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NCBA, PLC Weigh in on Precedent-Setting Clean Water Act Case

—Seeking Clarification on Costly, Burdensome Uncertainties Arising from Clean Water Act

WASHINGTON (Oct. 3, 2011) – The [National Cattlemen's Beef Association](#) (NCBA) and the [Public Lands Council](#) (PLC) recently filed an amicus brief to the U.S. Supreme Court in the Sackett v. Environmental Protection Agency (EPA) case, which will likely be argued in January 2012. Dustin Van Liew, PLC executive director and NCBA director of federal lands, said Sackett v. EPA could set a dangerous precedent allowing EPA and other federal agencies to make jurisdictional determinations that are not judicially or administratively reviewable.

In 2005, Chantell and Michael Sackett purchased a plot of land, less than one acre in size, to build a home. However, in 2007, after filling in half the lot with gravel in preparation for construction, EPA issued the Sacketts an “Administrative Compliance Order” (ACO), alleging the land was a wetland subject to Clean Water Act (CWA) jurisdiction and ordered the Sacketts to restore the land to its original condition or face nearly \$50,000 in fines per day. The Sackett family appealed for a hearing on their alleged violation but was denied by EPA and the federal court.

According to Van Liew, the court threw out the case because it determined that the CWA prevented judicial review ACOs until the enforcement actions have been issued by federal agencies. He said the Sacketts could not challenge the compliance order until they refused to do what it instructed and consequently were fined tens of thousands of dollars.

“Like millions of Americans regularly do, the Sacketts rightfully purchased land to build their dream home. Unfortunately, instead of building that home, they have spent the past four years battling EPA and the courts,” Van Liew said. “The Sacketts weren’t trying to cut corners. They followed the rules and now they just want a fair shake in the courts. The uncertainty surrounding the CWA permitting process and the time and financial costs associated with it has left them with abysmal options of submitting to the regulator’s demands and the costs associated with those demands, risking catastrophic fines for noncompliance or investing significant time and resources pursuing a permit. In this process, the only winner is the federal government. Private landowners lose.”

According to NCBA Deputy Environmental Counsel Ashley Lyon, this case could have far-reaching impacts on farmers and ranchers and all private landowners. She said the CWA has morphed from a statute to protect our nation’s waters in to a tool for regulators to micromanage daily decisions of private landowners. She said the U.S. Supreme Court will consider whether petitioners may seek pre-enforcement judicial review of ACOs and whether petitioners’ current inability to seek pre-enforcement judicial review of the ACO violates their rights under the Due Process Clause.

“The brief NCBA and PLC filed in this case pushes for a decision that affirms a landowner’s right to challenge a jurisdictional determination before they are required to either go through the costly and time-consuming permitting process or are fined thousands of dollars,” Lyon said. “Today it is private landowners, who followed the rules, attempting to build a home but private landowners, including farmers and ranchers, will no doubt face future challenges if EPA and other federal agencies’ decisions are not subject to judicial and administration review. We are hopeful the U.S. Supreme Court will consider the sweeping impact this case could have our all private landowners in this country.”