



WETLANDS

Agriculture's Quagmire

One of three major federal regulatory issues clouding America's agricultural future today is wetlands. Without legislative changes in the United States Congress, wetlands, endangered species and water quality control will increase in importance as farming and ranching becomes more obscure.

The wetlands issue impacts private property rights, economic viability and the day to day management of farming and ranching operations. Currently wetlands laws have as many inconsistencies as interpretations. It has become agriculture's quagmire.

Richard Newpher, executive director of the American Farm Bureau's Washington office, says the wetlands issue got caught between the Bush Administration and congressional inaction.

"Some of the key players — the Unit-

ed States Department of Agriculture (USDA) the Environmental Protection Agency (EPA), the Army Corps of Engineers (Corps), Interior Department, and the White House Council on Competitiveness — did not want to reach a solution that protects landowners as well as wetlands," says Newpher. "The presidential campaign complicated the issue even further."

Many farm organizations urged former President Bush to release the 1991 Wetlands Delineation Manual before leaving office. However, the administration lost interest in resolving the problem even though countless hours and dollars have been spent trying to reach a consensus.

As many as six wetlands delineation manuals have been published since 1988. The 1987 manual becomes policy

because Bush did not act on the 1991 manual. The 1987 manual has proven to be better than later manuals but it still has many ambiguities.

One of the major flaws is federal agencies can declare an area a wetland from maps, without seeing the property. It is the responsibility of the landowner to prove it is not a wetland. It also states if land is inundated to the surface for at least five percent of the growing season in most years, it can be declared a wetland. The manual can be loosely interpreted by radical regulators.

The 1989 manual was developed by the Corps, EPA, Fish and Wildlife Service (FWS) and Soil Conservation Service without public comment. One of the things the manual stated was land containing water 18 inches from the surface for seven days during the growing sea-

son was a wetland. Howls of protest from farmers and property owners prompted Congress to take action. A 1991 energy appropriations bill repealed the 1989 manual and prohibited the Corps and EPA from using it.

The 1991 manual requires inundation for 15 consecutive days or saturation to the surface for 21 days. It places the burden of proof on the government.

The Farm Bureau felt the new provisions treated agriculture more fairly and were a marked improvement over the 1989 manual. Environmental groups and the EPA cried foul. They claimed it would cause millions of acres of environmentally sensitive lands to lose protection.

Through political maneuvering, the 1991 wetlands manual has been referred to the National Academy of Sciences for further study. The Farm Bureau opposed the move which allocated \$400,000 for a 12-month study.

As the wetlands issue becomes more entangled in the political bureaucracy, environmental organizations are using it to gain funding and membership strength. Farmers and ranchers continue to face unnecessary regulatory threats with little hope of retaliation.

One of the murky problems is wetlands policies are being used as a vehicle to regulate land use.

The Four Star Tomato Company in Florida was cited for dredging a wetland. They had cleaned their irrigation ditches. After calling in their attorney, they were allowed to continue to operate as usual.

The Southwest Florida Water Management District placed a ban on all roller chopping after the Taylor Ranch was cited for chopping wetlands on their ranch. The ban was lifted after it was proven roller chopping actually improves wetlands areas.

In 1973 George and Sarah Perkins bought 700 acres in Tennessee. When George began ditching the land, the Corps said he was draining a wetland. He was allowed to clear only 58 acres. The now widowed Sarah continues to pay taxes on 642 unfarmable acres that nobody will buy.

Much of the argument grows out of the interpretation of true wetlands and perceived wetlands. It is basically up to individual regulatory agencies to decide what a wetland is and if it can be altered. Currently one has to go through a

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lengthy, expensive permit process to work in or around a wetland.

The regulatory agency with responsibility for wetlands-alteration permits is the Corps. FWS and National Marine Fisheries Service review permits and provide advice to the Corps. The EPA has veto authority over the Corps. Fear of veto drives the entire process.

The National Wildlife Federation, The Audubon Society, Sierra Club and other environmental organizations continue to pressure the EPA to preserve wetlands at all costs.

"The potential for mischief to landowners is endless," says Ronald Zumbun, president of the Pacific Legal Foundation, Sacramento, Calif.

It is not uncommon for farmers to be fined for filling in a sinkhole they did not know was considered a wetland. More and more frequently neighbors, who are members of environmental organizations, report the violation.

Recently two farmers in Florida had an argument unrelated to wetlands. Later one farmer reported the other had covered a wetland area. The second farmer had to prove he was not violating wetlands policy.

Government agencies also use aerial surveillance — usually without the farmer's knowledge. They fly over from time to time to keep maps current. If they discover a delineated wetland has been covered, repercussions are likely.

Severe fines and jail time are not uncommon for those who do not comply with wetland policies.

Ask Bill Ellen who is currently serving time for dumping two truck loads of landfill where one federal agent said it was OK and another said it wasn't. Ellen, who is as environmentally-conscious as they come, was expanding a wetlands area and had secured 38 permits to complete his project.

Ocie Mills and his son, Carey, spent 21 months in prison for dumping sand on a lot with Florida's permission. They were arrested by federal agents for filling in a wetland.

John Pozsgai, a Hungarian immigrant, is serving a three-year prison term for dumping topsoil on property he owned that had been filled with 7,000 tires. He was fined \$202,000.

U.S. Attorney Breckenridge Wilcox feels it is important for "those who commit criminal environmental insults . . . to learn to appreciate the inside of a federal correctional facility." Never mind the many criminals who violate human rights and are returned to the streets because prisons are overcrowded.

Besides criminal proceedings, wetlands determination can affect your operation in several ways:

- Private property rights, (no compensation for taking);
- USDA program benefits (if wetland is drained, civil penalties may be assessed if permits are not obtained);
- Ability to maintain existing drainage, (may need permit);
- Ability to build new building (cannot change use without permit);
- Potential to sell land to developers (reduced land value);
- Ability to harvest or manage timber (may need permit);
- Potential for reduced ability to borrow against devalued property;
- Effect on tax base of the community (reduces tax base).

Wetlands is section 404 of the Clean Water Act (CWA) and is highly contentious. The emphasis on clean water has begun to shift from "point sources" to "nonpoint sources."

Point sources are easily recognized as pollutants and toxic wastes flowing from a specific point such as a pipe from an industrial site.

Nonpoint sources of pollution are less obvious and often contribute to wetland areas. They include runoff from farmlands, construction, golf courses, suburban streets. Under the CWA the EPA has categorized agriculture as one of the primary non-point sources.

A major political difference between point and nonpoint sources is point sources can be adverse to human health.

Nonpoint sources deal with animal and plant habitat making it a potential ecological threat.

A wetlands strategy that is growing in popularity is wetland mitigation banks. It is a plan to deposit habitat restoration credits at one location and withdraw them later for another location. In other words, you can purchase property to create a wetlands, donate it to the government and then be allowed to operate on your own wetlands property without reprisals.

It even works within government agencies. In California, Cal-Trans occasionally finds it necessary to destroy wetlands while building roads. They are building a 90-acre pit in the Stone Lakes Wildlife Refuge to replace destroyed wetlands they may need to purchase. Once they obtain the \$2.8 million dollars needed to finish the project, they will have established their first mitigation bank. They not only buy the original right-of-way, they buy property to replace it.

After a year of negotiations, Florida's Department of Environmental Regulation (DER) issued a wetlands permit to allow the Walt Disney Company to complete its 20-year build-out of Disney World.

The mitigation to offset the wetland losses include purchase, preservation and donation to The Nature Conservancy of the Walker Ranch Property by Disney.

Approximately 530 acres of uplands will be restored to their historical wetlands state. Approximately 1,400 acres of wetlands will be enhanced by restor-

ing water flows. It includes a wetland enhancement and preservation project on the Disney property and protection of approximately 7,900 acres of Reedy Creek wetlands.

There is a long-term conservation management plan for the property which will be implemented by The Nature Conservancy and funded by Disney.

What did Disney get? The right to impact approximately 340 acres of wetlands and water bodies. Their build-out will include theme parks, hotels, roads, mass transit systems and a residential/commercial development.

Though it works for Cal-Trans and Disney, the average property owner will find the mitigation process too costly to be economically feasible.

Can farmers and ranchers look to the Clinton Administration for help? Vice President Al Gore and the new

EPA Director Carol Browner are both environmental activists.

Browner, who was Florida's DER secretary at the time, hailed the Disney agreement as a model for the nation. She applauds Florida for beginning a process that moves away from "mere environmental regulation" toward "significant environmental protection."

Browner is expected to push for the wetlands revisions of the 1989 manual. She holds fast to "avoidance" of impact on wetlands, which means no activity is to take place on or around a wetland.

With the election of the Clinton/Gore team and the appointment of Carol Browner, farmers and ranchers face challenges over the next four years that make the previous administration's handling of wetlands issues look like a Sunday School picnic.

Farmers, ranchers and organizations that represent them are seeking a common-sense solution through legislation and improved regulatory guidelines.

Farm Bureau officials say we must:

- Determine the best management practices in use by farmers and ranchers and put them into action.
- Conduct an environmental audit of farming and ranching operations to identify practices that have the potential to adversely impact water quality.
- Develop a strategy to win on key concerns of the Clean Water Act reauthorization.
- Inform members of Congress about Clean Water Act issues and delineation manual concerns.

The wetlands controversy will continue to inundate and frustrate farmers and ranchers for a long time to come.

Yet you must stay in the game; if for no other reason than to force the government and their environmental friends to think up new ways to eliminate you.

Don't quit. Be proactive. Win.

Editor's Note: Much of the information contained in this article was gathered through American Farm Bureau, Florida Farm Bureau and California Farm Bureau records.

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