

Legal Alert

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NEW CLEAN WATER ACT RULE BLOCKED BY INJUNCTION

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The recently published Final Rule defining “Waters of the United States” under the Clean Water Act was blocked by an injunction in a North Dakota district court on August 27th. The injunction was granted to the 13 states that filed the lawsuit, including Arizona. The other states are North Dakota, Alaska, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, South Dakota, Wyoming, and New Mexico. The rule was expected to be final on August 28th. The lawsuit is one of 10 lawsuits filed against the controversial rule that received over 1 million public comments.

Recently the Army Corps of Engineers, which was supposed to co-author the rule, released some internal memos apparently challenging the basis and validity for EPA's revisions to the rule. Some stakeholders have also recently requested an investigation by the Office of the Inspector General based on allegations of inappropriate lobbying by EPA.

It is not clear yet what course the rule will take as other lawsuits move through the process, but for now the new rule cannot be applied in the states which filed the lawsuit. The case may have an impact on other decisions. Several legislative efforts are ongoing to withdraw the rule.

Gammage and Burnham will continue to keep our clients updated on the developments with the rule.

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