

# 2017's Worst Offenses Against GEORGIA'S WATER

## GEORGIA'S STREAM BUFFERS

Legislators Stall Action to Protect Vulnerable Streams

### INTRODUCTION:

If a state law says that all of the state's water bodies must be protected by a undisturbed natural area, how is it possible that some water bodies enjoy this protection but others don't? Furthermore, how can one side of a river enjoy this protection, but the opposite side of the same river not receive the same? Yet, the reality is that during the past two years, these very situations exist, and the efforts of concerned state legislators to fix the unfair and perplexing enforcement of Georgia's stream buffer laws have been thwarted at every turn by legislative leaders and Georgia's Environmental Protection Division (EPD), the very agency charged with protecting these streams.

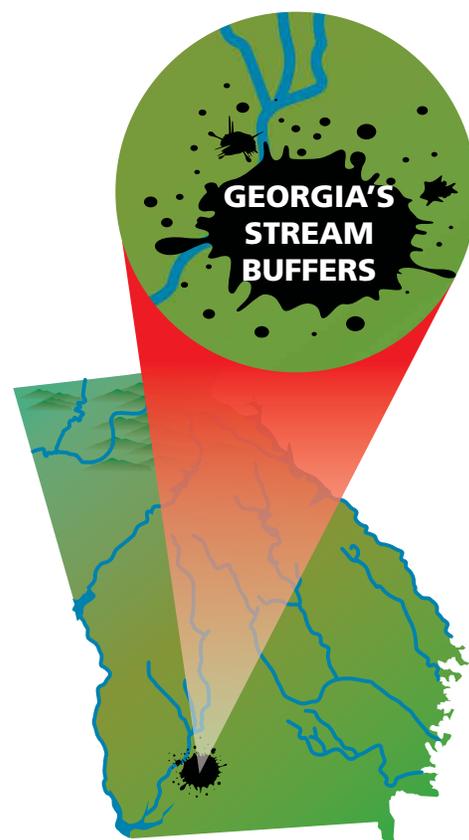
### THE WATER BODY:

Georgia's water is among the state's most critical natural resources. Our state is home to 70,150 miles of streams and rivers, 425,000 acres of lakes and reservoirs, 429,924 acres of coastal marshlands and 4.5 million acres of freshwater wetlands. These places harbor 265 species of fish and 165 species of freshwater mussels and snails. The state's rivers, streams and reservoirs fuel business, agriculture and industry, generate power and provide drinking water for Georgia's 10 million residents. Additionally, they provide those same citizens with places to boat, swim, fish, hunt and peacefully rest.

### THE DIRT:

Georgians have long agreed that the state's rivers, streams and other water bodies should be protected by undisturbed natural vegetated areas known as "buffers." The science is clear: these buffers keep water clean and cool, and protect downstream landowners and the value of their property. That's why the state has long prohibited land disturbance within these streamside buffer zones without first receiving special permission. On warm water streams the buffer is 25 feet, and on north Georgia's coldwater trout streams the buffer is 50 feet.

But, in 2015 a decision by the Georgia Supreme Court put a monkey wrench in the enforcement of this law. The justices ruled that only





water bodies with “wrested vegetation” along their banks are protected by the state’s stream buffer laws.

In places where streams run fast like in the mountains of north Georgia, there’s almost always “wrested vegetation”—a place where the force of the flowing water prevents plants from growing. In those cases, the protected natural buffer is measured from the point of wrested vegetation.

But at other locations like in south Georgia where the water flows slowly, there are many places that lack a clear line of wrested vegetation, and at those locations, EPD has used the Supreme Court ruling to assert that no state buffer should be enforced.



Where there’s not wrested vegetation, a developer can bulldoze right up to the water.

Recognizing this potential consequence of the “wrested vegetation” test, Supreme Court Justice Harold Melton wrote a dissenting opinion essentially instructing legislators to fix the law: “EPD’s extreme interpretation...is unreasonable and manifestly contrary to the statute, which is intended to ‘protect water quality and aquatic habitat’ of all state waters. Providing no buffer at all to state waters without sufficient wrested vegetation...cannot be considered reasonable.”

Many legislators have concurred with Justice Melton. After witnessing the inconsistency of EPD’s current buffer enforcement, legislators introduced a bill in 2016 to correct the problem, but at every turn, they were met with opposition.

During the 2017 session, rather than taking up a bill that would protect all of Georgia’s rivers, streams and reservoirs with a buffer, legislators instead created a committee to “study” the issue—a maneuver often used to squelch meaningful action on contentious issues.

The committee, co-chaired by Rep. Lynn Smith (R-Newnan) and Sen. Frank Ginn (R-Danielsville), has the option to create a report recommending legislative action. It met for the first time in October and has until the end of the year to create such a report.

Meanwhile, EPD continues to offer inconsistent interpretations of the state’s stream buffer laws and how to identify buffers, resulting in a failure to protect streams that lack wrested vegetation.

## WHAT MUST BE DONE:

The Joint Study Committee should provide the General Assembly with a recommendation to adopt legislation that fixes the ambiguous “wrested vegetation” stream buffer test. To protect all of Georgia’s rivers, streams and reservoirs, and those citizens that own property along them, legislators must act and provide clear stream buffer definitions.

*Top: A rain storm washes mud and silt into a stream that flows to the Chattahoochee River. In this case, a protective stream buffer was not required because the stream lacked wrested vegetation. Above left: Natural undisturbed areas along Georgia’s streams known as “stream buffers” help protect the health of the water we use for swimming, boating, fishing, drinking and more.*



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