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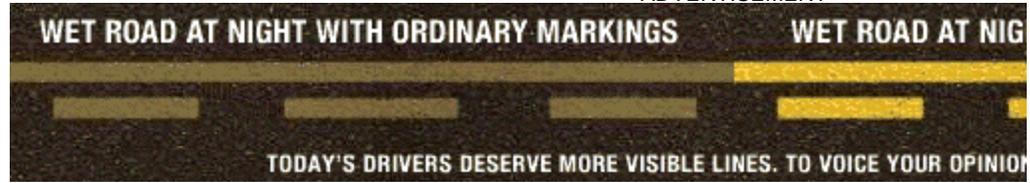
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Published June 21, 2006 [From the Lansing State Journal]

Water rules: Court leaves Mich. cases hanging; it's time for Congress to act

A Lansing State Journal editorial

It's no coincidence that a critical court battle over regulating waterways involved Michigan. This state is intimately tied to water; its health is the state's health.

Unfortunately, the U.S. Supreme Court failed to issue a clear path to the proper role of government in protecting healthy waters. It is now up to Michigan's members of Congress to lead the way to clarified federal laws to meet that duty.

U.S. Rep. John Dingell, D-Dearborn, says the Supreme Court bungled the "clear intent of Congress" in allowing two Michiganians, John Rapanos and Keith Carabell, to continue to defend their work on wetlands they owned.

Rapanos and Carabell wanted to develop land deemed wetlands, a violation of the Clean Water Act unless the Army Corps of Engineers agreed. The Corps didn't. Lower courts sided with the Corps.

The Supremes, however, couldn't decide. Some wanted to curtail federal authority. Some wanted to uphold an expansive view of what the Corps can regulate. And the swing vote, of Justice Anthony Kennedy, tried to articulate a new legal standard on such claims, by which Rapanos and Carabell could eventually win, or lose.

That's a recipe for confusion and expense, for landowners, for taxpayers, for everybody.

It's time for Congress to step into the breach and debate and enact changes to the Clean Water Act that clearly define where the Corps has regulatory authority and

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where it doesn't.

When it wrote the Clean Water Act, Congress could have been more specific about what is regulated water. Certainly, Dingell and members of the then-Michigan delegation could have offered experience on the importance of drawing lines. Michigan, much more than many states, runs into wetlands questions all the time; property owners deserve clear answers, citizens deserve safe waters.

But, as is typical in Washington, Congress left the details to unelected regulatory agencies. And, as is typical in Washington, regulatory agencies trended toward giving themselves maximum authority.

Congress' failure is what led to this court battle. And it is why calls for congressional action are ranging the ideological spectrum from the free-market Mackinac Center for Public Policy in Michigan to the Natural Resources Defense Council in Washington.

The courts have muddied the waters. It's time for Congress to clear them: and Michigan, by experience and need, should lead the way.

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