IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF KENTUCKY FRANKFORT DIVISION

))

))

)))

COMMONWEALTH OF KENTUCKY	
Plaintiff,	
V.	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <i>et al.</i> ,	

No. 3:23-cv-00007-GFVT

Defendants.

JOINT STATUS REPORT

On February 10, 2025, ECF No. 90, the Court granted Defendants' consent motion to stay the case for 60 days to brief new leadership regarding the issues raised in the case and ordered the parties to confer and file a joint status report within 14 days before the end of the abeyance period. In accordance with the Court's February 10, 2025, Order, the parties submit this joint status report to apprise the Court regarding recent developments and the parties' position on how this case should proceed.

On March 12, 2025, the U.S. Environmental Protection Agency and the U.S. Department of the Army (the "Agencies") issued new guidance concerning implementation of the "continuous surface connection" requirement for adjacent wetlands under the definition of "waters of the United States." *See* Att. 1. Simultaneously, the Agencies announced a notice to be published in the Federal Register establishing a public docket and soliciting stakeholder input to assist the Agencies in further clarifying the definition of "waters of the United States." *See* Att. 2. On March 24, 2025, this notice was published in the Federal Register. 90 Fed. Reg.

Case: 3:23-cv-00007-GFVT Doc #: 92 Filed: 03/28/25 Page: 2 of 4 - Page ID#: 3032

13428 (Mar. 24, 2025). Specifically, the notice states that the Agencies will hold a series of at least six listening sessions seeking input on the scope of "relatively permanent" waters, "continuous surface connection," and jurisdictional ditches. *Id.* at 13430-31. The Agencies are also accepting written recommendations from the public through the public docket. *Id.* at 13430. In doing so, the Agencies "will seek to provide clear and transparent direction regarding the definition [of 'waters of the United States'] and will prioritize practical implementation approaches, provide for durability and stability, as well as for more effective and efficient jurisdictional determinations, permitting actions, and other actions consistent with relevant decisions of the Supreme Court." *Id.*

Based on these developments, the parties respectfully request that the Court continue to stay the case for an additional six months, until October 14, 2025, to allow the Agencies time to conduct the listening sessions, receive and review public comments, and to undertake any further action as appropriate, and to allow Plaintiff to consider the new guidance and evaluate its claims in light of it. Any such action could potentially resolve the litigation or narrow the existing dispute. At the conclusion of the stay, the parties plan to confer and file a joint status report.

Respectfully submitted,

ADAM R.F. GUSTAFSON Acting Assistant Attorney General ENVIRONMENT AND NATURAL RESOURCES DIVISION

<u>/s/ Jin Hyung Lee</u> ANDREW J. DOYLE, FL Bar No. 84948 SONYA J. SHEA, CA Bar No. 305917 SARAH IZFAR, DC Bar No. 1017796 JIN HYUNG LEE, DC Bar No. 198095 ELLIOT HIGGINS, NY Bar No. 5737903

Of Counsel: Karyn I. Wendelowski Elise O'Dea Environmental Protection Agency

Case: 3:23-cv-00007-GFVT Doc #: 92 Filed: 03/28/25 Page: 3 of 4 - Page ID#: 3033

Daniel Inkelas Erica Zilioli U.S. Army Corps of Engineers United States Department of Justice Environmental Defense Section P.O. Box 7611 Washington, DC 20044 Tel: (415) 744-6469 (Doyle) Tel: (303) 844-7231 (Shea) Tel: (202) 305-0490 (Izfar) Tel: (202) 514-2640 (Lee) Tel: (202) 598-0240 (Higgins) Fax: (202) 514-8865 andrew.doyle@usdoj.gov sonya.shea@usdoj.gov sarah.izfar@usdoj.gov elliot.higgins@usdoj.gov

Counsel for Defendants

Russell Coleman ATTORNEY GENERAL

/s/ Victor B. Maddox

Victor B. Maddox (KBA No. 43095) Aaron J. Silletto (KBA No. 89305 Lindsey R. Keiser (KBA No. 99557) Jason P. Woodall (KBA No. 95013) Office of the Attorney General 700 Capital Avenue, Suite 118 Frankfort, Kentucky 40601 Phone: (502) 696-5300 Victor.Maddox@ky.gov Aaron.Silletto@ky.gov Lindsey.Keiser@ky.gov Jason.Woodall@ky.gov

Counsel for the Commonwealth of Kentucky ex rel. Russell Coleman in his official capacity as Attorney General of Kentucky

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2025, 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.

<u>/s/ Jin Hyung Lee</u> JIN HYUNG LEE