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THE FEDERAL CLEAN WATER ACT IN 2025: A RETRACTING CONSTRUCTION

By Carolyn Nelson Rowan[*]

More than 50 years ago, the Federal Clean Water Act (CWA or Act)[1] was enacted by Congress to protect the quality of the Nation's waters. The scope of that protection has been evolving ever since. Until relatively recently, the CWA was subject to an expanding interpretation by the federal agencies that implement the Act and, in many instances, the courts. During this time, jurisdictional waters included not only "traditionally navigable" waters, but also adjacent wetlands and non-adjacent wetlands that had a "significant nexus" to, i.e., affected the chemical, physical, and biological integrity of, waters subject to federal jurisdiction.

However, in the last few years, the executive and judicial branches have taken several steps to narrow the CWA's reach. First, in *County of Maui v. Hawaii Wildlife Fund*,[2] the U.S. Supreme Court reversed a Ninth Circuit Court of Appeals decision that had held the CWA applied to a discharge from a wastewater facility that traveled through groundwater to the Pacific Ocean, finding the CWA required a direct discharge or the functional equivalent. Next, in *Sackett v. EPA*,[3] the Court reversed a Ninth Circuit decision that had applied the "significant nexus" test to determine whether non-adjacent wetlands fell within the CWA jurisdiction, concluding the CWA only applies to wetlands that are practically "indistinguishable from" and have a "continuous surface water connection" to "the waters of the United States." Most recently, in March 2025, the U.S. Supreme Court issued its opinion in *City and County of San Francsico v. EPA*.[4] In doing so, the Court again narrowed the CWA's scope by overturning a Ninth Circuit Court of Appeals decision, this time by holding that certain "end-result" limitations commonly used by EPA in National Pollutant Discharge Elimination System (NPDES) permits are not allowed under the CWA.

This article explores basic Clean Water Act principles, the previous expansion of authority, the latest Supreme Court cases that together appear to demon-

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strate a significant retraction in CWA authority, and whether this trend is likely to continue.

The Clean Water Act: Basic principles

The CWA was enacted in 1972 by Congress "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[5] To that end, the CWA requires dischargers to obtain permits, pretreat effluent, and limit runoff. The Environmental Protection Agency (EPA) and Army Corps of Engineers (ACE) have joint responsibility for enforcing the CWA.[6] In addition, the CWA requires states to adopt water quality standards, and to certify that discharges approved by the federal government comply with adopted water quality standards.[7]

Two CWA permit programs have been the focus of recent high-profile cases: the Section 404 permit program and the National Pollutant Discharge Elimination System (NPDES) permit program. Under Section 404 of the CWA, any person wishing to discharge "dredged or fill material" into "navigable waters," defined elsewhere in the CWA as "waters of the United States including the territorial seas," must first obtain a federal permit,[8] commonly known as a "Section 404 permit."[9] These permits may be required for, among other things, construction activities that involve movement of soil that will be deposited in a jurisdictional water. The Section 404 permit process is lengthy and often requires submission of detailed data that may require retention of various experts and preparation of studies.[10] Depending on the circumstances, the process can be time consuming and require comment by other agencies and the public before issuance. Permits often contain conditions and time limits that drive up the cost and length of a project.[11]

In addition, a discharge of any "pollutant" from any "point source" into "waters of the United States" may require an NPDES permit.[12] Such a permit may be required for discharges associated with industrial activity and stormwater discharges, among other things. EPA's effluent guidelines set standards for numerous categories of industries that discharge pollutants. Those guidelines are used by federal and state agencies in writing NPDES permits allowing companies to make discharges in compliance with the CWA.[13]

The federal agencies have promulgated regulations implementing these permit programs, which, among other things, define "waters of the United States" for purposes of CWA jurisdiction.[14] As explained in more detail below,

what constitutes "waters of the United States" has changed over time in response to changes in administrations and judicial review. The most recent version of the regulations defined "waters of the United States" to include: interstate waters; waters used in or susceptible for use in interstate or foreign commerce; certain tributaries and wetlands adjacent to such waters, as specified; and certain intrastate lakes and ponds as specified.[15]

To establish liability under the CWA, the government need only prove that the unpermitted discharge occurred; the Act does not have to be intentional, knowing, or even negligent.[16] The CWA also allows for private citizen suits in some cases.[17] When a violation occurs, a range of administrative, civil, and even criminal remedies may attach.[18]

Given the length of time it may take to obtain a permit, the changing definitions of jurisdictional waters affected, the potential for considerable liability, and the environmental issues at stake, it is not surprising that CWA issues have reached the U.S. Supreme Court on numerous occasions over the last fifty years. The Court has paid particular attention to cases involving the scope of waters affected and the reach of CWA authority.

Not long after the CWA's enactment, federal jurisdiction was subject to an expanding interpretation

For many years, EPA and ACE relied on Congress' broad statements of concern for water quality to justify an expanded reading of the CWA and specifically the scope of waters subject to CWA jurisdiction. After initially construing the CWA to cover only waters that were "navigable-in-fact," the agencies began to assert jurisdiction over "waters of the United States," including "adjacent wetlands."[19] In 1975, ACE issued interim final regulations defining "waters of the United States" to include navigable waters and their tributaries, interstate waters and their tributaries, and nonnavigable intrastate waters whose use could affect interstate commerce, as well as freshwater wetlands that were adjacent to other covered waters.[20]

In 1985, in *U.S. v. Riverside Bayview Homes, Inc.*,[21] the Supreme Court upheld ACE's assertion that certain wetlands immediately adjacent to traditionally navigable waters were subject to its jurisdiction under Section 404.[22] The Court noted that "the transition from water to solid ground is not necessarily or even typically an abrupt one," and that ACE "must necessarily choose some point at which water ends and land begins."[23] Applying *Chevron* deference, the Court

found that ACE's conclusion that the adjacent wetlands were "inseparably bound up with 'water' of the United States" was not unreasonable.[24]

Then, in 2001, in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC),*[25] the Supreme Court considered whether ACE's jurisdiction extended to permanent or seasonal isolated ponds that were not immediately adjacent to traditionally navigable water, including vernal pools. The case involved application of ACE's "Migratory Bird Rule"—which purported to extend CWA jurisdiction to any intrastate waters used as habitat by migratory birds—to an abandoned sand and gravel pit in Illinois. The Court concluded ACE's jurisdiction did not extend to such ponds, finding that a "significant nexus" between the wetlands and navigable waters informed the Court's decision in *Riverside v. Bayview Homes* and that nexus was absent in *SWANCC*.[26] Though the holding in *SWANCC* did not extend jurisdiction, the discussion of a "significant nexus" confirmed that wetlands could fall under ACE's jurisdiction if the requisite nexus was established.

Next came *Rapanos v. U.S.* in 2006.[27] *Rapanos* involved three parcels in Michigan that the federal government asserted contained jurisdictional wetlands. One of the parcels was located 20 miles from Lake Huron, but the wetlands were connected to a man-made drain, which drained into a creek, which flowed into a river, which emptied into a bay and then to the lake.[28] The wetlands on other parcels also indirectly reached navigable waters through a series of connections.[29]

The *Rapanos* Court split as to whether the wetlands were subject to CWA jurisdiction. The only consensus reached was that the cases should be remanded to the Sixth Circuit for further proceedings and that the CWA's jurisdiction was not limited to "traditionally navigable" or "navigable-in-fact" waters.[30] Justice Scalia announced the decision of the Court with a plurality opinion joined by Justices Thomas and Alito.[31] Justice Scalia observed "the immense expansion of federal regulation of land use that has occurred under the Clean Water Act—without any change in the governing statute—during the past five Presidential administrations."[32] While recognizing that "waters of the United States" were not limited to those that are "navigable-in-fact," Justice Scalia concluded the term "cannot bear the expansive meaning that [ACE] would give it."[33]

However, because no majority was reached, it was Justice Kennedy's concurring opinion that was applied extensively following *Rapanos*. Adopting language

from the *SWANCC* decision, Justice Kennedy's concurring opinion set forth a "significant nexus test": wetlands were within the CWA's jurisdiction if they possessed the necessary nexus, by significantly affecting the chemical, physical, and biological integrity of other waters within the CWA's reach; if a wetland's effects on the quality of waters within the CWA's reach were speculative or insubstantial, they fell outside CWA jurisdiction.[34] Justice Kennedy concurred in the judgment because he believed the Sixth Circuit did not consider all the factors necessary to determine whether a significant nexus existed.[35]

For many years after *Rapanos*, the courts continued to apply Justice Kennedy's "significant nexus test" to determine whether non-adjacent wetlands fell within the CWA's reach. A few years ago, a shift occurred, marking the beginning of a retraction of CWA authority, with narrowing construction of key terms by the U.S. Supreme Court and the federal agencies themselves. Since 2020, the Supreme Court has overturned three Ninth Circuit decisions. With each case, the Court has chipped away at the CWA jurisdiction.

In 2020, the Supreme Court issued the first of three opinions retracting CWA authority

In *County of Maui v. Hawaii Wildlife Fund*,[36] the Supreme Court weighed in on the definition of "discharge" for purposes of the NPDES permit program. That case involved a wastewater reclamation facility, operated by the County of Maui. The facility collects sewage, partially treats it, and pumps the treated water through wells deep underground. From there, the effluent travels a half mile or so through groundwater into the ocean.[37] Plaintiffs brought citizen suits alleging the use of the wells required a permit under the CWA. The Ninth Circuit Court of Appeals upheld the permit requirement based on its finding of a "fairly traceable" indirect discharge from a point source through groundwater to the ocean.[38]

The Supreme Court framed the specific question presented as whether the CWA "requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source" such as groundwater.[39] Reversing the Ninth Circuit decision, the Supreme Court stated: "Our view is that Congress did not intend the point source-permitting requirement to provide EPA with such broad authority as the Ninth Circuit's narrow focus on traceability would allow."[40] The Court explained that the statutory context supported a narrower reading and indicated Congress intended to preserve

substantial responsibility for nonpoint source pollution for the states.[41] It further reasoned that EPA itself had long applied a narrower interpretation, limiting the permitting provision to point sources.[42]

Instead, the Court held that the CWA requires a "direct discharge" of a pollutant from a point source into navigable water, or the functional equivalent of a direct discharge, and the CWA does not apply to every indirect conveyance of a discharge through the groundwater into a navigable water.[43] "[A]n addition falls within the statutory requirement that it be 'from any point source' when a point source directly deposits pollutants into navigable waters, or when the discharge reaches the same result through roughly similar means."[44] The Court stated there is no bright-line test, but identified a non-exclusive list of potentially relevant factors: transit time; distance traveled; the nature of the material through which the pollutant travels; the extent to which the pollutant is diluted or chemically changed as it travels; the amount of the pollutant entering the navigable water compared to that which left the point source; the manner by or area in which the pollutant enters the navigable water; and the degree to which the pollutant has "maintained its identity."[45]

Notably, this was not the most restrictive approach the Court could have taken. The Court expressly refused to adopt the County of Maui's position that the permit requirement "does not apply if a pollutant, having emerged from a 'point source,' must travel through any amount of groundwater before reaching navigable waters."[46] Still, the Court's factor-based test left uncertainty as to whether any particular discharge from a point source through groundwater to a navigable water would be subject to CWA permit requirements, and ultimately resulted in narrower application of the law compared to what EPA had asserted.

Sackett v. EPA **narrowed the scope of waters subject to the CWA**

Only three years after *County of Maui*, the Supreme Court agreed to hear another case from the Ninth Circuit regarding the scope of CWA jurisdiction. In *Sackett v. EPA*,[47] the Supreme Court revisited the question of whether non-navigable, non-adjacent wetlands are within the CWA's reach.

The facts of the case were somewhat similar to those of *Rapanos*, in that the case centered on wetlands that were not adjacent to, but did have a hydrological connection with, a traditionally navigable water. The Sacketts purchased property with the intent of building a home. The property contained wetlands that

were near a ditch, which fed into a creek, which flowed into a navigable, intrastate lake.[48] Without seeking a Section 404 permit, the Sacketts began backfilling the lot with dirt to prepare for construction. EPA informed them that the property contained wetlands and the backfilling violated the CWA, ordered them to retore the site, and stated that penalties for violating the CWA could amount to over $40,000 per day.[49] The Ninth Circuit affirmed this exercise of jurisdiction, finding the wetlands had an ecologically significant nexus to a traditionally navigable water.[50]

However, instead of applying the "significant nexus" test set forth in Justice Kennedy's concurring opinion in *Rapanos*, the Court adopted the plurality opinion and held that the CWA extends only to those wetlands that are, practically speaking, "indistinguishable from waters of the United States" and requires that a wetland must have a "continuous surface water connection" with a "water of the United States" such that it is difficult to discern where the "water" ends and the "wetland" begins.[51]

Justice Kavanaugh penned a concurring opinion in which he agreed with the judgment but disagreed with the majority's adoption of the narrow, "continuous surface connection" test.[52] He asserted the majority opinion disregarded the plain meaning of the term "adjacent," and predicted serious real-world consequences in contexts such as flood control systems where "waters of the United States" are separated from wetlands by man-made dikes or berms.[53]

Most recently, the Supreme Court again limited EPA's authority in *City and County of San Francisco v. EPA*, this time with respect to requirements in NPDES permits

Two short years after *Sackett*, the Supreme Court took up a third CWA appeal from the Ninth Circuit. The latest case—*City and County of San Francisco v. EPA*—involved an NPDES permit issued by EPA to San Francisco's Oceanside wastewater facility, which treats both wastewater and stormwater.[54] Heavy rainfall often overwhelms combined systems, resulting in the discharge of untreated water, including raw sewage. The problems of combined systems have been recognized for decades, but the cost of separating the systems is very high. EPA developed the Combined Sewer Overflow (CSO) Control Policy,[55] which provides a phased permitting process for combined systems. While the Oceanside NPDES permit had been renewed previously without controversy, the 2019 renewal included two new "end-result" provisions prohibiting discharges that contribute to violations of any applicable water quality standard, as well as

discharges or treatments that create pollution, contamination, or nuisance as defined by California law.[56] San Francisco appealed.

The Ninth Circuit upheld EPA's authority to impose "end-result" requirements, finding broad authority for "any" limitations necessary to meet water quality standards.[57] The Supreme Court granted certiorari to resolve the issue of whether the CWA distinguishes between the water quality standards themselves and the specific limitations placed on an individual permittee's discharges.[58]

The Supreme Court again reversed the Ninth Circuit and limited EPA's authority under the CWA. While it declined to adopt San Francisco's argument that all permit requirements under section 1311 must qualify as effluent limitations and acknowledged that courts have allowed narrative provisions in certain cases (e.g., "best practices"), the Court concluded the CWA does not authorize requirements that make permittees responsible for ensuring that receiving waters meet water quality standards, without specifying how to do so.[59] To reach that conclusion, the Court engaged in basic statutory interpretation. It also examined the history of the CWA, emphasizing the "permit shield" provision, which protects permit holders who comply with all permit terms from potentially onerous liability.[60] Pointing to the practical challenges of detecting and correcting drops in water quality promptly, especially in light of factors outside the permittee's control (such as multiple dischargers), the Court found EPA's attempt to impose permit conditions based on water quality outcomes to undermine the shield by exposing permittees to penalties even when they have fully complied with permit terms.[61]

The Court was also swayed by the lack of any statutory mechanism for handling situations involving multiple dischargers into a single water body, finding that EPA's interpretation would effectively reintroduce a backward-looking approach without addressing how to apportion responsibility among multiple dischargers.[62] EPA's contention that the specific case at hand involved only one discharger failed to resolve the broader statutory inconsistency.[63]

Justice Barrett, joined by Justices Sotomayor, Kagan, and Jackson, dissented in part on the basis that receiving water limitations are not categorically inconsistent with the CWA.[64] Justice Barrett characterized the majority's opinion as finding that EPA's restrictions were not true "limitations" because they did not specify how compliance should be achieved. She disagreed with that position, arguing that limitations can include broad conditions, such as maintaining wa-

ter quality standards, even if the permittee decides how to meet them.[65] She argued that the CWA grants EPA broad authority to ensure discharges do not degrade water quality, meaning that receiving water limitations are legitimate, and that concerns about fairness—both in the context of the permit shield provision and where multiple dischargers contribute to the same water body's pollution—should be addressed through challenges to specific permit conditions rather than by overriding EPA's authority.[66]

The practical implications of *City and County of San Francisco v. EPA* may be far more significant than the Court acknowledged

While *City and County of San Francisco v. EPA* clearly continues the trend of retracting CWA authority, the magnitude of its significance remains to be seen. A few practical implications warrant note.

The decision does not eliminate all "narrative" permit conditions, which are found in many NPDES permits. For example, the Court's decision expressly does not affect other non-numerical requirements such as reporting, recordkeeping, and best management practices. However, it does eliminate "end-result" requirements. Such requirements should be replaced with more specific requirements. On the one hand, many permittees will welcome these changes because they will result in more certainty. Permittees will have a clearer understanding of how to comply with the permit and will not be subject to enforcement actions (and the potentially severe penalties under the CWA) based solely on an exceedance of water quality standards beyond the permittee's control. On the other hand, the decision will eliminate some of the flexibility that came with "end-result" requirements. And if more numeric limitations are adopted, it may be easier to prove when those limits are not met, which could create more legal exposure for permittees and make them more open to citizen suits under the CWA.

While some permittees may welcome the specificity and certainty, the new numeric limitations will significantly increase agency workloads and likely result in longer wait times for permits. Obtaining an NPDES permit was already a lengthy process, and the dissent argued that requiring specific permit conditions would make the permit process more difficult and time consuming and that EPA will be more likely to delay or even deny permits.[67] The majority was not moved. However, the briefing preceded the most recent change in administration, and since then there have been numerous cuts at the federal

level. In the current climate, the time it takes to get a permit may be an even more realistic problem. Further, agencies and state regulators will have to work through new permit requirements that address the Court's decision, which may further slow permit processing and result in more burdensome requirements on permittees.

In addition to delays, there may also be significant negative consequences for water quality. While EPA argued that end-result requirements were needed to fulfill Congress's goal of preserving water quality, the Court gave this short shrift: "If the EPA does its work, our holding should have no adverse effect on water quality."[68] Whether EPA will be able to "do its work" in the current climate—with the increased workload following this decision, federal cuts, and the other cases retracting its CWA authority—remains to be seen.

Post-*City and County of San Francisco v. EPA*, will the retraction continue?

Looking ahead, it appears the current retraction may well continue, at least in the near-term. A few legal developments not yet mentioned factor into that prediction.

In light of the *Sackett* decision, EPA recently announced it will revise the definition of "waters of the United States" yet again.[69] In a press release, EPA stated that it would aim to provide "clear and simplified direction" and work with ACE to "move quickly to ensure that a revised definition follows the law, reduces red-tape, cuts overall permitting costs, and lowers the cost of doing business in communities across the country while protecting the nation's navigable waters from pollution."[70] The stated focus on "clarity," "simplicity," and cutting red-tape suggests EPA's proposal will likely further retract CWA authority. EPA and ACE are currently soliciting stakeholder feedback on the proper scope of the rule.[71]

Anticipating that EPA and ACE will propose regulations to further weaken the "waters of the United States" rule, California is taking steps to shore up protections. The California Legislature has proposed S.B. 601, which would restore certain protections that were adopted by EPA and in effect on January 19, 2025, as specified.[72] The State Water Resources Control Board would be tasked with implementing and enforcing the restored protections. Whether the bill will pass and in what form remains to be seen, but it is consistent with steps taken by the state during the first Trump administration. If the bill, or

something similar, is enacted, that could mean an expansion of water quality protections in the state, but only for California.

Another development to be considered is the Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo*, which may further cement the retraction.[73] *Loper Bright* overturned *Chevron* deference, which had been law since 1984. Under *Chevron*, the courts deferred to a federal agency's interpretation of a law when the statute was silent or ambiguous as to the specific issue and the agency's interpretation was not unreasonable.[74] Though *Loper Bright* did not involve the CWA directly, *Riverside Bayview Homes* applied *Chevron* deference to uphold ACE's extension of CWA authority to water not considered traditionally navigable.[75] Query whether the absence of *Chevron* deference will push CWA jurisdiction one way or the other. While it did influence the Supreme Court in *Riverside Bayview Homes*, a case that expanded the CWA's reach, the Court expressly declined to apply *Chevron* deference in some of the other major CWA cases since.[76] Further, to the extent EPA and ACE will be asserting narrower jurisdiction, their actions will no longer be entitled to *Chevron* deference either. Without deference, the courts will have more independence to decide how to interpret and apply key CWA provisions such as the "waters of the United States." Given the Supreme Court's most recent decisions on CWA issues, it seems likely that will mean the judicial retraction of CWA authority will continue in the near term.

Conclusion

The latest Supreme Court cases and regulatory proposals demonstrate an increasingly narrow interpretation of the CWA. The Court has focused less on water quality outcomes and more on other issues, such as preserving a substantial role for the states, ensuring specificity and certainty for permittees, and reducing cost of compliance and red tape. Given the current makeup of the Supreme Court and the nascency of the current administration, it seems unlikely this trend will reverse in the near-term.

Despite the current trend toward narrower CWA jurisdiction, many unknowns remain: Will EPA and ACE complete new regulatory definitions and what will they say? Will they stand up in the courts? And if new regulations are adopted that restrict federal jurisdiction, will California fill that gap? One thing is for sure: it will be important for businesses with construction projects, industrial discharges, or other activities that might be subject to the CWA to monitor the legal developments as they unfold.

ENDNOTES:

[1]33 U.S.C.A. §§ 1251, et seq.

[2]*County of Maui, Hawaii v. Hawaii Wildlife Fund*, 590 U.S. 165, 140 S. Ct. 1462, 206 L. Ed. 2d 640 (2020).

[3]*Sackett v. Environmental Protection Agency*, 598 U.S. 651, 143 S. Ct. 1322, 215 L. Ed. 2d 579 (2023).

[4]*City and County of San Francisco v. Environmental Protection Agency*, 145 S. Ct. 704 (2025).

[5]33 U.S.C.A. § 1251(a); see Miller & Starr, California Real Estate 4th (2024) § 39:58.

[6]See Miller & Starr, California Real Estate 4th (2024) § 39:58.

[7]33 U.S.C.A. § 1341(a) ("Section 401 certification"); 33 U.S.C.A. § 1313; 40 C.F.R. §§ 131.1, et seq.; see Miller & Starr, California Real Estate 4th (2024) § 39:58.

[8]33 U.S.C.A. § 1344.

[9]See Miller & Starr, California Real Estate 4th (2024) § 39:58.

[10]See Miller & Starr, California Real Estate 4th (2024) § 39:58.

[11]See Miller & Starr, California Real Estate 4th (2024) § 39:58.

[12]33 U.S.C.A. § 1342; 40 C.F.R. § 122.1(b).

[13]See Miller & Starr, California Real Estate 4th (2024) § 39:58.

[14]33 C.F.R. §§ 328.1, et seq. (ACE); 40 C.F.R. §§ 120.2, 122.2, 230.3 (EPA).

[15]*Id.*

[16]See Miller & Starr, California Real Estate 4th (2024) § 39:58.

[17]33 U.S.C.A. § 1365; see Miller & Starr, California Real Estate 4th (2024) § 39:58.

[18]33 U.S.C.A. § 1319; see Miller & Starr, California Real Estate 4th (2024) § 39:58.

[19]See *Rapanos v. U.S.*, 547 U.S. 715, 723-724, 126 S. Ct. 2208, 165 L. Ed. 2d 159 (2006) (Scalia, J.).

[20]40 Fed. Reg. 31320, 31321 (1975).

[21]*U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 106 S. Ct. 455, 88 L. Ed. 2d 419 (1985).

[22]*Id.* at 139.

[23]*Id.* at 132.

[24]*Id.* at 134. The Court cited *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845, 104 S. Ct. 2778, 81 L. Ed. 2d

694 (1984) for the proposition that "[a]n agency's construction of a statute it is charged with enforcing is entitled to deference if it is reasonable and not in conflict with the expressed intent of Congress." Known as "*Chevron* deference," this doctrine was recently overturned by the U.S. Supreme Court in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).

[25]*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159, 121 S. Ct. 675, 148 L. Ed. 2d 576 (2001).

[26]*Id.* at 167, 171-172.

[27]*Rapanos v. U.S.*, 547 U.S. 715, 126 S. Ct. 2208, 165 L. Ed. 2d 159 (2006).

[28]*Id.* at 729.

[29]*Id.*

[30]*Id.* at 730 (Scalia, J., plurality), 759 (Kennedy, J., concurring).

[31]*Id.* at 719 (Scalia, J., plurality). Justice Scalia would have limited the reach of the CWA to wetlands adjacent to a channel containing a relatively permanent body of water connected to traditional navigable waters, where the wetland has a continuous surface water connection to the channel. *Id.* at 739, 742.

[32]*Id.* at 722 (Scalia, J., plurality).

[33]*Id.* at 732 (Scalia, J., plurality).

[34]*Id.* at 759 (Kennedy, J., concurring).

[35]*Id.*

[36]*County of Maui, Hawaii v. Hawaii Wildlife Fund*, 590 U.S. 165, 140 S. Ct. 1462, 206 L. Ed. 2d 640 (2020).

[37]*Id.* at 171.

[38]*Id.* at 172.

[39]*Id.* at 170.

[40]*Id.* at 174.

[41]*Id.* at 174-177.

[42]*Id.* at 177-178.

[43]*Id.* at 183.

[44]*Id.* at 183-184.

[45]*Id.* at 185-186.

[46]*Id.* at 178-179.

[47]*Sackett v. Environmental Protection Agency*, 598 U.S. 651, 143 S. Ct. 1322, 215 L. Ed. 2d 579 (2023).

[48]*Id.* at 662.

[49]*Id.*

[50]*Id.* at 663.

[51]*Id.* at 678, 684.

[52]*Id.* at 715 (Kavanaugh, J., concurring).

[53]*Id.* at 716 (Kavanaugh, J., concurring).

[54]*City and County of San Francisco, California v. Environmental Protection Agency*, 145 S. Ct. 704, 712 (2025).

[55]Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg. 18689 (1994); 33 U.S.C.A. § 1342(q)(1).

[56]*City and County of San Francisco v. Environmental Protection Agency,* 145 S. Ct. at 713.

[57]*Id.* at 713 (citing 33 U.S.C.A. § 1311(b)(1)(C)).

[58]*Id.* at 713.

[59]*Id.* at 710, 711, 713-714, 720.

[60]*Id.* at 717-718 (citing 33 U.S.C.A. § 1342(k)).

[61]*Id.* at 718.

[62]*Id.* at 717-718.

[63]*Id.*

[64]*Id.* at 727 (Barrett, J., dissenting in part).

[65]*Id.*

[66]*Id.* at 725 (Barrett, J., dissenting in part).

[67]*Id.* at 725 (Barrett, J., dissenting in part).

[68]*Id.* at 711.

[69]EPA Press Release, "Director Zeldin Announces EPA Will Revise Waters of the United States Rule," https://www.epa.gov/newsreleases/administrator-zeldin-announces-epa-will-revise-waters-united-states-rule (last accessed, Apr. 21, 2025).

[70]*Id.*

[71]90 Fed. Reg. 13428, 13428-13431 (Mar. 24, 2025).

[72]Proposed S.B. 601

[73]*Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).

[74]*Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984) (overruled by, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024)).

[75]While *Riverside Bayview Homes* applied *Chevron* deference, the majority opinions in *SWANCC*, *Rapanos,* and *County of Maui* expressly did not, so it is possible *Loper Bright* will not have a significant impact in either direction.

[76] *County of Maui v. Hawaii Wildlife Fund*, 590 U.S. at 180; *Rapanos v. U.S.*, 547 U.S. at 739; *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. at 172.

