



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

December 30, 2022

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: *Sackett v. EPA*, No. 21-454

Dear Mr. Harris:

The Court held oral argument in the above-captioned matter on October 3, 2022. During the argument, Justice Kagan asked about the status of the pending rulemaking by the Environmental Protection Agency (EPA) and the Department of the Army to revise the regulatory definition of “waters of the United States” under the Clean Water Act, 33 U.S.C. 1362(7). See Oral Arg. Tr. 94; cf. Resp. Br. 13, 39-40. I write to notify the Court that the Administrator of the EPA and the Assistant Secretary of the Army (Civil Works) recently signed the joint final rule and submitted it for publication in the *Federal Register*. The signed, pre-publication version of the joint final rule is available on the EPA’s website at <https://www.epa.gov/wotus/revising-definition-waters-united-states>.

During the argument, Justice Kagan also asked whether the forthcoming rule would provide additional guidance on the agencies’ views about which adjacent wetlands qualify as waters of the United States covered by the Act. Oral Arg. Tr. 94. The preamble to the final rule addresses that issue in several places, including the Executive Summary (at pp. 9-10 of the pre-publication version); Part IV.C.5, which discusses adjacent wetlands generally (at pp. 308-339); Part IV.C.8.b, which addresses the regulatory definition of “adjacent” (at pp. 411-419); and Part IV.C.10, which provides guidance to help property owners determine whether the Act applies to particular sites (at pp. 460-478).

I would appreciate it if you would circulate this letter to the Members of the Court.

Sincerely,

Brian H. Fletcher*
Acting Solicitor General

cc: See Attached Service List

* The Solicitor General is recused in this case.

21-0454

SACKETT, MICHAEL, ET UX.
ENVIRONMENTAL PROTECTION AGENCY, ET AL.

BENJAMIN D. BATTLES
POLLOCK COHEN LLP
50 LAKESIDE AVENUE
BURLINGTON, VT 05401
802-793-5512
BEN@POLLOCKCOHEN.COM

TIMOTHY S. BISHOP
MAYER BROWN LLP
71 SOUTH WACKER DRIVE
CHICAGO, IL 60606-4637
312-782-0600
TBISHOP@MAYERBROWN.COM

JANETTE K. BRIMMER
EARTHJUSTICE
810 THIRD AVE.
SUITE 610
SEATTLE, WA 98104
206-504-3459
JBRIMMER@EARTHJUSTICE.ORG

BETH S. BRINKMANN
COVINGTON & BURLING LLP
850 TENTH STREET, N.W.
WASHINGTON, DC 20001
202-662-6000
BBRINKMANN@COV.COM

KAREN BUDD-FALEN
BUDD-FALEN LAW OFFICES, LLC
300 EAST 18TH STREET
PO BOX 346
CHEYENNE, WY 82003-0346
307-632-5105
KAREN@BUDDFALEN.COM

ANTHONY T. CASO
CONSTITUTIONAL COUNSEL GROUP
174 W. LINCOLN AVENUE
#620
ANAHEIM, CA 92805
916-601-1916
ATCASO@CCG1776.COM

DAVID Y. CHUNG
CROWELL & MORING LLP
1001 PENNSYLVANIA AVE., N.W.
WASHINGTON, DC 20004
202-624-2500
DCHUNG@CROWELL.COM

SARA A. COLANGELO
GEORGETOWN LAW ENVIRONMENTAL LAW
& JUSTICE CLINIC
600 NEW JERSEY AVE., NW
WASHINGTON, DC 20001
202-661-6543
SARA.COLANGELO@LAW.GEORGETOWN.EDU

TERRY P. COLE
GUNSTER LAW FIRM
215 S. MONROE STREET,
SUITE 601
TALLAHASSEE, FL 32301
850-521-1980
GMUNSTON@GUNSTER.COM

ALEXANDRA DAPOLITO DUNN
BAKER BOTTS L.L.P.
700 K ST., N.W.
WASHINGTON, DC 20001
202-639-1324
ALEXANDRA.DUNN@BAKERBOTTSCOM

LAWRENCE S. EBNER
ATLANTIC LEGAL FOUNDATION
1701 PENNSYLVANIA AVE, NW
SUITE 200
WASHINGTON, DC 20006
202-729-6337
LAWRENCE.EBNER@ATLANTICLEGAL.ORG

ANTHONY L. FRANÇOIS
BRISCOE, IVESTER & BAZEL LLP
235 MONTGOMERY STREET
SUITE 935
SAN FRANCISCO, CA 94101
415-402-2707
TFRANCOIS@BRISCOELAW.NET

ROYAL C. GARDNER
STETSON UNIVERSITY COLLEGE OF LAW
1401 61ST ST. SOUTH
ST. PETERSBURG, FL 33707
727-562-7864
GARDNER@LAW.STETSON.EDU

PAIGE E. GILLIARD
PACIFIC LEGAL FOUNDATION
3100 CLARENDON BLVD.
SUITE 610
ARLINGTON, VA 22201
PGILLIARD@PACIFICLEGAL.ORG

BRIANNE J. GOROD
CONSTITUTIONAL ACCOUNTABILITY
CENTER
1200 18TH STREET NW
SUITE 501
WASHINGTON, DC 20036
202-296-6889
BRIANNE@THEUSCONSTITUTION.ORG

TYLER R. GREEN
ANTONIN SCALIA LAW
SCHOOLADMINISTRATIVE LAW CLINIC
CONSOVOY MCCARTHY PLLC
1600 WILSON BOULEVARD
SUITE 700
ARLINGTON, VA 22209
703-243-9423
TYLER@CONSOVOYMCCARTHY.COM

CAITLIN J. HALLIGAN
SELENDY & GAY PLLC
1290 AVENUE OF THE AMERICAS
ONE HOGAN PLACE
NEW YORK, NY 10104
212-390-9000
CHALLIGAN@SELENDYGAY.COM

KIMBERLY S. HERMANN
SOUTHEASTERN LEGAL FOUNDATION
560 W. CROSSVILLE ROAD
SUITE 104
ROSWELL, GA 30075-7509
770-977-2131
KHERMANN@SOUTHEASTERNLEGAL.ORG

CALE JAFFE
DIRECTOR OF ENVIRONMENTAL AND
REGULATORY LAW CLINIC
UNIVERSITY OF VIRGINIA
SCHOOL OF LAW
580 MASSIE ROAD
CHARLOTTESVILLE, VA 22903
CJAFFE@LAW.VIRGINIA.EDU

THOMAS M. JOHNSON, JR.
WILEY REIN LLP
2050 M STREET N.W
WASHINGTON, DC 20036
202-719-7000
TMJOHNSON@WILEY.LAW

TIMOTHY VARTKES KASSOUNI
KASSOUNI LAW
455 CAPITOL MALL,
SUITE 604
SACRAMENTO, CA 95814
916-930-0030
TIMOTHY@KASSOUNILAW.COM

MICHAEL B. KIMBERLY
MCDERMOTT WILL & EMERY LLP
500 NORTH CAPITOL STREET, NW
WASHINGTON, DC 20001
202-756-8901
MKIMBERLY@MWE.COM

LAWRENCE R. LIEBESMAN
SMOUSE & MASON, LLC
223 DUKE OF GLOUCESTER STREET
ANNAPOLIS, MD 21401
410-269-6620
LRL@SMOUSEANDMASON.COM

ELBERT LIN
HUNTON ANDREWS KURTH LLP
951 EAST BYRD STREET,
RIVERFRONT PLAZA
EAST TOWER
RICHMOND, VA 23219
804-788-7202
ELIN@HUNTON.COM

JEREMY C. MARWELL
VINSON & ELKINS LLP
2200 PENNSYLVANIA AVE, NW.
SUITE 500 WEST
WASHINGTON, DC 20037
202-639-6500
JMARWELL@VELAW.COM

ANNA-ROSE MATHIESON
CALIFORNIA APPELLATE LAW GROUP LLP
96 JESSIE STREET
SAN FRANCISCO, CA 94105
415-649-6700
ANNAROSE@CAQLAPPLAW.COM

J.G. ANDRE MONETTE
BEST BEST & KRIEGER, LLP
1800 K STREET, NW
SUITE 725
WASHINGTON, DC 20026
202-785-0600
ANDRE.MONETTE@BBKLAW.COM

SCOTT L. NELSON
PUBLIC CITIZEN LITIGATION GROUP
1600 20TH STREET NW
WASHINGTON, DC 20009
202-588-1000
WWW.CITIZEN.ORG

ERIC T. OLSON
ATTORNEY GENERAL
1300 BROADWAY
10TH FLOOR
DENVER, CO 80203
720-508-6000
ERIC.OLSON@COAG.GOV

JOHN PAGLIARO
THE NEW ENGLAND LEGAL FOUNDATION
150 LINCOLN STREET
BOSTON, MA 02111
617-695-3660
JOHNPAGLIARO@NELFONLINE.ORG

MICHAEL PEPSON
AMERICANS FOR PROSPERITY FOUNDATION
1310 N. COURTHOUSE ROAD
SUITE 700
ARLINGTON, VA 22201
571-329-4529
MPEPSON@AFPHQ.ORG

ERICA PETERSON
HUNTON ANDREWS KURTH LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20037
202-955-1932
EPETERSON@HUNTON.COM

DAMIEN M. SCHIFF
PACIFIC LEGAL FOUNDATION
930 G. STREET
SACRAMENTO , CA 95814
916-419-7111
DSCHIFF@PACIFICLEGAL.ORG

JAY R. SCHWEIKERT
CATO INSTITUTE
1000 MASSACHUSETTA AVE., NW
WASHINGTON, DC 20001
202-842-0200
JSCHWEIKERT@CATO.ORG

LINDSAY S. SEE
SOLICITOR GENERAL OF STATE OF WEST
VIRGINIA
STATE CAPITOL COMPLEX
BUILDING 1
ROOM E-26
CHARLESTON, WV 25305
304-558-2021
LINDSAY.S.SEE@WVAGO.GOV

ILYA SHAPIRO
CATO INSTITUTE
1000 MASSACHUSETTS AVE., NW
WASHINGTON, DC 20001
202-218-4600
ISHAPIRO@CATO.ORG

JENNIFER A. SIMON
KAZMAREK MOWREY CLOUD LASETER LLP
1230 PEACHTREE ST., NE
STE. 900
ATLANTA, GA 30309
404-812-0126
JSIMO9N@KMCLLAW.COM

CATHERINE E. STETSON
HOGAN LOVELLS US LLP
COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004
202-637-5491
CATE.STETSON@HOGANLOVELLS.COM

DANIEL R. SUHR
LIBERTY JUSTICE CENTER
440 N. WELLS ST.
SUITE 200
CHICAGO, IL 60654
312-637-2280
DSUHR@LIBERTYJUSTICECENTER.ORG

CHRISTOPHER D. THOMAS
PERKINS COIE LLP
2901 NORTH CENTRAL AVENUE,
SUITE 2000
PHOENIX, AZ 85020, AZ 85020
602-528-4044
CTHOMAS@PERKINSCOIE.COM

CHRISTOPHER D. THOMAS
SQUIRE, SANDERS & DEMPSEY L.L.P.
2901 NORTH CENTRAL AVENUE,
SUITE 2000
PHOENIX, AZ 85020, AZ 85020
602-528-4044
CTHOMAS@PERKINSCOIE.COM

NICHOLAS S. TORREY
SOUTHERN ENVIRONMENTAL LAW CENTER
601 WEST ROSEMARY STREET
SUITE 220
CHAPEL HILL, NC 27516
919-967-1450
NTORREY@SELCNC.ORG

DAVID C. TRYON
SPECIAL ASSISTANT TO THE ATTORNEY
STATE CAPITOL COMPLEX
112 CALIFORNIA AVENUE
BLDG. 6, ROOM 430
CHARLESTON, WV 25305-0220
304-558-2021
DAVID.C.TRYON@WVAGO.GOV

MISHA TSEYTLIN
TROUTMAN SANDERS LLP
227 W. MONROE
SUITE 3900
CHICAGO, IL 60606
312-759-5947
MISHA.TSEYTLIN@TROUTMAN.COM

BARBARA D. UNDERWOOD
NEW YORK SOLICITOR GENERAL
28 LIBERTY STREET,
23RD FLOOR
NEW YORK, NY 10005
212-416-6197
BARBARA.UNDERWOOD@AG.NY.GOV

FRED R. WAGNER
VENABLE LLP
600 MASSACHUSETTS AVE., NW
WASHINGTON, DC 20001
202-344-4000
FRWAGNER@VENABLE.COM

THOMAS J. WARD
NATIONAL ASSOCIATION OF HOME
BUILDERS
1201 15TH STREET, NW
WASHINGTON, DC 20005-2800
202-266-8490
TWARD@NAHB.ORG

MEREDITH WEINBERG
PERKINS COIE LLP
1201 THIRD AVENUE
SUITE 4900
SEATTLE, WA 98101
206-359-3229
MWEINBERG@PERKINSCOIE.COM

DAVID A. WILKINSON
ASSISTANT ATTORNEYS GENERAL
1031 W. 4TH AVE.
STE 200
ANCHORAGE, AK 99501
907-269-5100
DAVID.WILKINSON@ALASKA.GOV

JONATHAN CALVIN WOOD
PACIFIC LEGAL FOUNDATION
2048 ANALYSIS DR. STE. A
SUITE 610
BOZEMAN, MT 59718, MT 59718
406-587-9591
JONATHAN@PERC.ORG

SCOTT YAGER
CHIEF ENVIRONMENTAL COUNSEL
CENTER FOR PUBLIC POLICY
THE PENNSYLVANIA BUILDING
1275 PENNSYLVANIA AVE, NW, SUITE 801
WASHINGTON, DC 20004-1701
202-347-0228
SYAGER@BEEF.ORG

WILLIAM M. YEATMAN
CATO INSTITUTE
3100 CLARENDON BLVD
SUITE 1000
ARLINGTON, VA 22201
202-807-4472
ADYNAR@PACIFICLEGAL.ORG