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Can EPA Take Your Property Without Court Review? Yes!

Posted on October 18, 2011 at 8:34 AM

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"It is long overdue for the Supreme Court to end these outrageous abuses by an out-of-control EPA and its unconstitutional violation of property rights through its so-called pre-enforcement actions..." That statement comes from a recent press release from the Mountain States Legal Foundation. This assertion is made along with the accusation that "what the EPA does is constitutionally intolerable."

These comments are the result of EPA using its Clean Water Act power and abusing it to take a small home site from a couple in Idaho.

The story you are about to read not only defies common sense, but it makes one wonder what has happened to the EPA that has done good work for the country in the past.

This story is one of arrogance and legal abuse!

The U.S. Supreme Court has said it will hear arguments involving the Sackett family, Priest Lake, ID. The Sacketts owned a small building lot (less than 1 acre) where they intended to build a family home. The lot was within an existing subdivision and was zoned for residential use. The lot was separated from a nearby lake by a road; other lots in the subdivision had homes constructed on them.

The Sacketts, before buying the property, did what they considered due diligence, which included inspecting the property, researching permitting history of the subdivision and also researched regulatory requirements, according to the brief they have filed in the Supreme Court. The couple obtained all of the required local permits and initiated normal construction activities for their new dream home.

Shortly after initiating construction, the Sacketts received a compliance order from the EPA which threatened the family with a penalty of \$37,500 per day if they continued work on their home site, because EPA had determined the building lot was a wetland.

There is no indication in the record that EPA had made a formal wetlands determination, and even if EPA had made such a claim, the Sacketts would not have a right to a judicial review of that determination. Even if the Sacketts had conducted a wetlands evaluation, EPA would not be obligated to accept it because EPA may impose sanctions by an EPA compliance order if it has "any information" that a property contains a wetland.

It is almost impossible for an average citizen to know about EPA's and the U.S. Army Corps of Engineers' 1987 Guidance Manual which purports to tell experts how to determine what is a wetland on your property.

Devastated

The Sacketts, as any family would be, were devastated by reading EPA's compliance order because the Order indicated that fill material had been placed into wetlands, which is a violation of putting pollutants into waters of the United States. EPA's order stopped the Sacketts from building their home. The Sacketts were ordered to "immediately undertake activities to restore the site." This meant the Sacketts had to remove the fill material placed on their home site, and return all of the wetland soil which had allegedly been removed. Next, they were ordered to move the fill material to a location approved by EPA. The agency also ordered them to grant full access to their site and to any off-site areas, and EPA told the Sacketts that EPA officials must be allowed to move freely on the Sacketts site any time EPA deemed necessary.

The EPA compliance order also forced the Sacketts to plant on the site the types of wetlands plant previously on the site, and to plant trees approximately 10 feet apart, fence the site for three growing seasons, monitor the site and if the plants do not grow, restore the plants. EPA further ordered the Sacketts to show the compliance order to anyone who might be interested in the property 30 days before sale.

EPA takes the position the Sacketts cannot have a court review the compliance order. Two courts agreed with EPA that the compliance order did not violate the Sacketts' due process rights, nor did the order deprive the Sacketts of reasonable use and enjoyment of their property; nor did the EPA order violate the Sacketts' constitutional right to be free of unreasonable searches and seizures.

By this time, you must wonder what country we are living in.

The Supreme Court apparently sees this case as one where the Sacketts may have been subject to a serious deprivation of their constitutional rights, because it has decided to hear that case. That's the good news.

EPA has taken the position that the Clean Water Act provides no opportunity for review of EPA's compliance orders by a court. EPA believes it has a right to impose severe sanctions on this family and take its home site without a hearing.

EPA seeks to gain more and more power over citizens' and farmers' lands and their use. This case stands for the stark reality that the Courts still stand between an overbearing government agency and property rights. Follow this case in the U.S. Supreme Court because the outcome will have a direct impact on you and your land.

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Comments

Posted by Anonymous on October 20 at 7:51 AM

Thank you for pointing out that the Sacketts are victims of arrogance and legal abuse. Such arrogance and legal abuse have prompted hundreds to recently the petition at wh.gov/gJG (case sensitive) to provide the legal rights which are needed by everyone from grandmothers who are financially exploited while involuntarily conserved to government and corporate whistleblowers who can't get a hearing. Please sign this petition and encourage others to do the same. Thank you.

Posted by Anonymous on October 18 at 3:26 PM

Anonymous: All the information comes from court briefs filed in the US Supreme Court. Sorry you do not have the courage to stand behind your comments as I do!