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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE and  
SIERRA CLUB

Plaintiffs,

v.

SCOTT PRUITT,<sup>1</sup> in his official capacity as  
Administrator of the United States Environmental  
Protection Agency, and RICKY JAMES,<sup>2</sup> in his  
official capacity as Secretary of the Army for  
Civil Works,

Defendants.

Case No. 2:15-cv-01342-JCC

MOTION TO REOPEN

Noted: April 20, 2018

<sup>1</sup> Please note that pursuant to Fed. R. Civ. P. 25(d)(1), Scott Pruitt, Administrator of the U.S. Environmental Protection Agency, is substituted as a defendant for Gina McCarthy.

<sup>2</sup> Please note that pursuant to Fed. R. Civ. P. 25(d)(1), Ricky James, Secretary of the Army for Civil Works, is substituted as a defendant for Jo-Ellen Darcy.

1 Plaintiffs Puget Soundkeeper Alliance and Sierra Club (collectively “Plaintiffs”) move  
2 this Court to reopen the above-captioned matter.

### 3 ARGUMENT

4 Plaintiffs filed a Complaint in this case on August 20, 2015, bringing claims under the  
5 Clean Water Act and Administrative Procedure Act against specific portions of the 2015 “Waters  
6 of the U.S.” definitional rule (hereinafter “2015 Final Rule”) finalized by Defendants in 2015.  
7 *See* Pls. Compl., Aug. 20, 2015, ECF No. 1; 33 C.F.R. part 328; 40 C.F.R. parts 110, 112, 116,  
8 117, 122, 230, 232, 300, 302, and 401. In addition to the instant case, various other challenges to  
9 the 2015 Final Rule were brought in federal district courts around the country, and a motion was  
10 made to transfer and consolidate these district court cases to the District Court for the District of  
11 Columbia. On September 9, 2015, this Court stayed this case pending a ruling from the Judicial  
12 Panel on Multidistrict Litigation regarding the motion to consolidate and transfer the district  
13 court cases. Minute Order, Sept. 9, 2015, ECF No. 14. Although this stay order was in response  
14 to Defendants’ motion to stay proceedings, the order also directed the clerk to “statistically  
15 close” this case. *Id.*

16 While these district court proceedings were taking place, petitions for review of the 2015  
17 Final Rule were also being brought in courts of appeals due to uncertainty about the proper  
18 original jurisdiction for challenges to the rule. The twenty-two petitions for review of the 2015  
19 Final Rule in the courts of appeals were consolidated in the Sixth Circuit, and on October 9,  
20 2015, the U.S. Court of Appeals for the Sixth Circuit issued a nationwide stay of the 2015 Final  
21 Rule. *In re E.P.A.*, 803 F.3d 804, 805 (6th Cir. 2015), *vacated sub nom. In re United States*  
22 *Dep’t of Def.*, 713 F. App’x 489 (6th Cir. 2018). After issuing this stay, the Sixth Circuit  
23 proceeded to consideration of the merits of whether it had jurisdiction to hear the petitions for  
24 review of the 2015 Final Rule.

1 In the meantime, on October 13, 2015, the Judicial Panel on Multidistrict Litigation  
2 entered an order denying the motion to consolidate and transfer the district court actions on the  
3 2015 Final Rule to the District Court for the District of Columbia. *See* Defs. Mot. to Stay  
4 Proceedings Att. A, Oct. 15, 2015, ECF No. 17. Two days later, on October 15, 2015,  
5 Defendants filed a Motion to Stay Proceedings in this case because this Court's previously  
6 entered stay had only been pending the decision of the Judicial Panel on Multidistrict Litigation.  
7 *See* Defs. Mot. to Stay Proceedings, Oct. 15, 2015, ECF No. 16. This motion by Defendants to  
8 stay proceedings sought an additional stay pending the Sixth Circuit Court of Appeals' decision  
9 on the proper jurisdiction of challenges to the 2015 Final Rule. *See id.* Defendants' October 15,  
10 2015 Motion to Stay Proceedings was never ruled upon, presumably because this case was  
11 statistically closed at that time.

12 On February 22, 2016, the Sixth Circuit Court of Appeals decided that it had jurisdiction  
13 over the petitions for review of the 2015 Final Rule. *In re U.S. Dep't of Def., U.S. E.P.A.*, 817  
14 F.3d 261, 263 (6th Cir. 2016), *cert. granted sub nom. Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 137 S.  
15 Ct. 811 (2017), *rev'd and remanded sub nom. Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617  
16 (2018). This decision was appealed to the U.S. Supreme Court, and *certiorari* was granted on  
17 January 13, 2017. *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 137 S. Ct. 811 (2017). On January 22,  
18 2018, the U.S. Supreme Court ruled that federal district courts, not the courts of appeals, have  
19 jurisdiction over challenges to the 2015 Final Rule. *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S.  
20 Ct. 617 (2018). As a result, the Sixth Circuit vacated its nationwide stay of the 2015 Final Rule  
21 on February 28, 2016. *In re United States Dep't of Def.*, 713 F. App'x 489 (6th Cir. 2018).

22 It is appropriate for this Court to reopen this statistically-closed case because all of the  
23 pending jurisdictional decisions by the Judicial Panel on Multidistrict Litigation, the Sixth  
24

1 Circuit Court of Appeals, and the U.S. Supreme Court have now been made. The Supreme  
2 Court's ultimate order unequivocally gave jurisdiction over challenges to the 2015 Final Rule to  
3 federal district courts. Moreover, because the Judicial Panel on Multidistrict Litigation rejected a  
4 prior attempt to consolidate and transfer those district court actions to the D.C. District, the  
5 Western District of Washington remains the proper jurisdiction for Plaintiffs' claims. Therefore,  
6 the present action should be reopened at this time.

7 Counsel for Plaintiffs contacted counsel for Defendants in this case on April 3, 2018, to  
8 request Defendants' position on this motion. Defendants were not able to respond within the  
9 requested time frame.

10 CONCLUSION

11 For all of the above reasons, Plaintiffs respectfully request that this Court reopen the  
12 above-captioned matter.

13  
14 Respectfully submitted this 6<sup>th</sup> day of April, 2018.

15 /s/ Janette K. Brimmer  
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*Counsel for Puget Soundkeeper Alliance,  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 6, 2018, I electronically filed the foregoing Motion to Reopen with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Janette K. Brimmer  
Janette K. Brimmer