SCOTUS Issues Opinion Holding That Lawsuits Challenging "Waters of the United States Rule" Must be Filed in Federal District Courts

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On Monday, the United States Supreme Court, in a decision of national import to real estate developers and others who seek wetlands and other discharge permits, held that the appropriate jurisdiction for challenges to the Obama-era "Waters of the United States Rule" (the "Rule") are Federal district courts, rather than Federal circuit courts of appeal. The decision reverses a Sixth Circuit Court of Appeals decision that held to the contrary.

As a result of the Court's ruling, the stay issued by the Sixth Circuit should be lifted shortly (however, the ruling will not affect the states covered by the stay of the Rule issued by the U.S. District Court of North Dakota). This means that, other than the states covered by the North Dakota stay, the Rule will go back into effect. Therefore, expect opponents of the Rule in affected states to file actions in Federal district courts seeking to enjoin the Rule from going into effect. Given the government's November 2017 proposed rule to delay applicability of the Rule for two years after the proposed rule becomes final, it is not likely to pursue significant effort to defend challenges to the Rule.

What this means is that different Federal district courts could issue different, and even contradictory, holdings defining the scope of "Waters of the United States" and, therefore, the scope of the Corps' jurisdiction. In other words, depending on the district in which one proposes to discharge, a determination of whether or not a Corps permit will be required will vary.

If you have questions about this alert, please contact a member of McGlinchey Stafford's Environmental Team.

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