

Client Alert

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Hunton & Williams LLP Helps Secure Key Victory for Energy Industry Clients in Closely Watched Clean Water Act Suit Over Use of Nationwide Permits

Sierra Club v. Bostick (W.D. Oklahoma)

In June 2012, environmental groups filed suit in the US District Court for the Western District of Oklahoma challenging the US Army Corps of Engineers' issuance of Nationwide Permit (NWP) 12 for utility line projects, and use of NWP 12 for the Keystone Pipeline Gulf Coast Project. *Sierra Club v. Bostick*, 5:12-cv-00742-R (W.D. Oklahoma). Hunton & Williams intervened in the lawsuit on behalf of a coalition of industry associations whose member companies depend on NWP 12 for critical electric transmission line and pipeline infrastructure projects. The coalition sought intervention to defend NWP 12 against the groups' wide-ranging challenges seeking to block the construction of the pipeline and enjoin future use of NWP 12. NWP 12 is critical to timely and cost-effective construction of new projects (such as electric transmission line projects that connect new renewable or traditional power projects to the grid, or new gas or oil pipelines that allow resources to be brought to market), as well as important upgrades and repairs of existing projects (such as upgrades required for grid resiliency or to respond to major storm events).

The suit challenged a number of key provisions of NWP 12, some of which go back decades, and sought to nullify the permit — thereby threatening the ability of utilities (and others) to rely on NWP 12 for important projects nationwide. Initially the groups sought a preliminary injunction, which was denied by the district court. The district court's denial was upheld on appeal by the Tenth Circuit on October 31, 2013. The case then proceeded to the merits in the district court. On December 30, 2013, the district court issued a final decision on the merits, ruling against the plaintiffs on all claims. The decision is an important victory for proponents of pipeline, transmission line and other utility line projects for several reasons. First, it involves a Nationwide Permit extensively relied upon by the energy industry as a streamlined and cost-effective mechanism to receive Clean Water Act Section 404 authorization for work involving pipelines, transmission lines and other linear projects, as well as important upgrades and repairs of existing projects. Second, the district court's decision addresses and upholds a number of key provisions of NWP 12, as well as the overall Nationwide Permit program. Third, the decision reinforces key administrative law principles, such as waiver where a litigant does not first present its concerns to the agency during the public comment process.

The legal team included Andrew Turner, Deidre Duncan, Karma Brown and Kerry McGrath. The *Sierra Club v. Bostick* decision is highlighted in the January 6, 2014, *Law360* article on the Hunton & Williams LLP environmental team's selection as Environmental Practice of the Year.

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