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Waters of the United States/Clean Water Act: 17 State Attorney Generals File Judicial Challenge to U.S. Environmental Protection Agency/Corps of Engineers Final Rule

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Seventeen State Attorney Generals (collectively, "AGs") filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Northern District of California challenging the United States Environmental Protection Agency and United States Army Corps of Engineers (collectively "EPA") final rule published on April 21st addressing the Clean Water Act definition of waters of the United States ("WOTUS"). See 85 Fed. Reg. 22250.

A link to a previous post can be found [here](#).

The AGs filing the Complaint include:

- California
- Illinois
- Maine
- Maryland
- Massachusetts
- Michigan
- New Jersey
- New Mexico
- New York
- North Carolina
- Oregon
- Rhode Island
- Vermont
- Virginia
- Washington
- Wisconsin
- District of Columbia

The Complaint also includes as plaintiff the California State Water Resources Control Board, North Carolina Department of Environmental Quality, and the City of New York.

The rule addressing WOTUS is denominated the Navigable Waters Protection Rule (“Rule”).

The definition of WOTUS is arguably one of the three key jurisdictional terms of the Clean Water Act. Its importance is magnified by the fact that it is also relevant to non-National Pollution Discharge Elimination System programs such as:

- Section 404 of the Clean Water Act Wetland Permits
- Section 311 Oil/Hazardous Substances Release Requirements
- Clean Water Act Spill Prevention Control and Countermeasure Regulations

As a result, the definition of WOTUS has been the subject of frequent litigation, legislative oversight, rulemakings and public policy debates since the enactment of the modern version of the Clean Water Act in 1972.

The AGs argue that the Rule is unlawful under the Federal Administrative Procedure Act because it:

- Contradicts the Clean Water Act’s objective of maintaining and restoring the integrity of the Nation’s waters and the EPA’s own scientific findings;
- Arbitrarily and capriciously reduces and eliminates protections for ephemeral streams, tributaries, adjacent waters, wetlands and other important water resources that significantly affect downstream waters;
- Fails to comply with controlling Supreme Court precedent established in *Rapanos v. United States*; and
- Lacks a reasoned explanation or rational basis for changing long-standing policy and practice

The Complaint requests that the Court set aside and vacate the Rule.

A copy of the Complaint can be downloaded [here](#).