

SAFEGUARDING VIRGINIA'S WETLANDS

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EXECUTIVE SUMMARY

By removing federal protections from vast swaths of wetlands, the Supreme Court's 2023 decision in *Sackett v. EPA* emphasizes the crucial role that state and local authorities must now play to preserve these critical resources that mitigate the impacts of flooding and filter pollution. The future of Virginia's wetlands depends on safeguarding the Commonwealth's existing wetlands protection programs and ensuring that agencies receive sufficient funding to fill the federal gap.

CHALLENGE

Wetlands — swamps, marshes, and other areas inundated or saturated by surface or groundwater — play a critical role in reducing storm surge and absorbing rainfall, regulating water quality, trapping carbon, and providing habitat for wildlife. Virginia has an exceptional diversity of wetlands, from forested swamps and upland bogs to tidal freshwater and salt marshes.

But those wetlands are also disappearing at an all-too-rapid pace. Virginia has already lost to development approximately half of the wetlands that existed in the 1780s,¹ and the Commonwealth is projected to lose as much as 89% of its existing tidal wetlands by 2080 due to climate-induced sea-level rise if we do not plan for wetlands migration.² To meet the goals of the Chesapeake Bay Total Maximum Daily Load, Virginia's Phase III Watershed Implementation Plan calls for the restoration of hundreds of acres of wetlands across each of the Bay's tributaries³ — but Virginia is not on track to achieve this initiative. Restoration efforts are simply not enough. We must ensure that our existing wetlands can survive the pace of sea level rise by migrating landward.

For more than 50 years, Virginia has benefited from its partnership with the federal government to protect the Commonwealth's wetlands. But the Supreme Court's 2023 decision in *Sackett v. EPA* removes federal protections from vast swaths of the nation's wetlands, with severe repercussions for water quality and flood control in Virginia. It now falls largely to our existing state tidal and nontidal wetlands regulations, and to state and local decision-makers charged with enforcing these regulations, to protect the wetlands that support Virginia's communities, local economies, and cherished resources such as the Chesapeake Bay.

SOLUTION

Virginia has the benefit of longstanding state laws to protect its state waters, which the General Assembly has defined broadly to include "all water, on the surface and under the ground" within its borders, "including wetlands."⁴ The Virginia Marine Resources Commission (VMRC) and local wetlands boards administer a permitting program for the protection of tidal wetlands under the Tidal Wetlands Act.⁵ The Virginia Department

of Environmental Quality (DEQ) regulates activities that disturb either tidal or nontidal wetlands under the Virginia Water Protection Program,⁶ with a policy of no net loss of wetland acreage and function.⁷ And the Chesapeake Bay Preservation Act establishes buffer zones to help protect the integrity of wetlands from shoreline development.⁸ These buffers represent the wetlands of the future as sea levels rise. In the absence of federal involvement, it will be crucial for these state programs to effectively delineate and safeguard wetlands, including landward areas that can serve as areas for tidal wetland migration.

These efforts cannot be accomplished without a substantial boost in agency personnel and funding. Just four years ago, DEQ reported that compensating for reduced federal wetlands protections would require additional funding to hire and train new personnel.⁹ In 2012, Virginia estimated that administering a wetlands permitting program as robust as the federal Clean Water Act Section 404 program would cost \$18 million upfront to implement and \$3.4 million annually afterward.¹⁰ Clearly, the agencies that administer Virginia's wetlands programs — DEQ, VMRC, and local wetlands boards — will require far more resources than they currently have.

In light of the withdrawal of federal protections for wetlands due to the *Sackett* decision, it will be critical for Virginia to ward off any attempt to weaken its existing wetlands laws. Some of Virginia's most essential natural resources hang in the balance.

POLICY RECOMMENDATIONS

Preserve Virginia's existing "no net loss" approach to wetlands protection.

Increase funding for DEQ, VMRC, and local wetlands boards to enable the agencies to delineate wetlands, provide quality-control reviews of third-party delineations, and effectively implement wetlands permitting programs.

Maintain Virginia's ability to enact and implement wetlands protections that are more comprehensive than those under federal law.