

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

SOUTH CAROLINA COASTAL)
CONSERVATION LEAGUE, <i>et al.</i> ,)
)
Plaintiffs,)
)
v.)
)
MICHAEL REGAN, ¹ in his official)
capacity as Administrator of the U.S.)
Environmental Protection Agency, <i>et al.</i> ,)
)
Defendants,)
)
AMERICAN FARM BUREAU)
FEDERATION, <i>et al.</i> ,)
)
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 April 29, 2021 Order holding this case in abeyance until July 2, 2021 and directing the parties to file a proposal to govern further proceedings at the conclusion of the abeyance period. ECF No. 79. The parties have conferred and jointly request that the Court continue the abeyance until October 1, 2021, 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 Plaintiffs South Carolina Coastal Conservation League, et al., challenge a regulation that (1) repealed the “Clean Water Rule”—a 2015 rule defining “waters of the United States” under the Clean Water Act—and (2) recodified the prior regulatory definition of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. 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.” 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).

5. There have been several challenges to the “Navigable Waters Protection Rule” filed to date, including one before this Court.² The parties in that proceeding are currently briefing cross-motions for summary judgment, with the Agencies also having filed a motion to remand the Navigable Waters Protection Rule in lieu of filing a cross-motion for summary judgment. See S.C. Coastal Conservation League v. Wheeler, No. 2:20-cv-01687-BHH, ECF Nos. 119, 140, and 143 (D.S.C.).

6. The Agencies’ decision to initiate new rulemaking to re-define “waters of the United States” will invariably 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.” In light of this new rulemaking, the parties agree that a further abeyance in this proceeding is warranted.

Accordingly, the parties respectfully request that the Court hold this case in abeyance until October 1, 2021.

² 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).

Dated: June 30, 2021

FOR PLAINTIFFS:

s/ Frank S. Holleman III
Frank S. Holleman III
D.S.C. Bar No. 1911
Kelly F. Moser*
Geoffrey R. Gisler*
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, NC 27516-2356
Telephone: (919) 967-1450
Facsimile: (919) 929-9421
fholleman@selcnc.org
kmoser@selcnc.org
ggisler@selcnc.org

Mark Sabath*
Southern Environmental Law Center
201 West Main Street, Suite 14
Charlottesville, VA 22902-5065
Telephone: (434) 977-4090
Facsimile: (434) 977-1493
msabath@selcva.org

FOR DEFENDANTS:

M. RHETT DEHART
Acting United States Attorney
District of South Carolina

s/ Hubert T. Lee
HUBERT T. LEE
Trial Attorney
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-1806
Hubert.Lee@usdoj.gov

Lee Berlinsky
Fed. ID# 05443
Assistant United States Attorney
151 Meeting Street, Suite 200
Charleston, SC 29401

FOR INTERVENOR-DEFENDANTS:

s/ W. Thomas Lavender, Jr.
W. Thomas Lavender, Jr.
Joan Wash Hartley
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
(803) 253-8233
TLavender@nexsenpruet.com
jhartley@nexsenpruet.com

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

Brett E. Legner*
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
(312) 782-0600
blegner@mayerbrown.com

* *Pro hac vice*

Telephone: (843) 266-1679
Lee.Berlinsky@usdoj.gov