

| JUNE 2023 |

### REGULATORY UPDATE: WATERS OF THE UNITED STATES (SACKETT V. EPA)

On May 25, 2023, the U.S. Supreme Court issued its decision in the case Sackett v. U.S. Environmental Protection Agency (EPA). The court ruling states that federal jurisdiction of wetlands under the Clean Water Act includes only those wetlands with a continuous surface connection to “waters of the United States” (e.g., oceans, rivers, streams, lakes), whereas “waters” were defined by the court as “only those relatively permanent, standing, or continuously flowing bodies of water.” As a result of the decision, the EPA and U.S. Army Corps of Engineers (USACE) will interpret and regulate “waters of the United States” consistent with the ruling. Wetlands not directly connected to “waters of the United States” and/or those that do not meet the definition of “waters” are now expected to be non-jurisdictional at the federal level.

The agencies have indicated they will continue to review the decision to determine next steps. Until USACE issues further guidance, the issuance of Approved Jurisdictional Determinations will be on hold.

It is important to note that the wetlands now expected to be non-jurisdictional at the federal level may still be regulated at state and local levels depending on the state and local jurisdictions. The court decision is not expected to impact state or local wetland permit programs except where those programs/regulations make explicit reference to federal “waters of the United States.”

To discuss this matter and how it may impact your projects, please contact your Langan Project Manager or:



Gregg Woodruff, PP, AICP, LEED AP BD+C  
Associate Principal/Sustainability Leader  
[gwoodruff@langan.com](mailto:gwoodruff@langan.com)  
973.560.4498



Kelly McCormick, PWS,  
LEED AP  
Associate  
[kmccormick@langan.com](mailto:kmccormick@langan.com)  
973.560.4590



Robert March, PWS  
Senior Project Scientist  
[rmarch@langan.com](mailto:rmarch@langan.com)  
973.560.4427

Technical Excellence. Practical Experience. Client Responsiveness.

