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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:  
September 24, 2021

1 Pursuant to Local Rules 7(d)(1) and 10(g) and in accordance with this Court’s Order,  
2 Dkt. No. 52 (July 6, 2021), Plaintiff, Defendants (“the Agencies”),<sup>1</sup> and Intervenor-Defendants  
3 hereby submit this joint status report and jointly move to further stay the above-captioned  
4 proceeding until April 1, 2022. 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 <sup>1</sup> 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 September 20, 2021). In light of this new rulemaking, on July 1,  
24 2021, the Parties stipulated to continue the stay in this proceeding until October 1, 2021. Dkt.  
25 No. 51. On July 6, 2021, the Court granted the stipulated motion. Dkt. No. 52.

1           11.     On August 4, 2021, the Agencies issued a *Federal Register* notice announcing  
2 that the Agencies intend to revise the definition of “waters of the United States” and seeking  
3 stakeholder input. 86 Fed. Reg. 41,911 (Aug. 4, 2021).

4           12.     The Agencies have filed motions to remand the NWPR without vacatur in a  
5 number of other proceedings where the NWPR is being challenged. *See Conservation Law*  
6 *Foundation v. EPA*, 20-cv-10820-DPW (D. Mass.) at Dkt. No. 113 (June 9, 2021); *South*  
7 *Carolina Coastal Conservation League, et al. v. Regan, et al.*, 2:20-cv-01687-BHH (D.S.C.) at  
8 Dkt. No. 140 (June 21, 2021); *Waterkeeper Alliance, Inc., et al. v. Regan, et al.*, 3:18-cv-03521-  
9 RS (N.D. Cal.) at Dkt. No. 111 (June 22, 2021); *Navajo Nation v. Regan, et al.*, 2:20-cv-00602-  
10 MV-GJF (D.N.M.) at Dkt. No. 32 (June 22, 2021); *Pascua Yaqui Tribe v. EPA*, 4:20-cv-00266-  
11 RM, ECF No. 72 (D. Ariz. July 2, 2021); *Pueblo of Laguna v. Regan*, No. 21-cv-00277-JFR-  
12 KK, ECF No. 28 (D.N.M. July 2, 2021); *Env’t Integrity Project v. EPA*, 1:20-cv-01734-KBJ,  
13 ECF No. 34 (D.D.C. August 6, 2020).

14           13.     On July 15, 2021, the court in *S.C. Coastal Conservation League v. Wheeler*  
15 granted the Agencies’ motion to remand the NWPR without vacatur and dismissed the suit, *see*  
16 No. 2:20-cv-01687-BHH, ECF No. 147 (D.S.C. July 15, 2021).

17           14.     On August 30, 2021, the court in *Pascua Yaqui Tribe v. EPA* granted the  
18 Agencies’ motion for remand, but also vacated the NWPR, *see* 4:20-cv-00266-RM, ECF No. 99  
19 (D. Ariz. Aug. 30, 2021). Other courts that have decided the Agencies’ motions have granted the  
20 requests to remand the NWPR, but declined to reach the issue of vacatur in light of the *Pascua*  
21 *Yaqui* order. *See Conservation Law Found. v. EPA*, No. 1:20-cv-10820-DPW, ECF No. 122 (D.  
22 Mass. Sept. 1, 2021); *California v. Wheeler*, No. 3:20-cv-03005-RS, ECF No. 271 (N.D. Cal.  
23 Sept. 16, 2021); *Waterkeeper All. v. Wheeler*, No. 3:18-cv-03521-RS, ECF No. 125 (N.D. Cal.  
24 Sept.16, 2021); *Pueblo of Laguna v. Regan*, No. 21-cv-00277-JFR-KK, ECF No. 40 (D.N.M.  
25 Sept. 21, 2021).

1 15. The Agencies are currently weighing next steps in response to the *Pascua Yaqui*  
2 order. The intervenor defendants in *Pascua Yaqui* may also be weighing their response to the  
3 *Pascua Yaqui* order. How these entities respond to the *Pascua Yaqui* order may affect how the  
4 parties in this proceeding approach this litigation.

5 16. Moreover, the Agencies are in the process of a new rulemaking to define “waters  
6 of the United States.” In light of these uncertainties, the Parties agree that a further six-month  
7 abeyance in this proceeding is warranted and would promote judicial economy.

8 17. The Parties have met and conferred regarding this stipulated motion.  
9 Accordingly, the Parties request to stay this proceeding until April 1, 2022. This stipulated  
10 motion is without prejudice to the right of any party to seek a further stay at the end of the  
11 abeyance period. The Parties retain the right to move this Court to lift the stay prior to the end  
12 of the abeyance period if circumstances warrant resuming litigation.

13 For the foregoing reasons, the Parties respectfully request that the Court stay this  
14 proceeding until April 1, 2022. The Parties will file a joint status report and proposal(s) to further  
15 govern proceedings by no later than April 1, 2022.

16 Dated: September 24, 2021

Respectfully submitted,

17 /s/ Hubert T. Lee

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COUNSEL FOR INTERVENOR-  
DEFENDANTS  
*\*Pro hac vice*

**[Proposed] Order**

It is ORDERED that the above-captioned proceeding be stayed until April 1, 2022.

It is further ORDERED that the Parties file a joint status report and proposal(s) to further govern proceedings by no later than April 1, 2022.

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 September 24, 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