

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA**

STATE OF WEST VIRGINIA, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
and)	
)	
AMERICAN FARM BUREAU)	
FEDERATION, <i>et al.</i> ,)	Civil No. 3:23-cv-0032
)	
Intervenor-Plaintiffs,)	
)	
v.)	
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY, <i>et al.</i> ,)	
)	
Defendants.)	
)	

INTERVENOR-PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Intervenor-Plaintiffs the American Farm Bureau Federation; American Petroleum Institute; American Road and Transportation Builders Association; Associated General Contractors of America; Cass County Farm Bureau; Leading Builders of America; National Apartment Association; the National Association of Home Builders of the United States; National Association of REALTORS®; National Cattlemen’s Beef Association; National Corn Growers Association; National Mining Association; National Multifamily Housing Council; National Pork Producers Council; National Stone, Sand and Gravel Association; North Dakota Farm Bureau; Public Lands Council; and U.S. Poultry and Egg Association (“intervenor-plaintiffs”) respectfully move for the entry of summary judgment, vacatur of the *Revised Definition of “Waters of the United States”*, 88 Fed. Reg. 3004 (Jan. 18,

2023), and an order requiring EPA and the Army Corps of Engineers to apply the Supreme Court's decision in *Sackett v. EPA*, 143 S. Ct. 1322 (2023) as the operative framework for approved jurisdictional determinations and permit applications pending prompt promulgation of a new rule.

Intervenor-plaintiffs submit their memorandum in support concurrently with this motion.

Dated: June 30, 2023

Respectfully submitted,

/s/ Katie J. Schmidt

Timothy S. Bishop (*pro hac vice*)
Brett E. Legner (*pro hac vice*)
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
Tel: (312) 782-0600
Email: tbishop@mayerbrown.com
Email: blegner@mayerbrown.com

James B. Danford, Jr. (*pro hac vice*)
MAYER BROWN LLP
700 Louisiana Street, Suite 3400
Houston, TX 77002
Tel: 713-238-2700
Email: jdanford@mayerbrown.com

Katie J. Schmidt (ND ID #06949)
Andrew D. Cook (ND ID #06278)
OHNSTAD TWICHELL, P.C.
444 Sheyenne Street, Suite 102
P.O. Box 458
West Fargo, ND 58078-0458
Tel: (701) 282-3249
Fax: (701) 282-0825
Email: kschmidt@ohnstadlaw.com
Email: acook@ohnstadlaw.com

Counsel for Intervenor-Plaintiffs