Blogs
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California Land Use & Development Law Report

Court of Appeals Issues Nationwide Stay of New Clean Water Act Rules

A federal court of appeals has blocked implementation of new Clean Water Act rules adopted by the EPA and Army Corps of Engineers. *U.S. Environmental Protection Agency v. Ohio et. al.*, No. 15-3751 (6th Cir. Oct. 9, 2015). In issuing the stay pending full consideration of the case, the court concluded there was a substantial possibility that the challenge to the new rule would succeed on the merits. The court found the new rule's definitions of "tributaries," "adjacent" waters and "significant nexus" to navigable waters to be inconsistent with the U.S. Supreme Court's decision in *Rapanos v. United States*, 547 U.S. 715 (2006). The court also observed that the rule-making process leading to adoption of the new rules likely was not conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et. seq.* The court concluded that "the sheer breadth of the ripple effects caused by the [r]ules' definitional changes counsels strongly in favor of maintaining the status quo for the time being." As we previously reported (see Federal Court Blocks Enforcement of New Clean Water Act Rules), a federal district court in North Dakota granted a preliminary injunction on August 27, 2015—the day before the new rules were to take effect—barring implementation of the rules in 13 states. The stay issued by the Court of Appeals applies nationwide. Pending the court's decision on the merits of the new rules, the preexisting definition of "waters of the United States" will govern. Read our full Update on the decision. For an analysis of the details and potential impact of the new Clean Water Act rules, see our June 1, 2015 Update: Controversial Clean Water Act Rule Published.

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