



## Waters of the U.S. – Tenth Circuit Overturns Preliminary Injunction in Colorado WOTUS Case

Although other states and parties tried, Colorado was the only state that succeeded in persuading a U.S. District Court Judge to enter a preliminary injunction against enforcement (in Colorado only) of the new waters of the United States (WOTUS) rule which was published nearly a year ago, i.e., April 21, 2021. After being on appeal for several months, the Tenth Circuit Court of Appeals expressed its displeasure with that ruling. In *State of Colorado v. U.S. Environmental Protection Agency et al.*, case number 20-1238, Judge Baldock, in his March 2, 2021 opinion, was direct and to the point:

The question before us is straightforward: Did the district court abuse its discretion when it granted Colorado injunctive relief? The answer is yes. Colorado asked for immediate relief but hasn't shown it will suffer irreparable injury absent a preliminary injunction. **Because that alone compels us to reverse, we do not consider the other preliminary injunction factors.** Exercising jurisdiction under 28 U.S.C. § 1292, we therefore reverse and vacate the district court's order. [Emphasis added.]

It's good reading – the opinion. It sets out a concise history of the rule and the related arguments against its enforcement. Enjoy. See opinion [here](#).

Judge Baldock stated, "Starting with the ground the district court credited, we examine each of Colorado's alleged injuries and conclude it has failed to establish a significant risk of irreparable harm absent preliminary injunctive relief."

The Court concluded that Colorado had not met its heavy burden of establishing "irreparable harm" stating:

[A] llegations are not enough to warrant preliminary injunctive relief. The party seeking that extraordinary remedy faces a high bar—**it must make a clear and unequivocal showing it will likely suffer irreparable harm** absent preliminary relief. New Mexico Dep’t of Game & Fish, 854 F.3d at 1250–51. A review of the record evidence shows the district court abused its discretion when it found Colorado met this burden. [Emphasis added.]

As we’ve stated several times over the last many months – stay tuned. The Biden administration is on the prowl to overturn a plethora of the former administration’s environmental regulations and policies. The WOTUS rule is on the top of that list.

This post was drafted by [John Watson](#). He is an attorney in the Denver, CO office of Spencer Fane. For more information, visit [www.spencerfane.com](http://www.spencerfane.com).

## **Related Publications**

- [Colorado Joins the Surge of WOTUS Lawsuits and Proposes State Legislation to Institute a State-Run 404 Program](#)
- [Colorado Judge Enjoins Implementation of the WOTUS Rule in Colorado](#)
- [Colorado Looking to Issue Comprehensive Guidance for Waters of the United States \(WOTUS\)](#)
- [EPA and Corps of Engineers Take Another Step to Roll Back “Waters of the United States” Definition and Issue a New Proposed Rule](#)
- [Federal Court Halts EPA’s Waters of the United States \(WOTUS\) Rule in 11 States](#)
- [Scope of Clean Water Act Jurisdiction Set to Change](#)
- [Waters of the United States \(WOTUS\) Revised Definition Significantly Reduces Waters Subject to Federal Jurisdiction](#)
- [WOTUS Lawsuits Surge](#)