



Texas Gets a ‘Big Victory’ Against Biden’s Environmental Agenda in Federal Court

Description

The State of Texas has blocked the Biden administration’s Clean Water Act rule in federal court, the state’s Attorney General Ken Paxton announced on Monday morning.

“Big victory against Biden: Last night a federal court blocked the Admin’s radical ‘waters of the US’ rule, which imposes a leftist environmental agenda on Texas, crushing new regs, and oppressive economic costs. I will always fight to keep Biden’s boots off the necks of Texans!” Paxton tweeted.

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— Attorney General Ken Paxton (@KenPaxtonTX) [March 20, 2023](#)

Attorney General Paxton had [filed a complaint](#) in January against the Environmental Protection Agency, as well as the U.S. Army Corps of Engineers, against the Biden administration’s revision of the “waters of the United States” rule.

“The Clean Water Act (“CWA”) requires federal permits to discharge pollutants into ‘navigable waters,’ the lawsuit states. “‘Navigable waters,’ in turn, is defined to mean ‘the waters of the United States, including the territorial seas.’ Waters that do not fit into this definition are not within federal jurisdiction and may still be regulated by states and tribes.”

“By this challenge, the Plaintiffs assert that by amending the definition of ‘waters of the United States,’ as provided in the Final Rule, the Federal Agencies unconstitutionally and impermissibly expand their own authority beyond Congress’s delegation in the CWA— intruding into state sovereignty and the liberties of the states and their citizens,” the lawsuit continues. “The Final Rule also lacks clarity, leaving those wishing to identify the ambit of federal power over dry land or minor water features at the mercy of an expensive, vague, and arbitrary analysis, lest they face a staggering criminal or civil

penalty.”

Paxton’s legal complaint cites the Supreme Court decision in [Rapanos v. United States](#), which rejected the US Army Corps of Engineer’s “assertion of expanded authority over non-navigable, intrastate waters that are not significantly connected to navigable, interstate waters.”

On December 30, 2022, the EPA and Army Corps of Engineers announced the final “Revised Definition of ‘Waters of the United States’” rule. On January 18, 2023, the rule was [published](#) in the Federal Register; the rule was set to be effective on March 20, 2023.

The Federal Register cites the unanimous Supreme Court decision in *United States v. Riverside Bayview Homes* that purportedly acknowledged that Congress delegated a “breadth of federal regulatory authority” in the Clean Water Act and expected the Environmental Protection Agency (EPA) and the Department of the Army to tackle the “inherent difficulties of defining precise bounds to regulable waters.”

In December, the EPA and US Army made a joint announcement to justify the rule change.

“Today, the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army (the agencies) announced a final rule establishing a durable definition of ‘waters of the United States’ (WOTUS) to reduce uncertainty from changing regulatory definitions, protect people’s health, and support economic opportunity,” the joint announcement said. “The final rule restores essential water protections that were in place prior to 2015 under the Clean Water Act for traditional navigable waters, the territorial seas, interstate waters, as well as upstream water resources that significantly affect those waters. As a result, this action will strengthen fundamental protections for waters that are sources of drinking water while supporting agriculture, local economies, and downstream communities.”

“When Congress passed the Clean Water Act 50 years ago, it recognized that protecting our waters is essential to ensuring healthy communities and a thriving economy,” said EPA Administrator Michael S. Regan. “Following extensive stakeholder engagement, and building on what we’ve learned from previous rules, EPA is working to deliver a durable definition of WOTUS that safeguards our nation’s waters, strengthens economic opportunity, and protects people’s health while providing greater certainty for farmers, ranchers, and landowners.”

“This final rule recognizes the essential role of the nation’s water resources in communities across the nation,” said Assistant Secretary of the Army for Civil Works Michael L. Connor. “The rule’s clear and supportable definition of waters of the United States will allow for more efficient and effective implementation and provide the clarity long desired by farmers, industry, environmental organizations, and other stakeholders.”

Attorney General Paxton in a [press release](#) in February urging the court to issue a preliminary injunction argued the Clean Waters Act was being exploited to exert “federal control over states like Texas.”

“The environmental extremists who wrote this unlawful rule have no interest in respecting our sovereignty or our natural resources,” said Attorney General Paxton. “For this Administration, this isn’t about environmental protection—it’s about federal control over states like Texas, and we aren’t going to allow it. This rule is unlikely to survive our efforts to stop it permanently, and it is important that the court prevents the change in definition from going into effect until our case has been decided.”

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