

Celebrating the Clean Water Act's Impact on **GEORGIA'S WATER**



OGEECHEE-CANOOCHEE RIVERKEEPER V. U.S. ARMY CORPS OF ENGINEERS

Lawsuit Stops Harvest of 100-Year-Old Cypress, Prevents Misuse of Clean Water Act Forestry Exemption

INTRODUCTION

When any new law is passed, you can bet that during the sausage-making that is the legislative process, some exemptions to the law will make it into the sausage casing. The federal Clean Water Act was not immune to such machinations. Indeed, normal farming, ranching and silviculture operations that result in the filling of wetlands or streams are not subject to portions of the act. But, as they say, the devil is in the details. In 2006, when homeowners around Cypress Lake near Statesboro decided to harvest some 60 acres of water-bound cypress, blackgum and tupelo trees on their 100-plus-acre amenity lake formed by Lotts Creek, the U.S. Army Corps of Engineers obliged the homeowners by classifying the harvest as “ongoing forestry” despite the fact that there were no plans—or even the ability—to plant new trees or for the trees to naturally grow back for a future harvest. The harvest, the Corps erroneously concluded, could proceed without oversight under the Clean Water Act. That’s when Ogeechee Riverkeeper stepped in to say, “not so fast.” The outcome of the legal battle helped define exactly what forestry activities are exempt from the Clean Water Act.

THE WATER BODY

Lotts Creek flows some 35 miles through Bulloch County just west of Statesboro, and is one of hundreds of blackwater streams that twist through the low-lying bottomland forests of South Georgia feeding larger blackwater rivers like the St. Marys, Satilla and Ogeechee rivers. The streams’ tea-colored water, flanked by snow-white sandbars and dense stands of moss-draped cypress and tupelo lend to the region an iconic landscape. Influenced by regular flooding and soil conditions, these trees are extremely slow-growing, but long-lived. Thus, many of the state’s blackwater streams host trees that are hundreds of years old, despite their relative small size. It is along these small streams that generations of Georgians have fished, swam, picnicked and baptized.



Located on Lotts Creek in Bulloch County, Cypress Lake is part of the larger Canoochee-Ogeechee river system which drains some 5,540 square miles of eastern Georgia. Impacts to water quality on small streams like Lotts Creek impact the health of the Ogeechee River all the way to its mouth on the Georgia coast.

THE CASE

In 2006, Cypress Lake homeowners needed to make repairs to the dam on Lotts Creek that formed their amenity lake and they needed a way to pay for those repairs. A 60-acre stand of cypress, blackgum and tupelo in the shallow portions of the lake was the ticket. The old trees could be felled and mulched for a payout that would cover repairs and create more open water on the lake for boating and fishing.

The U.S. Army Corps of Engineers, the federal agency that oversees the Clean Water Act's wetlands permitting process classified the project as "ongoing silviculture" and washed its hands of any further oversight. But, some Cypress Lake homeowners, alarmed at the harvest of the old-growth trees, contacted Ogeechee-Canoochee Riverkeeper who stepped in to challenge the Corps determination.

The Riverkeeper argued—and the courts agreed—that the harvest was not ongoing because there was no possibility of regeneration at the site. Unlike natural wetlands where periods of drought would allow new trees to germinate, the man-made reservoir stayed wet year round preventing any regrowth.

So, while the Clean Water Act was explicit in exempting certain activities, this case enabled the courts to more narrowly define "ongoing silviculture" and put the very federal agency responsible for making such determinations on notice.

"By offering parameters for what is and is not an ongoing tree farming operation, the Court has given guidance that will protect thousands of acres of wetlands across Georgia and the country," said Brian Gist, an attorney with the Southern Environmental Law Center, which represented Ogeechee-Canoochee Riverkeeper (OCRK).

For the fledgling Riverkeeper organization which had formed just five years earlier, the court ruling made local governments take notice as well. Riverkeeper Chandra Brown recalled a meeting with local officials shortly after the legal victory:

"They told me: 'We used to just ignore you, but when you won a case against the feds, we figure we better start paying attention.' They realized that the citizen suit provision of the Clean Water Act could hold governments accountable when the government doesn't follow the law."



In 2006 when Ogeechee-Canoochee Riverkeeper stepped into a battle over saving old growth cypress trees on a 100-acre Bulloch County reservoir by suing the U.S. Army Corps of Engineers under the Clean Water Act, the grassroots citizen organization helped clarify what silviculture projects are exempt under the federal law and saved the cypress of Cypress Lake.

FOR MORE INFORMATION

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