



***Sackett v. EPA* and its impact on the Clean Water Act**

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The Sacketts' property, aerial view (2008)



Litigation Timeline

- November 2007: compliance order issued
- April 2008: APA lawsuit filed
- March 2012: SCOTUS affirms judicial review
- March 2019: district court affirms EPA jurisdiction
- August 2021: Ninth Circuit affirms as well, using the significant nexus test



EPA's (and the Ninth Circuit's) test

Wetlands may be regulated if they, either alone or in combination with similarly situated lands *in the region*, significantly affect the **chemical, physical, and biological integrity** of other covered waters more readily understood as navigable.



The Sacketts' property, aerial view (2008)



Sackett v. EPA (2023)

- Unanimous:
 - 1. Significant nexus test rejected
 - 2. EPA has no authority over the Sacketts' lot



Majority standard for “waters”: “relatively permanent”

1. Hydrogeographic feature marked by the regular presence of water
2. In ordinary parlance called a stream, river, lake, or the like
3. Connected to traditional interstate navigable waters



Majority standard for wetlands: “indistinguishable”

1. Wetland continuously connected to a relatively permanent water, *such that*
2. The two features are “indistinguishable,” “difficult to determine,” with “no clear demarcation”



What should the states do after *Sackett*?

1. States can decide: Clean Water Act not field-preemptive
2. States should ensure protections for ordinary land-use activities
3. States should guarantee the reasonable use of private property





**Learn more on *Sackett v. EPA* at
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