

Syllabus

BORDEN RANCH PARTNERSHIP ET AL. *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL.

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

No. 01–1243. Argued December 10, 2002—Decided December 16, 2002

261 F. 3d 810, affirmed by an equally divided Court.

Timothy S. Bishop argued the cause for petitioners. With him on the briefs were *Arthur F. Coon*, *Kyriakos Tsakopoulos*, and *Edmund L. Regalia*.

Jeffrey P. Minear argued the cause for respondents. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Sansonetti*, *Deputy Solicitor General Wallace*, *David C. Shilton*, and *Sylvia Quast*.*

*Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *William H. Pryor, Jr.*, Attorney General of Alabama, *Nathan A. Forrester*, Solicitor General, and *Alyce S. Robertson*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Bruce M. Botelho* of Alaska, *James E. Ryan* of Illinois, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *Don Stenberg* of Nebraska, *Betty D. Montgomery* of Ohio, *D. Michael Fisher* of Pennsylvania, *John Cornyn* of Texas, and *Jerry W. Kilgore* of Virginia; for the American Farm Bureau Federation et al. by *John J. Rademacher*; for the American Forest & Paper Association by *Steven P. Quarles*, *J. Michael Klise*, *Ellen B. Steen*, and *William R. Murray*; for the California Farm Bureau Federation et al. by *Robin L. Rivett* and *M. Reed Hopper*; for the National Association of Home Builders by *Virginia S. Albrecht*, *Andrew J. Turner*, *Duane J. Desiderio*, and *Thomas Jon Ward*; for the National Stone, Sand and Gravel Association et al. by *Lawrence R. Liebesman*; and for Save Our Shoreline by *Nancie G. Marzulla*, *Roger J. Marzulla*, *Brenda D. Colella*, and *David L. Powers*.

Briefs of *amici curiae* urging affirmance were filed for the State of New Jersey et al. by *David Samson*, Attorney General of New Jersey, and *Patrick DeAlmeida* and *Rachel J. Horowitz*, Deputy Attorneys General, and by the Attorneys General for their respective States as follows: *Earl I. Anzai* of Hawaii and *Darrell V. McGraw, Jr.*, of West Virginia; for the

PER CURIAM.

The judgment is affirmed by an equally divided Court.

JUSTICE KENNEDY took no part in the consideration or decision of this case.

Association of State Wetlands Managers by *Patrick A. Parenteau*; for the National Wildlife Federation et al. by *Howard I. Fox*; and for Dr. Joy Zedler et al. by *John D. Echeverria*.