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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

OREGON CATTLEMEN'S
ASSOCIATION,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

No. 3:19-cv-00564-AC

**JOINT PROPOSAL TO GOVERN
PROCEEDINGS/MOTION TO CONTINUE
STAY**

Pursuant to this Court’s March 25, 2022, Order (Dkt. No. 127), the Parties submit the following proposal to govern proceedings:

1. In this proceeding, Plaintiff is challenging two rules promulgated by the Agencies that define the phrase “waters of the United States” in Section 1362(7) of the Clean Water Act: “The Navigable Waters Protection Rule: Definition of ‘Waters of the United States,’” 85 Fed. Reg. 22,250 (Apr. 21, 2020) (“2020 Rule”), and “Clean Water Rule: Definition of ‘Waters of the United States,’” 80 Fed. Reg. 37,054 (June 29, 2015) (“2015 Rule”).

2. On May 6, 2020, Columbia Riverkeeper was granted the right to intervene in this proceeding. Dkt. No. 93.

3. Also on May 6, 2020, the Court agreed to stay Plaintiff’s claims against the 2015 Rule until either after the Court resolved Plaintiff’s claims against the 2020 Rule on the merits “or until another federal court enters an order with the effect of reinstating the 2015 regulations in Oregon.” *Id.*

4. On June 8, 2020, Plaintiff filed a motion to preliminarily enjoin the portions of the NPWR it is challenging as unlawful. Dkt. No. 97. After Plaintiff’s motion was fully briefed, the Court on August 6, 2020 held an oral hearing on the motion for preliminary injunction. Dkt. No. 108. At the hearing, the parties agreed that the Court denied Plaintiff’s motion for preliminary injunction and dismissed without prejudice Plaintiff’s claims against the 2020 Rule for lack of standing. *Id.*; *see also* Dkt. No. 110 at pp. 30-31. Intervenor-Defendant maintains that all other claims were also dismissed without prejudice due to lack of standing. Plaintiff’s position is that the court only dismissed Plaintiff’s claims against the 2020 Rule. The Agencies agree that at a minimum, Plaintiff’s claims against the 2020 Rule were dismissed without prejudice.

5. On February 2, 2021, the Court held a telephonic status conference, where the Court ordered the proceeding stayed. Dkt. No. 113. Since then, the Court has kept the proceeding in abeyance. The stay expires when either the Agencies issue a final rule regarding the definition of “waters of the United States” within the meaning of the Clean Water Act, 33 U.S.C. § 1362(7), or when the Agencies determine that they will no longer proceed with the rulemaking, whichever comes first. Dkt. No. 127 at 9.

6. On December 29 and December 28, 2022, respectively, the Administrator of EPA and the Assistant Secretary of the Army for Civil Works signed a final rule entitled “Revised Definition of ‘Waters of the United States.’ ” The rule revises the definition of “waters of the United States” under the Clean Water Act. On January 3, 2023, the Agencies filed a notice of final rule with the Court notifying the Court and the Parties that this rule has been signed. Dkt. No. 131.

7. On January 18, 2023, the final rule entitled “Revised Definition of ‘Waters of the United States,’ ” was published in the Federal Register. *See* 88 Fed. Reg. 3004 (Jan. 18, 2023). Unless enjoined by legal challenges, the final rule will go into effect on March 20, 2023.

8. On January 18, 2023, the final rule was challenged in two separate lawsuits filed in the Southern District of Texas. *See Texas v. EPA*, 3:23-cv-00017 (S.D. Tex. Jan. 18, 2023); *Am. Farm Bureau Fed’n v. EPA*, No. 3:23-cv-00020 (S.D. Tex. Jan. 18, 2023). Those lawsuits seek declaratory and injunctive relief against, and vacatur of, the final rule. *See Texas*, No. 3:23-cv-00017, ECF No. 1 at 28–29; *Am. Farm Bureau Fed’n*, No. 3:23-cv-00020, ECF No. 1 at 41–42.

9. In light of the publication of, and the pending legal challenges to, the new regulation defining “waters of the United States,” the Parties respectfully request that the

proceeding be held in continued abeyance.¹ The Parties will submit a status report and proposal or proposals for further proceedings by no later than July 31, 2023. The Parties may move to lift the stay if subsequent developments lead to the reinstatement of the prior rule(s) defining “waters of the United States” under the Clean Water Act. And each party reserves its right to oppose such a motion.

Respectfully submitted this 24th day of January, 2023:

/s/ Hubert T. Lee
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¹ One court has agreed to hold challenges to the prior “waters of the United States” rules in abeyance in light of the publication of, and the pending legal challenges to, the new regulation defining “waters of the United States.” *Washington Cattlemen's Association v. U.S. E.P.A. et al.*, 2:19-cv-00569-JCC, Dkt. No. 120, (W.D. Wash. January 23, 2023).

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**Pro hac vice*

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[PROPOSED] ORDER

Based upon the foregoing, and good cause appearing, it is ORDERED that the above-captioned proceeding remain in abeyance. Each party may move to lift the stay if subsequent developments lead to the reinstatement of the prior rule(s) defining “waters of the United States” under the Clean Water Act. And each party reserves its right to oppose such a motion.

It is further ORDERED that the Parties will submit a status report and proposal or proposals for further proceedings by no later than July 31, 2023.

IT IS SO ORDERED.

Dated:

Hon. Jeffrey J. Armistead, Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that the foregoing filing was electronically filed with the Clerk of the Court on January 24, 2023, using the CM/ECF system, which will send notification of said filing to the attorneys of record.

/s/ Hubert T. Lee

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