From: Sonja Wiser
To: Sonja Wiser
Subject: FW: WOTUS Supreme Court ruling - FOR THE PUBLIC RECORD AND COMPREHENSIVE PLAN UPDATE
Date: Wednesday, November 1, 2023 1:39:35 PM

From: Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>
Sent: Monday, October 23, 2023 8:28 AM
To: Sonja Wiser <Sonja.Wiser@clark.wa.gov>
Subject: FW: WOTUS Supreme Court ruling - FOR THE PUBLIC RECORD AND COMPREHENSIVE PLAN UPDATE

FYI. Thanks.

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Saturday, October 21, 2023 1:08 PM
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Subject: Fw: WOTUS Supreme Court ruling - FOR THE PUBLIC RECORD AND COMPREHENSIVE PLAN UPDATE

FOR THE PUBLIC RECORD AND COMPREHENSIVE PLAN UPDATE

Re: **United States Supreme Court ruling over the Waters of the United States (WOTUS) -**
Argued October 3, 2022—Decided May 25, 2023 - No. 21-454

To the Clark County Council and Clark County Staff,

This Information is being presented by Clark County Citizens United, Inc.. It is to be placed in the public record and the record for the Comprehensive Plan update. The following is a verbatim ruling from the United State Supreme Court regarding Waters of the United State (WOTUS)

Cite as: 598 U. S. ____ (2023) 1
Opinion of the Court
NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES No. 21–454

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

2 SACKETT v. EPA Opinion of the Court For more than a half century, the agencies responsible for enforcing the Act have wrestled with the problem and adopted varying interpretations. On three prior occasions, this Court has tried to clarify the meaning of "the waters of the United States." But the problem persists. When we last addressed the question 17 years ago, we were unable to agree on an opinion of the Court.

3 Today, we return to the problem and attempt to identify with greater clarity what the Act means by "the waters of the United States." I A For most of this Nation's history, the regulation of water pollution was left almost entirely to the States and their subdivisions. The common law permitted aggrieved parties to bring nuisance suits against polluters. But as industrial production and population growth increased the quantity and toxicity of pollution, States gradually shifted to enforcement by regulatory agencies.

4 Conversely, federal regulation was largely limited to ensuring that "traditional navigable waters"—that is, interstate waters that were either navigable in fact and used in commerce or readily susceptible of being used in this way—remained free of impediments. See, e.g., Rivers and Harbors Act of 1899, 30 Stat. 1151; see also United States v. Appalachian Elec. Power Co., 311 U. S. 377, 406–407 (1940); The Daniel Ball, 10 Wall. 557, 563 (1871). Congress's early efforts at directly regulating water pollution were tepid. Although the Federal Water Pollution Control Act of 1948 allowed federal officials to seek judicial abatement of pollution in interstate waters, it imposed high ———————— 3See Rapanos v. United States, 547 U. S. 715 (2006). Neither party contends that any opinion in Rapanos controls. We agree. See Nichols v. United States, 511 U. S. 738, 745–746 (1994). 4See N. Hines, Nor Any Drop To Drink: Public Regulation of Water Quality, 52 Iowa L. Rev. 186, 196–207 (1966). Cite as: 598 U. S. ____ (2023) 3 Opinion of the Court hurdles, such as requiring the consent of the State where the pollution originated. See 62 Stat. 1156–1157. Despite repeated amendments over the next two decades, few actions were brought under this framework.

5 Congress eventually replaced this scheme in 1972 with the CWA. See 86 Stat. 816. The Act prohibits "the discharge of any pollutant" into "navigable waters." 33 U. S. C. §§1311(a), 1362(12)(A). It broadly defines the term "'pollutant'" to include not only contaminants like "chemical wastes," but also more mundane materials like "rock, sand," and "cellar dirt." §1362(6). The CWA is a potent weapon. It imposes what have been described as "crushing" consequences "even for inadvertent violations." Army Corps of Engineers v. Hawkes Co., 578 U. S. 590, 602 (2016) (Kennedy, J., concurring). Property owners who negligently discharge "pollutants" into covered

waters may face severe criminal penalties including imprisonment. §1319(c). These penalties increase for knowing violations. Ibid. On the civil side, the CWA imposes over $60,000 in fines per day for each violation. See Note following 28 U. S. C. §2461; 33 U. S. C. §1319(d); 88 Fed. Reg. 989 (2023) (to be codified in 40 CFR §19.4). And due to the Act's 5-year statute of limitations, 28 U. S. C. §2462, and expansive interpretations of the term "violation," these civil penalties can be nearly as crushing as their criminal counterparts, see, e.g., Borden Ranch Partnership v. United States Army Corps of Engineers, 261 F. 3d 810, 813, 818 (CA9 2001) (upholding Agency decision to count each of 348 passes of a plow by a farmer through "jurisdictional" soil on his farm as a separate violation), aff 'd by an equally divided Court, 537 U. S. 99 (2002) (per curiam). The Environmental Protection Agency (EPA) and the ———————— 5See Hearings on Activities of the Federal Water Pollution Control Administration before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works, 90th Cong., 1st Sess., 674 (1967) (reporting only one abatement suit between 1948 and 1967). 4 SACKETT v. EPA Opinion of the Court Army Corps of Engineers (Corps) jointly enforce the CWA. The EPA is tasked with policing violations after the fact, either by issuing orders demanding compliance or by bringing civil actions. §1319(a). The Act also authorizes private plaintiffs to sue to enforce its requirements. §1365(a). On the front end, both agencies are empowered to issue permits exempting activity that would otherwise be unlawful under the Act. Relevant here, the Corps controls permits for the discharge of dredged or fill material into covered waters. See §1344(a). The costs of obtaining such a permit are "significant," and both agencies have admitted that "the permitting process can be arduous, expensive, and long." Hawkes Co., 578 U. S., at 594–595, 601. Success is also far from guaranteed, as the Corps has asserted discretion to grant or deny permits based on a long, nonexclusive list of factors that ends with a catchall mandate to consider "in general, the needs and welfare of the people." 33 CFR §320.4(a)(1) (2022). Due to the CWA's capacious definition of "pollutant," its low mens rea, and its severe penalties, regulated parties have focused particular attention on the Act's geographic scope. While its predecessor encompassed "interstate or navigable waters," 33 U. S. C. §1160(a) (1970 ed.), the CWA prohibits the discharge of pollutants into only "navigable waters," which it defines as "the waters of the United States, including the territorial seas," 33 U. S. C. §§1311(a), 1362(7), (12)(A) (2018 ed.). The meaning of this definition is the persistent problem that we must address. B Michael and Chantell Sackett have spent well over a decade navigating the CWA, and their voyage has been bumpy and costly. In 2004, they purchased a small lot near Priest Lake, in Bonner County, Idaho. In preparation for building a modest home, they began backfilling their property with Cite as: 598 U. S. ____ (2023) 5 Opinion of the Court dirt and rocks. A few months later, the EPA sent the Sacketts a compliance order informing them that their backfilling violated the CWA because their property contained protected wetlands. The EPA demanded that the Sacketts immediately "'undertake activities to restore the Site'" pursuant to a "'Restoration Work Plan'" that it provided. Sackett v. EPA, 566 U. S. 120, 125 (2012). The order threatened the Sacketts with penalties of over $40,000 per day if they did not comply. At the time, the EPA interpreted "the waters of the United States" to include "[a]ll . . . waters" that "could affect interstate or foreign commerce," as well as "[w]etlands adjacent" to those waters. 40 CFR §§230.3(s)(3), (7) (2008). "[A]djacent" was defined to mean not just "bordering" or "contiguous," but also "neighboring." §230.3(b). Agency guidance

instructed officials to assert jurisdiction over wetlands "adjacent" to non-navigable tributaries when those wetlands had "a significant nexus to a traditional navigable water."

6 A "significant nexus" was said to exist when "'wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity'" of those waters. 2007 Guidance 8 (emphasis added). In looking for evidence of a "significant nexus," field agents were told to consider a wide range of open-ended hydrological and ecological factors. See id., at 7. According to the EPA, the "wetlands" on the Sacketts' lot are "adjacent to" (in the sense that they are in the same neighborhood as) what it described as an "unnamed tributary" on the other side of a 30-foot road. App. 33. That tributary feeds into a non-navigable creek, which, in turn, feeds into Priest Lake, an intrastate body of water that the ————————— 6EPA & Corps, Clean Water Act Jurisdiction Following the U. S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States 7–11 (2007) (2007 Guidance). 6 SACKETT v. EPA Opinion of the Court EPA designated as traditionally navigable. To establish a significant nexus, the EPA lumped the Sacketts' lot together with the Kalispell Bay Fen, a large nearby wetland complex that the Agency regarded as "similarly situated." According to the EPA, these properties, taken together, "significantly affect" the ecology of Priest Lake. Therefore, the EPA concluded, the Sacketts had illegally dumped soil and gravel onto "the waters of the United States." The Sacketts filed suit under the Administrative Procedure Act, 5 U. S. C. §702 et seq., alleging that the EPA lacked jurisdiction because any wetlands on their property were not "waters of the United States." The District Court initially dismissed the suit, reasoning that the compliance order was not a final agency action, but this Court ultimately held that the Sacketts could bring their suit under the APA. See Sackett, 566 U. S., at 131. After seven years of additional proceedings on remand, the District Court entered summary judgment for the EPA. 2019 WL 13026870 (D Idaho, Mar. 31, 2019). The Ninth Circuit affirmed, holding that the CWA covers adjacent wetlands with a significant nexus to traditional navigable waters and that the Sacketts' lot satisfied that standard. 8 F. 4th 1075, 1091– 1093 (2021). We granted certiorari to decide the proper test for determining whether wetlands are "waters of the United States." 595 U. S. ___ (2022). II A In defining the meaning of "the waters of the United States," we revisit what has been "a contentious and difficult task." National Assn. of Mfrs. v. Department of Defense, 583 U. S. ___, ___ (2018) (slip op., at 1). The phrase has sparked decades of agency action and litigation. In order to resolve the CWA's applicability to wetlands, we begin by reviewing this history. Cite as: 598 U. S. ____ (2023)

7 Opinion of the Court The EPA and the Corps initially promulgated different interpretations of "the waters of the United States." The EPA defined its jurisdiction broadly to include, for example, intrastate lakes used by interstate travelers. 38 Fed. Reg. 13529 (1973). Conversely, the Corps, consistent with its historical authority to regulate obstructions to navigation, asserted jurisdiction over only traditional navigable waters. 39 Fed. Reg. 12119 (1974). But the Corps' narrow definition did not last. It soon promulgated new, much broader definitions designed to reach the outer limits of Congress's commerce power. See 42 Fed. Reg. 37144, and n. 2 (1977); 40 Fed. Reg. 31324–31325 (1975). Eventually the EPA and Corps settled on materially

identical definitions. See 45 Fed. Reg. 33424 (1980); 47 Fed. Reg. 31810–31811 (1982). These broad definitions encompassed "[a]ll . . . waters" that "could affect interstate or foreign commerce." 40 CFR §230.3(s)(3) (2008). So long as the potential for an interstate effect was present, the regulation extended the CWA to, for example, "intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds." Ibid. The agencies likewise took an expansive view of the CWA's coverage of wetlands "adjacent" to covered waters. §230.3(s)(7). As noted, they defined "adjacent" to mean "bordering, contiguous, or neighboring" and clarified that "adjacent" wetlands include those that are separated from covered waters "by manmade dikes or barriers, natural river berms, beach dunes and the like." §230.3(b). They also specified that "wetlands" is a technical term encompassing "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." §230.3(t). The Corps released what would become a 143- page manual to guide officers when they determine whether

8 SACKETT v. EPA Opinion of the Court property meets this definition.7 This Court first construed the meaning of "the waters of the United States" in United States v. Riverside Bayview Homes, Inc., 474 U. S. 121 (1985). There, we were confronted with the Corps' assertion of authority under the CWA over wetlands that "actually abut[ted] on a navigable waterway." Id., at 135. Although we expressed concern that wetlands seemed to fall outside "traditional notions of 'waters,'" we nonetheless deferred to the Corps, reasoning that "the transition from water to solid ground is not necessarily or even typically an abrupt one." Id., at 132–133. The agencies responded to Riverside Bayview by expanding their interpretations even further. Most notably, they issued the "migratory bird rule," which extended jurisdiction to any waters or wetlands that "are or would be used as [a] habitat" by migratory birds or endangered species. See 53 Fed. Reg. 20765 (1988); 51 Fed. Reg. 41217 (1986). As the Corps would later admit, "nearly all waters were jurisdictional under the migratory bird rule."8 In Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers, 531 U. S. 159 (2001) (SWANCC), this Court rejected the migratory bird rule, which the Corps had used to assert jurisdiction over several isolated ponds located wholly within the State of Illinois. Disagreeing with the Corps' argument that ecological interests supported its jurisdiction, we instead held that the CWA does not "exten[d] to ponds that are not adjacent to open water." Id., at 168 (emphasis deleted). Days after our decision, the agencies issued guidance that ——————— 7See Corps, Wetlands Delineation Manual (Tech. Rep. Y–87–1, 1987) (Wetlands Delineation Manual); see also, e.g., Corps, Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Alaska Region (Version 2.0) (ERDC/EL Tr–07–24, 2007). 8GAO, Waters and Wetlands: Corps of Engineers Needs To Evaluate Its District Office Practices in Determining Jurisdiction 26 (GAO–04– 297, 2004) (GAO Report). Cite as: 598 U. S. ____ (2023)

9 Opinion of the Court sought to minimize SWANCC's impact. They took the view that this Court's holding was "strictly limited to waters that are 'nonnavigable, isolated, and intrastate'" and that "field staff should continue to exercise CWA jurisdiction to the

full extent of their authority" for "any waters that fall outside of that category."9 The agencies never defined exactly what they regarded as the "full extent of their authority." They instead encouraged local field agents to make decisions on a case-by-case basis. What emerged was a system of "vague" rules that depended on "locally developed practices." GAO Report 26. Deferring to the agencies' localized decisions, lower courts blessed an array of expansive interpretations of the CWA's reach. See, e.g., United States v. Deaton, 332 F. 3d 698, 702 (CA4 2003) (holding that a property owner violated the CWA by piling soil near a ditch 32 miles from navigable waters). Within a few years, the agencies had "interpreted their jurisdiction over 'the waters of the United States' to cover 270-to-300 million acres" of wetlands and "virtually any parcel of land containing a channel or conduit . . . through which rainwater or drainage may occasionally or intermittently flow." Rapanos v. United States, 547 U. S. 715, 722 (2006) (plurality opinion). It was against this backdrop that we granted review in Rapanos v. United States. The lower court in the principal case before us had held that the CWA covered wetlands near ditches and drains that eventually emptied into navigable waters at least 11 miles away, a theory that had supported the petitioner's conviction in a related prosecution. Id., at 720, 729. Although we vacated that decision, no position commanded a majority of the Court. Four Justices concluded that the CWA's coverage did not extend beyond two categories: first, certain relatively permanent bodies of ———————— 9EPA & Corps, Memorandum, Supreme Court Ruling Concerning CWA Jurisdiction Over Isolated Waters 3 (2001) (alteration omitted). 10 SACKETT v. EPA Opinion of the Court water connected to traditional interstate navigable waters and, second, wetlands with such a close physical connection to those waters that they were "as a practical matter indistinguishable from waters of the United States." Id., at 742, 755 (emphasis deleted). Four Justices would have deferred to the Government's determination that the wetlands at issue were covered under the CWA. Id., at 788 (Stevens, J., dissenting). Finally, one Justice concluded that jurisdiction under the CWA requires a "significant nexus" between wetlands and navigable waters and that such a nexus exists where "the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity" of those waters. Id., at 779–780 (Kennedy, J., concurring in judgment). In the decade following Rapanos, the EPA and the Corps issued guidance documents that "recognized larger grey areas and called for more fact-intensive individualized determinations in those grey areas."

10 As discussed, they instructed agency officials to assert jurisdiction over wetlands "adjacent" to non-navigable tributaries based on fact-specific determinations regarding the presence of a significant nexus. 2008 Guidance 8. The guidance further advised officials to make this determination by considering a lengthy list of hydrological and ecological factors. Ibid. Echoing what they had said about the migratory bird rule, the agencies later admitted that "almost all waters and wetlands across the country theoretically could be subject to a case-specific jurisdictional determination" under this guidance. 80 Fed. Reg. 37056 (2015); see, e.g., Hawkes Co., 578 U. S., at 596 (explaining that the Corps found a significant nexus between wetlands and a river "some 120 miles ———————— 10N. Parrillo, Federal Agency Guidance and the Power To Bind: An Empirical Study of Agencies and Industries, 36 Yale J. on Reg. 165, 231 (2019); see 2007 Guidance 7–11; EPA & Corps, Clean

Water Act Jurisdiction Following the U. S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States 8–12 (2008) (2008 Guidance). Cite as: 598 U. S. ____ (2023) 11 Opinion of the Court away"). More recently, the agencies have engaged in a flurry of rulemaking defining "the waters of the United States." In a 2015 rule, they offered a muscular approach that would subject "the vast majority of the nation's water features" to a case-by-case jurisdictional analysis.

11 Although the rule listed a few examples of "waters" that were excluded from regulation like "[p]uddles" and "swimming pools," it categorically covered other waters and wetlands, including any within 1,500 feet of interstate or traditional navigable waters. 80 Fed. Reg. 37116–37117. And it subjected a wider range of other waters, including any within 4,000 feet of indirect tributaries of interstate or traditional navigable waters, to a case-specific determination for significant nexus. Ibid. The agencies repealed this sweeping rule in 2019. 84 Fed. Reg. 56626. Shortly afterwards, they replaced it with a narrower definition that limited jurisdiction to traditional navigable waters and their tributaries, lakes, and "adjacent" wetlands. 85 Fed. Reg. 22340 (2020). They also narrowed the definition of "[a]djacent," limiting it to wetlands that "[a]but" covered waters, are flooded by those waters, or are separated from those waters by features like berms or barriers. Ibid. This rule too did not last. After granting the EPA's voluntary motion to remand, a District Court vacated the rule. See Pascua Yaqui Tribe v. EPA, 557 F. Supp. 3d 949, 957 (D Ariz. 2021). The agencies recently promulgated yet another rule attempting to define waters of the United States. 88 Fed. Reg. 3004 (2023) (to be codified in 40 CFR §120.2). Under that broader rule, traditional navigable waters, interstate waters, and the territorial seas, as well as their tributaries and adjacent wetlands, are waters of the United States. 88 ———————— 11EPA & Dept. of the Army, Economic Analysis of the EPA-Army Clean Water Rule 11 (2015).

12 SACKETT v. EPA Opinion of the Court Fed. Reg. 3143. So are any "[i]ntrastate lakes and ponds, streams, or wetlands" that either have a continuous surface connection to categorically included waters or have a significant nexus to interstate or traditional navigable waters. Id., at 3006, 3143. Like the post-Rapanos guidance, the rule states that a significant nexus requires consideration of a list of open-ended factors. 88 Fed. Reg. 3006, 3144. Finally, the rule returns to the broad pre-2020 definition of "adjacent." Ibid.; see supra, at 7. Acknowledging that "[f]ield work is often necessary to confirm the presence of a wetland" under these definitions, the rule instructs local agents to continue using the Corps' Wetlands Delineation Manual. 88 Fed. Reg. 3117. B With the benefit of a half century of practice under the CWA, it is worth taking stock of where things stand. The agencies maintain that the significant-nexus test has been and remains sufficient to establish jurisdiction over "adjacent" wetlands. And by the EPA's own admission, "almost all waters and wetlands" are potentially susceptible to regulation under that test. 80 Fed. Reg. 37056. This puts many property

owners in a precarious position because it is “often difficult to determine whether a particular piece of property contains waters of the United States.” Hawkes Co., 578 U. S., at 594; see 40 CFR §230.3(t) (2008). Even if a property appears dry, application of the guidance in a complicated manual ultimately decides whether it contains wetlands. See 88 Fed. Reg. 3117; Wetlands Delineation Manual 84–85 (describing “not . . . atypical” examples of wetlands that periodically lack wetlands indicators); see also Hawkes Co. v. United States Army Corps of Engineers, 782 F. 3d 994, 1003 (CA8 2015) (Kelly, J., concurring) (“This is a unique aspect of the CWA; most laws do not require the hiring of expert consultants to determine if they even apply to you or your property”). And because the CWA can sweep Cite as: 598 U. S. ____ (2023)

13 Opinion of the Court broadly enough to criminalize mundane activities like moving dirt, this unchecked definition of “the waters of the United States” means that a staggering array of landowners are at risk of criminal prosecution or onerous civil penalties. What are landowners to do if they want to build on their property? The EPA recommends asking the Corps for a jurisdictional determination, which is a written decision on whether a particular site contains covered waters. Tr. of Oral Arg. 86; see Corps, Regulatory Guidance Letter No. 16–01, at 1 (2016) (RGL 16–01); 33 CFR §§320.1(a)(6), 331.2. But the Corps maintains that it has no obligation to provide jurisdictional determinations, RGL 16–01, at 2, and it has already begun announcing exceptions to the legal effect of some previous determinations, see 88 Fed. Reg. 3136. Even if the Corps is willing to provide a jurisdictional determination, a property owner may find it necessary to retain an expensive expert consultant who is capable of putting together a presentation that stands a chance of persuading the Corps.12 And even then, a landowner’s chances of success are low, as the EPA admits that the Corps finds jurisdiction approximately 75% of the time. Tr. of Oral Arg. 110. If the landowner is among the vast majority who receive adverse jurisdictional determinations, what then? It would be foolish to go ahead and build since the jurisdictional determination might form evidence of culpability in a prosecution or civil action. The jurisdictional determination could be challenged in court, but only after the delay and expense required to exhaust the administrative appeals ——————— 12See 88 Fed. Reg. 3134; Corps, Questions and Answers for Rapanos and Carabell Decision 16 (2007); J. Finkle, Jurisdictional Determinations: An Important Battlefield in the Clean Water Act Fight, 43 Ecology L. Q. 301, 314–315 (2016); K. Gould, Drowning in Wetlands Jurisdictional Determination Process: Implementation

of Rapanos v. United States, 30 U. Ark. Little Rock L. Rev. 413, 440 (2008).

14 SACKETT v. EPA Opinion of the Court process. See 33 CFR §331.7(d). And once in court, the landowner would face an uphill battle under the deferential standards of review that the agencies enjoy. See 5 U. S. C. §706. Another alternative would be simply to acquiesce and seek a permit from the Corps. But that process can take years and cost an exorbitant amount of money. Many landowners faced with this unappetizing menu of options would simply choose to build nothing. III With this history in mind, we now consider the extent of the CWA's geographical reach. A We start, as we always do, with the text of the CWA. Bartenwerfer v. Buckley, 598 U. S. 69, 74 (2023). As noted, the Act applies to "navigable waters," which had a well-established meaning at the time of the CWA's enactment. But the CWA complicates matters by proceeding to define "navigable waters" as "the waters of the United States," §1362(7), which was decidedly not a well-known term of art. This frustrating drafting choice has led to decades of litigation, but we must try to make sense of the terms Congress chose to adopt. And for the reasons explained below, we conclude that the Rapanos plurality was correct: the CWA's use of "waters" encompasses "only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic[al] features' that are described in ordinary parlance as 'streams, oceans, rivers, and lakes.'" 547 U. S., at 739 (quoting Webster's New International Dictionary 2882 (2d ed. 1954) (Webster's Second); original alterations omitted). This reading follows from the CWA's deliberate use of the plural term "waters." See 547 U. S., at 732–733. That term typically refers to bodies of water like those listed above. See, e.g., Webster's Second 2882; Black's Law Dictionary Cite as: 598 U. S. ____ (2023)

15 Opinion of the Court 1426 (5th ed. 1979) ("especially in the plural, [water] may designate a body of water, such as a river, a lake, or an ocean, or an aggregate of such bodies of water, as in the phrases 'foreign waters,' 'waters of the United States,' and the like" (emphasis added)); Random House Dictionary of the English Language 2146 (2d ed. 1987) (Random House Dictionary) (defining "waters" as "a. flowing water, or water moving in waves: The river's mighty waters. b. the sea or seas bordering a particular country or continent or located in a particular part of the world" (emphasis deleted)). This meaning is hard to reconcile with classifying "'"lands," wet or otherwise, as "waters."'" Rapanos, 547 U. S., at 740 (plurality opinion) (quoting Riverside Bayview, 474 U. S., at 132). This reading also helps to

align the meaning of "the waters of the United States" with the term it is defining: "navigable waters." See Bond v. United States, 572 U. S. 844, 861 (2014) ("In settling on a fair reading of a statute, it is not unusual to consider the ordinary meaning of a defined term, particularly when there is dissonance between that ordinary meaning and the reach of the definition"). Although we have acknowledged that the CWA extends to more than traditional navigable waters, we have refused to read "navigable" out of the statute, holding that it at least shows that Congress was focused on "its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made." SWANCC, 531 U. S., at 172; see also Appalachian Electric, 311 U. S., at 406–407; The Daniel Ball, 10 Wall., at 563. At a minimum, then, the use of "navigable" signals that the definition principally refers to bodies of navigable water like rivers, lakes, and oceans. See Rapanos, 547 U. S., at 734 (plurality opinion). More broadly, this reading accords with how Congress has employed the term "waters" elsewhere in the CWA and

16 SACKETT v. EPA Opinion of the Court in other laws. The CWA repeatedly uses "waters" in contexts that confirm the term refers to bodies of open water. See 33 U. S. C. §1267(i)(2)(D) ("the waters of the Chesapeake Bay"); §1268(a)(3)(I) ("the open waters of each of the Great Lakes"); §1324(d)(4)(B)(ii) ("lakes and other surface waters"); §1330(g)(4)(C)(vii) ("estuarine waters"); §1343(c)(1) ("the waters of the territorial seas, the contiguous zone, and the oceans"); §§1346(a)(1), 1375a(a) ("coastal recreation waters"); §1370 (state "boundary waters"). The use of "waters" elsewhere in the U. S. Code likewise correlates to rivers, lakes, and oceans.13 Statutory history points in the same direction. The CWA's predecessor statute covered "interstate or navigable waters" and defined "interstate waters" as "all rivers, lakes, and other waters that flow across or form a part of State boundaries." 33 U. S. C. §§1160(a), 1173(e) (1970 ed.) (emphasis added); see also Rivers and Harbors Act of 1899, 30 Stat. 1151 (codified, as amended, at 33 U. S. C. §403) (prohibiting unauthorized obstructions "to the navigable capacity of any of the waters of the United States"). This Court has understood the CWA's use of "waters" in the same way. Even as Riverside Bayview grappled with whether adjacent wetlands could fall within the CWA's coverage, it acknowledged that wetlands are not included in "traditional notions of 'waters.'" 474 U. S., at 133. It explained that the term conventionally refers to "hydrographic features" like "rivers" and "streams." Id., at 131. SWANCC went even further, repeatedly describing the "waters" covered by the Act as "open water" and suggesting

——————— 13See, e.g., 16 U. S. C. §745 (“the waters of the seacoast . . . the waters of the lakes”); §4701(a)(7) (“waters of the Chesapeake Bay”); 33 U. S. C. §4 (“the waters of the Mississippi River and its tributaries”); 43 U. S. C. §390h–8(a) (“the waters of Lake Cheraw, Colorado . . . the waters of the Arkansas River”); 46 U. S. C. §70051 (allowing the Coast Guard to take control of particular vessels during an emergency in order to “prevent damage or injury to any harbor or waters of the United States”). Cite as: 598 U. S. ____ (2023)

17 Opinion of the Court that “the waters of the United States” principally refers to traditional navigable waters. 531 U. S., at 168–169, 172. That our CWA decisions operated under this assumption is unsurprising. Ever since Gibbons v. Ogden, 9 Wheat. 1 (1824), this Court has used “waters of the United States” to refer to similar bodies of water, almost always in relation to ships. Id., at 218 (discussing a vessel’s “conduct in the waters of the United States”).14 The EPA argues that “waters” is “naturally read to encompass wetlands” because the “presence of water is ‘universally regarded as the most basic feature of wetlands.’” Brief for Respondents 19. But that reading proves too much. Consider puddles, which are also defined by the ordinary presence of water even though few would describe them as “waters.” This argument is also tough to square with SWANCC, which held that the Act does not cover isolated ponds, see 531 U. S., at 171, or Riverside Bayview, which would have had no need to focus so extensively on the adjacency of wetlands to covered waters if the EPA’s reading were correct, see 474 U. S., at 131–135, and n. 8. Finally, it is also instructive that the CWA expressly “protect[s] the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution” and “to plan the development and use . . . of land and water resources.” ——————— 14See, e.g., United States v. Alvarez-Machain, 504 U. S. 655, 661, n. 7 (1992) (discussing a treaty “to allow British passenger ships to carry liquor while in the waters of the United States”); Kent v. Dulles, 357 U. S. 116, 123 (1958) (discussing a prohibition on boarding “vessels of the enemy on waters of the United States”); New Jersey v. New York City, 290 U. S. 237, 240 (1933) (enjoining employees of New York City from dumping garbage “into the ocean, or waters of the United States, off the coast of New Jersey”); Cunard S. S. Co. v. Mellon, 262 U. S. 100, 127 (1923) (holding that the National Prohibition Act did not apply to “merchant ships when outside the waters of the United States”); Keck v. United States, 172 U. S. 434, 444–445 (1899) (holding that concealing imported goods on vessels “at the time of entering the waters of the United States,” without more, did not constitute smuggling).

18 SACKETT v. EPA Opinion of the Court §1251(b). It is hard to see how the States' role in regulating water resources would remain "primary" if the EPA had jurisdiction over anything defined by the presence of water. See County of Maui v. Hawaii Wildlife Fund, 590 U. S. ___, ___ (2020) (slip op., at 7); Rapanos, 547 U. S., at 737 (plurality opinion). B Although the ordinary meaning of "waters" in §1362(7) might seem to exclude all wetlands, we do not view that provision in isolation. The meaning of a word "may only become evident when placed in context," FDA v. Brown & Williamson Tobacco Corp., 529 U. S. 120, 132 (2000), and statutory context shows that some wetlands qualify as "waters of the United States." In 1977, Congress amended the CWA and added §1344(g)(1), which authorizes States to apply to the EPA for permission to administer programs to issue permits for the discharge of dredged or fill material into some bodies of water. In simplified terms, the provision specifies that state permitting programs may regulate discharges into (1) any waters of the United States, (2) except for traditional navigable waters, (3) "including wetlands adjacent thereto."15 When this convoluted formulation is parsed, it tells us that at least some wetlands must qualify as "waters of the ———————— 15This provision states in relevant part: "The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact." 33 U. S. C. §1344(g)(1). Cite as: 598 U. S. ____ (2023)

19 Opinion of the Court United States." The provision begins with a broad category, "the waters of the United States," which we may call category A. The provision provides that States may permit discharges into these waters, but it then qualifies that States cannot permit discharges into a subcategory of A: traditional navigable waters (category B). Finally, it states that a third category (category C), consisting of wetlands "adjacent" to traditional navigable waters, is "includ[ed]" within B. Thus, States may permit discharges into A minus B, which includes C. If C (adjacent wetlands) were

not part of A ("the waters of the United States") and therefore subject to regulation under the CWA, there would be no point in excluding them from that category. See Riverside Bayview, 474 U. S., at 138, n. 11 (recognizing that §1344(g) "at least suggest[s] strongly that the term 'waters' as used in the Act does not necessarily exclude 'wetlands'"); Rapanos, 547 U. S., at 768 (opinion of Kennedy, J.). Thus, §1344(g)(1) presumes that certain wetlands constitute "waters of the United States." But what wetlands does the CWA regulate? Section 1344(g)(1) cannot answer that question alone because it is not the operative provision that defines the Act's reach. See Riverside Bayview, 474 U. S., at 138, n. 11. Instead, we must harmonize the reference to adjacent wetlands in §1344(g)(1) with "the waters of the United States," §1362(7), which is the actual term we are tasked with interpreting. The formulation discussed above tells us how: because the adjacent wetlands in §1344(g)(1) are "includ[ed]" within "the waters of the United States," these wetlands must qualify as "waters of the United States" in their own right. In other words, they must be indistinguishably part of a body of water that itself constitutes "waters" under the CWA. See supra, at 14. This understanding is consistent with §1344(g)(1)'s use of "adjacent." Dictionaries tell us that the term "adjacent" may mean either "contiguous" or "near." Random House

 Dictionary 25; see Webster's Third New International Dictionary 26 (1976); see also Oxford American Dictionary & Thesaurus 16 (2d ed. 2009) (listing "adjoining" and "neighboring" as synonyms of "adjacent"). But "construing statutory language is not merely an exercise in ascertaining 'the outer limits of a word's definitional possibilities,'" FCC v. AT&T Inc., 562 U. S. 397, 407 (2011) (alterations omitted), and here, "only one . . . meanin[g] produces a substantive effect that is compatible with the rest of the law," United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd., 484 U. S. 365, 371 (1988). Wetlands that are separate from traditional navigable waters cannot be considered part of those waters, even if they are located nearby. In addition, it would be odd indeed if Congress had tucked an important expansion to the reach of the CWA into convoluted language in a relatively obscure provision concerning state permitting programs. We have often remarked that Congress does not "hide elephants in mouseholes" by "alter[ing] the fundamental details of a regulatory scheme in vague terms or ancillary provisions." Whitman v. American Trucking Assns., Inc., 531 U. S. 457, 468 (2001). We cannot agree with such an implausible interpretation here. If §1344(g)(1) were read to mean that the CWA applies to wetlands

that are not indistinguishably part of otherwise covered "waters of the United States," see supra, at 14, it would effectively amend and substantially broaden §1362(7) to define "navigable waters" as "waters of the United States and adjacent wetlands." But §1344(g)(1)'s use of the term "including" makes clear that it does not purport to do—and in fact, does not do—any such thing. See National Assn. of Home Builders v. Defenders of Wildlife, 551 U. S. 644, 662–664, and n. 8 (2007) (recognizing that implied amendments require "'clear and manifest'" evidence of congressional intent). It merely reflects Congress's assumption that certain "adjacent" wetlands are part of "waters of the United States." Cite as: 598 U. S. ____ (2023)

21 Opinion of the Court This is the thrust of observations in decisions going all the way back to Riverside Bayview. In that case, we deferred to the Corps' decision to regulate wetlands actually abutting a navigable waterway, but we recognized "the inherent difficulties of defining precise bounds to regulable waters." 474 U. S., at 134; see also id., at 132 (noting that "the transition from water to solid ground is not necessarily or even typically an abrupt one" due to semi-aquatic features like shallows and swamps). In such a situation, we concluded, the Corps could reasonably determine that wetlands "adjoining bodies of water" were part of those waters. Id., at 135, and n. 9; see also SWANCC, 531 U. S., at 167 (recognizing that Riverside Bayview "held that the Corps had . . . jurisdiction over wetlands that actually abutted on a navigable waterway"). In Rapanos, the plurality spelled out clearly when adjacent wetlands are part of covered waters. It explained that "waters" may fairly be read to include only those wetlands that are "as a practical matter indistinguishable from waters of the United States," such that it is "difficult to determine where the 'water' ends and the 'wetland' begins." 547 U. S., at 742, 755 (emphasis deleted). That occurs when wetlands have "a continuous surface connection to bodies that are 'waters of the United States' in their own right, so that there is no clear demarcation between 'waters' and wetlands." Id., at 742; cf. 33 U. S. C. §2802(5) (defining "coastal waters" to include wetlands "having unimpaired connection with the open sea up to the head of tidal influence"). We agree with this formulation of when wetlands are part of "the waters of the United States." We also acknowledge that temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells.16 ———————— 16Although a barrier separating a wetland from a water of the United States would ordinarily remove that wetland from federal jurisdiction, a

22 SACKETT v. EPA Opinion of the Court In sum, we hold that the CWA extends to only those wetlands that are "as a practical matter indistinguishable from waters of the United States." Rapanos, 547 U. S., at 755 (plurality opinion) (emphasis deleted). This requires the party asserting jurisdiction over adjacent wetlands to 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." Id., at 742. IV The EPA resists this reading of §1362(7) and instead asks us to defer to its understanding of the CWA's jurisdictional reach, as set out in its most recent rule defining "the waters of the United States." See 88 Fed. Reg. 3004. This rule, as noted, provides that "adjacent wetlands are covered by the Act if they 'possess a "significant nexus" to' traditional navigable waters." Brief for Respondents 32 (quoting Rapanos, 547 U. S., at 759 (opinion of Kennedy, J.)); see 88 Fed. Reg. 3143. And according to the EPA, wetlands are "adjacent" when they are "neighboring" to covered waters, even if they are separated from those waters by dry land. Brief for Respondents 20; 88 Fed. Reg. 3144. A For reasons already explained, this interpretation is inconsistent with the text and structure of the CWA. Beyond that, it clashes with "background principles of construction" ———————— landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA. Whenever the EPA can exercise its statutory authority to order a barrier's removal because it violates the Act, see 33 U. S. C. §§1319(a)–(b), that unlawful barrier poses no bar to its jurisdiction. Cite as: 598 U. S. _____ (2023)

23 Opinion of the Court that apply to the interpretation of the relevant statutory provisions. Bond, 572 U. S., at 857. Under those presumptions, the EPA must provide clear evidence that it is authorized to regulate in the manner it proposes. 1 First, this Court "require[s] Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power and the power of the Government over private property." United States Forest Service v. Cowpasture River Preservation Assn., 590 U. S. ___, ___–___ (2020) (slip op., at 15–16); see also Bond, 572 U. S., at 858. Regulation of land and water use lies at the core of traditional state authority. See, e.g., SWANCC, 531 U. S., at 174 (citing Hess v. Port Authority Trans-Hudson Corporation, 513 U. S. 30, 44

(1994)); Tarrant Regional Water Dist. v. Herrmann, 569 U. S. 614, 631 (2013). An overly broad interpretation of the CWA's reach would impinge on this authority. The area covered by wetlands alone is vast—greater than the combined surface area of California and Texas. And the scope of the EPA's conception of "the waters of the United States" is truly staggering when this vast territory is supplemented by all the additional area, some of which is generally dry, over which the Agency asserts jurisdiction. Particularly given the CWA's express policy to "preserve" the States' "primary" authority over land and water use, §1251(b), this Court has required a clear statement from Congress when determining the scope of "the waters of the United States." SWANCC, 531 U. S., at 174; accord, Rapanos, 547 U. S., at 738 (plurality opinion). The EPA, however, offers only a passing attempt to square its interpretation with the text of §1362(7), and its "significant nexus" theory is particularly implausible. It suggests that the meaning of "the waters of the United

24 SACKETT v. EPA Opinion of the Court States" is so "broad and unqualified" that, if viewed in isolation, it would extend to all water in the United States. Brief for Respondents 32. The EPA thus turns to the "significant nexus" test in order to reduce the clash between its understanding of "the waters of the United States" and the term defined by that phrase, i.e., "navigable waters." As discussed, however, the meaning of "waters" is more limited than the EPA believes. See supra, at 14. And, in any event, the CWA never mentions the "significant nexus" test, so the EPA has no statutory basis to impose it. See Rapanos, 547 U. S., at 755–756 (plurality opinion). 2 Second, the EPA's interpretation gives rise to serious vagueness concerns in light of the CWA's criminal penalties. Due process requires Congress to define penal statutes "'with sufficient definiteness that ordinary people can understand what conduct is prohibited'" and "'in a manner that does not encourage arbitrary and discriminatory enforcement.'" McDonnell v. United States, 579 U. S. 550, 576 (2016) (quoting Skilling v. United States, 561 U. S. 358, 402–403 (2010)). Yet the meaning of "waters of the United States" under the EPA's interpretation remains "hopelessly indeterminate." Sackett, 566 U. S., at 133 (ALITO, J., concurring); accord, Hawkes Co., 578 U. S., at 602 (opinion of Kennedy, J.). The EPA contends that the only thing preventing it from interpreting "waters of the United States" to "conceivably cover literally every body of water in the country" is the significant-nexus test. Tr. of Oral Arg. 70–71; accord, Brief for Respondents 32. But the boundary between a "significant" and an insignificant nexus is far from clear. And to add to the uncertainty, the test

introduces another vague concept—"similarly situated" waters—and then assesses the aggregate effect of that group based on a variety of open-ended factors that evolve as scientific understandings Cite as: 598 U. S. ____ (2023)

25 Opinion of the Court change. This freewheeling inquiry provides little notice to landowners of their obligations under the CWA. Facing severe criminal sanctions for even negligent violations, property owners are "left 'to feel their way on a case-by-case basis.'" Sackett, 566 U. S., at 124 (quoting Rapanos, 547 U. S., at 758 (ROBERTS, C. J., concurring)). Where a penal statute could sweep so broadly as to render criminal a host of what might otherwise be considered ordinary activities, we have been wary about going beyond what "Congress certainly intended the statute to cover." Skilling, 561 U. S., at 404. Under these two background principles, the judicial task when interpreting "the waters of the United States" is to ascertain whether clear congressional authorization exists for the EPA's claimed power. The EPA's interpretation falls far short of that standard. B While mustering only a weak textual argument, the EPA justifies its position on two other grounds. It primarily claims that Congress implicitly ratified its interpretation of "adjacent" wetlands when it adopted §1344(g)(1). Thus, it argues that "waters of the United States" covers any wetlands that are "bordering, contiguous, or neighboring" to covered waters. 88 Fed. Reg. 3143. The principal opinion concurring in the judgment adopts the same position. See post, at 10–12 (KAVANAUGH, J., concurring in judgment). The EPA notes that the Corps had promulgated regulations adopting that interpretation before Congress amended the CWA in 1977 to include the reference to "adjacent" wetlands in §1344(g)(1). See 42 Fed. Reg. 37144. This term, the EPA contends, was "'"obviously transplanted from"'" the Corps' regulations and thus incorporates the same definition. Brief for Respondents 22 (quoting Taggart v. Lorenzen, 587 U. S. ___, ___ (2019) (slip op., at 5)). This argument fails for at least three reasons. First, as we have explained, the text of §§1362(7) and 1344(g)(1)

26 SACKETT v. EPA Opinion of the Court shows that "adjacent" cannot include wetlands that are not part of covered "waters." See supra, at 22. Second, this ratification theory cannot be reconciled with our cases. We have repeatedly recognized that §1344(g)(1) "'does not conclusively determine the construction to be placed on . . . the relevant definition of "navigable waters."'" SWANCC, 531 U. S., at 171 (quoting Riverside Bayview, 474 U. S., at 138, n. 11); accord, Rapanos, 547 U. S., at 747–748,

n. 12 (plurality opinion). Additionally, SWANCC rejected the closely analogous argument that Congress ratified the Corps' definition of "waters of the United States" by including "'other . . . waters'" in §1344(g)(1). 531 U. S., at 168–171. And yet, the EPA's argument would require us to hold that §1344(g)(1) actually did amend the definition of "navigable waters" precisely for the reasons we rejected in SWANCC. Third, the EPA cannot provide the sort of "overwhelming evidence of acquiescence" necessary to support its argument in the face of Congress's failure to amend §1362(7). Id., at 169–170, n. 5. We will infer that a term was "'transplanted from another legal source' . . . only when a term's meaning was 'well-settled' before the transplantation." Kemp v. United States, 596 U. S. ___, ___–___ (2022) (slip op., at 9–10). Far from being well settled, the Corps' definition was promulgated mere months before the CWA became law, and when the Corps adopted that definition, it candidly acknowledged the "rapidly changing nature of [its] regulatory programs." 42 Fed. Reg. 37122. Tellingly, even the EPA would not adopt that definition for several more years. See 45 Fed. Reg. 85345 (1980). This situation is a far cry from any in which we have found ratification. See, e.g., George v. McDonough, 596 U. S. ___, ___ (2022) (slip op., at 5) (finding ratification when "Congress used an unusual term that had a long regulatory history in [the] very regulatory context" at issue). The EPA also advances various policy arguments about Cite as: 598 U. S. ____ (2023)

27 Opinion of the Court the ecological consequences of a narrower definition of adjacent. But the CWA does not define the EPA's jurisdiction based on ecological importance, and we cannot redraw the Act's allocation of authority. See Rapanos, 547 U. S., at 756 (plurality opinion). "The Clean Water Act anticipates a partnership between the States and the Federal Government." Arkansas v. Oklahoma, 503 U. S. 91, 101 (1992). States can and will continue to exercise their primary authority to combat water pollution by regulating land and water use. See, e.g., Brief for Farm Bureau of Arkansas et al. as Amici Curiae 17–27. V Nothing in the separate opinions filed by JUSTICE KAVANAUGH and JUSTICE KAGAN undermines our analysis. JUSTICE KAVANAUGH claims that we have "rewrit[ten]" the CWA, post, at 12 (opinion concurring in judgment), and JUSTICE KAGAN levels similar charges, post, at 3–4 (opinion concurring in judgment). These arguments are more than unfounded. We have analyzed the statutory language in detail, but the separate opinions pay no attention whatsoever to §1362(7), the key statutory provision that limits the CWA's geographic reach to "the waters of the United States." Thus, neither

separate opinion even attempts to explain how the wetlands included in their interpretation fall within a fair reading of "waters." Textualist arguments that ignore the operative text cannot be taken seriously. VI In sum, we hold that the CWA extends to only those "wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right," so that they are "indistinguishable" from those waters. Rapanos, 547 U. S., at 742, 755 (plurality opinion) (emphasis deleted); see supra, at 22. This holding compels reversal here. The wetlands on the Sacketts' property are distinguishable

28 SACKETT v. EPA Opinion of the Court from any possibly covered waters. * * * We reverse the judgment of the United States Court of Appeals for the Ninth Circuit and remand the case for further proceedings consistent with this opinion. It is so ordered

Wetland and Habitat Review

Wetland Protection Remains in Effect In Clark County

On May 25, 2023, the U.S. Supreme Court issued a decision in the case of *Sackett v. Environmental Protection Agency (EPA)* that limits the extent of waters subject to the Federal Clean Water Act. EPA subsequently issued a revised Federal Rule on August 29, 2023 redefining Waters of the United States and limiting the applicability of Section 404 of the Federal Clean Water Act to wetlands that have been historically regulated under Federal Law.

This change in Federal policy does not affect wetland regulations adopted by the state of Washington and Clark County. You can visit the Department of Ecology's website State regulations & applicant resources - Washington State Department of Ecology, review Clark County Code 40.450, or email WetlandHabitatReview@clark.wa.gov for more information.

Our Wetland and Habitat Review program administers the county's Wetland Protection and Habitat Conservation Ordinances, provides technical expertise for the administration of the Shoreline Master Program, and issues SEPA threshold determinations for projects that do not require Land Use or Shoreline Review or a Forest Practice Permit.

- _____-

CCCU Comments: Clark County Staff claims in the above report that the

county is not beholden to the May 25, 2023 Supreme Court WOTUS Rule regarding wetlands, because it regulates these waters under the Shoreline Master Program. But they are one in the same.

The Shoreline Master Program is administered by the Washington Department of Ecology, who in turn is regulated by the Clean Water Act, Environmental Protection Agency (EPA) and the WOTUS rule. They are all one in the same and cannot be separated out, just because there is a different name. The state agencies are subordinate to the federal agency determinations, when it comes to wetlands.

- **Washington Department of Ecology**: Shoreline and Coastal Management

- **Shoreline management**
-
- **Shoreline Management Act**

The Shoreline Management Act (SMA) requires all counties and most towns and cities with shorelines to develop and implement Shoreline Master Programs. The

law also defines our role in reviewing and approving local programs. The SMA was passed by the Washington Legislature in 1971 and adopted by voters in 1972. Its overarching goal is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines."

Chapter 90.58 RCW: SHORELINE MANAGEMENT ACT OF 1971

Where does the SMA apply?

Shorelines of the state

The SMA applies to all 39 Washington counties and about 250 towns and cities with stream, river, lake, or marine shorelines. These shorelines include:

- All marine waters.
- Streams and rivers with greater than 20 cubic feet per second mean annual flow.
- Lakes 20 acres or larger.
- Upland areas called shorelands that extend 200 feet landward from the edge of these waters.
- Biological wetlands and river deltas connected to these water bodies.
- Some or all of the 100-year floodplain, including all wetlands.

[ ]2 languages

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From Wikipedia, the free encyclopedia

Department of Ecology	
Agency overview	
Formed	1970
Headquarters	Lacey, Washington
Employees	approx. 1600
Annual budget	$459 million
Agency executive	• Laura Watson, Director
Website	ecology.wa.gov

The **Washington State Department of Ecology** (sometimes referred to simply as "**Ecology**") is the state of Washington's environmental regulatory agency. Created in February 1970, it was the first environmental regulation agency in the U.S. predating the creation of the Environmental Protection Agency (EPA) by several months.[1]

The department administers laws and regulations pertaining to the areas of water quality, water rights and water resources, shoreline management, toxics clean-up, nuclear waste, hazardous waste, and air quality. It also conducts monitoring and scientific assessments.

Duties[edit]

The agency has an operating budget of approximately $459 million, a capital budget of approximately $325 million and close to 1600 employees[2] The department's authorizing statute is RCW 43.21A.[3]

It is responsible for administering the Shoreline Management Act (RCW 90.58), the Water Code (RCW 90.03), the state Water Pollution Control Act (RCW 90.48), the state Clean Air Act (RCW 70.94), and the Model Toxics Control Act.

Appeals of Ecology's decisions are made to the Environmental Hearings office, which includes the Pollution Control Hearings Board and the Shoreline Hearings Board, as well as several boards that address appeals of decisions by the state Department of Fish and Wildlife and the Department of Natural Resources.

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604 E-Mail cccuinc@yahoo.com