



Court blocks Obama's water rule nationwide



By Timothy Cama - 10/09/15 10:55 AM EDT

Getty

A federal court ruled Friday that President Obama's regulation to protect small waterways from pollution cannot be enforced nationwide.

In a 2-1 ruling, the Cincinnati-based Court of Appeals for the Sixth Circuit delivered a stinging defeat to Obama's most ambitious effort to keep streams and wetlands clean, saying it looks likely that the rule, dubbed Waters of the United States, is illegal.

"We conclude that petitioners have demonstrated a substantial possibility of success on the merits of their claims," the judges wrote in their **decision**, explaining that the Environmental Protection Agency's (EPA) new guidelines for determining whether water is subject to federal control — based mostly on the water's distance and connection to larger water bodies — is "at odds" with a key Supreme Court ruling.

The judges said they have yet to decide whether they have jurisdiction to review the regulation, but a stay would make it easier to determine that.

"A stay allows for a more deliberate determination whether this exercise of executive power, enabled by Congress and explicated by the Supreme Court, is proper under the dictates of federal law," the court said.

"A stay temporarily silences the whirlwind of confusion that springs from uncertainty about the requirements of the new Rule and whether they will survive legal testing. A stay honors the policy of cooperative federalism that informs the Clean Water Act and must attend the shared responsibility for safeguarding the nation's waters."

The decision expands a **stay** that a North Dakota judge imposed in August, the day before the rule took effect, and that only applied to 13 states.

The EPA said it will respect the court's decision, but it believes the rule is legal and necessary.

"The agencies respect the court's decision to allow for more deliberate consideration of the issues in the case and we look forward to litigating the merits of the Clean Water Rule," EPA spokeswoman Melissa Harrison said.

"The Clean Water Rule was developed by the agencies to respond to an urgent need to improve and simplify the process for identifying waters that are and are not protected under the Clean Water Act, and is based on the latest science and the law," she added.

The National Federation of Independent Business, one of the groups that sued to stop the rule, welcomed Friday's decision.

"Small businesses everywhere this morning are breathing a sigh of relief," Karen Harned, executive director of the group's legal foundation, said in a statement.

"The court very properly acknowledged that the WOTUS rule has created a 'whirlwind of confusion' and that blocking its implementation in every state is the practicable way to resolve the deep legal question of whether it can withstand constitutional muster."

Environmentalists were disappointed with the stay.

"We strongly disagree with this irresponsible decision that lets polluters continue to put the drinking water of every American at risk."

Waters of the United States has become one of the most controversial environmental regulations under Obama.

Republicans, nearly 30 states and a wide range of business interests say that it is a major overreach of federal power, putting the EPA in charge of nearly every square inch of private and state land.

The EPA and the Army Corps, which enforce the rule together, said it was necessary to clarify the federal government's authority and ensure protection of small waterways that are connected to bigger ones, as called for under the Clean Water Act.

The Friday decision means those small waterways will, for the time being, go without Clean Water Act authority.

The stay is not the final word on the regulation, since the court still needs to go through the process of making a full ruling on it. After that, it can be appealed up to the Supreme Court.

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