

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
EASTERN DIVISION**

STATE OF WEST VIRGINIA, <i>et al.</i> ,	)	
<i>Plaintiffs,</i>	)	
	)	
AMERICAN FARM BUREAU	)	
FEDERATION, <i>et al.</i> ,	)	
	)	
<i>Plaintiff-Intervenors</i>	)	No. 3:23-cv-32-DLH-ARS
	)	
v.	)	Hon. Daniel L. Hovland
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY, <i>et al.</i> ,	)	
	)	
<i>Defendants,</i>	)	
	)	
CHICKALOON VILLAGE	)	
TRADITIONAL COUNCIL, <i>et al.</i> ,	)	
	)	
<i>Defendant-Intervenors.</i>	)	

**PARTIES’ PROPOSAL FOR FURTHER PROCEEDINGS**

Pursuant to this Court’s July 18 Order, ECF No. 151, the Parties submit this proposal for further proceedings.

In this case, Plaintiffs challenge the *Revised Definition of “Waters of the United States,”* 88 Fed. Reg. 3004 (“2023 Rule”). The 2023 Rule is currently enjoined in 27 states, including the 24 State Plaintiffs. On May 25, the Supreme Court issued its ruling in *Sackett v. EPA*, 598 U.S. 651 (2023), which addresses the standard for determining what constitutes “waters of the United States.” On September 8, Federal Defendants (the “Agencies”) published a final rule that amended provisions in the Code of Federal Regulations promulgated in the 2023 Rule. *Revised Definition of “Waters of the United States”; Conforming*, 88 Fed. Reg. 61964 (“Conforming

Rule”). Because the 2023 Rule is enjoined within Plaintiff States pursuant to this Court’s April 12 Order, ECF No. 131, the Conforming Rule is not in effect there. Plaintiffs intend to pursue their challenge to the 2023 Rule as amended by the Conforming Rule (the “Amended 2023 Regulations”). Accordingly, Plaintiff-Intervenors hereby withdraw their motion for summary judgment (filed prior to the issuance of the Conforming Rule), ECF Nos. 144-45. Plaintiffs will file amended complaints, to which the Agencies and Defendant-Intervenors will answer or respond. After that, the Parties will confer and propose further proceedings.

Accordingly, the Parties propose that the Court enter an order providing that:

1. Plaintiff-Intervenors’ motion for summary judgment, ECF Nos. 144-45, is stricken.
2. State Plaintiffs shall file an amended complaint to challenge the Amended 2023 Regulations by no later than November 13, 2023.
3. Plaintiff-Intervenors shall file an amended complaint to challenge the Amended 2023 Regulations by no later than November 13, 2023.<sup>1</sup>
4. The Agencies shall answer or otherwise respond to the amended complaints by no later than December 13, 2023.
5. Defendant-Intervenors shall answer or otherwise respond to the amended complaints by no later than December 13, 2023.
6. The Parties shall propose a schedule or schedules for further proceedings no later than December 21, 2023.

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<sup>1</sup> The Agencies have appealed the Magistrate Judge’s order granting Plaintiff-Intervenors’ motion to intervene, ECF No. 129, and that appeal is pending.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2023, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

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