Protecting Clean Water at the State Level after Sackett: Center for Water Security and Cooperation/Waterkeeper Alliance Report (Focus on Arkansas, Mississippi, Missouri, and Tennessee)



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The Center for Water Security and Cooperation and Waterkeeper Alliance have issued a May 2026 report titled:

Protecting Clean Water at the State Level After Sackett: How States Can Step Up to Keep Rivers, Streams, Lakes, and Wetlands Clean When Federal Protections Fall Short ("Report").

The authors of the Report are:

- Alexandra Campbell-Ferrari
- Co-Founder and Executive Director Center for Water Security and Cooperation
- Kelly Hunter Foster
- Senior Attorney Waterkeeper Alliance

The Report states that its purpose is to:

… help support and enable a more harmonized, coordinated regional approach to advancing water quality protections at the state level.

The Report's objectives are driven to a great extent by the 2023 United States Supreme Court decision in *Sackett v. United States Environmental Protection Agency* which addresses the Clean Water Act term Waters of the United States ("WOTUS").

The definition of WOTUS is arguably one of the most critical jurisdictional terms in the Clean Water Act. As a result, the definition of WOTUS has been and continues to be the subject of frequent litigation, legislative oversight, rulemakings, and public policy debates since the enactment of the modern version of the Clean Water Act ("CWA") in 1972. *Sackett* significantly reduced the scope of what constitutes a WOTUS.

The Report notes that states could address many of the resulting gaps and shortcomings in the CWA by broadly defining "waters of the state," ensuring state laws protect water quality in all of the waters of the state, and granting state agencies the broad authority to manage water quality in state waters. States

have the ability to adopt laws that take the same approach to water quality protection and extend the protections to a broader scope of water than those currently protected by the CWA. This is argued to have two benefits:

- Create consistency in approach across states, establishing a regional approach that imitates federal law.
- Would ensure waters are similarly governed in shared watersheds.

The Report initially focuses on what it describes as:

- Limitations of the CWA created by the *Sackett* decision, as well as subsequent agency rulemaking.
- Opportunities to remedy them at the state level.

Further, the Report:

- Sets forth a framework to identify how state law can protect water quality and fill the gaps in federal protections caused by the *Sackett* decision and regulatory rollbacks.
- Examines existing state laws within Arkansas, Mississippi, Missouri, and Tennessee.
- Identifies recommendations for how existing laws can be strengthened.

As previously noted, Arkansas is one of the states addressed in the Report. In regard to Arkansas, the Report addresses:

- Jurisdictional determinations in the state between 2015-2023 and notes that 71% of the assessed features were non-jurisdictional under *Sackett*.
- Jurisdictional decisions utilizing the pre-2015 definition after the *Sackett* decision, noting 790 jurisdictional determinations with 80.6% of those assessed features deemed non-jurisdictional as of February 23, 2026.
- States that the trend is consistent with a recent analysis of the impacts of the *Sackett* decision by Natural Resources Defense Council ("NRDC"), which predicted that 83 percent of 2,378,881.8 wetland acres and 94 percent of 133,915 individual wetlands could lack protection under its "Most Damaging Scenario," a model they developed based on industry's push to exclude "any water body that is not 'indistinguishable' from the adjacent, relatively permanent water body.
- A NRDC study concluded that 80.9 percent of stream lengths in Arkansas are non-perennial and are at risk of being excluded from CWA protections because:
- A portion of those rivers and streams are ephemeral (i.e., flowing primarily in response to rainfall)
- Industry is pushing nationally for the agencies to interpret *Sackett* more broadly to exclude at least some intermittent rivers and streams, i.e., flowing seasonally, as well.
- The risks to state waters are heightened because Arkansas has a significant number of losing streams that, due to karst geology.
- Continued protection of these streams is threatened under the Pre-2015 Definition consistent with *Sackett*/2025 because proposed definition specifically excludes tributaries that go subsurface where the subsurface portion does not convey "relatively permanent" flow to the downstream jurisdictional water or, alternatively, even when the subsurface portion does convey "relatively permanent" flow to the downstream jurisdictional water.

The Report discusses the relevant Arkansas statutory authorities, noting that it is illegal:

… for any person to cause pollution of any "waters of this state;" to "place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;" and to violate any provisions of the state's Water and Air Pollution Control Act (the "Act"), including rules and orders issued by the Arkansas Pollution Control and Ecology Commission and permits issued by the Arkansas Division of Environmental Quality.

The term "pollution" is described as being broadly defined as Arkansas defines "waters of the state" in the Act to include:

… all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.

Wetlands are stated to not be expressly listed; however, the definition includes marshes and other bodies or accumulations of surface water.

A copy of the Report can be found here.