

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

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

Plaintiffs,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY, *et al.*

Defendants.

Case No. 4:15-cv-00579-MW-CAS

**MOTION TO LIFT ABEYANCE, ADOPT PROPOSED
SCHEDULE, AND FOR LEAVE TO FILE A REPLY**

The Southeast Stormwater Association, Inc., Florida Stormwater Association, Inc., Florida Rural Water Association, Inc., and the Florida League of Cities, Inc. (collectively “Municipal Interests”) ask this Court to lift the abeyance on their challenge to a 2015 Final Rule defining the phrase “waters of the United States,” as that phrase is used in the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.* See 80 Fed. Reg. 37,054 (Jun. 29, 2015).

The 2015 Rule has been the subject of much litigation since its promulgation; however, to date, no court has ruled on the substance of the 2015 Rule. See, e.g., *Nat’l Ass’n of Mfrs. v. Dep’t of Defense*, 138 S. Ct. 617 (2018) (holding that the federal district courts are the appropriate forum to consider challenges to the 2015

Rule); *Murray Energy Corp. v. U.S. Dep't of Defense*, 817 F.3d 261 (6th Cir. 2016) (providing three separate opinions from three-judge panel on appropriateness of review by the federal circuit courts of appeal); *Ohio v. U.S. Army Corp of Eng'rs*, 803 F.3d 804 (6th Cir. 2015) (issuing nationwide stay of 2015 Rule that was later lifted for want of jurisdiction).

Preliminary injunctions issued by various federal district courts have now stayed the 2015 Rule in about half of the states. ECF 50 at ¶ 6. Yet the 2015 Rule is now effective in Tennessee, where the Municipal Interests have members. *See* ECF 1 at ¶ 13 (noting Southeast Stormwater Association's membership).

The Municipal Interests seek to lift the abeyance here so that this Court may consider the substance of the 2015 Rule. Three other federal district courts, including one in the Eleventh Circuit, have already resumed proceedings. *See* ECF 85, *Texas v. EPA*, Case No. 3:15-cv-162 (S.D. Tex. February 7, 2018) (granting motion to reopen); ECF 144, *Georgia v. Pruitt*, Case No. 2:15-cv-00079 (S.D. of Ga. March 9, 2018) (denying EPA's request for one year stay); ECF 199, *North Dakota v. U.S. Environmental Protection Agency*, Case No. 3:15-cv-59 (D.N.D. May 1, 2018) (affirming magistrate judge's order lifting stay).

Because this case must be resolved on the administrative record compiled by the Federal Agencies, the Municipal Interests propose the following schedule for this Court's consideration:

- October 15, 2018 – the Federal Agencies file the administrative record with this Court and provide copies to the Municipal Interests;
- October 29, 2018 – the Municipal Interests move for summary judgment with pinpoint citations to the record as appropriate;
- November 12, 2018 – the Federal Agencies cross-move for summary judgment, responding to the Municipal Interests, and with pinpoint citations to the record as appropriate; and
- November 27, 2018 – the Municipal Interests file a reply in support of their summary judgment motion with pinpoint citations to the record as appropriate.

The Municipal Interests also seek leave to file a short reply in support of this Motion. They do so because the Federal Agencies' response in opposition could raise weighty issues and the Municipal Interests wish to be heard on those issues.

Counsel for the Municipal Interests conferred with counsel for the Federal Agencies. The Federal Agencies oppose the request to lift the abeyance and the proposed schedule; however, they have not yet taken a position on the request to file a reply in support of this Motion.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

The undersigned certifies that he conferred with counsel for the Federal Agencies regarding this filing. The Federal Agencies oppose the request to lift the abeyance and the proposed schedule. The undersigned further certifies that this filing complies with the size, font, and formatting requirements of Local Rule 5.1(C), and that this filing complies with the word limit in Local Rule 7.1(F) because it contains 551 words, excluding the case style, signature block, and certificates.

Respectfully submitted,

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September 28, 2018

Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

I certify that, on September 28, 2018, I provided a true and correct copy of the foregoing to all counsel of record through the Court's electronic filing system.

/s/ Mohammad O. Jazil
Attorney