

## California Court Sidesteps Jurisdictional Question Under The Clean Water Act

Since the U.S. Supreme Court decided the *Rapanos* case in 2006, federal courts have grappled with the question of what qualifies under the Clean Water Act as "waters of the United States." Last week in [Garland v. Central Valley Regional Water Quality Control Board](#), a California court sidestepped the question. The Regional Board issued an administrative fine of \$250,000 under the CWA against Mr. Garland for discharging hundreds of thousands of gallons of sediment-filled storm water into ephemeral drainages that flowed into the Feather River during periods of heavy rainfall. Mr. Garland claimed that, under the *Rapanos* case, these ephemeral drainages were not "waters of the U.S." and that the Regional Board therefore lacked jurisdiction under the CWA to impose the penalty. The court began its analysis by restating the different legal standards outlined in *Rapanos* for defining the term "waters of the U.S." In *Rapanos*, Justice Stevens and three of his colleagues contended the term should be read broadly, in accordance with the longstanding position of the U.S. EPA and Army Corps of Engineers. But Justice Scalia and three other justices contended the term should be read narrowly to exclude ephemeral waters without a continuous surface connection to a relatively permanent water body such as a stream, ocean, river or lake. Justice Kennedy broke the tie with the intermediate position that such ephemeral waters are covered by the CWA, but only if they have a "significant nexus" to a navigable waterway. So, how would the California court of appeal apply the complicated *Rapanos* decision to the ephemeral drainages at issue in the case? It wouldn't. Instead, it relied on the fact that the drainages carrying the sediment from Mr. Garland's discharge eventually flowed into the Feather River, which unquestionably qualifies as a water of the U.S. under any of the *Rapanos* tests. As a result, it didn't matter whether *drainages* were covered by the CWA, since the ultimate discharge of sediments into the *river* was unlawful regardless. The court emphasized that the hydrological connection between the drainages and the river was undisputed. The court therefore upheld the fine – while avoiding the tricky jurisdictional question Mr. Garland wanted answered. *Garland v. Central Valley Regional Water Quality Control Board*, No. C067130, 4th Dist. (Oct. 24, 2012)

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