

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,  
Plaintiffs,  
v.  
ANDREW WHEELER, et al.,  
Defendants.

Case No. [20-cv-03005-RS](#)

**ORDER RE BRIEFING SCHEDULE  
AND HEARING DATE**

On May 18, 2020, plaintiffs filed a motion for preliminary injunction, accompanied by a motion to shorten time so that the injunction motion could be heard prior to the effective date of the rule plaintiffs seek to enjoin. According to plaintiffs, the rule they challenge adopts a new definition of the “waters of the United States” under the Clean Water Act, and will have the effect of removing 4.8 million miles of streams and millions of acres of wetlands from federal protection.

Because the requested advancement of the hearing date did not alter the briefing schedule set in the Civil Local Rules and only affected the Court’s own time to prepare for the hearing, the court in its discretion granted the motion to shorten time the following day.<sup>1</sup> Defendants’ present

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<sup>1</sup> Defendants complain that they were not afforded four days to respond to the motion to shorten time. Although the rules generally provide up to four days to oppose such motions, the court retains discretion to act sooner where time is of the essence and particularly where there is no prejudice to the other party.


1 motion to reconsider the order shortening time is denied, as it imposes no burden on them that  
2 would not have existed by operation of the standard briefing schedule set out in the rules.

3 Defendants' counter request to *extend* the briefing schedule is a separate issue. While  
4 plaintiffs' desire to have their preliminary injunction decided prior to the effective date of the rule  
5 is understandable, it is not clear that there is a sufficient likelihood of *immediate* irreparable harm  
6 upon the rule becoming effective to warrant briefing and deciding the matter under the time  
7 pressures imposed by the default rules.<sup>2</sup> The change to the status quo upon the rule becoming  
8 effective is only a lifting of federal regulations—the follow-on harms that plaintiffs contend will  
9 follow may reasonably be presumed to develop primarily over time. Indeed, plaintiffs refer to  
10 certain aspects of the potential harm as “cumulative.”

11 Whether plaintiffs have made an adequate showing of irreparable harm likely to occur  
12 during the pendency of entire litigation is a question to be considered when the motion for a  
13 preliminary injunction is heard. At this juncture, the narrower question is only whether the  
14 potential irreparable harm is likely to be so *immediate* that a delay in deciding the matter until  
15 after the rule has been in effect for a few weeks is unacceptable. Accordingly, within 48 hours of  
16 the issuance of this order, plaintiffs shall file any opposition to defendants' motion to extend the  
17 briefing schedule and continue the hearing date.

18  
19 **IT IS SO ORDERED.**

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21 Dated: May 20, 2020

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24 RICHARD SEEBORG  
25 United States District Judge

26  
27 <sup>2</sup> This is particularly so in light of the fact that plaintiffs sought and obtained a stipulated order  
28 substantially extending briefing page limits.