



PACIFIC LEGAL FOUNDATION

September 10, 2015

REVISED

Honorable Scott S. Harris, Clerk
One First Street, NE
Supreme Court of the United States
Washington, DC 20543

VIA FEDERAL EXPRESS

Re: *Kent Recycling Services, LLC v. U.S. Army Corps of Engineers*, No. 14-493

Dear Mr. Harris:

I write to inform the Court of a recent development that may affect the Court's disposition of the petition for rehearing in the referenced case. After this Court denied certiorari, petitioner sought rehearing on the ground that the Eighth Circuit had recently issued a decision that conflicts with the Fifth Circuit decision below and the Ninth Circuit decision in *Fairbanks North Star Borough v. United States Army Corps of Engineers*, 543 F.3d 586 (2008), relying on this Court's unanimous decision in *Sackett v. EPA*, 132 S. Ct. 1367 (2012). See *Hawkes Co. v. United States Army Corps of Engineers*, 782 F.3d 994 (2015). The government filed for rehearing en banc in *Hawkes*, but that petition was denied. Consequently, on September 8, 2015, the government timely filed a petition for writ of certiorari (15-290) asking this Court to grant review to resolve the three-way split among the circuits. The government now concedes these cases squarely conflict and that resolution of the conflict is a matter of significant national importance.

Both cases share a common question of law as to whether government-issued Jurisdictional Determinations (i.e., wetland delineations) under the Clean Water Act are subject to immediate challenge in court. However, *Kent Recycling* raises an additional question of petitioner's due process rights. As a matter of judicial economy, if the Court grants review, counsel urges this Court to consolidate the cases for briefing and oral argument.

I would appreciate your circulating this revised letter to the Court, and disregarding the September 9, 2015, letter.

Sincerely,

A handwritten signature in black ink that reads "M. Reed Hopper".

M. REED HOPPER
Principal Attorney

cc: See Attached Service List

Kent Recycling Services, LLC v. U.S. Army Corps of Engineers
No. 14-493

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing revised letter was served this 10th day of September, 2015, via Email and First-Class mail, postage pre-paid, upon the following:

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