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## BAIT AND SWITCH

*Developers continue to call the shots in the western Everglades, where the Endangered Species Act and the Clean Water Act are routinely flouted. Meanwhile, wetlands that protect against floods, provide the public with drinking water, and sustain all kinds of wildlife are being destroyed by federal sleight of hand.*

**By Ted Williams**

Audubon, March/April 2008

The Cocohatchee Slough, rising in Audubon's 13,000-acre Corkscrew Swamp Sanctuary in southwest Florida, is a system of wet forests, wet prairies, and streams that delivers life-sustaining water to the western Everglades, of which it is part. Along the way it filters out pollutants, feeds and shelters fish and wildlife, including endangered wood storks and endangered Florida panthers, recharges aquifers, and protects humans from floods. I have known and loved these wetlands for most of my adult life. Each time I return there are fewer.

The destruction is illegal, a fact that might seem curious to someone unfamiliar with American wetlands politics. Throughout the United States, but especially in Florida, little stands between rich, politically well-connected developers and the wetlands on which they have designs, least of all federal law. *Brilliant, creative, and brazen* are the most apt modifiers for state and federal circumvention and contravention of the Clean Water Act (which proscribes wetlands destruction without mitigation) and the Endangered Species Act (which proscribes development that jeopardizes the existence of a listed species).

And then, of course, there is the official White House wetlands policy of "no net loss," set forth in 1989 by President George H.W. Bush, which would, in his words, "stand the history of wetlands destruction on its head." Bill Clinton and George W. Bush promptly committed their administrations to the same pledge and policy.

Yet an investigation conducted by the *St. Petersburg Times* revealed that between 1990 and 2005, Florida lost at least 84,000 acres of wetlands. How could this happen?

**I collected bits and pieces** of the answer this past December, first from a Cessna 172. At the controls was Beaver Aviation Service's Shawn Homoky, who punched a GPS every time we saw a wood stork. In the backseat, shooting photos, was the Corkscrew Swamp Sanctuary's assistant director, Jason Lauritsen. As we banked over wetlands in various stages of destruction, the view from the starboard window was alternately beautiful and repugnant. One instant there was the unbroken, tundralike green of the Corkscrew Regional Ecosystem Watershed (CREW), the Florida Panther National Wildlife Refuge, and the Big Cypress National Preserve; then, metastasizing into it, equally vast rectangles of bulldozed dirt, felled trees, new roads, cement, asphalt, and the red-clay roof tiles of slapdash, tacky, golf-condo sprawl.

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Where the South Florida Water Management District was maintaining CREW's fire-dependent ecosystems with prescribed burns, plumes of white smoke rose, the fragrance filling the cabin when I opened the window for Lauritsen's camera. A black thunderhead of tree swallows, ravenous for the nutritious berries, swirled around a wax myrtle. Wood storks, white ibises, herons, and great egrets foraged along ditches. Black vultures dipped and wobbled like umbrellas lost to an updraft.

Five miles southwest of Corkscrew Swamp, Lauritsen called my attention to three adjacent developments, called Parklands, Saturnia Falls, and Mirasol. Together they'll destroy 1,147 acres of wetlands in prime panther and wood stork habitat. Florida panthers—thought to number between 80 and 100—are arguably the most endangered mammals in North America and have been on the federal list since it began in 1967. And while the American population of wood storks, listed in 1984, is now thought to include about 5,000 breeding pairs, that's down from 20,000 in the 1930s. Moreover, wetlands loss in south Florida has pushed the species' main breeding concentration out of its traditional (and best) habitat in Corkscrew Swamp north as far as South Carolina.

Developers seeking to destroy wetlands in the western Everglades must obtain permits from the South Florida Water Management District and the U.S. Army Corps of Engineers. The Cocohatchee Slough Coalition (consisting of Audubon of Florida, the Collier County Audubon Society, the National Wildlife Federation, the Florida Wildlife Federation, and The Conservancy of Southwest Florida) has challenged all three projects, charging multiple violations in state and federal permitting.

In violation of the state permit for its 1,600-housing-unit, 27-hole golf-community Parklands development, The Ronto Group cleared about 18 acres of wetlands and hacked out a road (for which it paid a fine of only \$51,800). And it illegally excavated between 300,000 and 400,000 cubic yards of earth (worth \$10 million as fill, according to some estimates) from protected CREW land. For this infraction it must attempt partial restoration. Ronto ceased work when the South Florida Water Management District notified it that it had violated its state permit. The Cocohatchee Slough Coalition then got the federal permit thrown out. In the likely event that a new one is issued, the coalition vows to go back to court.

Work was further along at Saturnia Falls, another massive Cocohatchee Slough development (in which G.L. Homes of Sunrise, Florida, has received permits to build 800 housing units, though apparently there won't be golf). Today, from 2,000 feet in the air, it's a scene from a kid's sandbox: Matchbox trucks and backhoes crawling between stacks of Tinkertoy logs and fire-ant mounds of bulldozed dirt.

As we orbited over the future site of the Mirasol project, Lauritsen called my attention to a pothole where he'd photographed nine wood storks the previous December. The developer, IM Collier Joint Venture, plans 1,917 housing units, a mining operation for offsite sale of fill, 18,900 square feet of "commercial uses" for residents, an assisted-living facility, and two 18-hole golf courses. While the Cocohatchee Slough Coalition lost in its challenge of Mirasol's state permit, it is about to sue the Army Corps and the U.S. Fish and Wildlife Service for issuing a federal permit.

Spokespeople for IM Collier Joint Venture go on and on about how they've spent thousands of hours on site and never seen a stork. If true, it's because they haven't looked when the storks are there. Brooding wood storks—fanning out as far as 50 miles from their nests—can use these kinds of wetlands only when water levels fall and fish and crayfish get trapped in shallow pools. Unlike herons and egrets, they're not sight feeders, so they must feel prey with their beaks. The feeding window for a wetland may be as short as two weeks, but these windows are vital to the species' survival because for a clutch

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of two chicks to fledge, parents and young require an average of 400 pounds of protein in the space of nine weeks.

**None of the legal action brought** by the Cocohatchee Slough Coalition would have happened had the developers followed its advice and protected the wetlands, clustering residential units in relatively dry, relatively flood-proof "uplands." The coalition doesn't "favor" development in upland habitat, but it has to choose its battles, and its main mission is to protect the slough.

Is the kind of sprawl under way around Corkscrew Swamp an intelligent swap for wetlands that sustain the rich, complex ecosystems of the western Everglades, protect people and property, provide drinking water, and without which the future of wood storks and panthers unquestionably will be jeopardized? "How does your company justify wetlands destruction in endangered species habitat for golf?" I asked Ronto spokesman Bryan Farrar in an e-mail, after he'd requested that I put my questions in writing. I didn't get a response.

The Army Corps of Engineers issues dredge-and-fill permits under Section 404 of the Clean Water Act, tossing them out like confetti. But supposedly a developer must "mitigate" the damage. One way he can do this is by creating replacement wetlands, definitely possible but rarely accomplished. Wetlands created by engineers and bureaucrats usually turn out to be mere water-retention basins. A developer may also purchase credits from a "mitigation bank" that uses his money to create wetlands (which, again, rarely have genuine wetland functions) or to enhance, restore, or preserve existing wetlands. But "enhancement," at least when it means deepening, can be worse than doing nothing, and while restoration and preservation are fine, why should a developer get to compensate for wetlands he destroys by restoring or preserving wetlands that are supposed to be protected by law?

A draft Fish and Wildlife Service report destined for suppression under the Bush administration but leaked to Public Employees for Environmental Responsibility in 2001, revealed that during the Clinton years the service had been dismayed by the Corps' dereliction in protecting the western Everglades. It cited 24 wetlands-destruction permits issued between 1995 and 2000 affecting 1,790 acres, and 15 pending permits affecting 1,406 acres. Charged the service: "The tremendous development pressure and lack of a rigorous regulatory program are resulting in significant direct, indirect, and cumulative fish and wildlife resource losses and are rapidly precluding opportunities for conservation, resource management, and restoration in southwest Florida." The service had made the Corps aware of these concerns and had been rebuffed.

Most Corps "mitigation" is make-believe. For example, in the 1990s the agency permitted the destruction of 4,000 acres of wetlands in the western Everglades while ordering about 500 acres of mitigation. Without genuine wetlands to absorb floodwater and with all the new asphalt and cement, a rainstorm in 1995 forced at least 1,000 people to evacuate their homes. The state and federal governments were then obliged to spend \$30 million moving people and demolishing their ruined dwellings. As a result, Lee County wrote a watershed management plan calling for protection of natural flow ways like the Cocohatchee Slough and recommending that development be kept out of floodplains. But the Mirasol, Parklands, and Saturnia Falls projects, just over the line in Collier County, will further develop the floodplain and further constrict the Cocohatchee Slough.

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Typically fraudulent is the mitigation required of IM Collier Joint Venture for its planned 1,713-acre Mirasol development in what is some of the state's best wood stork and panther habitat. To, supposedly, compensate for the 645 acres of wetlands it will destroy, the firm must buy and protect 176 acres and "preserve and restore" 940 on-site (mostly wet) acres, the wildlife value of which will be sharply reduced by all the development and traffic. The ultimate absurdity is that the developer gets to "restore" the on-site acreage by removing alien melaleuca trees.

Like any invasive exotic, melaleuca compromises wildlife habitat, but it doesn't come close to destroying it. Moreover, you don't have to be a developer to take it out. I asked Brad Cornell, policy advocate for Audubon of Florida and the Collier County Audubon Society, for an assessment of mitigation by melaleuca extraction.

Cornell—who, like all good naturalists, detests melaleuca outside its native range—cited multiple studies by eminent scientists demonstrating the high value of melaleuca-infested wetlands. "They recharge aquifers, store floodwaters, and cleanse drinking water just as well as melaleuca-free wetlands," he said. "They also continue to grow abundant fish and other aquatic prey for wood storks and wading birds. The agencies [the Corps, the Fish and Wildlife Service, and the South Florida Water Management District] have calculated mitigation based on presumed function rather than acreage. So there's this no-net-loss lie being perpetrated, which has destroyed thousands and thousands of acres of wetlands. With mitigation by melaleuca removal, you foreclose the opportunity to ever restore those developed wetlands. It's a ridiculous, perverted policy by which developers can destroy wetlands with impunity."

Mitigation is negotiated on a case-by-case basis, but if 75 percent of a 300-acre wetlands is in melaleuca, the developer sometimes gets to destroy 200 acres of the wetlands if he agrees to strip melaleuca from the remaining 100 acres. If the infestation is greater than 75 percent, the agencies figure the wetland is worthless, and the developer can sometimes destroy the whole thing without even token mitigation. According to a Southwest Florida Regional Planning Council review of wetland projects permitted in just the Estero Bay watershed (adjacent to Cocohatchee Slough and in what the Fish and Wildlife Service calls the wood stork's core foraging area), this happened 18 times between May 2006 and June 2007.



During the wet season, this ribbon of gray cypress and green slash pine shade a broad flowing and shallow sheet of water, which slowly makes its way from Corkscrew Swamp Sanctuary (background) southwest through the Cocohatchee Slough (foreground). Development threatens the margins of the entire watershed by dredging uplands and filling the majority of the shallow wetlands. This further degrades the remaining deeper wetlands, disrupts the

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ecology of the wood stork, and threatens the species' recovery in this important portion of its range.

Jason Lauritsen

**The Mirasol property—also in the** heart of the wood stork's core foraging area—is fenced with barbed wire. Still, Corkscrew Swamp Sanctuary's Jason Lauritsen and I were able to capture from it two of the most important wildlife species in Florida. The first, plucked from a sickly melaleuca leaf, was a gray weevil slightly smaller than a garden spider. It crawled up my forefinger, anchoring its hooked feet and briefly refusing to leave when I tried to pry it off. The larvae—black and slimy as slugs but with only one horn—had left chlorophyll-depleted trails on the melaleuca leaves.

We found only the larvae of the other species—a tiny fly called a psyllid—swaddled in white flocculence and the size, shape, and color of the hard interior of a corn kernel. They barely moved, and they left the same trails. Next day, just outside the southeast boundary of Corkscrew Swamp Sanctuary, in one of grossest melaleuca infestations in the state, Cornell found adult psyllids. They were the same shape, size, and color as the larvae. But they had wings that I couldn't see even with reading glasses, and they launched at warp speed when I tweaked their butts with a pine needle.

Both leaf-eating insects evolved with melaleuca in Australia, and both were released in Florida as biological controls—the weevil in 1997, the psyllid in 2002. Multiplying like fruit flies, they swept across the state faster than anyone dared hope. By disrupting photosynthesis they deplete melaleuca roots of carbohydrates, thereby stressing the trees so that they're far more susceptible to fire, drought, and disease—most notably a native rust fungus. Seedlings are particularly vulnerable. In some cases survival has been reduced by 80 percent. Biocontrol agents offer the only real hope of naturalizing many invasive exotics, and ecological dangers have been all but eliminated by stringent pre-release "starvation tests," in which an agent is offered all manner of similar native vegetation. It passes by starving to death.

Despite its melaleuca, the Mirasol land is beautiful and relatively healthy, an imperiled wet habitat type called "hydric pine flatwoods." There are broad stands of saw palmetto, wet prairies rife with native grasses and sedges, wax myrtle, swamp maple, pond cypress, and plenty of openings where sunlight penetrates to the forest floor. South Florida slash pine still comprises much of the canopy. The weevils and psyllids have done much to naturalize the melaleuca. A decade ago the gray, peeling, paperlike bark was unblemished, the trunks ramrod straight. Now the bark is scarred, the trunks gnarled and kinky. "Melaleuca can't dominate like it used to," said Lauritsen. "It no longer has the ability to shade out all the competition. The leaves are browner. The forest has a whole different feel."

One might assume the Corps, the Fish and Wildlife Service, and the South Florida Water Management District would take into account the dramatic effect of these biocontrol agents in the joint formula by which they supposedly divine the value of wetlands and calculate proper mitigation for their destruction. But no. The data on which they base their formula predate release of even the weevils. So wetlands are all the more undervalued and mitigation all the more overvalued.

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**When a developer wants to dredge** or fill wetlands in the habitat of an endangered or threatened species and has not demonstrated proper “avoidance” or “minimization” or offered reasonable mitigation, the Fish and Wildlife Service is obligated to ask the Corps to deny the dredge-and-fill permit. The service rarely asks, and when it does the Corps frequently ignores it.

Under the Endangered Species Act the service is required to write a “biological opinion” (BiOp) on how a development will affect a listed species. When, in the course of preparing that document, it finds that a project will jeopardize a species’ existence, it must issue a “jeopardy opinion.” This means the project can’t happen unless the developer implements “reasonable and prudent alternatives.” Service biologists inform me that the Bush administration has ordered the agency not to issue jeopardy opinions.

In the summer of 2004 *Audubon* had sent me to the Cocohatchee Slough to investigate this federal lawlessness as it pertains to Florida panthers. At that time Andy Eller, formerly assigned to panthers and, to a lesser extent, wood storks—accompanied me on the same flight Lauritsen and I made this past December, and we checked out most of the same development from the ground (see “[Going Catatonic](#),” September-October 2004). Eller had been assigned to write a BiOp for the Mirasol project, which, then as now, clearly threatened the existence of panthers and wood storks.

Among the many problems identified by Eller was a three-mile-long, 200-foot-wide drainage ditch that would serve Mirasol and four other developments, including Saturnia Falls and Parklands. Mirasol promoters were hawking it as a “regional flow way” that would be a blessing for wildlife (in that it supposedly would restore historic water levels) and for humans (in that it supposedly would protect them from floods). Eller warned that it could drain Corkscrew Swamp.

When other developers complained to Fish and Wildlife Service brass about Eller, he reports that he was ordered to rewrite a BiOp with a “positive” spin, and that when he refused it was rewritten for him. Accusing him of insubordination and all manner of other fictional offenses, his superiors fired him. But aggressive intervention by Public Employees for Environmental Responsibility got him reinstated.

Starved for funding, manpower, and (in its upper echelons) integrity and commitment, the Fish and Wildlife Service now farms out its BiOps *to the developers themselves*. In assessing how their projects might affect wood storks, panthers, and other listed species, developers are provided with templates and told to fill in the blanks. The data, supposedly subject to agency vetting, is as credible as that collected by department store Santas on who’s been naughty and nice.

Nowhere are results of these bogus BiOps more obvious than in Corkscrew Swamp Sanctuary, traditionally the nation’s most important wood stork rookery. In the 1960s it produced an average of 4,490 fledglings per year. In the past 10 years it produced an average of 978. None were produced in 2005, 1,550 in 2006, and none in 2007. While the 2005 and 2007 failures were mostly due to drought, the species is obviously careening toward extirpation in south Florida. But you’d never know it by reading the non-jeopardy BiOps on Mirasol hatched after Eller was yanked from the project.

The first Mirasol BiOp—released in 2003 and the one Eller helped write—found that the project would degrade or destroy 3,164 acres of the wood stork’s core foraging area, resulting in the deaths of 292 chicks per year. This was a fact developers and politicians didn’t want to know. So the Fish and Wildlife Service scrapped the BiOp. The second version, released in 2005, reduced its projection of core foraging area degradation and destruction to 962 acres and the annual incidental take of chicks to 47. But even these were deemed wrong answers. Before the final and current Mirasol BiOp, released last May, Mirasol

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did away with its regional drainage ditch but replaced it with a network of canals, pipes, and artificial impoundments that will have similar impacts. The new BiOp proclaims that the project will be a net *benefit* to wood storks, increasing the population by 16 clutches a year.

Golf-condo sprawl is now good for wood storks? By what miracle? Mostly by phony “mitigation” in the form of onsite melaleuca removal.

The U.S. Environmental Protection Agency has grave concerns about Mirasol. On September 22, 2006, it wrote the Corps that the wetlands, despite their melaleuca, “still provide important biological and hydrological functions that include filtering and cleaning surface water runoff, storing flood waters during the rainy season, recharging groundwater, and providing flood and refuges for wildlife.”

The EPA can veto a wetlands permit but bowed out of the Mirasol battle because the Fish and Wildlife Service dropped its objections. According to published reports, Porter Goss—shortly to become CIA director but then a U.S. representative (R-FL)—had pressured the federal agencies to hurry up with Mirasol’s permitting.

On the strength of the second Mirasol BiOp, the Corps had broken with long-standing tradition and denied a dredge-and-fill permit in December 2005. On the strength of the latest BiOp, it issued the permit last October.

**In south Florida wood storks used** to nest in late fall, when September’s heavy rainwater had receded into shallow pools, trapping the fish and crayfish on which nestlings depend. But as more and more wetlands in the wood stork’s core foraging area get filled and paved, the land sheds water faster. Now most storks nest in January and February, some even in March. The later they nest, the less successful they are. That’s because if weather or predators destroy a clutch, they don’t have time to renest.

From Corkscrew Swamp Sanctuary’s 2.25-mile-long boardwalk Jason Lauritsen and Brad Cornell showed me once-great wood stork nesting habitat, now degraded by distant, off-site wetlands destruction. We walked over and through lakes, sloughs, saw-grass marshes, pine flatwoods, wet prairies, and the continent’s largest stand of bald cypress trees, some of which were mature before Columbus was born. I saw no melaleuca. Virtually all of it had been removed with a little hard work and by non-developers.

“Getting storks to nest in November and December again will be key to their recovery,” declared Cornell. “And to do that we need to preserve and restore their foraging opportunities. The Mirasol, Parklands, and Saturnia Falls sites all represent shallow wetlands that provide food for storks in November. Losing this habitat will further force them into late nesting.”

Grade-schoolers pushed past us, stopping to watch dragonflies and butterflies or listen to their volunteer guides, teachers, and cell phones.

I had towed my own children down this same boardwalk many times when wood storks, loaded down with fish caught miles away, glided over our heads on white, black-trimmed wings, long beaks

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protruding almost as far from bald necks as long legs from stubby tails. It's a scene I hope to show my grandchildren.

But it looks like I need to hurry. Despite the ongoing nesting disaster in south Florida, the Fish and Wildlife Service proposes to downlist the species to threatened.

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### WHAT YOU CAN DO

In its campaign to reform federal wetlands management in the western Everglades, Audubon needs funds and voices. Urge others to join. For more information on our work and challenges, click [here](#).