

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
Tallahassee Division**

SOUTHEAST STORMWATER)
ASSOCIATION, INC., et al.)

Plaintiffs,)

v.)

U.S. ENVIRONMENTAL)
PROTECTION AGENCY, et al.,)

Defendants.)

Case No. 4:15-cv-579-MW/MAF

JOINT MOTION TO GOVERN FURTHER PROCEEDINGS

The parties jointly file this Motion to Govern Further Proceedings pursuant to this Court's March 25, 2020 Order. Order, ECF No. 99. On September 22, 2019, the Court held this case in abeyance for 75 days and ordered the parties to file a status report at the conclusion of the abeyance period. Order, ECF No. 89. The abeyance was further extended on December 10, 2019, January 24, 2020, and March 25, 2020. The parties have conferred and, in recognition of the Court's decision to exercise discretion in the September 22, 2019 Order, jointly request that the Court continue the abeyance for an additional 90 days, after which the parties will submit a proposal to govern further proceedings. In support, the parties state as follows:

1. Plaintiffs Southeast Stormwater Association, Inc., et al., challenge a 2015 regulation that revised certain regulatory provisions relating to the definition

of “waters of the United States” under the Clean Water Act. *See* Compl., ECF No. 1, ¶ 1 (challenging “Clean Water Rule: Definition of ‘Waters of the United States,’” 80 Fed. Reg. 37,054 (June 29, 2015) (“2015 Rule”)).

2. In 2017, the Agencies began reviewing the 2015 Rule. *See* 82 Fed. Reg. 12,497 (Mar. 3, 2017). The Agencies outlined a two-step rulemaking process. In Step 1, the Agencies proposed to repeal the 2015 Rule and reinstate the preexisting regulations. Definition of “Waters of the United States”—Recodification of Preexisting Rule, 82 Fed. Reg. 34,899 (July 27, 2017); Definition of “Waters of the United States”—Recodification of Preexisting Rule, 83 Fed. Reg. 32,227 (July 12, 2018) (supplemental notice of proposed rulemaking). In Step 2, the Agencies proposed a revised definition of “waters of the United States.” *See* Revised Definition of “Waters of the United States,” 84 Fed. Reg. 4154 (Feb. 14, 2019).

3. On September 12, 2019, the Administrator of the Environmental Protection Agency and the Assistant Secretary of the Army for Civil Works signed a final rule entitled “Definition of ‘Waters of the United States’—Recodification of Pre-Existing Rules” (“Repeal Rule”). The Repeal Rule was published in the Federal Register on October 22, 2019. 84 Fed. Reg. 56,626 (Oct. 22, 2019).

4. The Repeal Rule: (1) rescinded the 2015 Rule; and (2) recodified the prior regulatory definition of “waters of the United States.” It became effective on December 23, 2019.

5. There have been several challenges to the Repeal Rule filed to date. *Chesapeake Bay Foundation, Inc. v. Wheeler*, No. 1:20-cv-1063 (D. Md., complaint filed April 27, 2020); *Washington Cattlemen’s Ass’n v. EPA*, No. 2:19-cv-0569 (W.D. Wash., supplemental complaint filed Dec. 20, 2019); *Murray v. Wheeler*, No. 1:19-cv-1498 (N.D.N.Y., complaint filed Dec. 4, 2019); *South Carolina Coastal Conservation League v. Wheeler*, No. 2:19-cv-3006 (D.S.C., complaint filed Oct. 23, 2019); *New Mexico Cattle Growers’ Ass’n v. EPA*, No. 1:19-cv-0988 (D.N.M., complaint filed Oct. 22, 2019); *Pierce v. EPA*, No. 0:19-cv-2193 (D. Minn., supplemental complaint filed Oct. 22, 2019).

6. On January 23, 2020, the Agencies finalized the “Navigable Waters Protection Rule: Definition of ‘Waters of the United States.’” It was published in the Federal Register on April 21, 2020, and goes into effect on June 22, 2020. 85 Fed. Reg. 22,250 (Apr. 21, 2020). This rule defines “waters of the United States” under the Clean Water Act and will replace the existing definition promulgated in the Repeal Rule.

7. There have been several challenges to the Navigable Waters Protection Rule filed to date. *Murray v. Wheeler*, No. 1:19-cv-1498 (N.D.N.Y.,

amended complaint filed May 11, 2020); *Washington Cattlemen's Ass'n v. EPA*, No. 2:19-cv-0569 (W.D. Wash., second supplemental complaint filed May 4, 2020); *California v. Wheeler*, No. 3:20-cv-3005 (N.D. Cal., complaint filed May 1, 2020); *Oregon Cattlemen's Ass'n v. EPA*, No. 3:20-cv-0564 (D. Or., supplemental complaint filed May 1, 2020); *South Carolina Coastal Conservation League v. Wheeler*, No. 2:20-cv-1687 (D.S.C., complaint filed Apr. 29, 2020); *Conservation Law Foundation v. Wheeler*, No. 1:20-cv-10280 (D. Mass., complaint filed Apr. 29, 2020); *New Mexico Cattle Growers' Ass'n v. EPA*, No. 1:19-cv-0988 (D.N.M., supplemental complaint filed Apr. 27, 2020); *Chesapeake Bay Foundation, Inc. v. Wheeler*, No. 1:20-cv-1064 (D. Md., complaint filed April 27, 2020). And at least one motion for a preliminary injunction to enjoin implementation of the Navigable Waters Protection Rule has already been filed. *California v. Wheeler*, No. 3:20-cv-3005, ECF No. 30 (N.D. Cal. May 18, 2020).

8. Abeyance remains appropriate considering the Court's September 22, 2019 Order and the issuance of the replacement definition of "waters of the United States." The new rule and other related legal challenges regarding the regulatory definition of "waters of the United States" may affect the issues and arguments at play in this litigation. The parties thus ask the Court to hold this case in abeyance for an additional 90 days.

Accordingly, the parties respectfully request that the abeyance be extended for 90 days.

Dated: May 26, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 26, 2020, I caused a true and correct copy of the foregoing to be served via the Court's CM/ECF system on all registered counsel.

/s/ Erica Zilioli