

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

**The Blackstone Headwaters Coalition, Inc. v. Gallo Builders, Inc.,
RH Gallo Builders, Inc., Arboretum Village, LLC, Steven A. Gallo,
and Robert H. Gallo**

Blackstone Headwaters Coalition · No. 4:16-cv-40053-MRG · Decided November 30, 2025

SUMMARY

The United States District Court for the District of Massachusetts explains its reasons for granting the plaintiff's motion in limine to exclude a letter from the U.S. Army Corps of Engineers. The court concludes that the defendants failed to establish the letter's relevance, that its admission could mislead and unfairly prejudice the jury, and that the letter was untimely disclosed. The court also rejects the defendants' arguments that the letter was entitled to Skidmore deference or that the Army Corps had the final word on whether the disputed waters constituted Waters of the United States under the Clean Water Act.

CASE DETAILS

COURT	United States District Court for the District of Massachusetts
WRITING FOR THE COURT	Margaret R. Guzman
JURISDICTION	United States District Court for the District of Massachusetts
DECIDED	November 30, 2025
DOCKET	4:16-cv-40053-MRG
DISPOSITION	other
PROCEDURAL POSTURE	The court issued a memorandum and order supplementing its reasoning for granting the plaintiff's motion in limine to exclude a letter from the U.S. Army Corps of Engineers.
STANDARD OF REVIEW	Evidentiary rulings under Federal Rules of Evidence 401 and 403; the court evaluated whether the letter was relevant, whether its admission risked misleading the jury or causing unfair prejudice, and whether its late disclosure was permissible under Federal Rule of Civil Procedure 26(e).
PRECEDENTIAL VALUE	district court memorandum and order; precedential status not specified in the source

TOPICS

motion in limine relevance evidence clean water act administrative law

PRACTICE AREAS

civil procedure evidence environmental law administrative law

QUESTIONS PRESENTED

1. Whether the Army Corps of Engineers letter was sufficiently relevant under Federal Rule of Evidence 401 to be admitted.
2. Whether admitting the letter without its underlying application or supporting context would create a risk of misleading the jury or unfair prejudice under Federal Rule of Evidence 403.
3. Whether the defendants' late disclosure of the letter complied with Federal Rule of Civil Procedure 26(e).
4. Whether an Army Corps of Engineers determination concerning Waters of the United States is entitled to Skidmore deference and is dispositive in a Clean Water Act citizen suit.

HOLDINGS

1. The defendants failed to establish that the letter was relevant under Federal Rule of Evidence 401 because they did not provide the complete underlying application or sufficient information to determine the basis and significance of the Corps's determination.
2. Even if the letter had some relevance, presenting it on agency letterhead without the underlying context would create a risk of misleading the jury and causing unfair prejudice, warranting exclusion under Rule 403.
3. Federal Rule of Civil Procedure 26(e) does not authorize the production of materially new evidence on the eve of trial when the opposing party lacks sufficient time to investigate and conduct discovery concerning that evidence.
4. The Army Corps of Engineers does not have the final word on whether a discharge violates the Clean Water Act in a citizen suit; the ultimate decision rests with the court.
5. The letter was not entitled to persuasive weight under Skidmore because it lacked thorough reasoning and documentary support independent of the defendants' representations.

KEY QUOTATIONS

“There is no reason the Defendants could not have sought input from the Army Corps of Engineers prior to the eve of trial.”

“In a citizen suit under the CWA, the ultimate decision lies with the Court.”

FACTUAL BACKGROUND

The defendants sought to introduce a letter from the U.S. Army Corps of Engineers concerning whether certain waters qualified as Waters of the United States. The letter was based on a submission made by a former defense attorney on November 6, 2025, less than thirty days before trial, and the defendants did not provide the complete underlying application or other documentary context. The court concluded that the record did not establish what the Corps relied upon, whether the letter was a jurisdictional determination or merely a no-permit-required letter, or how it related to the issues in the case.

PROCEDURAL HISTORY

The plaintiff filed this Clean Water Act citizen suit in 2016. Discovery closed on September 1, 2023. Shortly before trial, the defendants disclosed a letter from the Army Corps responding to a November 6, 2025 submission by a former defense attorney. The court granted the plaintiff's motion in limine to preclude evidence of or reference to the letter and issued this order clarifying its reasoning.

DISPOSITION

other

CASES CITED

- Skidmore v. Swift & Co., 323 U.S. 134, 139-40 (1944)
- Loper Bright Enters. v. Raimondo, 603 U.S. 369, 388 (2024)
- Doe v. Leavitt, 552 F.3d 75, 82 (1st Cir. 2009)
- Precon Dev. Corp. v. U.S. Army Corps of Eng'rs, 633 F.3d 278, 296-97 (4th Cir. 2011)
- Ass'n to Protect Hammersley, Eld, & Totten Inlets v. Taylor Res., Inc., 299 F.3d 1007, 1012 (9th Cir. 2002)
- Sackett v. U.S. E.P.A., No. 08-CV-185-N-EJL, 2008 WL 3286801, at *1 (D. Idaho Aug. 7, 2008)
- San Francisco Baykeeper v. Cargill Salt Div., 481 F.3d 700, 706 (9th Cir. 2007)

OPINION

The Blackstone Headwaters Coalition, Inc. v. Gallo Builders, Inc., RH Gallo Builders, Inc., Arboretum Village, LLC, Steven A. Gallo, and Robert H. Gallo

PER CURIAM.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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THE BLACKSTONE HEADWATERS)

COALITION, INC.)

) Plaintiff,)) v.) Civil No. 4:16-cv-40053-MRG)

GALLO BUILDERS, INC.,)

RH GALLO BUILDERS, INC.,)

ARBORETUM VILLAGE, LLC,)

STEVEN A. GALLO, and)

ROBERT H. GALLO,)

) Defendants.) _____)

MEMORANDUM & ORDER

GUZMAN, J. The Court issues the following order clarifying its reasoning for granting Plaintiff's motion in limine to preclude evidence of or reference to a Letter from the U.S. Army Corps of Engineers to Defendants, [ECF No. 312]. In supplement to the reasoning stated at the November 28, 2025 hearing, the Court granted Plaintiff's motion for three primary reasons: First, Defendants did not establish the Letter's relevance under Federal Rules of Evidence Rule 401 because they did not substantiate the Letter with the complete underlying application, and the Court cannot determine what the Army Corps of Engineers' determination was based on or how the Letter relates to this case. Additionally, as Plaintiff details in its motion, there is a dispute as to whether the Letter is a jurisdictional determination by the Army Corps of Engineers or merely a "no permit required" letter. Second, because Defendants have failed to establish relevance, presenting the Letter—on agency letterhead—without any context of what the agency relied on in issuing the Letter creates a risk of misleading the jury and causing unfair prejudice to the Plaintiffs under Rule 403. Third, the Letter was untimely. This suit was filed in 2016 and discovery in this matter has been closed since September 1, 2023. There have been supplemental disclosures, but the Letter indicates that it is a response to a submission by Jennifer Kurzon, a former attorney of the Defendants, made on November 6, 2025—less than 30 days before the start of trial. While Federal Rule of Civil Procedure 26(e) requires parties to supplement its disclosures, it does not contemplate the production of new evidence on the eve of trial with insufficient time to conduct discovery into the new evidence. There is no reason the Defendants could not have sought input from the Army Corps of Engineers prior to the eve of trial. Plaintiff is entitled to know the full details of what the Defendants submitted to the Army Corps and to provide time for additional discovery on this matter would unduly delay the case. As a final point, the Court disagrees with Defendants that "the Army Corps has the final word" on a determination of what constitutes "Waters of the United States" ("WOTUS") in a citizen suit under the Clean Water Act. [See ECF No. 312-1]. First, the Letter is not entitled to Skidmore deference. See *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944)). In *Skidmore*, the Supreme Court held that "'interpretations and opinions' of the relevant agency, 'made in pursuance of official duty' and 'based upon . . . specialized experience,' 'constitute[d] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance,' even on legal questions." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 388 (2024) (quoting *Skidmore*, 323 U.S. at 139-40). "The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade" *Skidmore*, 323 U.S. 134 at 140. Here, the Letter's purported WOTUS determination is based entirely on representations made by the

Defendants and is not substantiated by thorough reasoning or documentary evidence independent from that provided by Defendants. Defendants have failed to provide any evidence that the Army Corps of Engineers “consulted appropriate sources, employed sensible heuristic tools, and adequately substantiated its ultimate conclusion.” *Doe v. Leavitt*, 552 F.3d 75, 82 (1st Cir. 2009) (articulating “the most salient of the factors that inform an assessment of persuasiveness” under *Skidmore*). Therefore, the Letter lacks the power to persuade. At least one other court has similarly found an Army Corps of Engineers WOTUS determination to be lacking the power to persuade under *Skidmore* because of a threadbare record supporting the agency’s conclusion. See *Precon Dev. Corp. v. U.S. Army Corps of Eng’rs*, 633 F.3d 278, 296–97 (4th Cir. 2011) (“Because the Corps’ current administrative record contains no evidence of significance for us to review, we cannot find its conclusion that significance existed here persuasive.”). Second, even if the Letter possessed the power to persuade under *Skidmore*, Defendants are mistaken that the Army Corps of Engineers “has the final word” here. In a citizen suit under the CWA, the ultimate decision lies with the Court. See, e.g., *Ass’n to Protect Hammersley, Eld, & Totten Inlets v. Taylor Res., Inc.*, 299 F.3d 1007, 1012 (9th Cir. 2002) (“Although the EPA or an authorized state agency¹ may be charged with enforcement of the Clean Water Act, neither the 1 The U.S. Army Corps of Engineers is an “agency” on par with the EPA. See, e.g., *Sackett v. U.S. E.P.A.*, No. 08- CV-185-N-EJL, 2008 WL 3286801, at *1 (D. Idaho Aug. 7, 2008) (overruled on other grounds) (“Congress delegated the authority for enforcement of CWA jointly to both the EPA and the Corps of Engineers, and gave both agencies a range of enforcement tools.”). text of the Act nor its legislative history expressly grants to the EPA or such a state agency the exclusive authority to decide whether the release of a substance into the waters of the United States violates the Clean Water Act.”); *San Francisco Baykeeper v. Cargill Salt Div.*, 481 F.3d 700, 706 (9th Cir. 2007) (“[W]e have held that a court may, in entertaining a citizen suit, decide whether a discharge of particular matter into navigable waters violates the CWA even though the regulating agency determined that the discharge was not subject to the requirement of a permit.”). SO ORDERED.

/s/ Margaret R. Guzman The Hon. Margaret R. Guzman Dated: November 30, 2025 United States District Judge