

CLEAN WATER RULE

Judge slaps down Obama-era WOTUS, but greens see bright side

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A federal judge ruled the Obama administration's Clean Water Rule exceeded its authority. Army Corps of Engineers

The Obama administration's long-litigated Clean Water Rule stumbled again in court yesterday as a federal judge found the regulation strayed from the bounds of the Clean Water Act.

Judge Lisa Godbey Wood of the U.S. District Court for the Southern District of Georgia said the regulation — also known as the Waters of the U.S., or WOTUS, rule — adopted an overly broad interpretation of the federal statute.

"[T]he Court holds that the WOTUS Rule extends the Agencies' delegated authority beyond the limits of the CWA, and thus is not a permissible construction of the phrase 'waters of the United States' within the statute," the George W. Bush appointee [wrote](#), adding that the joint EPA-Army Corps of Engineers rule also violated the Administrative Procedure Act.

The ruling is a blow for the Obama administration's Clean Water Rule, though environmental groups say there's a silver lining.

Finalized in 2015, the Obama rule aimed to clarify which wetlands and waterways are subject to federal protections under the Clean Water Act. Red states, farmers, industry groups and others launched a sweeping legal battle against the regulation.

A series of jurisdictional battles and court rulings led to today's complex WOTUS landscape: The Obama rule is blocked in 27 states and effective in 22 others, and its status is uncertain in one, New Mexico. Litigation over the 2015 standards is still pending in district courts across the country.

The Trump administration, meanwhile, is working on a formal rollback and replacement rule that will spark a new round of legal sparring.

Yesterday's ruling from the Georgia district court stems from a lawsuit a coalition of states filed more than four years ago. The decision resolves the case in the states' favor and remands the rule to EPA and the Army Corps.

"Congress has delegated the important role of protecting the nation's waters to the Agencies, but in fulfilling that role, the Agencies must comply with the law," Wood wrote. "Here, they have failed to do just that."

The Obama rule is already blocked in the states involved in the lawsuit, so the ruling will have no on-the-ground impacts.

However, it represents a significant legal blow for the prior administration's WOTUS interpretation. While other courts have ruled against the program in preliminary decisions or on procedural grounds, few have issued final rulings grappling with the meaty Clean Water Act questions.

In a May decision, for example, the U.S. District Court for the Southern District of Texas ruled that the Obama administration had violated the Administrative Procedure Act when crafting WOTUS ([Greenwire](#), May 29).

Southern Environmental Law Center attorney Blan Holman, who represents environmental groups that support the 2015 rule, said the ruling was disappointing for his clients but noted that it could also create problems for the Trump administration.

That's because Wood's decision emphasizes that a concurring opinion from then-Justice Anthony Kennedy in the complex *Rapanos v. United States* Supreme Court case is the controlling legal authority on the issue of Clean Water Act jurisdiction. Under Kennedy's approach, waters are subject to federal oversight under the law when they have a "significant nexus" to larger downstream waters.

The Trump administration's proposal for replacing the Obama rule tracks more closely with another Supreme Court opinion in that case: a plurality written by the late Justice Antonin Scalia.

"Their replacement rule very much seems to go beyond what Justice Kennedy was thinking," Holman said. "As much of a setback as this is for the Clean Water Rule, I think it spells trouble for the administration's bid to depart from the significant nexus test."

But critics of the Obama-era program celebrated the Georgia court's decision as a firm victory.

"We are proud to have fought for this relief, and we look forward to reforms that will permanently relieve farmers and landowners of the unnecessary burdens that the 2015 WOTUS Rule created," Georgia Attorney General Chris Carr (R) said in a statement today.

West Virginia Attorney General Patrick Morrisey (R) likewise said the ruling "affirms many of our arguments and underscores that the Obama administration overreached in setting forth its disastrous WOTUS rule."

Any appeals of the district court's decision would go to the 11th U.S. Circuit Court of Appeals.

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