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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,
IDAHO CONSERVATION LEAGUE,
SIERRA CLUB, and MI FAMILIA VOTA,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants,

and,

AMERICAN FOREST & PAPER
ASSOCIATION, AMERICAN
PETROLEUM INSTITUTE, and
NATIONAL MINING ASSOCIATION,
NATIONAL STONE, SAND, & GRAVEL
ASSOCIATION,

Intervenor-
Defendants.

No. 2:20-CV-0950-JCC

JOINT STATUS REPORT AND
STIPULATED MOTION TO FURTHER
STAY PROCEEDING

NOTE ON MOTION CALENDAR:
August 30, 2022

1 Pursuant to Local Rules 7(d)(1) and 10(g) and in accordance with this Court’s Order,
2 Dkt. No. 56 (April 4, 2022), Plaintiff, Defendants (“the Agencies”),¹ and Intervenor-Defendants
3 hereby submit this joint status report and jointly propose that the case remain in abeyance until
4 January 20, 2023. The Parties have good cause for this request:

5 **PROCEDURAL BACKGROUND**

6 1. In this proceeding, Plaintiffs are challenging two rules promulgated by the
7 Agencies that define the phrase “waters of the United States” in Section 1362(7) of the Clean
8 Water Act: The Navigable Waters Protection Rule: Definition of “Waters of the United States,”
9 85 Fed. Reg. 22,250 (Apr. 21, 2020) (“2020 Rule”), and the Definition of “Waters of the United
10 States” - Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“2019
11 Rule”).

12 2. Plaintiffs initiated this lawsuit on June 22, 2020, challenging the 2020 and 2019
13 Rules. Dkt. No. 1. Plaintiffs specifically seek to vacate and set aside the 2020 Rule and 2019
14 Rule, while reinstating nearly all of the 2015 Rule. *See id.* at “Requested Relief.”

15 3. On September 24, 2020, Plaintiffs amended their complaint, adding additional
16 challenges against the 2020 Rule. Dkt. No. 40.

17 4. On August 27, 2020, the Agencies filed a motion to consolidate this case with
18 *Washington Cattlemen’s Association v. United States Environmental Protection Agency, et al.*
19 (2:19-CV-0596-JCC). *See* Dkt. No. 31 (noticing to the Court and the parties that the Agencies
20 had filed a motion to consolidate this case with *Washington Cattlemen’s Association v. United*
21 *States Environmental Protection Agency, et al.* (2:19-CV-0596-JCC) (Dkt. No. 87)). That motion is
22 still pending.

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25 ¹ EPA Administrator Michael Regan and Acting Assistant Secretary of the Army for Civil
26 Works Jaime Pinkham are automatically substituted for their predecessors in office pursuant to
27 Rule 25(d) of the Federal Rules of Civil Procedure.

1 5. On August 20, 2020, third-party Patagonia Works filed a motion to intervene on
2 behalf of Plaintiffs in this proceeding. Dkt. No. 21. The Agencies opposed Patagonia Works’
3 motion to intervene. Dkt. No. 35. This motion is also still pending.

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

6 7. 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 2020 Rule at issue in this case.

11 8. In light of this directive, on February 5, 2021, the Parties filed a stipulated motion
12 to stay the proceeding for 90 days to accommodate the Agencies’ review of the 2020 Rule. Dkt.
13 No. 46. The Court granted the motion on February 8, 2021, staying the case until May 1, 2021.
14 Dkt. No. 47. The Parties filed four additional motions to stay the proceeding, which were all
15 granted by this Court. Dkt. Nos. 50, 52, 54, 56. The proceeding has been stayed until September
16 1, 2022, and the Parties were directed to “file a joint status report and proposal to further govern
17 proceedings on or before September 1, 2022.” Dkt. No. 56 at 2.

18 **RECENT DEVELOPMENTS AND PROPOSAL TO GOVERN PROCEEDINGS**

19 9. Following the Agencies’ review of the NWPR pursuant to EO 13990, the
20 Agencies moved to remand the NWPR in numerous courts where litigation challenging the rule
21 was pending. Although the Agencies asked for remand without vacatur of the NWPR, two courts
22 remanded the rule with vacatur. *See Pascua Yaqui Tribe v. EPA*, 557 F. Supp. 3d 949, 956-57
23 (D. Ariz. 2021), *appeal dismissed sub nom. Pasqua Yaqui Tribe v. EPA*, No. 21-16791, 2022

1 WL 1259088 (9th Cir. Feb. 3, 2022); *Navajo Nation v. Regan*, No. 2:20-cv-602, 2021 WL
2 4430466, at *5 (D.N.M. Sept. 27, 2021).²

3 10. As a result of those orders, “the agencies have halted implementation of the
4 Navigable Waters Protection Rule (‘NWPR’) nationwide and are interpreting ‘waters of the
5 United States’ consistent with the pre-2015 regulatory regime until further notice.” *See* U.S.
6 EPA, Current Implementation of Waters of the United States,
7 <https://www.epa.gov/wotus/current-implementation-waters-united-states> (last visited Aug. 24,
8 2022).

9 11. The remaining cases challenging the NWPR, as well as cases challenging the
10 2019 Rule, have been held in abeyance.³

11 12. On December 7, 2021, the Agencies issued a proposed rule entitled “Revised
12 Definition of ‘Waters of the United States.’ ” 86 Fed. Reg. 69,372 (Dec. 7, 2021). The comment
13 period for that proposed rule closed on February 7, 2022. The Agencies are reviewing and
14

15 ² Multiple other courts granted the Agencies’ motion for remand, either without vacatur or
16 without addressing vacatur. *See, e.g., Pueblo of Laguna v. Regan*, No. 1:21-cv-00277, 2021 WL
17 4290179, at *2 (D.N.M. Sept. 21, 2021) (declining to reach issue of vacatur in light of the
18 *Pascua* decision); Order, *S.C. Coastal Conservation League v. Regan*, No. 2:20-cv-01687
(D.S.C. July 15, 2021), Dkt. No. 147 (remanding without vacating).

19 ³ *See* Order, *Env’t Integrity Project v. Regan*, No. 1:20-cv-01734 (D.D.C. Apr. 15, 2022),
20 Dkt. No. 40 (continuing abeyance pending issuance of a final rule regarding the definition of
21 “waters of the United States” or a determination that the Agencies will no longer proceed with
22 rulemaking); Order at 2, *N.M. Cattle Growers’ Ass’n v. EPA*, No. 1:19-cv-00988 (D.N.M. Mar.
23 29, 2022), Dkt. No. 75 (same); Order at 9, *Or. Cattlemen’s Ass’n v. EPA*, No. 3:19-cv-00564
24 (D. Or. Mar. 25, 2022), Dkt. No. 127 (same); Order, *Colorado v. EPA*, No. 1:20-cv-01461
25 (D. Colo. Jan. 18, 2022), Dkt. No. 118 (same); Order at 2, *Wash. Cattlemen’s Ass’n v. EPA*, No.
26 2:19-cv-00569 (W.D. Wash. Apr. 4, 2022), Dkt. No. 111 (same); Order, *Chesapeake Bay Found.*
27 *v. Regan*, No. 20-1063 (D. Md. Nov. 29, 2021) Dkt, No. 63 (holding consolidated cases in
abeyance pending publication of a final rule regarding the definition of “waters of the United
States” or a decision that the Agencies will no longer proceed with rulemaking); *see also* Order
at 3, *Pasqua Yaqui Tribe v. EPA*, No. 4:20-cv-00266 (D. Ariz. Dec. 6, 2021), Dkt. No. 116
(staying challenge to 2019 Rule until the Agencies publish a final rule defining “waters of the
United States” or decide not to do so); Order at 1, *Navajo Nation v. Regan*, No. 2:20-cv-00602
(D.N.M. Oct. 28, 2021), Dkt. No. 45 (same).

1 responding to the comments submitted on the proposed rule and completing other necessary
2 components of the rulemaking process. The Agencies currently expect to issue a final regulation
3 by the end of this year.

4 13. This proceeding has been stayed until September 1, 2022. Dkt. No. 56. In light of
5 the Agency's expectation that a final regulation will be issued by the end of this year, the Parties
6 respectfully request that the proceeding be further stayed until January 20, 2023. The Parties will
7 submit a proposal or proposals for further proceedings by no later than January 31, 2023.

8 Dated: August 30, 2022

Respectfully submitted,

9 /s/ Hubert T. Lee

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COUNSEL FOR INTERVENOR-
DEFENDANTS
**Pro hac vice*

[Proposed] Order

It is ORDERED that the above-captioned proceeding remain in abeyance until January 20, 2023.

It is further ORDERED that the Parties shall file a proposal or proposals for further proceedings by no later than January 31, 2023.

IT IS SO ORDERED.

Hon. John C. Coughenour
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2022, 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

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