

THE
NATIONAL LAW REVIEW

North Dakota Federal Judge Blocks WOTUS Rule, Michigan Files Separate Suit

Tuesday, September 15, 2015

The **Environmental Protection Agency** and **Army Corps of Engineers'** "**Waters of the United States**" Rule (WOTUS) that was supposed to go into effect on August 28, 2015, was blocked when North Dakota U.S. District Judge Ralph Erickson issued a temporary injunction sought by North Dakota and 12 other states. The rule has faced extreme opposition from Republicans in Congress, farmers and energy companies, among others, citing that the regulation greatly expands the federal government's authority over water and land and could apply to ditches, streams, wetlands and small isolated bodies of water. The EPA and Army Corps of Engineers, on the other hand, claim the rule will safeguard drinking water and make jurisdictional determinations more predictable.

"Once the rule takes effect, the states will lose their sovereignty over intrastate waters that will then be subject to the scope of the Clean Water Act," Erickson wrote in his order. "The risk of irreparable harm to the states is both imminent and likely." Furthermore, Erickson stated that the rules are "arbitrary and capricious," would cover waters that are "remote and intermittent," and that the EPA "violated its congressional grant of authority in its promulgation of the rule."

At least 10 lawsuits have been filed in federal district court challenging the rule, including 29 states and 14 agricultural and industry organizations. Michigan has teamed up with Ohio, filing a lawsuit in the South District of Ohio on June 29, 2015 (Case 3 2:15-cv-02467). The Obama administration and the EPA have stated that Erickson's ruling only applies to the 13 states (Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota and Wyoming) that requested the injunction and that they will enforce the regulation as planned in the remaining 37 states.

© 2018 Varnum LLP

Source URL: <https://www.natlawreview.com/article/north-dakota-federal-judge-blocks-wotus-rule-michigan-files-separate-suit>



Article By [Varnum LLP](#)
[Aaron M. Phelps](#) [Growing Michigan](#)

[Environmental, Energy & Resources
Litigation / Trial Practice
8th Circuit \(incl. bankruptcy\)](#)