



NEWS RELEASE

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Attorney General Jackley Statement on EPA Rescinding Waters of the U.S. Rule

PIERRE, S.D. – Attorney General Marty Jackley announced today the Environmental Protection Agency, under Administrator Scott Pruitt and Corps of Engineers, under Douglas Lamont, have withdrawn the Obama-era regulation that asserts federal authority over state waters.

“It was always my concern that both the EPA and the Corps exceeded their authority granted by Congress. Today, the EPA and the Corps took a step forward in the process of restoring the control back to the States. I look forward to their final action to withdraw the WOTUS Rule and provide relief to the States,” said Jackley.

The proposed withdrawal of the WOTUS rule will be published in the Federal Register and the EPA will receive comments, after which point the withdrawal could be finalized. It is expected that the EPA, with input from the States, will then propose a new regulation to more clearly define its limited jurisdiction under the Clean Water Act.

The States actively sought postponement of the impending implementation of the WOTUS Rule while the courts could fully address the states’ concerns. On June 29, 2015, thirteen states filed in federal district court in North Dakota asking the court to vacate the new rule and bar the EPA and the Corps from enforcing the new definition. Several other states filed in their respective regions. The states contended the new definition of WOTUS violated provisions of the Clean Water Act (CWA), the National Environmental Policy Act (NEPA), and the United States Constitution. On July 30, 2015, 31 states requested that the EPA and CORPS delay the effective date of the new Rule defining “Waters of the United States” under the CWA.

On August 27, 2015, the Federal Court issued a preliminary injunction to delay the Rules implementation until the Court has an opportunity to fully review the administrative record. The Court found that it was likely that the federal government violated its grant of authority when it promulgated the Rule and likely failed to comply with the requirements in the Administrative Procedures Act. Finally, the Court found the risk of harm to the States is great.