

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

CHESAPEAKE BAY FOUNDATION, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action Nos. RDB-20-1063,
)	RDB-20-1064
)	
MICHAEL REGAN, in his official capacity as)	
Administrator of the U.S. Environmental)	
Protection Agency, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**JOINT PROPOSAL FOR FURTHER PROCEEDINGS/MOTION
TO CONTINUE ABEYANCE**

Pursuant to this Court’s November 29, 2021 Order, Dkt. No. 63, the Parties submit the following proposal for further proceedings, and jointly move to continue the abeyance.

1. In these consolidated cases, Plaintiffs challenge two rules promulgated by the Agencies that define the phrase “waters of the United States” in the Clean Water Act. 33 U.S.C. § 1362(7). These are the Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 Fed. Reg. 22,250 (Apr. 21, 2020) (“NWPR”), and the Definition of “Waters of the United States”—Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“2019 Rule”).

2. These cases have been held in abeyance “pending publication of a Final Rule in the Federal Register regarding the definition of ‘waters of the United States’ or the Agencies’ decision that they will no longer proceed with the rulemaking.” Dkt. No. 63.

3. On December 29 and December 28, 2022, respectively, the Administrator of EPA and the Assistant Secretary of the Army for Civil Works signed a final rule entitled “Revised

Definition of ‘Waters of the United States.’” The rule revises the definition of “waters of the United States” under the Clean Water Act. On January 18, 2023, the rule was published in the Federal Register. The Agencies notified the Court when the rule was signed, and again when it was published. Dkt. Nos. 70-71. The rule is scheduled to go into effect on March 20, 2023.

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

5. In light of the publication of the new regulation defining “waters of the United States,” the Parties respectfully request that these cases continue to be held in abeyance.¹ In lieu of the Agencies’ obligation to submit status reports every 90 days, *see* Dkt. No. 63, the Parties propose that they will submit a joint status report and proposal or proposals for further proceedings by no later than July 31, 2023. Any party may move to lift the stay if subsequent developments lead to the reinstatement of the prior rule(s) defining “waters of the United States” under the Clean Water Act. And each party reserves its right to oppose such a motion.

Dated: February 7, 2023.

Respectfully submitted,

/s/ Jon A. Mueller

Jon A. Mueller (Bar No. 17142)
Chesapeake Bay Foundation, Inc.

¹ Three courts have agreed to hold challenges to the prior “waters of the United States” rules in abeyance in light of the publication of, and the pending legal challenges to, the new regulation defining “waters of the United States.” *See* Order, *N.M. Cattle Growers’ Ass’n v. EPA*, No. 1:19-cv-00988 (D.N.M. Feb. 2, 2023); Order, *Oregon Cattlemen’s Ass’n v. EPA*, No. 3:19-cv-00564 (D. Or. Jan. 24, 2023), Dkt. No. 135; Order, *Washington Cattlemen’s Ass’n v. EPA*, No. 2:19-cv-00569 (W.D. Wash. Jan. 23, 2023), Dkt. No. 120.

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(signed by John A. Mueller with permission of
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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2023, I electronically transmitted the foregoing to the Clerk of Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to registered counsel for all parties.

/s/ Sonya J. Shea