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Federal Court Denies Preliminary Relief in Challenge to WOTUS Replacement Rule, Finding Plaintiffs Did Not Show a Likelihood of Success on Merits

In the first major ruling in numerous cases challenging a final rule redefining “waters of the United States” (WOTUS), a California federal court on Friday denied plaintiffs’ request for a preliminary injunction or an order delaying the effective date of the new rule. The rule went into effect yesterday.

The United States Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (the Corps) promulgated the WOTUS replacement rule, known as the “Navigable Waters Protection Rule,” in January 2020. EPA and the Corps finalized the Navigable Waters Protection Rule as the second step in a two-part process to repeal and replace the Obama-era Clean Water Rule, which had been bogged down in litigation over its legality since it was finalized. The agencies wrote that the Navigable Waters Protection Rule sought to end “decades of disputes and uncertainty” surrounding the definition of “waters of the United States” and to define the limits of federal jurisdiction under the Constitution, Clean Water Act (CWA), and case law.

Though the California federal court’s ruling is not a final decision on the merits of the challengers’ claims, the court’s decision to deny preliminary relief rested heavily on its conclusion that challengers had not shown a likelihood of ultimate success on the merits of their claims. “The court’s narrow role . . . is to evaluate whether the rule has been adopted in compliance with the Administrative Procedure Act. In that context, plaintiffs have not made a sufficient showing to support an injunction delaying the effective date of the new rule,” the court wrote.

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In making this determination, the Court applied *Chevron* deference, concluding that the plaintiffs were not likely to sustain a finding that the Navigable Waters Protection Rule represented an unreasonable interpretation of the Clean Water Act. “Had Congress chosen to speak more clearly about how broadly CWA jurisdiction was to extend, or if the CWA did not contemplate the balancing of interest in pursuit of its ultimate goals, it might be possible to characterize the [Navigable Waters Protection Rule] as an ‘unreasonable’ interpretation. At least at this juncture and on the current record, however, plaintiffs have not shown that they are likely to succeed in making that claim,” the court said.

The court noted that the prospect of irreparable harm and the balance of equities or hardships may “lean somewhat” in favor of the challengers, but not “so heavily, however, as to overcome the lack of a stronger showing on the merits.”

The case is *State of California, et al. v. Andrew Wheeler, et al.*, Case No. 20-cv-03005 (N.D. Calif.).

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