

Federal Case Law Update

Paulina Williams

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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

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2

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

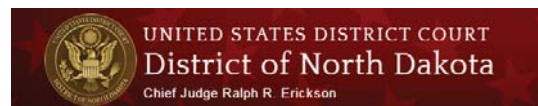
- **Categorically Jurisdictional**
 - Actually navigable, interstate, or territorial seas
 - **Tributaries**
 - Impoundments of above
 - Adjacent waters: Bordering, Contiguous, or **Neighboring**
- **Categorically Excluded**
 - Qualifying Ditches
 - Specific Features on Dry Land
 - Groundwater
 - Wastewater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



Table 1. WOTUS RULE TRACKING CHART: Circuit Court Challenges (Updated 04.17.16)					
Plaintiffs	Date Filed	Originating Circuit Court (Now Transferred to Ninth Circuit by MDL Panel)	Plaintiffs	Date Filed	District Court
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 June 18/29, 04/04, 05/11, 1/22, 5/27, 9/28, in opposition to petition for rehearing on June 18/29)	ag Circuit Transferred out by MDL panel	09/01/2015	District of Arizona (Arizona Mining Association, Arizona Farm Bureau, Association of Commerce and Industry, New Mexico Mining Association, Arizona Chamber of Commerce & Industry, Arizona Food Products Association, and New Mexico Farm & Livestock Bureau (14-1742)) <i>(Court granted unexpected motion to continue stay 03/10)</i>
American Exploration & Mining Association (15-1411) (docketed in Sixth Circuit as 15-4065)	11/09/2015	D.C. Circuit (Motion to intervene by environmental group denied 12/13 and 01/30/2016) (Motion to dismiss on jurisdictional grounds denied 02/23) (Petition for rehearing on June 18/29, 5/27, 9/28, in opposition to petition for rehearing on June 18/29)	ag Circuit Transferred out by MDL panel	08/14/2015	District of Columbia <i>(Court issued order on 05/09 commencing stay pending Sixth Circuit's resolution of its on June petition, or if on June review is granted, pending Sixth Circuit's resolution of the jurisdictional question)</i>
Washington Cattlemen's Association, Cattlemen's Association, New Mexico Cattlemen Association, New Mexico Federal Lands Council, Diverse Veterinary, Inc., Pasture Investment Company, LPT Property Group, LLC, Harkness Company, Inc. (15-3688)	07/15/2015	D.C. Circuit (Motion to intervene by environmental group denied 12/13 and 01/30/2016) (Motion to dismiss on jurisdictional grounds denied 02/23) (Petition for rehearing on June 18/29, 5/27, 9/28, in opposition to petition for rehearing on June 18/29)	ag Circuit Transferred out by MDL panel	06/14/2015	District of Columbia <i>(on 01/28 voluntary dismissal by ADAG)</i>
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	D.C. Circuit (Motion to dismiss on jurisdictional grounds denied 02/23, petition for rehearing on June 18/29, 5/27, 9/28, in opposition to petition for rehearing on June 18/29)	ag Circuit Transferred out by MDL panel	07/15/2015	District of Minnesota <i>(Parties filed joint statement on continuation of stay pending the Sixth Circuit's final resolution on the on June petition)</i>
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	D.C. Circuit (Motion to dismiss on jurisdictional grounds denied 02/23, petition for rehearing on June 18/29, 5/27, 9/28, in opposition to petition for rehearing on June 18/29)	ag Circuit Transferred out by MDL panel	06/29/2015	District of North Dakota <i>(Court granted preliminary injunction staying the rule pending the Sixth Circuit's final resolution on the on June petition)</i>
North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming, and the New Mexico Environment Department and	07/17/2015	Eighth Circuit (Motion to dismiss on jurisdictional grounds denied 02/23, petition for rehearing on June 18/29, 5/27, 9/28, in opposition to petition for rehearing on June 18/29)	ag Circuit Transferred out by MDL panel	07/17/2015	District of Georgia <i>(Court granted preliminary injunction staying the rule pending the Sixth Circuit's final resolution on the on June petition)</i>
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 (15-06402) (docketed in Sixth Circuit as 15-5885)	07/16/2015	Fifth Circuit (Motion to dismiss on jurisdictional grounds denied 02/23, petition for rehearing on June 18/29, 04/04, and 05/11)	ag Circuit Transferred out by MDL panel	07/16/2015	District of Texas <i>(Court granted preliminary injunction staying the rule pending the Sixth Circuit's final resolution on the on June petition)</i>
Pope Stouffer-Pope Alliance and Santa Clara (15-70227) (docketed in Sixth Circuit as 15-5839)	07/23/2015	Ninth Circuit (Motion to dismiss on jurisdictional grounds denied 02/23, petition for rehearing on June 18/29, 04/04, and 05/11)	ag Circuit Transferred out by MDL panel	07/23/2015	District of Texas <i>(Court granted preliminary injunction staying the rule pending the Sixth Circuit's final resolution on the on June petition)</i>
Monte Vista (15-1792)	07/23/2015	Tenth Circuit (Motion to dismiss on jurisdictional grounds denied 02/23, petition for rehearing on June 18/29, 04/04, and 05/11)	ag Circuit Transferred out by MDL panel	07/23/2015	District of Texas <i>(Court granted preliminary injunction staying the rule pending the Sixth Circuit's final resolution on the on June petition)</i>

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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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