



Another Adverse Pipeline Decision – Nationwide Injunction Issued Against U.S. Army Corps Nationwide Permit 12

By [Nicole Blevins](#)

Yesterday, the U.S. District Court for the District of Montana issued an [order](#) vacating U.S. Army Corps Nationwide Permit 12, applicable to oil and gas pipelines. The order further enjoins the Corps from authorizing any activities under Nationwide Permit 12 pending completion of Endangered Species Act Section 7 consultation and compliance with all environmental statutes and regulations. Nationwide Permit 12 authorizes certain discharges under the Clean Water Act, as required for construction, maintenance, repair, and removal of utility lines, including oil and gas pipelines. Below is a high-level summary of the order:

- Environmental groups challenged the Corps' reissuance of Nationwide Permit 12, in 2017, on the grounds that the Corps violated the Endangered Species Act by failing to conduct Section 7 consultation on the permit reissuance.
- Environmental groups won an identical challenge to Nationwide Permit 12 issued in 2002. Thereafter, the Corps completed Section 7 consultation on subsequent permit renewals in 2007 and 2012 but determined consultation was not necessary in 2017.
- In 2017, the Corps determined that the permit would not affect endangered species or critical habitat; however, the Court allowed expert testimony, outside of the administrative record, to establish that the permit "may affect" such species, thus, triggering the Section 7 consultation requirement.

Although this order is prospective, it provides potential avenue for attack on pipeline projects pending under Nationwide Permit 12. Please contact [Nicole Blevins](#) or [Bret Sumner](#) with any questions about this order and related issues.