

Jeff Civins in Law360 on EPA Water Transfer Rule Dispute

By Jeff Civins | March 5, 2018

RELATED PRACTICES Environmental Due Diligence, Environmental

Law360 quoted Haynes Boone Senior Counsel [Jeff Civins](#) in a story about a dispute over whether federal permits are required to transfer large amounts of water for human consumption and agricultural use.

The U.S. Supreme Court on Feb. 26 denied petitions for certiorari from states including New York, Connecticut and Michigan and environmental groups such as Riverkeeper that sought to overturn the Second Circuit's 2017 decision to uphold the Environmental Protection Agency's 2008 National Pollutant Water Transfer Rule, *Law360* [reported](#).

Under the rule, water may be transferred artificially, such as through a tunnel or pipe, between bodies of water without a National Pollutant Discharge Elimination System permit, even if the water is contaminated. *Law360* reported that a slew of western states including Colorado, New Mexico, Alaska and Texas, along with several local water agencies, asked the Supreme Court to uphold the Second Circuit's ruling, saying water transfers are critical to their functioning and that NPDES permits would be a huge burden. ...

The high court's decision not to review the Second Circuit's latest ruling provides clarity about the water transfer rule, but it also raises questions about other kinds of water issues that could find their way into the courts, said Haynes Boone Senior Counsel Jeff Civins.

"A related question might be: What happens if you discharge groundwater into waters of the U.S., does that require a permit? And what if you're diverting one portion of a stream, and having it come back into another portion? The quality of water from one segment to another segment isn't necessarily the same," he said. "You probably should do some type of analysis. But I'm not sure that the right vehicle is NPDES." ...

Excerpted from *Law360*. To read the full article, click [here](#). (Subscription required)