

## **South Carolina Environmentalists Need to Be Realistic**

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On March 23, 2009 a lawsuit was filed in the United States District Court, District of South Carolina, Charleston Division by the Southern Environmental Law Center on behalf of five environmental groups. The parties against whom the suit was filed included the U. S. Army Corps of Engineers (Corps), the U. S. Environmental Protection Agency (EPA) and a local development entity (Developer).

The substance of the lawsuit is that the Corps and EPA failed to exercise jurisdiction over alleged wetlands on the property of the Developer and that the alleged wetlands are protected under the Federal Clean Water Act.

This is a final desperate attempt to economically deprive a landowner of rights to use land owned that is not owned by the Federal, State or Local Governments or any one of the Plaintiffs in the lawsuit. In the process, the results of the lawsuit will deprive surrounding landowners of both the economic and physical benefits that result from the development of the property.

The economic benefits include job creation and improved land value among other positive effects of freedom based on the preservation of private property rights. The physical benefits include the alleviation of drainage and flooding problems that have existed for years.

The landowners, as the Corps and EPA have recognized, have the right to the legitimate and mutually beneficial use of the land for any legal purpose. Both state and local governmental agencies are also attempting to deprive the Developer of its property rights as well as diminish the value of the land by exercising the power that they have unlawfully assumed.

The environmental organizations and the environmental law firm representing them have an agenda that is more national in scope than it is local. It is their intention to attempt to re-establish the jurisdiction of the federal government that was eliminated by a series of U. S. Supreme Court cases decided in, or prior to, 2006. It should be apparent that recent attempts to expand the role of government in the lives of citizens and in the world of commerce have emboldened many radical thinking "big government" advocates. This attempt is just one more step toward the restriction of one of our most basic freedoms, private property rights.

The basic idea underlying the theory of the lawsuit is that there is “connectivity” between the alleged wetlands and “navigable waters” of the United States. To support the theory the environmentalists have employed an “expert” consultant from another state. That consultant, using a topographic map produced by the federal government in 1943, attempts to “prove” connectivity with Murrells Inlet. In 1943 I was six years old and I remember the long ride from Pawleys Island where my family had a summer home to Myrtle Beach where my uncle Pat lived. In 1943 the only developed property along this narrow two-lane highway was Brookgreen Gardens. Now, in 2009, fifty-six years later, there is a four-lane bypass, and enclosed shopping center, numerous commercial and residential developments. Granted, water still flows downhill but the impediments that exist now to that flow, if it ever existed, preclude water from flowing from the alleged wetland to Murrells Inlet.

The consultant and the other allies of the environmentalists also claim that there is connectivity with Collins Creek and therefore the Waccamaw River , Winyah Bay and the Atlantic Ocean. To support this theory they must use drainage swales created when roads were built in the area. The same roads that have created economic well being in the vicinity and have also created drainage problems for the residents and businesses that can be solved by the Developers Plan.

In the decision that this lawsuit hopes to nullify, Justice Scalia recited the economic cost of the federal wetland program as \$1.7 billion annually. That was in 2006. In light of the new federal spending plans, that doesn't seem like much. But, considering the size of our state budget it seems like a considerable amount of money to me.

Regardless of the fiscal and economic consequences of this lawsuit and the ridiculous logic underlying the legal theories. The most frightening aspect to someone like me is that the slippery slope leading our country down to a more collectivist society. It takes us farther from the rights and strengths that made this country great in the first place. What happened to the Tenth Amendment to the Constitution and the language of the Declaration of Independence describing the rights and powers of the States and the God given rights of the people?