

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

States of North Dakota, Alaska,
Arizona, Arkansas, Colorado, Idaho,
Missouri, Montana, Nebraska, Nevada,
South Dakota, and Wyoming; New
Mexico Environment Department; and
New Mexico State Engineer,

Plaintiffs,

v.

U.S. Environmental Protection Agency,
Regina McCarthy in her official
capacity as U.S. E.P.A. Administrator,
U.S. Army Corps of Engineers, Jo Ellen
Darcy in her official capacity as
Assistant Secretary of the Army (Civil
Works),

Defendants.

Case No. 3:15-cv-59

**ORDER DENYING DEFENDANTS’
MOTION TO DISMISS AMENDED
COMPLAINT AND DISSOLVE
PRELIMINARY INJUNCTION; AND
STAYING CASE**

Before the court is Defendants Jo Ellen Darcy’s, Regina McCarthy’s, U.S. Army Corps of Engineers’, and U.S. Environmental Protection Agency’s (collectively the “Agencies”) Motion to Dismiss the Amended Complaint and Dissolve the Preliminary Injunction.¹ The Agencies argue that such relief is appropriate given Sixth Circuit Court of Appeals’ assertion of exclusive jurisdiction to hear the consolidated challenges to the Clean Water Rule. The Plaintiffs the States², the New Mexico Environment Department, and the New Mexico State Engineer (collectively the “States”); and Intervenor Terry E. Branstad, Governor of the State

¹ Docs. #140, #142.

² North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming.

of Iowa, resist the motion.³

Numerous challenges throughout the country were levied against the final rule to change the definition of “Waters of the United States” under the Clean Water Act (hereafter, “Clean Water Rule” or “Rule”) in various district courts and courts of appeals. On June 29, 2015, the States filed a complaint against the Agencies challenging the Rule.⁴ The States subsequently filed an amended complaint on August 14, 2015.⁵ On October 13, 2015, the United States Judicial Panel on Multidistrict Litigation (“MDL Panel”) denied the Agencies’ motion to consolidate the various pending cases at the district level.⁶

Because the States were unsure about whether the district courts or courts of appeals had jurisdiction over their challenge, the States similarly filed a Petition for Review of the Clean Water Rule in the Eighth Circuit Court of Appeals on July 17, 2015.⁷ On July 28, 2015, the MDL Panel granted, pursuant to 28 U.S.C. § 2112(a)(3), the Agencies’ motion to consolidate the various cases pending on the circuit level to the Sixth Circuit Court of Appeals.⁸ The States’ Eighth Circuit Case was then transferred to the Sixth Circuit.⁹ Subsequently, the Sixth Circuit ruled that the courts of appeals have exclusive jurisdiction

³ Docs. #144, #145.

⁴ Doc. #1.

⁵ Doc. #44.

⁶ In re: Clean Water Rule: Definition of “Waters of the United States”, MDL No. 2663, Doc. #163.

⁷ See Petition for Review, North Dakota, et al., v. U.S. Environmental Protection Agency, et al., No. 15-2552 (8th Cir., filed July 17, 2015).

⁸ North Dakota, et al., v. U.S. Environmental Protection Agency, et al., No. 15-3831, Doc. #4, (6th Cir., filed July 31, 2015) (MDL consolidation order).

⁹ North Dakota, et al., v. U.S. Environmental Protection Agency, et al., No. 15-2552 (8th Cir., filed July 30, 2015) (judgment transferring case to Sixth Circuit Court of Appeals).

to hear the challenges to the Clean Water Rule pursuant to 33 U.S.C. § 1369(b)(1).¹⁰

Based on the ruling by the Sixth Circuit, it is unclear whether this court continues to retain jurisdiction over any claims alleged in the Amended Complaint.¹¹ What is clear, however, is that anything going forward in this court may be duplicative of the proceedings in the Sixth Circuit. In such situations, the court may stay proceedings pending the outcome of the other court.¹² No further actions will be taken in this case until further order from the Circuit Courts of Appeals. The Agencies' Motion to Dismiss the Amended Complaint and Dissolve Preliminary Injunction¹³ is **hereby DENIED**. It is further **ORDERED** that all proceedings in this case are **STAYED** pending any further decision by the Courts of Appeals or the United States Supreme Court.

IT IS SO ORDERED.

Dated this 24th day of May, 2016.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief District Judge
United States District Court

¹⁰ Doc. #143-1, Order of the Sixth Circuit Court of Appeals.

¹¹ For instance, Federal Question issues, including the States' Tenth Amendment Challenge to the Clean Water Rule, may still be before the court.

¹² See Missouri ex rel. Nixon v. Prudential Health Care Plan, Inc., 259 F.3d 949, 954 (8th Cir. 2001) (holding that the general rule to avoid federal district-to-district duplicative litigation equally applies to federal district-to-court of appeals duplicative litigation); Ritchie Capital Management, L.L.C. v. Jeffries, 653 F.3d 755, 763 n.3 (8th Cir. 2011) (stating that the district court may decide to dismiss or stay an action to avoid duplicative litigation).

¹³ Docs. #140, #142.