Reader's Digest

DANGER! Bureaucrats at Work

BY REP. JIMMY HAYES (D., LA.)

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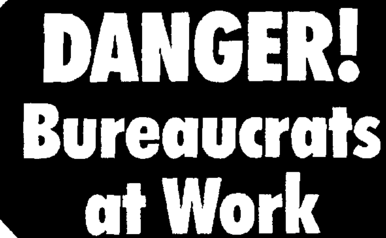

WHEN A rain-swollen creek broke through a 50-year-old levee and threatened to flood his crop land in 1987, Ricky McGown of Chariton County, Missouri, went out and rebuilt it. That repair turned McGown's world upside down.

The Army Corps of Engineers inspected the work and discovered cattails—a plant typical of wetlands—growing near the creek on McGown's land. The Corps informed the 33-year-old farmer that his reconstruction of the levee could be in violation of the 1972 Clean Water Act.

Under the act, any land considered by the Corps and the Environmental Protection Agency (EPA) to be a wetland—even land that is dry for all but seven days a year—remains protected "waters of the United States" unless the Corps issues a permit allowing an owner to disturb the site. Even then, the site may still be protected.

"How do I get a permit?" McGown asked. He was told to fill out a form, pay a $10 fee and wait. It would become the most expensive $10 that McGown ever spent.

On July 11, 1988, the Corps sent a letter informing him that the rebuilt levee traversed 6.7 acres of possible wetlands. To "mitigate" that "loss," and because the repairs had been unauthorized, McGown was ordered to set aside—without compensation—25 percent of his 255 acres, productive crop land that could never be farmed or developed. Furthermore, he still would have to pay the mortgage and property taxes on it!

In a meeting with Corps and EPA representatives, McGown pleaded for a compromise. "My daughter has emphysema, and her bills have already drained me. I can't afford to fight."

Replied an official, "If you don't give up your land, you'll see just how expensive it will be."

In the guise of protecting the environment, zealous federal agents are waging war on America's landowners

Then the Corps ordered him to tear down his repairs to the half-century-old levee, exposing his farm to future flood waters. McGown refused, deciding to fight the bureaucracy in court.

For the next two years, he borrowed to pay his attorney fees until the emotional and financial hardship proved too much to bear. Out of money, his nerves shattered, McGown abandoned the court fight and his farm. "Ten years of work," he says bitterly. "And the government took it all away."

Tragically, what happened to Ricky McGown was not an isolated case. My Congressional office, like those of my colleagues, has been inundated with horror stories of zealous unelected officials waging war on ordinary citizens in the guise of protecting the environment. Many of these people cannot afford to fight back.

Near Pensacola, Fla., 54-year-old builder Ocie Mills and his 31-year-old son Carey, a truck mechanic, unclogged a drainage ditch and spread land fill on their half-acre property in violation of a Corps cease-and-desist order. The father and son got 21-month prison sentences for disturbing a small wetland that had formed at the silted-over end of the ditch—the first Americans to go to jail for violating a wetland.

Hungarian immigrant John Pozsgai, a truck mechanic, cleared trash from 14 acres he owned in Morrisville, Pa., and disturbed an area the Corps classified as wetlands. When he continued to clean the site after receiving a cease-and-desist order from the EPA, Pozsgai was sentenced to three years in prison and fined $202,000.

A Broader Interpretation. Wetlands—swampy, marshy or water-saturated soils—were once considered a source of sickness and disease. Farmers were encouraged to drain and develop them. Huge swaths

of wetlands were eliminated for federal flood-control projects, canal building and mosquito control. Then, too late in many cases, scientists found that wetlands can help control flooding, filter out pollutants, cleanse our drinking water and provide habitat for fish and wildlife.

In 1972 Congress passed the Clean Water Act and gave the Army Corps of Engineers responsibility for issuing permits regulating the "discharge of dredged or fill material into navigable waters" of the United States. The term "wetlands" was not mentioned.

Environmental groups—eager to protect wetlands—brought numerous lawsuits to force a broader interpretation of the Act. The result: court rulings that ordered the Corps to protect wetlands adjacent to navigable waters. At the same time, the Carter Administration bolstered the EPA's veto power over Corps permit proposals by granting the EPA authority to make wetlands determinations and restrict the use of that land for any purpose. Two other federal agencies—the Fish and Wildlife Service and the Soil Conservation Service—would continue to play a supporting regulatory role.

These agencies drew up rules covering all possible variations of hydrology, soils and vegetation that might indicate the presence of wetlands. The result was a federal manual declaring that an area as small as a coffee table—and dry for all but one week of the year—could be a protected wetland.

Draconian Conditions. The manual did not distinguish between natural and man-made wetlands. Thus, a wet area in a cornfield created by a farmer's irrigation ditch would be classified in the same way as an ancient cypress swamp such as in the Florida Everglades and the Atchafalaya Basin in Louisiana.

The manual became the official wetlands bible of the four agencies. And it was implemented without the normal procedure of giving notice and allowing public comment. Literally overnight, it vastly increased the amount of acreage the federal government could regulate as wetlands. The state of Maryland had an estimated 275,000 acres of nontidal wetlands before the manual, nearly one million acres after its adoption. Niagara County in New York State found 65 percent of its land classified as potential wetlands, up from just five percent.

Almost immediately, property values began to fall in areas where development might be restricted. Building contractors suddenly found that new wetland restrictions on their properties made planned development impossible.

For example, after five years of planning and $20 million in costs, E.S.G. Enterprises prepared to build a planned community on 922 acres in Chesapeake, Va. Then in 1989, the Corps halted construction, and later determined that wetlands were

scattered throughout the property.

Aspiring businessmen with fewer resources were even harder hit. In my southwest Louisiana Congressional district, Melvin Wayne Domingue, a 36-year-old Lafayette city employee and father of three, mortgaged his home to buy 35 debris-covered acres to construct crawfish ponds. After removing truckloads of garbage, he built several ponds surrounded by levees. As he prepared to cultivate the crawfish, he received a cease-and-desist order from the Corps, alleging that his levees straddled a wetland. After an investigation, he was ordered to destroy the levees on pain of criminal penalties. He now faces losing his home because his crawfish ponds have been rendered worthless.

After the Corps makes its determination, the burden of proof that property isn't a wetland falls squarely on the owner. About one-third of all permit-seekers nationwide withdraw their applications out of frustration with the process and the prospect that the Corps will attach draconian conditions to the use of their property. If they attempt to defend themselves in court, landowners are confronted with batteries of federal lawyers armed with unlimited funds and time.

"Unfair and Abusive." No one regrets the federal manual's creation more than Bernard Goode, who headed the Army Corps regulatory office and served on the three-person Corps team that helped write it. Now retired from the Corps and working as a land consultant, he has seen firsthand its disastrous effects on innocent Americans. At one site in Dorchester County, Maryland, an interfaith group wanted to build homes for the rural poor. But the land the group had acquired contained hydric soils—supposedly an indicator of wetlands—so the Corps refused to allow construction. Goode inspected the field and was both angered and astonished to find it dry, flat and covered in weeds. Despite his pleas on its behalf, the charitable group never got approval, and the poverty-stricken families it wanted to help never got housing.

"Even when I was in the government, the wetlands program seemed wrong," Goode now admits. "I've come to know just how unfair, outrageous and abusive to landowners it really is."

In California's Central Valley, for example, a semiarid region in the fifth year of a drought, W. J. Lyons of Modesto and his three sons have run up against a bureaucratic Catch-22 situation. In 1988 they received approval to farm a 50-acre pasture they had used to grow feed for their cattle. Then the Fish and Wildlife Service intervened with the Corps, arguing that, based on topographical maps and aerial photography conducted in 1982, the field could be a protected wetland. The Corps informed the Lyons family that a wetlands violation may have occurred that could subject them to fines of

$5000 a day and a three-year jail sentence.

"We were flabbergasted," says 41-year-old Bill Lyons, Jr., who was honored as California's Outstanding Young Farmer in 1982. "Rainfall is less than 12 inches a year."

So far, the family has spent $150,000 on legal, engineering and consulting fees to defend themselves.

Grass-Roots Rebellion. In the five years that I have been a member of Congress, the list of absurd bureaucratic actions taken in the name of wetlands protection has grown alarmingly. Fortunately, there is only so much foolishness that Americans will tolerate from their government. In the past year, a grass-roots rebellion against wetlands-enforcement abuses has caught fire nationwide.

When the White House Domestic Policy Council Task Force on Wetlands conducted six public meetings on wetlands during 1990, hundreds of citizens voiced their outrage. Letters by the thousands bombarded Congress, and every time members return to their districts they receive an earful from constituents.

To its credit, the Bush Administration has agreed to revise this wetlands policy. On August 9 President Bush approved revisions to the manual that will redefine a wetland as having 15 days of standing water a year and 21 days of saturation at the surface. Plants are now rated on a wetness scale, further rolling back the amount of acreage currently claimed as marginal wetlands.

Welcome as the Administration and other reforms are, they do not address several problems. To this end, Rep. Tom Ridge (R., Pa.) and I have introduced legislation—H.R. 1330, co-sponsored by 173 colleagues—that will require the government to classify wetlands according to value and function, finally recognizing that all wetlands are not equal for regulatory purposes. For the most valuable wetlands, we propose a variety of compensation methods, including tax incentives and swaps for nonessential federal properties so that the landowner would not suffer. And we would take the EPA out of the wetlands business altogether, leaving the Army Corps with its proper, streamlined oversight role.

As is typical in Washington, too much authority was vested in too vague a law, giving federal agencies unbridled power. Now the people of this country, through their elected representatives—not the unelected federal bureaucracy—must decide our nation's environmental priorities with fairness and common sense.

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REPRINTED FROM THE DECEMBER 1991 ISSUE OF READER'S DIGEST
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