

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

CONSERVATION LAW FOUNDATION,)
et al.,)

Plaintiffs,)

v.)

U.S. ENVIRONMENTAL PROTECTION)
AGENCY, *et al.*,)

Defendants,)

CHANTELL SACKETT; MICHAEL)
SACKETT,)

Defendant-Intervenors.)
_____)

Case No. 20-cv-10820-DPW

DEFENDANTS’ MOTION FOR REMAND WITHOUT VACATUR

Defendants United States Environmental Protection Agency and the United States Army Corps of Engineers, *et al.* (the “Agencies”) move the Court to remand without vacatur the Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 Fed. Reg. 22,250 (Apr. 21, 2020) (the “NWPR”) to the Agencies and to dismiss this action. The Agencies respectfully submit this motion in lieu of filing a reply brief in support of their cross-motion for summary judgment, which is due today.

As explained further in the accompanying memorandum of law, the Agencies have completed their review of the NWPR and have decided to commence a new rulemaking to revise or replace the rule. A remand would avoid potentially unnecessary litigation in this Court over aspects of the NWPR that will be reconsidered in a new rulemaking, would conserve the parties’ limited resources, and would best serve the interest of judicial economy. In addition, remand would avoid requiring the Agencies to take positions on merits questions that might appear to pre-judge issues that will be reconsidered through notice-and-comment rulemaking.

For the foregoing reasons and the reasons identified in the accompanying memorandum of law, the Court should grant the Agencies' motion for remand without vacatur.

Respectfully submitted this 9th day of June, 2021.

/s/ Sarah Izfar

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Sarah Izfar
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