

## Corps Appeals to Ninth Circuit Despite Amended Nationwide Permit 12 Ruling

MAY 14, 2020

On May 11, 2020, the Montana federal district court issued an amended order in the *Northern Plains Resource Council et al. v. U.S. Army Corps of Engineers* (NPRC v. Corps), narrowing the scope of its initial nationwide vacatur of Clean Water Act Section 404 Nationwide Permit 12 (NWP 12). As we [recently reported](#), the Corps filed a motion for stay pending appeal of the Montana court's April 15, 2020 order, which enjoined the Corps from authorizing **any** dredge or fill activities under NWP 12 until the Corps completes programmatic consultation under the Endangered Species Act.

In response to Corps' motion, the plaintiffs proposed a revised remedy, suggesting that the court narrow the vacatur of the NWP 12 and corresponding injunction, rather than granting the Corps' motion for stay. On May 11, the court once again sided with the plaintiffs and issued an amended order that limits the vacatur of the NWP 12 to the construction of new oil and gas pipelines. The court reasoned that a partial vacatur is appropriate given the continued availability of individual permits under Section 404 of the Clean Water Act for oil and gas development. Thus, while the court's amended order allows the Corps to authorize non-pipeline construction activities and routine maintenance, inspection and repair activities on existing NWP 12 projects, the Corps is still enjoined from authorizing the construction of new oil and gas pipelines under NWP 12 during remand.

Following through on its promise to appeal if the Montana court did not grant a full stay, on May 13, 2020 the Corps filed a notice of appeal with the United States Court of Appeals for the Ninth Circuit. Although the amended order provides relief to many projects, including renewable energy developments and electric, internet and cable lines, oil and gas developers will continue to face Clean Water Act permitting challenges moving forward.

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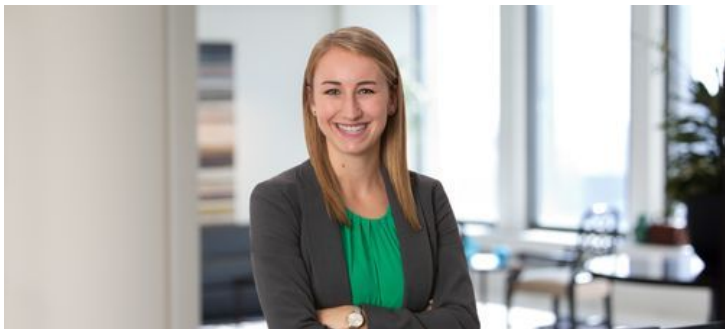
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