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INDUSTRY NEWS - PM

Supreme Court strikes down Biden WOTUS regulation



By [Peter Thomas Ricci](#) on 5/25/2023

In a 5-4 ruling, the U.S. Supreme Court has limited the scope of the Clean Water Act, and effectively ended a multi-month standoff between the White House and various levels of government over WOTUS regulations.

The case, *Sackett v. EPA*, concerned the Idaho property of Michael and Chantell Sackett, who in 2007 backfilled their lot with dirt to prepare for new home construction. Because the Sackett's property contained a wetland that fed into an intrastate lake – and was thus, according to the EPA, part of "waters of the United States," or WOTUS, regulations – the

agency ordered the couple to remove the backfill and restore the site, or face penalties.

The Sacketts sued the EPA, and although the Ninth Circuit sided with the agency (and ruled that the Clean Water Act covers wetlands with an "ecologically significant nexus to traditional navigable waters"), the Supreme Court agreed to hear the case in early 2022, and arguments were given on Oct. 3, 2022.

Writing for the majority, Justice Alito reversed the Ninth Circuit's ruling, and effectively limited the EPA's authority over wetlands. Alito wrote that going forward, the Clean Water Act will cover to "only those 'wetlands with a continuous surface connection to bodies that are waters of the United States in their own right,' so that they are 'indistinguishable' from those waters. ... The wetlands on the Sacketts' property are distinguishable from any possibly covered waters."

Dissenting opinions

Dissenting were Justices Jackson, Sotomayor, Kagan, and Kavanaugh, with the latter two justices filing separate opinions. In her opinion, Justice Kagan reiterated an earlier critique of the current Supreme Court, and accused it of substituting "its own ideas about policymaking for Congress's. The Court will not allow the Clean [Water] Act to work as Congress instructed. The Court, rather than Congress, will decide how much regulation is too much."

Justice Kavanaugh, meanwhile, wrote that while he agreed with reversing the Ninth Circuit's ruling, he disagreed with the court's new measure for which wetlands are covered under the Clean Water Act. "In my view," Kavanaugh wrote, "the Court's 'continuous surface connection' test departs from the statutory text, from 45 years of consistent agency practice, and from this Court's precedents. The Court's test narrows the Clean Water Act's coverage of 'adjacent' wetlands to mean only 'adjoining' wetlands. But 'adjacent' and 'adjoining' have distinct meanings."



An end to Biden WOTUS regulations

Although Sacketts v. EPA was not specifically argued with recent Biden WOTUS regulations under consideration, the court's ruling effectively ends the controversial policy.

Erected in January of this year, the Biden WOTUS rules expanded the waters and wetlands that the Clean Water Act regulated, and it met stiff opposition from both industry and state governments. In April, a North Dakota federal judge [granted a preliminary injunction](#) to halt the rule from taking effect in 24 states, and later that same month, an appeals court [granted a Kentucky administrative stay](#), effectively freezing the rule until May 10.

Congress, meanwhile, passed a resolution to block the regulation, but after President Biden vetoed the law, the legislature was [unable to gather the necessary votes to override the veto](#).

In reaction to the Supreme Court's new ruling, the National Cattlemen's Beef Association released a statement that cattle producers "rejoice" in the result. The NCBA had submitted an amicus brief in the case.

"Cattle producers across the country can breathe a sigh of relief today," said Todd Wilkinson, NCBA president. "Cattle producers have had to retain costly legal services to determine if water features on their property are federally jurisdictional. Today's Supreme Court opinion refocuses the Clean Water Act on protecting our water resource through regulatory clarity. We look forward to working with the EPA and U.S. Army Corps of Engineers as they implement the Court's new Continuous Surface Connection standard."

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 Comments

Darn spellcheck

Have to proofread as spellcheck misses correctly spelled words... :) "Alito revered* the Ninth Circuit's ruling" --> "reversed"; "Congress, meanwhile, passed a resolution to block the regulation, but after President Biden vetoed the law, the legislator* was" --> "legislature"

THURSDAY, MAY 25, 2023 | WORDS MATTER

Thanks for the close reading! We also caught those after the fact, but clearly not before you saw them.

THURSDAY, MAY 25, 2023 | PETER RICCI

Finally

I think we can all rejoice in this curtailment of the administrative state. Will the agency abide by this decision, or just continue its ravenous quest for ever-increasing power?

THURSDAY, MAY 25, 2023 | JUST A PEE-ON

10/10

Beware of what you wish for.....like Kavanaugh wrote; "the Court's 'continuous surface connection' test departs from the statutory text, from 45 years of consistent agency practice, and from this Court's precedents. The Court's test narrows the Clean Water Act's coverage of "adjacent" wetlands to mean only "adjoining" wetlands. But "adjacent" and "adjoining" have distinct meanings.".....So now the difference is that instead of going by the laws passed by people that were voted into office, you want to be the subject of the whims of people who have a lifetime appointment (and no way of being removed or even made to live by its own ethical standards as is evident by the last couple of scandals)

THURSDAY, MAY 25, 2023 | ENOUGH

10/10

seems like we could get a law passed in this country stating that regulatory agencies with unelected officials (ie. EPA, FDA, ATF, FBI, etc.) do not have the power to modify, interpret, implement, or enforce rules and/or regulations that are not specifically put in place by our ELECTED officials. The bureaucratic overreach has gotten way out of hand.

THURSDAY, MAY 25, 2023 | YEAP ENOUGH

10/10