



Regulatory Developments in Wetlands and Floodplain Development

Tim Haley

Barnes & Thornburg LLP

11 S. Meridian Street

317-231-6493 (o)

317-753-0554 (m)

thaley@btlaw.com

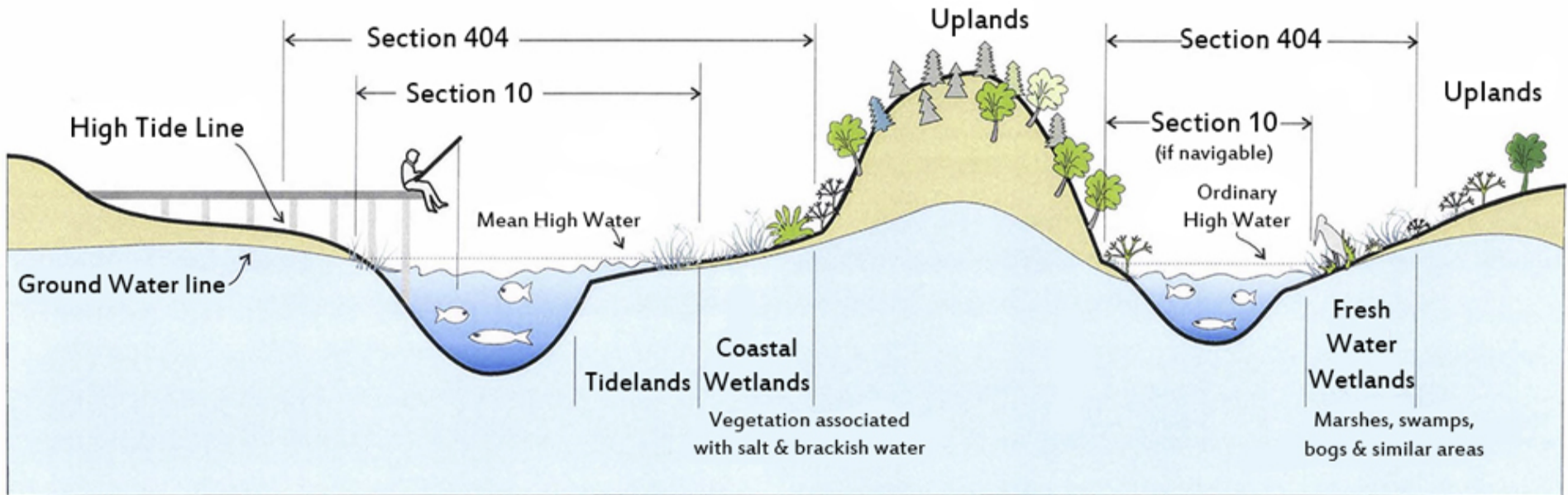




Corps of Engineers Regulatory Jurisdiction

Tidal Waters

Fresh Waters



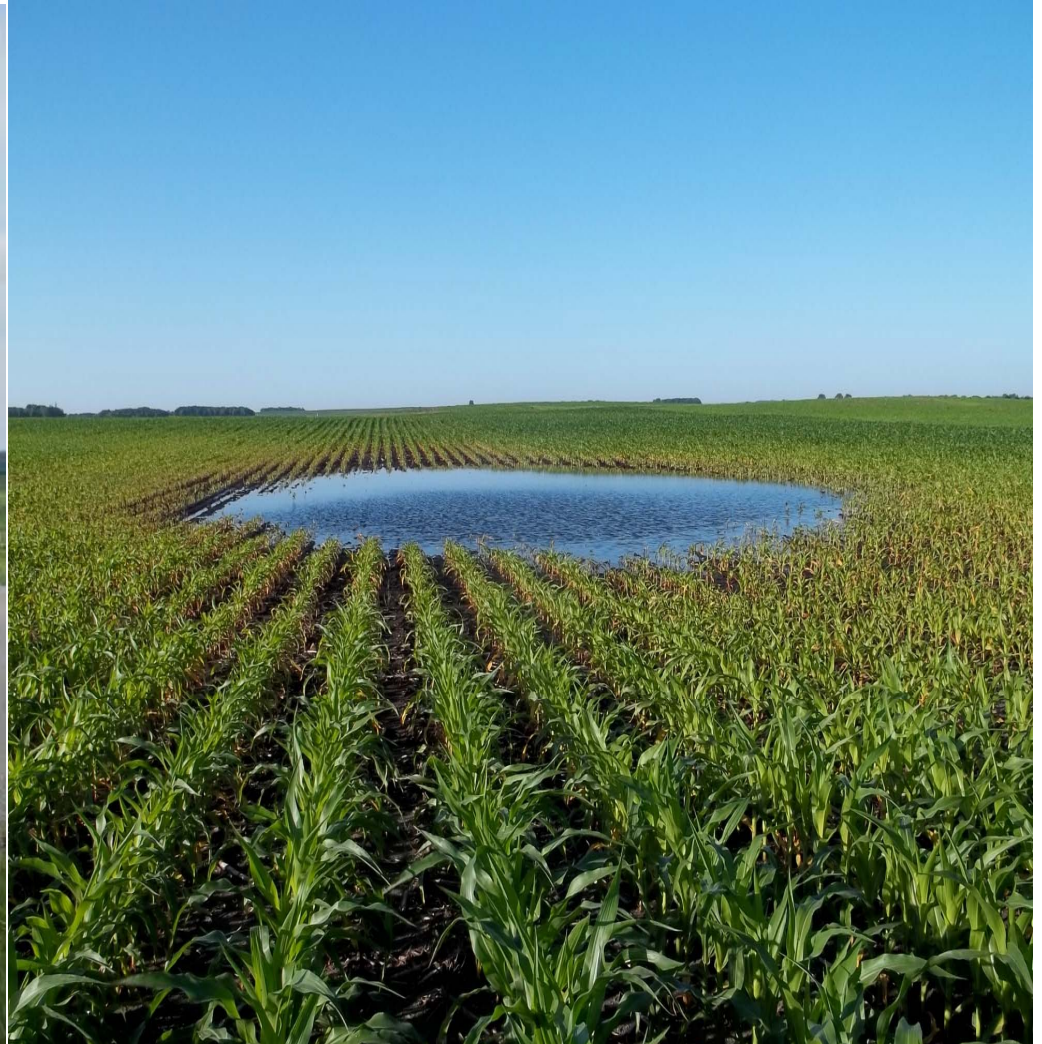
Typical examples of regulated activities

Section 103
Ocean Discharge of Dredged Material
Ocean discharges of dredged material.

Section 404
Disposal of Dredged or Fill Material
All filling activities, utility lines, outfall structures, beach nourishment, riprap, jetties, some excavation activities, etc.

Section 10
All Structures and Work (navigable waters)
Dredging, marinas, piers, wharves, floats, intake/outtake pipes, pilings, bulkheads, ramps, fills, overhead transmission lines, etc.

WOTUS???



Litigation

- Rule is currently Stayed – October 2015
- Jurisdiction/Venue – multiple courts/orders 2016
- Administrative Record -- Briefing in 6th Circuit
- Merits – Timing TBD
- Appeals?



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-326944

December 14, 2015

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate

Subject: *Environmental Protection Agency—Application of Publicity or Propaganda and Anti-Lobbying Provisions*

Dear Mr. Chairman:

This responds to your request for our opinion concerning whether the Environmental Protection Agency's (EPA) use of certain social media platforms in association with its "Waters of the United States" (WOTUS) rulemaking in fiscal years (FY) 2014 and 2015 violated publicity or propaganda and anti-lobbying provisions contained in appropriations acts. Letter from Chairman, Committee on Environment and Public Works, United States Senate, to Comptroller General (June 16, 2015).

In the meantime . . .



Peat Farming/JD determinations

Hawkes v. US Army Corps of Engineers



Other developments

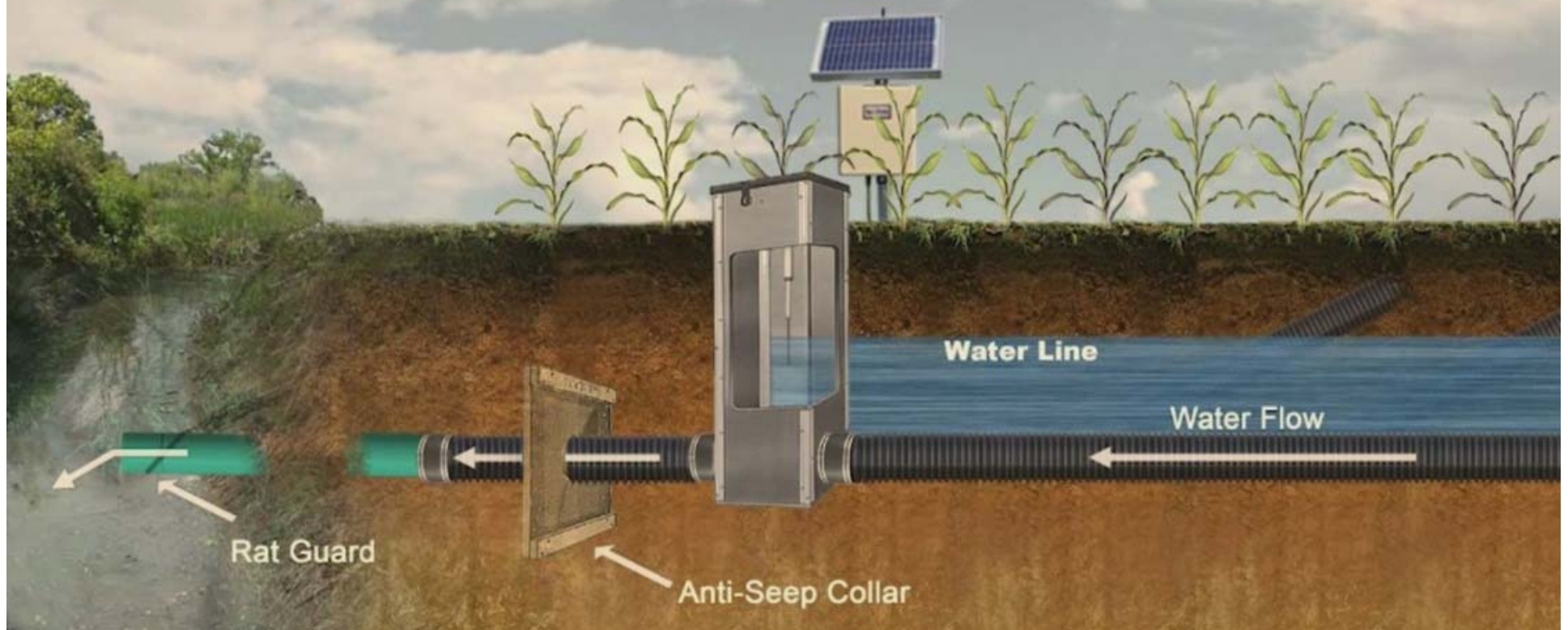
- Indiana Fee-in-lieu Program
- Bicentennial Nature Trust -
<http://www.in.gov/dnr/heritage/7309.htm>
- Litigation on federal mitigation rule commenced in 11th Circuit: *Gulf Restoration Network, et. al. v. Army Corps of Engineers*, Case 16-15545 (filed August 17, 2016)
- Indiana Storm Water General Permits

Des Moines Water Works – trial set June 2017

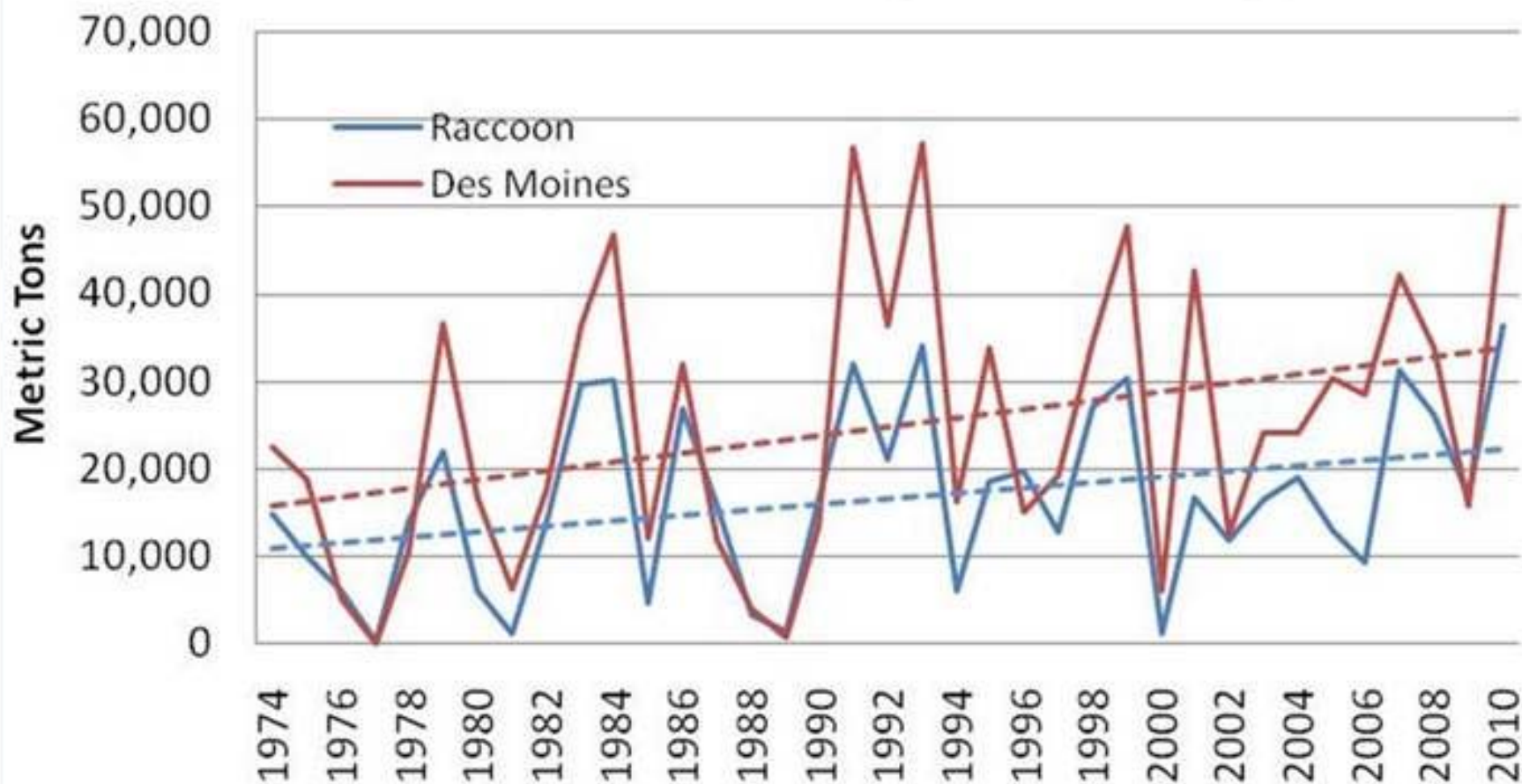


TYPICAL DRAINAGE WATER MANAGEMENT INSTALLATION

Inline Water Level Control Structure



River Nitrate-Nitrogen Loading



What will this mean to Indiana?



Reminders: Development on Wetlands and Floodplains

May Require Multiple Permits/certifications from multiple agencies, including, but not limited to:

- IDEM
- IDNR
- Army Corps of Engineers
- US EPA
- FEMA
- Local floodplain administrator
- Indiana Department of Homeland Security
- U.S. Fish & Wildlife Service
- Downstream states
- Local drainage board
- Local zoning authority