

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
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