

Impact of Sackett Decision on Clean Water Act Changes to CWA Jurisdiction

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Sackett Decision Summary

- ***SCOTUS Decision May 25, 2023***
- ***Revised Rule incorporating Sackett issued September 8, 2023***
- ***Significant Nexus removed***
- ***Continuous Surface Connection to TNW to establish jurisdiction under CWA***
- ***Adjacent wetlands:***
 - ***“..the wetland has a continuous surface connection with that water, making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins.”***

Sackett Decision Impacts to NHA

- ***Navigable rivers and perennial streams leading to the ocean are “in”***
- ***Sackett will affect”***
 - *Ephemeral and intermittent streams*
 - *Adjacent wetlands*
- ***Sackett will affect power lines and amenities associated with the hydropower facilities***
 - ***NWP 51. Land-Based Renewable Energy Generation Facilities.***
 - ***NWP 52. Water-Based Renewable Energy Generation Pilot Projects***
 - ***NWP 57. Electric Utility Line and Telecommunications Activities.***

<https://www.federalregister.gov/documents/2021/01/13/2021-00102/reissuance-and-modification-of-nationwide-permits>

Sackett Decision Summary

- ***Recent developments on Sackett***

- EPA held a webinar for States and tribes on Sackett, asserting that wetlands can be connected by physical connection that includes “non-jurisdictional ditches, swales, pipes, and culverts.” (Nov 15, 2023)

<https://www.youtube.com/watch?v=3ULRXa5C1Ns>

- EPA published two recent case-specific decision papers of jurisdiction post-Sackett

- https://www.epa.gov/system/files/documents/2024-02/lrb-2021-01386-joint-decision-memo_final_508c.pdf
- https://www.epa.gov/system/files/documents/2024-02/mvs-2023-00288-joint-decision-memo_final_508c.pdf



Questions?

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