Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

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residential lot contained navigable waters and that their construction project violated the Act. The Sacketts sought declarative and injunctive relief in the Federal Dis-

Spear, 520 U. S. 154, 178, requiring the Sacketts to restore their property according to an agency-approved plan and to give the EPA access. Also, "legal consequences . . . flow" from the order, *ibid.*, which, according to the Government's litigating position, exposes the Sacketts to double penalties in future enforcement proceedings. The order also severely limits their ability to obtain a permit for their fill from the Army Corps of Engineers, see 33 U. S. C. §1344; 33 CFR §326.3(e)(1)(iv). Further, the order's issuance marks the "consummation" of the agency's decisionmaking process, *Bennett*, *supra,* at 178, for the EPA's findings in the compliance order were not subject to further agency review. The Sacketts also had "no other adequate remedy in a court," 5 U. S. C. §704. A civil action brought by the EPA under 33 U. S. C. §1319 ordinarily provides judicial review in such cases, but the Sacketts cannot initiate that process. And each day they wait, they accrue additional potential liability. Applying to the Corps of Engineers for a permit and then filing suit under the APA if that permit is denied also does not provide an adequate remedy for the EPA's action. Pp. 4–6.

(b) The Clean Water Act is not a statute that "preclude[s] judicial review" under the APA, 5 U. S. C. §701(a)(1). The APA creates a "presumption favoring judicial review of administrative action." *Block* v. *Community Nutrition Institute*, 467 U. S. 340, 349. While this presumption "may be overcome by inferences of intent drawn from the statutory scheme as a whole," *ibid.,* the Government's arguments do not support an inference that the Clean Water Act's statutory scheme precludes APA review. Pp. 7–10.

622 F. 3d 1139, reversed and remanded.

SCALIA, J., delivered the opinion for a unanimous Court. GINSBURG, J., and ALITO, J., filed concurring opinions.

> "1.11 [The Sacketts'] discharge of pollutants into waters of the United States at the Site without [a] permit constitutes a violation of section 301 of the Act, 33 U. S. C. §1311." App. 19–20.

On the basis of these findings and conclusions, the order directs the Sacketts, among other things, "immediately [to] undertake activities to restore the Site in accordance with [an EPA-created] Restoration Work Plan" and to "provide and/or obtain access to the Site . . . [and] access to all records and documentation related to the conditions at the Site . . . to EPA employees and/or their designated representatives." *Id.*, at 21–22, ¶¶2.1, 2.7.

The Sacketts, who do not believe that their property is subject to the Act, asked the EPA for a hearing, but that request was denied. They then brought this action in the United States District Court for the District of Idaho, seeking declaratory and injunctive relief. Their complaint contended that the EPA's issuance of the compliance order was "arbitrary [and] capricious" under the Administrative Procedure Act (APA), 5 U. S. C. §706(2)(A), and that it deprived them of "life, liberty, or property, without due process of law," in violation of the Fifth Amendment. The District Court dismissed the claims for want of subject-matter jurisdiction, and the United States Court of Appeals for the Ninth Circuit affirmed, 622 F. 3d 1139 (2010). It concluded that the Act "preclude[s] pre-enforcement judicial review of compliance orders," *id.,* at 1144, and that such preclusion does not violate the Fifth Amendment's due process guarantee, *id.,* at 1147. We granted certiorari. 564 U. S. ___ (2011).

II

The Sacketts brought suit under Chapter 7 of the APA, which provides for judicial review of "final agency action for which there is no other adequate remedy in a court." 5 U. S. C. §704. We consider first whether the compliance

not self-executing, but must be enforced by the agency in a plenary judicial action. It suggests that Congress therefore viewed a compliance order "as a step in the deliberative process[,] . . . rather than as a coercive sanction that itself must be subject to judicial review." *Id.,* at 38. But the APA provides for judicial review of all final agency actions, not just those that impose a self-executing sanction. And it is hard for the Government to defend its claim that the issuance of the compliance order was just "a step in the deliberative process" when the agency rejected the Sacketts' attempt to obtain a hearing and when the *next* step will either be taken by the Sacketts (if they comply with the order) or will involve judicial, not administrative, deliberation (if the EPA brings an enforcement action). As the text (and indeed the very name) of the compliance order makes clear, the EPA's "deliberation" over whether the Sacketts are in violation of the Act is at an end; the agency may still have to deliberate over whether it is confident enough about this conclusion to initiate litigation, but that is a separate subject.

The Government further urges us to consider that Congress expressly provided for prompt judicial review, on the administrative record, when the EPA assesses administrative penalties after a hearing, see §1319(g)(8), but did not expressly provide for review of compliance orders. But if the express provision of judicial review in one section of a long and complicated statute were alone enough to overcome the APA's presumption of reviewability for all final agency action, it would not be much of a presumption at all.

The cases on which the Government relies simply are not analogous /P aadministra-

consumers. 467 U. S., at 345–348. Where a statute pro-

regulated parties into "voluntary compliance" without the opportunity for judicial review

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March 21, 2012]

JUSTICE GINSBURG, concurring.

Faced with an EPA administrative compliance order threatening tens of thousands of dollars in civil penalties per day, the Sacketts sued "to contest the jurisdictional bases for the order." Brief for Petitioners 9. "As a logical prerequisite to the issuance of the challenged compliance order," the Sacketts contend, "EPA had to determine that it has regulatory authority over [our] property." *Id.*, at 54–55. The Court holds that the Sacketts may immediately litigate their jurisdictional challenge in federal court. I agree, for the Agency has ruled definitively on that question. Whether the Sacketts could challenge not only the EPA's authority to regulate their land under the Clean Water Act, but also, at this pre-enforcement stage, the terms and conditions of the compliance order, is a question today's opinion does not reach out to resolve. Not raised by the Sacketts here, the question remains open for another day and case. On that understanding, I join the Court's opinion.

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millions. In a nation that values due process, not to mention private property, such treatment is unthinkable.

The Court's decision provides a modest measure of relief. At least, property owners like petitioners will have the right to challenge the EPA's jurisdictional determination under the Administrative Procedure Act. But the combination of the uncertain reach of the Clean Water Act and the draconian penalties imposed for the sort of violations alleged in this case still leaves most property owners with little practical alternative but to dance to the EPA's tune.

Real relief requires Congress to do what it should have done in the first place: provide a reasonably clear rule regarding the reach of the Clean Water Act. When Congress passed the Clean Water Act in 1972, it provided that the Act covers "the waters of the United States." 33 U. S. C. §1362(7). But Congress did not define what it meant by "the waters of the United States"; the phrase was not a term of art with a known meaning; and the words themselves are hopelessly indeterminate. Unsur-

Institute as *Amicus Curiae* 7–13.

Allowing aggrieved property owners to sue under the Administrative Procedure Act is better than nothing, but only clarification of the reach of the Clean Water Act can rectify the underlying problem.