June 26, 2025

FAQs
The Right to Clean Water Act
SB 601 (Allen)

Q: What is the goal of SB 601, The Right to Clean Water?

A. The goal of SB 601 is to maintain the status quo for Californians' right to clean water while the rest of the nation goes backwards. The bill is intended to not expand clean water permitting upon those with state permits, nor is the intent to have existing federal permittees change permits. If you are happy with your current Clean Water Act permit, you keep it and nothing changes. SB 601 changes nothing for those currently with a state permit. SB 601 only creates a safety net for those that want to use the Sackett decision to move from a Clean Water Act permit to a less stringent, and more cumbersome to enforce state permit. Californians have a right to clean water, and the federal government rollbacks should not result in less protections here in California.

Q: Q: Does SB 601 create a new private right of action?

A. No. The citizen enforcement was removed from SB 601 due to opposition on the Senate Floor. That section has been replaced with a public prosecutor section to help fill the gap left by the lack of citizen enforcement.

Q: Is there even a need for additional enforcement support above what the Water Boards are already doing?

A. Yes, clearly. In California, 83% of stormwater enforcement actions are brought by citizens rather than the Water Boards. According to the most recent State Water Board Performance Report, in fiscal year 2023-2024, State Water Boards did not commence a single penalty action for WDRs and Land Disposals. State Water Boards only commenced 9 compliance actions for WDRs and 4 compliance actions for Land Disposals. Further, only 3 out of 9 Regional Water Boards commenced compliance actions for WDRs and Land Disposals. Since 2012, the majority of WDR violations have received no enforcement actions. In every fiscal year since 2017, over 70% of WDR violations have received no enforcement actions. In fiscal year 2023-2024, 72% of WDR violations received no enforcement action. This was the enforcement gap prior to Sackett; with Sackett (and the removal of citizen enforcement in SB 601) the problem is only going to get worse.

Q: Didn't the Water Boards already get funding to help with enforcement post-Sackett, so a public prosecutor section is not necessary?

A. The public prosecutor section is intended to help replace the gap of citizen enforcement, which accounted for 83% of all clean water enforcement. Last year's budget request was only to replace the enforcement gap left by the federal government: "The requested resources would be used to conduct essential water quality permitting and enforcement work that has historically been conducted by the United States Army Corps of Engineers (Corps) and the United States Environmental Protection Agency (US EPA) but will no longer be, due to a 2023 U.S. Supreme Court Decision that reduces federal jurisdiction over a number of waterbodies."

What are the CEQA implications of SB 601?

A. The Sackett decision will require the Water Boards to conduct thousands of CEQA analyses for all newly required state permitting. **One core goal of SB 601 is to AVOID NEW CEQA DEMANDS by exempting "nexus water" permits from CEQA**. SB 601 would restore the previously applicable CEQA exemption for "Nexus Water" permits under Water Code, Chapter 5.5 (Section

13389). Without SB 601, the Water Boards would need to conduct CEQA analyses for state permits that are not also federal permits and permitting will be slower and more resource-intensive.

From the Water Board's *Sackett* FAQ: "Where the discharge of a pollutant is no longer within the scope of the Clean Water Act, dischargers may need to obtain waste discharge requirements [state permits] from the Water Boards. The issuance of waste discharge requirements [state permits], unlike the issuance of [federal] NPDES permits, will require full compliance with CEQA. Pursuant to California Water Code section 13389, waste discharge requirements [state permits] that serve as [federal] NPDES permits are largely exempt from CEQA. This CEQA exemption is not available for waste discharges requirements [state permits] that do not serve as [federal] NPDES permits."

Q: How does the March 2025 *San Francisco v. EPA* Supreme Court decision affect this bill?

A. While the full impacts of *San Francisco v. EPA* remain uncertain, the decision will heavily burden the California Water Boards by requiring more detailed CWA permits. That burden—paired with ongoing cuts to federal agencies and increasing attacks on the federal CWA—make it all the more important and timely to shore up state authority and assist the State Water Board, as SB 601 intends to do. We are also working on amendments to ensure SB 601 does not freeze in time the requirements that the SF v. EPA decision overturned.

Q: What Are "WOTUS" and why are they important?

A. "Waters of the United States" (WOTUS) establishes the geographic scope of the federal Clean Water Act (CWA) and water quality protections associated with the federal program. "WOTUS" has been at the center of multiple U.S. Supreme Court cases, most recently in *Sackett v. EPA*.

Q: What are the implications of the Supreme Court's *Sackett* decision?

A. In *Sackett*, the Court eliminated federal protections for a broad swath of the nation's waters. The *Sackett* Court limited WOTUS to: (i) interstate navigable waters, such as the ocean or major rivers, (ii) connected, relatively permanent flowing waters, and (iii) adjacent wetlands with a continuous surface connection to practically indistinguishable waterways. It is estimated that *Sackett* stripped 50-93% of wetlands and over half a million miles of streams in California from CWA protections. Without federal protection, these waters are vulnerable to pollution that prevent Californians from the right to drinkable, swimmable and fishable waters.

Q: Does California state law protect former WOTUS?

A. California's state tools are inferior to federal tools. State permits are less protective, less efficient to issue, and far more difficult to enforce as compared to federal permits. The State Water Board—which implements state water quality law (Porter-Cologne) and the CWA—is already experiencing the fallout from *Sackett* that will result in significant additional funding needs to create thousands of new state permits and otherwise replace federal programs.

Q: What is the intent behind the "Nexus Waters" definition?

A. The intent behind "nexus waters" is to include all waters and wetlands protected by the CWA pre-*Sackett*.

Q: What is the intent behind incorporating "Nexus Waters" into Water Code, Chapter 5.5?

A. California enacted Chapter 5.5 so the State Water Board could implement the CWA. By incorporating "Nexus Waters" protections into Chapter 5.5, we intend to reinstate previously applicable CWA protections for Nexus Waters. By doing so, we prevent clean water act protections

from expanding to existing state permitting such as agriculture. Overall, the goal is to put California waters back where they were pre-*Sackett*.

Q: Why is a California state agency implementing federal law?

A. The CWA provides specific roles for the states, including permitting administration. This means that California retains the leading role in water policy. But it also means that federal rollbacks cause greater headaches and resource impacts on the state to implement state and federal water law.

Q: Have other states taken similar actions in response to *Sackett*?

A. Yes. Last year, states including Colorado, Illinois, Maryland, and Delaware passed legislation to strengthen clean water protections. New Mexico is currently considering the same. The *Sackett* Court explicitly left it to the states to exercise their primary authority to combat water pollution. California is a global environmental leader yet lags behind others states in our *Sackett* response.

Q: Does the bill have an overall fiscal impact or does it save the state money?

A. Overall, the bill provides legal tools, not mandates, for state agencies. These tools will streamline permitting and result in a net cost savings to the state. While the provision to protect Californians from drinking water rollbacks will have a fiscal, the cost savings from permit streamlining far outweigh the cost to protect Californians from polluted drinking water.

Q: Does the bill address the Bay-Delta Estuary and/or larger water supply operations?

A. No, not directly. The bill provides clarity for permitting and enforcement statewide and does not include any specific geographic regional requirements. The bill also does not directly impact the water rights system nor does it impact statewide water supply operations.

Q: How do recent federal EPA announcements affect this bill?

A. On March 12, 2025, the federal EPA announced a number of deregulatory actions, including a planned revision to the definition of "waters of the United States." The EPA's revised WOTUS rule is expected to further narrow the scope of the federal CWA, especially for waters in the arid west. This makes it all the more important to shore up state authority with SB 601.