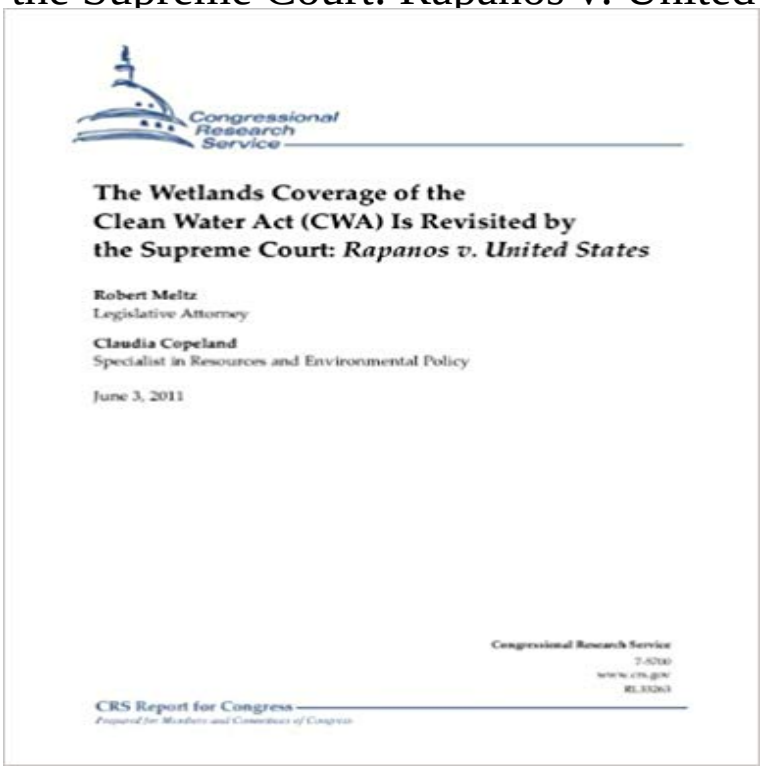
The Wetlands Coverage of the Clean Water Act (CWA) Is Revisited by the Supreme Court: Rapanos v. United States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The Wetlands Coverage of the Clean Water Act (CWA) Is Revisited by the Supreme Court: *Rapanos v. United States*

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In 1985 and 2001, the Supreme Court grappled with issues as to the geographic scope of the wetlands permitting program in the federal Clean Water Act (CWA). In 2006, the Supreme Court rendered a third decision, Rapanos v. United States, on appeal from two Sixth Circuit rulings. The Sixth Circuit rulings offered the Court a chance to clarify the reach of CWA jurisdiction over wetlands adjacent only to nonnavigable tributaries of traditional navigable watersincluding tributaries such as drainage ditches and canals that may flow intermittently. (Jurisdiction over wetlands adjacent to traditional navigable waters was established in one of the two earlier decisions.)The Courts decision provided little clarification, however, splitting 4-1-4. The four-justice plurality decision, by Justice Scalia, said that the CWA covers only wetlands connected to relatively permanent bodies of water (streams, rivers, lakes) by a continuous surface connection. Justice Kennedy, writing alone, demanded a substantial nexus between the wetland and a traditional navigable water, using an ambiguous ecological test. Justice Stevens, for the four dissenters, would have upheld the existing broad reach of Corps of Engineers/EPA regulations. Because no rationale commanded the support of a majority of the justices, lower courts are extracting different rules of decision from Rapanos for resolving future cases. Corps/EPA guidance issued in December 2008 says that a wetland generally is jurisdictional if it satisfies either the plurality or Kennedy tests. In April 2011, the agencies proposed revised guidance intended to clarify whether waters are protected by the CWA, but this proposal is controversial. The ambiguity of the Rapanos decision and questions about the agencies guidance have increased pressure on EPA and the Corps to initiate a rulemaking to promulgate new regulations,

but also on Congress to provide clarification. In the 111th Congress, legislation intended to do so was approved by a Senate committee (S. 787, the Clean Water Restoration Act), but no further legislative action occurred. Similar legislation has not been introduced in the 112th Congress.The legal and policy questions associated with Rapanosregarding the outer geographic limit of CWA jurisdiction and the consequences of restricting that scopehave challenged regulators, landowners and developers, and policymakers for more than 30 years. The answer may determine the reach of CWA regulatory authority not only for the wetlands permitting program but also for other CWA programs; the CWA has one definition of navigable waters, meaning waters of the United States, that applies to the entire law.While regulators and the regulated community debate the legal dimensions of federal jurisdiction under the CWA, scientists contend that there are no discrete, scientifically supportable boundaries or criteria along the continuum of wetlands to separate them into meaningful ecological or hydrological compartments. Wetland scientists believe that all such waters are critical for protecting the integrity of waters, habitat, and wildlife downstream. Changes in the limits of federal jurisdiction highlight the role of states in protecting waters not addressed by federal law. From the states perspective, federal programs provide a baseline for consistent, minimum standards to regulate wetlands and other waters. Most states are either reluctant or unable to take steps to protect non-jurisdictional waters through legislative or administrative action.

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Wetlands adjacent to non-navigable tributaries that are not relatively Congress enacted the Clean Water Act (CWA or the Act) to In Rapanos, the Supreme Court addressed where the Federal integrity of other covered waters more readily understood as `navigable. **The Wetlands Coverage of the Clean Water Act Is Revisited by the** This report discusses the Supreme Court decision in Rapanos v. Environmental Protection Agency (EPA) over wetlands adjacent to waters of the United States, the problematic phrase used by the Clean Water Act (CWA) **Clean Water Act Jurisdiction Following the U.S. Supreme Courts** The Wetlands Coverage of the Clean Water Act On June 19, 2006, the Supreme Court rendered a third decision, Rapanos v. United States **The Wetlands Coverage of the Clean Water Act is Revisited by the** This report discusses the Supreme Court decision in Rapanos v. 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Act Is Revisited by the This report discusses the Supreme Court decision in Rapanos v. Environmental Protection Agency (EPA) over wetlands adjacent to waters of the United States, the problematic phrase used by the Clean Water Act (CWA) **The Wetlands Coverage of the Clean Water Act is Revisited by the** Two of the Ninth Circuit decisions have held that CWA permits are required for at of FIFRA- regulated pesticides over or into waters of the United States, and the United States (547 U.S. 715, 2006), coverage of irrigation canals as waters of of the Clean Water Act (CWA) Is Revisited by the Supreme Court: Rapanos v. **The Wetlands Coverage of the Clean Water Act (CWA) Is Revisited** The Wetlands Coverage of the Clean Water Act (CWA) Is Revisited by the Supreme Court: Rapanos v. United States eBook: Claudia Copeland, Robert Meltz: **The Wetlands Coverage of the Clean Water Act (CWA) Is Revisited** This report discusses the Supreme Court decision in Rapanos v. Environmental Protection Agency (EPA) over wetlands adjacent to waters of the United States, the problematic phrase used by the Clean Water Act (CWA) **Wetlands Coverage of the Clean Water Act is Revisited by the** This report discusses the Supreme Court decision in Rapanos v. Environmental Protection Agency (EPA) over wetlands adjacent to waters of the United States, the problematic phrase used by the Clean Water Act (CWA) **The Wetlands Coverage of the Clean Water Act is Revisited by the** the Clean Water Act (CWA) in the wake of two Supreme Court decisions that interpreted the some geographically isolated wetlands, intermittent streams, and other waters. First, in Solid Waste Agency of Northern Cook County v. opinion in Rapanos commanded the support of five or more Justices, the scope of CWA This report discusses the Supreme Court decision in Rapanos v. Environmental Protection Agency (EPA) over wetlands adjacent to waters of the United States, the problematic phrase used by the Clean Water Act (CWA)