



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Sam Graves
Chair

Rick Larsen
Ranking Member

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July 10, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mail code: 1101A)
Washington, D.C. 20460

The Honorable Michael L. Connor
Assistant Secretary of the Army for Civil Works
Department of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

Administrator Regan and Assistant Secretary Connor:

We write to request that the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) systematically document the individual and cumulative impacts of the U.S. Supreme Court's (Court) misguided decision in *Sackett v. Environmental Protection Agency* (598 U.S. ____ (2023)) on efforts to protect the nation's water quality and to safeguard the strength of the nation's economy, the health and safety of American families, and the sustainability of the nation's environment.

In its *Sackett* decision, the Court dramatically limited the scope of federal protections over the nation's waters and wetlands provided by the Clean Water Act (CWA). In ignoring the CWA's plain and unambiguous language, as well as almost 5 decades of unbroken, bipartisan protection of the nation's waterbodies, five members of the Court redefined the Act's scope to serve their hyper-conservative judicial philosophy. In doing so, the Court decided to judicially rewrite the tests for determining what rivers, streams, and wetlands remain protected by the CWA and created entirely new criteria—with no precedent in the statute or in the decades-long agency interpretation of the CWA. These new criteria are likely to result in greater adverse impacts to the nation's waters than the Trump administration's 2020 rulemaking—a rulemaking that a prior Federal court characterized as causing serious environmental harm.

In the aftermath of the *Sackett* decision, various reports have characterized the *Sackett* decision as “a gift to polluting industries,” “a boon for developers,” “a decision [that] puts private property over any public good,” a decision that “has no basis in science,” and one that is causing regulatory “chaos.”¹

Preliminary analyses estimate that the *Sackett* decision has removed federal protections on roughly half of the existing wetlands in the United States, and an unknown, although likely equally significant impact to other waterbodies. If prior EPA internal estimates on the impacts of the Trump administration’s 2020 rule hold true, the *Sackett* decision will result in the loss of CWA protections on up to 70 percent of the nation’s river and stream miles. This would mean that critical rivers, streams, and lakes, and the associated waterbodies that have historically benefited from federal protection—including in watersheds flowing into the Chesapeake Bay and national parks like the Everglades—are in jeopardy of degradation or destruction.

The *Sackett* decision has the potential to eliminate over 50 years of progress by federal, state, and local governments, as well as average citizens, in improving water quality virtually overnight. It has returned water quality protection in the U.S. to the failed, patchwork of state-by-state efforts to protect local rivers, streams, and wetlands that was rejected in enactment of the Clean Water Act in 1972 and has reinvented the potential state-by-state, “race-to-the-bottom” on protecting our water-related environment.

Considering the potential overwhelming adverse impacts of this decision to our nation, its citizens, and our environment, it is incumbent on EPA and the Corps to systematically document the individual and cumulative impacts of the *Sackett* decision on national efforts to protect water quality, as well as the myriad of public, private, human health and environmental benefits that are associated with clean water.

Accordingly, we request that EPA and the Corps track the following data:

1. The number, location, acreage, and potential loss of ecological and hydrologic function of waters and wetlands where a jurisdictional determination was initiated, but not completed, prior to the *Sackett* decision.
2. The number, location, acreage, and potential loss of ecological and hydrologic function of waters and wetlands associated with CWA permits issued prior to *Sackett* where the permittee has abandoned (or requested to abandon) the permit.
3. The number, location, acreage, and potential loss of ecological and hydrologic function of wetlands previously protected by the CWA where such protection has been lost because of the *Sackett* decision, including wetlands separated from traditionally

¹ See <https://www.law360.com/articles/1686914/sackett-s-us-waters-redefinition-is-a-boon-for-developers>; <https://www.concordmonitor.com/My-Turn-The-Supreme-Court-fails-on-the-environment-51232419>; <https://www.eenews.net/articles/post-sackett-chaos-erupts-for-wetlands-oversight/>; <https://www.eli.org/vibrant-environment-blog/what-comes-next-clean-water-six-consequences-sackett-v-epa>, and <https://theintercept.com/2023/05/26/supreme-court-sackett-epa-clean-water-act/>.

navigable waters by “barriers” not considered “illegally” constructed under footnote 16 of the majority opinion.

4. The number, location, and pollutants covered by existing National Pollutant Discharge Elimination System (NPDES) permits which discharge into waters and wetlands no longer protected by the CWA following *Sackett*.
5. The locations and expected population impacted by the loss of CWA protections over intermittent, ephemeral, and headwater streams that provide a source of drinking water for public water systems.
6. Information on alleged violations of sections 402 and 404 of the CWA where the accused did not seek a jurisdictional determination on whether the waterbody was protected by the CWA.
7. Any potential impact on the agencies’ ability to meet the goals of existing federal geographic programs or projects, including the Great Lakes, the Chesapeake Bay, the Florida Everglades, the Puget Sound, San Francisco Bay, and Long Island Sound.

In addition, we request that EPA and the Corps quantify the potential adverse economic impacts of the *Sackett* decision on the following:

1. Any reduced ecological value of waters and wetlands no longer protected by the CWA.
2. Any lost recreational opportunity or recreational value associated with waters and wetlands no longer protected by the CWA.
3. Any potential increase in downstream inundation and flooding.
4. The ability of wetlands to help allay the potential and future impacts of climate change, including severe weather events and coastal and inland flooding.
5. Any potential increase in costs for ecological restoration or protection resulting from loss of CWA protections over waters and wetlands.
6. Any potential increase in drinking water costs or decrease in drinking water source protection and reliability resulting from loss of CWA protection over waters and wetlands.
7. Any potential increase in agricultural water costs or decrease in agricultural water source reliability resulting from loss of CWA protections over waters and wetlands.
8. Any potential increase in oil spill response costs or damages resulting from loss of CWA protections over waters and wetlands.

We also request that EPA and the Corps systematically track and document individual jurisdictional determinations—both positive and negative determinations—with ample scientific, geographic, hydrologic, and visual data (including photographic evidence) to provide stakeholders and practitioners with critical data on how to interpret the new *Sackett* decision.

As Congress begins the discussion on how to respond to the Court’s misreading of the CWA, we request that the agencies provide us and the general public with periodic updates on the information requested in this letter.

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We also request any recommendations you might suggest on how Congress and federal agencies can ensure that this nation does not lose progress in meeting the goals of the CWA to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” including potential amendments to the CWA to restore protections lost in the *Sackett* decision.

Sincerely,



Rick Larsen
Ranking Member
Committee on Transportation
and Infrastructure



Grace F. Napolitano
Ranking Member
Subcommittee on Water Resources
and Environment