

## OFF THE CUFF

BY: Ron Kern

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Seems like the issues of wetlands has been like a volleyball the past two decades being hit over the net back and forth.

When Congress initiated the Clean Water Act back in 1985 wetlands were defined as navigable waters which were subject to regulation.

In the past forty years since the Act the USEPA has continued to redefine navigable waters to include any water that has a nexus to another water. In other words any ditch that can carry water at any time. These new definitions have caused nothing but nightmares for landowners ever since USEPA got involved.

And it so happens that each new presidential administration keeps changing the rules. Well, guess what, you jerk people around long enough and somebody with deep pockets is gonna take you to court. So here we are.

In a lawsuit filed in April 2024, CTM Holdings challenged the "Swampbuster" provision of the 1985 Food Security Act, arguing it unconstitutionally restricts farmland use and infringes on property rights, seeking to overturn the federal wetland conservation program.

CTM Holdings, represented by the Pacific Legal Foundation and Liberty Justice Center, filed a lawsuit in the U.S. District Court for the Northern District of Iowa against the U.S. Department of Agriculture (USDA) and its related entities.

The lawsuit centers on the "Swampbuster" provision, which links a farmer's eligibility for USDA programs to their preservation of wetlands.

CTM argues that Swampbuster is unconstitutional because it:

- Exceeds Congress's power to regulate interstate commerce.
- Creates an unconstitutional condition for receiving federal benefits.
- Violates the Fifth Amendment's Takings Clause by restricting property use without compensation.

CTM owns a 71-acre farm in Delaware County, Iowa, where the Natural Resources Conservation Service (NRCS) identified nine acres as federally protected wetlands, triggering the Swampbuster provisions.

The USDA argues that Swampbuster is a valid condition on government spending and that CTM did not follow the correct protocol for wetland review.

Iowa Farmers Union, Dakota Rural Action, Food & Water Watch, and Iowa Environmental Council moved to intervene in the case, arguing that eliminating Swampbuster would have negative environmental impacts.

The lawsuit could have broad implications for wetlands protection and federal farm programs, including the program Sodbuster, which encourages farmers to take highly erodible land out of agricultural production and set aside.

The case was filed in April 2024 and is expected to go to trial in mid-2025.

For nearly a century, the U.S. government has encouraged farmers to adopt practices that conserve wetlands, protect clean water, and keep farms sustainable. Swampbuster, a federal program that recognize farmers who conserve wetlands with eligibility for millions of dollars in U.S. Department of Agriculture benefits, is a policy that upholds the longstanding government commitment to supporting good farming stewardship practices.

CTM Holdings is owned and managed by Jim Conlan and is an asset management company aimed at helping corporations minimize financial consequences stemming from tort liability. He is a landlord, not a farmer. He is the plaintiff in the case. Despite the voluntary nature of Swampbuster and the numerous exemptions for productive uses of wetlands, Conlan and his lawyers claim the program unconstitutionally restricts what farmers can do with their property, amounting to a federal taking without compensation. Conlan claims the program is comparable to a mandatory, uncompensated conservation easement on his property in Iowa. Both farmers and USDA are defendants in the case and argue that the Swampbuster requirements are not burdensome and actually necessary to farm and conservation sustainability.

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We should favor innovation and freedom over regulation. George Allen