



**C H E S A P E A K E**  
**L E G A L A L L I A N C E**

## **Clean Water Justice Act**

Maryland Responds to *Sackett*  
and Federalism Challenges

**November 2024**



# Chesapeake Legal Alliance

## Legal Education Center

- ❖ Community Legal Education
- ❖ Attorney Education

## Environmental Action Center

- ❖ Direct Client Service
- ❖ Research and Analytics
- ❖ Legal Innovation

## Outreach Center

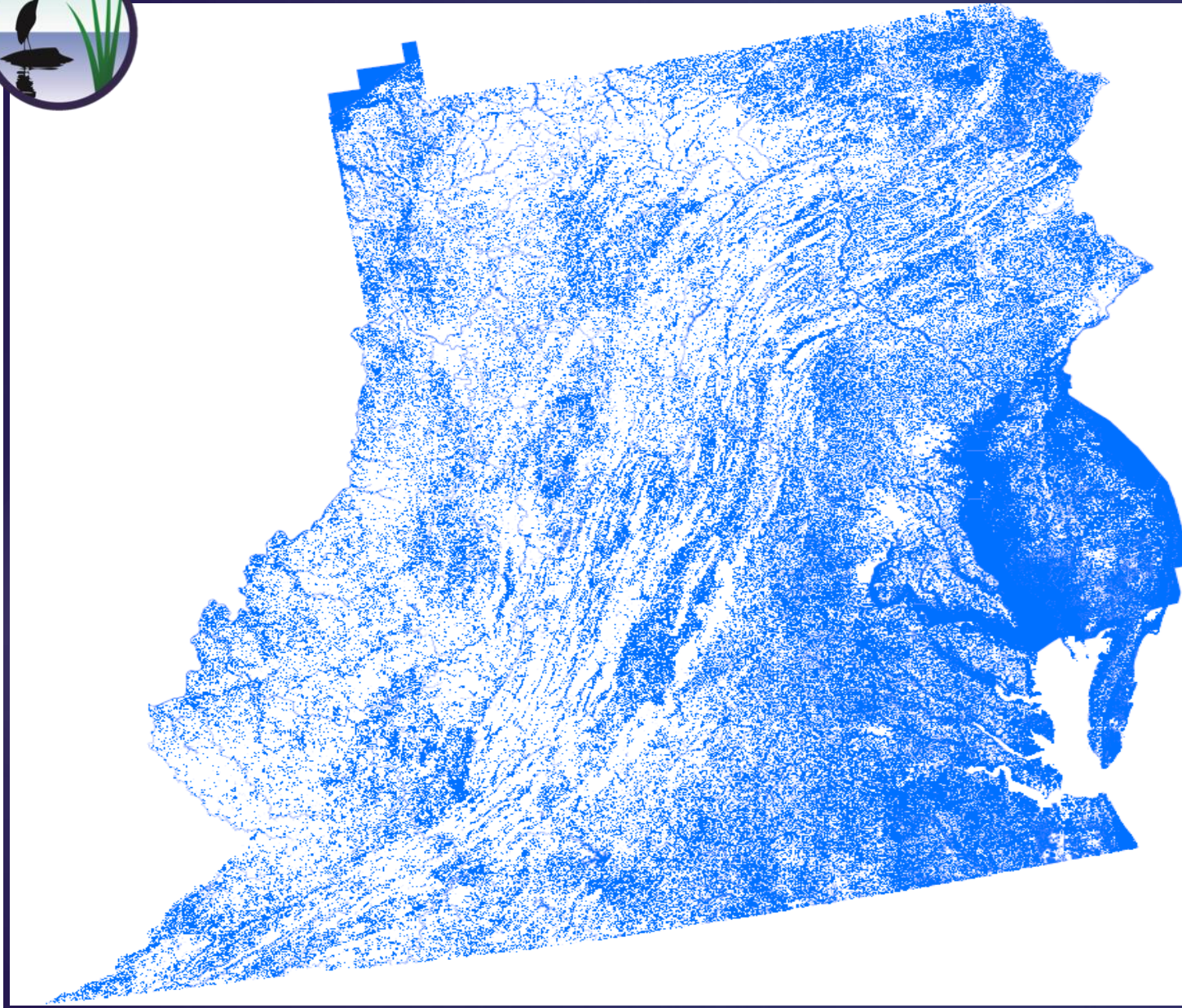
- ❖ Pro Bono Intake & Attorney Network
- ❖ Philanthropy



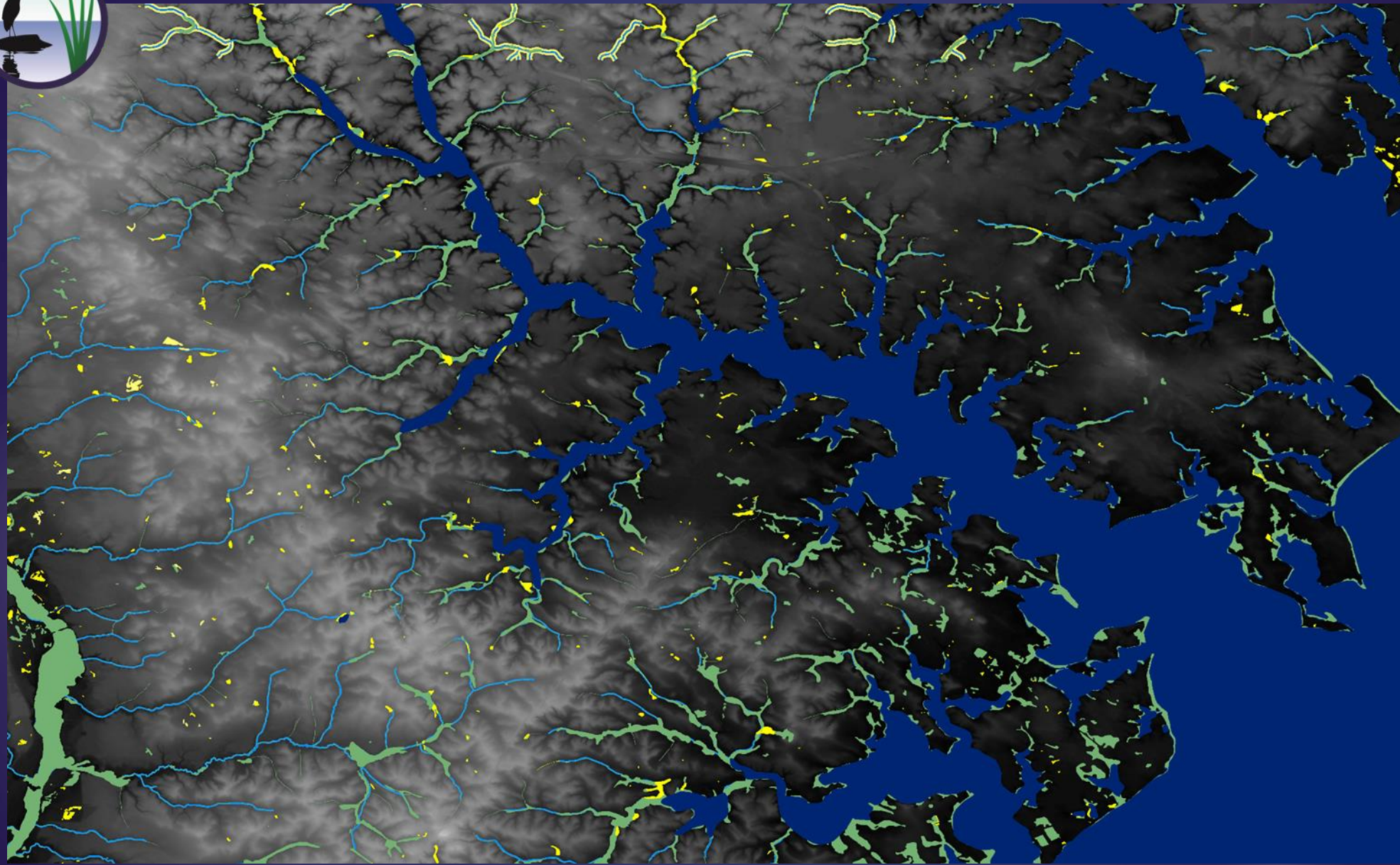


# Today's Discussion

- ❖ ***Sackett* impact on Maryland and need for the Clean Water Justice Act**
- ❖ **CWJA solution – public enforcement right – also part of a larger trend**
- ❖ **Federalism wave will continue to push environmental law to the states**
- ❖ **Public will need new resources, resolve, and rights**



# Waters of the United States





# *Sackett*: Impact to Maryland

- ❖ Bottom line: slashed the number of wetlands/waters protected by federal CWA
- ❖ Most affected states are those with (1) more ephemeral/intermittent streams and isolated wetlands, and/or (2) those with fewer state wetlands and water laws
  - Md geography/hydrology: middle of the pack re vulnerability post-*Sackett*
  - Md law/regulatory programs: more robust, less vulnerable
- ❖ Because Md has a broad jurisdictional definition and mature regulatory programs, the post-*Sackett* gap is not as large as in many (most) states
- ❖ However, what was lost for a majority of Md's waters was **our right** to protect them. If CWA § 505 no longer applies, public needs a comparable state right
- ❖ CWJA is basically the § 505 “citizen suit” for state violations in state courts



# *Overdue:* Public Enforcement Right

- ❖ CWJA wasn't just a response to *Sackett* but also to troubling trends in Md:
  - (e.g., between 2015-2020, CWA enforcement dropped 85%)
- ❖ Capped a multi-year process of attempting to reverse long-term CWA decline
  - 2020: agricultural enforcement; additional reporting on enforcement
  - 2021: enforcement transparency; public intervention right
  - 2022: transformative enforcement and permitting reform bill
  - 2023: construction stormwater permitting
  - 2024: Clean Water Justice Act; new permitting program for industrial sludge
- ❖ Will these new agency/public enforcement bills offset massive federal changes?



# *Federalism:* Accelerating Shift to States

- ❖ The new Administration will accelerate ongoing shift caused by SCOTUS
- ❖ Whether overt (*Sackett*) or indirect (anti-regulatory admin/enviro decisions) our bedrock federal environmental laws are under attack and increasingly vulnerable
- ❖ 2 prong defense: (1) do everything to protect those laws at the federal level; (2) restore at the state level what is lost federally
- ❖ Clean water polls higher than any politician, party, or institution by wide margins
- ❖ Abstract anti-regulatory rhetoric works on the margins during election season, but rarely works when communities are outraged by its impact in their back yard





# *People Power:* What to do now

- ❖ CWJA \*only\* had to respond to *Sackett*, not all of this since June 2023
- ❖ But it may nevertheless be exactly what Md – and other states - need in this unprecedented moment in American history
- ❖ Congress created the public enforcement right because it knew we could not trust government to stay the course all of the time; it planned for times like these
- ❖ Because enviro law is moving to the states, we must ensure state laws are ready
- ❖ Agencies need resources, public needs enforcement/participation rights/standing

# Questions?



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