

Strawberry Fields Forever

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Reading the brilliant blog post of my colleague [Teresa Navarro](#), one may get the impression that the situation in Doñana is principally the epitome of an ongoing electoral process. However, the threats to the ecological integrity of that unique natural space emanate from the very origins that justified its protection. The current crisis is but the culmination of the constant and serious threats, caused by the proposed bill to legalize new irrigation and aggravated by incompetence and lack of responsibility of the state, regional and local authorities ignoring the requirements of EU law.

Franco, the Spanish ‘Chernobyl’ and the beauty of Doñana

The protection granted to Doñana was an epic and enduring battle since the early 1950s, when General Franco made grand scale plans for converting the whole area into land suitable for agriculture, logging and tourism development. Its declaration as a protected area was a huge victory of the environmental protection associations during the dictatorship. In 1969, the Doñana National Park was created, a legal entity that opened a new stage in the conservation of the Guadalquivir marshes and their associated ecosystems. In 1978, only one day after the approval of the new Spanish Constitution, the Spanish parliament passed [Act 91/1978](#), on the Doñana National Park. This regulation is still in force.

Since then, this space has been threatened by multiple factors. Remember the Spanish ‘Chernobyl’, when in April 1998 a holding dam burst at a [Boliden](#) mine in Aznalcóllar, spilling 5 million m³ of toxic waste into rivers near the Doñana World Heritage Site. The flooding affected 5000-7000 hectares of farmland and marsh, destroying bird habitats and killing 26 tonnes of fish. Or, only to mention a few, [the plan to dredge the Guadalquivir River](#) for building a larger shipping channel. After 15 years of legal wrangling, the Supreme Court in [2019](#) ruled that protection must come first –a precedent-setting result applicable to other rivers and aquifers feeding Doñana.

But the biggest challenge to Doñana comes from economical activities: For too many years an entire economy based on golf tourism, swimming pools and red fruit (berries) farming, partly irrigated with illegal ponds, has been allowed to flourish. For many inhabitants of those areas the beauty of Doñana and the uniqueness of its ecosystems are not convincing enough to abandon their lucrative activities.

Think that Spain is the world’s largest strawberry exporter, and 95 % of all the country’s strawberries are produced in thousands of greenhouses around Doñana, generating 400 million euros annually. The industry is an important economic

sector but comes with significant environmental impacts: [every year, nearly twice the amount of water naturally occurring in the park is used in agriculture](#). Add to that the unquenchable thirst of hundreds of hotels and holiday homes in the neighbouring Matalascañas resort, and little by little, the park is drying up. Partly illegal occupation of the land is linked to the uncontrolled extraction of water from the Almonte-Marismas aquifer. Despite the abundance of complaints from conservation associations, reports both from scientific bodies and the [Ombudsman](#) of Andalusia, the situation of groundwater in Doñana still shows [no improvement](#). This situation determines that, as of today, the [IUCN](#) still qualifies Doñana as a natural area at significant risk. Last but not least, the terrible drought that plagues Spain, aggravated by climate change, only darkens the picture even more.

Conflicting EU specifications

For these reasons, the CJEU declared in its Judgment of 24 June 2021 ([Case C-559/19](#), Rapporteur: N. Jääskinen, Advocate General: Kokott) that Spain has failed to fulfil its obligations under [Water Framework Directive](#) and under the [Habitats Directive](#) by failing to adequately protect the Doñana protected natural area. As the Court stated, at the time when the Guadalquivir Hydrological Plan 2009–2015 was drawn up, and afterwards in the framework of the additional characterisation of the next Plan 2015–2021, there was sufficient evidence to consider that the Almonte-Marismas aquifer, as defined in that plan, was overexploited and that it was at risk of not achieving the objectives laid down by Water Framework Directive ([Directive 2000/60](#)). This circumstance made it necessary to carry out an additional characterisation given the risk that the body of water would not comply with the objectives provided for in the Directive. After a detailed analysis of the deficiencies of the analysis of pressures and their impact on water bodies, the Court stated that Spain had failed to fulfil its obligations under Directive 2000/60, by failing to consider illegal water abstractions and abstractions for urban supply when estimating groundwater abstractions in the Doñana region. In its findings, the CJEU also reviewed the obligations arising from the [Habitats Directive](#) which imposes on Member States a general obligation to take appropriate measures in special areas of conservation to avoid the deterioration of habitats and significant disturbances of the species for which those areas were designated. Under the provision that Nature conservation requirements must be interpreted strictly, authorisation of a plan or project may be granted only if the competent authorities are satisfied that the plan or project will not have harmful effects on the integrity of the site concerned on a lasting basis or if there is no reasonable doubt, from a scientific point of view, that there are no such effects. Several scientific data showed that, since its inclusion as a Site of Community Importance on 19 July 2006, damage to the integrity of the Doñana sites had occurred.

The linking of Water and Habitat Directives firmly established by CJEU doctrine made everybody think that an effective legal protection of these protected ecosystem will finally be granted by Spanish authorities. But politics have played in the other direction.

Last month, on 21 April, the Parliament of Andalusia, against the warnings coming from the Unesco, the European Commission and the Spanish Government, initiated the express procedure of a [bill](#) to regulate hundreds of hectares of illegal irrigation around the protected area of Doñana. Estimates of the land affected range from 600 to 1,700 hectares. The so called `Bill to improve the management of agricultural areas in the County of Huelva around Doñana´ alters the planning and classification of the soil to allow irrigated agriculture with surface water.

The trap of this controversial legislative proposal, as Teresa Navarro rightly claims, is that it does not resolve the otherwise non-existent legal problems of landowners because the Courts, in various instances, have consistently denied that the agricultural qualification of the soils by the regional authorities obliges the National water administration to grant water rights. Additionally, the proposed bill represents a new violation of the European Law which has established that under environmental impact assessment legislation such legislative initiatives must meet a number of requirements, including a detailed description of the project: its location, design and size, description of the measures envisaged to avoid, reduce and, if possible, compensate for significant adverse effects, as well as the data required to identify and assess the main effects that the project may have on the environment.

If this bill proposal succeeds, the necessary and urgent measures to restore an adequate governance in the exploitation and management of water and land in Doñana and its region will again be hindered and the process of degradation of this unique natural space will continue inexorably until its most probable destruction.

Federal failures creating Andalusian nightmares

How could the Andalusian Parliament have taken such a step in the wrong direction? How is it legally possible? Because Spain is a decentralised State and different powers are given to different entities. So, water from Guadalquivir basin are regulated by the State, but agriculture is ruled by the Autonomous Government of Andalusia. Finally, town planning is a faculty of the Municipalities around Doñana. If these authorities do not want to sit together in order to collaborate to save Doñana, there is little hope that this unique site will survive. On the eve of elections, which will take place 28 Mai, it does not seem that this will be possible, as each political parties are hoping to scrape up votes from a misinformed population. The dream of [balancing people, nature and prosperity in Doñana](#) is turning into a nightmare.

Little hope comes from the Minister of Ecological Transition, Teresa Ribera, who has recently [announced](#) that the National Government will begin the works for the connection of neighbouring rivers towards the area of Matalascañas as soon as possible. The ultimate goal is the immediate reduction of the water supply through groundwater overuse in that touristic town. At the same time, the granting of three cubic hectometres of water per year will help to stop overexploitation of water resources in Doñana – or not, if new demands for agriculture are given free track, as the Autonomous Government of Andalusia in the hands of right-centered `Partido Popular´ is pushing for. This is a shortsighted move to neutralise the emerging

far-right party Vox who according to polls is attracting voters from the area with promises of endless water for agriculture and tourism.

If Doñana finally collapses and dries, it will be the responsibility of the Spanish central and autonomous governments that fail to comply with the Water Framework Directive and the Waste Water Treatment Directive. Only vigorous action by the Commission and a possible new sentence by the Court of Justice can give us any hope of salvation for this emblematic area, an essential refuge for a biodiversity in danger.

