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Supreme Court to Revisit WOTUS Definition Once Again

Reflections on Water

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On Monday, January 24, in *Michael Sackett et al. v. U.S. Environmental Protection Agency et al.*, (Case No. 21-454), the U.S. Supreme Court granted certiorari to determine if the Ninth Circuit used the right test to determine whether wetlands are subject to federal jurisdiction under the Clean Water Act. Idaho landowners, the Sacketts, disputed the need for a Clean Water Act permit to build a home on their property. The circuit court unanimously rejected the Sacketts' position, choosing a concurring opinion written by former Supreme Court Justice Anthony Kennedy in *Rapanos v. United States* instead of Justice Antonin Scalia's plurality opinion for determining the statute's jurisdiction over wetlands. The Sacketts' case was previously before the high court in 2012, when they prevailed on the proposition that property owners could challenge U.S. Environmental Protection Agency (EPA) compliance orders in court before the EPA brings legal action to enforce them.

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