

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION

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. )

Case No. 3:15-cv-00059-RRE-ARS

U.S. ENVIRONMENTAL PROTECTION )  
AGENCY; REGINA McCARTHY, in her )  
official capacity as Administrator of the )  
U.S. Environmental Protection Agency; )  
U.S. ARMY CORPS OF ENGINEERS; )  
and JO ELLEN DARCY, in her official )  
capacity as Assistant Secretary of the Army )  
(Civil Works), )

Defendants. )

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NOTICE OF SUPPLEMENTAL INFORMATION

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On August 27, 2015, this Court issued its Memorandum Opinion and Order Granting Plaintiffs’ Motion for Preliminary Injunction, *North Dakota et al. v. U.S. Environmental Protection Agency et al.*, No. 3:15-cv-00059 (D.N.D. Aug. 27, 2015), ECF No. 70 (“Order”).

The Court found that it has jurisdiction over this case, and that the Clean Water Rule: Definition of Waters of the United States, 80 Fed. Reg. 37,054 (June 29, 2015) (the “WOTUS Rule” or “Rule”) should be enjoined during the pendency of the litigation because “the States are likely to succeed on their claim because (1) it appears likely that the EPA has violated its Congressional grant of authority in its promulgation of the Rule at issue, and (2) it appears likely the EPA failed

to comply with APA [Administrative Procedure Act] requirements when promulgating the rule.”  
Order at 2.

Plaintiff States sought a preliminary injunction from this Court and the Court’s Order clearly indicated that it was “enjoining Fed. Reg. 37,054-127.” Order at 18. However, shortly after the Court issued its Order, the Agencies issued a document entitled “CWR Litigation Statement” claiming the Agencies will only honor this Court’s Order in a limited geographic manner but “in all other respects the rule is effective on August 28.” See **Exhibit A**, attached hereto. Plaintiff States respectfully submit that the Agencies “CWR Litigation Statement” is contrary to, and in defiance of, the Court’s Order. Indeed, the Agencies’ defiance of this Court’s Order controverts the Agencies’ repeated claims before this and other courts that the Rule is of “nationwide” scope. See United States’ Opposition to Plaintiffs’ Motion for a Preliminary Injunction at 15, No. 3:15-cv-00059 (D.N.D. July 21, 2015), ECF No. 66 (citing *Macon County Samaritan Memorial Hospital v. Shalala*, 7 F.3d 762, 768-69 (8th Cir. 1993) for the proposition that the Agencies may employ bright-line rules to promote a “regime that is relatively easy” and that “promotes nationwide uniformity”); Motion to Stay Pending a Ruling from the Judicial Panel on Multi-District Litigation under 28 U.S.C. § 1407 to Transfer and Consolidate at 6, No. 3:15- cv-00059 (D.N.D. July 21, 2015), ECF No. 12 (referring to the Rule as a “nationwide rule”).

RESPECTFULLY SUBMITTED this 28th day of August, 2015.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of August, 2015, I electronically filed the foregoing **NOTICE OF SUPPLEMENTAL INFORMATION** with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

*/s/ Paul M. Seby* \_\_\_\_\_

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