

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

- (1) CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA,
- (2) NATIONAL FEDERATION OF
INDEPENDENT BUSINESS,
- (3) STATE CHAMBER OF OKLAHOMA,
- (4) TULSA REGIONAL CHAMBER, and
- (5) PORTLAND CEMENT ASSOCIATION,

Plaintiffs,

v.

- (1) UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,
- (2) GINA MCCARTHY, in her official
capacity as Administrator of the United
States Environmental Protection Agency,
- (3) UNITED STATES ARMY CORPS OF
ENGINEERS, and
- (4) JO-ELLEN DARCY, in her official
capacity as Assistant Secretary of the
Army (Civil Works),

Defendants.

No. 15-CV-386-CVE-PJC
(Related: No. 15-CV-381-CVE-FHM)

PLAINTIFFS' MOTION FOR CONSOLIDATION AND BRIEF IN SUPPORT

The Chamber of Commerce of the United States of America, National Federation of Independent Business, State Chamber of Oklahoma, Tulsa Regional Chamber, and Portland Cement Association (collectively, "Plaintiffs") hereby move for consolidation of the above-captioned case with a previously filed, related action pending before this Court: *Oklahoma v. EPA*, No. 15-CV-381-CVE-FHM (the "State case"). Plaintiffs respectfully submit that the cases

should be consolidated in the interests of judicial economy and efficiency because they involve the same defendants, the same facts, and almost identical legal issues.

In support of this motion, Plaintiffs state as follows:

1. On July 8, 2015, the State of Oklahoma ex rel. E. Scott Pruitt, in his official capacity as Attorney General of Oklahoma, filed suit against the Environmental Protection Agency (“EPA”), Gina McCarthy, in her official capacity as Administrator of the EPA, the United States Army Corps of Engineers, and Jo-Ellen Darcy, in her official capacity as Assistant Secretary of the Army (Civil Works) (collectively, “Defendants”). *See Oklahoma v. EPA*, No. 15-CV-381-CVE-FHM (Doc. 8). This case was assigned to Your Honor.

2. In its complaint, the State seeks declaratory and injunctive relief against Defendants regarding the regulation of “navigable waters” under the Clean Water Act. *See Clean Water Rule: Definition of “Waters of the United States,”* 80 Fed. Reg. 37,053-37,127 (June 29, 2015) (“Final Rule”).

3. The State claims that the Final Rule must be set aside and its enforcement enjoined because it violates (1) the Administrative Procedure Act; (2) the Commerce Clause; (3) the Clean Water Act; and (4) the Tenth Amendment. *See Doc. 8* at 14-23.

4. On July 10, 2015, Plaintiffs filed suit against the same Defendants. *See Chamber of Commerce v. EPA*, No. 15-CV-386-CVE-PJC (Doc. 2). Plaintiffs, like the State, seek declaratory and injunctive relief against Defendants because the Final Rule exceeds Defendants’ authority under (1) the Clean Water Act; (2) the Commerce Clause and the Necessary and Proper Clause; (3) the Tenth Amendment; (4) the Administrative Procedure Act; and (5) the Regulatory Flexibility Act. *Id.* at 22-28. This case was initially assigned to Judge Dowdell and was transferred to Your Honor on July 15. *See Minute Order* [Docket No. 22].

5. Under Federal Rule of Civil Procedure 42(a), “[a] district court has the discretion to consolidate separate actions for pretrial proceedings or trial if the cases involve a common issue of law or fact.” *Blagg v. Line*, No. 09-703, 2010 WL 3893981, at *1 (N.D. Okla. Sept. 23, 2010) (Eagan, J.). “The objective of Rule 42(a) is ‘to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties.’” *Id.* (quoting *Breaux v. Am. Family Mut. Ins. Co.*, 220 F.R.D. 366, 367 (D. Colo. 2004)).

6. “Courts generally consider ‘the saving of time and effort that consolidation would produce against any inconvenience, delay, or expense’ caused by consolidation.” *Id.* (quoting *C.T. v. Liberal Sch. Dist.*, 562 F. Supp. 2d 1324, 1346 (D. Kan. 2008)). In consideration of judicial economy and efficiency, “a multiplicity of common questions of law and fact ... compel[s] consolidation except in the presence of some disadvantage to the defendants.” *Brown v. Cent. Liquor Co.*, No. 79-234, 1980 WL 324460, at *14 (W.D. Okla. Dec. 29, 1980).

7. Here, the Chamber case should be consolidated with the first-filed State case because they involve the same Defendants, the same facts (a challenge to the same agency rulemaking), and many of the same legal claims.

8. In addition, the cases are likely to follow similar trajectories, as plaintiffs in both cases intend to seek a preliminary injunction. Consolidation will thus further the interests of judicial economy and efficiency by reducing the number of papers being filed and served.

9. The State has no objection to the consolidation of the two cases.

10. Finally, consolidation will not cause any delay or prejudice to Defendants, but instead will streamline these actions, which were only recently filed.

WHEREFORE, Plaintiffs respectfully request that the Court grant the motion and consolidate the above-captioned case with the State case.

Dated: July 15, 2015

Respectfully submitted,

By: /s/ James P. McCann

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CERTIFICATE OF SERVICE

This is to certify that on this, the 15th day of July, 2015, a true, correct, and exact copy of the above and foregoing instrument was mailed first class mail, postage prepaid, and via certified mail, return receipt requested, to:

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