

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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April 25, 2016

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-14035-EE

Case Style: State of Georgia, et al v. Regina McCarthy, et al

District Court Docket No: 2:15-cv-00079-LGW-RSB

The Court would like supplemental briefing on the following issues in compliance with the following directions:

1. Is this appeal moot in light of the nationwide stay of enforcement of the Clean Water Rule that the Sixth Circuit entered in In re: Environmental Protection Agency and Department of Defense Final Rule (In re EPA I), 803 F.3d 804 (6th Cir. 2015), on October 9, 2015, which remains in effect?
2. If this appeal is not now moot, should this Court stay any further proceedings in this case while the Sixth Circuit's stay order remains in effect?
3. Should this Court hold this appeal in abeyance pending the Sixth Circuit's decision concerning the validity of the Clean Water Rule?
4. The Sixth Circuit has decided that federal courts of appeals have original jurisdiction over the plaintiff states' challenges to the validity of the Clean Water Rule. In re Environmental Protection Agency and Department of Defense Final Rule (In re EPA II), — F.3d —, 2016 WL 723241 (6th Cir. Feb. 22, 2016). Is this Court bound to follow the Sixth Circuit's decision in this appeal because it was rendered in consolidated cases, one of which was transferred from this Court pursuant to the multi-district litigation procedures

set out in 28 U.S.C. § 2112(a)?

5. Does the Sixth Circuit's decision in In re EPA II that federal courts of appeals have original jurisdiction over the plaintiff states' challenges to the Clean Water Rule have preclusive effect on that issue in this appeal because of the doctrine of issue preclusion or any other related doctrine?

6. If the answer to each of the preceding questions is "no," what persuasive weight should this Court give to the Sixth Circuit's decision in In re EPA II?

The appellants' opening supplemental brief shall be no longer than 12,000 words. The appellees' responsive supplemental brief shall also be no longer than 12,000 words. The appellants' supplemental brief in reply shall be no longer than 5,000 words.

The parties may at their discretion adopt by reference from previous briefs or omit entirely the following parts of the supplemental briefs:

- Jurisdictional statement
- Statement of the issues presented for review
- Statement of the case

Appellants' opening supplemental brief is due 21 days from the date of this order. The appellees' responsive supplemental brief is due 14 days after the filing of the appellants' opening supplemental brief. The appellants' supplemental brief in reply is due 7 days after the filing of the appellees' responsive supplemental brief.

Sincerely,

DAVID J. SMITH, Clerk of Court

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LetterHead Only