

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

CHESAPEAKE BAY FOUNDATION, INC., <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action Nos. RDB-20-1063,
	)	RDB-20-1064.
	)	
ANDREW R. WHEELER, in his official	)	
capacity as Administrator of the U.S.	)	
Environmental Protection Agency, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**JOINT MOTION TO CONSOLIDATE CASES AND  
MODIFY THE SCHEDULING ORDER**

Plaintiffs Chesapeake Bay Foundation, Inc. and ShoreRivers, Inc. (collectively, “Plaintiffs”), jointly with Defendants Andrew R. Wheeler, in his official capacity as Administrator of the U.S. Environmental Protection Agency (“EPA”), EPA, Rickey Dale James, in his official capacity as Assistant Secretary of the Army (Civil Works), and the U.S. Army Corps of Engineers (collectively, the “Agencies”), by and through undersigned counsel move the Court to consolidate *Chesapeake Bay Found., Inc. v. Wheeler*, Case No. RDB-20-1063 (D. Md.) and *Chesapeake Bay Found., Inc. v. Wheeler*, Case No. RDB-20-1064 (D. Md.). Pursuant to the Court’s instruction that the Parties propose a unified schedule for briefing (Telephone conference held August 13, 2020), the Parties also move the Court to modify the Scheduling Orders issued July 21, 2020, as modified by Order issued August 4, 2020 (Case No. RDB-20-1064, ECF Nos. 19 & 21 (referencing ECF No. 20)), and July 28, 2020 (Case No. RDB-20-1063, ECF No. 16) to set one unified schedule for the consolidated cases.

In support of this motion, the Parties state the following:

1. These cases involve challenges to two final rules issued by the Agencies: “Definition of ‘Waters of the United States’—Recodification of Pre-Existing Rules,” 84 Fed. Reg. 56,626 (Oct. 22, 2019) (the “2019 Rule”) and “Navigable Waters Protection Rule: Definition of ‘Waters of the United States,’” 85 Fed. Reg. 22, 250 (Apr. 21, 2020) (the “2020 Rule”).

2. Plaintiffs initiated these lawsuits on April 27, 2020, challenging both the 2019 Rule and the 2020 Rule under the Administrative Procedure Act. *See Chesapeake Bay Found., Inc. v. Wheeler*, Case No. RDB-20-1063, ECF No. 1; *Chesapeake Bay Found., Inc. v. Wheeler*, Case No. RDB-20-1064, ECF No. 1.

3. The Agencies filed their answers to both Complaints on July 7, 2020. ECF No. 15 in No. RDB-20-1063; ECF No. 18 in Case No. RDB-20-1064.

4. On July 21, 2020, the Court issued a scheduling order in *Chesapeake Bay Found., Inc. v. Wheeler*, Case No. RDB-20-1064. ECF No. 19. The Parties jointly moved to modify the scheduling order to strike the deadlines for discovery and set deadlines for resolving the case on cross-motions for summary judgment. ECF No. 20. On August 4, 2020, the Court approved and modified the scheduling order. ECF No. 21. The Agencies filed the certified index of the administrative record for the 2020 Rule on August 11, 2020. ECF No. 22.

5. On July 28, 2020, the Court issued a scheduling order in *Chesapeake Bay Found., Inc. v. Wheeler*, Case No. RDB-20-1063. ECF No. 16. The Parties moved to modify the scheduling order to strike the deadlines for discovery but disagreed on scheduling summary judgment briefing on the 2019 Rule. ECF No. 17.

6. Pursuant to a scheduling call with Chambers on August 13, 2020, the Parties jointly move to consolidate these cases.

7. The Parties agree that a trial is neither necessary nor appropriate, as the claims in these cases should be decided after the conclusion of briefing on cross-motions for summary judgment and a hearing (if one is scheduled). Accordingly, the Parties renew their request in Case No. RBD-20-1063 to strike the following discovery deadlines (Joint Motion to Modify Scheduling Order, ECF No. 17 ¶ 5):

- August 11, 2020: Report about deposition hours
- August 11, 2020: Deadline for conference about discovery of electronically stored information
- September 28, 2020: Plaintiff's Rule 26(a)(2) disclosures
- October 26, 2020: Defendant's Rule 26(a)(2) disclosures
- November 9, 2020: Plaintiff's rebuttal Rule 26(a)(2) disclosures
- November 16, 2020: Rule 26(e)(2) supplementation of disclosures and responses
- December 10, 2020: Discovery deadline; submission of status report
- December 17, 2020: Requests for admission

8. Additionally, pursuant to the Court's instructions, the Parties request that the Scheduling Orders be modified to include the following deadlines and page limits for combined summary judgment briefing of both cases<sup>1</sup>:

- August 28, 2020: Defendants file certified index of the administrative record for the 2019 Rule.

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<sup>1</sup> Per the Court's instructions during the August 13, 2020 conference, the Agencies reserve their right to renew their previous request that the cases be briefed separately, with briefing on the claims concerning the 2019 Rule proceeding later, if necessary, after the claims concerning the 2020 Rule are resolved.

- September 28, 2020: Plaintiffs' motion to challenge or supplement the administrative record for the 2019 Rule and/or the 2020 Rule.
- November 24, 2020, if Plaintiffs do not challenge the record, or 30 days after the Court rules on any record challenges: Plaintiffs' consolidated motion for summary judgment, limited to 65 pages.
- January 15, 2021, if Plaintiffs do not challenge the record, or 45 days after Plaintiffs' motion for summary judgment is due after the Court resolves any record challenges: Defendants' combined and consolidated response and cross-motion for summary judgment, limited to 65 pages.
- March 1, 2021, if Plaintiffs do not challenge the record, or 45 days after Defendants' combined response and cross-motion for summary judgment is due after the Court resolves any record challenges: Plaintiffs' combined and consolidated response and reply, limited to 40 pages.
- March 31, 2021, if Plaintiffs do not challenge the record, or 30 days after Plaintiffs' combined response and reply is due after the Court resolves any record challenges: Defendants' consolidated reply, limited to 40 pages.

For the foregoing reasons and as described above, the Parties respectfully request that this Court grant their joint motion to consolidate *Chesapeake Bay Found., Inc. v. Wheeler*, Case No. RDB-20-1063 and *Chesapeake Bay Found., Inc. v. Wheeler*, Case No. RDB-20-1064 and modifying the Scheduling Orders.

Dated: August 21, 2020

Respectfully submitted,

/s/ Brittany Wright  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on August 21, 2020, I electronically transmitted the foregoing to the Clerk of Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to registered counsel for all parties.

*/s/ Erica Zilioli*