April 26, 2021

The Honorable Eric Holcomb
Governor of Indiana

Dear Governor Holcomb,

The undersigned 110 organizations and individuals are writing to respectfully request your veto of SEA 389, the bill that substantially reduces protection of Indiana's remaining wetlands. This bill opens the door to irrevocable impacts on our rich natural history and puts the wellbeing of millions of Hoosiers at risk, now and well into the future.

We acknowledge that the existing wetlands law, written in 2003, is due for review and revision to improve how it functions. In fact, many of the signatories to this letter were among the 90 diverse organizations - from business and conservation groups, to agricultural and municipal leaders - which signed a letter to legislators several weeks ago offering concrete policy alternatives to SB 389. Those alternatives were not incorporated, and instead, SEA 389 makes changes to the wetlands law that would do substantial harm to Indiana's water future.

SEA 389 would place *the vast majority* of Indiana's remaining state-jurisdictional wetlands in jeopardy (more than 500,000 acres). The resulting wetland losses would, without question, cost the state dearly in increased flooding and erosion, loss of groundwater recharge and water supplies, water purification, safe recreation and tourism opportunities, and loss of the diverse wildlife that makes Indiana special.

Revision of Indiana's wetlands law must be done in a careful and considered manner with the full array of knowledgeable stakeholders at the table. While SEA 389 would create a reasonable wetlands task force, it does so *after* making a major change in the law, which is not a sound policy process. The task force should be convened before the law is changed in order to guide policy change that: 1.) protects all Hoosiers from flood risks and rising infrastructure costs 2.) regulates wetlands based on science and consistency, 3.) protects valuable ecosystems, and 4.) secures an economically competitive and resilient water future. Indiana needs a thorough, inclusive, and deliberative approach to changing the law on such a vital natural resource. There is A LOT at stake. Please VETO SEA 389 and allow time for a multi-stakeholder process that ensures a policy we can be proud of, a policy that demonstrates our collective values.

To help guide your decision on SEA 389, we have included background information on the value and function of wetlands as well as policy alternatives in the addendum below.

Respectfully yours,

American Woodcock Society
Audubon Great Lakes
Barbee Lakes Property Owners Association
Bruce A. Kingsbury, Ph.D., Professor of Biology, Purdue University Fort Wayne
Central Indiana Land Trust
Citizens Action Coalition
City of Angola
City of Elkhart
Conservation Law Center
Crooked Lake Association Board of Directors
Daviess Martin Joint County Parks & Recreation Department
Delta Waterfowl
Ducks Unlimited
Earth Charter Indiana
Environmental Resources Center, Purdue University Fort Wayne
Evansville Audubon Society
FlatLand Resources, LLC
Friends of Goose Pond
Friends of Lake Monroe
Friends of the St. Joe River Association
Friends of Sugar Creek
Friends of the White River
Health by Design
Helping Ninjas
Hoosier Chapter of the Soil and Water Conservation Society
Hoosier Environmental Council
Hoosier Heartland Resource Conservation and Development Council
Hoosier Interfaith Power & Light
Indiana Association of Soil and Water Conservation Districts
Indiana Bowhunters Association
Indiana Catholic Conference
Indiana Chapter Backcountry Hunters and Anglers
Indiana Chapter of the American Society of Landscape Architects
Indiana Conservation Officers FOP Lodge
Indiana Deer Hunters Association
Indiana Forest Alliance
Indiana Friends Committee on Legislation
Indiana Green Party
Indiana Lakes Management Society
Indiana Native Plant Society
Indiana Park & Recreation Association
Indiana Parks Alliance
Indiana Sportsmen's Roundtable
Indiana State Chapter of the National Wild Turkey Federation
Indiana Wildlife Federation

International Crane Foundation
Izaak Walton League of America Porter County Chapter
Jami Penix Khan
Jennifer Yumibe
Just Transition NWI
La Porte County Conservation Trust
LaGrange County Surveyor
Lake James Association
Lake Maxinkuckee Environmental Fund
Laura Hare Charitable Trust
League of Women Voters of Brown County
League of Women Voters of Greater Lafayette
League of Women Voters of Muncie-Delaware County
League of Women Voters of Bloomington-Monroe County
League of Women Voters of Calumet Area
League of Women Voters of Fort Wayne Area
League of Women Voters of Henry County
League of Women Voters of Indiana
League of Women Voters of La Porte County
League of Women Voters of Montgomery County
League of Women Voters of the South Bend Area
League of Women Voters of Southwest Indiana
Little River Wetlands Project, Inc.
Mayor John Dennis, West Lafayette
Merrillville Stormwater Utility
Michigan City Sustainability Commission
National Marine Manufacturers Association
National Parks Conservation Association
National Wildlife Federation Great Lakes Regional Center
Northwest Indiana Green Drinks
Openlands
Owen-Putnam Friends of the Forest
Pheasants Forever
Quail Forever
Rachele Baker, Ecologist
Red-tail Land Conservancy
Robert J. Boklund, MSES
Save the Dunes
Save Whiting And Neighbors
Shirley Heinze Land Trust
Sierra Club Dunelands Group
Sierra Club Hoosier Chapter
South Bend - Elkhart Audubon Society
South Bend Venues Parks & Arts
St. Joseph County Surveyor

St. Joseph River Basin Commission
Steuben County Lakes Council
The Nature Conservancy of Indiana
The Ruffed Grouse Society
The Watershed Foundation
Tippecanoe Audubon Society
Tri-State Creation Care
Trout Unlimited
Valley Watch
Valparaiso Lakes Area Conservancy District
Wabash River Defenders, Inc
Wabash Valley Audubon
Wabash Valley Progressives
Wawasee Area Conservancy Foundation, Inc.
Webster Lake Conservation Association, Inc
Wesselman Woods
West Lafayette Go Greener Commissioner
Westfield Green Together
White River Alliance
Woodland Savanna Land Conservancy

Addendum
Wetlands: Function, Value, and Policy

A veto of SEA 389 is warranted, because wetlands need protection as a critical part of Indiana's water resources and because Indiana's water future is facing many challenges. There are other less damaging, widely supported policy options that deserve consideration.

Indiana already ranks fourth among the states with the greatest loss of wetlands[1]. By 1991, our state agencies estimated that Indiana had lost more than 85% of its original wetlands[2].

SEA 389 would lead to further wetland losses that the state cannot afford. It will eliminate protection for Class I wetlands and significantly reduce protection for Class II wetlands. According to the Indiana Department of Environmental Management (IDEM), 58% of Indiana's remaining wetlands are Class I and around 40% are Class II. IDEM estimates that passage of SEA 389, combined with the restriction of federally regulated wetlands in Indiana by the new Navigable Waters Protection Rule, will eliminate regulatory oversight for 550,000 to 600,000 acres of the 800,000 acres of wetlands remaining in Indiana, leaving the state with the authority to protect less than 5 percent of our original wetlands from complete destruction. The bill puts a substantial proportion of wetlands in jeopardy, yet all of these wetlands provide critical functions.

The Cost of Losing Wetlands

Wetlands are valuable in many ways. They absorb and store 1 – 1.5 million gallons of water per acre according to the U.S. Environmental Protection Agency (EPA)[3]. That means they reduce flooding during big storms, and while they're holding that water, it's soaking in and recharging the groundwater. Wetlands slowly release water and that helps maintain streamflow during dry months. Wetlands' ability to absorb and store water means that stormwater flows more slowly which reduces stream bank and ditch erosion. Wetlands filter sediment out of water, reducing the need for dredging in downstream lakes. The plants and microbes in wetlands pull pollutants out of water, purifying it and reducing the cost of treating drinking water. Finally, wetlands provide vital wildlife habitat. According to the Indiana Department of Natural Resources (DNR), wetlands provide habitat for 50% of the Indiana species with small or declining populations, and they provide rest stops for 325 species of migrating birds[4].

---

[1] Environmental Law Institute. *State Wetland Program Evaluation: Phase IV.* https://www.eli.org/sites/default/files/eli-pubs/d17_17.pdf

[2] IDEM. *Indiana Wetland Program Plan.* https://www.in.gov/idem/wetlands/resources/indiana-wetland-program-plan/#:~:text=Best%20estimates%20from%20a%201991,existed%20in%20Indiana%20circa%201780.

[3] EPA. *Functions and Values of Wetlands.* https://www.epa.gov/sites/production/files/2016-02/documents/functionsvaluesofwetlands.pdf

[4] Indiana Department of Natural Resources. *Connecting Wetlands, Wildlife, and You*

The DNR has estimated dollar values for some of the annual benefits wetlands provide:

- $1.8 billion in water storage,
- $850 million in erosion prevention,
- $202 million in water purification, and
- support for Indiana's multi-billion dollar outdoor recreation, hunting, and fishing industries[5].

The water storage and water quality functions of wetlands can be replaced by building stormwater infrastructure, but at a substantial cost, and without wildlife, recreation, air quality, and climate benefits. EPA data on the cost of stormwater infrastructure, adjusted to 2021 dollars, show that the least expensive option costs over $86,000 per acre of wetland being replaced[6]. Preserving existing wetlands saves these construction costs and provides the most cost-effective stormwater management available.

The Science and Classification of Wetlands

Proponents of SEA 389 have argued that Class I wetlands have no value, but according to the definition, Class I wetlands are characterized as lacking one or more of a list of features. They do not lack all of them. The full definition from Indiana statute is included here to help counter the mischaracterization that has been used as justification for eliminating protection of Class I wetlands.

IC 13-11-2-25.8
(a) For purposes of IC 13-18:
(1) "Class I wetland" means an isolated wetland described by one (1) or both of the following:
(A) At least fifty percent (50%) of the wetland has been disturbed or affected by human activity or development by one (1) or more of the following:
(i) Removal or replacement of the natural vegetation.
(ii) Modification of the natural hydrology.
(B) The wetland supports only minimal wildlife or aquatic habitat or hydrologic function because the wetland does not provide critical habitat for threatened or endangered species listed in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at least one (1) of the following:
(i) The wetland is typified by low species diversity.
(ii) The wetland contains greater than fifty percent (50%) areal coverage of non-native invasive species of vegetation.
(iii) The wetland does not support significant wildlife or aquatic habitat.

[5] Indiana Department of Natural Resources. *Connecting Wetlands, Wildlife, and You*
[6] U.S. Environmental Protection Agency (1999). *Preliminary Data Summary of Urban Storm Water Best Management Practices. Chapter 6.*

(iv) The wetland does not possess significant hydrologic function;

From the definition, it is clear that some of the Class I wetlands have low species diversity, some have more than 50% invasive vegetation, and some lack significant hydrologic function. The definition states "*minimal wildlife **or** aquatic habitat **or** hydrologic function"* and "*the wetland is characterized by **at least one** (1) of the following*" [emphasis added]. It does not say the Class I wetland is characterized by "all of the following".

Given IDEM's estimate that 58% of Indiana's remaining isolated wetlands are Class I, eliminating their protection will lead to substantial loss of the benefits they provide. They should not be discarded as the undeniable impacts will be widely felt by thousands of Hoosiers.

SEA 389 significantly reduces protection for Class II wetlands by raising the size of an exempt wetland from one quarter acre to three-eighths of an acre in rural areas and raising it to three-quarters of an acre within municipal boundaries. Further, when a project will impact multiple Class II wetlands, SEA 389 raises the exemption from one-third of the cumulative acreage to 60%. IDEM estimates the bill removes protection from approximately 20 to 40% of Class II wetlands. Since Class II wetlands represent 41% of Indiana's remaining wetlands, this is a significant loss of wetlands that offer the full suite of wetland functions.

Altogether, the wetland losses allowed if SEA 389 becomes law will cost the state in increased flooding, increased stream bank and ditch erosion, lost water purification, lost groundwater recharge, increased need to build stormwater infrastructure, degradation of private property value, and loss of wildlife.

SEA 389 will also cost the state by sending the wrong signal about Indiana. Businesses and talent often make location decisions based on a state's environmental quality and reputation. Industries make decisions based on the availability of key resources as well as the future reliability of those resources, of which water often tops the list. SEA 389, if passed into law, would declare that Indiana has a deep-seated disregard for natural resources.

Property Rights

Much of the argument for SEA 389 has been about private property rights, the notion that if a person owns land with a wetland on it, they should be free to do what they want with it. As sensible as that might sound, there are times when society must limit activity on private property because it would hurt someone else. For example, one cannot release toxic waste into a stream on their property because the stream crosses the property line and would carry the toxic waste to someone else. Likewise, our local governments have zoning which puts limits on private property, like zoning to prevent a hazardous waste facility from being built in a residential neighborhood. We accept these limits on private property in order to prevent harm to others and to live peacefully together as a society.

Wetlands are part of the water system, which is a shared resource, and that is the fundamental reason for their protection in law. The water ignores property lines. If there is a one-acre wetland on property A, it can absorb 1 – 1.5 million gallons of water. While it's holding that water, it's letting it soak in and recharge the groundwater. If the wetland on property A is destroyed, then there will be less groundwater and the neighbor's well might dry up, and during the next big storm, the million gallons the wetland would have absorbed will have to go somewhere else. It could flood the neighbor.

Broad Opposition to SEA 389

SEA 389 is not supported by the general public. There has been a massive outpouring of support for wetland protection from Hoosiers all across the state during the debate on this bill. The intense and widespread public opposition from diverse constituents should trigger pause.

90 organizations signed a letter calling on the General Assembly to preserve wetlands and to consider other policy options[7]. This letter represented unprecedented unity across sectors of Indiana society. It included hunting and fishing groups, river commissions, lakes associations, faith groups, architects, environmental and conservation groups, professional associations, and municipalities. Only the Farm Bureau and Builders Association supported the final version of the bill.

The votes in the General Assembly also demonstrate a lack of robust support for this bill. There were only 58 votes in favor in the House and 31 in the Senate. The nay votes included members of both parties.

Policy Alternatives

The letter signed by 90 organizations offered policy alternatives that were never considered during debate on SEA 389. The letter recommended changes that would simplify wetland permitting and create incentives for wetland preservation. Also, none of the 90 organizations were represented in negotiation of the final version of the bill, despite the extensive wetland expertise many of them have.

Wetland permit holders have complained about the complexity of the wetland permit process. They often find themselves with both federal- and state-protected wetlands in the same project and struggle with the differences. There are policy solutions that would streamline state wetland permitting, ensure scientifically-based assessments, align with federal regulatory processes, and provide clear, simple exemptions for common land use challenges. These common-sense and practical suggestions include concepts such as:

[7] https://www.hecweb.org/wp-content/uploads/2021/04/SB-389-facts_alternatives_policy-concerns-2.pdf

- Remove reference to wetland Classes, and instead define state-jurisdictional wetlands by their type, using the same classification and nomenclature as the US Army Corp of Engineers (USACE) uses, i.e. Emergent, Scrub-Shrub, and Forested (PEM, PSS, PFO). This classification system acknowledges the functional value of any given wetland (e.g. its water storage capacity and its habitat) and is common across the country.
    - Further define a small subset of these to a category known as 'Critical Wetland and/or Critical Special Aquatic Site'. These would include rare or unique state-regulated wetlands and would use the same definition as the federal permitting process (401/404) does for acknowledging these special wetland resources (e.g. fens, bogs, dune/swale, etc.). Most of these are currently classified as Class 3 wetlands in Indiana and make up a very small percentage of permits. Decide how to best protect this subset (e.g. required avoidance, unique mitigation ratios, etc.).
- Align mitigation ratios for wetland types to USACE's ratios for those of the same type.
- Align permit process thresholds to USACE (e.g. when to apply via general vs. individual permits). General permits are an easier permit pathway, and the USACE already has criteria for this pathway. Such alignment would provide process clarity and consistency for permittees.
- Exempt areas cropped within the last 5-yrs (same as USACE)

To date, Indiana's policy for wetlands has centered on replacing ("mitigating") wetlands that are filled or disturbed. However, preservation of existing wetlands is more cost effective than mitigation, so it would be advantageous to also look at protecting these valuable natural resources through incentive programs. For instance,

- Create tax incentives for protection and preservation of existing wetlands, so landowners would be compensated for any opportunity cost. Lost tax revenue would be a fraction of the cost of having to manage the resulting flood waters and pollution from lost wetlands.

Additional policy options to consider:

- Rename the program to State-Regulated Wetlands Program to lessen confusion and maintain consistency if/when the federal definition of Waters of the United States (WOTUS) undergoes different interpretations at the federal level.
- Create an Indiana Wetland Council charged with tracking the benefits wetlands provide to the state, examining the efficiency and efficacy of the wetland permitting process, and making recommendations about state wetland policy.
- Simplify, provide clarity, and/or expand/align other exemptions such as:
    - Exempt 'incidental wetlands' and utilize similar 5-yr timeframe for activities. These are wetlands that may have developed due to construction earthwork that has sat idle for a few years, etc. (e.g. runoff from a large gravel pile that collects at a low spot and wetland conditions develop)

- Clarify temporary impacts; allow for simple on-site restoration of temporary/construction impacts (per guidance); don't require mitigation if restored on site