UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

STATE OF MAINE, *et al.*, Plaintiffs, v. SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency, *et al.*, Defendants.	Civil Action No. 1:14-cv-264-JDL

EPA'S MOTION FOR A 90-DAY STAY OF PROCEEDINGS AND INCORPORATED MEMORANDUM OF LAW

Defendants Scott Pruitt, in his official capacity as Administrator of the United States Environmental Protection Agency, and Deborah A. Szaro, in her official capacity as Acting Regional Administrator of Region I of the United States Environmental Protection Agency (collectively "EPA"), respectfully move for a 90-day stay of proceedings, including all briefing deadlines, in order to provide EPA time to determine how it should proceed with respect to two administrative petitions requesting, in part, that EPA reconsider and withdraw the EPA decisions that are challenged in this case. Because Maine's motion for judgment on the administrative record and incorporated memorandum is currently due to be filed on or before May 15, 2017, and because the requested stay would apply to that filing, EPA respectfully requests expedited consideration of this motion. The reasons for this motion are as follows:

1. Plaintiffs here seek judicial review of EPA's decision in February 2015 to disapprove some of Maine's Water Quality Standards ("WQS") under the Clean Water Act, and

EPA's related interpretation and approval of Maine's WQS as including a designated use of sustenance fishing in Indian waters in Maine.

2. On February 27, 2017, Maine Governor Paul R. LePage filed an administrative petition with EPA in which he requested on behalf of Maine that EPA reconsider and withdraw the EPA decisions challenged here.[1] A copy of Maine's Administrative Petition is attached hereto.

3. On March 6, 2017, the Town of Baileyville, Maine; Verso Corporation; and Woodland Pulp LLC, filed a similar administrative petition for reconsideration with EPA. A copy of this administrative petition is also attached hereto.

4. EPA needs time to determine whether it should reconsider the decisions challenged here in light of the administrative petitions for reconsideration. This is especially true due to the recent change in administrations. EPA has 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 and that are covered under the administrative petitions for reconsideration. The individuals who will be involved in determining how EPA should proceed with respect to the administrative petitions for reconsideration reasonably require time to gain sufficient knowledge of the complex factual and legal underpinnings of the challenged decisions.

[1] Maine has also requested that EPA withdraw other related EPA decisions that are not challenged in this case, including EPA's final rule promulgating federal WQS for Indian Waters in Maine, published at 81 Fed. Reg. 92,466 (Dec. 19, 2016). These federal WQS were promulgated in part to address the disapproval decisions that are at issue in this case.

5. Depending upon how EPA determines to respond to the administrative petitions for reconsideration, that determination could substantially affect these proceedings. 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, or narrow the issues that would need to be briefed and decided. Alternatively, if EPA determines not to reconsider the challenged decisions in light of the administrative petitions, then the briefing schedule can resume and the parties can brief the issues confident that EPA will not withdraw the decisions in response to the pending administrative petitions. A brief stay will therefore serve the interest of judicial economy and also save the parties from expending their resources in briefing issues flowing from EPA decisions that might ultimately be withdrawn or revised if EPA determines to reconsider those decisions in light of the administrative petitions. After EPA determines whether it will reconsider the challenged decisions in light of the administrative petitions, counsel for EPA will coordinate with the other parties and EPA will move for any additional relief appropriate in light of its planned course of action.

6. While EPA has not yet decided how it intends to proceed with respect to the currently pending administrative petitions for reconsideration, it bears noting that federal agencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). EPA's interpretations of statutes it administers are not "carved in stone" but must be

evaluated "on a continuing basis," for example, "in response to . . . a change in administrations." *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (internal quotation marks and citations omitted). *See also Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (a revised rulemaking based "on a reevaluation of which policy would be better in light of the facts" is "well within an agency's discretion," and "'[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations'") (quoting *State Farm,* 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part)).

7. No party will be prejudiced by the relief requested in this motion. While Maine's motion for judgment on the administrative record and incorporated memorandum is currently due to be filed on May 15, 2017, as explained above, Maine filed one of the currently pending administrative reconsideration requests with EPA. In addition, Maine does not oppose this motion. However, Maine does not wish to file its motion and incorporated memorandum if the case will be stayed for 90 days as requested in this motion. EPA agrees that Maine should not have to do so, and therefore requests that the Court act upon this motion as soon before May 15, 2017, as it is able to do so. The filing of Maine's motion and incorporated memorandum triggers the deadline for the other parties' motions for judgment on the administrative record and incorporated memoranda (including that of EPA). Thus, no party other than Maine has been required to spend substantial resources in briefing the merits as of this time.

8. Counsel for EPA has coordinated this motion with counsel for Plaintiffs and each Tribal Defendant. Maine does not oppose the relief requested by this motion provided that the Court either acts on this motion prior to Maine's existing May 15, 2017, deadline for filing its motion for judgment on the administrative record and incorporated memorandum, or extends that deadline until after this motion is decided. The Tribal Defendants oppose this motion and intend to file a response brief no later than May 10, 2017.

For all these reasons, the Court should grant this motion and hold these cases in abeyance for 90 days in order to provide time for EPA to determine how to respond to the administrative petitions for reconsiderations described above, including whether to reconsider its prior decisions.

Respectfully submitted,

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Date: May 5, 2017

CERTIFICATE OF SERVICE

It is hereby certified that all counsel of record who have consented to electronic service are being served with a copy of the foregoing EPA's Motion for a 90-day Stay of Proceedings and Incorporated Memorandum of Law on this 5th day of May 2017. Any other counsel of record will be served by first class U.S. mail.

s/David A. Carson