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Waters Lawsuits Will Roll on Even as High Court Weighs in

By Bobby Magill and Samantha Hawkins

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- Supreme Court ruling not expected to end the lawsuits

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By Bobby Magill and Samantha Hawkins 2023-03-01T05:30:13000-05:00

1. At least five federal lawsuits filed challenge WOTUS rule
2. Supreme Court ruling not expected to end the lawsuits

At least five federal lawsuits challenging the EPA's new waters of the US rule are expected to continue even if the US Supreme Court undermines the basis for the rule in an opinion coming this term.

The ruling could fuel states' legal challenges to the Environmental Protection Agency's waters of the US, or WOTUS, definition, attorneys say.

Twenty-six states and a slate of agricultural and industry groups have joined the lawsuits seeking to vacate the EPA's latest WOTUS rule defining the scope of waters protected under the Clean Water Act. The lawsuits claim the EPA is exceeding its authority and that the rule is overly vague and premature because it was finalized in January ahead of the high court's future ruling in *Sackett v. EPA*, expected by June.

Sackett grapples with a legal test that the EPA is using to determine if waters and wetlands are protected under the law. The 2023 WOTUS rule takes effect March 20 and applies to some local lakes, streams, and wetlands that flow into navigable waters such as the Mississippi River.

'Overreach' Challenged

Farmers believe that the new WOTUS rule will allow the EPA and the Army Corps of Engineers to claim that any sometimes-wet water feature on farms would be protected—an expansion of long-standing federal wetlands jurisdiction, said Travis Cushman, deputy general counsel for litigation and public policy for the American Farm Bureau Federation.

The American Petroleum Institute, National Association of Home Builders, National Association of Realtors and 13 other trade groups joined the Farm Bureau in its lawsuit challenging the rule, American Farm Bureau Association v. EPA, filed Jan. 18 in the US District Court for the Southern District of Texas.





Farmers' concerns are echoed by 24 Republican-controlled states led by West Virginia, which sued Feb. 16

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