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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
PROCEEDING

NOTE ON MOTION CALENDAR:
FEBRUARY 2, 2021

1 Pursuant to Local Rules 7(d)(1) and 10(g), Plaintiff, Defendants, and Intervenor-
2 Defendants hereby move to stay the above-captioned proceeding until May 1, 2021. The Parties
3 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”).

7 2. In 2017, the Agencies began reconsidering the 2015 Rule. They conducted a
8 notice-and-comment rulemaking process, which resulted in the Agencies issuing a final rule
9 repealing the 2015 Rule and reinstating the pre-2015 Rule regulatory definition of “waters of the
10 United States.” *See* 84 Fed. Reg. 56,626, 56,626 (Oct. 22, 2019) (“Repeal Rule”). The Repeal
11 Rule went into effect on December 23, 2019. *Id.* at 56,626.

12 3. On January 23, 2020, the Agencies signed a final rule—the Navigable Waters
13 Protection Rule (“NWPR”)—promulgating a revised definition of “waters of the United States.”
14 The NWPR was published in the Federal Register on April 21, 2020, and went into effect on June
15 22, 2020. 85 Fed. Reg. 22,250 (Apr. 21, 2020).

16 4. Plaintiff initiated this lawsuit on April 16, 2019, first challenging the 2015 Rule.
17 Dkt. No. 1. Plaintiff then moved to preliminarily enjoin the 2015 Rule. *See* Dkt. No. 15. On
18 December 30, 2019, the Court denied Plaintiff’s first motion for preliminary injunction on the
19 grounds that the Repeal Rule rendered the motion “moot.” Dkt. No. 61.

20 5. Plaintiff then filed two supplemental complaints. First, on December 20, 2019,
21 Plaintiff added claims challenging the Repeal Rule to its complaint. Dkt. No. 60. Second, on May
22 4, 2020, Plaintiff added claims challenging portions of the NWPR. Dkt. No. 72.

23 6. On July 31, 2020, this Court stayed Plaintiff’s claims with respect to the 2015 Rule
24 and Repeal Rule. Dkt. No. 86. The Court noted that the Parties “may move to lift the stay following
25 the Court’s ruling on the merits of Plaintiff’s claims regarding the 2020 Rule.” *Id.*

26 7. On June 15, 2020, Plaintiff filed a motion to preliminarily enjoin, in part, the
27 NWPR. Dkt. No. 77. That motion is still pending.

1 8. On August 27, 2020, Defendants filed a motion to consolidate this case with *Puget*
2 *Soundkeeper Alliance, et al. v. United States Environmental Protection Agency, et al.* (2:20-CV-
3 0950-JCC). Dkt. No. 87. That motion is also still pending.

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

5 10. 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, Defendants are reviewing many rules promulgated in the last four years, including the
9 NWPR at issue in this case.

10 11. 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 12. 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 13. 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 2, 2020

Respectfully submitted,

2
3 /s/ Hubert T. Lee

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COUNSEL FOR DEFENDANT-
INTERVENORS

[Proposed] Order

It is ordered that the above-captioned proceeding be stayed until May 1, 2020.

IT IS SO ORDERED,

Hon. John C. Coughenour
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 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

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