

Under the federal reserved water rights doctrine, when the United States sets aside federally protected land, including national wildlife refuges and wilderness areas, it impliedly reserves sufficient water to fulfill the purposes of the land.³²⁴ The respective agencies have a legal obligation to manage those lands in a manner that fulfills their purpose.

The Okefenokee National Wildlife Refuge was established in 1937 as “a refuge and breeding ground for migratory birds and other wildlife.”³²⁵ Thus, the U.S. Fish and Wildlife Service has an obligation to manage the refuge in a manner that reserves any aquatic resources necessary for the protection of migratory birds and other wildlife.

The Service has already expressed concerns about the impacts of titanium mining on the aquatic resources of Okefenokee National Wildlife Refuge. In the Refuge’s Comprehensive Conservation Plan, for example, the Service identified “strip mining for titanium ... directly adjacent to the southeastern boundary of the swamp” as a leading threat to the Refuge. Specifically, the Service expressed concerns about “alternations to the water table elevation in the swamp as a result of changes to surface and ground water quantities and flows of the Trail Ridge.”³²⁶

Before granting any federal permit, the Corps must ensure that the proposed mine would not cause changes to surface or groundwater quantities that would impact the National Wildlife Refuge or the Wilderness Area.

X. Twin Pines’ cultural resource surveys are inadequate under the National Historic Preservation Act.

The “fundamental purpose of the NHPA is to ensure the preservation of historical resources.”³²⁷ Under Section 106 of the Act, federal agencies must “take into account the effects of their undertakings on historic properties and afford the [Advisory Council on Historic Preservation] a reasonable opportunity to comment on such undertakings.”³²⁸ Similar to NEPA, Section 106 is a “stop, look, and listen provision” requiring agencies to actually consider effects to historic and cultural resources before proceeding beyond project planning into implementation.³²⁹

Although Twin Pines had three Phase 1 cultural resources surveys performed for portions of three parcels of land within the 12,000-acre Twin Pines tract, these surveys are inadequate.

³²⁴ *Arizona v. California*, 460 U.S. 605, 610 (1983); *Cappaert v. United States*, 426 U.S. 128, 138 (1976); *Winters v. United States*, 207 U.S. 564 (1908)); *High Country Citizens’ All. v. Norton*, 448 F. Supp. 2d 1235, 1239 (D. Colo. 2006).

³²⁵ Executive Order 7593 (March 30, 1937).

³²⁶ U.S. Fish & Wildlife Serv., Okefenokee National Wildlife Refuge Comprehensive Conservation Plan (2005), <https://www.fws.gov/southeast/planning/PDFdocuments/OkefenokeeFinalCCP/Okefenokee%20Final%20CCP%20edited%20.pdf> (attached as Ex. L)

³²⁷ *Te-Moak Tribe v. U.S. Dep’t of Interior*, 608 F.3d 592, 609 (9th Cir. 2010).

³²⁸ 36 C.F.R. § 800.1(a); *see also* 54 U.S.C. § 306105.

³²⁹ *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999).