

## Lawsuit claims EPA, Corps disregarded court's WOTUS ruling

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Mar 18, 2024



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A lawsuit has been filed challenging the federal government's interpretation of the U.S. Supreme Court's latest ruling on waters of the United States, or WOTUS.

The [lawsuit](#), filed in U.S. District Court for the Eastern District of North Carolina, challenges the "adjacent wetlands" provisions of an amended rule issued by the Environmental Protection Agency and the U.S. Army Corps of Engineers.

The lawsuit claims the agencies are unlawfully asserting jurisdiction over private land in disregard of the Supreme Court's May 2023 ruling limiting federal jurisdiction under the Clean Water Act.

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In that case, [Sackett v. EPA](#), the Supreme Court unanimously rejected the agencies' historically broad approach to wetlands regulation. In addition, a majority of the court set forth a clear and substantially narrower standard for wetlands jurisdiction, according to the lawsuit filed by the [Pacific Legal Foundation](#) on behalf of Robert White.

### Regulated wetlands

The court ruled the agencies can only regulate wetlands with a continuous surface connection to regulated navigable waters that are indistinguishable from those waters, such that it is difficult to determine where the water ends and the wetland begins.

In September 2023, the agencies amended the final rule revising the definition of Waters of the United States purporting to redefine the scope of "navigable waters" to comply with the

Sackett ruling.

“This amended rule does not comport with Sackett. Instead the amended rule continues to assert staggeringly broad Clean Water Act authority over private land in every corner of the nation — in particular by continuing to assert authority over many types of isolated wetlands and other dry land,” the lawsuit claims.

Among other material defects, the amended rule unlawfully omits Sackett’s “indistinguishable” requirement for wetlands to be subjected to federal regulatory authority. Instead it relies on various asserted “connections” through intervening non-jurisdictional features, connections that lack surface water and connections that are not continuous, the lawsuit states.

White, who runs a seafood business, had over time purchased several additional parcels of land in Pasquotank, Camden and Chowan counties in North Carolina. Much of the land is relatively low-lying, and portions border the Pasquotank River, Big Flat Creek and other bodies of water.

The properties require regular maintenance, and White had obtained dozens of North Carolina Coastal Area Management Act permits authorizing land clearing, construction and erosion-control activities.

On Jan. 6, 2023, the federal government sued White in district court, alleging, among other things, that certain tracts of his farmland in Pasquotank County include wetlands regulated as “navigable waters” and are subject to EPA and Army Corps jurisdiction. The lawsuit alleged White violated the Clean Water Act by discharging pollutants into “navigable waters.”

### **Claim unmodified**

Despite White’s pleas for relief following the Sackett decision, the government has claimed authority over White’s property through the enforcement action — even though any wetlands alleged to exist on his property clearly are distinguishable from any waters subject to EPA and Corps authority under the Clean Water Act, the lawsuit states.

The lawsuit is asking the court to declare the “adjacent wetlands” provisions of the amended rule unlawful, to set aside the amended rule and permanently enjoin the implementation and enforcement of the amended rule.

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