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# Locke Lord QuickStudy: SCOTUS Stays District Court Remand of ?Trump EPA State Water ?Quality Certification ?Rules, Raises ?Stakes for Upcoming EPA ?Rulemaking

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On April 6, 2022, the Supreme Court stayed an October 21, 2021 Northern District of California Court ruling that vacated and remanded EPA's 2020 revisions to the processes for states to certify water quality impacts from projects under Section 401 of the Clean Water Act (33 USC §1341). The 2020 rule made a number of changes to the original 1971 rule the U.S. Environmental Protection Agency ("EPA") promulgated to implement the program, including changing the standard by which states could make water quality determinations, limiting the information that they could consider in determinations, and limiting the time in which they could make determinations.

The District Court's October 2021 decision vacated the 2020 rule, which would have had the effect of reinstating the previous, long-standing program. That decision was appealed to the Ninth Circuit Court of Appeals in December 2021. The Ninth Circuit rejected a similar request to stay the District Court ruling in February 2022 but is still considering the merits of the appeal. Today's ruling stays the District Court decision, leaving in place the 2020 EPA rule.

Notably, the Supreme Court's order is very brief – just one short paragraph – but is accompanied by a two-page dissent by the Court's three liberal justices along with Chief Justice Roberts. In the dissent, Justice Kagan asserted that the applicants for the stay had failed to meet the standard of showing "irreparable harm" in order to obtain a stay of a decision currently under review in a court of appeals. Specifically, Justice Kagan observed, the applicants did not identify any projects that a State had obstructed in the five months since the District Court issued its ruling, or cited any specific projects that are threatened by the court's ruling in the months before the Ninth Circuit issues its decision. The dissent concludes that by issuing a stay absent the showing of irreparable harm that has traditionally been required, the Court is essentially signaling its view of the merits of the case.

Ultimately, this ruling makes clear what EPA already knew: that to change the 2020 rule, EPA was going to have to propose and promulgate a new state water quality certification process under the Clean Water Act. In a [June 2021 Notice](#), the EPA stated its intent to propose a new program by spring, 2022. We expect that today's ruling created an added incentive for EPA to finalize and release the proposal. The EPA will need to take public comment on the proposed rule and ultimately issue a final rule that will very likely be challenged in court.

Depending on the outcome of the Ninth Circuit's decision on the appeal of the District Court's order, and any subsequent Supreme Court action on appeal, the 2020 rule could remain in place until EPA finalizes a new rule.

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