

Supreme Court sets October arguments in WOTUS fight
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The Supreme Court this week set oral arguments for October in the case over which court is the correct legal venue to hear challenges to the Obama administration's Clean Water Rule. Army Corps of Engineers
Lawyers will square off in October in front of the Supreme Court in a hot-button case over which court is the correct legal venue to hear challenges to the Obama administration's Clean Water Rule.

The high court this week set oral arguments in the case for the morning of Oct. 11.

At issue in the case is whether the 6th U.S. Circuit Court of Appeals erred last year when it found that it had jurisdiction to hear litigation over the controversial rule.

The Obama administration rule — which is also known as Waters of the U.S., or WOTUS — aimed to clarify which wetlands and streams receive automatic protection under the Clean Water Act.

A wide array of industry and state opponents characterized the rule as regulatory overreach and challenged it in federal courts. Environmentalists, on the other hand, thought it was too weak and filed their own litigation.

In all, parties filed 18 lawsuits in district courts and 22 petitions for review in federal appeals courts seeking to strike down the rule. The National Association of Manufacturers and other rule opponents sought to keep the litigation in local district courts, while the Obama administration argued that challenges should be heard by appellate courts.

In February 2016, the 6th Circuit — which had previously stayed the rule nationwide while litigation was pending — issued a split 2-1 decision asserting jurisdiction.

NAM petitioned the Supreme Court to resolve the dispute over jurisdiction, and in January, the high court agreed to hear the case. The court later rejected the Trump administration's request to pause proceedings while U.S. EPA and the Army Corps of Engineers reconsider the joint rule.

States, trade groups, electric utilities and environmentalists have all backed NAM's argument to the high court that challenges belong in district courts.

The core of their legal arguments is that WOTUS is a definitional rule that doesn't fit within the categories that the Clean Water Act says fall under the purview of appellate courts (Greenwire, May 2).

The choice of court affects the resources needed to litigate challenges, sets the statute of limitations for filing lawsuits, and helps determine whether actions can be challenged in subsequent civil or criminal proceedings.

The Trump administration has yet to file its initial brief in the case. The government's response is currently due July 28.

As the court battle over jurisdiction plays out in the Supreme Court, the Trump administration is moving forward on repealing WOTUS. In June, EPA and the Army Corps issued a repeal proposal. According to a White House deregulatory agenda released yesterday, the administration plans to propose a replacement by December.

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