

Sackett v EPA – Overview

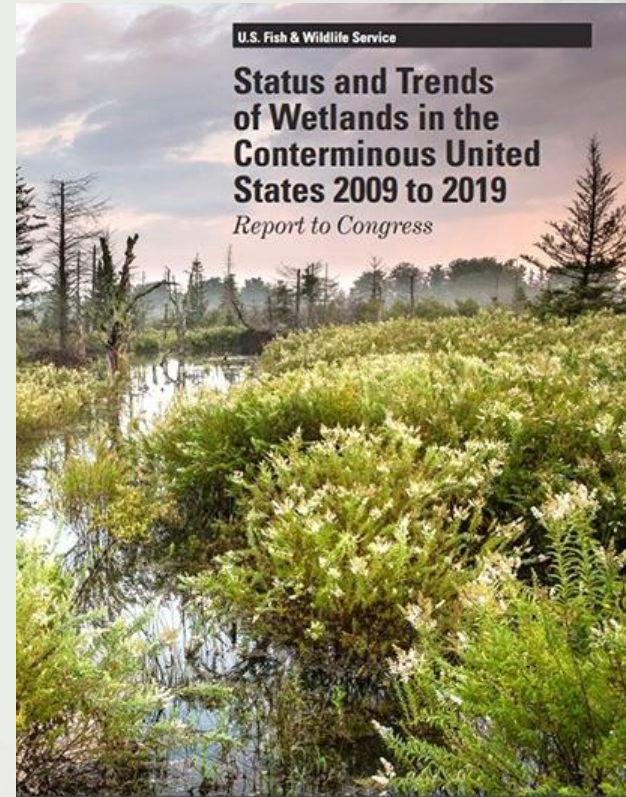
- In May 2023 the Supreme Court determined the Clean Water Act only covers wetlands **“with a continuous surface connection”** to other protected waters that are **“relatively permanent”** or continuously flowing or standing
- **63% of previously protected wetlands** and up to **5 million miles of streams** lost federal protections
- The impacts are broad-reaching across all states, and some of the greatest impacts are likely in dry areas like the Southwest, where wildfire risk runs high
- Expected that features like roads or levees could now be judged to sever a **“continuous surface connection”** with protected waters, and result in floodplain wetlands along our rivers and coastal areas now being non-jurisdictional

US FWS Status & Trends of Wetlands Report 2009-2019

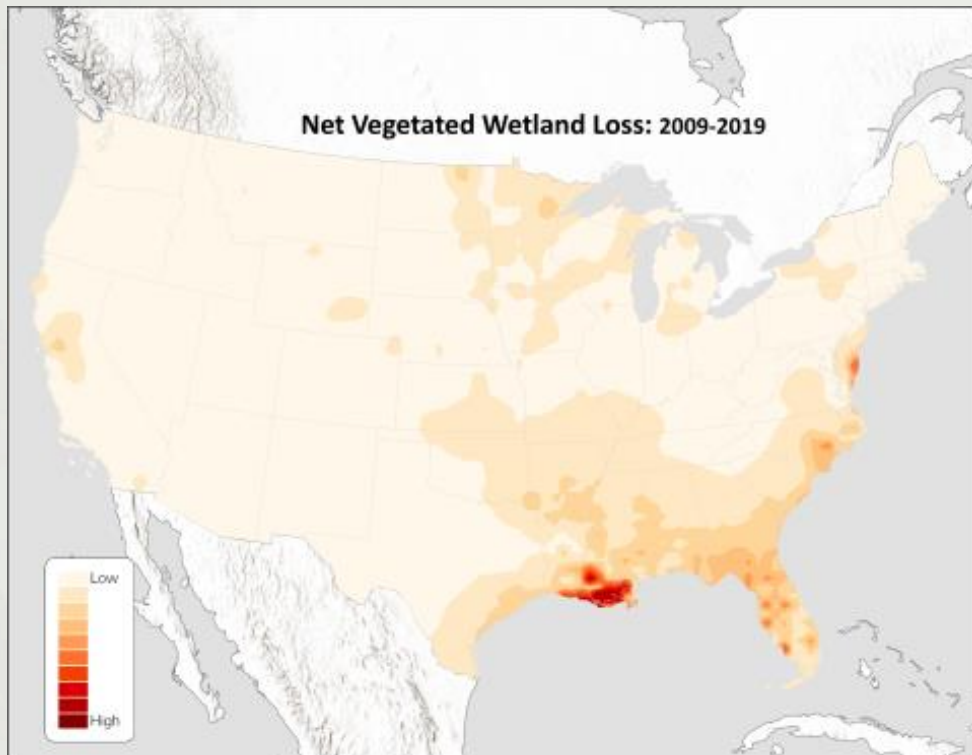
6th in a series of congressionally mandated reports spanning the last 70 years. Provides scientific estimates of wetland area and changes in area.

Key Findings:

- Wetland loss increased > 50%
- 221k acres of wetlands lost, primarily to uplands through drainage and fill
- Vegetated wetlands disproportionately affected – loss of 670k acres of these wetlands
- Salt marsh experienced largest net percent reduction of any category, while freshwater forested experience largest loss by area
- Transition from vegetated (salt marsh, swamp) to non-vegetated wetlands (ponds, mudflats, sandbars)



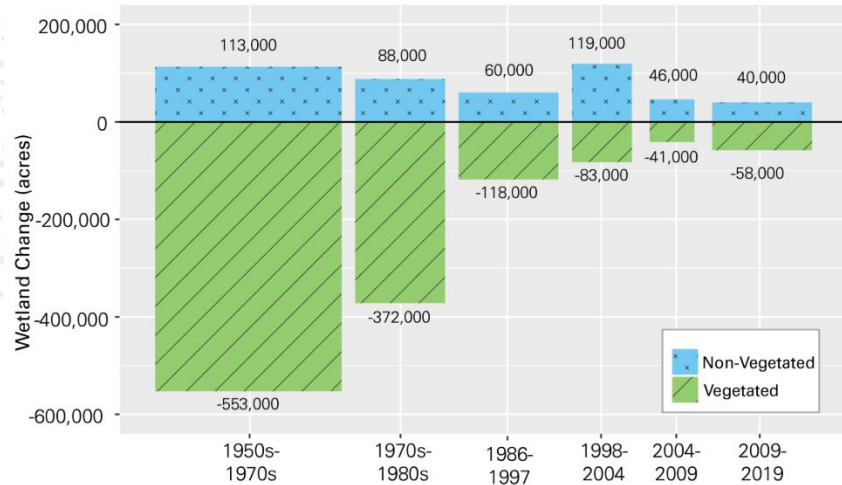
US FWS Status & Trends of Wetlands Report 2009-2019



Map showing the density and distribution of vegetated wetland losses between 2009-2019.

US FWS Status & Trends of Wetlands Report 2009-2019

Net Annual Change in Vegetated and Non-Vegetated Wetlands

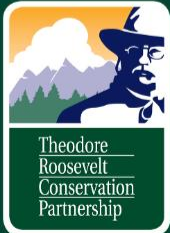


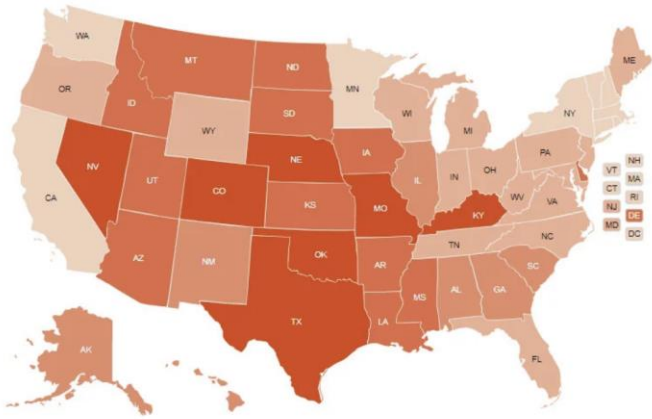
Clean Water Polling Highlights

- **High, bi-partisan support for the Clean Water Act**
- **Little knowledge of *Sackett* or its implications**
- **When explained, high bi-partisan opposition to the *Sackett* decision**
- **Most people associate wetlands with habitat**
- **Most persuasive arguments for strong wetlands protections are water quality and flood protection/control**

Federal and State Responses to Sackett v. EPA

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No or Little Protections for Wetlands



State Backstop Protections

- Most states have little or no state protections
- This leaves countless wetlands and streams at risk after *Sackett*

Graphic Courtesy of Earthjustice

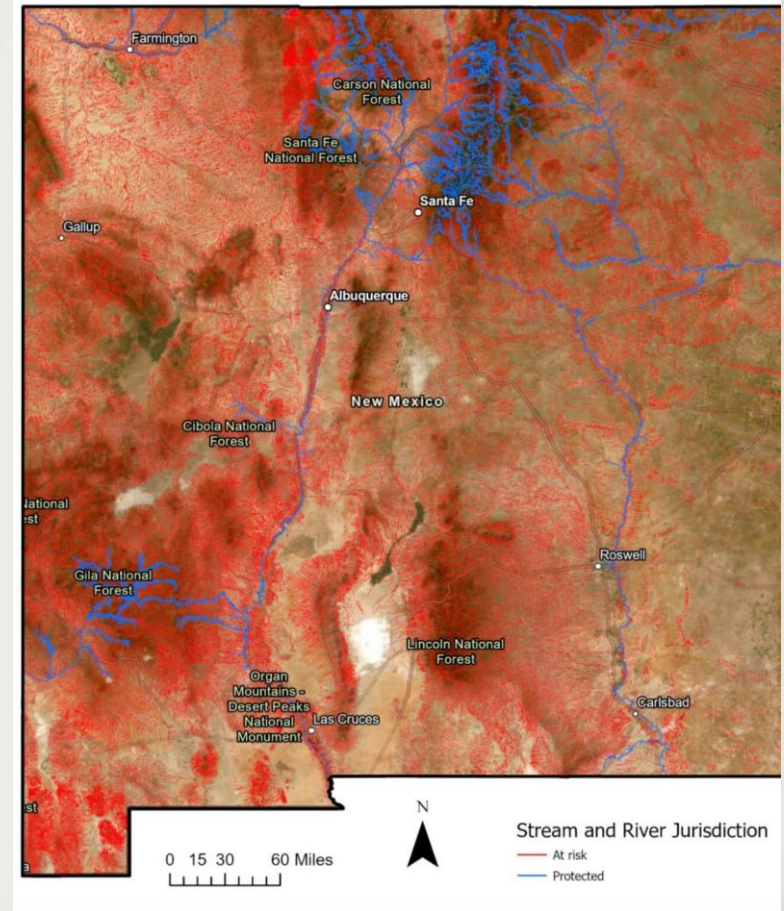
Impacts in New Mexico

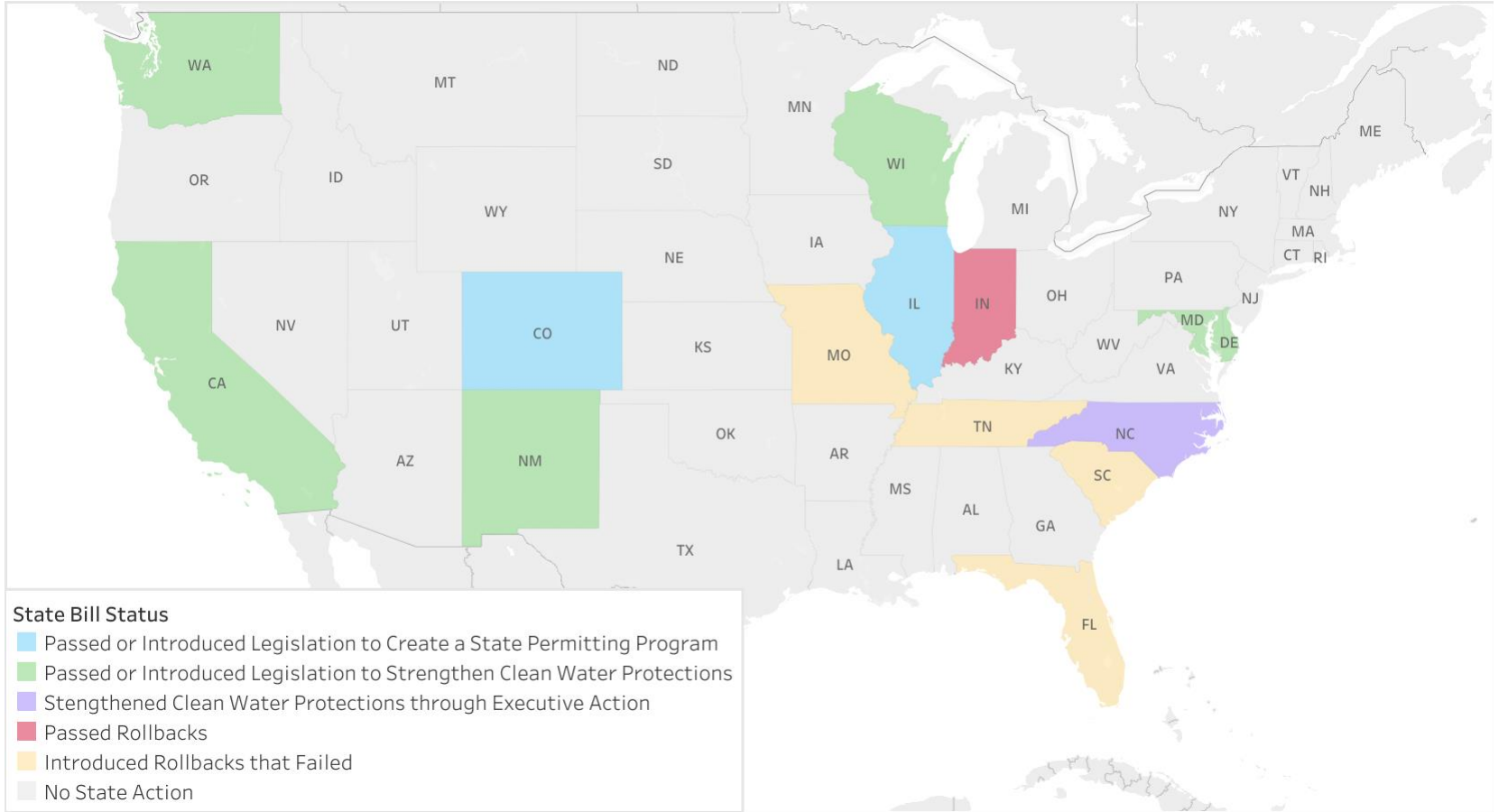
- Blue = Protected
- Red = At risk

88% of wetlands and **96% of the state's streams** are ephemeral or intermittent and would lack protection under Clean Water Act

Exciting progress in April – state approps for new surface water permitting program

Map courtesy of Amigos Bravos





Colorado

- High impact ~more than half of wetlands and streams lost federal protection
- Strong public support for wetland conservation for fish and wildlife/recreation
- Political alignment / support
- Public dialogue on post-Sackett strategy



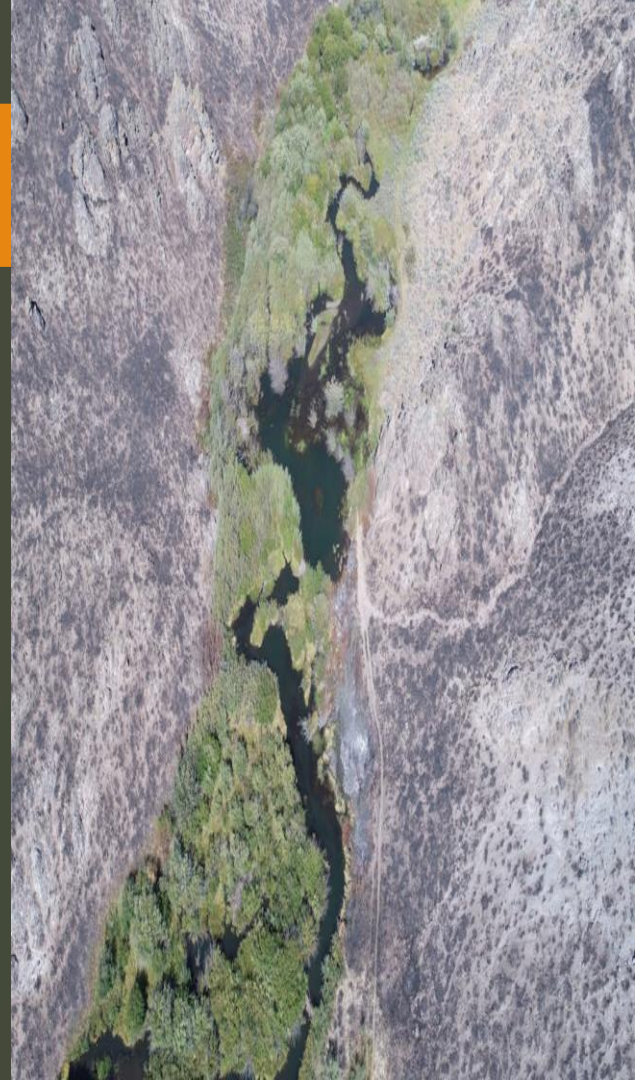
Colorado

- Colorado first state to pass legislation creating a new state-level wetland authority post-Sackett
- Well coordinated/funded push to weaken the new program – misinformation
- Debates on scope, exlusions/exemptions, utilization of national/regional permits



State Wetland Protection Efforts

- Strengthening state-level protections is critical but challenging:
 - Uphill battle/political challenges
 - Lengthy legislative + rulemaking process
 - Limited capacity and financial resources
 - Regulatory/protection patchwork



Congressional Response

- Congressional hearings
- Clean Water Act of 2023 (H.R. 5983)
- Creating Confidence in Clean Water Permitting Act (H.R. 7023)
- Other Efforts
 - FY25 Appropriations – EPA Wetland Program Development Grants
 - Farm Bill



Administrative Action

- **Council on Environmental Quality**

- Wetland and Water Protection Resource Guide
- America the Beautiful Freshwater Challenge

- **Army Corps of Engineers Memo**

- Targeting funding/technical assistance
- Avoid creation of non-jurisdictional waters
- Compensatory mitigation of non-jurisdictional waters



Federal Wetland Protection Efforts

- Congressional and Admin Responses Limited
 - Election Year
 - Limited *new* funding
- Signs of optimism?
 - Strengthen voluntary conservation efforts
 - Resources to states and Tribes

