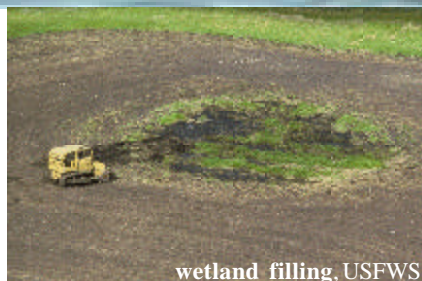


Weakening the Clean Water Act: What It Means For TEXAS



The purpose of the Clean Water Act is “to restore the chemical, physical, and biological integrity of the nation’s waters.” Over the past 31 years, the Act has led to great improvements in our water quality and protection of our water resources. In spite of this, last year the Bush Administration issued guidelines that eliminate Clean Water Act protection for many of our country’s important wetlands, streams, and other waters. These waters provide tremendous benefits to people and wildlife across the nation—benefits that will be lost forever if the Administration continues on its current path.

The U.S. Environmental Protection Agency estimates that the new guidelines remove Clean Water Act protection from 20 million acres, or 20 percent of the wetlands remaining in the lower 48 states. Loss of federal safeguards leaves these wetlands and other threatened waters subject to an incomplete patchwork of state and local protection. In the many areas where no state or local safeguards exist, it leaves these waters completely exposed to unlimited destruction and pollution.

- **Texas has a higher diversity of birds than any other state with over 600 species.**
- **Texas’ endangered plants are declining at twice the national rate.**
- **Texas has lost 6 species of fish since 1900, including 4 since 1980.**

Federal Clean Water Act Changes:

The Bush Administration claims that its new guidelines are necessary to implement a 2001 Supreme Court ruling limiting Clean Water Act protections for some “isolated” ponds and wetlands. However, the guidelines go beyond the narrow scope of the so-called

“SWANCC” decision, and needlessly put at risk millions of acres of wetlands, streams, ponds, lakes and other waters.

While the Administration had also asked for public comment on whether the rules of the Clean Water Act itself needed changing, it abandoned this effort after an enormous outpouring of opposition to this plan from Congress, 39 state agencies, conservation and environmental groups, hunters and anglers, and the public. But the guidance remains in effect and is causing unnecessary damage to many wetlands, rivers, lakes, and ponds.

Why Do We Need Federal Protection?

The removal of wetlands protections at the federal level has prompted many to look at state-level protections that could “plug the gap” left by the guidance and the 2001 Supreme Court decision. Only about one-third of the states (18) have any independent protection programs against dredge and fill activities in these types of waters, and most are substantially weaker than the Clean Water Act. In general, state water protection programs have evolved to work in conjunction with the federal law and heavily rely on federal funding and personnel to effectively protect waters.

Another concern is the nature of water resources. Since many states can share one common river, lake, or stream, protections in one state can be undermined by a lack of protections in a neighboring state. A lack of protection at the federal level could lead to a “race to the bottom” where states deregulate, making it cheapest to pollute locally in an attempt to attract industries from out of state. Additionally, some internationally important resources are now threatened, such as North America’s waterfowl, half of which breed in the prairie pothole wetlands of the northern Great Plains states where no state-level wetlands protections exist.

Current Protections in Texas

Texas, like many other states, has no independent wetlands regulatory program. The state has exercised its Section 401 Certification authority under the Clean Water Act to condition federal Clean Water Act permits such that they comply with state standards, however Texas regulatory programs are prohibited from being any stricter than complementary federal programs. Therefore, any rollback of Clean Water Act jurisdiction over wetlands and other waters will also remove state authority over activities in these waters, leaving them vulnerable to dredging, filling and potentially subject to residential and industrial pollution and oil spills.



migratory birds, TPWD

While The Texas Commission on Environmental Quality has legal authority to enforce state water quality standards on broadly-defined ‘waters of the State,’ the state has never developed an independent permitting program to enforce these standards. The Texas Pollution Discharge Elimination System (TPDES) program relies on the National-PDES program delegated to it through the Clean Water Act. Without federal Clean Water Act oversight and assistance, this program will be substantially weakened in many waters.

Additionally, the Texas Railroad Commission, not the TCEQ, regulates discharges from the oil and gas industries. This pollution-permitting program will also be weakened in the absence of federal support.

“The term ‘isolated’ is an artificial designation that has little or no basis in either science or fact” and “[We] recommend that its use in determining Clean Water Act jurisdiction should cease”.

-Texas Parks and Wildlife Dept.

What This Means for Texas

The Texas Parks and Wildlife Department estimates that a huge percentage of Texas will lose Clean Water Act protections, including 200,000 acres of playa lakes located in the Texas panhandle that could be considered “isolated”. Additionally, only 21% of Texas stream-miles flow year-round. Since Texas will likely not adopt any regulations stricter than federal regulations, the remaining 79% of stream-miles could become susceptible to unregulated dredge and fill activities and discharges of pollution if the *SWANCC* decision and guidance are interpreted broadly.

The elimination of Federal protections for such a large percentage of the State’s wetlands would only serve to further strap Texas state agencies (i.e. TPWD and TCEQ). These agencies would be forced to assume additional responsibilities and staff additional people without the federal dollars they received in the past. It would then be much more difficult to control pollution or restore waterways.



riverbed during dryseason, TPWD

SPECIFIC WETLANDS AT RISK:

Coastal Plain Wetlands

Data indicates that between 1956 and 1989, 54% of freshwater marshes in coastal areas and 8% of estuarine marshlands were lost in Texas, due mainly to the conversion of these wetlands to urban areas, rangeland, or cropland. To make matters worse, much of the remaining acreage has been seriously degraded: freshwater inflow from upstream sources has been reduced due to dams and groundwater withdrawal; pollution has increased from industry, shipping, and urbanization; and saltwater intrusion from canals, channels, and drainage ditches threaten freshwater habitats. The Galveston District of the Corps has already lifted CWA jurisdiction from wetlands connected to streams and bays via shallow swales or sheet flows, even though there are obvious hydrological, chemical, and biological connections. A study determined that almost 20% of rainfall in this region passes through so-called “isolated” wetlands and ends up in interstate waters.



Playa Lakes

The playa lake region in the Texas panhandle has many individual wetlands. These wetlands would likely be considered “isolated” by the Corps since there is little surface-water interaction, but it has been proven that the wetlands supply water to an aquifer located in Texas, New Mexico, Kansas, and Colorado.

These unique ecosystems will be threatened without Clean Water Act protections. Those considered “isolated” will have the same hydrological connectivity, via the aquifer, as others not considered “isolated”. Therefore, it does not matter if some playa lakes are regulated while others are not, as all will be affected by chemical and/or physical changes.

Bottomland Hardwood (forested) Wetlands

An important wintering ground on the central flyway, Texas’ forested wetlands are some of the most crucial ecosystems, hosting 3.5 million birds every year. As of 1980, an estimated 63% of forested wetlands had been lost in Texas, mostly due to the construction of reservoirs, logging, and the conversion of land to pine plantations. These declines are expected to continue as 14 new reservoirs will be constructed by 2040 and land continues to be developed for agricultural and urban use.

ECONOMIC IMPLICATIONS

Wetlands provide the State of Texas enormous economic benefits that cannot be overlooked. The natural processes of wetlands, like water storage and water purification, save the state millions every year in flood prevention costs and the construction and upkeep of additional water filtration plants.



SOURCES

- TPWD comments
- TCEQ comments
- TPWD website
- Texas Environmental Profiles website (joint effort between TX Center for Policy Studies and Environmental Defense)
- Birding Conservation Magazine

Wetlands and Tourism

- It is estimated that wildlife viewing in Texas generates **\$1.4 billion of economic activity** in the state per year
- Birders spend an average of \$90 million every year** in the Rio Grande Valley of Southern Texas. More importantly, they come during the 'off season', allowing local businesses to remain open for a longer part of the year, supplying much needed additional income.
- **Tourism is the 3rd largest industry in Texas, responsible for 422,000 jobs in the State.** Nature tourism is the fastest growing sector of the tourism industry.
- Researchers with Birding Conservation estimate that **each rare bird species accounts for approximately \$100,000 per year** in local spending in Texas.

“State regulation is an inadequate solution to interstate issues... Unequal regulation among various states gives an unfair economic advantage to states that allow or encourage unregulated development thus creating an incentive to do so.”
-TPWD

What You Can Do

Log on to <http://www.nwf.org/ourprograms> (click on [wetlands conservation](#) under National Programs) to get more information and to see if your legislators have taken steps to protect our Nation's waters.

Ask President Bush, Senators Cornyn and Hutchison and your representative to:

- work for the withdrawal of the harmful guidelines
- fully enforce the Clean Water Act to ensure protections for all our valuable wetlands and streams
- support the passage of the **Clean Water Authority Restoration Act of 2003** (H.R.962 and S.473)