

**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,¹ 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 March 4, 2021 Order holding this case in abeyance for an additional 60 days and directing the parties to file a proposal to govern further proceedings at the conclusion of the abeyance period. ECF No. 74. The parties have conferred and jointly request that the Court continue the abeyance for an additional 60 days, after which the parties will submit a proposal to govern further proceedings.

In support, the parties state as follows:

¹ EPA Administrator Michael Regan is automatically substituted for Jane Nishida 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 Plaintiffs South Carolina Coastal Conservation League, et al., challenge a regulation that (1) repealed the “Clean Water Rule”—a 2015 rule defining “waters of the United States” under the Clean Water Act—and (2) recodified the prior regulatory definition of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.’” 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 “Navigable Waters Protection Rule” 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 “Navigable Waters Protection Rule” filed to date, including one before this Court wherein briefing has been submitted on dispositive motions.² The Court has stayed proceedings in that case for 60 days. See S.C. Coastal

² The Court in South Carolina Coastal Conservation League v. Wheeler, No. 2:20-cv-01687-BHH, has since vacated the parties’ summary judgment briefing, dismissing the parties’ cross-motions for summary judgment without prejudice, “to be refiled at such time as the Agencies’ litigating position is determined.” Id. at ECF No. 106 (D.S.C. Mar. 2, 2021).

Conservation League v. Wheeler, No. 2:20-cv-01687-BHH, ECF No. 106 (D.S.C. Mar. 2, 2021).³

5. 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 “Navigable Waters Protection Rule.” The Agencies’ ongoing review of the “Navigable Waters Protection Rule” and/or the disposition of challenges to the “Navigable Waters Protection Rule” may affect the issues and arguments at play in this litigation and other related legal challenges regarding the regulatory definition of “waters of the United States,” including Plaintiffs’ challenge in the above-captioned proceeding.

Accordingly, the parties respectfully request that the Court hold this case in abeyance for an additional 60 days, up to and including July 2, 2021.

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³ 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); Pasqua Yaqui Tribe v. EPA, 4:20-cv-00266-RM, ECF No. 1 (D. Ariz. June 22, 2020); Navajo Nation v. 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).

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