

Waters of the United States/Clean Water Act: United States District Court Judge (Southern District of Texas) Enjoins Enforcement of Rule in Texas and Idaho



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United States District Judge (Southern District of Texas) Jeffrey Vincent Brown (“Court”) issued a March 19th Memorandum Opinion and Order Granting Preliminary Injunction (“Order”) addressing a challenge to a final rule issued by the United States Environmental Protection Agency (“EPA”) and United States Corps of Engineers (collectively “EPA”) addressing the Clean Water Act definition of waters of the United States (“WOTUS”).

The States of Texas and Idaho (collectively “States”) and 18 national trade associations requested that the Court preliminary enjoin the new EPA WOTUS Rule while it considers their consolidated request to vacate and remand.

The definition of WOTUS is arguably one of the three critical jurisdictional terms of the Clean Water Act. Its importance is magnified by the fact that it is also relevant to non-National Pollutant 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, it is easy to understand why the scope of the definition of WOTUS has been the subject of frequent litigation, legislative oversight, rulemakings and public policy debate since the enactment of the modern version of the Clean Water Act in 1972.

EPA had previously withdrawn the revisions to the Clean Water Act definition of WOTUS promulgated during the Trump Administration. The Trump Administration had previously rescinded an Obama era revision of WOTUS.

This most recent rule put forth by EPA was described by the federal agency as providing jurisdiction of waterbodies that Congress intended to protect under the Clean Water Act. The rule has been challenged by a number of states and trade associations in various federal courts. A number of environmental groups and other states have intervened to support the EPA rule.

The States in the United States District Court in the Southern District of Texas ask that the rule be enjoined within their borders. However, the trade associations asked for a nationwide injunction.

The Court granted the States' motion but denied the associations'.

The Court held that the States were likely to prevail in their arguments that:

- EPA is imposing on States' rights
- Irreparable harm would occur if the EPA Rule was effective pending the resolution of the States' litigation

A couple of points put forth by the Court supporting its position include:

- *Chevron* does not apply in this instance because the Clean Water Act implicates criminal penalties.
- A court must interpret the Clean Water Act as written to avoid the significant constitutional and federalism questions
- EPA's interpretation raises concerning the outer limits of Congress's power (citing SWANCC).
- As to Justice Kennedy's significant-nexus test, the Court states:
- Question if the significant-nexus test appropriately measures EPA's Clean Water Act jurisdiction
- EPA's rule does not accurately reflect the significant-nexus test
- EPA's interpretation of the Clean Water Act to include all interstate waters irrespective of any limiting principle raises serious federalism questions
- The States were found to have demonstrated that the EPA Rule poses irreparable harm
- Reluctance to deprive states that embrace the EPA Rule from exercising their sovereign rights to conform their conduct accordingly

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