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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

JOINT STATUS REPORT AND
STIPULATED MOTION TO FURTHER
STAY PROCEEDING

NOTE ON MOTION CALENDAR:
JUNE 30, 2021

1 Pursuant to Local Rules 7(d)(1) and 10(g) and in accordance with this Court’s Order,
2 Dkt. No. 50 (May 24, 2021), Plaintiff, Defendants (“the Agencies”),¹ and Intervenor-Defendants
3 hereby submit this joint status report and jointly move to further stay the above-captioned
4 proceeding until October 1, 2021. The Parties have good cause for this request:

5 1. In this proceeding, Plaintiffs are challenging two rules promulgated by the
6 Agencies that define the phrase “waters of the United States” in Section 1362(7) of the Clean
7 Water Act: The Navigable Waters Protection Rule: Definition of “Waters of the United States,”
8 85 Fed. Reg. 22,250 (Apr. 21, 2020) (“NWPR”), and the Definition of “Waters of the United
9 States” - Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“Repeal
10 Rule”).

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

14 3. On September 24, 2020, Plaintiffs amended their complaint, adding additional
15 challenges against the NWPR. Dkt. No. 40.

16 4. On August 27, 2020, the Agencies filed a motion to consolidate this case with
17 *Washington Cattlemen’s Association v. United States Environmental Protection Agency, et al.*
18 (2:19-CV-0596-JCC). *See* Dkt. No. 31 (noticing to the Court and the parties that the Agencies had
19 filed a motion to consolidate this case with *Washington Cattlemen’s Association v. United States*
20 *Environmental Protection Agency, et al.* (2:19-CV-0596-JCC) (Dkt. No. 87)). That motion is still
21 pending.

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25 ¹ EPA Administrator Michael Regan and Acting Assistant Secretary of the Army for Civil Works
26 Jaime Pinkham are automatically substituted for their predecessors in office pursuant to Rule
27 25(d) of the Federal Rules of Civil Procedure.

1 5. 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 6. There are no other outstanding motions or deadlines before the Court in this matter.

5 7. 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) (“EO 13990”). In conformance
8 with the Executive Order, the Agencies began reviewing a number of regulations promulgated
9 in the last four years, including the NWPR at issue in this case.

10 8. In light of this directive, on February 5, 2021, the Parties filed a stipulated motion
11 to stay the proceeding for 90 days to accommodate the Agencies’ review of the NWPR. Dkt. No.
12 46. The Court granted the motion on February 8, 2021, staying the case until May 1, 2021. Dkt.
13 No. 47.

14 9. On April 29, 2021, the Parties filed another stipulated motion to continue the stay
15 until July 1, 2021. Dkt. No. 49. The Agencies noted that Michael Regan had only recently been
16 sworn in as EPA Administrator and that the review of the NWPR was ongoing. *Id.* To provide
17 sufficient time to allow the new Administrator to make an informed decision regarding the
18 NWPR, the Agencies asked that the Court extend the stay until July 1. *Id.* On May 24, 2021, the
19 Court granted the stipulated motion to continue this proceeding until July 1, 2021. Dkt. No. 50.

20 10. On June 9, 2021, the Agencies issued a press release stating that, after reviewing
21 the NWPR, they have decided to initiate new rulemaking to revise the definition of “waters of
22 the United States.” See [https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-](https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus)
23 [definition-wotus](https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus) (last accessed June 25, 2021).

24 11. In light of this new rulemaking, the Parties all agree that the stay in the proceeding
25 should be extended another three months, until October 1, 2021, when the Parties can then
26 reassess how this litigation should proceed. By October 1, 2021, the Parties will file a joint status
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1 report and proposal(s) to further govern proceedings. Granting this motion will not prejudice any
2 party and would promote judicial economy.

3 12. To be sure, the Agencies have filed motions to remand the NWPR without vacatur
4 in a number of other proceedings where the NWPR is being challenged. *See Conservation Law*
5 *Foundation v. EPA*, 20-cv-10820-DPW (D. Mass.) at Dkt. No. 113 (June 9, 2021); *South*
6 *Carolina Coastal Conservation League, et al. v. Regan, et al.*, 2:20-cv-01687-BHH (D.S.C.) at
7 Dkt. No. 140 (June 21, 2021); *Waterkeeper Alliance, Inc., et al. v. Regan, et al.*, 3:18-cv-03521-
8 RS (N.D. Cal.) at Dkt. No. 111 (June 22, 2021); *Navajo Nation v. Regan, et al.*, 2:20-cv-00602-
9 MV-GJF (D.N.M.) at Dkt. No. 32 (June 22, 2021). Notwithstanding these filings, the Parties
10 here agree that it would be appropriate to further hold this litigation in abeyance for now. The
11 Agencies may decide to file a similar motion to remand the NWPR in this proceeding at a later
12 date.

13 13. Accordingly, the Parties request to stay this proceeding until October 1, 2021.
14 This stipulated motion is without prejudice to the right of any party to seek a further stay at the
15 end of the abeyance period. The Parties retain the right to move this Court to lift the stay prior
16 to the end of the abeyance period if circumstances warrant resuming litigation.

17 14. For the foregoing reasons, the Parties respectfully request that the Court stay this
18 proceeding until October 1, 2021. The Parties will file a joint status report and proposal(s) to
19 further govern proceedings by no later than October 1, 2021.

20 Dated: June 30, 2021

Respectfully submitted,

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/s/ Hubert T. Lee
HUBERT T. LEE
SONYA J. SHEA
Trial Attorneys
Environmental Defense Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-1806 (Lee)
(303) 844-7231 (Shea)
Hubert.lee@usdoj.gov
Sonya.Shea@usdoj.gov

COUNSEL FOR DEFENDANTS

/s/ Janette K. Brimmer
JANETTE K. BRIMMER
Earthjustice Northwest Office
705 2nd Ave., Suite 203
Seattle, WA 98104
Telephone: (206) 343-7340
Email: jbrimmer@earthjustice.org

COUNSEL FOR PLAINTIFFS

/s/ James A. Tupper, Jr.
TUPPER MACK WELLS PLLC
James A. Tupper, Jr., WSBA No. 16873 2025
First Avenue, Suite 1100
Seattle, WA 98121
(206) 493-2300
tupper@tmw-law.com

MAYER BROWN LLP
Timothy S. Bishop*
Colleen M. Campbell*
1999 K Street NW
Washington, DC 20006
(202) 263-3000
tbishop@mayerbrown.com
ccampbell@mayerbrown.com

Brett E. Legner*

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71 S. Wacker Drive Chicago, IL 60606
Telephone: (312) 701 7829 Facsimile: (312) 706
8607
blegner@mayerbrown.com

COUNSEL FOR INTERVENOR-
DEFENDANTS
**Pro hac vice*

[Proposed] Order

It is ORDERED that the above-captioned proceeding be stayed until October 1, 2021.

It is further ORDERED that the Parties file a joint status report and proposal(s) to further govern proceedings by no later than October 1, 2021.

IT IS SO ORDERED.

Hon. John C. Coughenour
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 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