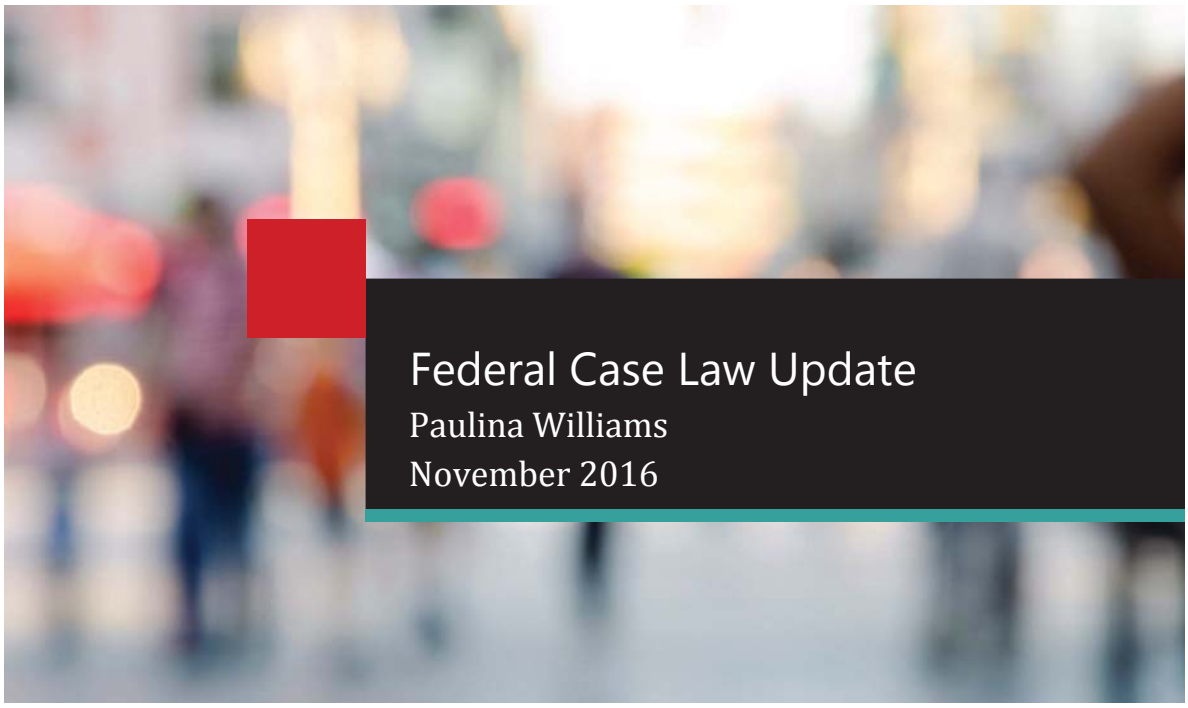


Federal Case Law Update

Paulina Williams

November 2016

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Clean Water Act

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"**



Litigation Everywhere

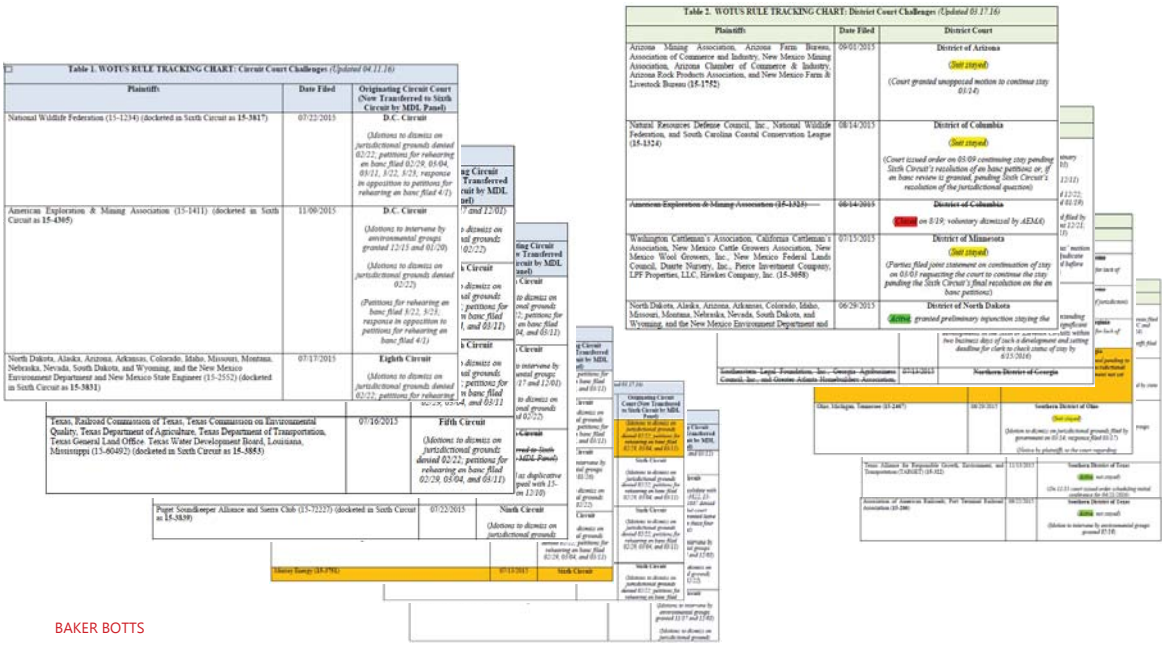


Table 1. WOTUS RULE TRACKING CHART: Circuit Court Challenges (Updated 04.11.16)

Plaintiffs	Date Filed	Originating Circuit Court (Now Transferred to Sixth Circuit by MDL Panel)
National Wildlife Federation (15-1234) (docketed in Sixth Circuit as 15-3817)	07/22/2015	D.C. Circuit (Motions to dismiss on jurisdictional grounds denied 02/22; petitions for rehearing en banc filed 02/29, 03/04, 03/11, 3/22, 3/25; response in opposition to petitions for rehearing en banc filed 4/1)
American Exploration & Mining Association (15-1411) (docketed in Sixth Circuit as 15-4305)	11/09/2015	D.C. Circuit (Motions to intervene by environmental groups granted 12/23 and 01/20) (Motions to dismiss on jurisdictional grounds denied 02/22) (Petitions for rehearing en banc filed 3/22, 3/23; response in opposition to petitions for rehearing en banc filed 4/1)
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 15-3831)	07/17/2015	Eighth Circuit (Motions to dismiss on jurisdictional grounds denied 02/22; petitions for rehearing
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 (15-60492) (docketed in Sixth Circuit as 15-3853)	07/16/2015	Fifth Circuit (Motions to dismiss on jurisdictional grounds denied 02/22; petitions for rehearing en banc filed 02/29, 03/04, and 03/11)
Puget Soundkeeper Alliance and Sierra Club (15-72227) (docketed in Sixth Circuit as 15-3839)	07/22/2015	Ninth Circuit (Motions to dismiss on jurisdictional grounds

Table 2. WOTUS RULE TRACKING CHART: District Court Challenges (Updated 01.17.16)

Plaintiffs	Date Filed	District Court
Arizona Mining Association, Arizona Farm Bureau, Association of Commerce and Industry, New Mexico Mining Association, Arizona Chamber of Commerce & Industry, Arizona Rock Products Association, and New Mexico Farm & Livestock Bureau (15-1752)	09/01/2015	District of Arizona (Suit stayed) (Court granted unopposed motion to continue stay 01/14)
Natural Resources Defense Council, Inc., National Wildlife Federation, and South Carolina Coastal Conservation League (15-1324)	08/14/2015	District of Columbia (Suit stayed) (Court issued order on 03/09 continuing stay pending Sixth Circuit's resolution of en banc petitions or, if en banc review is granted, pending Sixth Circuit's resolution of the jurisdictional question)
American Exploration & Mining Association (15-1321)	08/14/2015	District of Columbia Closed on 8/19; voluntary dismissal by AEMA)
Washington Cattlemen's Association, California Cattlemen's Association, New Mexico Cattle Growers Association, New Mexico Wool Growers, Inc., New Mexico Federal Lands Council, Duarte Nursery, Inc., Pierce Investment Company, LPF Properties, LLC, Hawken Company, Inc. (15-3058)	07/15/2015	District of Minnesota (Suit stayed) (Parties filed joint statement on continuation of stay on 01/01 requesting the court to continue the stay pending the Sixth Circuit's final resolution on the en banc petitions)
North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming, and the New Mexico Environment Department and	06/29/2015	District of North Dakota Active granted preliminary injunction staying the

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Procedural Status

- **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"

UNITED STATES COURT OF APPEALS
for the Sixth Circuit
R. Guy Cole, Jr., Chief Judge

UNITED STATES COURT OF APPEALS
for the Eleventh Circuit
Honorable Ed Carnes, Chief Judge

UNITED STATES DISTRICT COURT
Northern District of West Virginia
Gina M. Groh, Chief Judge - Cheryl Dean Riley, Clerk of Court

SOUTHERN DISTRICT of GEORGIA
United States District Court

UNITED STATES DISTRICT COURT
District of North Dakota
Chief Judge Ralph R. Erickson

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First appeared as part of the conference materials for the
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"Federal Case Law Update"