The government issued a long-awaited Waters of the United States rule (WOTUS for short). No doubt there will be much gnashing of teeth about the issuance of the rule — a very safe bet since the gnashers of teeth got going long before the rule was actually issued. But one person who should be happy is the Chief Justice. He's been criticizing the government for failing to issue such a rule for years.

In the *Raponos* case in 2006, Roberts made a point of berating the government for failing to engage in such a rulemaking, while also emphasizing that such a rule would receive strong judicial deference. Here's what the Chief Justice had to say on the subject in 2006, when he joined an opinion narrowly defining federal power over wetlands:

Agencies delegated rulemaking authority under a statute such as the Clean Water Act are afforded generous leeway by the courts in interpreting the statute they are entrusted to administer. Given the broad, somewhat ambiguous, but nonetheless clearly limiting terms Congress employed in the Clean Water Act, the Corps and the EPA would have enjoyed plenty of room to operate in developing some notion of an outer bound to the reach of their authority.

The proposed rulemaking went nowhere. Rather than refining its view of its authority in light of our decision in SWANCC, and providing guidance meriting deference under our generous standards, the Corps chose to adhere to its essentially boundless view of the scope of its power. The upshot today is another defeat for the agency.

It is unfortunate that no opinion commands a majority of the Court on precisely how to read Congress' limits on the reach of the Clean Water Act. Lower courts and regulated entities will now have to feel their way on a case-by-case basis. This situation is certainly not unprecedented. What is unusual in this instance, perhaps, is how readily the situation could have been avoided.

Now the government has delivered on his request, it will be interesting to see how he likes the rule he asked for.