

EPA: Clean water rule in effect despite court ruling

August 28 2015, byMatthew Daly



This June 11, 2015, photo shows a dry water ditch next to a corn field in Cordova, Md. A federal judge in North Dakota on Thursday, Aug. 27, 2015, blocked a new Obama administration, which would have given the U.S. Environmental Protection Agency and Army Corps of Engineers authority to protect some streams, tributaries and wetlands under the Clean Water Act. The rule was scheduled to take effect Friday. (AP Photo/Alex Brandon)

The Environmental Protection Agency says it is going forward with a

new federal rule to protect small streams, tributaries and wetlands, despite a court ruling that blocked the measure in 13 central and Western states.

The EPA says the [rule](#), which took effect Friday in more than three dozen states, will safeguard drinking water for millions of Americans.

Opponents pledged to continue to fight the rule, emboldened by a federal court decision Thursday that blocked it from Alaska to Arkansas.

"We see this (rule) as very hurtful to farmers and ranchers and we're going to do everything to stop it politically," said Don Parrish of the American Farm Bureau Federation, one of several farm and business groups that have filed suit against the regulation.

Lawsuits to block the regulation are pending across the country, and the Republican-controlled Congress has moved to thwart it. The House has ignored a White House veto threat and passed a bill to block it, and a Senate committee has passed a measure that would force the EPA to withdraw and rewrite it.

Four senators who oppose the regulation said that while well-intentioned, the water rule imposes excessive burdens on small farmers and ranchers.

The senators—two Democrats and two Republicans—said in an opinion column Friday that the EPA has "created considerable and potentially costly confusion for many American businesses and communities who are just trying to do their jobs well."

The column, written by Sens. Joe Donnelly, D-Ind., John Barrasso, R-Wyo., Heidi Heitkamp, D-N.D. and Jim Inhofe, R-Okla., shows opposition to the rule comes from both parties.



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The EPA counters that the rule merely clarifies which smaller waterways fall under federal protection after two Supreme Court rulings left the

reach of the Clean Water Act uncertain. Those decisions in 2001 and 2006 left 60 percent of the nation's streams and millions of acres of wetlands without clear federal protection, according to EPA, causing confusion for landowners and government officials.

The new rule would force a permitting process only if a business or landowner took steps that would pollute or destroy the affected waters—those with a "direct and significant" connection to larger bodies of water downstream that are already protected. That could include tributaries that show evidence of flowing water, for example.

In practice, the rule means that developers can no longer pave over wetlands and oil companies can no longer dump pollution into streams unhindered, restoring Clean Water Act protections to more than half the nation's streams, supporters say.

But opponents call the rule an example of federal overreach and fear a steady uptick in federal regulation of nearly every stream and ditch on rural lands.

Thursday's ruling by U.S. District Judge Ralph Erickson in Fargo, N.D., is "a significant and rightful win for states' rights," said Rep. Jason Chaffetz, R-Utah, chairman of the House Oversight and Government Reform Committee. Chaffetz called the EPA rule "arbitrary and subjective" and said it "should never see the light of day."

More than half the states have sued the EPA in hopes of delaying or blocking the rule. State officials from Georgia to New Mexico to Wisconsin have suggested the regulations could be harmful to farmers and landowners who might have to pay for extra permits or redesign their property to manage small bodies of water on their private land.

The federal ruling Thursday was in North Dakota, where officials from

that state and 12 others argued the new guidelines are overly broad and infringe on their sovereignty. The EPA said after the ruling that it would not implement the new rules in those 13 states: Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota and Wyoming.

Several other lawsuits from other states and farm and business groups remain.

A federal judicial panel is set to hear arguments on EPA's request to consolidate the lawsuits at an Oct. 1 hearing in New York.

Since the rule was originally proposed last year, the EPA has been working to clear up what it says are misconceptions, such as critics' assertions that average backyard puddles would be regulated. Farming practices currently exempted from the Clean Water Act—plowing, seeding and the movement of livestock, among other things—will continue to be exempted, the EPA said.

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