

**FILED**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAR 8 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MICHAEL SACKETT; CHANELL  
SACKETT,

Plaintiffs-Appellants,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY; JANE NISHIDA, Acting  
Administrator,<sup>1</sup>

Defendants-Appellees.

No. 19-35469

D.C. No. 2:08-cv-00185-EJL  
District of Idaho,  
Boise

ORDER REQUESTING  
SUPPLEMENTAL BRIEFING

Before: GOULD and FRIEDLAND, Circuit Judges, and OTAKE,<sup>\*</sup> District Judge.

Assuming we were to hold that there is still a live controversy surrounding EPA's authority to regulate Plaintiffs' property, the parties are instructed to address the relevance, if any, of the Navigable Waters Protection Rule: Definition of "Waters of the United States," 85 Fed. Reg. 22,250 (April 21, 2020), to this appeal. The parties shall each file a supplemental brief not exceeding 10 pages in length. Plaintiffs shall submit their brief on or before March 26, 2021, and

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<sup>1</sup> On January 20, 2021, Jane Nishida was named Acting Administrator of the U.S. Environmental Protection Agency and was automatically substituted as a defendant. *See* Fed. R. App. P. 43(c).

<sup>\*</sup> The Honorable Jill Otake, United States District Judge for the District of Hawaii, sitting by designation.

Defendants shall submit their brief on or before April 12, 2021. If we deem it appropriate, we will request a reply brief from Plaintiffs through a separate order.