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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON CATTLEMEN'S
ASSOCIATION,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

And

PUGET SOUNDKEEPER ALLIANCE,
IDAHO CONSERVATION LEAGUE, and
SIERRA CLUB,

Defendant-
Intervenors.

No. 2:19-CV-0569-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. 101 (July 6, 2021), Plaintiff, Defendants (“the Agencies”),¹ 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, Plaintiff is challenging three 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 Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg.
8 37,054 (June 29, 2015) (“2015 Rule”), the Definition of “Waters of the United States” –
9 Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“2019 Rule”), and
10 The Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 Fed. Reg.
11 22,250 (Apr. 21, 2020) (“2020 Rule”).

12 2. Plaintiff initiated this lawsuit on April 16, 2019, first challenging the 2015 Rule.
13 Dkt. No. 1. Plaintiff then moved to preliminarily enjoin the 2015 Rule. *See* Dkt. No. 15. On
14 December 30, 2019, the Court denied Plaintiff’s first motion for preliminary injunction on the
15 grounds that the Repeal Rule rendered the motion “moot.” Dkt. No. 61.

16 3. Plaintiff then filed two supplemental complaints. First, on December 20, 2019,
17 Plaintiff added claims to its complaint, challenging the Repeal Rule. Dkt. No. 60. Second, on
18 May 4, 2020, Plaintiff added claims challenging portions of the NWPR. Dkt. No. 72.

19 4. On July 31, 2020, this Court stayed Plaintiff’s claims with respect to the 2015
20 Rule and Repeal Rule. Dkt. No. 86. The Court noted that the Parties “may move to lift the stay
21 following the Court’s ruling on the merits of Plaintiff’s claims regarding the 2020 Rule.” *Id.*

22 5. Plaintiff filed a motion to preliminarily enjoin, in part, the NWPR on June 15,
23 2020. Dkt. No. 77. That motion is still pending.

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¹ 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 6. On August 27, 2020, Defendants filed a motion to consolidate this case with
2 *Puget Soundkeeper Alliance, et al. v. United States Environmental Protection Agency, et al.*
3 (2:20-CV-0950-JCC). Dkt. No. 87. That motion is also still pending.

4 7. There are no other outstanding motions or deadlines before the Court in this
5 matter.

6 8. On January 20, 2021, President Biden issued an Executive Order entitled
7 “Executive Order on Protecting Public Health and the Environment and Restoring Science to
8 Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 25, 2021) (“EO 13990”). In conformance
9 with the Executive Order, the Agencies began reviewing a number of regulations promulgated
10 in the last four years, including the NWPR at issue in this case.

11 9. In light of this directive, on February 2, 2021, the Parties filed a stipulated motion
12 to stay the proceeding for 90 days to accommodate the Agencies’ review of the NWPR. Dkt. No.
13 94. The Court granted the motion on February 8, 2021, staying the case until May 1, 2021. Dkt.
14 No. 95.

15 10. On April 29, 2021, the Agencies filed a motion to continue the stay until July 1,
16 2021. Dkt. No. 97. The Agencies noted that Michael Regan had only recently been sworn in as
17 EPA Administrator and that the review of the NWPR was ongoing. *Id.* To provide sufficient
18 time to allow the new Administrator to make an informed decision regarding the NWPR, the
19 Agencies asked that the Court extend the stay until July 1. *Id.* While Plaintiff initially opposed
20 the motion, Plaintiff subsequently informed the Agencies it would no longer oppose the motion,
21 once it learned that the Agencies were prepared to make an announcement regarding the NWPR
22 by early June. Dkt. No. 98. Ultimately, on May 24, 2021, the Court granted the motion to
23 continue this proceeding until July 1, 2021. Dkt. No. 99.

24 11. On June 9, 2021, the Agencies issued a press release stating that, after reviewing
25 the NWPR, they have decided to initiate new rulemaking to revise the definition of “waters of
26 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)
27 [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 June

1 30, 2021, the Parties stipulated to continue the stay in this proceeding until October 1, 2021. Dkt.
2 No. 100. On July 6, 2021, the Court granted the stipulated motion. Dkt. No. 101.

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

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

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

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

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[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.

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