

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GEORGIA**

SOUTHEASTERN LEGAL)	
FOUNDATION, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:15-cv-2488-TCB
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
Defendants.)	
)	

Case No. 1:15-cv-2488-TCB

**JOINT STATUS REPORT AND
MOTION TO EXTEND STAY OF PROCEEDINGS**

Plaintiffs Southeastern Legal Foundation, Inc., Georgia Agribusiness Council, Inc., and Greater Atlanta Homebuilders Association, Inc., and Defendants the United States Environmental Protection Agency, Andrew Wheeler¹, in his official capacity as Administrator of EPA, the United States Army Corps of Engineers, Ryan D. McCarthy, in his official capacity as Acting Secretary of the Army, Todd T. Semonite, Chief of Engineers and Commanding General of the

¹ The following officials are automatically substituted for their predecessors in office pursuant to Rule 25(d) of the Federal Rules of Civil Procedure: Andrew Wheeler, EPA Administrator; Ryan D. McCarthy, Secretary of the Army; R.D. James, Assistant Secretary of the Army (Civil Works); and Todd T. Semonite, Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers.

U.S. Army Corps of Engineers and R.D. James, in his official capacity as Assistant Secretary of the Army (Civil Works), (collectively, “the Agencies”) provide this status report and jointly move for a continued stay of these proceedings.

1. This litigation challenges the Agencies’ 2015 rule amending the definition of “waters of the United States” under the Clean Water Act, entitled “Clean Water Rule: Definition of ‘Waters of the United States,’” 80 Fed. Reg. 37,053 (Jun. 29, 2015) (“2015 Rule”).

2. In response to the President’s February 28, 2017 Executive Order directing the Agencies to reconsider the 2015 Rule, *see* Exec. Order No. 13,778 of Feb. 28, 2017, 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 Rule and reinstating the pre-2015 regulatory definition of “waters of the United States.” 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“2019 Rule”). The 2019 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 Rule. 85 Fed.

Reg. 22,250 (Apr. 21, 2020) (“2020 Rule”). The 2020 Rule went into effect on June 22, 2020, in all states except Colorado.² *Id.*

3. This case has been stayed to allow for various related proceedings before the judicial panel on multi-district litigation and courts of appeals. *See, e.g.*, Dkt. Nos. 5, 8, 12, 17. More recently, the case has been stayed to allow for the Agencies’ two-step administrative rulemaking process to repeal and replace the 2015 Rule. *See* Dkt. Nos. 24, 26. There is good cause to extend the stay of this case for an additional year.

4. There are a number of challenges to the 2019 and 2020 Rules pending across the country that could bear upon the Court’s resolution of claims in this case. The Agencies and other parties have sought to stay challenges to the 2015 and 2019 Rules to focus on the rule currently in effect, the 2020 Rule.³

² *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).

³ *See, e.g., Murray v. Wheeler*, No. 1:19-cv-01486, Dkt. No. 22 (N.D.N.Y. July 28, 2020) (order deferring briefing on claims challenging 2019 Rule until after resolution of claims challenging 2020 Rule); *Washington Cattlemen’s Ass’n v. EPA*, No. 2:19-cv-00569, Dkt. No. 85 (W.D. Wash. July 28, 2020) (stipulation to stay claims challenging 2015 and 2019 Rules while briefing on 2020 Rule proceeds); *Pierce v. EPA*, No. 0:19-cv-02193, Dkt. No. 33 (D. Minn. July 1, 2020) (staying challenges to 2015 and 2019 Rules); *North Dakota v. EPA*, No. 3:15-cv-00059, Dkt. No. 325 (D.N.D. June 24, 2020) (extending stay of challenge to 2015 Rule); *South Carolina Coastal Conservation League v. Wheeler*, No. 2:19-cv-

5. 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. The Parties ask that the stay be limited to one year and be automatically lifted if the 2015 Rule becomes effective and applicable in this State or is ordered or scheduled to become so within a three-month time horizon.

6. 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) (citation omitted); *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).

In conclusion, the Parties respectfully request that the Court extend the stay of this case for an additional year, subject to automatic lifting if the 2015

03006, Dkt. No. 54 (D.S.C. May 29, 2020) (extending abeyance of challenge to 2019 Rule); *Waterkeeper Alliance, Inc. v. Wheeler*, No. 3:18-cv-03521, Dkt. No. 83 (N.D. Cal. May 27, 2020) (stipulation holding in abeyance claims challenging 2015 Rule to allow plaintiffs to add and brief the merits of challenge to 2020 Rule); *Southeast Stormwater Ass’n, Inc. v. EPA*, No. 4:15-cv-00579, Dkt. No. 103 (N.D. Fla. May 26, 2020) (extending abeyance of challenge to 2015 Rule); *Oregon Cattlemen’s Ass’n v. EPA*, No. 3:19-cv-00564, Dkt. No. 94 (D. Or. May 6, 2020) (order granting stay of claims challenging 2015 Rule while briefing on 2020 Rule proceeds).

Rule becomes effective and applicable in this State or is ordered or scheduled to become so within a three-month time horizon.

Dated: July 31, 2020

Respectfully submitted,

/s/ Jennifer A. Simon

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CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of July, 2020, I electronically filed the foregoing 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.

/s/ Erica Zilioli
