

Public Power Daily

Attorneys general move to block 'Waters of the U.S.' rule; House resolution introduced

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News Director

A large number of state attorneys general have filed lawsuits in recent weeks challenging a recently published final "Waters of the U.S." rule by the Environmental Protection Agency and the Army Corps of Engineers.

The final rule was published on June 29. On the same day, several state attorneys general took legal action against the regulation.

Attorneys general from Nebraska, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nevada, New Mexico, North Dakota, South Dakota and Wyoming joined in a lawsuit filed in the U.S. District Court for the District of North Dakota.

In their complaint, the states argue that the new definition of WOTUS violates provisions of the Clean Water Act, the National Environmental Policy Act and the U.S. Constitution. The states are seeking to have the rule vacated and the EPA and Corps enjoined from enforcing the new definition of WOTUS.

Also on June 29, attorneys general from Texas, Louisiana and Mississippi jointly filed a lawsuit in which they argued that the final WOTUS rule "is an unconstitutional and impermissible expansion of federal power over the states and their citizens and property owners."

Meanwhile, on June 30, Alabama and eight other states argued in a lawsuit filed in the Southern District of Georgia that the final rule put forward by the EPA and the Corps violates the Clean Water Act, the Administrative Procedure Act and the U.S. Constitution, and usurps the states' primary responsibility for the management, protection and care of intrastate waters and lands.

Alabama joined West Virginia, Florida, Georgia, Kansas, Kentucky, South Carolina, Utah and Wisconsin in filing the federal lawsuit.

Lawmaker introduces resolution

Meanwhile, Rep. Adrian Smith, R-Neb., on July 9 introduced a resolution that would prevent the WOTUS rule from taking effect.

In addition, the "disapproval resolution," H.J. Res. 59, would block the agencies from issuing a substantially similar rule without subsequent statutory authorization.

The American Public Power Association, which has voiced serious concerns about the WOTUS rule, supports enactment of H.J. Res. 59.

However, enactment of the resolution faces an uphill climb given that President Obama would veto the measure should it land on his desk.

On the other side of Capitol Hill, the Senate Environment and Public Works Committee on June 10 [approved legislation](#) that would direct the EPA and Corps to issue a revised WOTUS rule. The measure passed on a party line vote of 11-9.

At issue is S.1140, the Federal Water Quality Protection Act, which is sponsored by Sen. John Barrasso, R-Wyo.

The bill would direct EPA and the Corps to issue a revised WOTUS rule that does not include features such as isolated ponds, ditches, agriculture water, storm water, groundwater, floodwater, municipal water supply systems, wastewater management systems, and streams without enough flow to carry pollutants to navigable waters.

The draft WOTUS rule was issued in March 2014. The EPA and the Department of the Army on May 27 issued a final rule defining which streams, wetlands and other bodies of water are protected under the Clean Water Act.

Last fall, APPA said the EPA and Corps should withdraw the proposed rule. The rule "broadens the scope of CWA jurisdiction beyond the statutory limits established by Congress and the constitutional limits recognized by the Supreme Court," APPA said.

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