

## Federal Case Law Update

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BAKER BOTTS 

### Clean Water Act

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***In re: Murray Energy Corporation v. EPA, et al,***  
No. 15-3751 (6th Cir.)

***aka***  
***WOTUS Rule Challenge***

# WOTUS Rule: Why Does it Matter?

- **CWA 404 Permitting (Corps dredge and fill permits)**
  - Any foot print expansion, ever?
  - Any new, replaced, or significant maintenance of infrastructure?
  - Do you have any schedules for the above?
- **NPDES (state or federal discharge permits)**
  - Point source discharges
  - 316(b) applicability for cooling water intakes
- **Spill Prevention, Control, and Countermeasure Plans**
- **Spill Reporting**

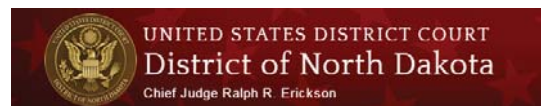
## Big Picture

- **Categorically Jurisdictional**
  - Actually navigable, interstate, or territorial seas
  - **Tributaries**
  - Impoundments of above
  - Adjacent waters: Bordering, Contiguous, or **Neighboring**
- **Categorically Excluded**
  - Qualifying Ditches
  - Specific Features on Dry Land
  - Groundwater
  - Wastewater treatment systems
  - Prior converted cropland
- **Case by Case for "Other Waters"**



Table 1. WOTUS REUL TRACKING CHART: Circuit Court Challenges (Updated 04.17.16)				Table 2. WOTUS REUL TRACKING CHART: District Court Challenges (Updated 03.17.16)			
Plaintiffs	Date Filed	Originating Circuit Court (Now Transferred to Sixth Circuit by MDL Panel)		Plaintiffs	Date Filed	District of	
National Wildlife Federation (15-1234) (docketed in Sixth Circuit as 15-3817)	07/22/2015	D.C. Circuit  (Motion to dismiss on jurisdictional grounds denied 02/27; petition for rehearing on base filed 02/29, 03/04, 03/11, 03/22, 03/24, response in opposition to petition for rehearing on base filed 04/14)	ag Circuit Transferred out by MDL panel 7 and 12/01	Natural Resources Defense Council, Inc., National Wildlife Federation, and South Carolina Coastal Conservation League (15-1512)	08/14/2015	District of Columbia  (Court issued order on 03/09 continuing stay pending Sixth Circuit's resolution of on base petitions, or on base review to proceed, pending Sixth Circuit's resolution of the jurisdictional questions)	
American Engineers & Mining Association (15-1411) (docketed in Sixth Circuit as 15-4365)	11/09/2015	D.C. Circuit  (Motion to intervene by environmental groups granted 12/13 and 01/20)  (Motion to dismiss on jurisdictional grounds denied 02/22)  (Petition for rehearing on base filed 3/22, 3/23, response in opposition to petition for rehearing on base filed 4/1)	ag Circuit Transferred out by MDL panel 7 and 12/01	American Engineers & Mining Association (15-1411)	08/14/2015	District of Columbia  (On 01/19 voluntary agreement by AEMO)	
North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming, and the New Mexico Environment Department and New Mexico State Engineer (15-2552) (docketed in Sixth Circuit as 15-3818)	07/17/2015	Eighth Circuit  (Motion to dismiss on jurisdictional grounds denied 02/22; petition for rehearing on base filed 02/29, 03/04, and 03/11)	ag Circuit Transferred out by MDL panel 7 and 12/01	Washington Cattlemen's Association, California Cattlemen's Association, New Mexico Cattle Growers Association, New Mexico Wild Horse Care, Inc., New Mexico Federal Lands Council, Duane Shapary, Inc., Pieter Investment Company, LPP Property, LLC, Harkson Company, Inc. (15-3688)	07/15/2015	District of Minnesota  (Petition filed prior to court on continuation of stay on 03/18 requesting the court to continue the stay pending the Sixth Circuit's final resolution on the on base petition)	
Texas, Railroad Commission of Texas, Texas Commission on Environmental Quality, Texas Department of Agriculture, Texas Department of Transportation, Texas General Land Office, Texas Water Development Board, Louisiana, Mississippi (15-8049) (docketed in Sixth Circuit as 15-3885)	07/16/2015	Fifth Circuit  (Motion to dismiss on jurisdictional grounds denied 02/22; petition for rehearing on base filed 02/28, 03/04, and 03/11)	ag Circuit Transferred out by MDL panel 7 and 12/01	North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming, and the New Mexico Environment Department and New Mexico State Engineer (15-2552)	06/29/2015	District of North Dakota  (Court issued preliminary injunction staying the two business days of such a development and setting deadline for the district to start cases of July 6, 2015/2016)	
Paper Stockpilers Alliance and Santa Cruz (15-7222) (docketed in Sixth Circuit as 15-3839)	07/22/2015	Sixth Circuit  (Motion to dismiss on jurisdictional grounds denied 02/22; petition for rehearing on base filed 02/28, 03/04, and 03/11)	ag Circuit Transferred out by MDL panel 7 and 12/01	Endangered Species Foundation, San Joaquin Antelope Valley, and California Condor Conservation Consortium, and California Condor Conservation Consortium (15-1735)	07/14/2015	Northern District of Georgia  (Court issued preliminary injunction staying the two business days of such a development and setting deadline for the district to start cases of July 6, 2015/2016)	
				Other Plaintiffs (15-1487)	08/19/2015	Southern District of Ohio  (Court issued preliminary injunction staying the two business days of such a development and setting deadline for the district to start cases of July 6, 2015/2016)	
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- **District Court or Court of Appeals?**
  - CWA 509
    - (b)(1)(E) - actions "approving or promulgating any effluent limitation or other limitation"
    - (b)(1)(F) - actions "issuing or denying any permit"



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