

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

<p>STATE OF TEXAS, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 3:23-cv-17 Hon. Jeffrey V. Brown</p>
<p>AMERICAN FARM BUREAU FEDERATION, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 3:23-cv-20 Hon. Jeffrey V. Brown</p>

**FEDERAL DEFENDANTS’ UNOPPOSED OMNIBUS MOTION TO
CONSOLIDATE, FILE A CONSOLIDATED RESPONSE TO PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION, AND EXTEND RESPONSE
BRIEF DEADLINE**

Pursuant to Rule 42 of the Federal Rules of Civil Procedure and Local Rules 7.2 and 7.6, Federal Defendants respectfully move to (i) consolidate *State of Texas v. United States Environmental Protection Agency*, No. 3:23-cv-17 (S.D. Tex.) (J. Brown) (“*Texas litigation*”), with *American Farm Bureau Federation v. United States Environmental*

Protection Agency, No. 3:23-cv-20 (S.D. Tex.) (J. Brown) (“*Farm Bureau* litigation”); (ii) file a consolidated response, not to exceed 48 pages, that responds to two separate motions for preliminary injunction pending in each case, *see Texas* litigation, ECF No. 13; *Farm Bureau* litigation, ECF No. 15; (iii) extend Federal Defendants’ time to respond by two days, to March 2, 2023; and (iv) permit the *Texas* Plaintiffs and the *Farm Bureau* Plaintiffs to each file a reply brief, not to exceed 18 pages, on or before March 10, 2023.¹ Pursuant to Local Rule 7.2, Federal Defendants have conferred with Plaintiffs in both cases, and no party opposes the relief requested. In support of the motion, Federal Defendants state as follows:

1. Plaintiffs in the *Texas* litigation and *Farm Bureau* litigation both challenge a rule entitled *Revised Definition of “Waters of the United States,”* 88 Fed. Reg. 3004 (Jan. 18, 2023) (“Rule”).

2. The same day the Rule was published in the Federal Register, both sets of Plaintiffs commenced litigation. *See Texas* litigation, ECF No. 1; *Farm Bureau* litigation, ECF No. 1.

3. On February 2, 2023, the *Farm Bureau* Plaintiffs filed an amended complaint. *Farm Bureau* litigation, ECF No. 12.

¹ Should the Court grant the pending motions to intervene, the *Texas* Plaintiffs and the *Farm Bureau* Plaintiffs reserve the right to file a consolidated reply brief and may seek leave to file a reply brief, not to exceed 25 pages, which replies to the Federal Defendants’ response and any response filed by movant-intervenor, on or before March 10, 2023.

4. Pursuant to Fed. R. Civ. P. 4(i)(1)(A)(i), the United States Attorney's Office for the Southern District of Texas was served in the *Texas* litigation on January 20, 2023, and Federal Defendants' answer is due March 21, 2023. Upon information and belief, the United States Attorney's Office has not been served in the *Farm Bureau* litigation.

5. On February 7, 2023, Plaintiffs in both cases moved to enjoin the Rule. *Texas* litigation, ECF No. 13; *Farm Bureau* litigation, ECF No. 15.

6. On February 9, 2023, Bayou City Waterkeeper, Inc. moved to intervene in both cases. *Texas* litigation, ECF No. 20; *Farm Bureau* litigation, ECF No. 16. The motions are pending.

7. Under Local Rule 7.3 and Gal. Div. R. Prac. 5.f. and g., Defendants' responses to both preliminary injunction motions are due February 28, 2023, and each response is limited to 30 pages.

8. Consolidation of the two cases is appropriate under Fed. R. Civ. P. 42 because the two cases were brought in the same court, challenge the same Rule, involve the same Federal Defendants, address common issues, and raise common claims. Consolidation would conserve judicial resources and is within this Court's discretion. *See Miller v. U.S. Postal Serv.*, 729 F.2d 1033, 1036 (5th Cir. 1984); *see also In re Air Crash Disaster*, 549 F.2d 1006, 1013 (5th Cir. 1977).

9. Rather than file two separate briefs, each with a 30-page limit, Federal Defendants seek leave to file one consolidated response brief, not to exceed 48 pages. A

consolidated response allows for more efficient case administration, reduces the burden on the Court, and eliminates unnecessary repetition.

10. Federal Defendants further seek a two-day extension, to March 2, 2023, to file their consolidated response brief.

11. Federal Defendants request this short extension for good cause. The preliminary injunction motions raise complicated and critical issues of national scale and importance. Federal Defendants require additional time to formulate their response and coordinate necessary review among multiple government agencies.

WHEREFORE, Federal Defendants respectfully request that the Court (i) consolidate the *Texas* and *Farm Bureau* cases; (ii) permit Federal Defendants to file one consolidated response, not to exceed 48 pages, to the two pending preliminary injunction motions; (iii) extend Defendants' time to respond by two days, to March 2, 2023; and (iv) permit the *Texas* Plaintiffs and the *Farm Bureau* Plaintiffs to each file a reply brief, not to exceed 18 pages, on or before March 10, 2023.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.2, counsel for Defendants has conferred with counsel for the *Texas* plaintiffs and counsel for the *Farm Bureau* Plaintiffs, neither of whom oppose the relief requested herein.

CERTIFICATE OF SERVICE

I hereby certify that this motion was served via the District's ECF system on all counsel of record on February 10, 2023.

s/Sarah Izfar
Sarah Izfar