

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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NEW MEXICO CATTLE GROWERS’))	
ASSOCIATION,))	
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Plaintiff,))	
))	
v.))	
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UNITED STATES ENVIRONMENTAL))	
PROTECTION AGENCY, et al.,))	
))	
Defendants,))	
))	Case No. 1:19-cv-00988-RB-SCY
and))	
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AMIGOS BRAVOS, NEW MEXICO))	
ACEQUIA ASSOCIATION, and GILA))	
RESOURCES INFORMATION))	
PROJECT,))	
))	
Intervening Cross-Claimants-Defendants,))	
))	
v.))	
))	
UNITED STATES ENVIRONMENTAL))	
PROTECTION AGENCY, et al.,))	
))	
Cross-Defendants.))	
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**DEFENDANTS/CROSS-DEFENDANTS’ STATUS REPORT/MOTION TO FURTHER
EXTEND STAY**

Pursuant to this Court’s April 29, 2021 Order directing the defendants/cross-defendants (the “Agencies”) to file a status report no later than June 1, 2021 “updating the Court on when

the 2020 Rule [NWPR] will be reviewed,” *see* Dkt. No. 64, the Agencies hereby provide the Court with the following status report.

The Agencies further move, unopposed, to extend the stay of this proceeding by one month, extending the end of the stay from June 1 to July 1, 2021. Plaintiff consents to this proposed motion; the Intervening Cross-Claimants-Defendants take “no position” on the motion. The Agencies have good cause for this request:

1. In 2015, the Agencies revised the regulatory definition of “waters of the United States.” *See* Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg. 37,054 (June 29, 2015) (“2015 Rule”).

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

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

4. Plaintiff initiated this lawsuit on October 22, 2019, challenging the Repeal Rule. Dkt. No. 1.

5. On April 27, 2020, Plaintiff sought leave to file a supplemental complaint to add challenges to the NWPR. Dkt. No. 24. This motion for leave was granted the same day. Dkt. No. 25.

6. On June 30, 2020, the Court granted Intervening Cross-Claimants-Defendants' motion to intervene. Dkt. No. 37.

7. Also on June 30, 2020, Intervening Cross-Claimants-Defendants filed a cross-complaint against the Agencies challenging the NWPR. Dkt. No. 38.

8. On May 26, 2020, Plaintiff filed a motion to preliminarily enjoin, in part, the NWPR. Dkt. No. 30. The Agencies and Intervening Cross-Claimants-Defendants opposed that motion. Dkt. Nos. 34, 40. On February 10, 2021, Plaintiff's motion for preliminary injunction was denied without prejudice. Dkt. No. 59. Plaintiff, however, may refile the motion at a later date "if necessary." *Id.*

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

10. On March 16, 2021, the Agencies filed a motion to stay the proceeding until June 1, 2021 in order to give appropriate agency officials adequate time to review the NWPR and determine whether the rule should be maintained, modified, or otherwise reconsidered. On April 29, 2021, the Court granted the Agencies' request to further stay this proceeding until June 1, 2021. Dkt. No. 64. The Court further instructed the Agencies to file, before June 1, a status report "updating the Court on when the [NWPR] will be reviewed." *Id.*

11. The Agencies provide the following status report: the Agencies are expecting to complete their review of the NWPR and announce next steps by June 9, 2021.

12. In light of the Agencies' anticipated completion of the review of the NWPR, the Agencies hereby move to further extend the stay period by 30 days, extending the final day of the stay from June 1, 2021 to July 1, 2021. The short extension would allow the Parties to plan for next steps in the litigation, incorporating the Agencies' expected next steps regarding the NWPR.

13. The Parties have met and conferred. Plaintiff consents to the Agencies' proposed motion to extend the stay in litigation; the Intervening Cross-Claimants-Defendants take "no position" regarding this motion.

For the foregoing reasons, the Agencies respectfully request that the Court further stay this proceeding until July 1, 2021.

Dated: May 25, 2020

Respectfully submitted,

/s/ Hubert T. Lee

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that, on May 25, 2021, 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/ Hubert T. Lee