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High court divided on county wetlands

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By **JEFF KART**

TIMES WRITER

Midland developer John Rapanos was hoping the U.S. Supreme Court would resolve his ongoing fight with regulators over wetlands in Bay County's Williams Township.

Instead, he's going back to court again.

The high court on Monday split three ways in affirming government protection for millions of acres of wetlands, even on land miles away from waterways. Regulators, however, must prove a significant connection to the waterways under a test authored by a single justice.

The key decision was by moderate Justice Anthony M. Kennedy, who agreed with liberal members that federal regulations can apply to land adjacent to tributaries, including tributaries that are not filled with water all year.

Kennedy, however, joined conservatives in ruling that regulators may have misinterpreted the Clean Water Act when they refused to let Rapanos and another Michigan property owner build commercial developments on wetlands they own.

The Rapanos case involved land in Williams Township that regulators said contained wetlands that eventually flowed to Lake Huron.

The case was about whether the government can extend protections for wetlands miles away from waterways.

Observers said the ruling sends the Rapanos case back to a lower court, which originally ruled against Rapanos for backfilling three areas without a permit, and may mean more disputes involving wetland development are litigated in the future.

"We are quite pleased with the decision of these justices to repudiate this overreaching by the federal government," said Reed Hopper, a Pacific Legal Foundation attorney who represented Rapanos.

Robert McCann, spokesman for the state Department of Environmental Quality, called the ruling a "mixed bag" and said it won't change how his agency goes about protecting wetlands, which filter pollutants, control flooding and provide habitat for fish and wildlife.

"It's certainly not absolving Mr. Rapanos," McCann said.

Hopper said he thinks the decision improves the fortunes of landowners and developers.

"I think it's a message to all federal agencies that they need to define their authority clearly under the law and that the court is going to look with a jaundiced eye at regulations that are incomplete, imprecise and in this case inconsistent."

Anne Woiwode, Michigan director of the Sierra Club, said the ruling shows that Congress needs to clearly define that the Clean Water Act is meant to protect wetlands.

"People in this state are interested in protecting wetlands with the exception of those who are going to profit from destroying wetlands," Woiwode said.

She said exempting drains from the act, which the ruling seems to suggest, is a concern, because of pollution problems with concentrated animal feeding operations in Michigan.

"The state has the authority to have stronger laws than the federal government," Woiwode said. "We'd hope for some leadership in Michigan to ensure there isn't any weakening of the laws here."

- The Associated Press contributed to this report.

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