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Environmentalists sue to stop Florida's takeover of federal wetland permits

- Steve Patterson - The Florida Times-Union (TNS)
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JACKSONVILLE, Fla. — A coalition of environmental groups sued Thursday to stop the federal government turning over its control of wetlands construction permitting to Florida's Department of Environmental Protection.

"Florida's record of wetlands protection is already abysmal, and now is not the time for the federal government to turn over a massive Clean Water Act program to a state with a shrinking budget," said Bonnie Malloy, an attorney representing seven groups including the St. Johns Riverkeeper.

U.S. Environmental Protection Agency Administrator Andrew Wheeler signed an agreement last month that made Florida only the third state in the country, after New Jersey and Michigan, to handle applications for what are called 404 permits, after the section of the federal Clean Water Act where they're described.

But the lawsuit contends the government didn't follow its own laws when handoff happened, and it asks a federal judge in Washington to issue an injunction blocking the change.

"Defendants' actions threaten to open the floodgates for other states to seek assumption without requiring that those programs meet federal standards," Malloy and other attorneys from the activist law firm Earthjustice argue in the suit.

Permitting has been handled until now by the U.S. Army Corps of Engineers.

The suit says letting last month's decision stand would imperil the health of waterways around the country, as well as animals and plants in them that are supposed to be protected by the Endangered Species Act.

The lawyers argue EPA, the Corps and the U.S. Fish and Wildlife Service, which reviews wetland permit impacts on endangered species, acted without meeting requirements of the federal government's Administrative Procedure Act, which sets rules for things like public comment periods.

They say, for example, that Florida's application to take over wetland permitting wasn't complete because it depended on a Fish and Wildlife finding about the handoff, called a biological opinion, that hadn't been written when the application was filed.

The suit says the opinion was completed about two weeks after the public comment period for Florida's application had ended, so there was no way people could review it or raise any points that might have affected the handoff decision.

The Corps still handles wetlands permitting on some waterways. But the lawsuit argues Florida's application didn't adequately identify which waterways the state would take over, making meaningful public comment impossible.

Wheeler said in December that the areas the Corps would handle had been worked out in a memo of understanding with the state.

An EPA spokesperson declined to comment Thursday because the case is pending.

A Department of Environmental Protection spokeswoman said state lawyers are reviewing the suit, although only federal officials are named as defendants.

The lawyers also argued Florida hadn't met a legal requirement for taking over wetland permitting because it didn't identify funding to handle the work.

State officials had said the Department of Environmental Protection could take over permitting using the funds they're already budgeted for other work, but the lawsuit says the application didn't show that the agency has the legal authority to shift money from other tasks to handling wetlands permits.

Besides the Riverkeeper organization, the 51-page lawsuit was filed by the Center for Biological Diversity, Defender of Wildlife, the Sierra Club, the Conservancy of Southwest Florida, the Florida Wildlife Federation and the Miami Waterkeeper organization.

The groups suing worried state official would be too lenient in permitting and cast their suit as a step to save the state's environment.

"The toxic algae blooms that now plague Florida are a direct result of the state's decades-long failure to protect our waterways," said Jason Totoiu, a lawyer with the Center for Biological Diversity.

"Now the state wants to make it even easier to dredge and fill wetlands that help filter these pollutants from entering our lakes, estuaries, and springs," he said.

A stack of summonses for federal official were issued Thursday and U.S. District Judge Randolph Moss issued standing orders guiding how lawyers handle the case, but there was no immediate action in the case.