

Legal Alerts

Understanding the Latest Federal Wetlands Rulings: A Guide for Property Owners and Developers

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Recent federal court decisions have changed the way wetlands are regulated in the United States. Here's what you need to know.

A Shift in Wetland Regulation: The Sackett Decision and Its Impact

In 2023, the U.S. Supreme Court issued its much anticipated opinion in *Sackett v. EPA*,^[1] significantly changing how the federal Clean Water Act (CWA) applies to wetlands. (We reported on this ruling in November 2023 and you can read it [here](#).) This ruling affects property owners, developers and real estate investors who deal with land that may include wetlands and other "waters of the United States" that may be subject to federal regulation.

- **Key Ruling:** The Supreme Court ruled Clean Water Act jurisdiction extends to only those wetlands with a continuous surface connection to water bodies that are themselves waters of the United States.

The Lewis Case: A Real-World Example

In December 2023, the U.S. Court of Appeals applied the *Sackett* holding in a case involving property in Louisiana, *Lewis v. U.S. Army Corps of Engineers*.^[2] The case strictly interprets *Sackett* in its application to wetlands and the reach of federal jurisdiction.

- **Background:** The owners of a pine timber plantation wanted to develop their land but were told that a significant portion contained federally regulated wetlands.
- **Outcome:** Applying the new legal standard from the *Sackett* decision, the court found that there was no continuous surface connection between wetlands on the property and any "relatively permanent body of water" constituting a "water of the United States," meaning the U.S. Army Corps of Engineers did not have jurisdiction.

What Does This Mean for You?

The definition of what constitutes a wetland under federal regulation is now narrower. If you're dealing with property that includes or is near wetlands, these rulings could impact your development plans. In addition to federal jurisdiction, local government codes and even state law contain overlapping regulatory

requirements. Each case is still unique and requires careful analysis.

Navigating the Legal Landscape

Understanding and navigating these legal changes can be complex. As your trusted legal advisors, we at Foster Garvey are here to help you:

- **Stay Informed:** We continuously monitor legal developments to provide you with up-to-date advice.
- **Legal Support:** If you have questions or need assistance with wetland or natural resource issues, please reach out. [Contact Joe Brogan, a member of our Real Estate, Land Use & Environmental law team.](#)

Conclusion: The landscape of wetland regulation in the United States has shifted once again. It's crucial for property owners and developers to stay informed and seek expert guidance to navigate these changes successfully.

About Joe Brogan:

[Joe Brogan](#) is one of the leading land use and water rights lawyers in Washington state, providing strategic advice, permitting and litigation support to water purveyors, public utility districts, ports, industry clients and private property owners. Joe represents clients in administrative appeals and in state and federal court on a wide range of land use, water rights and water resource matters. He was a Research Fellow at U.S. EPA and has served under two gubernatorial administrations as Regulatory Performance Advisor to the Washington State Department of Ecology.

[1] 143 S.Ct. 1322 (2023).

[2] *Lewis v. U.S. Army Corps of Engineers*, No. 21-30163 c/w No 23-30387, (Fifth Cir.) December 18, 2023.

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