CHAPTER TWELVE
The "Ultimate Hammer": Dexter Lehtinen's Lawsuit

Litigation was part of the political mix in South Florida water management as early as the nineteenth century. But when the United States brought suit against the SFWMD in 1988 it raised litigation to a new level, initiating one of the largest environmental lawsuits in American history. The suit pitted federal and state agencies against each other, pushed agricultural organizations to harden their position against environmental remediation, incited environmental organizations to vilify Big Sugar, and alienated the people who were nearest to the geographic center of it all, the Miccosukee Tribe. For all of the turmoil that it caused, however, the suit raised awareness and compelled action. It laid the foundation for the broad consensus approach that would triumph at the end of the century in Congress's billion-dollar blessing of the Comprehensive Everglades Restoration Plan. To people who worked on Everglades issues and were inured to litigation, the suit that began in 1988 would long be known as "the Big One," or simply as "Dexter Lehtinen's lawsuit."[1]

Dexter Lehtinen, raised in Homestead, Florida, in the 1950s, knew the Everglades as a place of tranquility and boyhood innocence. During the Vietnam War, Lehtinen volunteered to serve in the U.S. Special Forces as a paratrooper and ranger. Gravely wounded while leading his platoon on reconnaissance during the invasion of Laos in 1971, he bore a deep scar on his left cheek afterwards – a "trademark," journalists would later write, of his fiery, combative public persona. Returned from the war, he went to Stanford Law School and graduated at the top of his class. In the 1980s, he entered Florida politics, serving one term in the House and one in the Senate. As a state senator, Lehtinen switched from the Democratic to the Republican Party after marrying a Republican colleague – Ileana Ros – thereby attracting the attention of Republicans at the national level. In 1988, he was appointed the U.S. Department of Justice's top attorney in South Florida. The Reagan administration picked Lehtinen for the prominent position of U.S. attorney in Miami because they saw a man who would increase efforts in the drug war. Said former Associate Attorney General Frank Keating, he was "the brightest, toughest, meanest scrapper we could find." Lehtinen immediately grabbed attention by trying to assume the lead role in prosecuting former Panamanian dictator and drug lord General Manuel Noriega. Lehtinen further made news by carrying a plastic AK-47 as a symbol of his aggressive attack on drugs and by publicizing his office's new motto, "No Guts. No Glory."[2] He received the nickname "Machine Gun."[3]

Lehtinen was also passionate, if less demonstrative, about protecting the environment. Soon after taking office he arranged a meeting with Michael Finley, the superintendent of Everglades National Park, who, since his arrival in 1986, had become very concerned about the quality of water entering the park. The problem, as Finley discovered, was that EAA farmers – primarily sugar growers – used nitrate and phosphate fertilizers to stimulate their crops, and these nutrients became absorbed in the runoff that ultimately flowed into the water conservation areas and then into the park. Because of the influx of nutrients, the water conservation areas (especially

Loxahatchee National Wildlife Preserve, which adjoined the EAA) and the canals transmitting the water were choked with cattails and algae that prevented sunshine from reaching underwater plants, creating stagnant, oxygen-depleted waterbodies. Although Everglades National Park had so far experienced few of these problems, Finley realized that it was only a matter of time. "It's like a cancer," he told *Time* magazine, "and the cancer is moving south."[4]

After meeting together in 1988, both Lehtinen and Finley saw an opening to combat this agricultural pollution of South Florida waters. The state, under its five water management districts (including the SFWMD), was chiefly responsible for regulating water quality. Since the water entering the conservation areas and the park was, in the opinion of Lehtinen, Finley, and other park officials, of poor quality, the state had obviously failed to fulfill its mission, opening itself to litigation for damages done to Loxahatchee National Wildlife Refuge and Everglades National Park.[5]

Lehtinen and Finley relied on the work of Ron Jones, a microbiologist at Florida International University, for their evidence. Jones, described by one journalist as "a nerdy young [man] who was a devout adherent of an Amish-style sect called Apostolic Christianity, and believed God had sent him to Florida to save the Everglades," conducted studies that convinced him that any phosphorous amounts over 10 parts per billion would destroy the Everglades ecosystem by, among other things, transforming sawgrass swaths into areas choked with cattails – "the markers on the grave of the Everglades," according to Jones.[6] Phosphorous also killed periphyton, a food source for fish and snails that are then consumed by birds, disrupting the food chain. Yet phosphorous-rich runoff continued to pour into the Everglades, making it oligotrophic and poisoning it to death. Only by reducing phosphorous amounts to 10 parts per billion, Jones argued, could any healing begin.[7]

Periphyton. (Source: South Florida Water Management District.)

When the SFWMD released a first draft of its SWIM plan for protecting the water quality of Lake Okeechobee, Lehtinen and Finley had a clear target for their lawsuit. Although there was no direct federal interest in Lake Okeechobee, the SWIM plan clearly had ramifications for waters draining into Loxahatchee National Wildlife Refuge and Everglades National Park, two federal areas. In Lehtinen's and Finley's view, the draft SWIM plan would not reduce phosphorus levels quickly or drastically enough to protect the federal areas from the contaminated sheet flow emanating from Lake Okeechobee. Therefore, the lawsuit would ask the U.S. district court in Miami to maintain its jurisdiction until the state agencies developed an adequate plan. In other words, the suit would force the state to take a tougher stand against polluters, particularly the sugar industry.[8]

Finley had been searching for solid ground for a lawsuit against the state for the previous two years, consulting with legal counsel in the Natural Resources Defense Council and the Sierra Club, and later assigning members of his staff to develop causes for action. But it was Lehtinen who finally crafted the complaint. Legal scholar William H. Rodgers, Jr., has written that the lawsuit, entitled *United States v. South Florida Water Management District and Florida Department of Environmental Regulation, et al.*, was "brilliantly conceived" and "one of the most creative contributions in the history of modern environmental law."[9] The complaint contained five counts. The first and second counts held that the damage to natural vegetation in the Loxahatchee National Wildlife Refuge and Everglades National Park – which the state was allowing to happen by not enforcing water quality regulations – violated state law and the public trust doctrine because it was destroying federal property. The third count alleged a breach of contract: the National Park Service had contracted with the SFWMD to have water of a certain quality delivered to the park and the SFWMD had not complied. The fourth count maintained that the excessive water-born nutrients entering the park constituted a nuisance under common law and riparian water rights, while the fifth held that the state's actions violated the National Park Service Organic Act, which provided that parks would be preserved in an unimpaired condition for future generations.[10]

The strength of the lawsuit was that it claimed that the state failed to enforce its own water quality standards, in particular the narrative standard for high quality waters as defined in the Florida Administrative Code. For so-called Class III waters, the code stated that "in no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna." Although experts disagreed on the precise causes for the changes in natural vegetation, water quality was clearly involved. Thus, in the eyes of many environmentalists, Lehtinen's nuisance theory was practically irrefutable, and the litigation came to focus on nutrient loading as the keystone pollutant that altered natural conditions in both the refuge and the park.[11]

But to state lawyers and administrators, a bitter irony existed in the lawsuit: the C&SF Project – the pollution delivery system – was largely a federal project. As Keith Rizzardi, an attorney for the SFWMD, later wrote, "The federal government sued the State of Florida and the Water Management District for the consequences of operating the flood control project that the United States had helped to design and build."[12] The lawsuit simply sidestepped the federal interest in the C&SF Project, focusing instead on the federal interest in conservation lands. Lehtinen's client in this case was the Department of the Interior, not the Corps of Engineers.

In a similar vein, the agricultural interests declared that the state had developed its water quality standards under the aegis of a federal statute, the Clean Water Act, in cooperation with the federal enforcing agency, the Environmental Protection Agency. There was no legal precedent, they observed, for using the Clean Water Act to control non-point-source pollution. Since the Biscayne aquifer lay just beneath the ground surface in South Florida, non-point source pollution was ubiquitous in that region. Agricultural interests contended that the Clean Water Act did not create a federal right to sue the state over how it was managing non-point-source pollution, but Lehtinen's litigation took the opposite view, one of the first lawsuits to do so.[13]

Lehtinen filed the lawsuit on 11 October 1988, one day after the SFWMD released its draft SWIM plan for Lake Okeechobee. The SFWMD acknowledged in the plan that phosphorus

levels in the lake had increased by more than two and a half times since the early 1970s, and it recommended that the phosphorus concentration be reduced by at least half. According to the lawsuit, this was not good enough. Phosphorus levels in Lake Okeechobee had reached approximately 120 parts per billion (ppb), and ran as high as 200 ppb in the runoff from the EAA. By contrast, ambient levels of phosphorus in park waters were about 10 ppb. The lawsuit therefore highlighted the need for an Everglades SWIM plan in order to reduce nutrient levels to an amount that would not harm park resources.[14]

Lehtinen had other reasons for filing the lawsuit when he did. According to Finley, he and the U.S. attorney waited for Governor Martinez to endorse the proposed Everglades National Park Protection and Expansion Act, anxious that the litigation should not derail that effort. Perhaps, too, Lehtinen waited because he doubted whether the Reagan administration would support such a headlong legal battle with the sugar industry in Florida. By October, Vice President George H. W. Bush was in the final heat of his presidential campaign, castigating the Democratic Party nominee, Massachusetts Governor Michael S. Dukakis, for his failure to clean up Boston Harbor. The U.S. Justice Department would hardly be able to back away from a lawsuit aimed at protecting the Everglades. Regardless, Lehtinen filed the lawsuit without consulting his superiors at "Main Justice" in Washington.[15]

An employee of the SFWMD conducting sampling for water quality studies. (Source: South Florida Water Management District.)

Because Finley had been working closely with Governor Martinez on the matter of expanding the boundaries of Everglades National Park, the superintendent wanted to maintain a good relationship. Therefore, immediately after Lehtinen filed the suit, Finley telephoned Martinez so the governor would not have to discover the action in the newspapers. Finley tried to inform Martinez gently, using the bad-news, good-news formula. "What could possibly be the good news?" the governor responded when he was told that his state and the water management district were being sued by the United States. The good news, Finley replied, was that the suit did not name the governor personally.[16]

Martinez issued a statement on the lawsuit the following day. He listed various initiatives he had taken as governor for the protection of Florida's environment. He was proud of what his administration had accomplished, he said, and it would do more in the future. "While I have not seen the federal lawsuit and cannot comment on it at this time," he said, "I welcome the efforts of anyone who chooses to join in our efforts to protect one of the world's unique environmental resources."[17]

Despite Martinez's spirit of turning the other cheek, the litigation was politically charged from the outset, and it grew more politicized as various interest groups lined up on either side. The governing board of the SFWMD immediately hired outside counsel to assess the implications of the lawsuit. Vice Chairman James Garner persuaded Governor Martinez that he should request the Department of Justice to drop the suit. They flew to Washington and met with Attorney General Richard Thornburgh. According to another board member, Nathaniel Reed, who strongly opposed this move, Thornburgh told the governor, "I do not force my U.S. attorneys to drop lawsuits." If Martinez felt that the state was being unjustly sued, Thornburgh continued, he should prepare a good defense. Reed recollected that the lawsuit divided the SFWMD's governing board, as members like Reed contended that the district needed to listen more assiduously to its own scientists and agree to more stringent pollution controls, while others urged the state to spend enormous sums on legal defense so as to defeat the lawsuit without taking any action.[18] "There has to be a change," Reed insisted, while board member Doran Jason retorted, "If [Lehtinen] wants to fight, let's go ahead."[19]

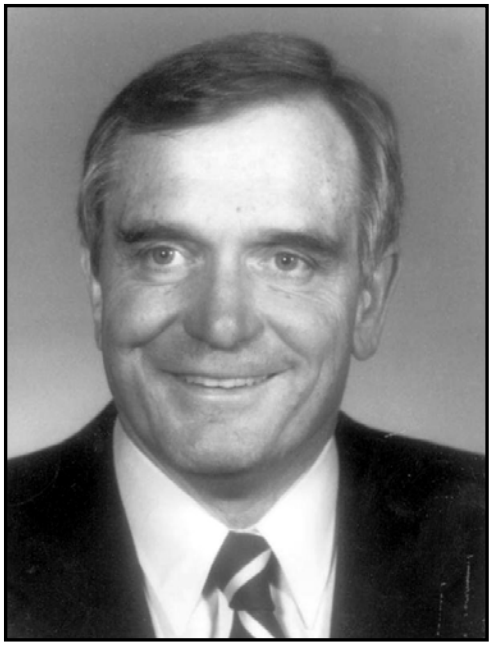
Meanwhile, the U.S. Army Corps of Engineers' reaction to the lawsuit was mixed. Colonel Terrence "Rock" Salt, who became District Engineer of the Jacksonville District in 1991, claimed that the lawsuit was useful for bringing about stronger environmental protections, but he also recognized the unprecedented strain it placed on the Corps' historic partnership with the SFWMD. The action put the Corps between the SFWMD and the National Park Service, two agencies with which it had long enjoyed close, if sometimes contentious, relationships. The Corps staff was conflicted about the litigation, with some division managers approving it and others opposing it. Legal counsel in the Jacksonville District were cautiously supportive, supplying documents upon request by the Justice Department, preparing its experts for deposition, but never offering advice on litigation strategy.[20]

In the Justice Department, the lawsuit was not given high priority, and many attorneys were doubtful that Lehtinen could win the case. His legal arguments involving the Clean Water Act were unprecedented. Moreover, without strong backing from Washington, Lehtinen and his staff attorneys in Miami were soon outgunned. While the federal government assigned relatively few lawyers to the case, the state began to spend millions of dollars on legal fees. In the words of one publication, it "responded to the suit by hiring the most expensive lawyers it could find," eventually expending approximately $6 million.[21] In addition, the court granted the Florida Sugar Cane League and other agricultural interests intervention in the case in January 1991, allowing the sugar industry to supplement state efforts with its financial resources. The industry hired high-priced law firms in Miami, and these attorneys began to accumulate deposition after deposition of interminable testimony taken from experts on both sides. By the early 1990s, the lawsuit rivaled the litigation surrounding the *Exxon Valdez* oil spill as the most expensive environmental litigation ever seen.[22]

U.S. Senator Lawton Chiles (D-Florida) made the litigation expense a campaign issue when he ran for Florida's governorship in 1990. Chiles argued that the millions of dollars Governor Martinez was spending on legal fees would be better spent on working with the federal agencies to solve the problem. Chiles promised not only to settle the lawsuit, but he also declared that cleanup of the water flowing into the Everglades would be his top environmental priority. In the November election, Chiles defeated Martinez, but it is unclear how much of a deciding factor the

Everglades lawsuit played in the outcome. Nevertheless, in fulfillment of his campaign promise, Chiles made settlement of the Everglades lawsuit his "Number 1 Environmental Priority," assigning Carol Browner, secretary of the Department of Environmental Regulation, to oversee the negotiations.[23]

Encouraged by the change in administration, a number of environmental organizations began to urge a negotiated settlement, and commenced work in that direction.[24] Also influential was Richard Stewart, assistant attorney general for the Bush administration, who had formerly worked as a lawyer specializing in environmental lawsuits against copper smelters. Stewart, described by one observer as "pompous, well organized, and conniving," in contrast to Lehtinen, who was "down-to-earth, frantic, and candid," organized federal agencies responsible for the South Florida ecosystem and got them to submit unified comments on the Everglades SWIM Plan developed by the SFWMD, decrying the destruction that had taken place to the environment.[25] This united front helped convince Governor Chiles that continuing a defense in the lawsuit was fruitless. Accordingly, on 20 May 1991, in a bit of political theater that Everglades hands would recount for years afterwards, Governor Chiles walked into the federal courthouse in Miami and appealed directly to Judge William Hoeveler to end the litigation. "I am ready to stipulate today that water is dirty," Governor Chiles declared. "I am here and I brought my sword. I want to find out who I can give that sword to and I want to be able to give that sword up and have our troops start the reparation, the clean up. . . .We want to surrender. We want to plead that the water is dirty. We want the water to be clean, and the question is how can we get it the quickest."[26] A few weeks later, the Florida Department of Environmental Regulation filed papers with the court agreeing that water going into the conservation areas and into Everglades National Park contained excessive amounts of nutrients. Department Secretary Carol Browner explained why both Chiles and the state took these actions. "The real challenge for everyone concerned," she noted, "is to stop pointing fingers to prove who is at fault and get on with the cleanup."[27]



Governor Lawton Chiles, who "surrendered his sword." (Source: The Florida Memory Project, State Library and Archives of Florida.)

Although environmentalists lauded Chiles and the state, some in the sugar industry were not pleased, especially since they believed that the state had a sound defense against Lehtinen's allegations. Chiles did not "want to have an albatross of a lawsuit, so he waltzed into federal court [and] surrendered his sword," Barbara Miedema, vice-president of communications for the Sugar Cane Growers Cooperative of Florida, stated in her characterization of the situation. This action, according to George Wedgworth, founder and president of the Sugar Cane Growers Cooperative, "forfeited our interests."[28]

The sugar industry's preferences notwithstanding, Chiles' action set in motion a more intense period of negotiations, and in July 1991, the Florida Department of Environmental Regulation, the SFWMD, and the U.S. Department of Justice reached a settlement. In the resulting 30-page "Settlement Agreement," a landmark document, the parties defined the problem, articulated a set of remedial solutions, and specified dates in the future by which certain goals had to be met. It began with a set of definitions, including item "F," which defined "imbalance in natural populations of flora and fauna" as "situations when nutrient additions result in nuisance species." Such circumstances included

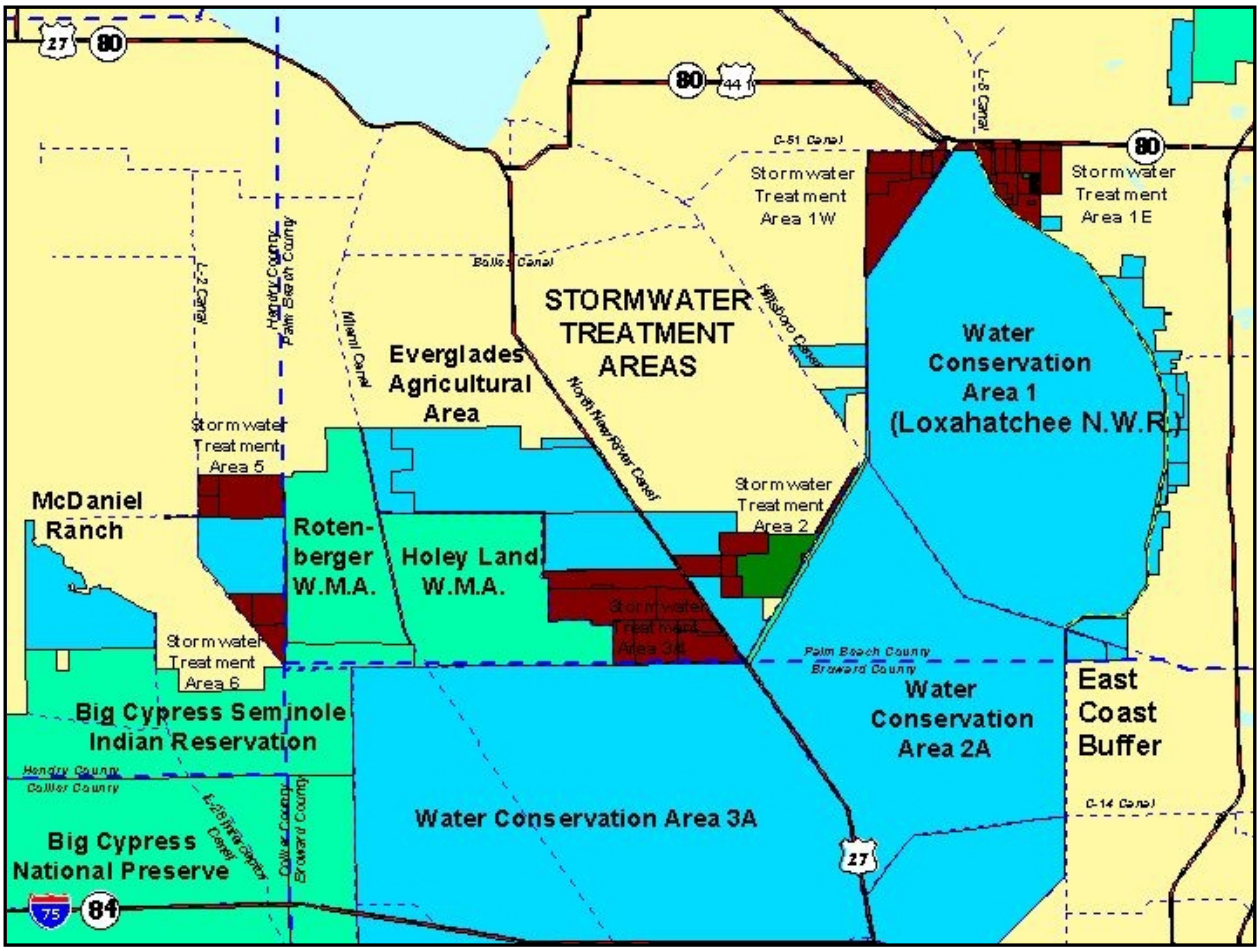
> replacement of native periphyton algal species by more pollution-tolerant algal species, loss of the native periphyton community or, in advanced stages of nutrient pollution, native sawgrass and wet prairie communities giving way to dense cattail stands or other nutrient-altered ecosystems, which impair or destroy the ability of the ecosystem to serve as habitat and forage for higher trophic levels characteristic of the Everglades.[29]

With "imbalance" of natural systems defined, the document proceeded to describe the problem, drawing a link between the phosphorus-loaded water flowing out of the EAA and the nutrient-lean (oligotrophic) natural condition of the Everglades ecosystem. The following statement carried unusual weight because it was prefaced by "the Parties agree" and it concluded with the freighted term "imbalances":

> Excess phosphorus accumulates in the peat underlying the water, alters the activity of microorganisms in the water, and disturbs the natural species composition of the algal mat (periphyton) and other plant communities in the marsh. These disturbed communities deplete the marsh of oxygen, and, ultimately, result in native sawgrass and wet prairie communities being replaced by dense cattail stands or other nutrient-tolerant ecosystems. The ability of the ecosystem to serve as habitat and forage for the native wildlife is thereby greatly diminished or destroyed. These changes constitute imbalances in the natural populations of aquatic flora and fauna or indicators of such imbalances.[30]

Following the sections on definitions and background, the document contained 20 more numbered paragraphs, of which three were especially important. In Paragraph 7, the parties agreed that phosphorus concentrations in waters entering Everglades National Park would be reduced to amounts that would prevent an imbalance of flora and fauna. In general, the objective was to obtain prescribed concentration limits for Shark River Slough and Taylor Slough in two stages, with "interim concentration limits" met by 1 July 1997 and "long-term concentration limits" by 1 July 2002. Target levels were tied to "baseline" amounts measured in 1978 and 1979. These levels, expressed in parts per billion (ppb), were set forth in Appendix A of the Settlement Agreement. The amounts varied to take into account wet and dry cycles, but reflected an overall target of about 10 ppb. Paragraph 8 of the Settlement Agreement established similar goals for water discharged from the EAA into the Loxahatchee National Wildlife Refuge. Target levels for this area were set forth in Appendix B.[31]

Paragraph 10 committed the SFWMD to develop stormwater treatment areas (STAs). The agreement identified STAs as "the primary strategy to remove nutrients from agricultural runoff." Construction and operation of these giant water filtration plants would constitute the primary remedial action, and, as such, they would become the focus of much further debate over the next decade. The district was to purchase land for the STAs, design the structures, and build them (the agreement was later amended to commit the Corps to this task as well). Initially, the



Stormwater Treatment Area 2. (Source: South Florida Water Management District.)

SFWMD was to construct four STAs, and if these did not sufficiently reduce phosphorus concentrations coming from the EAA, the district would acquire more acreage and build additional facilities. The location and size of the four STAs and the basins that each STA would serve were stipulated in a table, with further specifications detailed in Appendix C. In addition to the STAs, the Florida Department of Environmental Regulation agreed to regulate agricultural discharges by a regulatory permit system. The STAs and the permits together were expected to reduce phosphorus loading by 80 percent.[32]

But the Settlement Agreement was not the only result of Lehtinen's lawsuit. In May 1991, the Florida legislature had also passed unanimously the Marjory Stoneman Douglas Everglades Protection Act, which specifically dealt with water quality in the conservation areas and Everglades National Park. The law declared that it was the state's imperative to preserve and restore the Everglades Protection Area, which it defined as the Loxahatchee National Wildlife Refuge, the other water conservation areas, and the park, and it required the SFWMD to develop specific programs to protect and restore the Everglades. In addition, the act mandated tougher objectives for incorporation into the draft Everglades SWIM plan, including the development of

STAs and the implementation of a permit system for discharges into waters managed by the district.[33]

In February 1992, Judge Hoeveler approved the Settlement Agreement, entering it as a consent decree. The judge noted that its "ambitious plan" essentially implemented what the state had set forth in the Marjory Stoneman Douglas Everglades Protection Act. Indeed, the only real differences were that the agreement delineated additional specificity for schedules and it imposed an administrative process rather than a result.[34] This administrative process was based on interagency cooperation and consensus, achieved through a Technical Oversight Committee. This committee consisted of five members representing Everglades National Park, the Loxahatchee National Wildlife Refuge, the Florida Department of Environmental Regulation, the SFWMD, and the Corps. It had the responsibilities of planning, reviewing, and recommending all research pursuant to the Settlement Agreement, and it was supposed to operate under a consensus approach, defined as a four out of five majority. In the absence of a consensus decision, parties could seek arbitration.[35]

Although the entering of the Settlement Agreement as a consent decree supposedly ended the litigation, it continued, in large part because some entities were not happy with the arrangement. The Florida Cane Sugar League and other agricultural interests, for example, appealed the court order approving the settlement. Likewise, in the spring of 1992, following the SFWMD's Governing Board's approval of the final Everglades SWIM Plan (which, to no one's surprise, mirrored the requirements in the Everglades Protection Act and the Settlement Agreement), more than 30 agricultural cooperatives and corporations brought suit against the SFWMD. Several of these entities, mostly representing the sugar industry, petitioned for administrative proceedings to determine the legality of the Everglades SWIM Plan. The petitioners argued that the SFWMD, in refusing to disclose technical information that had been used in the settlement process and in developing the Everglades SWIM Plan, had violated the Florida Administrative Procedures Act. The petitions went to the Division of Administrative Hearings, which consolidated them into three cases. The Florida Department of Environmental Regulation, the United States, the Miccosukee Tribe, and certain environmental organizations moved to intervene in the litigation, and the Florida Division of Administrative Hearings granted all these motions for intervention.[36] As Carol Browner, secretary of the Department of Environmental Regulation derisively explained, "We get sued every day by sugar. I call it 'suit du jour.'"[37]

Referring to these challenges, Deputy Assistant Attorney General Myles Flint later explained to Congress that "relaxed rules of evidence and procedure and a plenary grant of jurisdiction governed these proceedings," so that despite efforts by the state and federal agencies to stand by the Settlement Agreement and Consent Decree, "the administrative challenges became protracted and complicated, with voluminous discovery." Not only did this renewed litigation cause further delays and expense, it threatened to undermine the consensus approach fashioned in the Settlement Agreement and Consent Decree as agricultural interests took one side while the Miccosukee Tribe and environmental organizations closed ranks on the other.[38]

Indeed, even though the Miccosukee had not participated in the water quality suit, the tribe, whose reservation lands were affected by quality issues, still had an interest in the proceedings. Lehtinen and his staff had carefully framed the lawsuit so that it neither embraced nor prejudiced tribal interests, but once a settlement was reached the tribe did not want to be left out of the

remediation effort. It therefore filed a motion to intervene in the case and attain status as a party to the Settlement Agreement. U.S. attorneys, however, were concerned that the tribe's move might jeopardize the agreement. Following negotiations, the tribe withdrew its motion to intervene in return for a Memorandum of Agreement with three Interior Department agencies: the NPS, the FWS, and the Bureau of Indian Affairs. This memorandum, dated 1 November 1991, pledged that the Interior Department would provide the tribe with results and data of all studies relating to water quality in the Everglades, allow the tribe to attend Technical Oversight Committee meetings as an interested non-member, and consult with the tribe on the Department's position prior to such meetings. For its part, the tribe agreed to give the Department notice before taking any further actions in court with regard to the Settlement Agreement.[39]

Cattails, "the markers on the grave of the Everglades." (Source: South Florida Water Management District.)

Meanwhile, even though agricultural interests continued fighting the Settlement Agreement and Consent Decree in court, Lehtinen's role in the lawsuit had just about run its course. His superiors in Washington had lost patience with his renegade spirit, while many of his staff attorneys in Miami had had enough of his autocratic management style. More importantly, the Justice Department now wanted to preserve the fragile consensus that the Settlement Agreement produced, even though it was seemingly teetering on a precipice. Toward the end of 1992, Lehtinen quit his office as U.S. attorney in Miami, leaving behind a staff that was deeply divided and isolated from the rest of the Justice Department.[40]

Lehtinen was far from through with Everglades litigation, however. Less than a year after resigning from the Justice Department, he went to work for the Miccosukee Tribe. As the tribe's attorney, Lehtinen would file suit against the United States in 1995, initiating another phase in the Everglades litigation. For Lehtinen's detractors, the volatile attorney's new championship of the Miccosukee Tribe appeared self-serving, perhaps even vengeful. "You have to be careful, because Dexter is like gasoline," complained one federal official.[41] But by then, Lehtinen was no longer calling the shots. The Miccosukee Tribe was making its own decisions and Lehtinen was merely its agent. He would continue to make himself heard on Everglades issues, but henceforth he would be at the edge of the process rather than at the center of it, accusing the federal government of selling out the Everglades and his client, the Miccosukee

Tribe, to the wealthy corporations that had an economic stake in polluting the waters of South Florida.[42]

In a similar way, Lehtinen's lawsuit continued. Although the Everglades Forever Act of 1994, discussed in Chapter 14, brought some resolve to the litigation – in that it appeased the sugar industry, which called it a "far better, more comprehensive solution than the settlement agreement" – later amendments to that act would be the subject of additional appeals and contentions. In the initial years of the twenty-first century, *U.S. v. South Florida Water Management District* remained active, although under the jurisdiction of Judge Federico A. Moreno.[43] To Michael Finley, this was a good thing. "The court still has jurisdiction," he stated in a 2004 interview, "which is the ultimate hammer over the state and the South Florida Water Management District."[44]

The lawsuit that Dexter Lehtinen instigated in 1988, then, was not a happy affair. It sharpened differences among all stakeholders in South Florida's water resources and drove wedges between federal and state agencies that had long labored to work cooperatively and share information with one another. As Estus Whitfield, environmental adviser to both Governor Martinez and Governor Chiles maintained, "the lawsuit set back the restoration efforts substantially" by "pitt[ing] everybody against everybody else." "That is not the formula for getting something done," Whitfield contended. "That is the formula for fussing and fighting and going nowhere."[45]

Yet in other ways, the lawsuit was a necessary instrument of change. The cost of litigation – both in monetary terms and in the toll it took on people's lives – drove many diverse interests to seek consensus as an alternative to fighting and gridlock. At the same time, it jarred Florida into taking action to restore water quality to the Everglades. "Without litigation," Nathaniel Reed contended, the SFWMD "never would have been able to persuade the taxpayers and the sugar industry that steps had to be taken to control the pollution of the Everglades marsh."[46] Indeed, the litigation brought about four specific actions that established a foundation for environmental mitigation efforts in the 1990s: the Marjory Stoneman Douglas Everglades Protection Act, the Everglades SWIM Plan, the Settlement Agreement, and the Consent Decree. Viewed in retrospect, the lawsuit was a major turning point in the long, complicated, and arduous transformation of the C&SF Project from a system designed primarily for flood control and irrigation to one bent toward ecosystem restoration and the preservation of a sustainable environment.

Chapter Twelve Endnotes

[1] William H. Rodgers, Jr., "The Miccosukee Indians and Environmental Law: A Confederacy of Hope," *Environmental Law Reporter* 31 (August 2001): 10918; John D. Brady interview by Theodore Catton, 12 May 2005, 1 [hereafter referred to as Brady interview].

[2] All quotations in Rebecca Wakefield, "Lehtinen for Mayor," *Miami New Times*, 22 May 2003; see also James Carney, "Last Gasp for the Everglades," *Time* 134 (25 September 1989): 27.

[3] Rodgers, "The Miccosukee Indians and the Environmental Law," 10918.

[4] As quoted in Carney, "Last Gasp for the Everglades," 27.

[5] Finley interview, 2.

[6] Both quotations in Grunwald, *The Swamp*, 284-285.

[7] Michael Grunwald, "Water Quality is Long-Standing Issue for Tribe," *The Washington Post*, 24 June 2002.

[8] Keith Rizzardi, "Translating Science into Law: Phosphorus Standards in the Everglades," *Journal of Land Use and Environmental Law* 17 (Fall 2001): 151; "Everglades Water Threatened," *Engineering News-Record* 221 (27 October 1988): 16.

[9] Rodgers, "The Miccosukee Indians and the Environmental Law," 10918.

[10] Finley interview, 4; U.S. Civil Complaint, "Everglades Litigation and Restoration" <http://exchange.law.miami.edu/everglades> (29 August 2005).

[11] Rodgers, "The Miccosukee Indians and the Environmental Law," 10918. Florida Administrative Code quoted in "Settlement Agreement," *United States v. South Florida Water Management District*, Case No. 88-1886-CIV-Hoeveler, 4 January 1995, 3.

[12] Rizzardi, "Translating Science into Law," 150-151.

[13] Brady interview, 2.

[14] South Florida Water Management District, "Draft Interim Surface Water Improvement and Management (SWIM) Plan for Lake Okeechobee," 10 October 1988, 19, File Okeechobee S.W.I.M. Plan (SFWMD) – 1988, Box 1, S1497, Department of Agriculture and Consumer Services, Surface Water Improvement and Management Plan Files, FSA, 19; Rizzardi, "Translating Science into Law," 151; "Everglades Water Threatened," 16.

[15] Grunwald, "Water Quality is Long-Standing Issue for Tribe."

[16] Finley interview, 4.

[17] "For Your Information," 12 October 1988, File Everglades, Box 88-02, S1331, Executive Office of the Governor, Brian Ballard, Director of Operations, Subject Files 1988, FSA.

[18] Nathaniel Reed interview by Julian Pleasants, 18 December 2000, 22, Everglades Interview No. 2, Samuel Proctor Oral History Program, University of Florida, Gainesville, Florida [hereafter referred to as Reed interview].

[19] As quoted in Carney, "Last Gasp for the Everglades," 27.

[20] Brady interview, 2.

[21] Norman Boucher, "Smart as Gods: Can We Put the Everglades Back Together Again?" *Wilderness* 55 (Winter 1991): 18.

[22] Brady interview, 2; Michael Satchell, "Can the Everglades Still Be Saved?" *U.S. News & World Report* 108 (2 April 1990): 24; Wedgworth and Miedema interview, 5.

[23] Jim Lewis, "Key Environmental Accomplishments of the Chiles-McKay Administration," 12 December 1991, File Environmental Issues, Box 5, S1824, Executive Office of the Governor Subject Files, 1991-1996, FSA.

[24] "Everglades Lawsuit and Cleanup," undated memorandum, File Environmental Issues, Box 5, S1824, Executive Office of the Governor, Subject Files, 1991-1996, FSA. The environmental organizations were the Wilderness Society, Florida Audubon Society, and Environmental Defense Fund.

[25] Rodgers, "The Miccosukee Indians and Environmental Law," 10923.

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[28] Wedgworth and Miedema interview, 5.

[29] *United States of America, et al., v. South Florida Water Management District*, Settlement Agreement, 26 July 1991, "Everglades Litigation and Restoration" <http://exchange.law.miami.edu/everglades> (25 August 2005) [hereafter referred to as Settlement Agreement].

[30] Settlement Agreement.

[31] Settlement Agreement.

[32] Settlement Agreement.

[33] South Florida Water Management District, "Draft Surface Water Improvement and Management Plan for the Everglades: Planning Document," 24 September 1991, File Everglades SWIM Plan 1990-1991, Box 1, S1497, Department of Agriculture & Consumer Services, Surface Water Improvement and Management Plan Files, FSA.

[34] *United States of America, et al., v. South Florida Water Management District*, Consent Decree, 24 February 1992, File 1110-2-1150a Settlement Agreement, Case #88-1886-CIV-HOEVELER, Box 3977, JDAR.

[35] Settlement Agreement.

[36] SWIM Challenges, "Everglades Litigation and Restoration" <http://exchange.law.miami.edu/everglades> (29 August 2005). The following organizations petitioned: Sugar Cane Growers Cooperative of Florida; Roth Farms, Inc.; and Wedgworth Farms, Inc. (DOAH Case No. 92-3038); Florida Sugar Cane League, Inc,; United States Sugar Cane Corporation; and New Hope South, Inc. (DOAH Case No. 92-3039); Florida Fruit and Vegetable Association; Lewis Pope Farms; W. E. Schlecter & Sons, Inc.; and Hundley Farms, Inc. (DOAH Case No. 92-3040).

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[38] House Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, *Oversight Hearing on the Land Use Policies of South Florida with a Focus on Public Lands and what Impact these Policies are Having*, 103rd Cong., 2d sess., 1994, 66-67.

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[44] Finley interview, 5.

[45] Whitfield interview, 25.

[46] Reed interview, 22.