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WLF Implores Appeals Court to Prevent EPA from Expanding Its Clean Water Act Regulatory Authority

(Murray Energy Corp. v. EPA)

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WASHINGTON, DC—Washington Legal Foundation late yesterday called on the US Court of Appeals for the Sixth Circuit to overturn Environmental Protection Agency (EPA) regulations that assert greatly expanded Clean Water Act (CWA) regulatory authority by adopting a very broad definition of the “waters of the United States.” WLF’s brief filed in *Murray Energy Corp. v. EPA* argues that EPA’s final rule did not honor notice-and-comment rulemaking requirements and should be vacated for that reason.

WLF’s brief focuses principally on the procedural irregularities by which EPA (in conjunction with the U.S. Army Corps of Engineers) adopted its final rule. WLF argues that EPA violated the Administrative Procedure Act (APA) by failing to provide interested parties with adequate notice of its proposed regulations and a meaningful opportunity to participate in the rulemaking process. WLF accuses EPA of engaging in a regulatory “switcheroo” by making last-minute changes upon which no one had an opportunity to comment.

WLF also argues that EPA’s final rule is arbitrary and capricious, in violation of the APA, because it fails to provide a “satisfactory explanation” for its regulatory actions. WLF’s brief criticizes EPA’s assertion of jurisdiction over non-navigable “tributaries,” which EPA defined so broadly that the term encompasses dry land in the arid Southwest over which no water has flowed for decades.

Multiple court challenges to EPA’s new regulations are pending in federal courts across the country. Both the Sixth Circuit and a federal district court in North Dakota have issued injunctions staying enforcement of the regulations until after the litigation is concluded.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “Congress granted EPA authority to regulate the ‘waters of the United States.’ But EPA is attempting to use that authority to regulate millions of acres of bone-dry land, including vast sections of the desert Southwest. The appeals court needs to block this power grab. In its haste to issue regulations, EPA has run roughshod over many procedural safeguards applicable to the regulation-drafting process. The Sixth Circuit should strike down the rule in response.”

WLF is a free-market, public-interest law firm and policy center that regularly litigates in federal court to ensure that administrative agencies adhere to the rule of law.

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