

Focus on: Protecting state wetlands and streams



Supreme Court decision weakens federal protections for wetlands and streams

Wetlands cover more than 900,000 acres in Washington, about 2% of the state's total land area. They help absorb the impacts of floods, provide erosion control, filter and clean stormwater runoff, and recharge our underground sources of drinking water. Wetlands also offer essential habitat for salmon, birds and other wildlife.

Until May 2023, most of these waters were considered "waters of the United States" and received federal protection under the Clean Water Act. A recent U.S. Supreme Court decision – *Sackett v Environmental Protection Agency* – significantly weakened federal protections for many of these areas.

Waters losing federal protections include ephemeral streams that run dry at certain times of year, as well as wetlands in areas such as coastal dunes, floodplains, behind dikes, and those not directly connected to a stream. Interstate wetlands are also no longer protected.

An analysis by the Washington Department of Ecology indicates more than 50% of Washington's wetlands and 14% of state streams no longer receive federal oversight due to the *Sackett* decision.

On Aug. 29, 2023, EPA and U.S. Army Corps of Engineers issued a final amended federal rule that conforms to the Supreme Court decision.

However, state law still protects these waters.

How Washington law protects wetlands

Multiple Washington state laws offer continued oversight and protections for activities that could impact wetlands and streams. These include the 1945 Water Pollution Control Act, 1972 Shoreline Management Act, and 1990 Growth Management Act, as well as other statutes.

More development projects getting state review

Before the federal decision, developers typically used the Corps' streamlined Nationwide Permit for small impacts to state waters and specific activities such as residential development and road maintenance.

To protect state water quality, Ecology is currently using state administrative orders to review and authorize these types of proposals that impact state waters without federal protection. Before *Sackett*, Ecology issued a handful of administrative orders annually. Due to the high court's decision, Ecology now estimates 50 to 100 projects a year will need administrative orders.

While this system provides needed environmental protections, issuing individual state administrative orders is less efficient and transparent than a traditional permitting program.

New state review process needed

Currently, administrative orders are the only mechanism allowing some development projects to move forward legally. A new approach is needed to protect state water quality.

1. Immediate (fiscal years 2025 to 2027): More staff are needed to form an interim approach for using administrative orders while building a state permit program, provide education and outreach, and respond to violations.
2. Long-term (fiscal year 2025 to implementation starting in fiscal year 2027): Build a transparent, efficient and streamlined permit pathway to review and authorize projects in waters of the state.

A permit program for state waters would provide greater transparency and predictability for the regulated community. It can also provide a pathway for authorizing specific types of actions or projects under certain thresholds.

Creating new permitting program

Based on feedback from interested parties, Ecology has determined a permit program would be the best way to address the need and desire for a transparent, streamlined process.

If Ecology receives funding in the 2025-27 biennial budget, the agency intends to proceed immediately to rulemaking to establish a robust permit program designed to reduce delays and provide clarity and predictability to applicants.

In developing the permit program, the department would consider options for streamlining the permit process, including developing general permits for common project types such as restoration projects, culvert replacement, and maintenance. The permit rule would also identify exemptions for certain activities such as existing and ongoing agriculture and forest practices.

Under this approach, each project would be reviewed using agency guidance and best available science. Ecology would develop discrete, transparent criteria, and thresholds for decision-making. The agency would also define, when available, acceptable mitigation approaches for wetland impacts.

Other impacts from federal changes

While state law will continue to protect wetlands and other waters of the state, the *Sackett* decision means significantly fewer federal resources are available to deal with oil spills and other environmental emergencies to state waters. Ecology plans to continue responding swiftly to all spills to Washington waters even when federal funding or assets are unavailable.

Related information

- [State wetland regulations¹](#)
- [An overview of wetlands²](#)
- [Statement from Ecology director³](#)

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ADA accessibility

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¹ <https://ecology.wa.gov/Water-Shorelines/Wetlands/Regulations/State-wetland-regulations>

² <https://ecology.wa.gov/Water-Shorelines/Wetlands/Wetlands-overview>

³ <https://ecology.wa.gov/About-us/Who-we-are/News/2023/May-25-Director-Watson-statement-on-Supreme-Court>