

IN THE HOUSE OF REPRESENTATIVES

HOUSE JOINT MEMORIAL NO. 13

BY RESOURCES AND CONSERVATION COMMITTEE

A JOINT MEMORIAL

1
2 TO THE PRESIDENT OF THE UNITED STATES, THE ADMINISTRATOR OF THE U.S. ENVIRON-
3 MENTAL PROTECTION AGENCY, THE REGIONAL ADMINISTRATOR OF EPA REGION 10,
4 THE ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS), THE COMMANDING GEN-
5 ERAL OF THE U.S. ARMY CORPS OF ENGINEERS, THE COMMANDER OF THE U.S. ARMY
6 CORPS OF ENGINEERS WALLA WALLA DISTRICT, THE DIRECTOR OF THE IDAHO DE-
7 PARTMENT OF ENVIRONMENTAL QUALITY, THE DIRECTOR OF THE IDAHO DEPARTMENT
8 OF LANDS, THE MEMBERS OF THE IDAHO WATER RESOURCE BOARD, THE PRESIDENT
9 OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OF CON-
10 GRESS, AND THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO
11 IN THE CONGRESS OF THE UNITED STATES.

12 We, your Memorialists, the House of Representatives and the Sen-
13 ate of the State of Idaho assembled in the Second Regular Session of the
14 Sixty-eighth Idaho Legislature, do hereby respectfully represent that:

15 WHEREAS, in 2004 the Sackett family purchased land near Priest Lake in
16 Bonner County, Idaho; and

17 WHEREAS, when the Sacketts attempted to start building their home in
18 2007, they were quickly stopped by the Environmental Protection Agency (EPA)
19 asserting jurisdiction pursuant to a 1996 determination by the U.S. Army
20 Corps of Engineers (Corps) that the land was wetlands subject to the Clean
21 Water Act (CWA), which the EPA itself affirmed in 2007; and

22 WHEREAS, the CWA allows for federal jurisdiction, oversight, and regu-
23 lation of "waters of the United States" (WOTUS), which includes wetlands ad-
24 jacent to WOTUS; and

25 WHEREAS, the Sacketts fought for over a decade for their right to build
26 on their property; and

27 WHEREAS, finally, after nearly 16 years of litigation, the Supreme
28 Court, in *Sackett v. Environmental Protection Agency, et al.*, 598 U.S. 651
29 (2023) (*Sackett*), sided with the Sacketts, finding that the EPA and Corps
30 exceeded their authority, and announced a new standard for determining what
31 is included in WOTUS and, thus, what is subject to federal jurisdiction; and

32 WHEREAS, courts have historically applied a "significant nexus" test to
33 determine whether waters are, in fact, WOTUS subject to federal jurisdic-
34 tion, wherein waters or wetlands would so qualify if the wetland has a con-
35 tinuous surface connection to waters that are WOTUS in their own right (i.e.
36 traditional interstate navigable waters) such that it is difficult to de-
37 termine where the water ends and the wetland begins. Courts have consis-
38 tently held that nonnavigable, isolated, intrastate waters, including in-
39 termittent or ephemeral streams, man-made drainage ditches, and culverts,
40 were not, in fact, WOTUS subject to federal jurisdiction; and

41 WHEREAS, the Supreme Court in *Sackett* further clarified the law by an-
42 nouncing that the CWA extends only to wetlands with a continuous surface con-
43 nection to waters that are WOTUS in their own right such that the wetland is

1 indistinguishable from the WOTUS, and that the CWA use of WOTUS encompasses
2 only those relatively permanent, standing, or continuously flowing bodies
3 of water forming geographical features that are described in ordinary par-
4 lance as streams, oceans, rivers, and lakes; and

5 WHEREAS, despite the decades of Supreme Court cases finding the EPA and
6 Corps overextended their jurisdiction under the CWA by a misguided inter-
7 pretation of what qualifies as WOTUS and providing clarification on how that
8 term should be interpreted, the two agencies still fail to properly adhere to
9 the law as provided by statute and judicial decree; and

10 WHEREAS, notwithstanding the law and standards announced by the Supreme
11 Court in its 2023 *Sackett* decision, among other decisions, the EPA and Corps
12 continue to apply overturned and outdated rules and standards, such as by as-
13 serting jurisdiction over intermittent and ephemeral streams and channels
14 that are not relatively permanent or continuously flowing bodies of water
15 and are not what ordinary people would describe as streams, oceans, rivers,
16 or lakes; and

17 WHEREAS, Idahoans are being materially injured by the two agencies'
18 inability to follow current law and continuing to assert jurisdiction over
19 "waters" that plainly do not qualify as WOTUS, such as stockwater ponds,
20 ditches, and canals; and

21 WHEREAS, Idaho, as the state in which the *Sackett* dispute arose, has
22 a compelling interest in ensuring that federal agencies operating within
23 Idaho's borders faithfully implement and adhere to the binding standards set
24 forth by the Supreme Court in *Sackett*; and

25 WHEREAS, federal agencies' refusal to follow current law increases
26 compliance costs, delays permits, and causes injury to Idaho's agriculture,
27 housing, transportation, energy, forestry, mining, and water infrastruc-
28 ture projects, with accompanying adverse effects on jobs and regional
29 competitiveness; and

30 WHEREAS, Idaho's prosperity depends on predictable, lawful, and effi-
31 cient permitting carried out with a spirit of cooperative federalism that
32 respects the Supreme Court's *Sackett* decision and provides timely, trans-
33 parent coordination with state authorities.

34 NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Ses-
35 sion of the Sixty-eighth Idaho Legislature, the House of Representatives and
36 the Senate concurring therein, that the Legislature affirms the controlling
37 standard announced by the Supreme Court in *Sackett v. Environmental Pro-*
38 *tection Agency* that requires an indistinguishable surface connection to ex-
39 ist for waters adjacent to "waters of the United States," which are rela-
40 tively permanent, standing, or continuously flowing bodies of water, to be
41 subject to the Clean Water Act and federal regulation and jurisdiction, and
42 the Legislature opposes any federal assertion of jurisdiction inconsistent
43 with that standard.

44 BE IT FURTHER RESOLVED that the Legislature urges the U.S. Environmen-
45 tal Protection Agency and the U.S. Army Corps of Engineers to fully and im-
46 mediately implement the standard set forth in *Sackett* and formally recognize
47 that intermittent and ephemeral streams, which are dry for long periods of
48 time, are not "waters of the United States" subject to federal jurisdiction,
49 but are instead subject to state and local oversight and regulation.

1 BE IT FURTHER RESOLVED that the Legislature urges the U.S. Environmen-
2 tal Protection Agency and the U.S. Army Corps of Engineers to: rescind or
3 revise any pre-*Sackett* guidance, training materials, or field manuals that
4 rely on outdated and overturned laws, standards, and practices; provide up-
5 dated materials, manuals, and policies that reflect current law; and pro-
6 vide up-to-date training for Region 10 personnel and consultants operating
7 in Idaho.

8 BE IT FURTHER RESOLVED that the Legislature urges Idaho's congressional
9 delegation to support legislation that codifies the standards set forth by
10 the Supreme Court in *Sackett* in the Clean Water Act and creates oversight
11 mechanisms to ensure that federal agencies do not reintroduce overturned and
12 outdated standards through rule, guidance, or informal policy or practice.

13 BE IT FURTHER RESOLVED that the Legislature urges the Trump administra-
14 tion to take the appropriate measures to ensure administrative rules that
15 codify the standards set forth by the Supreme Court in *Sackett* are promptly
16 promulgated and implemented by the agencies.

17 BE IT FURTHER RESOLVED that the Chief Clerk of the House of Represen-
18 tatives be, and she is hereby authorized and directed to forward a copy of
19 this Memorial to the President of the United States, the Administrator of
20 the U.S. Environmental Protection Agency, the Regional Administrator of EPA
21 Region 10, the Assistant Secretary of the Army (Civil Works), the Command-
22 ing General of the U.S. Army Corps of Engineers, the Commander of the U.S.
23 Army Corps of Engineers Walla Walla District, the Director of the Idaho De-
24 partment of Environmental Quality, the Director of the Idaho Department of
25 Lands, the members of the Idaho Water Resource Board, the President of the
26 Senate and the Speaker of the House of Representatives of Congress, and the
27 congressional delegation representing the State of Idaho in the Congress of
28 the United States.