



U.S. Supreme Court Reinstates Wetland Permitting Under Nationwide Permit 12

In a one paragraph, unsigned order issued July 6, 2020, the U.S. Supreme Court reinstated most uses of the U.S. Army Corps of Engineers' Nationwide Permit 12 for pipeline and utility trenching and construction, dredge and fill, and maintenance, inspection, and repair activities in or adjacent to wetlands and other waters of the United States. The Court's order carves out and continues to disallow use of NWP 12 for the Keystone XL pipeline (the actual target of plaintiffs' lawsuit). For our earlier alerts on this fast-moving litigation see [here](#), and [here](#), and [here](#).

The entirety of the Supreme Court's Order states:

The application for stay presented to Justice Kagan and by her referred to the Court is granted in part and denied in part. The district court's May 11, 2020 order granting partial vacatur and an injunction is stayed, except as it applies to the Keystone XL pipeline, pending disposition of the appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the petition for a writ of certiorari, if such writ is timely sought. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

Army Corps of Engineers v. Northern Plains Resource Council, slip op. No. 19A1053 (July 6, 2020).

This Order offers much sought-after relief to pipeline companies and their associated construction and land development partners, while also preserving the environmental interest plaintiffs' specific successes as to the Keystone XL pipeline project itself. We will continue to track this case, which remains far from resolution.

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