IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF IOWA, EASTERN DIVISION

CTM HOLDINGS, LLC, an Iowa limited liability company, *Plaintiff*, vs. THE UNITED STATES DEPARTMENT OF AGRICULTURE; THOMAS J. VILSACK, in his official capacity as the Secretary of the United States Department of Agriculture; THE NATURAL RESOURCES CONSERVATION SERVICE; TERRY COSBY, in his official capacity as Chief of the Natural Resources Conservation Service; and JON HUBBERT, in his official capacity as Iowa State Conservationist, *Defendants*, IOWA FARMERS UNION, IOWA ENVIRONMENTAL COUNCIL, FOOD & WATER WATCH, and DAKOTA RURAL ACTION, *Intervenors*.	CIVIL NO. 6:24-cv-02016-CJW-MAR **PLAINTIFF'S COMBINED REPLY IN SUPPORT OF CTM'S MOTION FOR SUMMARY JUDGMENT**

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I. This Court Can Reach the Merits of the Case.

Defendants and Intervenors argue that CTM cannot bring a claim because it has not yet faced any consequences for converting wetlands. ECF 66 at 7–10; ECF 67 at 7. But "the APA provides for judicial review of all final agency actions, not just those that impose a self-executing sanction." *Sackett v. EPA*, 566 U.S. 120, 129 (2012). CTM has suffered injury because of Defendants' enforcement of Swampbuster and, thus, this Court can reach the merits of the case.

A. CTM Has Demonstrated Economic Injury Resulting from Swampbuster.

CTM is injured by Swampbuster because the statute's requirements devalue its property. As CTM's lease demonstrates, the portions covered by the alleged wetlands are worth less in rental income than the portions not covered. Plaintiff's appendix in Support of Plaintiff's Combined Resistance to Defendants' and Intervenors' Motions for Summary Judgment (CTM Resistance App.) at 20. Intervenors call CTM's declaration self-serving. ECF 66 at 6. But the declaration—which is made under penalty of perjury and must be taken as true for purposes of summary judgment—asserts that CTM has suffered economic harm and changes its behavior because of Swampbuster. CTM Resistance App. at 14–19.

The Supreme Court has held that a plaintiff's declaration is sufficient to demonstrate standing resulting from an economic injury. In *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, the Supreme Court stated that it "agree[d] with the lower courts that the decrease in the market value of [plaintiff's] land as a result of the [agency action] is a sufficiently concrete injury for Article III purposes." 586 U.S. 9, 19 n.1 (2018). At the lower courts, the landowners asserted that the agency action injured them by impacting their future business decisions and supported those

arguments by declarations from representatives or employees of each company.[1] The district court concluded that the plaintiffs' declarations were "sufficient to establish constitutional standing[.]" *See Markle Interests v. U.S. Fish & Wildlife Serv.*, 40 F. Supp. 3d 744, 757 & n.22 (E.D. La. 2014).

B. Neither Finality nor Exhaustion Prevent this Court from Reaching the Merits.

Courts have "consistently taken a 'pragmatic' and 'flexible' approach to the question of finality …." *Hawkes Co. v. U.S. Army Corps of Eng'rs*, 782 F.3d 994, 997 n.1 (8th Cir. 2015), *aff'd*, 578 U.S. 590 (2016). That approach is warranted here because Defendants have made clear how it will apply Swampbuster to CTM. *See* Plaintiff's appendix in Support of Motion for Summary Judgment (CTM App.) at 79. Intervenors argue that Defendants have not yet articulated how it will apply the regulations to CTM. ECF 66 at 10–12. But the NRCS's letter in response to CTM's request for a wetland delineation clearly states that the 2010 certification applies and it will review that certification only if one of two conditions are satisfied.

And CTM was not required to exhaust administrative remedies, if any, before bringing this suit. The NRCS's response to CTM's request for a wetland delineation is unclear about whether CTM has appeal rights. It states that "You have not been offered appeal rights as the appropriate time-period to request an appeal of the 4/16/2010 determination has expired" but then states that CTM can appeal the decision to not appeal. CTM App. at 79. But assuming there were administrative remedies available, any failure to exhaust is excused because the issues in this case are questions of law. *See* CTM Resistance to Motions for Summary Judgment at 4–6.

[1] *See* Declaration of Robin M. Rockwell ¶ 4 (Rockwell Decl.), *Markle Interests v. U.S. Fish & Wildlife Serv.*, No. 13-cv-00234 (E.D. La. Dec. 9, 2013), ECF No. 69-3; Declaration of Edward B. Poitevent ¶ 4 (Poitevent Decl.), *Markle*, No. 13-cv-00234 (E.D. La. Dec. 12, 2013), ECF No. 80-2.

II. The Spending Clause Does Not Grant Congress Unlimited Authority.

Defendants and Intervenors argue that Swampbuster is constitutional under Congress's Spending power. But Congress's Spending Power is not unlimited and the Supreme Court has held that a program that pays farmers to farm less of their property exceeds Congress's Spending Power. *United States v. Butler*, 297 U.S. 1, 71 (1936). Defendants cite a Tenth Circuit case to argue that *Butler* is no longer followed. ECF 67 at 11. But that case does not bind this Court and was decided before the Supreme Court in *Koontz* cited *Butler* as an example of the Court's many "unconstitutional conditions cases [that] involve a gratuitous governmental benefit of some kind." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 606–08 (2013).

Defendants also argue that *Sebelius* claims that *Butler* is outdated law. ECF 67 at 11. That argument reads too much into the Court's analysis. In discussing the limits of "Congress's ability to use its taxing power to influence conduct," the Court noted that "[a] few of our cases policed these limits aggressively, invalidating punitive exactions obviously designed to regulate behavior otherwise regarded at the time as beyond federal authority." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 572 (2012) (citing *Butler*, 297 U.S. 1). The Court then stated: "More often and more recently we have declined to closely examine the regulatory motive or effect of revenue-raising measures." *Id.* at 573.

But the Court held that the Affordable Care Act's shared responsibility payment passed "muster as a tax under our narrowest interpretations of the taxing power" and explicitly declined to "decide the precise point at which an exaction becomes so punitive that the taxing power does not authorize it." *Id.* Far from repudiating *Butler*, *Sebelius* used *Butler* as an example of the unconstitutional end of Congress's Taxing power and then noted that the shared responsibility payment passed muster even under *Butler*'s views of the constitutional limits on congressional

power. But here, Swampbuster creates a program nearly identical to the one the Court held unconstitutional in *Butler* and cannot be distinguished like the payment in *Sebelius*.

Finally, Intervenors argue that *Koontz* has no application to this case. ECF 66 at 16. While it is true that *Koontz* applied "'a special application' of [the unconstitutional conditions] doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits," 570 U.S. at 604, the Court also discussed the unconstitutional conditions doctrine broadly, *id.* at 608. Specifically, the Court cited several applications of the unconstitutional conditions doctrine concerning several constitutional rights for the proposition that "[v]irtually all of our unconstitutional conditions cases involve a gratuitous governmental benefit of some kind." *Id.* CTM relies on that statement because it applies to all applications of the unconstitutional conditions doctrine, even if the special application of the doctrine discussed in *Koontz* does not apply here.

III. CTM Offers the Best Reading of Swampbuster.

Defendants'[2] and Intervenors'[3] attempts to distinguish *Branstad v. Veneman*, 212 F. Supp. 2d 976 (N.D. Iowa 2002) (*Branstad III*), and *B & D Land & Livestock Co. v. Veneman*, 332 F. Supp. 2d 1200 (N.D. Iowa 2004), are unpersuasive. ECF 67 at 15–16; ECF 66 at 21–22. In those two cases the government made—and this Court rejected—nearly the same arguments Defendants make here. Indeed, during oral argument before the United States Court of Appeals for the Eighth Circuit in *Foster v. USDA*, the government conceded that both *Branstad III* and *B & D Land and Livestock Co.* support a reading of the statute that is identical to the one CTM

[2] Defendants also argue that CTM's interpretation of the statute is absurd. ECF 67 at 15. For the reasons explained in CTM's brief in opposition to Defendants' motion for summary judgment, ECF 65 at 25–26, CTM's interpretation falls far short of absurdity.

[3] Intervenors argue that CTM's challenge to the Review Regulation is premature. ECF 66 at 21. As stated in Section I-B, *supra*, that argument should be rejected.

advances here. *See* Eighth Circuit oral argument at 14:45, *Foster v. USDA*, 68 F.4th 372 (8th Cir. 2023) (No. 22-2729), http://media-oa.ca8.uscourts.gov/OAaudio/2023/3/222729.MP3.

In *Branstad III*, the plaintiff argued that "a certification of wetlands can be challenged at any time by a person affected by the certification." *Branstad III*, 212 F. Supp. 2d at 994. Plaintiff CTM makes the same argument here. ECF 57-1 at 21–22. This Court accepted that argument, quoted 16 U.S.C. § 3822(a)(4), and stated that "in light of the plain language of the statute," "a person affected by an existing, certified wetland determination may request that the Secretary review an existing certified determination, which ends the 'validity' of the existing certified determination." *Branstad III*, 212 F. Supp. 2d at 997. Defendants are correct that this Court in *Branstad III* addressed whether a subsequent landowner could challenge a prior certification. ECF 67 at 16. But Defendants miss a critical point of this Court's conclusion in that case—that a review request invalidates a prior determination. *Branstad III*, 212 F. Supp. 2d at 997. *B & D Land and Livestock Co.* likewise supports CTM's reading of the statute. In that case, this Court explained that 16 U.S.C. § 3822(a)(4) "expressly provides for *a second administrative challenge* to a wetland determination, *after* the final certification of the wetland has become final, when a person affected by the certification requests review of the certification by the Secretary." *B & D Land and Livestock Co.*, 332 F. Supp. 2d at 1213 (emphasis in original).

Defendants also misinterpret CTM's argument with respect to the converted wetlands regulations. ECF 67 at 16. CTM is arguing that 7 C.F.R. § 12.2(a) exceeds the agency's authority under the statute. *See* ECF 57-1 at 22 (explaining the woody vegetation addition and quoting *Global Van Lines, Inc. v. Interstate Commerce Comm'n*, 714 F.2d 1290, 1296 (5th Cir. 1983), for the rule that an "agency's regulations may not exceed a statute or modify its provisions").

CONCLUSION

This Court should grant Plaintiff's Motion for Summary Judgment.

Respectfully submitted this 25th day of February 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2025, that I submitted the foregoing Plaintiff's Combined Reply in Support of CTM's Motion for Summary Judgment to the Clerk of Court via the District Court's CM/ECF system.

Respectfully submitted this 25th day of February, 2025.

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