



*Sackett v. Environmental Protection Agency*

## **Landowners can challenge EPA compliance orders in court**



### **Case Status: Active: Litigation is ongoing**

Chantell and Michael Sackett received a local permit to build a modest three-bedroom home on a half-acre lot in an existing, partially built-out residential subdivision in Priest Lake, Idaho. The home poses no threat to water quality but federal EPA regulators nonetheless declared their property to contain a wetland and demanded they stop all work and restore the lot to its natural condition or pay fines of up to \$75,000 per day. When they sued to challenge this order, EPA asserted they had no right to judicial review. The district court and Ninth Circuit Court of Appeals agreed, and tossed their lawsuit out of court. The United States Supreme Court unanimously reversed, ruling that failure to allow the lawsuit violated the Sacketts' constitutional due process rights. They are now litigating their claims in federal district court in Idaho.

Chantell and Michael Sackett bought a half-acre parcel of apparently dry land near Priest Lake, Idaho, and obtained local permits to build a home. The lot sits in a built-out subdivision, has an existing sewer hookup, and is zoned for residential construction. When the Sacketts began leveling the lot for construction, EPA officials immediately ordered the Sacketts to stop work, and, months later, sent the Sacketts a compliance order claiming the property contained a "wetland" that could not be filled without a federal permit. The compliance order prohibited the Sacketts from constructing their

home, demanded costly restoration work, and required a three-year monitoring program during which the property must be left untouched. The EPA also ordered them to provide off-site mitigation and pay fines exceeding the value of the land. Further, the EPA warned the Sacketts they would be liable for civil penalties up to \$75,000 per day and possible criminal sanctions if they failed to comply with the order.

The Sacketts disputed the presence of wetlands on their lot, and the EPA provided them with no proof of any violation and no opportunity to contest EPA's claims. Represented by PLF, the Sacketts sued the EPA, claiming the agency's overreaching denied them their constitutional right to due process. The Supreme Court unanimously agreed, concluding that the Sacketts had a constitutional right to contest the jurisdiction of the EPA in a court of law. This was the first time in 40 years that a court had so ruled.

The Sacketts' case returned to the federal district court in Idaho for a decision on the merits. All briefing on cross-motions for summary judgment is complete and we are awaiting a decision.

### **WHAT'S AT STAKE?**

- **The Constitution's Due Process guarantee gives landowners a means to level the playing field by allowing them to seek judicial review when faced with onerous compliance orders based on an error in jurisdiction or improper assertion of authority under the Clean Water Act.**
- **A person's property cannot be taken from him, or devalued, or made entirely unusable, based on an unreviewable government or administrative decree.**

### **CASE TIMELINE**

### **CASE ATTORNEYS**



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