

UNITED STATES DISTRICT COURT

for the

DISTRICT OF COLUMBIA

ENVIRONMENTAL DEFENSE FUND, *Incorporated*,
on behalf of all those entitled to the full benefit, use and
enjoyment of the national natural resource that is the
Oklawaha Regional Ecosystem without degradation resulting
from the construction of the *Cross Florida Barge Canal* by the
Defendants,

Plaintiff,

v.

Corps of Engineers of the United States Army;
Stanley S. Resor, Secretary of the Army;
William F. Cassidy, Chief of Engineers, Corps of Engineers of
the United States Army,

Defendants

YANNAKONE & YANNAKONE

Attorneys for the Plaintiff

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To

UNITED STATES DISTRICT COURT
for the
DISTRICT OF COLUMBIA

Plaintiff upon its verified complaint herewith filed, hereby makes application for an immediate hearing of this cause and of the Plaintiff's application for a preliminary injunction and for a permanent injunction.

YANNACONE & YANNACONE
Attorneys for the Plaintiff,
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The Plaintiff complaining of the Defendants by its attorneys, YANNACONE & YANNACONE, sets forth and alleges:

1. Jurisdiction.

Jurisdiction of this Court is invoked under Title 28, United States Code, §1331(a).

“The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.”

This action arises under Article VI, section 2 of the Constitution of the United States.

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

and involves the declaration and interpretation of the Plaintiffs’ rights guaranteed the Ninth Amendment of the Constitution of the United States,

“The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.”

and protected under the *due process* clause of the Fifth Amendment of the Constitution of the United States.

“ . . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law: . . . ”

and also requires the declaration of the rights of the Plaintiffs under the Treaty with Great Britain for the Protection of Migratory Birds concluded August 16, 1916, and the Treaty with the United Mexican States for the Protection of Migratory Birds and Game Mammals, concluded February 7, 1936.

The matter in controversy, exclusive of interest and costs exceeds the value of Ten Thousand (\$10,000) Dollars.

2. Jurisdiction

Jurisdiction of this court is invoked under Title 5, United States Code, §702(a) and the federal statutes relevant to this proceeding are:

Title 33, United States Code, §540

“Federal . . . improvements of rivers . . . and other waterways shall be under the jurisdiction of and shall be prosecuted by the Department of the Army under the direction of the Secretary of the Army and the supervision of the Chief of Engineers . . . which said . . . improvements shall include a due regard for wildlife conservation.”

Title 16, United States Code, §§580m, 580n

“It is declared to be the policy of the United States to provide that reservoir areas of projects for flood control, . . . and other related purposes owned in fee and under the jurisdiction of the secretary of Army and the Chief of Engineers shall be developed and maintained so as to encourage, promote, and assure fully resources of readily available timber, through sustained yield programs, reforestation and accepted conservation practices, and to increase the value of such areas for conservation, recreation, and other beneficial uses: Provided, that such development and management shall be accomplished to the extent practicable and compatible with other uses of the project.”

“In order to carry out the national policy declared in §580m of this title, the Chief of Engineers, under the supervision of the Secretary of the Army, shall provide for the protection and development of forest or other vegetative cover and the establishment and maintenance of other conservation measures on reservoir areas under his jurisdiction, so as to yield the maximum benefit and otherwise improve such areas. . . .”

Title 16, United States Code, § 661 *et seq.*

“... Wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs....”

“... Whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purposes whatever, including navigation and drainage, by any department or agency of the United States, ... such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular state wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development.”

“... the project plan shall include such justifiable means and measures for wildlife purposes as the reporting agency finds should be adopted to obtain maximum overall project benefits.”

“... whenever the waters of any stream or other body of water are impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, adequate provision, consistent with the primary purposes of such impoundment, diversion or other control, shall be made for the use thereof, together with any areas of land, water, or interest therein, acquired or administered by a Federal agency in connection therewith, for the conservation, maintenance and management

of wildlife resources thereof, and its habitat thereon, including the development and improvement of wildlife resources. . . .”

The Water Pollution Control Act
Title 33, United States Code §466(h)

“It is declared to be the intent of the Congress that any Federal department or agency having jurisdiction over any . . . installation, or other property shall . . . cooperate . . . in preventing or controlling water pollution.”

Title 16, United States Code, §460d C.F.R. § 209

The Migratory Bird Act
Title 16, United States Code, § §701 *et seq.*

3. Venue

The venue of this action is determined under the Title 28, United States Code, §1391(e).

4. Declaratory Judgment

This is a proceeding for a Declaratory Judgment under Title 28, United States Code, §§2201, 2202, declaring the rights and legal relations of the parties to the matter in controversy, specifically declaring:

(a) That the *Oklawaha Regional Ecosystem* is a national natural resource treasure.

(b) The rights of the people of the United States and State of Florida in and to the full benefit, use, and enjoyment of the economic, recreational, educational, social, cultural and historic values of the *Oklawaha Regional Ecosystem* without degradation resulting from the construction of the Cross Florida Barge Canal by Defendants.

(c) That the construction of the Cross Florida Barge Canal violates the rights of the class represented by the Plaintiff guaranteed under the Ninth Amendment of the Constitution of the United States and protected by the *due process* clause of the Fifth Amendment of the Constitution of the United States.

5. Class Action

The Plaintiff, Environmental Defense Fund, *Incorporated*, (EDF) is a non-profit, public-benefit membership corporation duly organized and existing under and by virtue of the laws of the State of New York. EDF is made up of scientists and other citizens dedicated to the protection of man's environment, and was established for the purpose of taking whatever legal action is necessary to protect the environment. EDF serves as the legal action arm of environmental scientists throughout the United States and seeks to establish, through appropriate litigation, a body of common law under which the general public can assert its constitutional right to a salubrious environment.

The Environmental Defense Fund, *Incorporated*, does not support private damage suits of any kind. Any legal action brought by EDF is founded on broad ecological grounds and asserts the fundamental constitutional right of all the people to a salubrious environment undiminished in quality by the actions of the Defendants complained of herein.

Policy for the Environmental Defense Fund, Incorporated, is set by a Board of Trustees composed of scientists, citizens and counsel. EDF maintains a Scientists Advisory Committee which evaluates the scientific merits of any legal action contemplated, and EDF only takes legal action where its position has broad support within the scientific community.

No Trustee of the Environmental Defense Fund, Incorporated, including its legal counsel, receives any fees for services rendered as a trustee, although expenses related to corporate activities are reimbursed. EDF finances are handled by an independent Certified Public Accounting firm.

This action is brought by the Environmental Defense Fund,, *Incorporated*, on behalf of all those entitled to the full benefit, use and enjoyment of the particular natural resources herein described without diminution by the actions of the Defendant, as a class suit in accordance with the provisions of Rule 23 of the Federal Rules of Civil Procedure.

The members of this class are so numerous as to make it impracticable to bring them all before this Court. There are substantial questions of law and fact common to the class and common relief on behalf, of all members of the class is sought.

The claims of the representatives being typical of the claims of the members of the class, and the defendants' actions having substantial effect upon all members of the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole, this action is a proper class action.

The members of the class are fairly and adequately represented by the Plaintiff and the Plaintiff has no interest adverse to that of any individual who might be entitled to the relief sought herein.

6. The Undisturbed Oklawaha Regional Ecosystem

The Oklawaha is one of the principal rivers of Florida. It has its source in several large lakes of the central peninsula, including Lake Griffin, Lake Eustis, Lake Harris and Lake Dora. It flows northward for some sixty miles and enters the St. Johns River about eight miles below Lake George. The great flow of the water from Silver Springs joins the Oklawaha through Silver Springs Run and twenty miles further north, where the river bends abruptly eastward, it receives the overflow from Orange Lake through Orange Creek.

The Oklawaha is a sand-bottom river and its waters are clear, although stained tan by acids from the bark and leaves of the dense tree swamp through which it meanders. Throughout its course the river twists and doubles back and forth in a well-defined, heavily forested valley so that its actual length is a third again as long as its valley.

The Oklawaha is navigable, and indeed for many years small steamboats, short enough to negotiate the many sharp turns, made weekly trips from Palatka on the St. Johns to Silver Springs. From earliest times the Oklawaha has served man as a pathway through the jungle fastness of its great tree swamp. The Indians of the time of William Bartram, Florida's first visiting naturalist, called the river Ockli-Waha—Great River—and it was for them an important highway and hunting ground. A hundred years ago, when most of Florida was wild, naturalists and hunters alike regarded a trip up the Oklawaha as an exciting and rewarding venture into wilderness. Today, when so many of the diverse original Florida landscapes are threatened with obliteration, the Oklawaha, in its lower reaches, remains as it was, a dark, beautiful stream, clear and free-flowing, and now as in past times, noted for its fine fishing. Channel catfish, chain pickerel, and many species of sunfish including redbreast, shellcrackers, and speckled perch abound and the river is famous for the exceptional size of its largemouth black bass.

The many kinds of wildlife that delighted the early outdoorsmen remain, with the exception of the Carolina Paroquet, the Ivory-billed Woodpecker and the Roseate Spoonbill. And perhaps if the great woodpecker is not really extinct, and if the spoonbills continue their slow come-back, a traveler on the Oklawaha will one day round a bend and see once again the heart-stopping sight of these spectacular birds against the green back-drop of the river forest. In any case he surely will see the many kinds of herons, the Limpkins, gallinules and rails feeding at the river edge; Wood Ducks flying headlong through the bordering forest; snakes, turtles and alligators sunning themselves on downed tree trunks, and may get fleeting glimpses of deer, raccoons, otters, a wild cat or a black bear. By incredible good fortune, most of the wild things Bartram saw are still to be seen along the lower Oklawaha today.

The Oklawaha is an ancient Florida river, geologically speaking. In its long life span it has carved out a mile-wide valley, through which now it meanders leisurely. When the river runs high, as it does in the wet period of the climatic cycles, or in the annual rainy season, the water flows over its low banks and spreads out on the valley floor. During dry times the water recedes to within the river banks. The trees of the valley forest are adapted to these periodic floodings and recessions. They are for the most part deciduous, and include tupelo, water-locust, water-ash, swamp red bay, water oak, sweet gum, red maple, loblolly bay, Florida elm, water-hickory, cabbage palm and the magnificent bald cypress. On higher ground, along the edges of the valley, the typical hammock hardwoods such as magnolia, blue beech, hop-hornbeam and laurel oak make up the forest.

This hydric hammock or tree swamp supports a much more abundant and varied fauna than the adjacent pine islands. Indeed, the Oklawaha Valley provides habitat for a majority of all the different kinds of terrestrial vertebrate animals resident in peninsular Florida. The strip of valley forest is wide and very long and its great area enhances its quality as a wilderness region. The wild turkey, for example, requires for its living area, a big piece of unbroken woods. This largest of North American birds serves as an indicator of true wilderness. The turkey flocks of the Oklawaha are among the finest in Florida.

The role the valley forest is serving, as a reservoir of wildlife for the adjacent lands is most evident when seen from an airplane. Flying north from the Silver Springs area the Oklawaha Valley appears as a broad, densely-forested belt that curves for more than forty miles around the northern third of the Ocala National Forest. To the west lie open pine lands, and the dry low forest of the Big Scrub spreads out to the east. Clearly, the valley forest serves as a safe highway and sanctuary for wildlife over an enormous area.

The area of roughly thirty-five square miles, designated here as the Oklawaha Wilderness Area, extends from the Silver Springs region eastward to Lake George. The area is bordered on the east by the St. Johns River and extends north nearly to Palatka. It includes the pine lands for some ten miles to the north and west of the Oklawaha River. This region offers an extraordinarily wide range of out-of-door pleasures for mankind.

The Ocala National Forest, established many years ago, makes up the largest part of the area. Generations of Floridians have been coming here for the fine hunting in the Big Scrub and the river forest. It is particularly renowned for its deer, wild turkey, squirrel, bobwhite quail, waterfowl and black bear. Today, as Florida's population increases and its wilderness decreases, more and more people, with a variety of interests are coming into the Forest. Students, ranging from grade school to college, come here on field trips; winter visitors, groups of youngsters, Boy Scouts, Girl Scouts and families come for a day or a week, just for the pleasure of being in natural Florida woods.

The Youth Conservation Camp sponsored by the Florida Game and Fresh water Fish Commission is located on Lake Eaton in the National Forest. This lovely little lake, only two miles from the Oklawaha, will be wholly drowned along with forty-five miles of the river, if the Cross-Florida Barge Canal construction continues as presently planned.

Five outstanding Florida springs are located in or very near this natural wilderness area: Silver Springs, Juniper Springs, Alexander Springs near the St. Johns, Salt Springs, and Silver Glen where Jody played with his flutter mill in *The Yearling*. This is the country made to glow in the writings of Marjorie Kinnan Rawlings.

The lands adjacent to the river valley are abundantly supplied with lakes. In addition to many small lakes scattered through the forests, Lake Bryant is located a few miles southwest of Silver Springs, and Lake Kerr, near Salt Springs, is located in the center of the wilderness area. To the west and less than fifteen miles from the Oklawaha River are the great lakes, Lochloosa and Orange Lake, long famed to naturalist, hunter and fisherman for their abundant waterfowl and fish.

7. The Defendants

The Defendant, Corps of Engineers of the United States Army is a civil and military engineering and construction agency. As a civil construction agency, it is responsible for the design, construction, operation and in certain cases, maintenance of navigation and flood control.

The Defendant, Stanley S. Resor, is Secretary of the Army of the United States and in such capacity is, or should be, responsible for the activities of the Defendant, Corps of the Engineers of the United States Army.

The Defendant, William F. Cassidy, is the Chief of Engineers, Corps of Engineers of the United States Army. The Defendant William F. Cassidy, is, or should be, subject to the supervision and control of the Defendant, Stanley S. Resor.

The Defendants, jointly or severally, individually or in concert, by their several agents, servants and/or employees, have acted to commit the People of the United States through the Congress of the United States to expenditures far in excess of the amounts contemplated in initial appropriations for projects subject to the jurisdiction and control of the Defendants.

The Defendants, jointly or severally, individually or in concert, by their several agents, servants and/or employees, have consistently failed to fully determine the actual cost to the American People of their several projects, in particular, the Cross Florida Barge Canal.

8. Defendants' Actions

Defendants have consistently failed to report to the U.S. Congress and to the people of the United States the numerous, well-founded objections of scientists, specialists and informed dedicated experienced citizens received during the years the project was studied and authorized. These objections were received as testimony at hearings and meetings attended by high officials of the defendant.

The defendants have misrepresented cost and benefit data by underestimating costs and overestimating benefits.

The costs of maintenance of the Cross Florida Barge Canal have been grossly underestimated. The defendants have repeatedly failed to heed a large body of evidence readily available to them which would have permitted calculation of maintenance costs with greater accuracy. Rather, they have recklessly persisted in reporting to the Congress and the people of the United States projected costs which were underestimated.

Defendants have failed to evaluate the present and future impact of aquatic vegetation largely of foreign origin that is thriving and will continue to thrive as a result of the defendants' challenged project. This uncontrollable aquatic vegetation creates economic, biological, flood control and navigational problems of increasingly massive proportions for which there is no permanent and satisfactory solution in any significant aquatic area of Florida. This is true in spite of the continuing efforts of local, state and federal agencies responsible for aquatic weed control.

Since the time of authorization of the project, the number of species of known nuisance water weeds infesting ecosystems such as the proposed barge canal has increased greatly. Furthermore, this barge canal would provide an effective means of distribution for additional species, infecting one part of the state from another.

Defendants knew or should have known with the exercise of due care that:

Clearing sections of river swamp forest for reservoirs by crushing the forest would only contribute to eutrophication and create snags adversely affecting recreational and navigational values and benefits expected therefrom.

Forest survival would be minimized in the reservoir areas due to higher, stabilized levels of water.

The lower Oklawaha River from Rodman Dam to the St. Johns River will suffer serious, permanent and irreparable damage as a result of the upstream activities of the defendants.

Upstream developments of parts of the Oklawaha River that are out of the Cross Florida Barge Canal project area would cause pollution, eutrophication and siltation in the Cross Florida Barge Canal and its reservoirs.

The reservoirs of the Cross Florida Barge Canal will retain nutrients and cycle them in such a manner as to be incompatible with maintaining the economic, cultural, recreational, historic, and transportation values of that national natural resource treasure, the Oklawaha Regional Ecosystem.

Migratory fish important to the sports fishery and to the tourist attraction at Silver Springs will be effectively denied access to the Oklawaha River by the canal structures.

The defendants have been less than candid in reporting to the Congress and the people of the United States concerning the geology of the Cross Florida Barge Canal project area.

The Defendants' proposal to vary the surface water elevations in the Cross Florida Barge Canal will drastically affect the ground water levels in the Oklawaha Regional Ecosystem. Defendants stated plan is to use hydraulic dredges to dig segments of the canal that will traverse the Rodman and Eureka pools. Such action can cause serious, permanent and irreparable damage to the Oklawaha Regional Ecosystem, and there is no evidence that the Defendants have even seriously considered the effects of this action, much less evaluated the dollar value of the damage.

Defendants have created a noxious system which, regardless of the degree of treatment using methods now known or likely to be devised by the time the Cross Florida Barge Canal is complete, will only result in replacement of one or more species of noxious water weeds by one or more species even more difficult to control and of at least equal hazard to navigation, flood control, or recreation.

The Defendants have shown a callous disregard for suggestions by citizens and other governmental agencies that, if followed, would have minimized the damaging effects of the Cross Florida Barge Canal on the Oklawaha Regional Ecosystem.

Defendants have failed to determine the real value of the existing Oklawaha Regional Ecosystem in spite of the declared policies of both state and federal governments seeking to protect significant areas of unique and unspoiled native wilderness, and the Defendants' actions will diminish the resource value and multiple use potential of the Ocala National Forest.

9. Equitable Jurisdiction.

This action is properly brought in Equity before this Court on the following grounds:

(a) The subject matter of the dispute is equitable in nature.

This action is brought for the purpose of restraining the Defendants from damaging the national natural resource that is the Oklawaha Regional Ecosystem and doing irreparable injury to the class represented by Plaintiff. The injury which will be inflicted by the Defendants is irreparable in that it cannot be adequately compensated in damages.

The declaratory judgment and injunction demanded by the Plaintiff are equitable remedies and the substantive character of the rights sought to be enforced are historically in the province of a chancery court.

(b) There is no adequate remedy at law.

The law does not afford any adequate remedy for the contemplated wrong resulting from Defendants' continued construction of the Cross Florida Barge Canal within the Oklawaha Regional Ecosystem. There is no plain, adequate and complete remedy at law as practicable and efficient as the equitable relief sought herein, nor are the damages sustained by the class represented by Plaintiff as a result of the Defendants' actions complained of herein capable of measurement and determination in any action at law.

WHEREFORE, the Plaintiff on behalf of all the people of the United States entitled to the full benefit, use and enjoyment of the national natural resource that is the *Oklawaha Regional Ecosystem* demands judgment of the Defendants:

DECLARING

That the *Oklawaha Regional Ecosystem* is a national natural resource treasure.

DECLARING

The rights of the people of the United States and State of Florida in and to the full benefit, use, and enjoyment of the economic, recreational, educational, social, cultural and historic values of the *Oklawaha Regional Ecosystem* without degradation resulting from the construction of the Cross Florida Barge Canal by Defendants.

DECLARING

That the construction of the Cross Florida Barge Canal violates the rights of the class represented by the Plaintiff guaranteed under the Ninth Amendment of the Constitution of the United States and protected by the *due process* clause of the Fifth Amendment of the Constitution of the United States.

RESTRAINING

the Defendants from continuing the construction of the Cross Florida Barge Canal, pending the final hearing and determination of this action.

RESTRAINING

the Defendants from continuing the construction of the Cross Florida Barge Canal, pending the full determination of the total social cost and real social benefits of the proposed Cross Florida Barge Canal.

TOGETHER

with such other and further relief as to this Court shall seem just and proper under the circumstances.

YANNACONE & YANNACONE

Attorneys for the Plaintiff,

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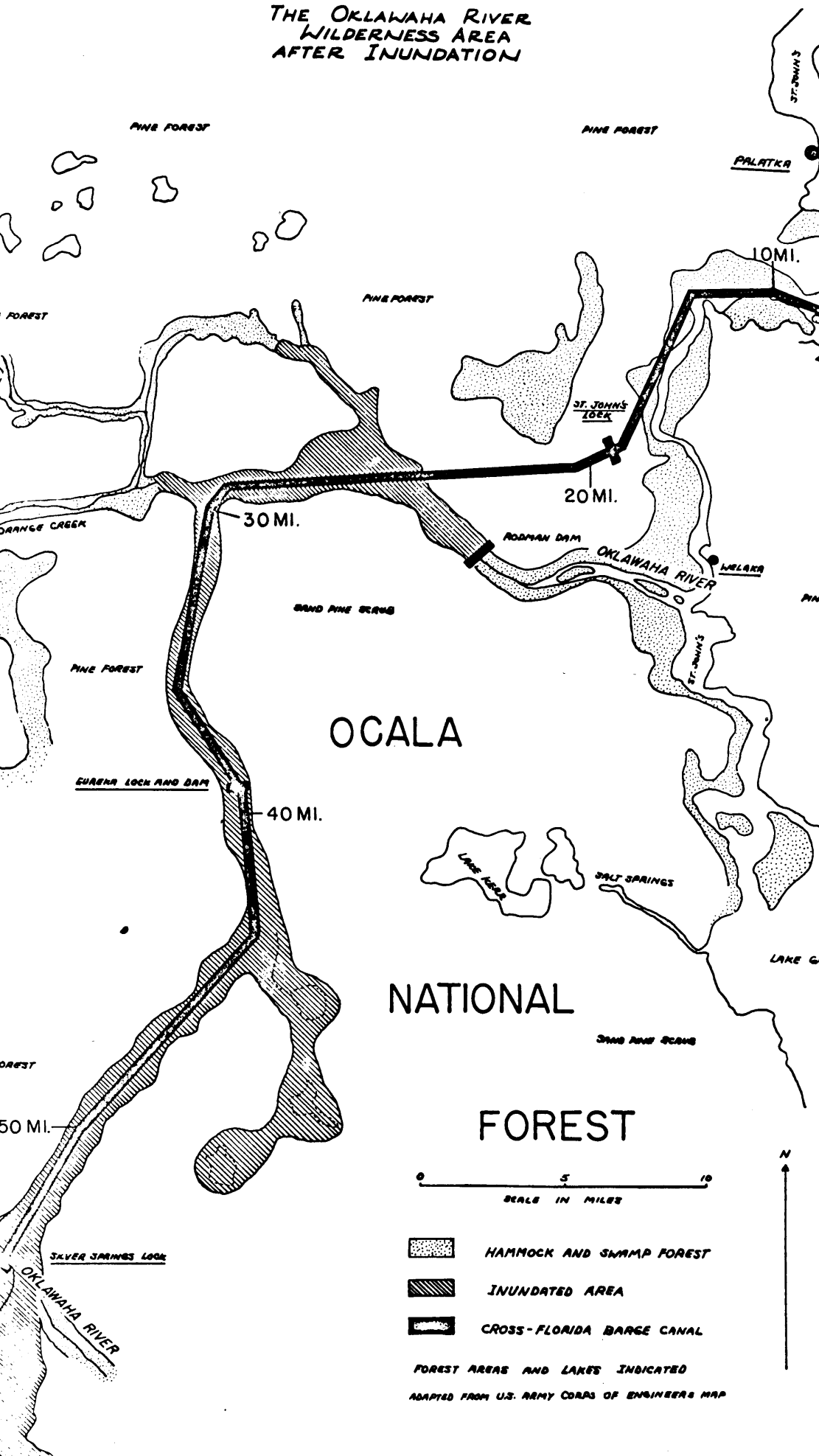
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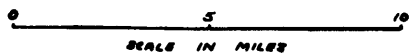
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THE OKLAWAHA RIVER WILDERNESS AREA AFTER INUNDATION



NATIONAL

FOREST



-  HAMMOCK AND SWAMP FOREST
-  INUNDATED AREA
-  CROSS-FLORIDA BARGE CANAL

FOREST AREAS AND LAKES INDICATED
ADAPTED FROM U.S. ARMY CORPS OF ENGINEERS MAP