Message

From: Knapp, Michael [Knapp.Michael@epa.gov]
Sent: 5/9/2017 12:36:35 PM
To: Williams, Ann [Williams.Ann@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]; Carson, Davida [David.a.Carson@usdoj.gov]; Ford, Peter [Ford.Peter@epa.gov]; Siegal, Tod [Siegal.Tod@epa.gov]; Brundage, Jennifer [Brundage.Jennifer@epa.gov]; Stover, Michael [Stover.Michael@epa.gov]; Abele, Ralph [abele.ralph@epa.gov]; Voorhees, Jeanne [voorhees.jeanne@epa.gov]
Subject: Law360 Article on ME WQS Stay

FYI –

EPA Asks For Stay In Maine Water Quality Row

Share us on: By Kat Sieniuc

Law360, New York (May 8, 2017, 5:16 PM EDT) -- The U.S. Environmental Protection Agency on Friday asked a Maine federal judge for a 90-day stay in the state's suit challenging the EPA's tightening of its water quality standards for tribal waters, so it can review the policy.

The agency said in its motion that it plans to use the three-month pause to brush up on the more stringent standards being challenged by the state — which were put in place by former President Barack Obama's EPA — to determine whether the agency should reconsider or withdraw the rules altogether, which could signal a shift in how strictly the EPA plans to regulate water quality in the country.

"Depending upon how EPA determines to respond to the administrative petitions for reconsideration, that determination could substantially affect these proceedings," the motion said. "For example, if EPA determines that it should reconsider the challenged decisions, in whole or in part, in light of the administrative petitions, EPA's subsequent decision on reconsideration could moot this case entirely."

On the flip side, the agency said, litigation can resume if the EPA decides after its review not to reconsider the challenged standards.

Maine's Department of Environmental Protection wants to impose water quality standards that are lower than what the EPA, under the former administration, has said would protect the Houlton band of Maliseet Indians' sustenance fishing practices.

Maine's suit, first filed in 2014, seeks a declaration that its environmental jurisdiction applies uniformly throughout the state, including in Native American territories, based on settlement acts from the 1980s that established a unique tribal-state relationship.

Now, the EPA says that the recent change in administrations means it needs time to determine how to proceed, stressing "new personnel, including a new administrator, who need to familiarize themselves with the complex factual and legal underpinnings of the decisions that are challenged here."

In December, the Houlton band of Maliseet Indians asked a Maine federal court to let it intervene to oppose the state's suit challenging the stricter water quality standards for tribal waters, saying that the more restrictive rules ensure the tribe can continue its fishing traditions.

The tribe, whose members live along the Meduxnekeag River in Maine, objects to the state Department of Environmental Protection's efforts to impose water quality standards lower than the EPA believes would protect the

tribe's sustenance fishing practices. The band said it has a compelling interest more pressing than the federal government's own claims of authority.

"The Houlton band has a direct and substantial interest in ensuring that its members can safely engage in the sustenance fishing practices that have been integral to the Maliseet way of life since time immemorial," they said in their December motion to intervene. "The case cuts straight to the heart of the Houlton band's culture and economy."

Representatives for the tribe and the state were not immediately available to comment on Monday.

The Houlton band is represented by Graydon G. Stevens of Kelly Remmel & Zimmerman, and Cory J. Albright, Jane G. Steadman and Riyaz A. Kanji of Kanji & Katzen PLLC.

Maine is represented by Scott W. Boak of its attorney general's office.

The EPA is represented by David A. Carson and John G. Osborn of the U.S. Department of Justice.

The case is Maine et al. v. McCarthy et al., case number 1:14-cv-00264, in the U.S. District Court for the District of Maine.

--Additional reporting by Michael Phillis. Editing by Stephen Berg.

Michael Knapp
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Boston, Massachusetts 02109
617-918-1053