

**Environment Department**SUSANA MARTINEZ, GOVERNORRyan Flynn, Cabinet Secretary  
Butch Tongate, Deputy Secretary**NEWS RELEASE****August 27, 2015****For Immediate Release****Contact:** Allison Scott Majure  
Communications Director  
505.231.8800 cell  
505.827.0314 office  
[Allison.Majure@state.nm.us](mailto:Allison.Majure@state.nm.us)**NM Environment, State Engineer and Rocky Mountain  
State Coalition win injunction against EPA and the Army Corps in North Dakota**

**Santa Fe** – Today, Governor Susana Martinez’s executive agencies--the New Mexico Environment Department (NMED) and the Office of the State Engineer (OSE)--along with 12 other co-plaintiff states (States) prevailed in their motion to block the Aug. 28 implementation of the Waters of the United States (WOTUS) rule promulgated by the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps). Chief Judge Ralph Erickson granted the States’ Motion for Preliminary Injunction in the U.S. District Court of North Dakota, and ruled that the North Dakota District Court has original jurisdiction over the matter, not the Court of Appeals, as has been argued by EPA and the Corps.

“EPA and the Corps forced this rule on the states with minimal state and stakeholder involvement. I am delighted that the court has halted this rule until its serious legal deficiencies can be corrected by the courts,” said NMED Secretary Ryan Flynn. “Regulating a state’s most precious resource, water, from Washington, D.C., is both ineffective and wrong. Local oversight, local control, and local communication lead to the most effective protection of our arid state’s waters, streams, and tributaries.”

The coalition of states--North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming, and New Mexico’s Environment Dept. and Office of the State Engineer--sought postponement of the WOTUS rule so that full litigation over the rule can run its course. The Court entered an order halting the WOTUS rule, which was previously set to go into effect on Aug. 28, 2015, pending the outcome of challenges filed by various states throughout the country.

“EPA and the Corps’ WOTUS rule unlawfully imposes federal regulatory authority over state lands and waters beyond what Congress allows under the Clean Water Act. The new rule mandates a sprawling new WOTUS definition. Living in New Mexico, we understand the uniqueness of our arid environment, and NMED and the OSE are clearly the appropriate agencies to regulate these state waters,” said Flynn. “The WOTUS rule greatly infringes on state and local authority to manage and regulate lands and waters within our boundaries.”

The proposed WOTUS definition seeks to include state waters that were previously immune from federal jurisdiction, such as remote and intermittent waters, and ephemeral streams and channels.

Flynn explained, “In New Mexico, many of our waterways and streams are dry for the majority of the year, sometimes for entire years, and yet, these so-called waters would be swept under the regulatory authority of the EPA and the Army Corps.”

New Mexico State Engineer Tom Blaine pointed out that, “A lack of clarity and internal inconsistencies in the new rule will lead to misinterpretation and confusion making disputes more likely. This lawsuit is necessary to protect the New Mexico State Engineer’s exclusive authority to supervise the appropriation and distribution of our State’s surface and groundwater.”

#### SIDEBAR - HIGHLIGHTS FROM THE U.S. DISTRICT COURT OF NORTH DAKOTA’S DECISION

- In granting the preliminary injunction, the Court applied the usual four-factor test: (1) threat of irreparable harm to the States; (2) the balance of harms to the parties; (3) the States’ likelihood of success on the merits; and (4) the public interest. The Court decided that all four factors weighed in favor of the States.
- The Court affirmatively stated that “the States are likely to succeed on their claim because (1) it appears likely that the EPA has violated its Congressional grant of authority in its promulgation of the Rule at issue, and (2) it appears likely the EPA failed to comply with APA [Administrative Procedures Act] requirements when promulgating the Rule.”
- In regard to the internal memoranda from the Corps to EPA that were released earlier this month, the Court stated that the memoranda reflect “the absence of any information about how EPA obtained its presented results. Consequently, the subsequent results are completely unverifiable.” Further, the Court recognized the memoranda reveal “a process that is inexplicable, arbitrary, and devoid of a reasoned process.”
- The Court went on to say, “The Rule asserts jurisdiction over waters that are remote and intermittent waters. No evidence actually points to how these intermittent and remote wetlands have any nexus to a navigable-in-fact water.”
- Finally, the Court recognized that “the risk of irreparable harm [from WOTUS rule] to the States is both imminent and likely,” and “immediately upon the Rule taking effect, the Rule will irreparably diminish the States’ power over their waters.”

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