



High Court Places in Doubt Federal Safeguards for Countless Waters

“A Setback for Clean Water, Public Health and Wildlife”

Washington, DC (June 19, 2006) -- The Supreme Court today placed additional hurdles to federal protections under the Clean Water Act for more than half of the nation’s remaining wetlands and countless stream miles, putting many of those waters at risk for pollution and destruction. In a case involving Michigan wetlands and streams that flow into larger water bodies, the court sent the cases back to the lower courts for further consideration.

“This decision will be difficult to implement because the court was split, with no clear majority,” says Jim Murphy, Wetlands Counsel for the National Wildlife Federation. “Unless this uncertainty is properly corrected, the impact on our nation’s waters will be devastating.”

The Supreme Court case combined two cases, *Carabell v. United States* and *United States v. Rapanos* which are on appeal from the Sixth Circuit Court of Appeals. Both addressed whether the Clean Water Act protects wetlands adjacent to small tributaries that flow into larger water bodies.

The Court’s reasoning was split. A plurality ruled that only permanent bodies of waters, such as major lakes and rivers, and directly abutting wetlands are protected by the Act. Justice Kennedy, in a concurring opinion, found that the Act protected waters with a “significant nexus” to other waters and that ecological factors such as flood control could create such a nexus. While Justice Kennedy disagreed with the majority’s very narrow view of scope of the Act, he was not

convinced that the lower court had found a “significant nexus” had been established in the waters at issue and that further proceedings were needed.

“The confusion caused by this split decision can be clarified if Congress or the administration acts to protect all our country’s waters,” continued Murphy. “If the court thinks current law is not adequate to protect all waters, then Congress should amend the law to encompass all wetlands, streams, lakes, rivers and other important waters.”

Joining the National Wildlife Federation and Ducks Unlimited in an amicus brief filed in the case were the American Fisheries Society, American Sportfishing Association, Bass Pro Shops, Boone & Crockett Club, Izaak Walton League, Michigan United Conservation Clubs, Orvis, Pheasants Forever, The Wildlife Society, Theodore Roosevelt Conservation Partnership, Trout Unlimited and Wildlife Management Institute.

The groups supported the Bush Administration’s position in the case that Congress intended to protect headwater wetlands and tributaries under the Clean Water Act when it was passed in 1972.

“This ruling adds unnecessary and unintended hurdles for agencies and citizens trying to protect our waters. This dog won’t hunt with America’s sportsmen who will fight in the courts, congress and the administration to assure a full legacy of healthy waters for our children’s future,” concluded Murphy.

The cases involve Michigan wetlands slated for development. In the Rapanos case, the developer began filling in wetlands in three Michigan Counties without a permit. The 54 total acres of wetlands are connected to tributaries that flow into either Lake St. Clair or Lake Huron. The developer was found liable for the wetlands destruction under the Clean Water Act by the Sixth Circuit Court of Appeals. In the Carabell case, the developer wanted to build condo units on 19 acres of land in Macomb County, Michigan, about 15 of which was forested wetlands. The Carabell wetlands are adjacent to a tributary that flows to Lake St. Clair. A permit for the development was issued by the Michigan Department of Environmental Quality, but the Army Corps intervened and ordered the permit be denied. The developer then brought suit alleging the wetlands were not covered by the Clean Water Act.

The National Wildlife Federation is America’s conservation organization protecting wildlife for our children’s future. www.nwf.org.

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