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Waters of the United States/Clean Water Act: Federal District Court (Louisiana) Addresses Property Owner's Challenge to Jurisdiction Over Adjacent Wetlands Since Issuance of Sackett

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The United States District Court (E.D. Louisiana) (“Court”) issued a June 12th Order addressing a property owner’s challenge to the United States Corps of Engineers (“Corps”) assertion of Clean Water Act jurisdiction over certain adjacent wetlands. See *Garry Lewis, et al. v. United States Army Corps of Engineers, et al.*, 2023 WL 3949124.

Both the Plaintiff property owners (“Owners”) and the Corps filed arguments addressing their views on the appropriate disposition of the challenge in view of the United States Supreme Court opinion in *Sackett v. Environmental Protection Agency, et al.* (“*Sackett*”). See previous blog post [here](#).

The United States Supreme Court opinion in *Sackett* issued an opinion on May 25th addressing the scope of the Clean Water Act definition of water of the United States (“WOTUS”).

The *Sackett* Majority articulated a two-part process for determining a WOTUS:

1. The Clean Water Act’s use of “waters” in §1362(7) refers only to “geo-graphic[al] features that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes’ ” and to adjacent wetlands that are “indistinguishable” from those bodies of water due to a continuous surface connection. *Rapanos v. United States*, 547 U. S. 715, 755, 742, 739.
2. To assert jurisdiction over an adjacent wetland un-der the CWA, a party must establish “first, that the adjacent [body of water constitutes] . . . ‘water[s] of the United States’ (i.e., a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins.”

The owners in this Louisiana proceeding had challenged a December 2020 Corps Approved Jurisdictional Determination (“AJD”) that certain land they owned was subject to Clean Water Act jurisdiction.

The Court notes that since the filing of the motions by both the Owners and the Corps, the United States Supreme Court issued its opinion in *Sackett* addressing the limits of Clean Water Act jurisdiction over wetlands.

The Owners requested that the Court adjudicate its challenge applying *Sackett*. In contrast, the Corps requested that the Court grant a motion for voluntary remand. Further, the Corps apparently stated that it was willing:

. . . to withdraw the Approved Jurisdictional Determination in this suit, and offering to expeditiously reassess plaintiffs' property in accordance with *Sackett*.

The Court stated that:

. . . in the absence of a specific statutory limitation, an administrative agency has the inherent authority to reconsider its decisions.

Further, the Court noted that when an agency seeks a remand, to undertake an action in accordance with the correct legal standards, the Court should allow such an action.

The Court concludes that:

. . . it is undisputed *Sackett* may affect the result and that the Corps issued its decision without the benefit of the *Sackett* opinion. Further, the agency's offer to withdraw the challenged AJD potentially renders the instant case moot. Accordingly, the court finds that the remand to the agency for further review in light of *Sackett* is appropriate.

A copy of the opinion can be downloaded [here](#).