

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

SOUTH CAROLINA COASTAL  
CONSERVATION LEAGUE, *et al.*,

Plaintiffs,

v.

MICHAEL REGAN,<sup>1</sup> in his official  
capacity as Administrator of the U.S.  
Environmental Protection Agency, *et al.*,

Defendants,

AMERICAN FARM BUREAU  
FEDERATION, *et al.*,

Intervenor-Defendants.

Case No. 2:19-cv-03006-BHH

**JOINT STATUS REPORT AND MOTION TO GOVERN FURTHER PROCEEDINGS**

The parties file this Joint Status Report and Motion to Govern Further Proceedings pursuant to the Court’s July 12, 2021 Order holding this case in abeyance until October 1, 2021 and directing the parties to file a proposal to govern further proceedings at the conclusion of the abeyance period. ECF No. 83. The parties have conferred and jointly request that the Court continue the abeyance until January 3, 2022, after which the parties will submit a proposal to govern further proceedings.

In support, the parties state as follows:

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<sup>1</sup> EPA Administrator Michael Regan is automatically substituted for Andrew Wheeler pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

1. Plaintiffs South Carolina Coastal Conservation League, et al., challenge a regulation that (1) repealed the “Clean Water Rule”—a 2015 rule defining “waters of the United States” under the Clean Water Act—and (2) recodified the prior regulatory definition of “waters of the United States.” See ECF No. 1 ¶ 1 (challenging Final Rule, Definition of “Waters of the United States”—Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“Repeal Rule”)).

2. On January 17, 2020, Defendants moved to dismiss the complaint for lack of subject matter jurisdiction. See ECF No. 28. On March 4, 2021, the Court dismissed Defendants’ motion to dismiss without prejudice, “to be refiled, as appropriate, at such time as a proposal to govern further proceedings is determined.” ECF No. 74.

3. On January 23, 2020, the Administrator of EPA and the Assistant Secretary of the Army for Civil Works signed a final rule entitled “Navigable Waters Protection Rule: Definition of ‘Waters of the United States’ ” (“NWPR”). This rule defines “waters of the United States” under the Clean Water Act and replaced the definition promulgated in the Repeal Rule, which is the subject of this litigation. The NWPR was published in the *Federal Register* on April 21, 2020, see 85 Fed. Reg. 22,250 (Apr. 21, 2020), and went into effect on June 22, 2020.

4. There have been several challenges to the NWPR filed to date, including one filed with this Court (S.C. Coastal Conservation League v. Wheeler, No. 2:20-cv-01687-BHH).<sup>2</sup>

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<sup>2</sup> See also Conservation Law Found. v. EPA, No. 1:20-cv-10820-DPW, ECF No. 1 (D. Mass. Apr. 29, 2020); California v. Wheeler, No. 3:20-cv-03005-RS, ECF No. 1 (N.D. Cal. May 1, 2020); Chesapeake Bay Found., Inc. v. Wheeler, 1:20-cv-01064-RDB, ECF No. 1 (D. Md. Apr. 27, 2020); N.M. Cattle Growers’ Ass’n v. EPA, 1:19-cv-00988-JHR-SCY, ECF No. 26 (D.N.M. Apr. 27, 2020); Or. Cattlemen’s Ass’n v. EPA, 3:19-cv-00564-MM, ECF No. 90 (D. Or. May 1, 2020); Wash. Cattlemen’s Ass’n v. EPA, 2:19-cv-00569-JCC, ECF No. 72 (W.D. Wash. May 4, 2020); Murray v. Wheeler, 1:19-cv-01498-LEK, ECF No. 17 (N.D.N.Y. May 11, 2020); Colorado v. EPA, 1:20-cv-01461-WJM, ECF No. 1 (D. Colo. May 22, 2020); Pascua Yaqui Tribe v. EPA, 4:20-cv-00266-RM, ECF No. 1 (D. Ariz. June 22, 2020); Navajo Nation v.

4. On January 20, 2021, President Biden issued an Executive Order entitled “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 25, 2021). In conformance with the Executive Order, the Agencies are reviewing many rules promulgated in the last four years, including the NWPR. As a result of this review, the Agencies announced on June 9, 2021 that they have decided to initiate new rulemaking to revise the definition of “waters of the United States.” See <https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus> (last accessed June 29, 2021). The Agencies subsequently issued a *Federal Register* notice announcing that the Agencies intend to undertake two rulemakings and seeking stakeholder input on the forthcoming rulemaking process. 86 Fed. Reg. 41,911 (Aug. 4, 2021).

5. As a result of the Agencies’ decision to initiate new rulemaking to revise the definition of “waters of the United States,” on June 21, 2021, the Agencies filed, in a separate proceeding, a motion to remand the NWPR with this Court. See S.C. Coastal Conservation League v. Wheeler, No. 2:20-cv-01687-BHH, ECF No. 140 (D.S.C. June 21, 2021). On July 15, 2021, the Court granted the Agencies’ motion to remand the NWPR without vacatur and dismissed the suit. See id. at ECF No. 147.

6. The Agencies have filed similar motions to remand the NWPR in other courts. On August 30, 2021, the court in Pascua Yaqui Tribe v. EPA granted the Agencies’ motion for remand, and also vacated the NWPR, see 4:20-cv-00266-RM, ECF No. 99 (D. Ariz. Aug. 30, 2021). Other courts that have decided the Agencies’ motions have granted the requests to remand

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Wheeler, 2:20-cv-00602-MV-GJF, ECF No. 1 (D.N.M. June 22, 2020); Puget Soundkeeper All. v. EPA, 2:20-cv-00950-JCC, ECF No. 1 (W.D. Wash. June 22, 2020); Env’t Integrity Project v. EPA, 1:20-cv-01734-KBJ, ECF No. 1 (D.D.C. June 25, 2020); Waterkeeper All. v. Wheeler, No. 3:18-cv-03521-RS, ECF No. 93 (N.D. Cal. Dec. 23, 2020); Pueblo of Laguna v. Regan, No. 21-cv-00277-JFR-KK, ECF No. 1 (D.N.M. Mar. 26, 2021).

the NWPR, but declined to reach the issue of vacatur in light of the Pascua Yaqui order. See Conservation Law Found. v. EPA, No. 1:20-cv-10820-DPW, ECF No. 122 (D. Mass. Sept. 1, 2021); California v. Wheeler, No. 3:20-cv-03005-RS, ECF No. 271 (N.D. Cal. Sept. 16, 2021); Waterkeeper All. v. Wheeler, No. 3:18-cv-03521-RS, ECF No. 125 (N.D. Cal. Sept. 16, 2021); Pueblo of Laguna v. Regan, No. 1:21-cv-00277-WJ-KK, ECF No. 40 (D.N.M. Sept. 21, 2021).

7. The Agencies are currently weighing next steps in response to the Pascua Yaqui order. The intervenor-defendants in Pascua Yaqui may also be weighing their response to the Pascua Yaqui order. How these entities respond to the Pascua Yaqui order may affect how the parties in this proceeding approach this litigation challenging the “Repeal Rule.”

8. Moreover, the Agencies are in the process of a new rulemaking to revise the definition of “waters of the United States.” In light of these uncertainties, the Parties agree that a further three-month abeyance in this proceeding is warranted.

Accordingly, the parties respectfully request that the Court hold this case in abeyance until January 3, 2022.

Dated: September 23, 2021

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