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Spinning Sackett: Assessing New and Traditional Media Coverage So Far

One morning last month, my six-year-old son declared that we needed to stop listening to the news each day because “we already heard pretty much all that stuff yesterday.” You can easily argue he is right. In the modern media world, certain “sexy” topics get the lion’s share of both new and traditional media coverage. Environmental law and policy is not an area that typically gets much media attention, even of arguably important developments. I believe the paucity of good environmental coverage stems both from the nuances of environmental law and policy that escape many reporters and others, and also from the nature of the underlying message (Proposed Changes to the *Code of Federal Regulations*). But sometimes a legal environmental issue grabs the media’s attention.

Take the media’s coverage of *Sackett v. U.S. Environmental Protection Agency*, No. 10-1062 (2012). Before it reached the U.S. Supreme Court, only a small number of wetland and administrative law wonks had followed it closely, but after the Court agreed to hear the case, both traditional and new media have dedicated a great deal of attention to the case. In fact, some might argue that it has been transformed into a cause celeb for property-rights advocates.

Sackett was not really a wetlands case, although the dispute arose from an attempt to enforce federal laws governing wetlands. What the Court actually considered was whether the U.S. Environmental Protection Agency (EPA) has authority to issue administrative compliance orders requiring persons believed to be in violation of the federal Clean Water Act (CWA) to take certain actions or face administrative fines, and enforce such orders before the affected persons may seek judicial review. The Court heard arguments on January 9 of this year, and issued a unanimous decision on March 21 concluding the Sacketts could seek review of the compliance order under the Administrative Procedure Act.

So, how did the media frame the issues in the case? To start, some in the blogosphere

pitched the case as a battle of mom-and-pop against a heavy-handed government. For example, on Reason.TV, you can watch a video clip and read about how

[Mike] Sackett realized [a] dream when he and his wife, Chantelle Sackett, bought a plot of land near Priest Lake . . . [a]fter securing the necessary permits from local authorities, the Sacketts were only three days into the process of clearing the land when officials from the EPA showed up and put their dreams on hold.¹

By contrast, The Center for Progressive Reform’s blog opines that since

Mike Sackett owns an Idaho contracting and excavating company[, it] seems most unlikely that the existence of federal wetlands regulation, which restricts excavating and filling wetlands, was a surprise to the Sacketts. In fact, their parcel is listed on the federal National Wetlands Inventory. Meanwhile, the EPA says the Sacketts were repeatedly invited to discuss the terms of the compliance order, but never responded.²

As for traditional media, while the discussion was a little more balanced, the use of sound bites makes this story arguably more accessible than many typical environmental policy articles. The headlines in local papers themselves after the argument were compelling: *EPA Hunting Bullfrogs With Shotgun in Sackett Case*;³ *EPA Drops Jackboot on Necks of Couple for Daring to Build on Their Own Land*;⁴ and *EPA: We Can Take Your House and You Don’t Get to Appeal*.⁵ *USA Today* closed its short article on the argument with the following: “Even Justice Stephen Breyer, who voiced concerns about the importance of the EPA using its expertise to protect wetlands from pollution, observed, ‘Here, the

person whom the order is directed against is being hurt a lot.’”⁶ CNN’s coverage summarized the stakes with this assessment: “What happened has become a six-year fight pitting business and property rights groups against many in the environmental community. The stakes could be huge in the long-standing tensions over the balance between commercial and private development and maintaining clean air, water, and soil.”⁷

Did the tone change once the Court handed down an actual decision with a clear rationale for reporters to cover? The traditional media maintained balance in most cases, with titles such as “Justices Fault EPA, Back Landowners”⁸ and “Property Owners Win Key Battle in EPA Wetlands Fight.”⁹ Trade press was more descriptive (and accurate) in most cases, with titles such as “Unanimous High Court Allows Judicial Review of EPA’s Clean Water Orders.”¹⁰ Not surprisingly, opinion pieces used the decision to deliver a more provocative take, including the *Washington Times’ Ending EPA’s Land Grab: Supreme Court Delivers Lesson in Humility to Arrogant Agency*¹¹ and the *Wall Street Journal’s Supremes 9, EPA 0: The Justices Rebuke the Bureaucracy’s Water Torture*.¹²

The blogosphere and the Twitterverse, as well as public comments at the end of most articles, revealed a harsh, almost deafening tone, most of which was overly one-sided to the point of misconstruing the facts. Many blogs included impassioned commentary, such as: “[s]everal of our government agencies engage in citizen harassment, intimidation, and persecution that is much more characteristic of a fascistic system than a democratic one”¹³ and “the Supreme Court released their unanimous decision on *Sackett v. EPA*, the egregious case of an Idaho couple being persecuted by the EPA for building on their two-thirds-of-an-acre that the EPA deemed protected wetlands.”¹⁴ The 140-character limit imposed by Twitter led to some interesting characterizations: *Epic Smackdown for EPA; The Sacketts*

Versus the EPA Power Grab; and #EPA Overreach Loses in #SCOTUS!

The spinning (on both sides), it seems to me, borders on mischaracterizing the actual facts. New media and economic pressures on traditional journalism have prompted a recent recommitment to “truth” in journalism. The Pew Research Center’s Project for Excellence in Journalism has a compelling statement thereon:¹⁵

Democracy depends on citizens having reliable, accurate facts put in a meaningful context. Journalism does not pursue truth in an absolute or philosophical sense, but it can—and must—pursue it in a practical sense. . . . Even in a world of expanding voices, accuracy is the foundation upon which everything else is built—context, interpretation, comment, criticism, analysis and debate. . . . As citizens encounter an ever greater flow of data, they have more need—not less—for identifiable sources dedicated to verifying that information and putting it in context.

The strident and distracting nature of public debate on environmental law and policy makes this commitment more important than ever. In reviewing the media coverage so far, most of it seems lacking in foundational aspects of what has traditionally been good reporting. Many media outlets seem to skimp on thorough facts, detailed explanation of the law, and a true balance in the voices set forth for public consumption.

Sackett reflects a new era of media coverage, not only of CWA enforcement, but of all environmental issues. The decision itself clearly mandates that EPA adjust its modus operandi on enforcement. The details of how this will be implemented matters not only to we wetlands wonks, but in a very real way to both the regulated and conservation communities. In addition to the outcome itself, however, the approaches to reporting, social media, and blogging deserve attention. Part of me is glad that wetland and administrative law and policy has been making the news through *Sackett*, but I am leery that shrill spinning and narrow coverage may keep “truth” from emerging in continued coverage of this case and future related matters. ■

—Kim Diana Connolly

ENDNOTES

1. Reason website, *Sackett v. EPA*—How One Couple’s Battle Against the Feds Might Protect Your Land (last visited Apr. 2, 2012), at <http://reason.com/blog/2012/03/07/sackett-v-epa-how-one-couples-battle-aga>.
2. Center for Progressive Reform website, In *Sackett v. EPA*, Troubling Potential for SCOTUS to Undermine Government’s Ability to Promptly Respond to Environmental Threats (last visited April 2, 2012), at <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A706AFFB-D70B-9B5D-C6405D7D8237CEF9>.
3. *EPA Hunting Bullfrogs With Shotgun in Sackett Case*, WESTERN FARM PRESS, Jan. 23, 2012.
4. *EPA Drops Jackboot on Necks of Couple for Daring to Build on Their Own Land*, PRISON PLANET, Jan. 18, 2012.
5. *EPA: We Can Take Your House and You Don’t Get to Appeal*, EXAMINER, Jan. 17, 2012.
6. Joan Biskupic, *Wetlands Case Pits EPA Against Property Owners*, USA TODAY, Jan. 10, 2012, A2.
7. Bill Mears, “Little Guy” Fight Over Property Rights Reaches High Court, CNN WIRE, Jan. 9, 2012.

8. *Justices Fault EPA, Back Landowners*, L.A. TIMES, Mar. 22, 2012.
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10. *Unanimous High Court Allows Judicial Review of EPA’s Clean Water Orders*, Inside EPA Weekly Report, Mar. 23, 2012.
11. *Ending EPA’s Land Grab: Supreme Court Delivers Lesson in Humility to Arrogant Agency*, WASH. TIMES, Mar. 22, 2012, B02.
12. *Supremes 9, EPA 0: The Justices Rebuke the Bureaucracy’s Water Torture*, WALL ST. J., Mar. 22, 2012.
13. Pocateloshops website, *Politics, A Victory Over Government Intimidation* (last visited Apr. 2, 2012), at http://www.pocateloshops.com/new_blogs/politics/?p=8913.
14. Erika Johnsen, Townhall website, *Justice Is Sweet: The Sackett v. EPA Decision* (last visited Apr. 2, 2012), at http://townhall.com/tipsheet/erikajohnsen/2012/03/21/justice_is_sweet_the_sackett_v_epa_decision.
15. Pew Research Center’s Project for Excellence in Journalism website, *Principles of Journalism* (last visited Apr. 2, 2012), at <http://www.journalism.org/resources/principles>. See subsection on Journalism’s First Obligation Is to the Truth.

CONSERVATION

Accessing the Precious Gems of the Wetland Conservation Crown

Visiting a wetland is arguably the best way to increase awareness and knowledge about the things that wetlands do, otherwise known as ecosystem services. These are the ecological functions and socioeconomic values that benefit all of us, usually for free. Floodwater storage, sediment retention, nutrient cycling, wildlife habitat, and artistic inspiration are commonly listed among the many services provided.

There is a myriad of notable wetlands receiving protection and notoriety throughout the United States and the world. All of these conservation programs are worthy endeavors, but unraveling the crazy quilt of ownership and management is mind-boggling even for the most seasoned wetland scientist and traveler. They are neither conserved using the same criteria nor found conveniently registered under any single system, meaning few outside the wetlands world will know the breadth of what exists, much less how to get there for a visit.

Let us go on a quick virtual tour. Internationally, the Ramsar Convention on Wetlands of International Importance (Ramsar) and World Heritage Sites are the best known worldwide. Ramsar, through signatories to an international treaty, now boasts nearly 2,000 designated sites

encompassing over 480 million acres (see www.ramsar.org). These sites range in area from huge, e.g., Kakadu National Park in northern Australia, nearly 3.5 million acres, to quite modest, e.g., Wilma H. Schiermeier Olentangy River Wetland Research Park in Columbus, Ohio, 53 acres. Within the United States (and similarly protected in many other countries) are wetlands on public parcels managed by the National Park Service, which include some of the gems in the conservation crown, such as Everglades National Park, Upper Missouri River Breaks National Monument, and Point Reyes National Seashore in California (see www.nps.gov). The U.S. Fish and Wildlife Service manages over 150 million acres in the National Wildlife Refuge (NWR) System, with acquisition criteria that originally emphasized habitat for migrating waterfowl and waterbirds; Edwin B. Forsythe NWR in New Jersey and Aransas NWR in Texas come to mind (see www.fws.gov/refuges). Additional sites receive protection as state, county, and municipal parks, as do private parcels held by land trusts and conservation organizations.

Access to any of these sites ranges from easy hikes on trails or boardwalks, to more involved boat outings, all the way on to near wilderness

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