Chesapeake Bay Program
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WETLANDS WORKGROUP STATEMENT: CHESAPEAKE BAY PROGRAM RESPONDS TO SACKETT V. ENVIRONMENTAL PROTECTION AGENCY

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On May 25, 2023, the U.S. Supreme Court determined in Sackett v. Environmental Protection Agency that the jurisdiction of the federal Clean Water Act (CWA) "extends only to those wetlands with a continuous surface connection to bodies that are waters of the United States in their own right, such that they are indistinguishable from those waters." As a result, this ruling could reduce the number of wetland acres protected under the CWA.

While the *Sackett* decision addresses whether discharges to certain wetlands are regulated under the federal CWA, that ruling does not affect whether or not a feature on the landscape is a wetland in the scientific sense, *i.e.*, its hydrology, hydric soils and plants adapted to saturated soils. Nor does the ruling affect the functions and values that wetlands perform and contribute to the larger watershed. *Sackett* also does not affect whether discharges to a wetland feature are or can be regulated under State laws. But some wetland areas previously requiring federal permits for impacts may now be subject to loss with minimal or no compensatory mitigation.

The Wetlands Workgroup has concern about the protection of wetlands in all the jurisdictions connected and within the Chesapeake Bay watershed as the decision may mean that fewer wetlands are protected by federal law. The loss of wetlands could result in significant impacts to habitat and water quality, as well as potential increases in flooding. The increasing loss of wetlands will negate the hard-won progress made toward meeting the Chesapeake Bay Program's wetland restoration goals.

Under the *Watershed Agreement*, the partnership strives to meet two wetlands outcomes: voluntary creation or restoration of 85,000 acres of wetlands, and the enhancement of 150,000 acres of wetlands. The Wetlands Workgroup is responsible for advancing these outcomes, which were established to offset some of the estimated 50% wetland loss since colonial times. The Wetlands Workgroup has developed a cohesive strategy for tidal and nontidal wetlands across the watershed, which includes information on site selection and priorities that take into consideration the other goals and outcomes associated with the *Watershed Agreement*.

The restoration, creation and enhancement of wetlands are critical to reach the goals of a healthy Chesapeake Bay and will not be achieved if there is a net loss of existing wetlands. The Wetlands Workgroup, and the entire Chesapeake Bay Program, remains committed to meeting the two wetlands outcomes from the current *Watershed Agreement*, as well as any future goals that are agreed upon.