

Stormwater Clean Water Act Citizen Suit/Waters of the U.S.: Federal Court Addresses Applicability to Wet-Weather Stream



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A United States District Court (W.D. Texas, “Court”) addressed in a June 11th Decision issues arising out of a Clean Water Act citizen suit enforcement action. See *Ragsdale v. JLM Construction Services, Inc.* 2024 WL 2933009.

The Court addressed whether certain stormwater discharges from a construction site were subject to Clean Water Act jurisdiction.

Ragsdale filed a Clean Water Act citizen suit enforcement action against JLM Construction Services Inc. (“JLM”). Ragsdale alleged that JLM repeatedly discharged sediment-laden stormwater onto his property.

JLM was described as the primary operator overseeing construction of a recreational vehicle park (“Construction Site”). The Construction Site was directly across the road from Ragsdale’s property.

JLM was required to obtain a Clean Water Act General Stormwater Permit for the Construction Site from the Texas Commission on Environmental Quality (“TCEQ”) because it was in the Edwards Aquifer Contributing Zone. Discharge of stormwater from the Construction Site was authorized if compliant with the terms and conditions of the Permit. The Permit listed the North Fork San Gabriel River as the body of water to receive the stormwater runoff or potential runoff from the site.

Ragsdale is stated to have observed sediment-laden stormwater draining off the Construction Site onto his property. He alleged that the stormwater had accumulated on his pastures and in a stock tank on his property.

Ragsdale sent complaints to TCEQ alleging violations of the terms of the Permit. TCEQ recommended certain corrective action and subsequently determined that there were no violations as a result of the investigation.

An additional complaint by Ragsdale was investigated by TCEQ which determined that silt fences had been damaged. However, there was no signs of discharge.

Ragsdale subsequently filed a Clean Water Act citizen suit against JLM alleging that discharges of stormwater onto his property violated the Clean Water Act. He alleged that JLM did not comply with the conditions of the Permit by:

1. Failing to maintain stormwater pollution prevention and control measures identified in its Stormwater Pollution Prevention Plan;

2. Failing to remove sediment and debris that accumulated on his property; and
3. Failing to conduct inspections and properly document incidents of discharge and noncompliance.

The Complaint further alleged that sediment from the stormwater had accumulated on his pastures and the stock tank on his property. This included an allegation that if the stock tank were to overflow, stormwater would enter a wet-weather creek on his property. The wet-weather creek was contended to be a tributary to the North Fork San Gabriel River.

The case was tried before the Court on December 4th and 6th 2023.

In a post-trial brief JLM argued that under the United States Supreme Court holding in *Sackett v. Environmental Protection Agency*, that Ragsdale's property was neither adjacent to nor adjoining any navigable waters or other Waters of the United States encompassed by the Clean Water Act.

The Court in addressing whether the wet-weather creek on Ragsdale's property was a Waters of the United States, undertook an extensive discussion of the relevant United States Supreme Court cases which include:

- Riverside Bayview.
- SWANCC.
- Rapanos.
- Sackett.

JLM argued that the wet-weather creek was not a relatively permanent, standing, or continuous flowing body of water. It also argued that the stock tank, drainage ditches, stormwater culverts, and trenches were not encompassed by the definition. As a result, it contended that because none of the alleged discharges involved Waters of the United States, there was no viable Clean Water Act claim.

Ragsdale conceded that the stock tank, drainage ditches, culverts, and trenches were not covered under the Clean Water Act. However, as to the wet-weather creek he argued that there was no need to show that JLM discharged stormwater into Waters of the United States to prove a violation.

Instead, he argued that there was only a need to demonstrate that JLM violated the terms of the stormwater Permit. Further, Ragsdale argued that even if he was required to show that the discharges of stormwater entered Waters of the United States, he had done so.

The Court rejected both arguments.

First, the Court held that to prevail under the Clean Water Act, Ragsdale must show that the alleged violations involve discharges into Waters of the United States.

Second, the Court found that the wet-weather creek:

- Is not a relatively permanent, standing, or continuously flowing body of water that can be described in ordinary parlance as a stream or river (described as an ordinarily dry channel through which water occasionally or intermittently flows).
- Determined that there was no evidence that stormwater from the Construction Site ever actually entered the North Fork San Gabriel River or entered the creek on the Southern part of his property.
- Dismissed Ragsdale's argument that if his stock tank overflowed, sediment could be released into the wet-weather creek and eventually enter the North Fork San Gabriel River.

The Court ruled for JLM but stated:

...while the Court is sympathetic that sediment from JLM's Construction Site has accumulated on his ranch and in his stock tank, that CWA was enacted not to create a federal tort... but to protect navigable rivers and streams from pollution.

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