

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**January 29, 2018**

**Elisabeth A. Shumaker**  
**Clerk of Court**

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA;  
NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS; TULSA  
REGIONAL CHAMBER; PORTLAND  
CEMENT ASSOCIATION; STATE  
CHAMBER OF OKLAHOMA,

Plaintiffs - Appellants,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; E. SCOTT  
PRUITT, in his official capacity as  
Administrator of the United States  
Environmental Protection Agency;  
UNITED STATES ARMY CORPS OF  
ENGINEERS; JO-ELLEN DARCY, in her  
official capacity as Assistant Secretary of  
the Army (Civil Works),

Defendants - Appellees.

-----

PACIFIC LEGAL FOUNDATION; CATO  
INSTITUTE; SOUTHEASTERN LEGAL  
FOUNDATION; STATE OF ALABAMA;  
STATE OF ALASKA; STATE OF  
ARIZONA; STATE OF ARKANSAS;  
STATE OF COLORADO; STATE OF  
FLORIDA; STATE OF GEORGIA;  
STATE OF IDAHO; STATE OF  
INDIANA; STATE OF KANSAS; STATE  
OF KENTUCKY; STATE OF  
LOUISIANA; STATE OF MICHIGAN;  
STATE OF MISSISSIPPI; STATE OF

No. 16-5038  
(D.C. No. 4:15-CV-00386-CVE-PJC)  
(N.D. Okla.)

MISSOURI; STATE OF NEBRASKA;  
NEW MEXICO STATE ENGINEER;  
NEW MEXICO ENVIRONMENT  
DEPARTMENT; STATE OF NEVADA;  
NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY; STATE  
OF NORTH DAKOTA; STATE OF  
OHIO; STATE OF SOUTH CAROLINA;  
STATE OF SOUTH DAKOTA; STATE  
OF TENNESSEE; STATE OF TEXAS;  
STATE OF UTAH; STATE OF WEST  
VIRGINIA; STATE OF WISCONSIN;  
STATE OF WYOMING; AMERICAN  
ROAD AND TRANSPORTATION  
BUILDERS ASSOCIATION; THE  
AMERICAN FARM BUREAU  
FEDERATION; AMERICAN FOREST &  
PAPER ASSOCIATION; AMERICAN  
PETROLEUM INSTITUTE; GREATER  
HOUSTON BUILDERS ASSOCIATION;  
LEADING BUILDERS OF AMERICA;  
NATIONAL ALLIANCE OF FOREST  
OWNERS; NATIONAL ASSOCIATION  
OF HOME BUILDERS; NATIONAL  
ASSOCIATION OF  
MANUFACTURERS; NATIONAL  
ASSOCIATION OF REALTORS;  
NATIONAL CATTLEMEN'S BEEF  
ASSOCIATION; NATIONAL CORN  
GROWERS ASSOCIATION; NATIONAL  
MINING ASSOCIATION; NATIONAL  
PORK PRODUCERS COUNCIL;  
NATIONAL STONE, SAND & GRAVEL  
ASSOCIATION; PUBLIC LANDS  
COUNCIL; TEXAS FARM BUREAU;  
U.S. POULTRY & EGG ASSOCIATION,

*Amici Curiae.*

---

STATE OF OKLAHOMA EX REL. MIKE  
HUNTER, in his official capacity as

Attorney General of Oklahoma,

Plaintiff - Appellant,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; UNITED STATES ARMY CORPS OF ENGINEERS; E. SCOTT PRUITT, in his official capacity as Administrator of the United States Environmental Protection Agency; JO-ELLEN DARCY, in her official capacity as Assistant Secretary of the Army for Civil Works,

Defendants - Appellees.

-----

PACIFIC LEGAL FOUNDATION; CATO INSTITUTE; SOUTHEASTERN LEGAL FOUNDATION; STATE OF ALABAMA; STATE OF ALASKA; STATE OF ARIZONA; STATE OF ARKANSAS; STATE OF COLORADO; STATE OF FLORIDA; STATE OF GEORGIA; STATE OF IDAHO; STATE OF INDIANA; STATE OF KANSAS; STATE OF KENTUCKY; STATE OF LOUISIANA; STATE OF MICHIGAN; STATE OF MISSISSIPPI; STATE OF MISSOURI; STATE OF NEBRASKA; NEW MEXICO STATE ENGINEER; NEW MEXICO ENVIRONMENT DEPARTMENT; STATE OF NEVADA; NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF TENNESSEE; STATE OF TEXAS; STATE OF UTAH; STATE OF WEST

No. 16-5039  
(D.C. No. 4:15-CV-00381-CVE-FHM)  
(N.D. Okla.)

VIRGINIA; STATE OF WISCONSIN;  
STATE OF WYOMING; AMERICAN  
ROAD AND TRANSPORTATION  
BUILDERS ASSOCIATION; THE  
AMERICAN FARM BUREAU  
FEDERATION; AMERICAN FOREST &  
PAPER ASSOCIATION; AMERICAN  
PETROLEUM INSTITUTE; GREATER  
HOUSTON BUILDERS ASSOCIATION;  
LEADING BUILDERS OF AMERICA;  
NATIONAL ALLIANCE OF FOREST  
OWNERS; NATIONAL ASSOCIATION  
OF HOME BUILDERS; NATIONAL  
ASSOCIATION OF  
MANUFACTURERS; NATIONAL  
ASSOCIATION OF REALTORS;  
NATIONAL CATTLEMEN’S BEEF  
ASSOCIATION; NATIONAL CORN  
GROWERS ASSOCIATION; NATIONAL  
MINING ASSOCIATION; NATIONAL  
PORK PRODUCERS COUNCIL;  
NATIONAL STONE, SAND & GRAVEL  
ASSOCIATION; PUBLIC LANDS  
COUNCIL; TEXAS FARM BUREAU;  
U.S. POULTRY & EGG ASSOCIATION,

Amici Curiae.

---

**ORDER AND JUDGMENT\***

---

Before **LUCERO, PHILLIPS**, and **MORITZ**, Circuit Judges.

---

Plaintiffs filed these actions in the United States District Court for the Northern District of Oklahoma to challenge a regulation issued by the Environmental

---

\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Protection Agency defining the term “waters of the United States” for purposes of the Clean Water Act. The district court dismissed both cases, concluding that such challenges must be brought in the United States Circuit Court of Appeals pursuant to 33 U.S.C. § 1369(b)(1). We consolidated the subsequent appeals.

Following oral argument, the Supreme Court granted certiorari in a case raising the same issue. Nat’l Ass’n of Mfrs. v. Dep’t of Def., 137 S. Ct. 811 (2017). We abated these appeals pending the Court’s decision in that case. The Supreme Court has now held that the regulation at issue “falls outside the ambit of § 1369(b)(1), and any challenges to the Rule therefore must be filed in federal district courts.” Nat’l Ass’n of Mfrs. v. Dep’t of Def., \_\_\_ U.S. \_\_\_, No. 16-299, 2018 WL 491526, at \*4 (Jan. 22, 2018).

We accordingly **LIFT** the abatement, **REVERSE**, and **REMAND** to the district court for further proceedings.

Entered for the Court  
Per Curiam