Life After *Sackett v. EPA*—Assessing the Decision's Implementation in the Lower Courts, and Predicting the Agencies' Next Steps

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In *Sackett v. United States Environmental Protection Agency*,[1] the United States Supreme Court established the test for determining which hydrogeographic features qualify as "waters" potentially subject to

1. 598 U.S. 651 (2023).

federal regulation under the Clean Water Act (CWA). The decision ends an extended period of legal controversy over how to interpret the geographic reach of the nation's preeminent federal water quality law. In this essay,[2] we review how *Sackett* has been employed in the lower courts and by EPA and the U.S. Army Corps of Engineers (Corps) in these first eighteen months following *Sackett*. We also offer our predictions about how the agencies will operate long-term after *Sackett*.

I. BACKGROUND

A. The Statute

Enacted in 1972, the CWA[3] forbids the unpermitted "discharge" of "pollutants" from "point sources" to "navigable waters."[4] It defines "navigable waters" to include "the waters of the United States [WOTUS],"[5] but it does not further define what those waters are. Most pollutant discharges to "navigable waters" require a permit from either EPA (called a National Pollutant Discharge Elimination Program, or NPDES, permit) or, if the discharge involves "dredged or fill material," from the Corps (commonly called a Section 404 permit).[6] The CWA's permitting regime is "arduous, expensive, and long."[7] But for those who discharge without a needed permit, the Act's enforcement provisions impose "crushing consequences even for inadvertent violations."[8]

B. Regulatory & Case Law History

Prior to *Sackett*, construing the meaning of "navigable waters" proved vexing. The 1970s saw a series of controversial and sometimes conflicting rulemakings, along with a legislative response from Congress.[9] In 1985, the Supreme Court weighed in, holding in *United*

2. Portions of this essay first appeared as a blog post for the Environmental & Land Use Law Section of the Washington State Bar Association. Those portions appear here with the kind permission of the WSBA Environmental & Land Use Law Section. *See* WA. State Bar Ass'n, Sackett v. EPA *One Year Later: Assessing the Decision's Implementation in the Lower Courts*, Environmental & Land Use Section (Aug. 29, 2024), https://wsba-elul.org/2024/08/29/sackett-v-epa-one-year-later-assessing-the-decisions-implementation-in-the-lower-courts/.

3. 33 U.S.C. §§ 1251-1389.

4. *See id.* §§ 1311, 1362.

5. *Id.* § 1362(7).

6. *See id.* §§ 1342(a), 1344(a).

7. U.S. Army Corps of Eng'rs v. Hawkes Co., 578 U.S. 590, 601 (2016).

8. *Sackett*, 598 U.S. at 660 (internal quotation marks omitted).

9. *See* Rapanos v. United States, 547 U.S. 715, 723-724 (2006) (plurality opinion); Clean Water Act of 1977, Pub. L. No. 95–217, 91 Stat. 1566 (Jan. 4, 1977).

States v. Riverside Bayview Homes, Inc., that "navigable waters" include at least *some* wetlands.[10] Following that ruling, the agencies issued further rulemakings[11] which in turn created more controversy, resulting in the Supreme Court's 2000 ruling in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, holding that the CWA does not regulate isolated waters.[12]

Seeking to minimize *SWANCC* and to continue to regulate broadly, the agencies developed the so-called "hydrological connection" theory, which deemed as "navigable waters" any wetland or similar feature from which water could flow to navigable-in-fact waters. In 2006, the Supreme Court in *Rapanos v. United States* rejected this theory but the Court failed to adopt a majority opinion explaining what the test should be. Writing for a plurality, Justice Scalia advanced what became known as the "relatively permanent water" or "continuous surface connection" test, while Justice Kennedy, concurring in the judgment, advocated for his competing and substantially broader "significant nexus" standard.[13]

Rapanos initiated a period of immense confusion. Shortly after the decision, EPA and the Corps issued a guidance document.[14] This guidance proved to be unhelpful,[15] and so the agencies then embarked upon notice-and-comment rulemaking, resulting in the so-called "Clean Water Rule."[16] But soon that rule was preliminarily enjoined for being inconsistent with various aspects of *Rapanos*.[17] Ultimately, two other courts held on the merits that the rule was unlawful,[18] and shortly thereafter the agencies repealed it.[19] EPA and the Corps then tried again

10. 474 U.S. 121, 135 (1985).

11. *Rapanos*, 547 U.S. at 725 (plurality opinion).

12. 531 U.S. 159, 171 (2001).

13. *See Rapanos*, 547 U.S. at 739, 742 (plurality opinion); *id.* at 779-780 (Kennedy, J., concurring).

14. *See* EPA & ARMY CORPS, MEMORANDUM RE: CLEAN WATER ACT JURISDICTION FOLLOWING THE U.S. SUPREME COURT'S DECISION IN *RAPANOS V. UNITED STATES* & *CARABELL V. UNITED STATES* (2008), available at https://www.epa.gov/wotus/rapanos-v-united-states-carabell-v-united-states.

15. *See* 80 Fed. Reg. 37,054, 37,056 (June 29, 2015).

16. *Id. at* 37,054.

17. *In re EPA & Dep't of Defense Final Rule*, 803 F.3d 804 (6th Cir. 2015), *vacated on other grounds*, 713 Fed. Appx. 489 (6th Cir. 2018); North Dakota v. U.S. Env't Prot. Agency, 127 F. Supp. 3d 1047 (D.N.D. 2015).

18. Texas v. U.S. Env't Prot. Agency, 389 F. Supp. 3d 497 (S.D. Tex. 2019); Georgia v. Wheeler, 418 F. Supp. 3d 1336 (S.D. Ga. 2019).

19. *See* 84 Fed. Reg. 56,626 (Oct. 22, 2019).

in 2020, issuing a "Navigable Waters Protection Rule."[20] But this third agency effort at construing *Rapanos* failed judicial review as well.[21]

C. The Sackett *Decision*

Shortly after the 2020 rule was vacated, the Supreme Court agreed to hear *Sackett*. The case concerned an Idaho couple's attempt to build a family home on a 2/3-acre residential lot located a few hundred feet from the shores of Priest Lake. EPA had determined, using Justice Kennedy's significant nexus standard, that the Sacketts' parcel contained wetlands subject to CWA regulation. The Sacketts sued, but the Idaho district court and the Ninth Circuit affirmed EPA's determination.

The Supreme Court, however, ruled in the Sacketts' favor. The Court unanimously rejected the significant nexus standard and unanimously determined that the Sacketts' property is not subject to CWA regulation.[22] Moreover, in a 5-4 majority opinion written by Justice Alito, the Court adopted Justice Scalia's test from his *Rapanos* plurality opinion. That test, articulated in *Sackett*, proceeds in two steps. First, the agencies must identify valid "waters," namely, "relatively permanent, standing or continuously flowing bodies of water forming geographic[al] features that are described in ordinary parlance as 'streams, oceans, rivers, and lakes.'"[23] Second, if wetlands are at issue, the agencies must establish that the wetlands are "indistinguishably part of a body of water that itself constitutes 'waters' under the [CWA]."[24] That indistinguishability occurs when the wetlands have a "continuous surface connection" to a bona fide "water" such that it is difficult to determine where the water ends and the wetland begins.[25]

A few months after *Sackett*, the agencies issued a "conforming" rule to bring their existing regulations (issued while *Sackett* was pending) into compliance with the Court's ruling.[26] Although the conforming rule correctly deletes those parts of the old regulations relying on the significant nexus standard, it does not fully adopt *Sackett*'s test. For

20. 85 Fed. Reg. 22,250 (Apr. 21, 2020).

21. *See* Colorado v. U.S. Env't Prot. Agency, 445 F. Supp. 3d 1295, 1299 (D. Colo. 2020), rev'd on other grounds, 989 F.3d 874 (10th Cir. 2021); Pasqua Yaqui Tribe v. U.S. Env't Prot. Agency, 557 F. Supp. 3d 949, 954 (D. Ariz. 2021); Navajo Nation v. Regan, 563 F. Supp. 3d 1164 (D.N.M. 2021).

22. Sackett v. Env't Prot. Agency, 598 U.S. at 651, 684; *id.* at 715-16 (Kavanaugh, J., concurring).

23. *Id.* at 671 (majority opinion).

24. *Id.* at 676.

25. *Id.* at 678.

26. *See* 88 Fed. Reg. 61,964 (Sept. 8, 2023).

example, although the conforming rule requires a "continuous surface connection," it does not require a continuous surface *water* connection, nor does it require a finding that the connection render the wetlands indistinguishable from any adjoining waters.[27] Likewise, the rule fails to make clear that the "relatively permanent" test is one of "common parlance," and it does not articulate the requirements for "relative permanence."[28]

II. POST-*SACKETT* LITIGATION[29]—CIVIL ENFORCEMENT LITIGATION

A. United States v. Valentine

The defendants in this case run a forestry and logging company. In 2016, they began purchasing timberland in the Roanoke River floodplain in eastern North Carolina and upgrading the parcels' forest road network. This road construction work became the subject of a Corps investigation which culminated in the 2022 filing of a civil enforcement action under the CWA. The lawsuit contends that the defendants' timberlands contain wetlands qualifying as "waters of the United States" because the wetlands have a "continuous surface connection" to the Roanoke River and other navigable-in-fact waters. The complaint does not, however, allege that the wetlands are "indistinguishable" from those waters, nor does it allege that there exists a continuous surface *water* connection. The defendants moved for judgment on the pleadings on the government's CWA claim, contending that the complaint is defective in light of *Sackett*. The district court denied the motion, ruling that indistinguishability is a not a separate element of the *Sackett* test but rather the necessary factual outcome of a wetland having a "continuous surface connection" to a water.[30] The district court also appeared to rule that a CWA complaint does not need to allege that a wetland has a continuous surface *water* connection.[31]

27. *See id.* at 61,968-69.

28. *See id.*

29. Our discussion is limited to cases involving the agencies, rather than cases brought by private groups against private defendants under the CWA's citizen suit provision, 33 U.S.C. § 1365. We note that PLF attorneys represent the Valentines and Robert White.

30. United States v. Valentine, 751 F. Supp. 617, 624 (E.D.N.C. Sept. 27, 2024).

31. *See id.* The decision could, however, be read as simply rejecting the proposition that an allegation of regular (but not continuous) flooding from nearby waters necessarily implies a denial of a continuous surface water connection.

B. United States v. Sharfi

In 2017, the defendants in *United States v. Sharfi* purchased land in Martin County, Florida that is traversed by several man-made ditches and that contains wetlands. The defendants began work to convert the property to agricultural use, which led to the 2021 initiation of a CWA civil enforcement action. On cross-motions for summary judgment, the assigned magistrate judge ruled for the defendants.[32] The magistrate judge first determined that the site's man-made ditches do not qualify as regulable "waters" because they have only seasonal, intermittent flow.[33] Second, the magistrate judge determined that the wetlands at issue lacked a continuous surface water connection to, and thus were not indistinguishable from, any "waters." In reaching this latter conclusion, the magistrate judge explicitly rejected the government's contention "that the 'continuous surface connection' required by *Sackett* does not require a continuous *water* surface connection and instead requires only that the adjacent regulated body of water 'abut' the wetlands."[34]

C. United States v. Chameleon LLC

The defendants in this case own an approximately 100-acre parcel of undeveloped Virginia timberland. The parcel is traversed by several unnamed watercourses and contains wetlands. In 2023, the government brought a CWA enforcement action, alleging that the defendants' earthmoving and timber harvesting in the site's wetlands violated the CWA.[35] The complaint alleged that the wetlands are "adjacent to" and have a "continuous surface connection" with "relatively permanent tributaries." The district court dismissed the complaint, holding that, in "merely recit[ing] the language and elements of the *Sackett* test," the government failed to plead sufficient facts to substantiate its claim. Although the government attempted to recharacterize its recitation as factual, in the court's view, far more was required.[36]

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32. United States v. Sharfi et al., No. 2:21-cv-14205, 2024 WL 4483354, at *1-*6 (S.D. Fla. Sept. 21, 2024). The magistrate judge's report and recommendation was subsequently adopted in full by the district court judge. *See* United States v. Sharfi, No. 2:21-cv-14205, 2024 WL 5244351 (S.D. Fla. Dec. 30, 2024).

33. *Sharfi*, 2024 WL 4483354, at *11-12.

34. *Id.* at *13-*14.

35. United States v. Chameleon, LLC, No. 3:23-cv-00763, 2024 WL 3835077, at *1 (E.D. Va. Aug. 15, 2024).

36. *Id.* at 5-7.

D. United States v. Ace Black Ranches

The defendant, Ace Black Ranches, LLP, operates a roughly 800-acre ranch in Idaho's Bruneau Valley. The ranch is traversed by the Bruneau River and contains wetlands. EPA obtained an administrative warrant and inspected the ranch in 2021 and 2023. The government then commenced a CWA civil enforcement action in February 2024, alleging that the defendant had discharged pollutants into the Bruneau River and had disturbed surrounding wetlands through the defendant's construction of road crossings and mining of sand and gravel.[37] The defendant moved to dismiss. In resolving that motion, the district court described the operative question as "whether the Government successfully allege[d] that Ace Black Ranches discharged pollutants into wetlands that are indistinguishable from, *and* have a continuous connection with, the River[.]"[38] The court then determined that the government's complaint failed to meet this standard,[39] in part because the complaint lacked allegations that the wetlands were connected to the river "via a sufficient surface-water connection."[40]

III. PRE-ENFORCEMENT LITIGATION

A. Lewis v. United States

The Lewis family owns real property in Livingston Parish, Louisiana. In 2013, the Lewis family made plans to develop and improve portions of its properties. This set in motion a dizzying series of proceedings too complex to summarize in this essay. In short, for a decade, the Lewis family was trapped in a protracted game of cat-and-mouse with the Corps, which repeatedly asserted CWA authority over alleged wetlands on their property. The Fifth Circuit put a definitive stop to this situation shortly after *Sackett*.[41] The Fifth Circuit began its analysis by observing that *Sackett*'s test "significantly tightens the definition of federally regulable wetlands."[42] The court then found that, because the

37. United States v. Ace Black Ranches, LLP, No. 1:24-cv-00113, 2024 WL 4008545, at *1-2 (D. Idaho Aug. 29, 2024).

38. *Id.* at *3 (emphasis added).

39. *Id.*

40. *Id.* at *4 n.2. The government has succeeded in one enforcement action, post-*Sackett*. On June 12, 2023, the District of Connecticut granted summary judgment to the government in *United States v. Andrews*, 677 F. Supp. 3d 74 (D. Conn. 2023), affirmed, No. 24-1479, 2025 WL 855763 (2d Cir. Mar. 19, 2025). The defendants in this case, however, were pro se.

41. *See* Lewis v. United States, 88 F.4th 1073, 1076 (5th Cir. 2023) ("Enough is enough.").

42. *Id.* at 1078.

nearest relatively permanent water was miles away from the Lewis family's property, and any connection between purported wetlands on the property and this water was through a series of conduits, it was "not difficult to determine where the 'water' ends and any 'wetlands' . . . begin."[43] Thus, the Lewis family's property is not regulated under the CWA. Notably, the Fifth Circuit also denied the government's request for another remand,[44] while criticizing the Corps' "utter unwillingness to concede its lack of regulatory jurisdiction in this case following *Sackett*."[45]

B. White v. EPA (and United States v. White)

Robert White owns many agricultural parcels in eastern coastal North Carolina. Much of this land is relatively low-lying and borders navigable-in-fact waters that are prone to flooding. To minimize erosion, Mr. White obtained state permits to construct bulkheads. This work triggered enforcement from EPA and the Corps. The agencies contended that Mr. White's bulkheading resulted in illegal discharges to regulated wetlands found on his agricultural properties. In early 2023, EPA initiated a CWA civil enforcement action.

While Mr. White continues to defend himself in that lawsuit, he has initiated his own lawsuit to challenge the agencies' *Sackett* conforming rule. His complaint attacks the "adjacent wetlands" provisions of the rule, arguing that they do not conform to *Sackett* because, as noted above, they do not require that regulable wetlands be "indistinguishable" from adjoining waters, nor do they require that wetlands be linked to regulable waters by a surface-water-based connection. Shortly after filing the complaint, Mr. White moved for a preliminary injunction to prevent the agencies from enforcing against him the conforming rule's adjacent wetlands provisions. The district court denied the motion, concluding that Mr. White is not likely to prevail. Although acknowledging that the conforming rule's preamble does suggest a departure from *Sackett*, the court concluded that the rule's regulatory text is not necessarily inconsistent with *Sackett*. The court explained that a "continuous surface connection" could theoretically render a wetland "indistinguishable"

43. *Id.*

44. *Id.* at 1079-80.

45. *Id.* at 1080 n.7. The Lewises were further vindicated on January 29, 2025, when the Middle District of Louisiana set aside a 2021 approved jurisdictional determination asserting authority over intermittent tributaries on an additional property. *See* Lewis v. United States, No. 17-cv-1644, 2025 WL 338296, at 12-13 (M.D. La. Jan. 29, 2025). The district court determined there could be no CWA authority due to the tributaries' intermittent flow.

from a neighboring water and thus the conforming rule is not, on its face, inconsistent with *Sackett*.[46] Mr. White's appeal of the denial of the preliminary injunction is currently pending in the Fourth Circuit.

IV. THREE KEY TAKEAWAYS FROM POST-*SACKETT* CASE LAW

First, the lower courts have rejected the agencies' attempts to regulate tributary features that do not contain continuous flow. Across the board, lower courts confronted with assertions of tributary authority have applied *Sackett*'s relative permanence test—including its ordinary parlance component—strictly. In *Sharfi* for example, the magistrate judge relied heavily on her own assessment of photographs of the ditches at issue to conclude that they are not "waters."

Second, the lower courts are divided as to the role of *Sackett*'s "indistinguishability" requirement.[47] Some courts (*Sharfi* and *Ace Black Ranches*) have been skeptical of agency attempts to minimize *Sackett*'s indistinguishability requirement, while others (*Valentine* and *White*) have been more receptive to EPA and the Corps' view.

Third, the agencies' CWA litigation tactics have not changed. After past losses sustained at the Supreme Court, the agencies vigorously sought to maintain a very broad view of their authority.[48] That practice appears to be continuing post-*Sackett*.[49]

V. REFLECTIONS AND PREDICTIONS

A. Agency Intransigence and the Statutory Purpose-Effect Mismatch

Why have EPA and the Corps resisted fully implementing *Sackett*? Part of the answer is attitudinal. The agencies are staffed by bureaucrats, protected from removal, who have the jobs they have precisely because they want a greener, cleaner world, and thus are predisposed to interpreting their authorities to maximize regulatory power.[50] But part of

46. White v. U.S. Env't Prot. Agency, 737 F. Supp. 3d 310, 326-27 (E.D.N.C. 2024).

47. *See* ROYAL C. GARDNER, WATERS OF THE UNITED STATES: POTUS, SCOTUS, WOTUS, AND THE POLITICS OF A NATIONAL RESOURCE 213 (2024) (citing *Sackett*, 598 U.S. at 678-79, 684) ("Most of the post-*Sackett* analysis of its impact on wetland jurisdiction focused solely on the continuous surface requirement and neglected to consider the 'indistinguishable' requirement[.]").

48. *See* Sackett v. EPA, 598 U.S. 651 666-67 (2023) (observing this phenomenon following *SWANCC* and *Rapanos*).

49. *See Lewis*, 88 F.4th at 1080 n.7.

50. *See* Richard J. Lazarus, *The Tragedy of Distrust in the Implementation of Federal Environmental Law*, 54 L. & CONTEMP. PROBS. 311, 353 (1991) (observing that, "in an agency

the answer is also to be found in the CWA itself. Although the statute is billed as the nation's premier federal water quality statute, it is not well-suited to that task. For one, the statute does not regulate nonpoint-source pollution, which is commonly acknowledged to be the reason for today's continuing water-quality problems.[51] Another design defect—at least from the perspective of comprehensive water quality policy—is the statute's primary concern with "waters"—i.e., streams, oceans, rivers, and lakes. If *Sackett* means anything, it is that the CWA is *not* a federal wetlands protection act, and that wetlands are protected only incidentally. Importantly, *Sackett*'s understanding of "wetlands" is *not* a scientific one; it is a legal one founded upon *Riverside Bayview*'s layman understanding of wetlands as being those intermediate features that one sometimes must traverse in moving from river to river bank.[52] Hence, one should not expect that the *Sackett* wetland test would map well onto the agencies' regulatory definition of wetlands, which derives from wetland science post-dating the Clean Water Act's passage and which includes those areas that are not always inundated.

But if wetlands are largely beyond the CWA's reach, so too is a comprehensive water quality regulatory program.[53] The agencies appear unable to accept the idea that the CWA is essentially indifferent to wetlands, because the agencies cannot accept that the statute would have such a gaping hole. Of course, Congress does not always write effective laws. But when it enacted the CWA, Congress was not exercised over wetlands; it was concerned about ending the practice of using rivers and other waters as industrial waste receptacles,[54] a problem that has little to do with wetlands destruction.

B. The Future of WOTUS Wars

The ever-shifting agency interpretations of the CWA are a prime example of regulatory ping-pong. We predict that the WOTUS wars will end, but not because of *Sackett*. WOTUS rules are interpretative, not

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such as EPA," the "employees choose to work there primarily out of their sense of sharing in the agency's perceived mission rather than for more tangible rewards").

51. *See* Robin Kundis Craig & Anna M. Roberts, *When Will Governments Regulate Nonpoint Source Pollution? A Comparative Perspective*, 42 B.C. ENV'T AFF. L. REV. 1, 2 (2015).

52. *Cf. Riverside Bayview*, 474 U.S. at 132.

53. *See* OFFICE OF RESEARCH & DEV., U.S. EPA, CONNECTIVITY OF STREAMS AND WETLANDS TO DOWNSTREAM WATERS: A REVIEW AND SYNTHESIS OF THE SCIENTIFIC EVIDENCE, at ES-2 to ES-3 (2015).

54. *See* Jonathan H. Adler, *Fables of the Cuyahoga: Reconstructing a History of Environmental Protection*, 14 FORDHAM ENV'T L.J. 89, 95 (2002).

substantive, and thus are not necessary to make the CWA fully operative. The main, if not sole, reason for WOTUS rules was the deference that courts would afford reasonable agency interpretation of ambiguous statutory provisions. But after *Loper Bright*, there is no such deference.[55] Hence, there is much less reason nowadays to go through notice-and-comment rulemaking to codify any WOTUS interpretation. There is some value, of course, to codifying a WOTUS rule even without deference. A WOTUS rule would bind agency personnel, thus making WOTUS delineations more consistent across the country. Also, a published rule would put the regulated public on notice as to the agencies' view of their own authority. But these ends can be achieved through an interpretative rule published in the Federal Register without the need for notice or comment.[56] [57]

C. The Clean Water Act Is no Longer Chic

We are not environmentalists, and we do not have any special insight into the environmental movement. But even as outsiders we have noticed that wetlands regulation is no longer as popular within the environmental movement as it once was. Admittedly, this is hard to measure. But our anecdotal impression from the last few years is that, for the environmental community, wetlands regulation has paled in importance as compared with greenhouse gas regulation and the infusion of DEI and environmental justice principles into environmental regulation.

This shift in interest is also happening at the Supreme Court. In its unanimous 1985 ruling in *Riverside Bayview*, the Court engaged in an extended discussion of the Act's legislative and regulatory history, a history which purportedly underscored the importance of wetlands protection.[58] But some decades later in *Sackett*, the majority opinion

55. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024).

56. The Administrative Procedure Act does not require notice or public comment for interpretative rules. *See* 5 U.S.C. § 553(b)(4)(A).

57. On March 24, 2025, EPA and the Corps issued a public notice requesting written recommendations from the public and scheduling a number of "listening sessions." *See* 90 Fed. Reg. 13,438. The purpose of this notice is to seek public input regarding the future implementation of the CWA in light of the *Sackett* decision. The agencies also simultaneously issued new guidance which partially amends the agencies' approach to regulating wetlands under the CWA. *See* Memorandum to the Field Between the U.S. Department of the Army, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency Concerning the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act (Mar. 12, 2025), https://www.epa.gov/system/files/documents/2025-03/2025 cscguidance.pdf. It is not yet clear what ultimate form the agencies' new approach will take.

58. *See Riverside Bayview*, 467 U.S. at 133-135.

contained no such discussion and in fact disavowed the propriety of such a discussion.[59] Even Justice Kagan in her *Sackett* concurrence devoted just a peremptory paragraph to that point, spending most of her time on legal objections to the majority's statutory interpretation.[60] Moreover, not a single justice in *Sackett* voted for EPA's reading of the statute, the acceptance of which the agency and its amici had pitched as critical to preserving national water quality.

VI. CONCLUSION

Sackett has brought a measure of clarity and resolution to the longstanding disputes over how to interpret "the waters of the United States." But based on EPA and the Corps' litigation position in the above-discussed post-*Sackett* lawsuits, the agencies—"whose disregard for the statutory language has been so long manifested," as Justice Scalia tartly observed in *Rapanos*—are intent on retaining as much authority as possible. This they evidently aim to do despite *Sackett*'s rejection of their "land is waters" approach, but it's likely that the agencies' focus will soon shift to other areas of environmental regulation.

59. *See* Sackett v. EPA, 598 U.S. 651, 683 (2023).
60. *See id.* at 710-715 (Kagan, J., concurring).