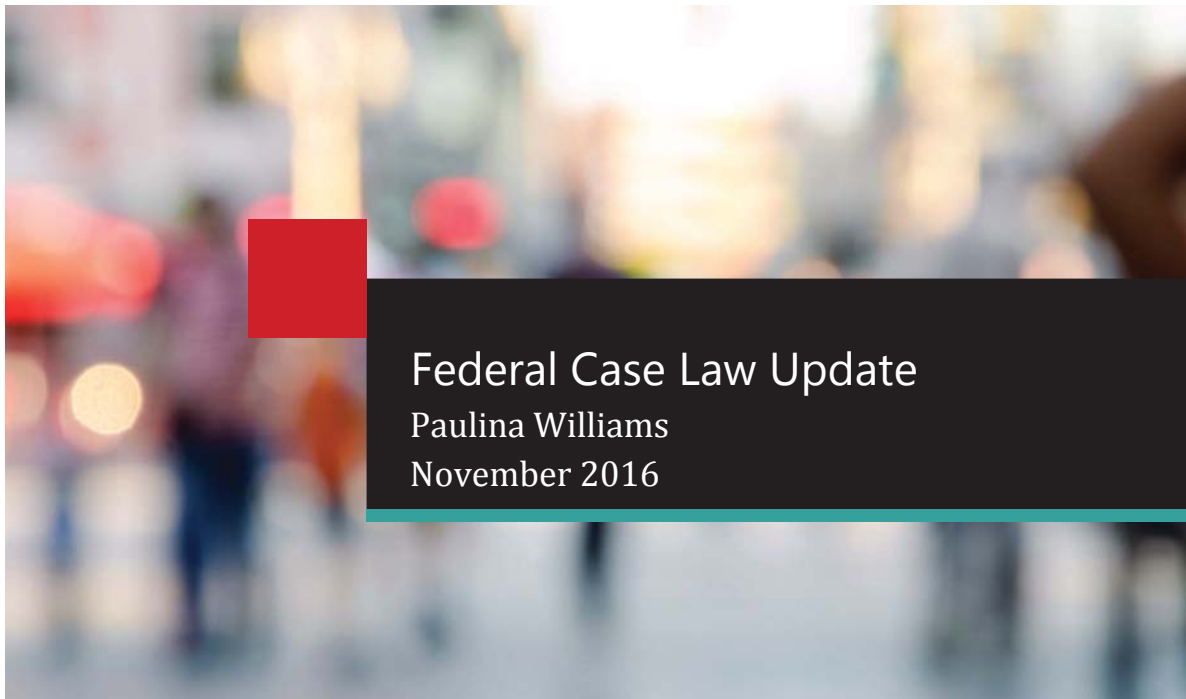




Federal Case Law Update

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November 2016

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Clean Water Act

In re: Murray Energy Corporation v. EPA, et al,
No. 15-3751 (6th Cir.)

aka
WOTUS Rule Challenge

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WOTUS Rule: Why Does it Matter?

- **CWA 404 Permitting (Corps dredge and fill permits)**
 - Any foot print expansion, ever?
 - Any new, replaced, or significant maintenance of infrastructure?
 - Do you have any schedules for the above?
- **NPDES (state or federal discharge permits)**
 - Point source discharges
 - 316(b) applicability for cooling water intakes
- **Spill Prevention, Control, and Countermeasure Plans**
- **Spill Reporting**

Big Picture

- **Categorically Jurisdictional**
 - Actually navigable, interstate, or territorial seas
 - **Tributaries**
 - Impoundments of above
 - Adjacent waters: Bordering, Contiguous, or **Neighboring**
- **Categorically Excluded**
 - Qualifying Ditches
 - Specific Features on Dry Land
 - Groundwater
 - Wastewater treatment systems
 - Prior converted cropland
- **Case by Case for "Other Waters"**



Table 1. WOTUS RULE TRACKING CHART: Circuit Court Challenges (Updated 04.17.16)		
Plaintiffs	Date Filed	Originating Circuit Court (Now Transferred to Ninth Circuit by MDL Panel)
National Wildlife Federation (15-1234) (docketed in Ninth Circuit as 15-3817)	07/22/2015	D.C. Circuit (Motion to dismiss on jurisdictional grounds denied 02/22, petition for rehearing on June 18/29, 04/04, 05/11, 02/2, 5/23, 5/29, in opposition to petition for rehearing on June 18/29)
American Exploration & Mining Association (15-1411) (docketed in Ninth Circuit as 15-4585)	11/09/2015	D.C. Circuit (Motion to intervene by environmental group granted 12/13 and 01/20) (Motion to dismiss on jurisdictional grounds denied 02/22) (Petition for rehearing on June 18/29, 5/23, 5/29, in opposition to petition for rehearing on June 18/29)
North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming, and the New Mexico Environment Department and New Mexico State Engineer (15-2552) (docketed in Ninth Circuit as 15-5881)	07/17/2015	Eighth Circuit (Motion to dismiss on jurisdictional grounds denied 02/22, petition for rehearing on June 18/29, 05/04, and 05/21)
Texas, Railroad Commission of Texas, Texas Commission on Environmental Quality, Texas Department of Agriculture, Texas Department of Transportation, Texas General Land Office, Texas Water Development Board, Louisiana, Mississippi (15-06402) (docketed in Ninth Circuit as 15-5885)	07/16/2015	Fifth Circuit (Motion to dismiss on jurisdictional grounds denied 02/22, petition for rehearing on June 18/29, 04/04, and 05/21)
Pope Stouffer/Boys Alliance and Santa Child (15-73227) (docketed in Ninth Circuit as 15-5839)	07/23/2015	Ninth Circuit (Motion to dismiss on jurisdictional grounds denied 02/22, petition for rehearing on June 18/29, 04/04, and 05/21)
Monte Vista (15-1792)	07/15/2015	Tenth Circuit (Motion to dismiss on jurisdictional grounds denied 02/22, petition for rehearing on June 18/29, 04/04, and 05/21)

Table 2. WOTUS RULE TRACKING CHART: District Court Challenges (Updated 03.17.16)

Plaintiffs	Date Filed	District Court
Arizona Mining Association, Arizona Farm Bureau, Association of Commerce and Industry, New Mexico Mining Association, Arizona Chamber of Commerce & Industry, Arizona Food Products Association, and New Mexico Farm & Livestock Bureau (14-1742)	09/01/2015	District of Arizona (Court granted unexpected motion to continue stay 03/16)
Nature Resources Defense Council, Inc., National Wildlife Federation, and South Carolina Coastal Conservation League (14-1524)	08/14/2015	District of Columbia (Court issued order on 05/09 continuing stay pending Sixth Circuit's resolution of its on habe petition, or if on habe review is granted, pending Sixth Circuit's resolution of the jurisdictional question)
American Exploration & Mining Association (14-1434)	04/14/2015	District of Columbia (On 01/28 voluntary dismissal by AEMAG)
Washington Cattlemen's Association, California Cattlemen's Association, New Mexico Cattlemen Association, New Mexico Western Land Council, Diverse Veterinary, Inc., Pattee Investment Company, LPT Property Group, LLC, Harsco Company, Inc. (14-3688)	07/15/2015	District of Minnesota (Parties filed joint statement on continuation of stay pending the Sixth Circuit's final resolution on the on habe petition)
North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming, and the New Mexico Environment Department and	06/29/2015	District of North Dakota (Court granted preliminary injunction staying the two business days of such a development and setting deadline for district to check status of stay by 03/13/2016)
Consolidated Legal Foundation, Inc., Georgia Appalachian Council, Inc., and Georgia Appalachian Council, Inc.	02/14/2015	Northern District of Georgia (Court granted preliminary injunction staying the two business days of such a development and setting deadline for district to check status of stay by 03/13/2016)
Chlor-Alkali, Tennessee (15-1487)	08/25/2015	Southern District of Ohio (Court granted preliminary injunction staying the two business days of such a development and setting deadline for district to check status of stay by 03/13/2016)
State of Illinois, Republic of Georgia, Environment and Natural Resources (14-1552)	07/23/2015	Southern District of Texas (Court granted preliminary injunction staying the two business days of such a development and setting deadline for district to check status of stay by 03/13/2016)
Association of American Farmers, Pattee Investment Company, LPT Property Group, LLC, Harsco Company, Inc.	08/15/2015	District of Minnesota (Court granted preliminary injunction staying the two business days of such a development and setting deadline for district to check status of stay by 03/13/2016)
State of Illinois, Republic of Georgia, Environment and Natural Resources (14-1552)	07/23/2015	Southern District of Texas (Court granted preliminary injunction staying the two business days of such a development and setting deadline for district to check status of stay by 03/13/2016)
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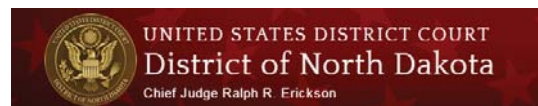
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Procedural Status

- **District Court or Court of Appeals?**
 - CWA 509
 - (b)(1)(E) - actions "approving or promulgating any effluent limitation or other limitation"
 - (b)(1)(F) - actions "issuing or denying any permit"



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