

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

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

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and MICHAEL S.
REGAN, in his official capacity as the
Administrator of the United States
Environmental Protection Agency,¹

Defendants,

AMERICAN PETROLEUM INSTITUTE, *et
al.*,

Defendant-Intervenors,

NATIONAL HYDROPOWER
ASSOCIATION,

Defendant-Intervenors,

STATE OF LOUISIANA, *et al.*,

Defendant-Intervenors.

Civil Action No. 2:20-cv-03062-BHH

**DEFENDANTS' MOTION TO HOLD PROCEEDINGS IN ABEYANCE AND VACATE
BRIEFING SCHEDULE**

¹ Pursuant to Fed. R. Civ. P. 25(d), Jane Nishida's successor, Michael S. Regan, in his official capacity as the Administrator of the United States Environmental Protection Agency, is automatically substituted as a defendant.

Defendants United States Environmental Protection Agency and Michael S. Regan, in his official capacity as the Administrator of the United States Environmental Protection Agency (collectively, “EPA”), by and through their counsel, hereby move to hold these proceedings in abeyance for 53 days, until June 4, 2021. In support of this Motion, EPA states as follows:

1. Plaintiffs in this action challenge an EPA final rule under the Clean Water Act, entitled the Clean Water Act Section 401 Certification Rule (the “Certification Rule”) (codified at 40 C.F.R. § 121). On January 20, 2021, President Biden signed Executive Order 13,990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7037 (Jan. 25, 2021), directing federal agencies to review certain actions taken between January 20, 2017, and January 20, 2021. The Certification Rule was specifically listed in a subsequent White House Statement as one of the agency actions to be reviewed pursuant to the Executive Order for potential suspension, revision or rescission.

2. On February 11, 2021, the Parties jointly moved the Court to hold all proceedings in abeyance and continue the briefing schedule to allow EPA additional time to brief new administration officials with decision-making responsibility about the Certification Rule (Dkt. No. 55).

3. For the past 60 days, EPA officials have been reviewing the Certification Rule. This effort has included briefings with senior leadership in EPA’s Office of Water. EPA leadership has determined that Administrator Regan should be consulted on this matter. Administrator Regan was sworn in on March 11, 2021. An initial briefing of Administrator Regan regarding the Certification Rule was held last week. Further consultation with Administrator Regan is necessary to determine a course of action with respect to the Certification Rule.

4. In parallel with its internal review of the Certification Rule, EPA has also taken steps to understand Plaintiffs’ concerns with the Rule’s implementation. EPA has met with the Army Corps of Engineers to discuss implementation challenges and concerns.

5. The Certification Rule is among the highest priorities for EPA’s Office of Water. EPA requires additional time for its review of the Certification Rule. EPA anticipates that extending

the abeyance by 53 days will allow the Office of Water to work with Administrator Regan to select a course of action with respect to the Certification Rule, and to announce its intended course of action. At the end of the 53-day period, EPA will confer with Plaintiffs and intervening parties to provide a status report. While EPA anticipates that it will have selected and announced its intended course of action by the end of the 53-day period, EPA reserves the right to request additional time.

6. EPA is advised that Plaintiffs intend to move the Court to dismiss EPA's pending motion for summary judgment (Dkt. No. 46).

7. For the foregoing reasons, abeyance of all proceedings in this Court for 53 days and vacatur of the current briefing schedule is warranted. An abeyance would preserve the resources of the Court and the Parties if, as a result of the Agency's review directed by the Executive Order, the Agency decides it would be appropriate to undertake further rulemaking to suspend, revise or rescind the Certification Rule. Such action could obviate the need for judicial resolution of the issues raised in the Complaint or narrow the issues subject to litigation.

8. Counsel for EPA has conferred with Plaintiffs and intervenors regarding this request. Plaintiffs do not oppose this request. Intervenors were not able to state their position at the time of filing.

WHEREFORE, the EPA respectfully request that the Court issue an order holding all proceedings in this case in abeyance for 53 days, until June 4, 2021, and vacating the current briefing schedule. EPA will confer with Plaintiffs and intervening parties and provide a status report regarding its review of the Certification Rule by June 4, 2021.

Respectfully submitted this 12th day of April, 2021.

JEAN E. WILLIAMS
Acting Assistant Attorney General

/s/ Elisabeth Carter

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Motion for Summary Judgment to be filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

Date: April 12, 2021

s/ Elisabeth Carter