

seascapes that are unique, rare, declining, or underrepresented in existing protection efforts.²⁹² Thirty-seven years later, in 1974, Congress increased the protections to the swamp when it designated 343,850 acres of the refuge a wilderness area.²⁹³ Those protections are embodied in the Comprehensive Conservation Plan for the wilderness area which states those protections are designed to, “Restore, preserve, and protect the primeval character and natural processes of the Okefenokee Wilderness, leaving it untrammelled by man while providing recreational solitude, education, scientific study, conservation ethics, and scenic vistas.”²⁹⁴

For the myriad reasons discussed above, federal agencies have a duty to protect wilderness areas. This includes the Corps. Before the Corps grants a Clean Water Act permit, it must consider any adverse impacts that an activity might have on a wilderness area. Similarly, the federal agency administering the wilderness area, the Fish and Wildlife Service in this case, must consider these impacts during the Corps permit process.

Courts have been diligent in ensuring that federal agencies hold to their obligation to protect wilderness areas from outside impacts and pollutants. For example, the federal district court for the district of Minnesota found that a proposed snowmobile trail was incompatible with the use of the adjacent Boundary Waters Canoe Area, noting that the federal agency administering the wilderness area is responsible for preserving the wilderness character of the area.²⁹⁵ The court explained that the text of Wilderness Act indicates that the agency’s duty to preserve the wilderness is wholly independent of the source or location of that activity.²⁹⁶ In other words, it does not matter whether the noise would be coming from inside or outside the wilderness, the administering agency has a duty to prevent it. Thus, in the case of the proposed Twin Pines mine, the Service, as well as the Corps, under its public interest test, have a duty to consider the impacts of the proposed mine on the Wilderness Area.

Under the proposed action, visitors to Okefenokee Wilderness Area, would be subject to the light, noise, and other forms of pollution that the proposed mine would emit, especially when Twin Pines begins mining the portions of its site abutting the Wilderness Area.²⁹⁷ As explained above, the Wilderness Area attracts hundreds of thousands of visitors a year. In 2016, over 5,500 visitors camped overnight at the upland campsites and sleeping platforms in the Wilderness Area.²⁹⁸

²⁹¹ Robert L. Fischman, Fischman, Robert L., “From Words to Action: The Impact and Legal Status of the 2006 National Wildlife Refuge System Management Policies,” 77, 78 (2007).
Articles by Maurer Faculty. Paper 170. <http://www.repository.law.indiana.edu/facpub/170>.

²⁹² 16 U.S.C. § 668ee.

²⁹³ Okefenokee Wilderness, Public Law 93-429 (Oct. 1, 1974).

²⁹⁴ Okefenokee Wilderness Area, Comprehensive Conservation Plan (2006).

²⁹⁵ *Izaak Walton League of Am., Inc. v. Kimbell*, 516 F. Supp. 2d 982, 988 (D. Minn. 2007).

²⁹⁶ *Id.*

²⁹⁷ Until Twin Pines sells the mineral rights of those portions of its land abutting the wilderness area, it is fair to assume that it will mine up to the border of the wilderness area. Similarly, it is fair to assume that Twin Pines will operate the proposed mine 24 hours a day.

²⁹⁸ E-mail from U.S. Fish & Wildlife Serv. staff member (Sept. 6, 2019).