

2. In response to the President’s February 28, 2017, Executive Order directing the Agencies to reconsider the 2015 WOTUS Rule (*see* Exec. Order No. 13,778, 82 Fed. Reg. 12,497 (Mar. 3, 2017)), the Agencies engaged in a two-step rulemaking process. In step one, the Agencies issued a rule repealing the 2015 WOTUS Rule and reinstating the pre-2015 regulatory definition of “waters of the United States.” 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“2019 Repeal Rule”). The 2019 Repeal Rule went into effect on December 23, 2019. In step two, the Agencies promulgated the Navigable Waters Protection Rule, which defines “waters of the United States” under the Clean Water Act and replaced the 2019 Repeal Rule. 85 Fed. Reg. 22,250 (Apr. 21, 2020) (“2020 NWPR Rule”). The 2020 NWPR Rule went into effect on June 22, 2020, in all states except Colorado.¹ *Id.*

3. The United States District Court for the District of Arizona vacated the 2020 NWPR Rule in August of this year. *See Pascua Yaqui Tribe v. United States Env’t Prot. Agency*, No. CV-20-00266-TUC-RM, 2021 WL 3855977 (D. Ariz. Aug. 30, 2021). In response, the agencies announced they were returning to the pre-2015 regulatory regime pending further rulemaking.

¹ *See Colorado v. EPA*, No. 20-CV-1461-WJM-NRN, 2020 WL 3402325, at *1 (D. Colo. June 19, 2020) (preliminarily enjoining implementation of 2020 Rule in State of Colorado), later vacated at 989 F.3d 874 (10th Cir. 2021).

4. In its Order, the Arizona court requested briefing on the validity of the 2019 Repeal Rule that repealed the 2015 WOTUS Rule. *See id.*, at *6:

Plaintiffs' Complaint and Motion for Summary Judgment also challenge the 2019 Repeal Rule, but the Motion focuses on the NWPR, as do the Intervenor's Cross-Motions for Summary Judgment. Because the Agency Defendants filed a Motion for Voluntary Remand in lieu of a response to Plaintiffs' Motion for Summary Judgment, the Agency Defendants have not responded to Plaintiffs' challenges to the 2019 Repeal Rule. Because it may be beneficial to have further briefing focused on the 2019 Repeal Rule, the Court will deny without prejudice all pending summary judgment motions, as well as Plaintiffs' Motion to Expedite Briefing, and will require the parties to file a proposal or proposals for further proceedings concerning Plaintiffs' challenge to the 2019 Repeal Rule.

CONSENT MOTION TO EXTEND STAY

5. Although the Agencies' intent is to return to the pre-2015 regulatory regime until they promulgate a new WOTUS definition, the activity in the Arizona court continues the possibility that the 2015 WOTUS Rule could take effect.

6. To serve the related principles of avoiding unnecessary litigation and of conserving judicial and party resources, the Parties request a continued stay of this litigation, but that again the stay be limited to one year and be automatically lifted if the 2015 WOTUS Rule becomes effective and applicable in this State or is ordered or scheduled to become so within a three-month time horizon.

7. This Court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997);

Rogers v. City of Atlanta, 214 F. Supp. 3d 1314, 1319 (N.D. Ga. 2016). The Court may grant a stay where it would serve “economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

CONCLUSION

For the reasons stated above, the Plaintiffs request, and the Defendants consent to, a one-year continued stay of this action, to be automatically lifted if the 2015 WOTUS Rule becomes effective and applicable in this State or is ordered or scheduled to become so within a three-month time horizon.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of October, 2021, electronically filed the foregoing CONSENT MOTION TO EXTEND STAY OF PROCEEDINGS with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all registered CM/ECF users.

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