

Waters of the United States/Clean Water Act: Earthjustice Projects Impact of Sackett v. EPA on a State-by-State Basis



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05/16/2024

The environmental organization Earthjustice has developed charts that provide the organization's views on the impact of the United States Supreme Court decision *Sackett v. EPA* on the scope of the Clean Water Act term waters of the United States ("WOTUS").

The projections address impacts on a state-by-state basis.

The United States Supreme Court in a 2023 Opinion addressed the scope of the Clean Water Act definition of WOTUS.

The majority articulated a two-part process for determining a WOTUS:

1. The Clean Water Act's use of "waters" in § 1362(7) refers only to geo-graphic[al] features that are described in ordinary parlance as streams, oceans, rivers, and lakes and to adjacent wetlands that are indistinguishable from those bodies of water due to a continuance surface connection.
2. To assert jurisdiction over an adjacent wetland under the Clean Water Act, a party must establish first, that the adjacent . . . water[s] of the United States (i.e., a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine whether the 'water' ends and the 'wetland' begins."

Sackett significantly narrowed the scope of what constitutes a WOTUS for the purpose of the Clean Water Act. Further, the United States Environmental Protection Agency and Corps of Engineers subsequently issued a rule revising the Clean Water Act definition of WOTUS to conform to *Sackett*.

Earthjustice states that the United States has at least 290 million acres of wetlands. In addition, it estimates that the United States has 200 million miles of streams. The organization projects that *Sackett v. EPA* has eliminated millions of acres of wetlands and an unknown number of streams from the permitting requirements of the Clean Water Act.

The state-by-state charts developed by Earthjustice include the following categories:

- Wetlands and Streams most in danger after the U.S. Supreme Court's *Sackett v. EPA* decision
- States with a significant number of streams vulnerable to be targeted

A link to the Earthjustice charts can be found [here](#).