



**Navigating Newly Non-WOTUS
Wetlands: A Study of Six States'
Wetlands Programs after
*Sackett v. EPA***

IOWA SUPPLEMENT

FEBRUARY 2025

IOWA

I. Overview

Before European settlement, Iowa's landscape was dominated by expansive wetland basins, covering between 4 to 6 million acres, or about 11% of the state's surface area.¹ These wetlands were integral to every watershed in Iowa. However, nearly 95% of these wetlands have been drained over time.² In 1850, the Swamp Land Act marked the beginning of extensive wetland drainage efforts, as Congress authorized the sale of wetlands at a nominal price, fueling a century of land reclamation.³ This historical loss saw Iowa's wetlands diminish drastically—less than 1% of its original extent by 1970.⁴ In 2005, the Iowa Department of Natural Resources (IDNR) initiated a wetland monitoring program, focusing on prairie pothole wetlands in north-central Iowa with funding from the U.S. Environmental Protection Agency (EPA).⁵ This program has since expanded statewide, aiming to assess the ecological condition of Iowa's remaining wetlands and guide future conservation efforts.⁶

Iowa relies on Clean Water Act (CWA) Section 401 certifications to regulate state wetlands, though IDNR reports that the state only issues approximately five Section 401 certifications per month. State law also directs IDNR to create a “protected wetlands” inventory and permitting program, which could theoretically offer protection to certain state wetlands that are not “Waters of the United States” under the CWA; however, neither the inventory nor the permitting program has been created as of the date of this report. IDNR also has statutory authority to establish a wetlands acquisition program, which would help reduce pollution from the closure or change in use of agricultural drainage wells. This program has not yet been created as of the date of this report.

IDNR can indirectly regulate its wetlands through the implementation of the National Pollution Discharge Elimination System permit program for discharges of pollution into wetlands, though IDNR reports that discharges into wetlands are rare. Two other permitting regimes—floodplain permits and sovereign lands construction permits—have a limited nexus to wetland management and protection in Iowa. Any floodplains that are wetlands could trigger the need for a floodplain permit and all projects covered under a sovereign lands construction permit should minimize detrimental impacts to surrounding wetlands.

Despite the lack of a state-specific wetland permitting program, Iowa nevertheless has law on the books that can afford strengthened protection to state wetlands if implemented. Factors that may

¹ *Iowa's Wetlands*, IOWA DEP'T OF NAT. RES., <https://www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Monitoring/Wetlands> (last visited Sept. 9, 2024).

² *Id.*

³ IOWA DEP'T OF NAT. RES., THE IOWA WILDLIFE ACTION PLAN 20 (2015).

⁴ *Id.*

⁵ *Iowa's Wetlands*, *supra* note 1.

⁶ *Id.*

influence the implementation of a wetlands permit program and wetland inventory efforts may include adequate financing, staff capacity, and departmental expertise.

II. Legal Framework

a. Wetland Definitions and Delineation

Iowa statutorily defines “waters of the state” as

any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which [is] contained within, flow[s] through or border[s] upon the state or any portion thereof.

IOWA CODE § 445B.171(41) (2024).

For purposes of IDNR’s statutory authority to regulate wetlands, “wetlands” are “an area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.”⁷

b. Wetland-related Statutes and Regulations

i. Protected Wetland Program

Under state law, IDNR is required to inventory the wetlands and marshes of all counties and designate certain wetlands as “protected.”⁸ IDNR is required to develop a map and list of protected wetlands, file the map and list with the county recorder and conservation board, and notify landowners affected by the “protected wetland” designations.⁹ Together, the map and list are intended to inform landowners of the wetlands they are prohibited from draining without having first obtained a draining permit from IDNR.¹⁰

In 2021, however, an Iowa state auditor determined IDNR had not complied with the statutory mandate to inventory protected wetlands.¹¹ In response, IDNR submitted the “program was never established because . . . Section 404 and Section 401 Certification under the [CWA] accomplish the same or more [protection] than [Chapter 456B.12], as this section regulates only pothole type wetlands” under an outdated classification system that does not recognize other

⁷ IOWA CODE § 456B.1(5) (2024).

⁸ *Id.* at §§ 456B.12(1), 456B.1(4) (2024) (“protected wetlands” are “type 3, type 4, and type 5 wetlands as described in the circular 39, ‘Wetlands of the United States,’ 1971 Edition, published by the United States [D]epartment of the [I]nterior.” Additionally, “a protected wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district”).

⁹ *Id.* at § 456B.12(1) (2024).

¹⁰ *See id.* at § 456B.13 (2024).

¹¹ Office of Auditor of State, Report of Recommendations to the Iowa Department of Natural Resources 4 (June 30, 2021) [hereinafter IDNR 2021 Audit] (available at <https://www.legis.iowa.gov/docs/publications/ADRPT/1373828.pdf>).

types of wetlands.¹² The state auditor nonetheless recommended that IDNR comply with this statutory requirement or, “where applicable, seek to have the provisions changed or repealed.”¹³ While this statutory requirement is not currently implemented, IDNR’s protected wetlands program could theoretically fill some federal jurisdictional gaps (*i.e.*, non-WOTUS wetlands).

Under state law, IDNR can only issue permits authorizing the drainage of a protected wetland if either the applicant replaces the protected wetland with a wetland “of equal or greater value as determined by [IDNR]” or the protected wetland no longer “meet[s] the criteria for continued designation as a protected wetland.”¹⁴ Draining a protected wetland without a valid permit from IDNR can result in the issuance of a civil penalty of up to \$500 per day for each day of the continuing violation.¹⁵

As also determined through the 2021 audit, IDNR has not implemented this permitting provision. The permitting program to drain protected wetlands was never established because, according to IDNR in 2021, federal programs offer equal or more protection than this Iowa Code provision.¹⁶

ii. Wetlands and Conservation Easement Acquisition Program

IDNR is also authorized under state law to administer a wetlands and conservation easement acquisition program in coordination with the Iowa Department of Agriculture and Land Stewardship (IDALS) for areas “on and around wetlands that result from the closure or change in use of agricultural drainage wells upon the implementation of the programs . . . to eliminate ground water contamination caused by the use of agricultural drainage wells.”¹⁷

Like the protected wetlands program, IDNR has not “developed a specific program for the acquisition of wetlands and conservation easements resulting from the closure of agriculture drainage wells.”¹⁸ IDNR cited two reasons for not developing a wetlands and conservation easement acquisition program during the 2021 audit: 1) acquiring highly productive farmland is cost-prohibitive given existing departmental funding; and 2) IDNR “has worked closely” with IDALS in its agricultural drainage well closure program that purportedly better matches landowner interest in assistance with alternative drainage, as opposed to wetland restoration.¹⁹

iii. Other permitting programs

1. NPDES Permitting

¹² *Id.* at 5.

¹³ *Id.* at 4.

¹⁴ IOWA CODE § 456B.13(2)(a)–(b) (2024).

¹⁵ *Id.* at § 456B.14 (2024).

¹⁶ IDNR 2021 Audit, *supra* note 11, at 5.

¹⁷ IOWA CODE § 456B.11 (2024).

¹⁸ IDNR 2021 Audit, *supra* note 11, at 5.

¹⁹ *Id.*

In 1987, Iowa received Clean Water Act (CWA) Section 402 delegation from the EPA.²⁰ IDNR promulgated its National Pollutant Discharge Elimination System (NPDES) rules pursuant to its authority

over the surface water and groundwater of the state to prevent, abate and control water pollution by establishing standards for water quality and for direct or indirect discharges of wastewater to waters of the state by regulating potential sources of water pollution through a system of general rules or specific permits.

IOWA ADMIN. CODE r. 567—60.1 (2022).

The state program requires “all facilities that discharge pollutants from any point source into waters of the United States or waters of the state . . . to obtain a NPDES or operation permit.”²¹ Because wetlands are implicitly included within the statutory “waters of the state,” NPDES permits can apply to any facility that discharges pollutants (*i.e.*, any type of industrial, municipal, and agricultural waste) from any point source (*i.e.*, publicly-owned treatment works, industrial facilities, and urban runoff) into wetlands; however, IDNR reports that discharges into wetlands rarely occur.²²

2. Floodway and Floodplain Permitting

Under Iowa state law, IDNR has the authority to regulate construction in any floodway or floodplains.²³ Floodplains are the “area adjoining a river or stream which has been or may be covered by flood water.”²⁴ Therefore, any wetlands that are floodplains may be subject to IDNR’s regulatory authority over construction in floodplains. Any person seeking to “permit, erect, use, or maintain a structure, dam, obstruction or deposit, or excavation in or on a . . . floodplain” that is also a wetland must first receive a permit from IDNR.²⁵

3. Sovereign Lands Construction Permitting

IDNR also has regulatory authority to issue “sovereign lands construction permits” prior to the commencement of construction work for “construction on, above, or under state-owned lands and/or waters.”²⁶ The rules governing sovereign lands construction permits apply to, among other lands, “all fee title lands and waters under the jurisdiction of the [Natural Resources] [C]ommission” (*i.e.*, a commission of seven Iowa citizens, appointed by the governor and confirmed by the state senate, who have “substantial knowledge of the subjects embraced by [the

²⁰ *NPDES Wastewater Permitting*, IOWA DEP’T OF NAT. RES., <https://www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting> (last visited Sept. 10, 2024).

²¹ IOWA DEP’T OF NAT. RES., *NPDES Wastewater Permitting*, <https://www.iowadnr.gov/Environmental-Protection/Water-Quality/NPDES-Wastewater-Permitting> (last visited Sept. 10, 2024); *See* IOWA ADMIN. CODE r. 567—60.1–69 (2022).

²² Personal communication with Noah Poppelreiter, Iowa Dep’t of Nat. Res. (Aug. 5, 2024).

²³ IOWA CODE § 455B.275 (2024).

²⁴ *Id.* § 455B.261(8) (2024).

²⁵ *Id.* § 455B.275 (2024).

²⁶ IOWA ADMIN. CODE r. 571—13.1 et seq. (2024).

regulation and funding of IDNR]).²⁷ Projects authorized under a “sovereign lands construction permit” must meet several criteria such as the “minimi[zation] of detrimental impacts to biological and botanical resources in or around the proposed [project] area including . . . wetland . . . areas.”²⁸

c. Organization of State Agencies

i. Iowa Department of Natural Resources

As described above, IDNR has the statutory authority to administer the protected wetlands program, though this program has not come to fruition as of the date of this report. IDNR can also regulate wetlands through the issuance of CWA Section 401 certifications and construction permits for activities occurring in state-owned lands and/or waters and floodplains. As discussed below, IDNR has three departmental bureaus that also play a role in wetland protection, monitoring, and restoration.

1. Water Quality Bureau

The IDNR Water Quality Bureau “manages water protection programs including . . . water quality monitoring (lakes, streams, rivers, wetlands and beaches), and administers the [state’s] watershed improvement programs ([CWA] Section 319 watershed grants as well as TMDL development).”²⁹ According to Iowa’s 2016–2020 Wetland Program Plan, the purpose of the water quality monitoring program, which “includ[es] wetlands,” is “to provide consistent, unbiased information about the condition of Iowa’s surface and groundwater resources so that decisions regarding the development, management, and protection of these resources may be improved.”³⁰

2. Fisheries Bureau

According to Iowa’s 2016–2020 Wetland Program Plan, IDNR’s Fisheries Bureau offers technical assistance to “landowners and partners in restoring lakes and wetlands to improve water quality and recreational opportunities.”³¹

3. Wildlife Bureau

As part of its Private Lands Program, the IDNR Wildlife Bureau “provides technical expertise to landowners interested in restoring wetlands on their property.”³² The Private Lands Program is

²⁷ *Id.* r. 571—13.2 (2024); IOWA CODE § 455A.5(1)(a) (2024).

²⁸ IOWA ADMIN. CODE r. 571—13.7(1)(a)(3) (2024).

²⁹ *DNR Staff & Offices*, IOWA DEP’T OF NAT. RES., <https://www.iowadnr.gov/About-DNR/DNR-Staff-Offices> (last visited Sept. 10, 2024).

³⁰ IOWA DEP’T OF NAT. RES., WETLAND PROGRAM PLAN FOR IOWA 2016–2020 1 [hereinafter IOWA WETLAND PROGRAM PLAN 2016–2020] (available at https://www.epa.gov/sites/default/files/2019-03/documents/iowa_wpp_final_1_29_16.pdf).

³¹ *Id.* at 1.

³² *Private Land Efforts Are Reestablishing Habitat*, IOWA DEP’T OF NAT. RES., <https://www.iowadnr.gov/conservation/wildlife-landowner-assistance> (last visited Sept. 10, 2024); IOWA WETLAND PROGRAM PLAN 2016–2020, *supra* note 30, at 1.

staffed, in part, by private lands biologists and technicians who help landowners evaluate their land for potential wetland restoration opportunities and connect landowners with “potential partners and federal programs that can help the landowners construct and cover costs of restoring wetlands.”³³

ii. Watershed Management Authorities

The Natural Resource Title of the Iowa Code authorizes the creation of “Watershed Management Authorities” (WMAs), which are a “mechanism for cities, counties, Soil and Water Conservation Districts, and stakeholders to cooperatively engage in watershed management and planning.”³⁴ WMAs are created through the agreement of two or more political subdivisions located within the same HUC08 watershed.³⁵ Some of the duties WMAs can perform include assessing flood risks, water quality, and allocating money to improve water quality and flood mitigation.³⁶

One active WMA, the Beaver Creek WMA, has assessed certain wetlands in its watershed and developed “strategic approaches/goals [for] flood mitigation and resilience” in its 2020 Beaver Creek Watershed Plan.³⁷ One “measure of success” articulated in the Watershed Plan provides that restored wetlands are a secondary benefit of “flood control and water quality [Best Management Practices].”³⁸ At least two of the Watershed Plan’s strategies to improve water quality concern wetlands as well (*e.g.*, nutrient removal wetlands; and stormwater ponds and constructed wetlands).³⁹

iii. Iowa Department of Agriculture and Land Stewardship

As will be discussed more thoroughly below, IDALS participates in an initiative with state, federal, local, and private partners to “provide incentives to landowners who voluntarily establish wetlands for water quality improvement in the tile-drained regions of Iowa.”⁴⁰ IDALS also assisted with the development of the Iowa 2016–2020 Wetland Program Plan.

d. Clean Water Act Section 401 Certification

IDNR administers the state’s CWA section 401 certifications for federally issued licenses including, but not limited to, CWA section 404 permits issued by the Army Corps.⁴¹ Applicants for 401 certification of individual permits or licenses issued by federal agencies must first submit

³³ *Private Land Efforts Are Reestablishing Habitat*, *supra* note 32.

³⁴ IOWA CODE §§ 466B.21–446B.30 (2024); *Watershed Management Authorities in Iowa*, IOWA DEP’T OF NAT. RES., <https://www.iowadnr.gov/Environmental-Protection/Water-Quality/Watershed-Management-Authorities> (last visited Sept. 10, 2024).

³⁵ IOWA CODE § 466B.22 (2024).

³⁶ *Id.* at §§ 466B.23(1)–(2), (6) (2024).

³⁷ *See* BEAVER CREEK WATERSHED MANAGEMENT AUTHORITY, BEAVER CREEK WATERSHED PLAN (January 2020), https://www.iowadnr.gov/Portals/idnr/uploads/water/watershed/files/WMA_Files/Beaver%20Creek%20WMA%20Watershed%20Plan_Parts%201%20and%202_8.13.2020_reduced%20size%20file.pdf (funded, in part, through a CWA section 319 grant awarded to IDNR).

³⁸ *Id.* at 146.

³⁹ *Id.* at 184, 197.

⁴⁰ *Iowa Conservation Reserve Enhancement Program*, IOWA DEP’T OF AGRIC. & LAND STEWARDSHIP, <https://iowaagriculture.gov/crep> (last visited Sept. 10, 2024).

⁴¹ IOWA ADMIN. CODE r. 567—61.2(6) (2022).

a pre-filing meeting request with IDNR at least 30 days before submitting their 401 certification request.⁴² After the pre-filing meeting request has been submitted, applicants must submit their requests through IDNR’s “Section 401 Water Quality Certification Request Form,” available on IDNR’s website.⁴³

Once IDNR receives a certification request, IDNR will issue public notice of the request specifying the procedure and time frame for submitting comments on the proposed project.⁴⁴ Once the comment period has closed and IDNR has considered the comments it received on the proposed project, IDNR may: issue a 401 certification with (or without) “conditions necessary to ensure compliance with state water quality standards,” waive certification, or deny certification.⁴⁵ IDNR reports that it issues around five CWA section 401 certifications per month.⁴⁶ An example of a condition IDNR may impose on a to-be certified project includes the requirement to take action to “prevent pollution affecting public health, fish, shellfish, wildlife, and recreation due to turbidity, pH, nutrients, suspended solids, floating debris, visible oil and gas, or other pollutants [from] entering waters of the state.”⁴⁷

e. Nationwide Permits

To ensure that projects authorized under Nationwide Permits (NWP) will not result in more than minimal adverse effects to the aquatic environment, Iowa has imposed certain regional conditions on the NWPs in effect as of the date of this report.⁴⁸ They include:

- 1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.
- 2) For projects that impact an Outstanding National Resource Water, Outstanding Iowa Water, fens, bogs, seeps, or sedge meadows, a Pre-Construction Notice in accordance with General Condition No. 32 and an Individual Section 401 Water Quality Certification will be required.
- 3) Any bank stabilization activity involving a method that protrudes from the bank contour, such as jetties, stream barbs and/or weirs, will require a Pre-Construction Notice in accordance with General Condition No. 32.
- 4) Beyond what is described in General Condition # 6, suitable fill material shall consist of clean materials, free from debris, trash, and other deleterious materials. If broken concrete is used as riprap, all reinforcing rods must be cut flush with the surface of the concrete, and individual pieces of concrete shall be appropriately graded and not exceed 3

⁴² *Id.* at 567—61.2(6)(b) (2022).

⁴³ *Id.*; see also IOWA DEP’T NAT. RES., Water Quality Pre-Filing Meeting Request and Certification Request Form, <https://www.iowadnr.gov/Portals/idnr/uploads/forms/5420400.pdf> (last visited Sept. 10, 2024).

⁴⁴ IOWA ADMIN. CODE r. 567—61.2(6)(c) (2022).

⁴⁵ *Id.* at 567—61.2(6)(e) (2022).

⁴⁶ Poppelreiter, *supra* note 22.

⁴⁷ *Id.* at 567—61.2(6)(f)(1) (2022).

⁴⁸ U.S. ARMY CORPS OF ENG’RS, IOWA REGIONAL CONDITIONS 2021 NATIONWIDE PERMITS (2021), <https://www.mvr.usace.army.mil/Portals/48/docs/regulatory/2021%20NWPs/Iowa%20Regional%20Conditions%202021%20Nationwide%20Permits.pdf>.

feet in any dimension. Asphalt, car bodies, and broken concrete containing asphalt, and liquid concrete are specifically excluded.

5) No non-native, invasive or other plant species included on the Corps “Excluded Plant List” shall be planted for re-vegetation or stabilization purposes, with the exception of any species that hold particular cultural or traditional significance to the Meskwaki Nation (the Sac and Fox Tribe of the Mississippi in Iowa). The plant list can be found on the Corps website at: <http://www.mvr.usace.army.mil/Missions/Regulatory.aspx>. To prevent the spread of non-native and/or invasive plant species, the permittee shall ensure that equipment to be utilized in Waters of the United States is cleaned before arriving on site. Wash water shall not be discharged into any wetland, waterway, or any other surface water conveyances.

6) All authorizations requested by applicants other than the Tribal Authority for use within lands under the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa require preconstruction notification to the District Engineer and coordination with the Tribal Authority.

U.S. ARMY CORPS OF ENG’RS, IOWA REGIONAL CONDITIONS 2021 NATIONWIDE PERMITS (2021).

For NWP #14, “all proposed projects that result in the loss of greater than 300 linear feet of streambed located within Waters of the U.S., as defined in the definitions contained in the [NWPs], require a Pre-Construction Notice in accordance with General Condition No. 32 to the District Engineer.”⁴⁹

As discussed above, IDNR issues CWA section 401 certifications, which apply equally to NWPs to ensure compliance with state water quality standards. In 2021, IDNR’s 401 certifications for NWP 404 activities were added as regional conditions to the NWPs.⁵⁰

In Iowa, projects that do not qualify for coverage under NWPs may be permitted under Regional or Individual Permits.⁵¹

f. Mitigation

i. Protected Wetlands Program

Mitigation to offset adverse wetland impacts is implicit in the Iowa Code provisions governing protected wetlands. As such, IDNR is required to issue permits for the draining of a protected wetland only if either: 1) “the protected wetland is replaced by the applicant with a wetland of equal or greater value as determined by [IDNR];” or 2) “the protected wetland does not meet the

⁴⁹ *Id.*

⁵⁰ U.S. ARMY CORPS OF ENG’RS, *Special Public Notice for the Nationwide Permit Reissuance and Regional Conditions for the State of Iowa – Issuance of Regional Conditions* (Mar. 8, 2021), <https://www.mvr.usace.army.mil/Portals/48/docs/regulatory/publicnotices/2021/Special%20PN%20NWP%20Reissuance-Regional%20Conditions%20State%20of%20Iowa%20Issuance-Regional%20Conditions.pdf>.

⁵¹ *Obtaining a USACE Permit*, U.S. ARMY CORPS OF ENG’RS, ROCK ISLAND DISTRICT, <https://www.mvr.usace.army.mil/Missions/Regulatory/Permits/> (last visited Sept. 10, 2024).

criteria for continued designation as a protected wetland.”⁵² The Iowa Code does not further specify how IDNR shall make such wetland replacement determinations.

As described in Section II(b)(ii) above, IDNR has not yet established a protected wetland permitting program. Thus, as of the date of this report, the mitigation requirement to replace protected wetlands that have been drained exists only in the letter of the law, rather than in practice.

ii. Clean Water Act Section 404 Mitigation Requirements

In Iowa, the mitigation banking Interagency Review Team is comprised of the Army Corps’ Rock Island District, EPA Region 7, U.S. Fish and Wildlife Service’s Rock Island Field Office, IDNR, and the Natural Resources Conservation Service.⁵³ In 2019, the Army Corps’ Rock Island District updated its “Mitigation Banking Guidance Package” (Package),⁵⁴ providing that wetland banks and In-Lieu Fee Programs (ILFP) in Iowa “should contain a minimum of 25 acres of wetlands.”⁵⁵ The Package is intended for use in the “development of new mitigation banking proposals or amendments to existing mitigation banks” and also contains a checklist of requirements for submitting prospectuses and banking instruments.⁵⁶

Under state law, wetland mitigation is required for wetlands removed during the “design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, and highways.”⁵⁷ The Iowa Department of Transportation (Iowa DOT) and its contractors are required to comply with the mitigation requirements of CWA section 404 for the construction of transportation projects.⁵⁸ According to the 2016–2020 Wetland Program Plan, Iowa DOT “regularly partners with county or state conservation agencies in the development and long-term management of mitigation wetlands.”⁵⁹ The statutory mitigation requirements for wetland removal in these contexts obligate Iowa DOT to replace the removed wetland “by acqui[ring] [a] wetland, in the same general vicinity if possible, for public ownership and preservation, or by other mitigation deemed to be comparable to the wetland removed, including, but not limited to, the improvement, development, or preservation of wetland under public ownership.”⁶⁰

As of the date of this report, no regulations governing Iowa DOT’s mitigation requirements were discovered; however, according to the department’s “Construction Manual,” Iowa DOT “provides compensatory mitigation on a case-by-case basis” and generally “compensates at a 1:1

⁵² IOWA CODE § 456B.13(2) (2024).

⁵³ U.S. ARMY CORPS OF ENG’RS, IOWA MITIGATION BANKING 1 (July 2019), <https://usace.contentdm.oclc.org/utis/getfile/collection/p266001coll1/id/9231>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ IOWA CODE § 314.23(2) (2024).

⁵⁸ *See* IOWA DEP’T OF TRANSPORTATION, STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION Vol. 1, Div. 11, Sec. 1107.18(A) (2023), https://iowadot.gov/specifications/standard_specifications/Standard_Specifications_2023.pdf.

⁵⁹ IOWA WETLAND PROGRAM PLAN 2016–2020, *supra* note 30, at 9.

⁶⁰ IOWA CODE § 314.23(2) (2024).

ratio when purchasing mitigation credits from a mitigation bank and at a minimum of 1.5:1 ratio when Iowa DOT constructs a mitigation site.”⁶¹

iii. Iowa 2016–2020 Wetland Program Plan Objectives

One objective for IDNR and the Army Corps described in the Iowa 2016–2020 Wetland Program Plan is to “review other states [sic] wetland mitigation ratios to determine if a guidance document should be produced.”⁶² This objective was intended to occur between 2016 and 2017. The Wetland Program Plan also describes that “other Region 7 state wetland mitigation strategies” should be reviewed between 2016 through 2020.⁶³ To note, ELI was unable to determine the status of progress made on these two objectives through this research.

g. Tracking systems

IDNR’s “Permit and Environmental Review Management Tool” (PERMT) is a public-facing online forum through which Flood Plain & Sovereign Lands Permits applications can be submitted and tracked.⁶⁴ PERMT also contains “any final response/determination documents from” IDNR’s: 1) Flood Plain and Dam Safety Section and; 2) Sovereign Lands Section.⁶⁵

Iowa DOT also maintains a “Section 404 Permit Library,” which provides public access to clearance memos, prepared by Iowa DOT’s Location and Environment Bureau, and copies of 404 permits.⁶⁶

Information about whether and how IDNR tracks Section 401 certifications was not publicly available at the time of this report.

III. Water Quality Standards

Iowa’s surface water quality standards apply to wetlands because “all waters of the state are classified for protection of beneficial uses.”⁶⁷ Classified waters include general use segments and designated use segments.⁶⁸ Under the Iowa Administrative Code, “designated use segments” are “waterbodies which maintain flow throughout the year or contain sufficient pooled areas during intermittent flow periods to maintain a viable aquatic community.”⁶⁹

⁶¹ IOWA DEP’T OF TRANSP., *Construction Manual*, Ch. 10 <https://iowadot.gov/erl/current/CM/content/CM%2010.40.htm> (last visited Sept. 10, 2024); *see also* Instructional Memorandum to Local Public Agencies from Local Systems Bureau, I.M. No. 4.130 (May 20, 2019) (providing guidelines and procedures on the 404 permit process in Iowa) (available at https://www.iowadot.gov/local_systems/publications/im/4130.pdf).

⁶² IOWA WETLAND PROGRAM PLAN 2016–2020, *supra* note 30, at 9.

⁶³ *Id.*

⁶⁴ *PERMT About*, IOWA DEP’T OF NAT. RES., <https://programs.iowadnr.gov/permt/Home/FAQ> (last visited Sept. 10, 2024).

⁶⁵ *Id.*

⁶⁶ Section 404 Permit Library, IOWA DEP’T OF TRANSP., <https://envpermits.iowadot.gov/> (last visited Sept. 10, 2024); *Iowa Construction Manual*, Ch. 10, *supra* note 61, at 10.43.

⁶⁷ IOWA ADMIN. CODE r. 567—61.3(1) (2022).

⁶⁸ *Id.* at r. 567—61.3(1)(a)–(b) (2022).

⁶⁹ *Id.* at r. 567—61.3(1)(b).

Wetlands and lakes fall under the designated use category, Class “B(LW).”⁷⁰ As part of “Class B waters,” wetlands are “to be protected for wildlife, fish, aquatic, and semiaquatic life.”⁷¹ In addition to the general water quality criteria that apply to all designated use waters, the Iowa Administrative Code establishes specific water quality criteria—governing dissolved oxygen, pH, general chemical constituents, and temperature—that apply to wetlands via application to all “Class B” waters.⁷²

As described above, IDNR reports that discharges to wetlands are rare.⁷³ However, discharges to designated use wetlands (*i.e.*, Class B(LW)) authorized under a NPDES permit would be subject to the numeric criteria for Class B waters. Discharges to non-designated use wetlands would be subject only to general water quality criteria.

Though Iowa does not have an anti-degradation policy specific to wetlands, wetlands fall under Iowa’s general anti-degradation policy to maintain and protect existing surface water uses and the level of water quality necessary to protect such uses.⁷⁴

IV. Monitoring and Assessment

The 2016-2020 Iowa Wetland Program Plan lists several development activities for monitoring and assessment to achieve the program goal of developing a complete monitoring and assessment strategy that can inform management decisions and help protect wetlands in the state.⁷⁵ Program development activities include developing groundwater and open water wetland assessment methodologies, partnering with EPA to implement the National Wetland Condition Assessment, creating a wetland monitoring network, developing a data sharing portal, and mapping fen sites.⁷⁶

Iowa’s Ambient Wetland Monitoring Program, established in 2005, is integrated into the state’s Ambient Surface Water Quality Monitoring Program.⁷⁷ The wetland monitoring program is designed to assess wetland types across the state and focuses on pothole, riverine, and fen wetlands.⁷⁸ IDNR samples a rotating group of 30 sites three times per year for water quality, vegetation, macroinvertebrates, and fish.⁷⁹ These monitoring results enable IDNR to determine the ecological condition of Iowa’s wetlands and inform conservation and restoration priorities,

⁷⁰ *Id.* at r. 567—61.3(b)(9) (waters under this class are “artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a community normally associated with lake-like conditions”).

⁷¹ *Id.* at r. 567—61.3(3)(b).

⁷² *Id.* at r. 567—61.3(3)(b)(1)–(3), (5).

⁷³ *Supra* at Section II(b)(iii)(1).

⁷⁴ IOWA ADMIN. CODE r. 567—61.2(2).

⁷⁵ IOWA WETLAND PROGRAM PLAN 2016–2020, *supra* note 30, at 4.

⁷⁶ *Id.* at 4–5.

⁷⁷ *Iowa’s Wetlands*, *supra* note 1; *See also Iowa’s Ambient Water Quality Monitoring and Assessment Program*, Iowa Dep’t of Nat. Res., <https://www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Monitoring> (last visited Sept. 10, 2024) (explaining that Iowa’s surface water quality monitoring program includes ambient groundwater, ambient lake, shallow lakes, ambient stream, and ambient wetland monitoring. The state also conducts ambient biological and fish tissue monitoring, as well as public beach monitoring).

⁷⁸ *Iowa’s Wetlands*, *supra* note 1.

⁷⁹ *Id.*

mitigation requirements, monitoring program decisions, and watershed improvement projects statewide.⁸⁰ IDNR collects and stores monitoring data in AQuIA: Iowa's water quality monitoring results database.⁸¹

In 2015, Iowa published its first report summarizing the state's baseline assessment of the ecological condition of prairie pothole wetlands in north-central Iowa.⁸² The state collected data on the basic chemical, physical, and biological status of its wetland resources using newly developed wetland sampling methods.⁸³ During the same year, the state published a report on riverine wetland monitoring results. The goals of the study were to “assess the ecological condition of riverine wetlands in Iowa and improve the quality and quantity of data available to resource managers.”⁸⁴

In 2016, IDNR published the Iowa Fen Rapid Assessment Method for Wetlands v. 1 (IA FenRAM) to monitor the condition of the wetlands and identify impairments. The rapid assessment methodology also supported the state’s renewed effort to “visit [its] fens, record important information, and meet with landowners to discuss the value of preserving fens and available conservation options.”⁸⁵ The Fen Rapid Assessment Method user manual indicates that the collected data will help measure status and trends in wetland quantity and quality, inform conservation and restoration priorities, and identify an individual site’s restoration potential.⁸⁶

The state previously maintained a volunteer water monitoring program called IOWATER.⁸⁷ However, this program was discontinued in January of 2016 due to ongoing fiscal constraints, “declining participation, and IT challenges.”⁸⁸ The state has launched a new locally led volunteer monitoring program.⁸⁹ Through the volunteer monitoring program, IDNR trains “local citizen leaders, who will then train other volunteers in their community.”⁹⁰ The program’s website

⁸⁰ IOWA DEP’T OF NAT. RES., LAKE RESTORATION PROGRAM 2023 REPORT AND 2024 PLAN 23 (Dec. 2023) (available at <https://www.iowadnr.gov/Portals/idnr/uploads/water/lakerestoration/23lrreport.pdf>) (in addition to the state’s wetland monitoring efforts, the IDNR Lake Restoration Program provides a 40% cost share for a monitoring program with the Water Quality Monitoring and Assessment Section of IDNR’s Water Quality Bureau. Data are used to prioritize lake restoration projects for funding, evaluate the results of restoration activities, and determine how the public perceives water quality as a factor in determining lake visits).

⁸¹ IOWA DEP’T OF NAT. RES., AQuIA Database, <https://programs.iowadnr.gov/aquia/search/Results/3XPT> (last visited Sept. 10, 2024).

⁸² IOWA DEP’T OF NAT. RES., WATER QUALITY MONITORING REPORT 2005-2009 MONITORING OF PRAIRIE POTHOLE WETLANDS (2015).

⁸³ *Id.* at 2.

⁸⁴ IOWA DEP’T OF NAT. RES., RIVERINE WETLAND SUMMARY REPORT 2012-2014 5 (Nov. 2015).

⁸⁵ IOWA DEP’T OF NAT. RES., IOWA FEN RAPID ASSESSMENT METHOD FOR WETLANDS V.1 QUANTITATIVE RATING USER’S MANUAL AND SCORING FORM 2 (2016).

⁸⁶ *Id.*

⁸⁷ *Volunteer Water Monitoring*, IOWA DEP’T OF NAT. RES., <https://www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Monitoring/Volunteer-Water-Monitoring> (last visited Sept. 10, 2024).

⁸⁸ Dan Haug, *The Legacy of the IOWATER Program*, PRAIRIE RIVERS OF IOWA (Sep. 3, 2024), <https://www.prrcd.org/the-legacy-of-the-iowater-program/>.

⁸⁹ *Volunteer Water Monitoring*, *supra* note 87.

⁹⁰ IOWA DEP’T OF NAT. RES., *Iowa Watershed Improvement Program, Locally-Led Volunteer Water Monitoring Factsheet* (2017), <https://www.iowadnr.gov/Portals/idnr/uploads/water/watershed/volmon/2017%20Volunteer%20Water%20Monitoring%20fact%20sheet%20FINAL.pdf>.

encourages interested parties to check with local watershed or conservation groups for volunteer opportunities.⁹¹

V. Restoration

Iowa’s 2016-2020 Wetland Program Plan outlines an objective for the state to “restore, increase, maintain, and protect wetland ecosystems by voluntary means.”⁹² The plan sets a target of “4,000 restoration acres/year through acquisitions at a 3:1 acre ratio (upland:wetland)” with a continued focus on “restoring complexes of wetland areas to ensure that several types of wetlands are present on Iowa’s landscape; not just permanent and semi-permanent [wetland] types.”⁹³ The plan also calls for the state to identify critical wetlands areas for protection and restoration through a variety of means, including the creation of a GIS layer of the sites for Iowa and the development and implementation a fen protection/preservation project.⁹⁴ It is unclear if the state has met these targets; however, as described above, the state has created a fen monitoring program.

Like the Wetland Program Plan, the Iowa Wildlife Action Plan outlines steps to conserve habitat and wildlife in the state.⁹⁵ The plan identifies priority areas, including wetlands, for conservation work. The Wildlife Action Plan’s priority areas were identified by combining areas identified as priorities for action in other statewide conservation plans, including those that prioritize wetland habitats (*e.g.*, the Prairie Potential Joint Venture Priority Wetland Complexes, amphibian and reptile conservation areas, Ducks Unlimited Living Lakes Initiative Emphasis Areas, Past Wetland Reserve Program Special Project Areas, Natural Resources Conservation Service Wetland Easements, and Forest Stewardship Potential).⁹⁶

State Restoration Programs

In collaboration with state, federal, and private partners, IDNR administers several ongoing habitat conservation and water quality planning and restoration programs, including several that fund the conservation and restoration of wetland habitats.

Created in 2006,⁹⁷ IDNR’s Lake Restoration Program (LRP) aims to “improve water quality, habitat, watershed protection, infrastructure and recreational opportunities at Iowa’s publicly owned lakes.”⁹⁸ The program, funded through Restore Iowa Infrastructure Fund (RIIF),⁹⁹ has a current annual level of funding of around \$9.6 million per year (with a total of \$157 million since the program’s inception).¹⁰⁰ The program selects projects that have multiple benefits, including

⁹¹ *Volunteer Water Monitoring*, *supra* note 87.

⁹² IOWA WETLAND PROGRAM PLAN 2016–2020, *supra* note 30, at 6.

⁹³ *Id.*

⁹⁴ *Id.* at 6–7.

⁹⁵ *See generally* THE IOWA WILDLIFE ACTION PLAN, *supra* note 3.

⁹⁶ *Id.* at 137, 139, 143, 146, 147, 148, 155.

⁹⁷ Infrastructure Appropriations Bill, H.F. 2782, 81st Gen. Assemb. (Iowa 2006).

⁹⁸ *Lake Restoration Program and Water Quality Improvement*, IOWA DEP’T OF NAT. RES., <https://www.iowadnr.gov/environmental-protection/water-quality/lake-restoration> (last visited Sept. 10, 2024).

⁹⁹ *Id.*

¹⁰⁰ LAKE RESTORATION PROGRAM 2023 REPORT AND 2024 PLAN, *supra* note 80, at i–ii.

improved water quality and increased public use,¹⁰¹ using a science-based prioritization process or through community petition.¹⁰² Each project is implemented according to an individual lake restoration plan.¹⁰³ Depending on the lake project, marsh/wetland restoration may be a critical component of a lake restoration plan. Over the past several years, over \$11 million has been invested in marsh/wetland restoration efforts at lakes prioritized through the LRP.¹⁰⁴ Over the past 17 years, 14,000 acres of wetlands and shallow lakes have been enhanced.¹⁰⁵ The program involves strong partnerships with private partners, including Ducks Unlimited (see Public-Private Partnerships below).¹⁰⁶ Projects average a 35% cost share from other project partners to match LRP funds.¹⁰⁷

Iowa's Resource Enhancement and Protection (REAP) program is a general fund for conservation education, natural resource conservation and enhancement, historical resources, and city parks and open space.¹⁰⁸ REAP's funding comes from the state's Environment First Fund and the sale of natural resource license plates.¹⁰⁹ The REAP fund is allocated across "eight different programs, including city parks and open space, soil and water enhancement, county conservation, and state open space," among others.¹¹⁰

REAP Open Spaces Protection funding (28% of REAP fund allocation) is allocated to the IDNR for "acquisition and development of lands and waters."¹¹¹ The Natural Resources Commission-established policy for this fund directs half of the fund to finance land acquisition and the other half to finance facility development.¹¹² As an incentive to local governments participating in the program, land purchased with REAP Open Space funds remains on the tax rolls, with the taxes

¹⁰¹ See *id.* at i, iii (detailing that IDNR, "in partnership with stakeholders, maintains a five-year plan prioritizing 35 lakes and 5 shallow lake/wetlands for developing and implementing restoration efforts); see also IOWA CODE § 456A.33B(2)(b) (stating that projects that receive funding under the Lake Restoration Program should achieve certain goals, such as cost-effectiveness and ability to achieve significant improvement of the water clarity, safety, and quality of Iowa lakes).

¹⁰² LAKE RESTORATION PROGRAM 2023 REPORT AND 2024 PLAN, *supra* note 80, at 5.

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.* at 11.

¹⁰⁵ *Id.* at i.

¹⁰⁶ *Id.* at 11.

¹⁰⁷ *Id.* at i.

¹⁰⁸ *Resource Enhancement and Protection [REAP]*, IOWA DEP'T OF NAT. RES., <https://www.iowadnr.gov/Conservation/REAP> (last visited Sept. 10, 2024).

¹⁰⁹ *Id.*; Iowa Legis. Servs. Agency, *Environment First Fund* (2023),

<https://www.legis.iowa.gov/docs/publications/FTNO/1377624.pdf> (explaining that the "Environment First Fund (EEF) was established in 2000 Iowa Acts, chapter 1225 (FY 2001 Appropriations — Infrastructure and Capital Projects Act), to provide funding for protection, conservation, enhancement, and improvement of natural resources. That legislation established a standing appropriation of \$35.0 million for the Fund beginning in FY 2001 from the Rebuild Iowa Infrastructure Fund (RIIF)); *Natural Resources License Plates*, IOWA DEP'T OF NAT. RES., <https://www.iowadnr.gov/Conservation/Natural-Resources-License-Plates#Resource-Enhancement-and-Protection-REAP-22> (last visited Sept. 10, 2024).

¹¹⁰ *\$200K REAP grant awarded to Iowa City Parks and Recreation*, PROJECT GREEN,

<https://projectgreen.org/2023/11/07/200k-reap-grant-awarded-to-iowa-city-parks-and-recreation/> (last visited Sept. 10, 2024).

¹¹¹ *Open Spaces Protection*, IOWA DEP'T OF NAT. RES., <https://www.iowadnr.gov/idnr/Conservation/REAP/REAP-Funding-at-Work/Open-Spaces-Protection> (last visited Sept. 10, 2024).

¹¹² *Id.*

paid by IDNR with REAP Open Space funds.¹¹³ A portion of the REAP open space funding goes to cost-share on land acquisition projects with private organizations.¹¹⁴ The private cost-share projects are prioritized according to criteria established by a project planning and review committee.¹¹⁵ Examples of prior criteria used included whether the project provided a “demonstrated benefit to the public, including but not limited to expanded recreational or educational opportunities and incorporation of land improvements that may have a positive impact on the ecosystem, such as bank stabilization, wetland development, or filter strips.”¹¹⁶

In 2010, Iowa voters agreed to amend the state constitution to create the Natural Resources and Outdoor Recreation Trust Fund.¹¹⁷ The Trust Fund, however, has yet to be appropriated any funding.¹¹⁸ Advocates in Iowa have proposed a 3/8ths of a cent increase in the sales tax to “fund the Trust and provide greatly needed funding to protect Iowa’s waters, enhance outdoor recreation opportunities, improve quality of life for Iowans, and strengthen the state’s economy.”¹¹⁹

IDALS partners with the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), USDA Farm Service Agency, Soil and Water Conservation Districts, and Iowa State University to implement federal restoration programs for private landowners in Iowa. The Conservation Reserve Enhancement Program (CREP) is a “voluntary state-federal-local-private program that provides incentives to landowners to establish wetlands to reduce the flow of nitrates and other agricultural chemicals from agricultural drainage water.”¹²⁰ The program provides a 100% cost share for wetland restoration and buffer enhancement, as well as rental payments up to 15 years and incentive payments for 30-year or perpetual easements.¹²¹ The Iowa Wetland Program Plan includes a goal to “create an action plan to promote a permanent easement (goal) on 25,000 acres . . . over 5 years” under CREP programs.¹²²

¹¹³ *Id.*

¹¹⁴ *Id.* (stating, “Iowa owns and manages property that is jointly purchased on behalf of the public. A review committee of 3 [I]DNR administrators [and private organization staff] selects the projects”).

¹¹⁵ IOWA ADMIN. CODE R. 571—33.18(5) (2024).

¹¹⁶ *See, Open Spaces Protection, supra* note 112 (linking to a section of the Iowa Administrative Code describing the “New Definitions for Scoring Criteria” for REAP projects at https://www.iowadnr.gov/portals/idnr/uploads/REAP/openspaces_criteria.pdf).

¹¹⁷ IOWA CODE § 461.31 (2024); *Natural Resources and Outdoor Recreation Trust Fund (fka Sustainable Financing)*, IOWA DEP’T OF NAT. RES., <https://www.iowadnr.gov/About-DNR/Grants-Other-Funding/Natural-Resources-Rec-Trust> (last visited Sept. 10, 2024).

¹¹⁸ IOWA DEP’T OF NAT. RES., NATURAL RESOURCES AND OUTDOOR RECREATION 2022 TRUST FUND REPORT 2 (Jan 15, 2023).

¹¹⁹ *About Fund the Trust*, FUND THE TRUST, <https://www.fundthetrust.org/about-fund-the-trust/> (last visited Sept. 10, 2024).

¹²⁰ *Iowa Conservation Reserve Enhancement Program, supra* note 40.

¹²¹ *Id.*

¹²² IOWA WETLAND PROGRAM PLAN 2016–2020, *supra* note 30 (explaining that the easement goal of 25,000 acres should come out of the CP27 (wetland restoration) and CP28 (buffer program) Conservation Reserve Programs).

An integral part of Iowa’s CREP program is regular wetland monitoring conducted by Iowa State University. The program monitors a representative subset of CREP wetlands for performance in reducing nitrates.¹²³

The state also participates in the Agricultural Conservation Easement Program-Wetland Reserve Easements (ACEP-WRE). Under the ACEP-WRE, landowners enroll land in wetland reserve easements.¹²⁴ NRCS pays a percentage of the easement value and restoration costs depending on the duration of the easement.¹²⁵ NRCS also provides technical assistance to participants.¹²⁶

Federal Programs

Federal grants for wetland conservation and restoration in Iowa come from the North American Wetland Conservation Act (NAWCA) and the Land and Water Conservation Fund (LWCF).¹²⁷ NAWCA is a matching grant program that provides funding to organizations and partnerships for wetland conservation projects.¹²⁸ Over one hundred thousand acres of wildlife habitat have been conserved in Iowa through 69 completed or underway projects.¹²⁹ These projects were paid for by almost \$40 million in NAWCA funding, matched by \$97.7 million in partner contributions.¹³⁰ For the NAWCA 2025 grant cycle, IDNR received two million dollars for a “conservation partnership that will protect, restore, and enhance 1,932.7 acres of critical wetland and migratory bird habitat throughout Iowa’s Prairie Pothole Region.”¹³¹

LWCF provides 50% cost share grants for outdoor recreation area development and land acquisition projects.¹³² Iowa cities and counties are eligible applicants under this program.¹³³ Previously funded projects have included wetland acquisition and restoration.¹³⁴

¹²³ *Monitoring*, IOWA STATE UNIV., <https://www.iowacrep.org/reports> (last visited Sept. 10, 2024).

¹²⁴ *Agricultural Conservation Easement Program — Iowa*, U.S. NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/programs-initiatives/acep-agricultural-conservation-easement-program/iowa/agricultural-conservation> (last visited Sept. 10, 2024).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Land Water and Conservation Fund*, IOWA DEP’T OF NAT. RES., <https://www.iowadnr.gov/About-DNR/Grants-Other-Funding/Land-Water-Conservation-Fund> (last visited Sept. 10, 2024).

¹²⁸ *North American Wetlands Conservation, What We Do*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/program/north-american-wetlands-conservation> (last visited Sept. 10, 2024) (also describing the four grant programs to fund wetlands conservation projects: 1) the U.S. Standard Grant Program; 2) U.S. Small Grant Program; 3) Mexico Program; and 4) Canada Program).

¹²⁹ Ducks Unlimited, *Iowa NAWCA Factsheet*, <https://ducksedn.blob.core.windows.net/imagescontainer/landing-pages/conservation/nawca/fact-sheets/iowa.pdf> (last visited Sept. 10, 2024).

¹³⁰ *Id.* (excluding from the figures multi-state projects).

¹³¹ U.S. FISH & WILDLIFE SERV., NORTH AMERICAN WETLANDS CONSERVATION ACT (NAWCA) U.S. STANDARD GRANTS PROGRAM, CYCLE 2025-1 PROJECT SUMMARIES 12 (Sept. 10, 2024) (partner organizations for this award include Cerro Gordo County Conservation Board, Ducks Unlimited, Grundy County Conservation Board, Iowa Department of Natural Resources, Iowa Natural Heritage Foundation, JB Holland Construction, Inc., Lincoln Savings Bank, Pheasants Forever (Grundy County), Polk County Conservation Board, Private Contributors).

¹³² *Land Water and Conservation Fund*, *supra* note 127.

¹³³ *Id.*

¹³⁴ See IOWA DEP’T OF NAT. RES., 2017 LAND AND WATER CONSERVATION FUND 1 (2017) (detailing the wetlands acquisition for the Roberts Wildlife Area-Key Connections in the Wapsipinicon River Corridor project); IOWA

VI. Public-Private Partnerships

Landowner Assistance for Conservation and Flood Resilience Projects

In Iowa, public-private partnerships play a crucial role in enhancing wildlife habitat and wetlands conservation. As previously discussed, the IDNR Wildlife Bureau's Private Lands Program offers technical expertise to private landowners interested in restoring and conserving wetlands.¹³⁵ Wildlife management biologists work closely with landowners to evaluate their property for potential wetland restoration opportunities, set priorities, establish restoration goals.

The Iowa Watershed Approach (IWA)—a multi-stakeholder effort to address the factors that contribute to floods at a watershed scale—was created through a National Disaster Resilience grant from the U.S. Department of Housing and Urban Development.¹³⁶ Through the IWA, nine Watershed Management Authorities were created to develop hydrologic assessments, create watershed plans, and implement flood resilience projects upstream.¹³⁷ Flood resilience projects include, among other types of non-structural strategies, constructed wetlands, floodplain restoration, and buffer strips.¹³⁸ Landowners can receive up to 90% of the funding for a project.¹³⁹ The remaining 10% comes from the landowner or local match.¹⁴⁰

State Partnerships with Conservation Organizations

The state also partners with private conservation organizations on wetland conservation and restoration efforts. Notably, Ducks Unlimited (DU) has been a key partner in shallow lake restoration, significantly improving wetland management through their Living Lakes Initiative.¹⁴¹ This collaboration, which includes innovative solutions for carp control and water level management, has led to increased public education and outreach, enhancing both water quality and long-term management practices.¹⁴² DU's contributions to the state, such as securing in substantial federal funding and partnering with the U.S. Fish and Wildlife Service and the USDA Natural Resources Conservation Service, underscore the impact of these cooperative efforts.¹⁴³

DEP'T OF NAT. RES., 2019 LAND AND WATER CONSERVATION FUND 1 (2019) (detailing wetlands restoration as part of the Morgan Creek Park Phase 1 Development project).

¹³⁵ *Private Land Efforts Are Reestablishing Habitat*, *supra* note 32.

¹³⁶ *About*, IOWA WATERSHED APPROACH, <https://iowawatershedapproach.org/about/> (last visited Sept. 10, 2024).

¹³⁷ *Id.*

¹³⁸ *Flood Mitigation Projects*, IOWA WATERSHED APPROACH, <https://iowawatershedapproach.org/programs/constructed-watershed-projects/> (last visited Sept. 10, 2024).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Living Lakes Initiative*, DUCKS UNLIMITED, <https://www.ducks.org/conservation/du-conservation-initiatives/living-lakes-initiative> (last visited Sept. 10, 2024).

¹⁴² IOWA WETLAND PROGRAM PLAN 2016–2020, *supra* note 30, at 9.

¹⁴³ *Id.*

Iowa similarly collaborates with organizations like The Nature Conservancy and the Iowa Natural Heritage Foundation, further strengthening its conservation initiatives.¹⁴⁴ For example, Prairie Meadows Casino awarded a \$470,000 Legacy Grant in August 2024 to the Iowa Natural Heritage Foundation, Ducks Unlimited, Polk County Public Works, Polk County Conservation, and the Iowa Agriculture Water Alliance for four central Iowa wetlands projects to enhance water quality, habitat, and conservation education.¹⁴⁵ These partnerships can collectively drive progress in wetland and habitat restoration across Iowa.

VII. Education and Outreach

Public Education

IDNR offers several resources geared at environmental education for a variety of age groups, covering topics related to terrestrial and aquatic environments.¹⁴⁶ Project WILD and Aquatic WILD are educational resources provided by IDNR that focus on wildlife conservation and environmental education to encourage responsible behavior towards natural resources.¹⁴⁷

Additionally, educators from Iowa State University—with support from IDNR and the Iowa Nutrient Research Center—offer a series of educational videos and factsheets on Iowa’s wetlands for the public.¹⁴⁸

As previously discussed, the IDNR REAP program provides funding for environmental conservation throughout the state. For example, in the late 1990s, IDNR and the EPA Environmental Education Program funded the development of the “School of the Wild” at the University of Iowa: a statewide initiative that enhances outdoor learning for over six thousand elementary and middle school students, immersing them in Iowa’s diverse wetlands, woodlands, and prairies.¹⁴⁹ This program is still in effect as of September 2024.

VIII. Coordination with State and Federal Agencies

IDNR regularly coordinates with federal agencies on regulatory issues, including compensatory mitigation, restoration activities, and other wetland-related efforts.

¹⁴⁴ *Grand River Grasslands*, THE NATURE CONSERVANCY, <https://www.nature.org/en-us/get-involved/how-to-help/places-we-protect/grand-river-grasslands-region/> (last visited Sept. 10, 2024); *Land, Water & Wildlife Protection*, IOWA NAT. HERITAGE FOUND., <https://www.inhf.org/what-we-do/protection/> (last visited Sept. 10, 2024).

¹⁴⁵ Joe Jayjack, *\$470,000 to go to central Iowa Wetlands thanks to Prairie Meadows grant*, IOWA NAT. HERITAGE FOUND. (Aug. 29, 2024), <https://www.inhf.org/blog/press-center/470000-to-go-to-central-iowa-wetlands-thanks-to-prairie-meadows-grant/>.

¹⁴⁶ *Projects WILD and Aquatic WILD*, IOWA DEP’T OF NAT. RES., <https://www.iowadnr.gov/Conservation/For-Teachers/Projects-WILD-WILD-Aquatic> (last visited Sept. 10, 2024).

¹⁴⁷ *Id.*; see also *About*, IOWA CONSERVATION EDUC. COAL., <https://iowaee.org/about/> (last visited Sept. 10, 2024) (explaining that the non-profit, Iowa Conservation Education Coalition, supports Project WILD by offering resources like book recommendations and downloadable lesson plans for educators).

¹⁴⁸ *Wetlands in Iowa*, IOWA STATE UNIV., <https://naturalresources.extension.iastate.edu/wetlands> (last visited Sept. 10, 2024).

¹⁴⁹ *School of the Wild*, UNIV. OF IOWA COLL. OF EDUC., <https://wild.education.uiowa.edu/school-wild#school-of-the-wild-model> (last visited Sept. 10, 2024).

As discussed above, IDNR—along with the Corps, EPA, the U.S. Fish and Wildlife Service, and NRCS—is a member of the Interagency Review Team to review and approve compensatory mitigation banks and In-Lieu Fee Programs.¹⁵⁰ Iowa DOT regularly partners with county or state conservation agencies in the development and long-term management of mitigation wetlands, according to the Wetland Program Plan.¹⁵¹

As described above, the state also partners with USDA and NRCS to implement federal restoration programs for private landowners in Iowa.

IX. Impact of *Sackett* on Iowa’s Wetlands Program

IDNR reports that Iowa is not experiencing an immediate impact from the Supreme Court’s *Sackett* opinion. However, a preliminary analysis of estimated jurisdiction status across the states conducted by the Environmental Defense Fund finds that approximately 401.2k to 451.5k acres of wetlands could lose protection and may be at risk.¹⁵²

Iowa’s protected waters program—if implemented—should theoretically be able to fill in some gaps in federal jurisdiction following *Sackett* because the definition of “protected waters” is not reliant on the federal WOTUS. For example, isolated wetlands, like prairie potholes, that are excluded under WOTUS could be protected through the state’s protected wetlands program. However, as of the date of this report, IDNR has neither inventoried the state’s protected wetlands nor established a protected wetlands permitting regime.

The floodplain development and sovereign lands construction permitting programs are not tied to federal WOTUS and, consequently, will likely not be impacted by the *Sackett* decision.

The largest impact on the state’s wetlands management regime following *Sackett* will likely be in the form of Section 401 certifications because the scope of federally jurisdictional waters for which Section 404 applies has been significantly narrowed.

¹⁵⁰ IOWA MITIGATION BANKING, *supra* note 53.

¹⁵¹ IOWA WETLAND PROGRAM PLAN 2016–2020, *supra* note 30, at 10.

¹⁵² ENVT’L DEF. FUND, Estimating federal wetlands protections in the wake of a 2023 Supreme Court decision, <https://experience.arcgis.com/experience/4ee055766699446485fd98bd9d539a37/> (last visited Sept. 10, 2024) (“This web viewer shows summarized results of estimated federal jurisdictional status for non-tidal wetlands in the coterminous U.S. based on potential interpretations of the Supreme Court’s *Sackett v. EPA* majority opinion. These results are preliminary, have not been peer-reviewed and may change. Estimates provided for informational purposes only and do not represent actual federal jurisdictional status as determined solely by the U.S. government. These results are only suitable for interpretation at large spatial scales due to resolution limitations in the underlying data. Jurisdictional determinations for specific wetlands or properties require higher-resolution data than used in this study and also typically require field visits.”)