

FILED

OCT 26 2015

U.S. Court of Appeals
Eighth Circuit-St. Paul, MN

No. 15-3419

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

WASHINGTON CATTLEMEN'S ASSOCIATION; CALIFORNIA
CATTLEMEN'S ASSOCIATION; OREGON CATTLEMEN'S ASSOCIATION;
NEW MEXICO CATTLE GROWERS ASSOCIATION; NEW MEXICO WOOL
GROWERS, INC.; NEW MEXICO FEDERAL LANDS COUNCIL; COALITION
OF ARIZONA/NEW MEXICO COUNTIES FOR STABLE ECONOMIC
GROWTH; DUARTE NURSERY, INC.; PIERCE INVESTMENT COMPANY;
LPF PROPERTIES, LLC.; and HAWKES COMPANY, INC.,

Appellants,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; GINA
McCARTHY, in her official capacity as Administrator of the ENVIRONMENTAL
PROTECTION AGENCY; UNITED STATES ARMY CORPS OF ENGINEERS;
and JO ELLEN DARCY, in her official Capacity as Assistant Secretary of the
Army, Civil Works,

Respondents.

PETITION FOR REVIEW

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EIGHTH CIRCUIT

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioners consist of trade associations or closely held companies and have no parent company and no publicly held company owns 10% or more of the corporation's stock.

PETITION FOR REVIEW

Petitioners respectfully petition this Court pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure and Section 509(b) the Clean Water Act, 33 U.S.C § 1251 et seq., to determine the validity of a final rule defining the scope of the Act issued by respondents United States Environmental Protection Agency; Gina McCarthy, in her official capacity as Administrator of the U.S. EPA; the United States Army Corps of Engineers; and Jo-Ellen Darcy, in her official capacity as Assistant Secretary of the Army (Civil Works). The final rule was published in the Federal Register at 80 Fed. Reg. 37053 (June 29, 2015) and is entitled *Clean Water Rule: Definition of "Waters of the United States"* (the "Rule") (attached as Exhibit "A").

This rule is facially invalid and should be struck down. It exceeds statutory and constitutional authority, circumvents the proper rule-making process, and undermines state sovereignty.

There is disagreement among the parties as to which court has jurisdiction to hear this case. The government believes the Circuit Courts have original jurisdiction whereas petitioners believe the District Courts have original jurisdiction. Accordingly, petitioners filed a complaint challenging the rule in the District of Minnesota (No. 15-cv-03058-DWF-LIB). This petition is timely filed as a protective measure. *See Inv. Co. Inst. v. Bd. of Governors of Fed. Reserve*, 551 F.2d1270, 1280 (D.C. Cir 1997) ("If any doubt as to the proper forum exists, careful counsel should file suit in both the

court of appeals and the district court or, since there would be no time bar to a proper action in the district court, bring suit only in the court of appeals.”).

There are ten suits pending in the district courts. Prior petitions filed in the circuits have been consolidated in the Sixth Circuit Court of Appeals (Lead 15-3751 with Nos. 15-3799/3822/3853/3887). That court recently stayed the rule nationwide while it considers the jurisdictional question.

DATED: October 23, 2015.

Respectfully submitted,

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By  _____

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on October 23, 2015, true copies of the PETITION FOR REVIEW were placed in pre-addressed envelopes and mailed by First-Class Mail, postage prepaid, as follows:

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