

WOTUS Rule Legal Update

On March 19, 2023, a judge in Galveston, Texas, issued a preliminary injunction (PI) on the WOTUS Rule in Texas and Idaho, stopping the implementation and enforcement of the rule in those two states. The rule is slated to go into effect today.

In the same ruling, a nationwide PI requested by NAR and 16 other trade associations was denied. While the nationwide PI was denied, the broader lawsuit moves forward, with the first hearing scheduled for later in March.

This is one of several cases pending on this rulemaking. See more details below and let us know if you have any questions. We will keep you updated as the legal battles continue.

1. **NAR + others filed litigation in the Southern District of Texas on Jan. 18 à PI granted on March 19 in TX & ID**

- This legal challenge argues the EPA and Army Corps of Engineers Waters expanding its reach with the rulemaking to the detriment of property owners and developers across the country. We argue the rule is vague and the agencies exceeded their authority in issuing the rule. The coalition specifically challenged violations of the APA, Commerce Clause, 10th Amendment, Due Process Clause, Non-delegation Doctrine, Major Questions Doctrine, and the RFA.
 1. <https://www.nar.realtor/washington-report/coalition-files-suit-to-stop-wotus-rule>
- **This case was consolidated with the Texas AG lawsuit on Feb. 13 (and recently added Idaho as a plaintiff).**
- A hearing scheduled on the motions for a preliminary injunction was held on March 15.

2. **ND lawsuit- filed by 26 states led by WV, filed Feb. 16**

- *West Virginia v. EPA, No. 3:23-cv-32 (D.N.D.)*
- **NAR (as part of the same coalition) has filed a motion to intervene in this lawsuit** – because we are aligned with the interests of the 26 state AGs – in seeking a declaratory judgment and injunctive relief challenging the legality of the final rule.
- We are waiting to hear the status of our intervention.

3. The KY Chamber + KY AG filed a lawsuit in KY (6th circ).

- *Kentucky v. EPA, No. 3:23-cv-7 (E.D. Ky.)*
- We are not intervening there because their briefings are moving fast.
- There has not been a ruling on the PI filed here (hearing was 3/10)

4. **Sackett v. EPA** is a crucial lawsuit pending before the SCOTUS that could greatly impact the WOTUS rule.

- This case is looking at which waters and wetlands are protected under the law – brought by two homeowners in Idaho trying to prove that the *Clean Water Act* does not apply to their property.
- At the minimum, the new WOTUS rule should not go into effect until a decision in this case is issued providing clarity on the CWA.
- Oral arguments were held in October 2022, and a decision is expected in the coming months.