https://www.capitalpress.com/ag_sectors/water/wetland-disputes-remain-despite-high-courts-sackett-ruling/article_73430a76-e7aa-11ee-903c-576e0a66c651.html

Wetland disputes remain despite high court's Sackett ruling

By CAROL RYAN DUMAS Capital Press
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Mike and Chantell Sackett of Priest Lake, Idaho, who prevailed against the Environmental Protection Agency and U.S. Army Corps of Engineers in the Waters of the U.S. case.

Associated Press File

Other cases

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The other cases in which the Pacific Legal Foundation is representing landowners are White v. U.S. Environmental Protection Agency, U.S. v. Valentine and Ward v. U.S. Army Corps of Engineers.

After decades of confusion over which wetlands are subject to regulation under the Clean Water Act, the U.S. Supreme Court laid out a clear definition in Sackett v. EPA in May 2023.

The court ruled the agencies had no jurisdiction over Michael and Chantell Sackett's land, unanimously rejecting the agencies' broad approach to wetlands regulation, according to the Pacific Legal Foundation.

Charles Yates

But that hasn't stopped the Environmental Protection Agency and U.S. Army Corps of Engineers from claiming jurisdiction over private lands that clearly fall outside that definition, argues Charles Yates, an attorney with PLF.

PLF represented the Sacketts in their challenge of the agencies' claim of authority over their land in Priest Lake, Idaho. The agencies' action against the Sacketts had prevented them from building a home on the property since 2007.

PLF is now representing landowners in the same position as the Sacketts in two federal cases and one agency appeal, he said.

Limited authority

The Supreme Court unequivocally restricted the agencies' authority and restored lawfulness to the way the agencies have been operating for 50 years, he said.

In the majority opinion by Justice Samuel Alito, the court held the Clean Water Act extends 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 concern post-Sackett is whether the agencies will fall in line with the court's ruling, he said.

This isn't the first time the agencies have lost at the Supreme Court on this issue, and each time they've gone back to broad assertions and expanded their authority, he said.

Agency disregard

The Supreme Court held the agencies cannot regulate wetlands outside the scope of the Clean Water Act, limiting their authority to streams, oceans, rivers and lakes. But the agencies continue to regulate beyond the act, he said.

After the Sackett decision, the agencies had a rulemaking without notice and issued a final rule in which they continue to assert authority, he said.

They disregarded the decision and are not going to do what the law requires of them. They simply refuse to accept they have no authority over wetlands outside the court's definition, he said.

There are several other cases challenging the agencies, and several enforcement actions targeting landowners for Clean Water Act violations.

Double down

Many enforcement actions were filed before the Sackett decision, and landowners were told by counsel that Sackett resolves the issue. But in many cases, the agencies have doubled down, he said.

“That goes to show the degree of disregard the agencies have for the decision in the Supreme Court,” he said.

The agencies are continuing to assert jurisdiction over isolated wetlands and other dryland features, he said.

The Supreme Court restored the proper scope of the agencies’ authority. Now it’s incumbent upon lower courts to make sure they’re actually following the court’s decision, he said.

Carol Ryan Dumas