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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,  
IDAHO CONSERVATION LEAGUE,  
SIERRA CLUB, and MI FAMILIA VOTA,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, et al.,

Defendants,

and,

AMERICAN FOREST & PAPER  
ASSOCIATION, AMERICAN  
PETROLEUM INSTITUTE, and  
NATIONAL MINING ASSOCIATION,  
NATIONAL STONE, SAND, & GRAVEL  
ASSOCIATION,

Intervenor-  
Defendants.

No. 2:20-CV-0950-JCC

STIPULATED MOTION TO STAY  
PROCEEDING

NOTE ON MOTION CALENDAR:  
FEBRUARY 5, 2021

1 Pursuant to Local Rules 7(d)(1) and 10(g), Plaintiffs, Defendants (“the Agencies”), and  
2 Intervenor-Defendants hereby move to stay the above-captioned proceeding until May 1, 2021.  
3 The Parties have good cause for this request.

4 1. In 2015, the Agencies revised the regulatory definition of “waters of the United  
5 States.” *See* Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg. 37,054  
6 (June 29, 2015) (“2015 Rule”). In 2017, the Agencies began reconsidering the 2015 Rule. They  
7 conducted a notice-and-comment rulemaking process, which resulted in the Agencies issuing a  
8 final rule repealing the 2015 Rule and reinstating the pre-2015 Rule regulatory definition of  
9 “waters of the United States.” *See* 84 Fed. Reg. 56,626, 56,626 (Oct. 22, 2019) (“Repeal Rule”).  
10 The Repeal Rule went into effect on December 23, 2019. *Id.* at 56,626.

11 2. On January 23, 2020, the Agencies signed a final rule—the Navigable Waters  
12 Protection Rule (“NWPR”)—promulgating a revised definition of “waters of the United States.”  
13 The NWPR was published in the Federal Register on April 21, 2020, and went into effect on June  
14 22, 2020. 85 Fed. Reg. 22,250 (Apr. 21, 2020).

15 3. Plaintiffs initiated this lawsuit on June 22, 2020, challenging the Repeal Rule and  
16 NWPR. Dkt. No. 1. Plaintiffs specifically seek to vacate and set aside the Repeal Rule and NWPR,  
17 while reinstating nearly all of the 2015 Rule. *See id.* at “Requested Relief.”

18 4. On September 24, 2020, Plaintiffs amended their complaint, adding additional  
19 challenges against the NWPR. Dkt. No. 40.

20 5. On August 27, 2020, the Agencies filed a motion to consolidate this case with  
21 *Washington Cattlemen’s Association v. United States Environmental Protection Agency, et al.*  
22 (2:19-CV-0596-JCC). *See* Dkt. No. 31 (noticing to the Court and the parties that the Agencies had  
23 filed a motion to consolidate this case with *Washington Cattlemen’s Association v. United States*  
24 *Environmental Protection Agency, et al.* (2:19-CV-0596-JCC) (Dkt. No. 87)). That motion is still  
25 pending.  
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1           6.       On August 20, 2020, third-party Patagonia Works filed a motion to intervene on  
2 behalf of Plaintiffs in this proceeding. Dkt. No. 21. The Agencies opposed Patagonia Works’  
3 motion to intervene. Dkt. No. 35. This motion is also still pending.

4           7.       There are no other outstanding motions or deadlines before the Court in this matter.

5           8.       On January 20, 2021, President Biden issued an Executive Order entitled  
6 “Executive Order on Protecting Public Health and the Environment and Restoring Science to  
7 Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 25, 2021). In conformance with the Executive  
8 Order, the Agencies are reviewing many rules promulgated in the last four years, including the  
9 NWPR at issue in this case.

10          9.       Agencies have inherent authority to review past decisions and to revise, replace, or  
11 repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v.*  
12 *Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass’n v. State Farm*  
13 *Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983); *Modesto Irrigation District v. Gutierrez*, 619 F.3d  
14 1024, 1034 (9th Cir. 2010). An agency’s interpretation of a statute it administers is not “carved in  
15 stone” but must be evaluated “on a continuing basis,” for example, “in response to . . . a change in  
16 administrations.” *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981  
17 (2005) (internal quotation marks and citations omitted).

18          10.       Accordingly, the Parties request to stay this proceeding until May 1, 2021 to give  
19 appropriate officials adequate time to review the NWPR and determine whether the rule should be  
20 maintained, modified, or otherwise reconsidered. This joint motion is without prejudice to the right  
21 of any party to seek a further stay at the end of the abeyance period. The Parties retain the right to  
22 move this Court to lift the stay prior to the end of the abeyance period if circumstances warrant  
23 resuming litigation.

24          11.       Granting this motion will not prejudice any party, will conserve the Parties’  
25 resources, and will promote the interest of judicial economy.

26               For the foregoing reasons, the Parties respectfully request that the Court stay this  
27 proceeding until May 1, 2021.

1 Dated: February 5, 2021

Respectfully submitted,

2 /s/ Hubert T. Lee

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**[Proposed] Order**

It is ordered that the above-captioned proceeding be stayed until May 1, 2021.

IT IS SO ORDERED,

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Hon. John C. Coughenour  
UNITED STATES DISTRICT JUDGE

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2021, I filed the foregoing using the Court’s  
CM/ECF system, which will electronically serve all counsel of record registered to use the  
CM/ECF system.

/s/ Hubert T. Lee

Hubert T. Lee