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WORLDNETDAILY EXCLUSIVE

YOUR GOVERNMENT AT WORK

EPA to property owner: 'Your land is our land'

\$40 million in fines pending over plan to build new home

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By Bob Unruh

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Just imagine. You want to build a home, so you buy a \$23,000 piece of land in a residential subdivision in your hometown and get started. The government then tells you to stop, threatens you with \$40 million in fines and is *not* kidding.



Mike and Chantell Sackett

That's the case now before the U.S. Supreme Court, with briefs being filed today by the [Pacific Legal Foundation](#) on behalf of a Priest Lake, Idaho, family, Chantell and Mike Sackett.

9/25/2011

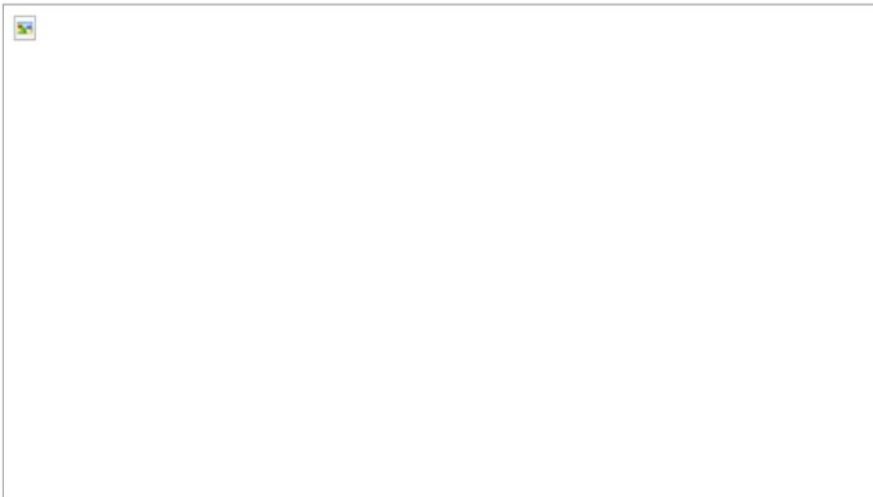
Attorney Damien Schiff, who will be arguing before the high court in the case, said it's simply a case of a government run amok, and it poses a potential threat to perhaps not every landowner across the nation, but untold millions.

["Constitutional Chaos: What Happens When the Government Breaks Its Own Laws"](#)

The Sacketts, Schiff said, "bought property, and the government in effect has ordered them to treat the property like a public park."

"The EPA has not paid them a dime for that privilege," he said. "The regime we have operating now allows the EPA to take property without having to pay for it, or giving the owners the right to their day in court."

The organization has prepared a [video](#) to explain the case here :
http://www.youtube.com/watch?feature=player_embedded&v=Pe8TBXgwpnw



The case developed when the Sacketts bought a .63-acre parcel of land for \$23,000 in a subdivision in their hometown of Priest Lake, Idaho. The land is 500 feet from a lake, had a city water and sewer tap assigned, had no running or standing water and was in the middle of other developed properties.

The couple obtained all of the needed permits for their project and

9/25/2011

started work. Suddenly, the Environmental Protection Agency showed up on the building site, demanded that the work stop and issued a "compliance order" that the couple remove the fill they had brought in, restore the land to its native condition, plant trees every 10 feet, fence it off and let it sit for three years.

Then they would, for costs estimated at roughly a quarter of a million dollars, be allowed to "request" permission from the government to build on their own land.

Or else, warned the agency, there is the possibility of fines of \$37,500 per day - with the total now surpassing \$40 million.

Chantell reported she was told by the EPA that if "you're buying a piece of property you should know if it's in wetlands."

"I started to do research. I said, 'So how do I find this piece of property in the wetlands [registry]? And she said, 'Here's the coordinates.' When I actually pulled up the coordinates, it's not there."

No matter, said the government. Do what we want.

So the Sacketts went to court, only to be told the courts can't address a decision like this, as it's an administrative decision. The couple would have to meet the demands of the "compliance order" and pay the \$250,000 to apply for a building permit, then challenge the eventual decision.

Or they could expose themselves to \$37,500 per day in fines by refusing to cooperate.

The "taking" of their private property without due process now is the focus on the high court's hearings.

The brief explains that the Fifth Amendment to the U.S. Constitution requires that "no person shall be ... deprived of life, liberty, or property, without due process of law." But the [Clean Water Act](#) gives the EPA authority to issue compliance orders, then fine defendants who are "in violation."

"Any citizen engaged in a range of activities may run afoul of the act," the brief explains. "The Clean Water Act's reach is extremely broad, requiring

9/25/2011

a permit for the discharge of 'pollutants' from a 'point source' into the 'waters of the United States,' which phrase has been interpreted by regulation to include 'wetlands.'"

The regulations, the brief contends, had been defined so broadly by the EPA that they have pertained to "land that appears to be totally dry."

"If the EPA has completed an analysis and made a determination that the property contains jurisdictional 'wetlands,' the citizen has no right to judicial review of that analysis. If the citizen hires professionals to conduct a 'wetlands' determination, EPA is not obligated to accept it. Despite any evidence, professional opinions, or agency advice the citizen obtains, EPA may still impose sanctions by a compliance order if it has 'any information' that" it wants to use to call it wetlands, the brief explains.

Further, the "compliance order" also demands that the private [property owners](#) give the EPA full access not only to the lands but to their private records about what is done to the land.

"Given that the order is not based on probable cause, it withdraws the Sacketts' constitutional right to be free of unreasonable searches by requiring them to [grant](#) access to 'all records and documentation related to the conditions at the site and th restoration activities conducted pursuant to this order.'"

The EPA ordered the planting of specific trees and shrubs and then demanded that the land "be fenced for the first three growing seasons."

"Monitoring of vegetation on the restored site for survival and ground coverage shall be performed in October 2008, June 2009, October 2009, and October 2010," it ordered.

"The very existence of the order, subjecting the property to a federal mandate, prohibiting the intended, authorized use, and requiring expensive remedial actions, substantially reduces the value of the property and limits the Sacketts' ability to [use] it," the brief said.

"Although there has been no judicial decision to establish EPA's jurisdiction and authority to impose these deprivations, the compliance order threatens the Sackets with various 'sanctions.'"

9/25/2011

The couple's eventual lawsuit claimed the EPA does not have jurisdiction and the order violates their due process and other constitutional rights.

"The second claim turns on the basic principle that, before a person can be deprived of liberty or property, he is entitled to a full and fair hearing 'at a meaningful time and in a meaningful manner,'" the brief argues. "The third claim is based on the related principle that a person cannot be punished for conduct that violates an 'impermissibly vague' law."

The district court rejected their case, as did the 9th U.S. Circuit Court of Appeals.

"The court created a constitutional problem by reading the Clean Water Act to preclude judicial review of the compliance order," said the brief. "The court acknowledged both that the Clean Water Act's express language does not mandate the interpretation it ultimately adopted ... and that courts should avoid statutory interpretations that raise serious constitutional questions," the brief said.

"The court never considered whether contrary inferences might support the conclusion that Congress *did* intend for individuals like the Sacketts to obtain review under the EPA. Similarly, the court never considered whether the nature of the compliance order itself supports review."

Additionally, it's an order issued without probable cause and "the process that produces the order is entirely secret, with no notice given to property owners like the Sacketts."

"In sum, the compliance order has deprived the Sacketts of the only economically viable use of their property permitted under local law, deprived them of their right to exclude unwanted persons from their property, and deprived them of their right to be free from unreasonable searches of their property and effects. The Sacketts have never received any review, let alone meaningful review, of the compliance order," the brief argued.

Schiff earlier told WND the significant property rights and due process issues need to be resolved.

"When the government seizes control of your land, and you disagree with

9/25/2011

the justification, shouldn't you be allowed your day in court? Just as important, should EPA be a law unto itself, without meaningful accountability to the courts and the Constitution?" he said.

"We're very encouraged that the Supreme Court has recognized how important our case is," said Mike Sackett in a statement released earlier by the foundation. "We are standing up against an agency that seems to have unlimited resources and few if any limits on what it can do to property owners. We're standing up for everyone's right to go to court when the government hands you a raw deal - or takes over your hard-earned property. Thank goodness PLF has been helping us, and now PLF will be making our case in the nation's highest court."

Schiff told WND earlier that there is "no question that the power the EPA is claiming it has under the Clean Water Act is significant."

"Even if you have a good basis to think the EPA is wrong, the EPA won't let you get into the courthouse," he said. "They are able to shut the courthouse door by issuing compliance orders that are not judicially reviewable."

That puts a landowner in the impossible situation of either complying with the order with its potential cost of tens of thousands or even hundreds of thousands of dollars or facing that same penalty in fines.

And it's not just the Sacketts' land that could be subject to such orders. The foundation arguments suggest that private property across the nation could be at risk.

[EPA](#) officials have declined WND requests for comment. They referred WND to a Department of Justice office, which did not respond.

The legal team noted that between 1980 and 2001, the EPA issued up to 3,000 compliance orders every year across the nation.

"The reality of the Sacketts' situation is that they have been unambiguously commanded by their government not to complete their home-building project, to take expensive measures to undo the improvements that they have made to their land, and to maintain their land essentially as a public park until the property is 'restored' to the

9/25/2011

satisfaction of the EPA. They have been threatened with frightening penalties if they do not immediately obey; but they have been refused the prompt hearing they should have received as a matter of right in any court," Pacific Legal argued.

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9/25/2011