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Down Upon the Suwannee River

It was only a small environmental rule change by Bush's EPA. But it's threatening Florida's Suwannee River -- and the nation's wetlands.

By Ted Williams

Mother Jones, September 2003

Even 152 years after it was made famous by Stephen Foster, the Suwannee fits the song. From the Okefenokee Swamp in southeastern Georgia (the continent's biggest swamp, and one of the few elevated ones), it winds down 235 miles to the Gulf of Mexico in northern Florida. Of all major American rivers it is the least polluted and least obstructed.

On other rivers, "flood control" projects such as dams and levees promote property damage by encouraging floodplain development, then failing. On the Suwannee there's only one kind of flood control, the only kind that ever worked—wetlands. Many of these wetlands are called "isolated," meaning that if bureaucrats and engineers dump dye into them, it doesn't show up anywhere they are looking. But there is no such thing as isolated wetlands; the very term connotes ignorance of the natural world. "Isolated" wetlands store and filter water for the aquifers they flow into, and animals that live elsewhere in forest, prairie, or even desert seek them out to feed and breed in.

There are deep, wild woods in Florida, none deeper or wilder than the vast, spongy floodplains of the Suwannee. On the clear, cool afternoon of May 7, 2003, the air is fragrant with wildflowers, and the chanting of mockingbirds rises and falls against an electric buzz of cicadas. The river, still carrying debris from recent rains, has dropped eight feet; I can see the old waterline on the trees. A brown water snake sashays across the surface. Near the bank a large basking turtle—possibly a Suwannee cooter—splashes from a snag, giving me only a glimpse of its carapace as it sinks into the tannin-stained flow. Here, 60 miles from the sea, endangered manatees feed on succulent plants; and, day and night, threatened gulf sturgeon, the size of people and shaped like sharks, shoot high into the air, smashing the surface with their armored sides. There are bowfins, longnose and Florida gars, 15 species of sunfish, seven species of catfish, largemouth bass, and Suwannee bass. Sometimes alligators haul themselves out on the floating dock I'm standing on.

The dock belongs to Svern and Joy Lindskold. The Lindskolds don't worry about floods. Forested wetlands on and around the property slow the water and soak it up. And their house rests on 14-foot-high stilts. During the mild flood of 1998 their "first floor" (below the stilts) was five feet underwater. Scarcely inconvenienced, they canoed to and from the stairs.

The Lindskolds live in no town—just Gilchrist County. Their upstream neighbor to the north is a phosphate strip-mining company called Potash Corp. of Saskatchewan (PCS). Wrapped tightly around the 100,580-acre project area on the east, south, and west is the Suwannee River. Wetlands and streams that feed the Suwannee have been polluted, degraded, or, in many cases, gouged out of the earth by PCS; and now the company plans an 18,166-acre expansion of the mine.

Until January 10, 2003, many of the streams and wetlands on 3,997 acres of the expansion area were protected by the Clean Water Act. But on that date the Bush administration, through its Army Corps of Engineers and Environmental Protection Agency (EPA), issued a "guidance document" instructing field agents on how not to apply the Clean Water Act. No longer were they to bust parties who filled or fouled "isolated waters" that are non-navigable and "intrastate" (completely in one state) just because migratory birds are present. No definition of "isolated waters" was provided, but the agencies have since proclaimed them to be streams that flow intermittently or dip underground, and wetlands that don't have obvious connections to larger waters. The document also ordered agents to seek "headquarters approval" before issuing a citation, thereby dooming enforcement by initiating an endlessly ascending chain reaction of butt-covering permission requests.

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With these directives came a proposed rule-making, suggesting that isolated waters don't count anymore and inviting comment on how to define the word "isolated" so as to make the Clean Water Act more palatable to those it inconveniences. If the rule goes through, it could degrade 60 to 80 percent of the stream miles in the United States.

The enforcement ban—which delighted DuPont, Dow Chemical, the American Forest and Paper Association, the National Association of Home Builders, the National Cattlemen's Beef Association, state farm bureaus, and other development interests that lobbied for it—was made possible by a broad and bizarre interpretation of a January 9, 2001, Supreme Court decision about some wetlands in Illinois. The only point the Supremes had made was that use by migratory birds is no longer grounds for federal protection of intrastate, non-navigable waters. There are plenty of other enforcement standards, such as public use for recreation or use by farmers for irrigation. The guidance and proposed rule-making that now jeopardize headwater streams and wetlands across America are payback for the polluters who contributed to the Bush campaign. Agribusiness, including the logging industry, gave Bush \$2,687,275. (They tossed Al Gore \$313,925.) The construction industry, including home builders, gave Bush \$4,175,256, Gore \$1,050,902. Coal-mining companies gave Bush \$108,821, Gore \$16,450.

Even Bush's own Justice Department finds the administration's guidance document illegal. Since the Supreme Court decision, 17 lower courts have ruled that isolated wetlands and intermittent and underground streams must be protected under the Clean Water Act, and in the five cases in which conservative courts have supported some or all of the administration's new, broader interpretation, the Justice Department is vigorously appealing three and holding off on a fourth until a similar case can be decided.

Before the administration's imaginative interpretation of the Supreme Court decision, PCS couldn't destroy even an isolated wetland without a special permit from the Army Corps of Engineers. The Florida Department of Environmental Protection (DEP) still has jurisdiction over most isolated wetlands, but its enforcement record is abysmal. Julie Sibbing, wetlands policy specialist for the National Wildlife Federation, describes the state's regulations for wetland mitigation as "a joke." The streamlining of mine expansion by federal abdication is "as ugly as it gets," she says.

I had arranged to tour the mine with Stan Posey, the PCS official who deals with state and federal wetlands regulations. Posey is proud of what his company does to patch up the earth after it has torn out the phosphate ore, and he was eager to show me some of the repair work. But the day before our appointment he phoned to tell me that the big bosses in Chicago and Saskatoon had decided the tour couldn't happen. There hadn't been enough advance notice, one of them explained when I called to complain. I'd caught them off guard. They were having this important conference....

So 40 miles north of the mine, at Valdosta, Georgia, I hired a Cessna 172, inviting as my guides Svenn Lindskold, who heads the 300-member Save Our Suwannee, and Frank Sedmera, chairman of the Four Rivers Audubon Society. Once we were over the mine, it became obvious that it was too vast for Posey to have shown me what it was like from the ground even if he'd wanted to. As far as we could see, the lush, green face of northern Florida—"overburden," as defined by PCS—had been disturbed or peeled away, revealing mud, dirt, pits, and waste piles. A dragline—one of four—bit into the earth with a bucket the size of a two-car garage.

The overburden, only 7 percent of which is phosphate rock, is mixed with water and piped as slurry to separation facilities. Eventually, the phosphate gets mixed with sulfuric acid at two on-site chemical plants, a process that produces phosphoric acid (used in fertilizer, animal feed, and other products) and gypsum. The gypsum is radioactive enough to be shunned for major commercial uses and acidic enough to kill most of the plants that try to grow on it. So PCS discards almost all of it, piling it into rectangular stacks thousands of feet on a side and at least 100 feet high. Eventually, says Stan Posey, the stacks will be reshaped and vegetated, but in two hours of flying we didn't see that kind. Other

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waste products—mostly clay and sand—ae piped into giant lagoons, called slime pits by most everyone but PCS, which calls them "clay settling areas." Plumes of gray water, fading in color as the waste settled, fanned out from the pipe outlets.

About a third of the project area's 100,580 acres are—or were—in wetlands. But for every wetland acre a company destroys, Florida DEP requires it to "create" another. So, according to the state, PCS, and a large element of the general public, there's no problem. For both isolated and nonisolated wetlands there is supposedly "no net loss." PCS gets "mitigation" credit from the state for real wetlands it destroys by reshaping its slime pits and planting trees around the edges. The projects I saw were certainly an aesthetic improvement; but few if any sustain wetland plants and wildlife, purify runoff, or recharge groundwater the way real wetlands do. Basically, they're water-retention basins. So are most of the other holes that state and federal agencies require extractive industries to dig as "wetland mitigation."

There are indeed such things as man-made wetlands that work. However, they are exceedingly rare and almost never designed by engineers and bureaucrats. Only God or a very smart soil scientist can make a real wetland. One study found that no more than 5 percent of the wetland-mitigation projects in Florida could be called successful, and the General Accounting Office reports that nationwide, 80 percent fail. Even if you assume that wetland replication works, the United States loses 58,500 acres of wetlands each year.

Back on the ground, we inspected as much of the PCS mine as we could gain legal access to. We got up-close looks at attractive, rehabilitated slime pits where willows were supposed to have been shaded out by planted cypress, except the cypress weren't cooperating. "Will these ever be forested wetlands?" I asked Sedmera.

"I don't know," he answered. "You and I won't live long enough to find out. Wetland rehabilitation [he and Lindsold refuse to call it restoration] is all one vast experiment." Forested wetlands, said by PCS to have been "restored," were shadeless tangles of parched deadwood. Near one of these I stopped the car to move a gopher tortoise off the asphalt. Time may be running out for this state-listed species of special concern. And from what I've seen of wetland "restoration" in Florida and elsewhere, I can't claim to have even a little faith that PCS will rebuild the wetlands (and uplands) around which gopher tortoises feed and dig their burrows to the species' liking.

The new guidelines and proposed rule-making are just part of a larger offensive on the Clean Water Act. The statute contains a provision--never implemented—that would have gone a long way toward controlling the "nonpoint pollution" from such sources as agriculture and city streets. The Total Maximum Daily Load (TMDL) program, which deals with nonpoint pollution, is a commonsense approach requiring pollution to be limited so that a stream is no longer "impaired." At the behest of agribusiness and the timber industry a reasonably effective TMDL rule, promulgated by Clinton's EPA, was neutralized April 2, 2003, by the Bush administration. Bush's EPA proposes to redefine "impaired" waters as clean and to preserve the status quo by letting the states—which had ignored the TMDL program—worry about discharges.

And surviving Clean Water Act provisions aren't being enforced. According to EPA documents obtained under the Freedom of Information Act by the U.S. Public Interest Research Group, nearly 30 percent of the largest municipal, industrial, and federal facilities were in serious violation of pollution permits at least once between January 2000 and March 2001. The response of the Bush administration was to cut the EPA's enforcement budget.

Last December—after intense pressure from the National Chicken Council, the National Turkey Federation, the National Pork Producers Council, the National Cattlemen's Beef Association, and the American Farm Bureau Federation—Bush's EPA hatched a new rule for manure disposal at factory farms. Permits for dumping manure on land, even where it runs into streams, can now be written by

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the feedlot owner with no public or governmental oversight or review. And, provided the feedlot operator has written a permit for himself, there are no federal consequences for fish kills and other environmental damage.

The Clean Water Act inconveniences coal miners as well as phosphate miners. For example, a four-year-old court interpretation of the law forbids miners' traditional practice of pushing busted-up mountains into valleys, thereby burying headwater streams. It's cheaper to take the mountain from the coal, rather than vice versa, so during the last decade "mountaintop removal," as the public calls it—or "mountain mining," as the industry prefers—has become de rigueur in the coal seams of West Virginia, Kentucky, Tennessee, and Virginia. In addition to mountains and some of the most diverse temperate forests on the planet, the practice has cost America a lot of streams. An EPA study reports 724 miles of stream obliterated by mountaintop mining and an additional 476 miles that were "directly impacted." Mining residue in the form of broken mountains and forests is, of course, waste; but the Corps can't give permits to dump waste into wetlands and streams. Accordingly, the coal industry started calling the rubble "fill" and got fill-dumping permits from the cooperative Corps.

But then on October 20, 1999, U.S. District Judge Charles H. Haden ruled that this was unlawful. "When valley fills are permitted in intermittent and perennial streams, they destroy those stream segments," he wrote in his 49-page order. "The normal flow and gradient of the stream is now buried under millions of cubic yards of excess spoil waste material, an extremely adverse effect. If there are fish, they cannot migrate. If there is any life form that cannot acclimate to life deep in a rubble pile, it is eliminated. No effect on related environmental values is more adverse than obliteration.... Under a valley fill the water quantity of the stream becomes zero. Because there is no stream, there is no water quality."

The solution was immediately clear to the coal industry and the Bush administration. The name change had to become official. So on May 3, 2002, the administration, the Corps, and the EPA finalized a rule that redefined mining waste as fill. Five days later Judge Haden struck it down. "Only Congress can rewrite the Clean Water Act," he wrote. But, if the Bush administration's wetlands rule-making goes through, the headwater streams themselves will be redefined—that is, they won't count as streams under the Clean Water Act—and mining companies can bury them without federal permits.

The notion that isolated wetlands and intermittent and underground streams shouldn't count because they're small is like saying that tree branches shouldn't count because they're small. Cut a few and you may not see any ill effect on the tree; cut a lot, and it dies. If you add up all the "isolated waters" that the Bush administration has stripped of federal protection, it comes to 20 percent of the 105.5 million acres of wetlands that remain in the contiguous states. We started out with 220 million.

Another problem is that these wetlands and streams proceed by gravity into rivers and lakes. Under the Bush administration's new guidelines, a factory pig farm, say, can pipe manure into the source of an otherwise protected municipal water supply. It makes as much sense as pouring yourself a glass of bottled springwater, then dropping in ice chunks pried from the inside of your car's fenders.

It's not just environmentalists who are irate. Pollution permits issued by the EPA are based on pollution loads, so when those loads increase because wetlands and streams are being legally fouled, industries and municipalities are required to spend more on effluent treatment. And, in the process, the river gets no cleaner. Many of the states are angry as well. Among the 133,000 mostly negative letters the EPA received about the guidance and proposed rule-making was the following from John Cooper, who heads the South Dakota Department of Game, Fish and Parks: "The calendar has effectively been rolled back 30 years for some of South Dakota's and the nation's most important wetland resources."

As Cooper went on to note, isolated waters have functions that are different and no less important than larger ones. For example, when floods are raging in the main channel, juvenile fish find refuge in small feeder streams where the current is gentle because they are intermittent. The streams the Corps and EPA write off tend to be fed by groundwater, which remains at more or less the same

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temperature year-round; so they provide fish with refuge from ice in winter and from warm, deoxygenated water in summer. Amphibians breed in small wetlands because they are isolated from fish, which otherwise would devour them. Only 20 years ago the Animal Welfare Institute was able to report that "amphibians have fared better than other vertebrates." Today few classes of vertebrates are in more desperate trouble. The International Union for the Conservation of Nature and Natural Resources lists 157 species and four subspecies of amphibians as "vulnerable," "endangered," or "critically endangered."

Ben Stout, director of environmental studies at Wheeling (West Virginia) Jesuit University, has found that the headwater streams that mountaintop removers and the Bush administration want to bury, and which both call "dry washes," have greater biodiversity than the waters they feed. At 175 sampling sites, he and his team found all eight orders of aquatic insects they were looking for—in all, 80 groups, including perennial species. "The biological community begins in watersheds as small as six acres," he told me. "The majority of insects we found are leaf shredders; when they shred leaves the particles feed the whole downstream community. And emerging insects export this energy back to the forest in a form that's available to salamanders, frogs, fish, and birds. An intermittent stream is the link between a forest and a river."

In issuing its wetlands guidance document, the Bush administration rejected warnings from the most knowledgeable wetlands authorities in the nation, including the professional managers and biologists of such organizations as the Wildlife Society, American Fisheries Society, International Association of Fish and Wildlife Agencies, and Ducks Unlimited, who patiently explained why and how isolated waters are "an integral part of our nation's watersheds and thus affect the health of all waters of the United States," and 43 senior scientists from organizations such as the National Academy of Sciences who painstakingly detailed "the ecological goods and services" provided by isolated wetlands and intermittent and underground streams.

These goods and services are particularly evident in the woods around the Suwannee's Little Shoals. Of all the places on earth I would look for whitewater, Florida is close to the last; so after I'd seen these rapids from the air, I insisted that Lindsfold and Sedmera guide me to them by wheel and foot. Everyone but Avis appreciated the 2.2-mile ride over the rough, muddy dirt road. Deer froze and fled noiselessly over and through palmettos, their tails bobbing like snowy owls long after the forest had swallowed the rest of their bodies. Sand washes, dry for only a few days, were strewn with fox scat and wild turkey tracks. Twice we heard the demented laughter of pileated woodpeckers.

For the entire distance the car was completely in the Suwannee River. The engine ran smoothly, however, because the floodplain was dry—rivers breathe like people and we were catching this one on an exhale. A sign we'd seen as we turned off the tarred road had informed us that in 1998 the surface of the river at this point had been exactly level with the roof of the car. When the dirt road ran out, we walked through and around forested wetlands (real ones), picking and eating blueberries as we went.

These wetlands didn't look anything like the "restored" versions we'd seen earlier. They were dark, cool, and richly scented with damp earth and forest duff. A few were already dry, at least on the surface, but most held standing water. Tadpoles splashed at our feet, and all around us redbellied woodpeckers croaked. When we found pond cypress "knees," we looked for the cypress, much of which had been cut out. But other species thrived. In and around the wetlands we encountered old, lofty specimens of river birch, red maple, sweet gum, wax myrtle, persimmon, ash, and, on higher ground, loblolly pine. The diversity of wildlife was a function of the diversity of vegetation.

The area over which we had been riding and walking had been subdivided and offered for house lots. Then the Suwannee River Water Management District bought it to protect the public from floods and the river from pollution. Canoeing and kayaking are popular everywhere on the river, especially at Little Shoals. Still, most visitors—In fact, most Americans—have yet to make the connection between rivers and wetlands.

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The environmental community, which made the connection long ago, preaches about the value of wetlands; but it spends enormous resources attacking businesses that destroy wetlands without attacking the government agencies that permit and encourage the destruction. So savagely has PCS been beaten up by environmentalists that it gets jumpy when approached by reporters, especially reporters from publications like Mother Jones. Some of the pummeling was well deserved and has elicited improved behavior. But, these days, more and more of it is unfair. If all your neighbors were strip miners, you wouldn't have a better one than PCS. It really does make an effort. While it pollutes the Suwannee, it generally dumps no more than 20 percent of the limit allowed on its EPA discharge permit. Pollution is way down because the company has voluntarily reduced its use of groundwater by conserving and recycling. PCS has donated land and money to the town of White Springs for a modern sewage-treatment plant, thereby removing one of the last pollution point sources to the upper Suwannee.

Chastising industry for legally destroying wetlands is like chastising your cat for killing rodents and coughing them up under the dinner table. You can do it, but it won't get you anywhere because that's the nature of the beast. The nature of government, on the other hand, is different. Chastising the executive branch for emasculating the Clean Water Act might just get you some results—especially if you do it with letters to newspapers, on the Internet, and, ultimately, with your vote.