

NHA Intervention – Client Update on Status of Challenges to CWA Section 401 Rule (**March 5, 2021**)

Case	Intervention Status	Other Intervenors	Immediate Next Steps	Scheduling Details
<p><i>California et al. v. Wheeler</i> (N.D. California)</p> <p>(consolidated with two other N.D. Cal. cases and collectively renamed <i>In re Clean Water Act Rulemaking</i>, No. 3:20-cv-4636)</p>	<p>Granted 10/9/20</p>	<p><u>States:</u> Arkansas, Louisiana, Mississippi, Missouri, Montana, Texas, West Virginia, and Wyoming</p> <p><u>Industry:</u> American Petroleum Institute and Interstate Natural Gas Association of America</p>	<p>On 2/22, the Court granted the parties joint motion to hold proceedings in abeyance, for 60 days “up to and including April 20, 2021.” Dkt. 132. The EPA must file a status report regarding its review of the rule by April 20, 2021.</p>	<p>The parties are ordered to “meet and confer” regarding the status of EPA’s review of the Section 401 Rule by April 10, 2021. All other deadlines have been stayed.</p> <p>This means that all three cases are now stay at least until early-to-mid April.</p>
<p><i>South Carolina Coastal League et al. v. Wheeler</i>, No. 2:20-cv-3062 (D. South Carolina)</p>	<p>Granted 10/30/20</p>	<p><u>States:</u> Louisiana, Arkansas, Mississippi, West Virginia, Texas, Missouri, and Wyoming</p> <p><u>Industry:</u> American Petroleum Institute and Interstate Natural Gas Association of America</p>	<p>On 2/17, the Court granted the parties’ joint motion to hold the case in abeyance for 60 days. The EPA must file a status report regarding its review of the rule by April 12, 2021.</p>	<p>The Court’s order granting the abeyance sets the updated briefing schedule and deadlines:</p> <ul style="list-style-type: none"> • 5/11/21 – Intervenors motion for SJ • 6/3/21 – Plaintiffs’ opposition and cross-motion for SJ • 6/10/21 – Amicus briefs in support of Plaintiff • 8/2/21 – EPA response/reply in support of SJ • 8/9/21 – Intervenors response/reply in support of SJ • 8/30/21 – Plaintiffs reply in support of cross-motion for SJ

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<p><i>Delaware Riverkeeper Network v. EPA</i>, No. 2:20-cv-3412 (E.D. Pennsylvania)</p>	<p>Granted 12/18/20</p>	<p><u>States</u>: Louisiana, Montana, Arkansas, Mississippi, Missouri, Texas, West Virginia, and Wyoming</p> <p><u>Industry</u>: American Petroleum Institute and Interstate Natural Gas Association of America</p>	<p>On 2/10, the Court granted the parties' joint motion to hold the case in abeyance for 60 days. The EPA must file a status report regarding its review of the rule by April 6, 2021.</p>	<p>The Court's order granting abeyance notes (but does not explicitly adopt) the parties requested briefing schedule if a second abeyance is not requested and granted:</p> <ul style="list-style-type: none"> • 4/30/21 – EPA to file administrative record • 6/1/21 – Plaintiffs move for SJ • 6/15/21 – Amicus briefs in support of Plaintiffs • 7/16/21 – EPA opposition and cross-motion for SJ • 7/30/21 – Intervenors opposition and cross-motion for SJ • 8/17/21 – Plaintiffs response/reply in support of motion for SJ • 8/31/21 –EPA reply in support of opposition and crossmotion for SJ • 9/14/21 – Intervenors reply in support of EPA's opposition and crossmotion for SJ