

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

AMERICAN EXPLORATION & MINING ASSOCIATION,	)	
	)	
Plaintiff,	)	Civil Action No. 1:16-cv-1279-RC
	)	
v.	)	
	)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**PLAINTIFF’S UNOPPOSED MOTION TO STAY THE PROCEEDINGS**

Plaintiff, American Exploration & Mining Association (“AEMA”), by and through its undersigned attorney, hereby respectfully requests that this Court stay the proceedings in this case pending further action by either the U.S. Court of Appeals for the Sixth Circuit or the Supreme Court of the United States in related litigation. The grounds for this Motion are as follows:

1. On June 29, 2015, Defendants published the “Clean Water Rule: Definition of ‘Waters of the United States’” (“WOTUS Rule”). 80 Fed. Reg. 37,054 (June 29, 2015).
  
2. After issuance of the WOTUS Rule, numerous actions were filed in both the U.S. District Courts and the U.S. Courts of Appeals. *See* ECF No. 3 (notice of related cases listing the actions filed in the district courts and courts of appeals). The petitions for review filed in the U.S. Courts of Appeals were consolidated in the U.S. Court of Appeals for the Sixth Circuit by the U.S. Judicial Panel on Multidistrict Litigation. *See In re: EPA & Dep’t of Def., Final Rule: Clean Water Rule: Definition of “Waters of the United States”*, MCP No. 135 (J.P.M.L. 2015). However, the actions filed in the U.S. District Courts were not centralized in one district court,

but instead continued in their respective courts. *See In re: Clean Water Rule: Definition of “Waters of the United States”*, 140 F. Supp. 3d 1340, 1341 (J.P.M.L. 2015).

3. On October 9, 2015, the Sixth Circuit issued a nationwide stay of the WOTUS Rule, which remains in place today. *In re EPA*, 803 F.3d 804, 809 (6th Cir. 2015).

4. On November 9, 2015, AEMA filed a Petition for Review of the Final Rule in the U.S. Court of Appeals for the District of Columbia Circuit, in light of the 120-day statute of limitations in Section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1). ECF No. 1 at 2.<sup>1</sup> AEMA’s Petition for Review was subsequently transferred and consolidated with 21 other petitions for review before the Sixth Circuit. *Id.* At the time of transfer, there were a number of motions to dismiss for lack of jurisdiction pending in the consolidated proceedings before the Sixth Circuit. *Id.*

5. Defendants in the instant case are also parties to the consolidated proceedings before the Sixth Circuit.

6. On February 22, 2016, the Sixth Circuit held that it has exclusive, original jurisdiction over challenges to the WOTUS Rule, pursuant to Section 509(b)(1) of the Clean Water Act. *In re: U.S. Dep’t of Def. & EPA Final Rule: Definition of “Waters of the United States”*, 817 F.3d 261, 274 (6th Cir. 2016). As a result, the Sixth Circuit entered case management orders outlining a schedule for any administrative record-related motions and merits briefing. On September 22, 2016, the Sixth Circuit issued an order holding the merits briefing in abeyance pending its ruling on the outstanding motions to complete the administrative record.

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<sup>1</sup> Citations to page numbers of documents filed in this case refer to the page numbers automatically assigned to the documents by this Court’s CM/ECF system.

7. On June 23, 2016, AEMA filed the instant case as a protective measure in light of the one-year statute of limitations in the Regulatory Flexibility Act, 5 U.S.C. § 611(a)(3)(A), and in case it is ultimately determined that the Sixth Circuit lacked exclusive, original jurisdiction over AEMA's challenge to the WOTUS Rule. ECF No. 1 at 3. Defendants' answer in this case is due on or about October 11, 2016.

8. On September 2, 2016, the National Association of Manufacturers filed a Petition for a Writ of Certiorari, seeking review of the Sixth Circuit's decision that it has exclusive, original jurisdiction over challenges to the WOTUS Rule. *Nat'l Ass'n of Mfrs. v. Murray Energy Corp.*, No. 16-299 (U.S. Sept. 2, 2016). AEMA has given notice that it will be joining a response in support of the Petition, which is due on October 7, 2016.

9. In light of the related actions pending before the Sixth Circuit and the Supreme Court, AEMA respectfully requests that this Court stay the proceedings in this case until either the Sixth Circuit or the Supreme Court provides further guidance with respect to either jurisdiction or the merits.

10. This Court has broad discretion to stay proceedings in a case before it pending the resolution of independent proceedings elsewhere. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”); *see also Belize Soc. Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 731 (D.C. Cir. 2012).

11. Staying the proceedings in this case will conserve this Court's limited resources because it may ultimately be determined that the Sixth Circuit does, indeed, have exclusive, original jurisdiction over challenges to the WOTUS Rule.

12. Staying the proceedings in this case will avoid duplication. *See Georgia ex rel. Owens v. McCarthy*, No. 15-14035-EE, 2016 WL 4363130, at \*3 (11th Cir. Aug. 16, 2016) (holding in abeyance an appeal regarding a challenge to the WOTUS Rule to avoid duplication). This is underscored by the fact that AEMA filed the instant action as a protective measure in the event that it is ultimately determined that the Sixth Circuit *does not* have exclusive, original jurisdiction over challenges to the WOTUS Rule. ECF No. 1 at 3.

13. Staying the proceedings in this case will not cause "hardship or inequity" to either AEMA or Defendants, *see Landis*, 299 U.S. at 255, but will conserve their resources. There is already a nationwide stay of the WOTUS Rule, so AEMA will not be harmed if these proceedings are stayed. In addition, both AEMA and Defendants are parties in the consolidated proceedings before the Sixth Circuit and respondents with respect to the Petition for a Writ of Certiorari and can adequately protect their interests in those cases.

14. If the proceedings in this case are stayed, the parties will file joint status reports with this Court every 120 days. If definitive action is taken by either the Sixth Circuit or the Supreme Court, the parties will notify this Court of such action within 14 days. Finally, both AEMA and Defendants reserve the right to move to lift the stay at any time.

15. Counsel for Defendants, Jessica O'Donnell, was consulted regarding this Motion, and advised that Defendants "do not oppose the relief requested" in this Motion.

16. A proposed order is filed concurrently herewith for this Court's convenience.

WHEREFORE, AEMA respectfully requests that this Court stay the proceedings in this case pending further definitive action by either the Sixth Circuit or the Supreme Court regarding the WOTUS Rule.

DATED this 30th day of September 2016.

Respectfully submitted,

/s/ Steven J. Lechner

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of September 2016, I filed the foregoing document using the CM/ECF system, which caused all counsel of record to be served electronically through this Court's CM/ECF system.

/s/ Steven J. Lechner  
Steven J. Lechner