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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON CATTLEMEN’S  
ASSOCIATION,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, et al.,

Defendants.

And

PUGET SOUNDKEEPER ALLIANCE,  
IDAHO CONSERVATION LEAGUE, and  
SIERRA CLUB,

Defendant-Intervenors.

No. 2:19-CV-0569-JCC

STIPULATED MOTION TO STAY  
CLAIMS ONE THROUGH EIGHTEEN  
AND FILE CERTIFIED INDEX FOR THE  
ADMINISTRATIVE RECORDS;  
[PROPOSED] ORDER

NOTE ON MOTION CALENDAR:  
JUNE 26, 2020

Stipulated Motion to Stay Claims One through  
Eighteen and File Certified Index for the  
Administrative Records  
2:19-CV-0569-JCC

U.S. Dept. of Justice/ENRD  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-1806

1 Pursuant to L.R. 10(g) and 7(d)(1), Plaintiff Washington Cattlemen’s Association  
2 (“Plaintiff”); Defendants the United States Environmental Protection Agency (“EPA”), Andrew  
3 Wheeler, in his official capacity as Administrator of EPA, the United States Army Corps of  
4 Engineers, and R.D. James, in his official capacity as Assistant Secretary for Civil Works,  
5 Department of the Army (collectively, “the Agencies”); and Defendant-Intervenors Puget  
6 Soundkeeper Alliance, Idaho Conservation League, and Sierra Club (collectively “Defendant-  
7 Intervenors”)<sup>1</sup>; hereby stipulate to and move for an order providing that Plaintiff’s claims  
8 concerning the 2015 Rule and 2019 Rule be held in abeyance and further providing that the  
9 Agencies be relieved of the requirement to file via ECF the administrative records in this case.  
10 In lieu of filing the full voluminous administrative records, the Agencies will file a certified  
11 index that lists the documents that compose the administrative record for the 2020 Rule and  
12 provides their Regulations.gov document identification number and hyperlinks.

13 **Stipulation to Stay Claims One through Eighteen**

14 Plaintiff filed its second supplemental complaint, which is the operative complaint in  
15 this case, on May 4, 2020. Dkt. No. 72. The Agencies’ and Defendant Intervenors’ responses to  
16 the second supplemental complaint are due July 3, 2020. Dkt. No. 75. Plaintiff’s second  
17 supplemental complaint alleges claims challenging three successive rules that define the phrase  
18 “waters of the Unites States” in the Clean Water Act. Claims One through Eight raise claims  
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20 <sup>1</sup> Defendant Intervenors’ counsel have agreed in principle to the terms set forth in the stipulation  
21 below. However, Defendants’ counsel was unable to attain Defendant Intervenors’ signature of  
22 the stipulation by the time of filing. Defendants will file a revised stipulation once Defendant  
23 Intervenors’ expressly consent to electronically signing this stipulation.

1 against a rule entitled “Clean Water Rule: Definition of ‘Waters of the United States,’” 80 Fed.  
 2 Reg. 37,054 (Nov. 29, 2015) (“2015 Rule”). Claims Nine through Eighteen raise claims against  
 3 a rule entitled “Definition of ‘Waters of the United States’—Recodification of Pre-Existing  
 4 Rules,” 84 Fed. Reg. 56,626 (October 22, 2019) (“2019 Rule”). Claims Nineteen through  
 5 Twenty Six raise claims against a rule entitled “Navigable Waters Protection Rule: Definition of  
 6 ‘Waters of the United States,’” 85 Fed. Reg. 22,250 (April 21, 2020) (“2020 Rule”).

7       Currently, as of June 22, 2020, the 2020 Rule is in effect in Washington, and nationwide  
 8 except for Colorado. *See Colorado v. EPA*, No. 20-cv-01461, Dkt. No. 61 (D. Colo. June 19,  
 9 2020) (staying the 2020 Rule’s effective date in Colorado); *California v. Wheeler*, No. 3:20-cv-  
 10 03005, Dkt. No. 171 (N.D. Cal. June 19, 2020) (declining plaintiffs’ request to preliminarily  
 11 enjoin or stay the effective date of the 2020 Rule). Motions to preliminarily enjoin the 2020  
 12 Rule are currently pending in this case and in two other courts. *See* Dkt. No. 72; *Or.*  
 13 *Cattlemen’s Ass’n*, No. 19-cv-564, Dkt. No. 97; *N.M. Cattle Growers’ Ass’n*, No. 19-cv-988,  
 14 Dkt. No. 30. Cases challenging the 2020 Rule are pending in multiple district courts across the  
 15 nation. *Pascua Yaqui Tribe v. EPA*, No. 4:20-cv-00266 (D. Ariz.); *Chesapeake Bay Found., Inc.*  
 16 *v. EPA*, No. 1:20-cv-01064 (D. Md.); *Conservation Law Found. v. EPA*, No. 1:20-cv-010820  
 17 (D. Mass.); *S.C. Coastal Conservation League v. Wheeler*, No. 2:20-cv-01687 (D.S.C.);  
 18 *California v. Wheeler*, No. 3:20-cv-03005 (N.D. Cal.); *Colorado v. EPA*, No. 20-cv-01461 (D.  
 19 Colo.); *Navajo Nation v. Wheeler*, No. 2:20-cv-602 (D.N.M.); *N.M. Cattle Growers’ Ass’n v.*  
 20 *EPA*, No. 1:19-cv-988 (D.N.M.); *Murray v. Wheeler*, No. 1:19-cv-1498 (N.D.N.Y.); *Or.*  
 21 *Cattlemen’s Ass’n v. EPA*, No. 3:19-cv-564 (D. Or.); *Puget Soundkeeper All. v. EPA*, No. 2:20-

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1 cv-950 (W.D. Wash.).

2           The 2020 Rule replaces the 2019 Rule, which had been in effect nationwide since  
 3 December 23, 2019. The 2019 Rule repealed and replaced the 2015 Rule, which had previously  
 4 been in effect in Washington. The 2019 Rule is currently subject to a number of legal  
 5 challenges, although some of those claims have been stayed, and those cases are still in early  
 6 stages. *See, e.g., S.C. Coastal Conservation League v. Wheeler*, No. 2:19-cv-03006, Dkt. No. 54  
 7 (D.S.C. May 29, 2020) (extending stay); *Murray v. Wheeler*, No. 1:19-cv-1498 (N.D.N.Y.)  
 8 (response to amended complaint due July 10, 2020); *Chesapeake Bay Found., Inc. v. Wheeler*,  
 9 No. 1:20-cv-1063 (D. Md.) (response to complaint due July 10, 2020). Claims challenging the  
 10 2015 Rule have also been stayed pending the outcome of claims challenging the 2020 Rule  
 11 and/or the 2019 Rule. *E.g., Waterkeeper All., Inc. v. Wheeler*, No. 3:18-cv-3521, Dkt. No. 87  
 12 (N.D. Cal. May 27, 2020); *North Dakota v. EPA*, No. 3:15-cv-59, Dkt. No. 325 (D.N.D. June  
 13 24, 2020); *Or. Cattlemen’s Ass’n v. EPA*, No. 3:19-cv-564, Dkt. No. 94 (D. Or. May 6, 2020).  
 14 Most cases challenging the 2015 Rule are in the early stages. Both district courts that ruled on  
 15 the merits of plaintiffs’ summary judgment motions concluded that the 2015 Rule was  
 16 “unlawful” and remanded it. *Georgia v. Wheeler*, 418 F. Supp. 3d 1336, 1360 (S.D. Ga. 2019);  
 17 *Texas v. EPA*, 389 F. Supp. 3d 497, 504-06 (S.D. Tex. 2019); *see also Puget Soundkeeper All.*  
 18 *v. Wheeler*, No. 2:15-cv-1342, 2019 WL 6310562 (W.D. Wash. Nov. 25, 2019) (denying  
 19 plaintiffs’ motion for summary judgment for lack of standing).

20           The Parties support litigating Plaintiff’s claims Nineteen through Twenty Six (the 2020  
 21 Rule Claims) first and stipulate to staying Plaintiff’s remaining claims until after the Court

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1 resolves the merits of the 2020 Rule Claims.

2 **Stipulation to File Certified Indexes of Administrative Records**

3 There is good cause for the Agencies to be relieved of strict compliance with Local Civil  
4 Rule 79(h) in this case. The administrative records for the three rules are publically available  
5 through Regulations.gov. See <https://www.regulations.gov/docket?D=EPA-HQ-OW-2011-0880>  
6 (docket for 2015 Rule); <https://www.regulations.gov/docket?D=EPA-HQ-OW-2017-0203>  
7 (docket for 2019 Rule); <https://www.regulations.gov/docket?D=EPA-HQ-OW-2018-0149>  
8 (docket for 2020 Rule). Each rule's record consists of thousands of pages, and each contains  
9 some files that are not easily converted to PDF, including Excel spreadsheets with multiple tabs.  
10 Given the volume and complexity of the records, filing the records via ECF would be  
11 burdensome and time consuming. Some files would need to be provided in an alternative  
12 format, which would consume additional resources. Further, each party is likely to cite only a  
13 small percentage of the documents in the record to support its summary judgment arguments.

14 Given these considerations, the Parties support the Agencies filing a certified index of  
15 the records, instead of strictly complying with Local Civil Rule 79(h). Each rule's certified  
16 index of the administrative record will list the documents that compose the administrative  
17 record for that rule and provide their Regulations.gov document identification number and  
18 hyperlinks to their location on Regulations.gov. A significant portion of the administrative  
19 records can be directly accessed via hyperlink. This furthers the goals of transparency, allowing  
20 members of the public direct access to the record.

21 Additionally, because the Parties stipulate that the claims concerning the 2019 and 2015

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1 Rules should be stayed, the Parties further stipulate that the certified indexes of the  
2 administrative records for the 2019 and 2015 Rules need not be filed until after the stay is lifted,  
3 and depending on subsequent future events, may not be necessary to resolve this case.

4 The Parties stipulate that the certified index for the administrative record for the 2020  
5 Rule will be due with the Agencies’ answer to the second supplemental complaint. Within  
6 fourteen days after the stay of Claims One through Eighteen or a portion of those claims is  
7 lifted, the Parties will submit a proposal to govern further proceedings, including submission of  
8 the certified indexes for the administrative records for the 2019 and 2015 Rules.

9

10

Dated: June 26, 2020

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Respectfully submitted,

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/s/ Hubert T. Lee

HUBERT T. LEE

14

SONYA J. SHEA

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U.S. Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

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Attorneys for Federal Defendants

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21

/s/ Anthony L. Francois

ANTHONY L. FRANÇOIS

22

Stipulated Motion to Stay Claims One through  
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Attorney for Defendant-Intervenors

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**[Proposed] Order**

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It is ordered that Plaintiff’s claims One through Eighteen are stayed pending a decision on the merits of Plaintiff’s claims Nineteen through Twenty Six.

It is further ordered that Defendants need not file the entire administrative records for the challenged rules. Defendants shall submit a certified index of the administrative record for the 2020 Rule on the date that Defendants file their answer to the second supplemental complaint. The deadline to file the certified indexes for the administrative records for the other challenged rules is stayed pending a decision on the merits of Plaintiff’s claims Nineteen through Twenty Six. Within fourteen days after the stay of Claims One through Eighteen or a portion of those claims is lifted, the Parties shall submit a proposal to govern further proceedings, including submission of the certified indexes for the administrative records for the 2019 and 2015 Rules.

It is so Ordered,

\_\_\_\_\_  
Hon. John C. Coughenour  
UNITED STATES DISTRICT JUDGE

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2:19-CV-0569-JCC

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**CERTIFICATE OF SERVICE**

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I certify that on June 26, 2020, the foregoing will be electronically filed with the Court’s electronic filing system, which will generate automatic service upon on all Parties enrolled to receive such notice.

/s/ Hubert T. Lee  
Hubert T. Lee

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