

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

State of North Dakota, <i>et al.</i> ,)	
)	
Plaintiffs,)	ORDER
)	
vs.)	Case No. 3:15-cv-59
)	
U.S. Environmental Protection Agency, <i>et al.</i> ,)	
)	
Defendant.)	

On August 22, 2018, Plaintiff-Intervenor Kimberly Reynolds, Governor of the State of Iowa, filed a “Request for Expedited Clarification that the Preliminary Injunction in this Matter Applies to Iowa.” See Docket No. 247.

On June 29, 2015, Plaintiffs—twelve states and two agencies of a thirteenth state—filed this lawsuit for declaratory and injunctive relief against the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“Corps”) (collectively “the Agencies”), challenging a final rule promulgated by the Agencies to clarify the definition of “waters of the United States” (“WOTUS”) that are protected under the Clean Water Act, 33 U.S.C. §§ 1251-1388 (rule referred to hereafter as “WOTUS Rule”). See Docket No. 1. The WOTUS Rule was set to go into effect on August 28, 2015. On August 27, 2015, the district court granted the Plaintiffs’ motion for a preliminary injunction, enjoining the WOTUS Rule during the pendency of the litigation. See Docket No. 70. The district court later issued an order limiting the scope of the preliminary injunction to the “parties in this litigation.” See Docket No. 79, p. 4.

On November 17, 2015, Terry Branstad, then-Governor of Iowa, filed a motion to intervene in the suit as a plaintiff on behalf of the State of Iowa. See Docket No. 100. The EPA did not take a position on the motion to intervene because, at that time, the Sixth Circuit Court of Appeals had issued a nationwide stay of the WOTUS Rule, making the issue moot. See Docket No. 103. The district court granted the unopposed motion to intervene on December 11, 2015. See Docket No. 107.

On February 6, 2018, the EPA published the Suspension Rule, which in effect, delayed the WOTUS Rule until 2020. 83 Fed. Reg. 5200. The Suspension rule was challenged and on August 16, 2018, a South Carolina federal district court granted a motion for summary judgment against the EPA's Suspension Rule, and enjoined the Suspension Rule nationwide and reinstated the WOTUS Rule in the states where the WOTUS Rule had not been preliminarily enjoined. See Docket No. 245-1. As a result of the invalidation of the Sixth Circuit's nationwide stay of the WOTUS Rule and the District of South Carolina ruling reinstating the Rule, Plaintiff-Intervenor Kimberly Reynolds seeks an order from this Court expressly stating that the WOTUS Rule is enjoined in Iowa. See Docket No. 247, p. 3.

Reynolds argues it is now a party to this litigation and the district court previously issued a preliminary injunction ruling that it should apply to all the "parties in this litigation." See Docket No. 247, p. 3. Reynolds asserts she became a party after the original order and the subsequent order clarifying its scope, and that is not a sufficient basis to exclude her and the citizens of Iowa from the scope of the injunction. See Galbreath v. Metropolitan Trust Co. of California, 134 F.2d 569, 570 (10th Cir. 1943) ("It is also equally true that one who intervenes in a suit in equity thereby becomes a party to the suit, and is bound by all prior orders and adjudications of fact and law as though he had been a party from the commencement of the suit."). Further, Reynolds asserts she has conferred with defense counsel, and the Agencies do not object and Defendant-Intervenor Sierra Clubs indicated they take no position on the motion. See Docket No. 247, p. 4. For good cause shown, the Court **GRANTS** Plaintiff-Intervenor Reynolds' request (Docket No. 247). The Court finds that the WOTUS Rule is enjoined in Iowa.

IT IS SO ORDERED.

Dated this 18th day of September, 2018.

/s/ Daniel L. Hovland
Daniel L. Hovland, Chief Judge
United States District Court