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Judicial Review of Agency Clean Water Act Jurisdiction Determination?: U.S. Supreme Court Grants Certiorari In U.S. Army Corps of Engineers v. Hawkes (8th Circuit Court of Appeals)

Arkansas Environmental, Energy, and Water Law Blog

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The United States Supreme Court ("Court") on December 11th granted a *Petition for a Writ of Certiorari* ("Petition") in the United States challenge to an Eighth Circuit Court of Appeals decision in *Army Corps of Engineers v. Hawkes Co., Inc., et al.* ("*Hawkes*").

The Eighth Circuit held that a federal district court could review a United States Army Corps of Engineers ("Corps") Clean Water Act jurisdictional determination.

The State of Arkansas is encompassed by the Eighth Circuit.

The issue addressed in the Eighth Circuit *Hawkes* decision was whether a party may seek federal court review of a Corps determination that a particular parcel is subject to the Clean Water Act. The Eighth Circuit concluded that the Corps jurisdictional determination constituted "final agency action." The Fifth Circuit Court of Appeals had previously reached the opposite conclusion in *Belle Co., LLC v. U.S. Army Corps of Engineers*. See 761 F.3d 383 (2014).

The Corps had designated the property owned by the Hawkes Co., Inc., Pierce Investment Company, and LPF Properties, in Minnesota as jurisdictional Clean Water Act wetlands. The property owners argued that they had the right to bring a federal district court challenge to the Corps regulatory findings.

The United States argued that the property owner in such litigation (involving Clean Water Act jurisdictional determinations) does not have a right to judicial review until it has first obtained a permit.

The National Association of Home Builders (as part of a coalition) filed an amicus brief in support of the property owners' position and has been granted leave to file a brief as *amicus curiae* in the United States Supreme Court.

[Click here to download a copy of the U.S. Supreme Court December 11th Order list and the Eighth Circuit Court of Appeals *Hawkes* decision.](#)