

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

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| STATE OF TEXAS, <i>et al.</i> , |) | |
| |) | |
| <i>Plaintiffs,</i> |) | |
| |) | |
| v. |) | Civil Action No. 3:15-cv-0162 |
| |) | |
| UNITED STATES ENVIRONMENTAL |) | |
| PROTECTION AGENCY, <i>et al.</i> , |) | |
| |) | |
| <i>Defendants.</i> |) | |

STATES’ MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, the State of Texas, Texas Department of Agriculture, Texas Commission on Environmental Quality, Texas Department of Transportation, Texas General Land Office, Railroad Commission of Texas, Texas Water Development Board, along with the States of Louisiana and Mississippi (collectively, “States”), by and through undersigned counsel and pursuant to Southern District of Texas Local Rule 7, respectfully submit this Motion for Preliminary Injunction. The States request that the Court enjoin the final rule titled “Clean Water Rule: Definition of ‘Waters of the United States,’” 80 Fed. Reg. 37,054 (June 29, 2015) (“Rule”), jointly promulgated by the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“Corps”) (collectively, “Federal Agencies”).

This Motion for Preliminary Injunction and the Memorandum in Support were initially presented to this Court as attachments (Dkt. 16-4 and 16-5) to the States' Motion for Partial Lift of Stay and Motion for Expedited Treatment (Dkt. 16). On February 2, 2016, the Court denied the States' Motion for Partial Lift of Stay and Motion for Expedited Treatment as moot (Dkt. 36). The States agree that their Motion for Partial Lift of Stay has become moot because the stay (Dkt. 15) has expired on its own terms following the Judicial Panel on Multi-District Litigation (JPML)'s denial of Defendants' motion to transfer and consolidate this action and all other district court challenges to the Clean Water Rule. *See In re: Clean Water Rule: Definition of "Waters of the United States,"* MDL No. 2663, Dkt. 163 (J.P.M.L.) (Oct. 13, 2015).¹

The stay in this Court having expired upon the JPML ruling, the States now file their request for injunctive relief, updated to reflect the current status of the case. Proceedings on this Motion for Preliminary Injunction are appropriate even in light of the current nationwide stay of the Clean Water Rule that has been imposed by the Sixth Circuit. *In re Final Rule; "Clean Water rule: Definition of Waters of the United States,"* Sixth Circuit No. 15-3799 (lead case) Dkt. 24-2; No. 15-3853 (Tx., La., and Miss. case) Dkt 59-2 (Sept. 16, 2015). Jurisdiction in that circuit remains in dispute; the issue has been briefed and argued but the question remains pending there. Should that circuit rule that it lacks jurisdiction, the nationwide stay may dissolve before the States can seek relief here. Judicial economy in this Court will be served by the parties developing the issue of

¹ Defendants have requested a second stay of proceedings in this Court (Dkt. 25), but this Court has not yet ruled on that motion.

preliminary injunctive relief through motions, responses, and briefing. If quick action is necessary following a Sixth Circuit ruling, the issue will be ripe for decision by this Court. The States therefore respectfully submit the following.

The Rule provides sweeping changes to the jurisdictional reach of the Clean Water Act (“CWA”), drastically altering the administration of water quality programs implemented by the States, EPA, and the Corps. Through the Rule, the agencies assert the authority to regulate land and water resources in the States, thereby infringing upon the States’ sovereign and economic interests. The States are entitled to a preliminary injunction because: (1) the States are likely to succeed on the merits, because the Rule violates the U.S. Constitution, the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, and Supreme Court precedent; (2) the Rule causes immediate and irreparable harm; (3) an injunction will not cause any harm to the Federal Agencies; and (4) an injunction will serve the public interest by allowing meaningful judicial review of the Rule before its jurisdictional overreach further harms the States.

In support of their motion, the States submit their Memorandum in Support of the States’ Motion for Preliminary Injunction. For the reasons set forth herein and in the accompanying Memorandum, the States respectfully moves the Court to grant its Motion for Preliminary Injunction pending resolution of the States’ challenges on the merits.

Respectfully Submitted,

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CERTIFICATE OF CONFERENCE

In accordance with Court Procedure 6.A.1, counsel for the States conferred with opposing counsel and determined that this Motion is opposed.

CERTIFICATE OF SERVICE

I certify that on February 12, 2016, a copy of the foregoing Motion for Preliminary Injunction was served electronically through the U.S. District Court for the Southern District of Texas's CM/ECF system on all registered counsel.

/s/ Linda B. Secord