

No. 22-3292
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STATE OF OHIO

Plaintiff,

and

STATE OF TENNESSEE

Plaintiff-Appellant,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, ET AL.,

Defendants-Appellees.

and

NATURAL RESOURCES DEFENSE
COUNCIL, INC., ET AL.,

Intervenors-Appellees

On Appeal from the
United States District Court
for the Southern District of Ohio
Eastern Division

District Court Case No.

2:15-cv-2467

STIPULATED DISMISSAL

Pursuant to Fed. R. App. P. 42(b)(1), the parties stipulate to the dismissal of the State of Tennessee's appeal.

1. In this action, Tennessee challenged the legality of the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers' 2015 rule defining "the waters of the United States" for purposes of the Clean Water Act. *See* 80 Fed. Reg. 37,054 (2015).

2. Federal appellee agencies have since taken steps to repeal and replace the 2015 rule. In 2019, the agencies promulgated a “final rule to repeal the 2015 Clean Water Rule.” 84 Fed. Reg. 56,626 (Oct. 22, 2019). Several parties challenged the 2019 repeal rule. *See* Fed. Appellees Br. 21. As of July 2023, all litigation related to the 2019 repeal rule has concluded and the 2019 repeal rule has not been set aside or otherwise enjoined.

3. In January 2023, the agencies promulgated a new rule “defining the scope of waters protected under the Clean Water Act.” 88 Fed. Reg. 3004 (Jan. 18, 2023). A few months later, in May 2023, the U.S. Supreme Court issued its decision in *Sackett v. EPA*, 143 S. Ct. 1322. On September 8, 2023, the agencies promulgated amendments to the 2023 rule in light of *Sackett*. *See Revised Definition of “Waters of the United States”; Conforming*, 88 Fed. Reg. 61,964. “This conforming rule amends the provisions of the agencies’ definition of ‘waters of the United States’ that are invalid under the Supreme Court’s interpretation of the Clean Water Act in the 2023 decision” in *Sackett. Id.*

4. Litigation against the 2023 rule is ongoing. As a result of litigation, the 2023 rule is currently enjoined in 27 states, including Tennessee.

5. In light of the above, Tennessee no longer wishes to pursue the present action challenging the 2015 rule. All remaining parties have stipulated to the dismissal of Tennessee’s appeal, with each party bearing its own costs.

September 13, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2023, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Whitney D. Hermandorfer

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