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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON CATTLEMEN'S
ASSOCIATION,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

And

PUGET SOUNDKEEPER ALLIANCE,
IDAHO CONSERVATION LEAGUE, and
SIERRA CLUB,

Defendant-
Intervenors.

No. 2:19-CV-0569-JCC

JOINT STATUS REPORT AND
STIPULATED MOTION TO FURTHER
STAY PROCEEDING

NOTE ON MOTION CALENDAR:
JANUARY 20, 2023

1 Pursuant to Local Rules 7(d)(1) and 10(g) and accordance with this Court’s Order, Dkt.
2 No. 113 (August 31, 2022), Plaintiff, Defendants (“the Agencies”),¹ and Intervenor-Defendants
3 hereby submit this joint status report and jointly move to further stay the above-captioned
4 proceeding until July 31, 2023. The Parties have good cause for this request:

5 1. In this proceeding, Plaintiff is challenging three rules promulgated by the
6 Agencies that define the phrase “waters of the United States” in Section 1362(7) of the Clean
7 Water Act: the Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg.
8 37,054 (June 29, 2015) (“2015 Rule”), the Definition of “Waters of the United States” –
9 Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“2019 Rule”), and
10 the Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 Fed. Reg.
11 22,250 (Apr. 21, 2020) (“2020 Rule”).

12 2. Plaintiff initiated this lawsuit on April 16, 2019, first challenging the 2015 Rule.
13 Dkt. No. 1. Plaintiff then moved to preliminarily enjoin the 2015 Rule. *See* Dkt. No. 15. On
14 December 30, 2019, the Court denied Plaintiff’s first motion for preliminary injunction on the
15 grounds that the 2019 Rule rendered the motion “moot.” Dkt. No. 61.

16 3. Plaintiff then filed two supplemental complaints. First, on December 20, 2019,
17 Plaintiff added claims to its complaint, challenging the 2019 Rule. Dkt. No. 60. Second, on May
18 4, 2020, Plaintiff added claims challenging portions of the 2020 Rule. Dkt. No. 72.

19 4. On July 31, 2020, this Court stayed Plaintiff’s claims with respect to the 2015
20 Rule and 2019 Rule. Dkt. No. 86. The Court noted that the Parties “may move to lift the stay
21 following the Court’s ruling on the merits of Plaintiff’s claims regarding the 2020 Rule.” *Id.*

22 5. Plaintiff filed a motion to preliminarily enjoin, in part, the 2020 Rule on June 15,
23 2020. Dkt. No. 77. That motion is still pending.

25 ¹ EPA Administrator Michael Regan and Assistant Secretary of the Army for Civil Works
26 Michael L. Connor are automatically substituted for their predecessors in office pursuant to Rule
27 25(d) of the Federal Rules of Civil Procedure.

1 6. On August 27, 2020, Defendants filed a motion to consolidate this case with
2 *Puget Soundkeeper Alliance, et al. v. United States Environmental Protection Agency, et al.*
3 (2:20-CV-0950-JCC). Dkt. No. 87. That motion is also still pending. The parties in *Puget*
4 *Soundkeeper Alliance* have since filed a stipulated motion to dismiss that proceeding without
5 prejudice, which was granted on January 17, 2023. *See id.* at Dkt. Nos. 61, 62.

6 7. There are no other outstanding motions or deadlines before the Court in this
7 matter.

8 8. On January 20, 2021, President Biden issued an Executive Order entitled
9 “Executive Order on Protecting Public Health and the Environment and Restoring Science to
10 Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 25, 2021) (“EO 13990”). In conformance
11 with the Executive Order, the Agencies began reviewing a number of regulations promulgated
12 in the last four years, including the 2020 Rule at issue in this case.

13 9. Considering this directive, on February 2, 2021, the Parties filed a stipulated
14 motion to stay the proceeding for 90 days to accommodate the Agencies’ review of the 2020
15 Rule. Dkt. No. 94. The Court granted the motion on February 8, 2021, staying the case until May
16 1, 2021. Dkt. No. 95. The Parties filed five additional motions to stay the proceeding, which
17 were all granted by this Court. Dkt. Nos. 99, 101, 107, 111, 113. The proceeding has been stayed
18 until January 20, 2023, and the Parties were directed to “file a joint status report on or before
19 January 31, 2023, to update the Court on the status of the case.” Dkt. No. 113 at 2.

20 10. On December 29 and December 28, 2022, respectively, the Administrator of EPA
21 and the Assistant Secretary of the Army for Civil Works signed a final rule entitled “Revised
22 Definition of ‘Waters of the United States.’ ” The rule revises the definition of “waters of the
23 United States” under the Clean Water Act. On January 3, 2023, the Agencies filed a notice of
24 final rule with the Court notifying the Court and the Parties that this rule has been signed. Dkt.
25 No. 116.

1 11. On January 18, 2023, the final rule entitled “Revised Definition of ‘Waters of the
2 United States,’ ” was published in the Federal Register. *See* 88 Fed. Reg. 3004 (Jan. 18, 2023).
3 Unless enjoined by legal challenges, the final rule will go into effect on March 20, 2023.

4 12. On January 18, 2023, the final rule was challenged in two separate lawsuits filed
5 in the Southern District of Texas. *See Texas v. EPA*, 3:23-cv-00017 (S.D. Tex. Jan. 18, 2023);
6 *Am. Farm Bureau Fed’n v. EPA*, No. 3:23-cv-00020 (S.D. Tex. Jan. 18, 2023). Those lawsuits
7 seek declaratory and injunctive relief against, and vacatur of, the final rule. *See Texas*, No. 3:23-
8 cv-00017, ECF No. 1 at 28–29; *Am. Farm Bureau Fed’n*, No. 3:23-cv-00020, ECF No. 1 at 41–
9 42.

10 13. In light of the publication of, and the pending legal challenges to, the new
11 regulation defining “waters of the United States,” the Parties respectfully request that the
12 proceeding be further stayed until July 31, 2023. The Parties will submit a proposal or proposals
13 for further proceedings by no later than July 31, 2023. Either party may move to lift the stay if
14 subsequent developments lead to the reinstatement of the prior rule(s) defining “waters of the
15 United States” under the Clean Water Act. And each party reserves its right to oppose such a
16 motion.

17 Dated: January 20, 2023

Respectfully submitted,

18 /s/ Hubert T. Lee

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INTERVENORS

[Proposed] Order

It is ORDERED that the above-captioned proceeding be stayed until July 31, 2023.

It is further ORDERED that the Parties file a joint status report and proposal(s) to further govern proceedings by no later than July 31, 2023.

IT IS SO ORDERED.

Hon. John C. Coughenour
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 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.

/s/ Hubert T. Lee

Hubert T. Lee