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As Federal Water Regulations Recede, California's Permitting Tide Rises

Many California businesses expect narrower federal wetlands jurisdiction to simplify permitting. It often creates the opposite result.

The U.S. Supreme Court's 2023 decision in *Sackett v. U.S. Environmental Protection Agency* reduced Clean Water Act coverage for many wetlands and surface water features. California's water quality program now carries more of the permitting and enforcement work for features that no longer qualify as "waters of the U.S."

The State Water Resources Control Board's January legislative report treats this shift as an operational issue, not a legal footnote. This shift doesn't reduce regulation. It moves it into state processes that often take longer, require different documentation and use different enforcement tools.

That change affects schedules, deal diligence, construction sequencing and enforcement risk. After *Sackett*, the key question isn't only whether a feature triggers federal jurisdiction. It's whether the project team built the state law pathway into the schedule early enough to prevent delays.

Federal Jurisdiction Narrowed, But California's Backstop Remained

The state water board report describes *Sackett* as a sharp contraction of federal jurisdiction. For wetlands, Clean Water Act coverage now turns on a "continuous surface connection" to a jurisdictional water, such that the wetland is "indistinguishable" from that water.

For nonwetland waters, the report reads *Sackett* to limit coverage to "relatively permanent" waters such as streams, rivers, lakes and oceans. That matters in California.

Nonperennial systems dominate large areas of the state, especially in arid regions and Southern California. The report notes that the “relatively permanent” standard removes many of these features from federal jurisdiction.

But they still fall under state law. California defines “waters of the state” broadly, including surface water and groundwater. When federal coverage drops out, state waste discharge requirements, or WDR, often become the controlling permit.

Federal jurisdiction still matters, but it no longer ends the permitting analysis. A negative federal determination often triggers a mandatory state process with different procedures and timelines.

The Permitting Pivot: From Section 401 Certifications to State WDR

The report’s clearest signal for regulated businesses is the conversion of projects from Clean Water Act Section 401 water quality certifications to state WDR permits. By late 2025, California’s nine regional water quality control boards saw significant statewide conversion, with strong regional differences.

Regions in Southern California experienced near-complete conversion for individual dredge-and-fill permits that once would have been processed as Section 401 certifications. Other regions saw less change.

This isn’t a paperwork swap. The report explains why the WDR process can create more friction than the Section 401 pathway. WDR often requires longer public review and adoption at noticed board meetings. Even strong applications can get stuck behind meeting calendars.

A filing that lands just after a board meeting may wait months for the next adoption slot, regardless of urgency. By contrast, executive officers can issue Section 401 certifications in many cases.

The process differences matter for planning. The WDR process typically requires longer public comment periods. Staff time per individual WDR application can run higher than for comparable Section 401 certifications.

As more projects move into WDR, capacity becomes a risk factor, especially in regions where Sackett leaves fewer federally jurisdictional waters. The takeaway is practical. Many projects that once followed a familiar federal-to-state conditioning sequence now require a state-only permit with a more formal timetable.

The effective response is to plan for WDR early, rather than fight jurisdiction late.

Stormwater Uncertainty and California's Emerging Backstop

The report points to stormwater as an area where the effects of Sackett haven't fully settled. But uncertainty already shapes regulatory planning.

Narrower federal jurisdiction raises the possibility that some stormwater discharges could fall outside National Pollutant Discharge Elimination System, or NPDES, permitting where receiving waters no longer qualify as waters of the U.S.

California's response is developing. The state water board has begun drafting general WDR under state authority for stormwater discharges tied to certain industrial facilities and construction activities that discharge to nonfederal waters. The stated goal is continuity: Maintain pre-Sackett protection levels, even where federal permitting might not apply.

For regulated entities, the message is direct: A drop in federal exposure may not reduce regulatory burden. California may expand state tools to close gaps, especially where stormwater programs relied on federal jurisdiction.

CEQA Can Multiply the Schedule

The report flags a procedural mismatch that can surprise teams used to NPDES-based stormwater compliance. California Water Code Section 13389 provides a statutory California Environmental Quality Act exemption for NPDES permits.

Comparable WDR permits don't always get the same treatment, even when they mirror an exempt federal permit. That gap can drive schedule risk.

CEQA can add discretionary decisions, environmental analysis and more public process. The report frames this mismatch as adding time and cost with limited regulatory gain when a state order duplicates an exempt NPDES structure.

If California leans more on state stormwater WDR after Sackett, CEQA posture may become part of stormwater timing, not a separate land-use track.

Enforcement After Sackett: Same Regulators, Different Leverage

The report describes enforcement effects. Defendants raise Sackett more often as a defense, which increases the agency burden to prove federal jurisdiction. Those determinations turn on field facts, and can take real effort to support.

When matters move off the federal track, enforcement leverage can shift. The report notes differences in authority and penalty structures depending on whether a discharge affects waters of the U.S. or only nonfederal waters of the state.

It also describes limits on administrative liability for non-NPDES WDR violations when no discharge occurs and no reporting failure exists. That constraint can reduce an agency's ability to drive preventative compliance through enforcement alone.

As a result, agencies may pursue parallel theories. Regulated entities should expect closer scrutiny of hydrology, connectivity and delineation records early in a dispute.

What Businesses Should Do Now

Post-Sackett risk in California shows up in timelines, documentation and enforcement dynamics. The most effective planning approach treats waters analysis as schedule governance.

Teams should assume WDR may control the critical path when federal jurisdiction drops out, then build board calendars, longer notice periods and CEQA posture into transaction timing, entitlement strategy and construction sequencing.

A defensible jurisdictional record also matters more than it once did. Sackett pushes the analysis toward fact-heavy concepts such as relative permanence and surface connection. A record that explains the reasoning, not just the conclusion, reduces dispute risk and helps stabilize the permitting route early.

Finally, permit conditions should be integrated before mobilization. If the project will run under WDR, conditions should be treated as operational requirements and flowed into construction controls, inspection plans, training and contract scopes to avoid late-stage surprises.

Conclusion: California Sets the Operational Baseline

Sackett narrowed Clean Water Act coverage, but it didn't narrow California's waters of the state program.

The state water board's January report shows the result on the ground: More projects move into state WDR processes, stormwater uncertainty drives new state backstops, CEQA posture can affect timelines, and enforcement leverage shifts when cases move off the federal track.

Companies that plan early for state permitting, build durable jurisdictional records and integrate permit conditions into project governance can cut schedule risk and reduce enforcement exposure in post-Sackett California.

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