

Sackett v. Environmental Protection Agency

By: Kristen Miller, Senior Legislative Attorney
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This report summarizes the U.S. Supreme Court’s majority opinion in *Sackett v. Environmental Protection Agency* (EPA) ([598 U.S. \(2023\)](#)) on whether EPA’s authority to enforce the Clean Water Act extends to wetlands.

Summary

The Clean Water Act (CWA; [33 U.S.C. § 1251 et seq.](#)) prohibits discharging pollutants, including materials like rock and “cellar dirt,” into “navigable waters” without a permit. It defines “navigable waters” as “waters of the United States, including territorial seas,” but it does not clearly define “waters of the United States” (WOTUS).

In *Sackett*, the Supreme Court presented a two-part test for determining whether wetlands are WOTUS under the CWA. The case stemmed from an alleged CWA violation for backfilling a property with rock and dirt on wetlands. EPA interpreted WOTUS to include wetlands adjacent to waters that could affect interstate or foreign commerce, with adjacency including neighboring areas.

The Court rejected EPA’s position, finding that the agency’s interpretation of WOTUS was overly broad, giving it jurisdiction over nearly all waters and wetlands for purposes of the CWA. Instead, the Court agreed with the four justices in the plurality decision of [Rapanos v. United States](#), 547 U.S. 715 (2006). The Court held that for wetlands to be included under CWA regulation, they must qualify under *Rapanos*’ two-part test: the (1) adjacent waterbody (i.e., wetland) is a relatively permanent body of water connected to traditional interstate navigable waters and (2) wetland has a continuous surface connection with that water making it difficult to distinguish between the two.

There are also three concurring opinions, authored by justices Thomas, Kagan, and Kavanaugh, respectively.

Facts and Procedural History

This case stems from the petitioners' (the Sacketts') efforts to build a home on property in Idaho. As part of the building process, they used dirt and rocks to backfill the property. EPA deemed this action a CWA violation because the property contained wetlands that the agency viewed as WOTUS and thus protected.

EPA interpreted WOTUS to include wetlands adjacent to waters that could affect interstate or foreign commerce, with "adjacent" meaning "neighboring" in addition to "bordering" or "contiguous." Specifically applicable to this case, it claimed jurisdiction over wetlands adjacent to non-navigable tributaries when there was a "significant nexus to a traditional navigable water," and there was a "significant nexus" when wetlands, on their own or with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of the waters.

EPA asserted that the Sacketts' property included WOTUS wetlands because the wetlands are adjacent to (neighboring) an unnamed tributary across the road, which feeds into a creek, which then feeds into an intrastate lake that EPA designated as traditionally navigable. The significant nexus standard was fulfilled, according to EPA, because, together with a large nearby wetland complex, it significantly affected the lake's ecology.

Concerning EPA's WOTUS determination, the District Court granted summary judgment for EPA, which the Ninth Circuit Court of Appeals affirmed. The Ninth Circuit held, in line with circuit precedent following Justice Kennedy's concurring opinion in *Rapanos*, that the (1) CWA applies to adjacent wetlands with a "significant nexus" to traditional navigable waters and (2) property in *Sackett* met the standard.

The Supreme Court then granted certiorari (i.e., agreed to hear the case) to determine the proper test for determining if wetlands are WOTUS. (Under the most recently adopted EPA rule, which was not applicable when the Sacketts received their notice of violation, WOTUS includes traditional navigable waters, interstate waters, and territorial seas; these waters' tributaries and adjacent wetlands; and intrastate lakes, ponds, streams, or wetlands with either a continuous surface connection to these waters or a significant nexus to interstate or traditional navigable waters.)

Majority Opinion

Justice Alito authored the Court’s majority opinion, which reversed the Ninth Circuit and remanded the case for further action.

The Court agreed with the plurality in *Rapanos* and rejected EPA’s arguments that (1) supported the “significant nexus” approach and (2) asserted that covered adjacent wetlands include those neighboring covered water. Specifically, it held that the CWA applies only to wetlands that are “as a practical matter indistinguishable from waters of the United States” (*Sackett*, No. 21-454, at *22 (citing *Rapanos*)). The Court reached this decision by analyzing the CWA’s text (for the plain meaning of “navigable waters” and the contextual application of wetlands as waters) and the statutory history of the CWA and other laws.

Under the decision, the agency seeking CWA jurisdiction over adjacent wetlands must show that the (1) adjacent waters are WOTUS (it is a relatively permanent body of water connected to traditional interstate navigable waters) and (2) wetlands has a continuous surface connection with that water, making it difficult to determine where the water ends and the wetland begins (*Sackett*, No. 21-454, at *22 (citing *Rapanos*)).

Further Information

For additional information about WOTUS and the *Sackett* decision, including implications for federal and state regulation, see the following Congressional Research Service reports:

- [Waters of the United States \(WOTUS\): Frequently Asked Questions About the Scope of the Clean Water Act](#), R47408 (Updated June 22, 2023)
- [Supreme Court Narrows Federal Jurisdiction Under Clean Water Act](#), LSB10981 (June 21, 2023)

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