

HUBERT T. LEE  
DANIEL PINKSTON  
Environmental Defense Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
150 M Street NE, Room 4.1116  
Washington, DC 20002  
[Hubert.lee@usdoj.gov](mailto:Hubert.lee@usdoj.gov)  
[Daniel.pinkston@usdoj.gov](mailto:Daniel.pinkston@usdoj.gov)  
(202) 514-1806 (Lee)  
(303) 844-1804 (Pinkston)

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA AT TUCSON**

PASQUA YAQUI TRIBE, et al., )  
 ) Case No. 4:20-cv-00266-RM  
Plaintiffs, )  
 ) Assigned Judge: Hon. Rosemary Márquez  
v. )  
 )  
UNITED STATES ENVIRONMENTAL ) **JOINT STIPULATION OF**  
PROTECTION AGENCY, et al., ) **DISMISSAL WITHOUT PREJUDICE**  
 )  
Defendants, )  
 )  
and )  
 )  
ARIZONA ROCK PRODUCTS )  
ASSOCIATION, et al., )  
 )  
Intervenors-Defendants, )  
 )  
and )  
 )  
CHANTELL SACKETT and MICHAEL )  
SACKETT, )  
 )  
Intervenors-Defendants. )  
 )

1           WHEREAS, on June 22, 2020, Plaintiffs Pascua Yaqui Tribe, Quinault Indian  
2 Nation, Fond du Lac Band of Lake Superior Chippewa, Menominee Indian Tribe of  
3 Wisconsin, Tohono O’Odham Nation, and Bad River Band of Lake Superior Chippewa  
4 filed a complaint in this case, ECF No. 1, challenging two rules defining “Waters of the  
5 United States” (WOTUS) issued by the U.S. Environmental Protection Agency and the  
6 U.S. Army Corps of Engineers (Agencies): one published in 2019, “Definition of ‘Waters  
7 of the United States’ – Recodification of Pre-Existing Rules,” 84 Fed. Reg. 56,626 (2019  
8 WOTUS Rule), that replaced the prior 2015 WOTUS Rule, and another published in  
9 2020, “Navigable Waters Protection Rule,” 85 Fed. Reg. 22,250 (2020 WOTUS Rule),  
10 that redefined the term WOTUS;

11           WHEREAS, the Court issued a memorandum order and opinion granting the  
12 Agencies’ request to voluntarily remand the 2020 WOTUS Rule while granting  
13 Plaintiffs’ request to vacate the rule. ECF No. 99 (August 30, 2021). In the same order,  
14 the Court denied without prejudice all other outstanding motions in the proceeding. *Id.* at  
15 11;

16           WHEREAS, on November 30, 2021, the parties filed a joint proposal to hold  
17 Plaintiffs’ remaining claims with respect to the 2019 WOTUS Rule in abeyance pending  
18 the completion of the Agencies’ rulemaking regarding a revised definition of “waters of  
19 the United States,” ECF No. 114, which the Court granted on December 6, 2021, ECF  
20 No. 116; and

21           WHEREAS, on January 18, 2023, the Agencies published a final rule entitled  
22 “Revised Definition of ‘Waters of the United States’” in the Federal Register that  
23 supersedes prior WOTUS Rules, 88 Fed. Reg. 3004;

24           NOW, THEREFORE, all parties in the captioned litigation hereby agree to the  
25 following: Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the  
26 parties hereby stipulate to the voluntary dismissal without prejudice of the only  
27

1 unresolved claims in this case, that is, those challenging the 2019 WOTUS Rule.<sup>1</sup> The  
2 parties agree that each party shall bear its own costs and fees. The parties request that the  
3 Clerk now close this case.

4 Respectfully submitted this 8th day of February, 2023.

5 *Counsel for Defendants:*

6 /s/ Hubert T. Lee

7  
8 HUBERT T. LEE  
9 Trial Attorney  
10 Environmental Defense Section  
11 Environment & Natural Resources Division  
12 U.S. Department of Justice  
13 150 M Street NE, Room 4.1116  
14 Washington, DC 20002  
15 (202) 514-1806  
16 Hubert.lee@usdoj.gov

17 DANIEL PINKSTON  
18 Senior Trial Attorney  
19 Environmental Defense Section  
20 Environment & Natural Resources Division  
21 U.S. Department of Justice  
22 999 18<sup>th</sup> Street, South Terrace, Suite 370  
23 Denver, CO 80202  
24 (303) 844-1804  
25 Daniel.pinkston@usdoj.gov

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26 <sup>1</sup> Intervenors-Defendants Chantell and Michael Sackett (“the Sacketts”), sought only  
27 limited intervention to defend Plaintiffs’ claims against the provisions of the 2020  
Navigable Waters Protection Rule defining “adjacent wetlands,” 33 C.F.R. § 328.3(c)(1);  
40 C.F.R. § 120.2(3)(i) (2020). *See* ECF No. 44 at 3. As such, the Sacketts did not seek  
leave to participate on the merits of Plaintiffs’ remaining claims challenging the 2019  
WOTUS Rule. *See id.* at 7 n.3. Because this Court’s May 14, 2021, order granting the  
Sacketts’ motion to intervene granted them party status “for all purposes,” *See* ECF No.  
170 at 3, the Sacketts join this stipulation of voluntary dismissal Pursuant to Federal Rule  
of Civil Procedure 41(a)(1)(A)(ii).

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*Counsel for Plaintiffs:*

/s/ Stuart C. Gillespie

Stuart C. Gillespie, CO # 42861  
EARTHJUSTICE  
633 17th Street, Suite 1600  
Denver, CO 80202  
(303) 996-9616  
[sgillespie@earthjustice.org](mailto:sgillespie@earthjustice.org)

Janette K. Brimmer, WSBA # 41271  
EARTHJUSTICE  
810 Third Avenue, Suite 610  
Seattle, WA 98104  
(206) 343-7340  
[jbrimmer@earthjustice.org](mailto:jbrimmer@earthjustice.org)

*Counsel for Intervenors-Defendants Chantell and Michael Sackett:*

/s/ James M. Manley

James M. Manley, Ariz. Bar No. 031820  
Pacific Legal Foundation  
3241 E Shea Boulevard, # 108  
Phoenix, Arizona 85028  
Telephone: (916) 419-7111  
Facsimile: (916) 419-7747  
[jmanley@pacificlegal.org](mailto:jmanley@pacificlegal.org)

Charles T. Yates, Cal. Bar No. 327704\*  
Pacific Legal Foundation  
555 Capitol Mall, Suite 1290  
Sacramento, California 95814  
Telephone: (916) 419-7111  
Facsimile: (916) 419-7747  
[cyates@pacificlegal.org](mailto:cyates@pacificlegal.org)

*\*pro hac vice*

*Counsel for Intervenors-Defendants Arizona Rock Products Association, et al.*

/s/ D. Lee Decker

D. Lee Decker (AZ Bar No. 013202)

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Stuart S. Kimball (AZ Bar No. 026681)  
GALLAGHER & KENNEDY, P.A.  
2575 East Camelback Road  
Phoenix, Arizona 85016-9225  
Telephone: (602) 530-8000  
Facsimile: (602) 530-8500  
dld@gknet.com  
stuart.kimball@gknet.com

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 8, 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/ HUBERT T. LEE