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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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RAPANOS ET UX., ET AL. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 04–1034. Argued February 21, 2006—Decided June 19, 2006*

As relevant here, the Clean Water Act (CWA or Act) makes it unlawful to discharge dredged or fill material into "navigable waters" without a permit, 33 U. S. C. §§1311(a), 1342(a), and defines "navigable waters" as "the waters of the United States, including the territorial seas," §1362(7). The Army Corps of Engineers (Corps), which issues permits for the discharge of dredged or fill material into navigable waters, interprets "the waters of the United States" expansively to include not only traditional navigable waters, 33 CFR §328.3(a)(1), but also other defined waters, §328.3(a)(2), (3); "[t]ributaries" of such waters, §328.3(a)(5); and wetlands "adjacent" to such waters and tributaries, §328.3(a)(7). "[A]djacent" wetlands include those "bordering, contiguous [to], or neighboring" waters of the United States even when they are "separated from [such] waters . . . by man-made dikes . . . and the like." §328.3(c).

These cases involve four Michigan wetlands lying near ditches or man-made drains that eventually empty into traditional navigable waters. In No. 04–1034, the United States brought civil enforcement proceedings against the Rapanos petitioners, who had backfilled three of the areas without a permit. The District Court found federal jurisdiction over the wetlands because they were adjacent to "waters of the United States" and held petitioners liable for CWA violations. Affirming, the Sixth Circuit found federal jurisdiction based on the sites' hydrologic connections to the nearby ditches or drains, or to more remote navigable waters. In No. 04–1384, the Carabell petitioners were denied a permit to deposit fill in a wetland that was

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*Together with No. 04–1384, *Carabell et al.* v. *United States Army Corps of Engineers et al.,* also on certiorari to the same court.

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separated from a drainage ditch by an impermeable berm. The Carabells sued, but the District Court found federal jurisdiction over the site. Affirming, the Sixth Circuit held that the wetland was adjacent to navigable waters.

Held: The judgments are vacated, and the cases are remanded.

No. 04–1034, 376 F. 3d 629, and No. 04–1384, 391 F. 3d 704, vacated and remanded.

JUSTICE SCALIA, joined by THE CHIEF JUSTICE, JUSTICE THOMAS, and JUSTICE ALITO, concluded:

1. The phrase "the waters of the United States" includes only those relatively permanent, standing or continuously flowing bodies of water "forming geographic features" that are described in ordinary parlance as "streams," "oceans, rivers, [and] lakes," Webster's New International Dictionary 2882 (2d ed.), and does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall. The Corps' expansive interpretation of that phrase is thus not "based on a permissible construction of the statute." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 843. Pp. 12–21.

(a) While the meaning of "navigable waters" in the CWA is broader than the traditional definition found in *The Daniel Ball,* 10 Wall. 557, see *Solid Waste Agency of Northern Cook Cty.* v. *Army Corps of Engineers,* 531 U. S. 159, 167 *(SWANCC); United States* v. *Riverside Bayview Homes, Inc.,* 474 U. S. 121, 133, the CWA authorizes federal jurisdiction only over "waters." The use of the definite article "the" and the plural number "waters" show plainly that §1362(7) does not refer to water in general, but more narrowly to water "[a]s found in streams," "oceans, rivers, [and] lakes," Webster's New International Dictionary 2882 (2d ed.). Those terms all connote relatively permanent bodies of water, as opposed to ordinarily dry channels through which water occasionally or intermittently flows. Pp. 12–15.

(b) The Act's use of the traditional phrase "navigable waters" further confirms that the CWA confers jurisdiction only over relatively permanent bodies of water. Traditionally, such "waters" included only discrete bodies of water, and the term still carries some of its original substance, *SWANCC, supra,* at 172. This Court's subsequent interpretation of "the waters of the United States" in the CWA likewise confirms this limitation. See, *e.g., Riverside Bayview, supra,* at 131. And the CWA itself categorizes the channels and conduits that typically carry intermittent flows of water separately from "navigable waters," including them in the definition of "'point sources,'" 33 U. S. C. §1362(14). Moreover, only the foregoing definition of "waters" is consistent with CWA's stated policy "to recognize, preserve,

and protect the primary responsibilities and rights of the States . . . to plan the development and use . . . of land and water resources . . . ." §1251(b). In addition, "the waters of the United States" hardly qualifies as the clear and manifest statement from Congress needed to authorize intrusion into such an area of traditional state authority as land-use regulation; and to authorize federal action that stretches the limits of Congress's commerce power. See *SWANCC, supra,* at 173. Pp. 15–21.

2. A wetland may not be considered "adjacent to" remote "waters of the United States" based on a mere hydrologic connection. *Riverside Bayview* rested on an inherent ambiguity in defining where the "water" ends and its abutting ("adjacent") wetlands begin, permitting the Corps to rely on ecological considerations only to resolve that ambiguity in favor of treating all abutting wetlands as waters. Isolated ponds are not "waters of the United States" in their own right, see *SWANCC, supra,* at 167, 171, and present no boundary-drawing problem justifying the invocation of such ecological factors. Thus, only those wetlands with a continuous surface connection to bodies that are "waters of the United States" in their own right, so that there is no clear demarcation between the two, are "adjacent" to such waters and covered by the Act. Establishing coverage of the Rapanos and Carabell sites requires finding that the adjacent channel contains a relatively permanent "wate[r] of the United States," and that each wetland has a continuous surface connection to that water, making it difficult to determine where the water ends and the wetland begins. Pp. 21–24.

3. Because the Sixth Circuit applied an incorrect standard to determine whether the wetlands at issue are covered "waters," and because of the paucity of the record, the cases are remanded for further proceedings. P. 39.

JUSTICE KENNEDY concluded that the Sixth Circuit correctly recognized that a water or wetland constitutes "navigable waters" under the Act if it possesses a "significant nexus" to waters that are navigable in fact or that could reasonably be so made, *Solid Waste Agency of Northern Cook Cty.* v. *Army Corps of Engineers,* 531 U. S. 159, 167, 172 *(SWANCC),* but did not consider all the factors necessary to determine that the lands in question had, or did not have, the requisite nexus. *United States* v. *Riverside Bayview Homes, Inc.,* 474 U. S. 121, and *SWANCC* establish the framework for the inquiry here. The nexus required must be assessed in terms of the Act's goals and purposes. Congress enacted the law to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," 33 U. S. C. §1251(a), and it pursued that objective by restricting dumping and filling in "waters of the United States," §§1311(a), 1362(12).

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The rationale for the Act's wetlands regulation, as the Corps has recognized, is that wetlands can perform critical functions related to the integrity of other waters—such as pollutant trapping, flood control, and runoff storage. 33 C. F. R. §320.4(b)(2). Accordingly, wetlands possess the requisite nexus, and thus come within the statutory phrase "navigable waters," if the wetlands, alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters understood as navigable in the traditional sense. When, in contrast, their effects on water quality are speculative or insubstantial, they fall outside the zone fairly encompassed by the term "navigable waters." Because the Corps' theory of jurisdiction in these cases—adjacency to tributaries, however remote and insubstantial—goes beyond the *Riverside Bayview* holding, its assertion of jurisdiction cannot rest on that case. The breadth of the Corps' existing standard for tributaries—which seems to leave room for regulating drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water-volumes toward it—precludes that standard's adoption as the determinative measure of whether adjacent wetlands are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood. Absent more specific regulations, the Corps must establish a significant nexus on a case-by-case basis when seeking to regulate wetlands based on adjacency to nonnavigable tributaries, in order to avoid unreasonable applications of the Act. In the instant cases the record contains evidence pointing to a possible significant nexus, but neither the agency nor the reviewing courts considered the issue in these terms. Thus, the cases should be remanded for further proceedings. Pp. 1–30.

SCALIA, J., announced the judgment of the Court, and delivered an opinion, in which ROBERTS, C. J., and THOMAS and ALITO, JJ., joined. ROBERTS, C. J., filed a concurring opinion. KENNEDY, J., filed an opinion concurring in the judgment. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a dissenting opinion.