LEGAL PRECEDENT | FEDERAL COURT

Sackett v. EPA

Housing Affordability Institute's Legal Precedents outlines influential, precedent-setting court decisions at the state and federal levels and illustrates their impact on housing and development.

CASE OVERVIEW

Sackett v. EPA, 21-454, is a federal legal precedent establishing the extent to which wetlands fall under the classification as "Waters of the United States" (WOTUS), and are therefore subject to the Clean Water Act (CWA). Property owners Michael and Chantell Sackett sought to build a home on a parcel of land they owned in Idaho that contained wetlands, which they began to fill. After commencing construction, the Environmental Protection Agency (EPA) informed the Sacketts that the wetland qualified as a "navigable waterway" under the WOTUS rule, requiring the restoration of the wetland.

In 2023, the United States Supreme Court ruled unanimously that Sacketts' wetland did not fall under the WOTUS rule, and 5-4 in favor of establishing a new test for which waters fall under the WOTUS rule.

PRECEDENT

Sackett replaces the "significant nexus" framework previously used by the EPA. In the majority opinion, Justice Alito wrote:

> *"The EPA, however, offers only a passing attempt to square its interpretation with the text of §1362(7), and its "significant nexus" theory is particularly implausible. It suggests that the meaning of "the waters of the United States" is so "broad and unqualified" that, if viewed in isolation, it would extend to all water in the United States. The EPA thus turns to the "significant nexus" test in order to reduce the clash between its understanding of "the waters of the United States" and the term defined by that phrase, i.e., "navigable waters." As discussed, however, the meaning of "waters" is more limited than the EPA believes. And, in any event, the CWA never mentions the "significant nexus" test, so the EPA has no statutory basis to impose it." (Citations omitted)*

The test established by Sackett is that waters fall under the Clean Water Act when "as a practical matter indistinguishable from waters of the United States."

1. A government entity claiming jurisdiction to the body of water in question must find that an adjacent body of water does fall under the WOTUS definition "(i.e., a relatively permanent body of water connected to traditional interstate navigable waters)."

2. The body in water in question has a "continuous surface connection" to the body of water falling under the WOTUS definition, "making it difficult to determine where the 'water' ends and the 'wetland' begins."

IMPACT ON HOUSING

Sackett brought needed clarity to the 51-year question of which waters fall under the WOTUS rule's definition, which had become a growing issue in the months leading to the 2023 opinion. The Biden administration issued a new definition in 2022 that reverted to the 2015 definition. President Biden also vetoed congressional action in April 2023 supporting the revised definition which excluded many wetlands. Multiple lawsuits had also commenced, with the new definition's implementation stayed in 26 states.

In addition to the needed clarity, *Sackett* created a two-factor test to determine whether waters fall under the Clean Water Act or not for projects containing wetlands that are distinguishable from "waters of the United States."