WOTUS: ‘We’re fighting over the ephemerals’

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WITH THE U.S. SUPREME COURT SKEWING MORE CONSERVATIVE AFTER THE CONFIRMATION OF TWO JUSTICES NOMINATED DURING THE TRUMP ADMINISTRATION, NEW CASE LAW ON WOTUS IS POSSIBLE

Several presidential administrations have interpreted the ruling differently in their regulations. Most recently, the Biden administration proposed a change to the Trump administration’s rules, which had limited federal jurisdiction over wetlands.

Congress could amend the Clean Water Act to clarify the law’s intentions, but that’s not likely to happen, said Courtney Briggs, AFBF’s senior director of congressional relations.

“The votes aren’t there,” she said.

However, with the U.S. Supreme Court skewing more conservative after the confirmation of two justices nominated during the Trump administration, new case law on WOTUS is possible.

“That would be our best bet right now,” Briggs said.

Regulations under the Clean Water Act are complicated and nuanced, but Briggs explained that the Biden administration made a distinct change to the rules.

Under the Trump administration’s interpretation, “ephemeral,” or temporary, waters did not come under federal authority, while the Biden administration’s interpretation would expand the government’s reach, she said.

“They use incredibly vague terms,” Briggs said.

Potentially, the regulation of ephemeral waters would apply to ditches and other drainage areas, as well as low spots that collect water on fields, she said.

“That’s what we’re really fighting over,” she said. “We’re fighting over the ephemerals.”

It’s possible that the Supreme Court could review a lawsuit that brings more certainty to WOTUS authority, Briggs said.

One candidate is a longstanding legal dispute between the federal government and landowners near a lake in Idaho, she said. “That could really provide some clarity.”

The Biden administration has underestimated the regulatory change’s effect on agriculture, claiming that it won’t negatively affect businesses, Briggs said.

“I just about fell out of my chair when I read that,” she said.

Part of the battle over WOTUS will be convincing lawmakers and others that farmers already go to great lengths to preserve water quality, she said.

Farmers care about the water used by their families and communities, contrary to the stigma created by critics that the agriculture industry wants to weaken water protections, Briggs said.

“There’s a reputation that farmers don’t care about preserving the environment,” which also needs to change, she said.

Washington wetland projects accused of infringing on irrigation water rights

By MATEUSZ PERKOWSKI
Capital Press

Mateusz Perkowski/Capital Press File

A lawsuit against USDA alleges that wetland projects have infringed on a farm’s water rights.

A Washington hay farm is seeking $240,000 in damages from USDA for financing upstream wetland projects that have allegedly infringed on its water rights.

Round Lake Farms of Soap Lake, Wash., has filed a complaint that claims USDA’s Natural Resources Conservation Service helped fund several wetland projects without obtaining required state permits.

Between 2005 and 2013, the agency provided financial and technical assistance for eight private landowner projects that diverted water from Crab Creek for wetland restoration on 2,233 acres, the lawsuit said.

Historically, spring floodwaters from the creek flow into a channel that connects to Round Lake, which the farm relies on to irrigate about 840 acres of hay, the complaint said. During other parts of the year, the creek level is too low to fill the channel.

In 2020, however, the creek’s water level didn’t rise enough in spring to send water into Round Lake, depriving the farm of irrigation water and forcing it to acquire a new water source for its hay crop, according to the lawsuit.

“A single year without adequate water for irrigation risks loss of the annual crop and hay stand mortality,” the complaint said. “Hay stand mortality requires planting and re-establishing the stands the following year at significant additional cost.”

While the farm suffered a “substantial” reduction in hay yield due to the irrigation delay, water flowed into the wetland projects even though they hadn’t obtained reservoir or dam safety permits from the Washington State Department of Ecology, the complaint said.

Streamflow measurements show that an 825-acre wetland project reduced the creek’s flow by up to 83%, and the other seven projects totaling 1,408 acres likely had a similar effect, the complaint said.

The USDA’s own documents demonstrate that its wetland reserve program is intended to retain surface water and recharge groundwater, the complaint said.

Through a public records request, the farm also obtained a technical analysis indicating that USDA intended or at least knew the specific Crab Creek wetland projects “would be a net user of water and result in reduced creek flow,” the complaint said.

The USDA did not respond to requests for comment on the lawsuit as of press time.

Because the USDA didn’t follow federal policy by complying with state permitting laws, the agency is liable for damages due to negligence, trespass and nuisance under the Federal Tort Claims Act, according to the lawsuit.

The farm is seeking compensation of about $163,000 spent on replacement water from the East Columbia Basin Irrigation District and about $77,000 spent on private consultants who investigated the problem and represented the plaintiff during emergency water hearings.

Round Lake Farms is also asking a federal judge to order USDA to remove the wetland projects or to mitigate their effects on its senior water rights.

Inflation: Fuel, electricity, labor expenses have all increased

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‘I’M NOT IN THIS FOR THE EXPERIENCE. I’M HERE TO MAKE INCOME. NOBODY CAN WORK FOR FREE.’
George Meyer

from $13.70 in 2020.

Axiom, another herbicide, costs $29.50 per pound in 2022 compared to $26.60 pre-pandemic.

These price quotes, Raschein said, are only guaranteed for a month.

Diesel fuel, which farmers rely on, is also rising in price. Between January 2021 and January 2022, according to the American Automobile Association, the average price of diesel in Oregon went from $2.73 per gallon to $3.88 per gallon, a 42.12% increase. Off-road diesel, used in tractors and other equipment, is slightly less per gallon but also went up about a dollar in price year-over-year.

“It’s tough,” said Raschein.

Energy costs also increased. According to the Energy Information Administration, electricity prices to consumers across all sectors went up from 10.63 to 11.20 cents per kilowatt-hour 2020 to 2021. In the industrial sector specifically, the price leapt from 6.71 to 7.26 cents per kilowatt-hour, an 8.2% increase.

“We had tremendous electrical bills,” said Meyer.

Labor expenses have gone up, too.

Oregon’s minimum wage moved from $12.75 in 2021 to $13.50 in 2022.

Oregon growers who hire guestworkers through the H-2A temporary visa program are now required to pay $17.41 per hour, a 6.5% increase from 2021.

Operations like GM Meyer Farms, which hire workers through labor contractors, must pay whatever rates the contractor requires. In May 2021, Raschein said, the farm hired workers at $18 per hour. By December, the contractor had raised wages to $19.25 per hour.

Equipment, too, is expensive.

Meyer said this year he spent about $4,000 per tire on a set of large tires that cost around $1,800 each five years ago.

Raschein hunted for a used tractor last year, hoping to spend around $35,000, but the models she wanted were selling for $42,000 to $50,000, so she decided not to buy.

All these rising costs mean tighter profit margins.

But why? Can’t Meyer and Raschein raise their prices?

“We can’t do that. We’re price-takers, not price-makers,” said Meyer.

Some farmers, especially those selling direct-to-consumer or producing value-added products like wine, have more price control, but according to USDA, most farmers selling wholesale have little control over contracts, markets and pricing.

According to data from USDA’s “food dollar series,” off-farm costs including marketing, processing, wholesaling, distribution and retailing account for more than 80 cents of every food dollar spent in the U.S.

A decade ago, American farmers received 17.6 cents of every $1 consumers spent on food. By 2019, that had fallen to 14.6 cents of each dollar spent. In 2021, the farmer’s share was just 14.3 cents.

With rising expenses on and off farm, many economists predict farmers’ profit margins and share of the food dollar will continue to shrink, pushing some out of business.

Meyer and Raschein continue to farm, but Meyer said he’s concerned about agriculture’s future.

“I’m not in this for the experience,” he said. “I’m here to make income. Nobody can work for free.”

Farmland: Values were up the most in Great Plains, Corn Belt states

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“Geographic trends do play out in local markets,” he said.

It’s helpful to remember there are national trends and local trends. They usually follow each other but can deviate, he said.

For example, the national trend shows a lot of interest in farmland and investment. But in some areas, there are a lot of farms on the market, but people aren’t interested, he said.

In general, low interest rates, strong outlooks for profitability and a lot of people wanting to buy farmland put upward pressure on farmland values in 2021, he said.

But “the farmland value hasn’t increased for all producers, all commodities and all regions,” he said.

Farmland values were up the most in the Great Plains and Corn Belt states, increasing by 13.9% in Kansas, 13.8% in Nebraska, 11.9% in South Dakota and 10.7% in Wisconsin.

Farmland values were up in the West and Southwest, but not as significantly — ranging from 0.7% in New Mexico to 9.3% in Idaho. Farmland values increased 7.4% in California, 6.1% in Oregon and 3.4% in Washington.

In 2022, he will be watching farm profitability. If strong profits on corn and soybeans slip, farmland values in those regions could decrease a little, he said.

He is also watching 10-year Treasury bonds. If the Federal Reserve raises interest rates significantly, farmland value could weaken, he said.

Farmland values have pretty much increased over the last 10 years, as much as 145% in North Dakota, 123% in South Dakota and 114% in Kansas.

But they haven’t increased as aggressively outside the Northern Plains and Corn Belt. They are up only 2.7% in Alabama and even down 5.1% in New Mexico and 0.06% in Alabama.

Farmland has been a good investment the past 10 years, but there’s no guarantee it will be forever, he said.