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Environmentalists challenge EPA change that allows Florida to control wetlands development

By JIM SAUNDERS

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TALLAHASSEE — A coalition of environmental groups Thursday filed a federal lawsuit challenging a potentially far-reaching move by the U.S. Environmental Protection Agency to shift permitting authority to Florida for projects that affect wetlands.

The coalition, represented by attorneys from the Earthjustice legal group, contends that the EPA and other federal agencies did not comply with a series of laws in making Florida the third state to have such permitting authority.

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“EPA is lowering the bar to allow a state, for the first time, to run the federal wetlands program without meeting federal standards,” Tania Galloni, Earthjustice managing attorney for Florida, said in a prepared statement Thursday. “Developers have called this the ‘holy grail’ because it would make it easier, faster and cheaper for them to get permits for big projects with less oversight and accountability for environmental impacts.”

The EPA on Dec. 17 announced approval of the shift, which involves permitting for dredge and fill activities under part of the federal Clean Water

Act. Florida lawmakers in 2018 overwhelmingly approved a bill that was an initial step in trying to move authority for the permitting from the U.S. Army Corps of Engineers to the state. Gov. Ron DeSantis in August submitted a package to the EPA seeking approval.

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What Is This?

Supporters of the move praised the EPA's decision as helping reduce duplicative state and federal permitting and giving Florida more control over such decisions.

"Our waters and wetlands are critical to our economy and way of life in Florida. As such, it is important for the state to be in charge and take the lead in their protection," state Department of Environmental Protection Secretary Noah Valenstein, whose agency is slated to oversee the permitting, said in a statement released last month by the EPA.

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But Thursday's [51-page lawsuit](#), filed in U.S. district court in the District of Columbia, alleges that federal officials violated laws such as the Clean Water Act and the Administrative Procedure Act.

"This action arises from the U.S. Environmental Protection Agency's unlawful approval of a state application to assume jurisdiction over the Clean Water Act's Section 404 permitting program, which regulates the dredging and filling of waters of the United States, including wetlands essential to water quality, storm and climate resiliency, threatened and endangered species and the economy," the lawsuit said. "EPA's approval is unlawful because the state's program is not as stringent as federal law and rests on unprecedented arrangements that violate federal law."

The lawsuit also raised the possibility that other states could similarly pursue permitting authority. Only Michigan and New Jersey have had such authority.

“Defendants’ actions threaten to open the floodgates for other states to seek assumption (of the permitting authority) without requiring that those programs meet federal standards, further imperiling waters of the United States and the ESA-listed species that rely on them,” the lawsuit said, referring to the Endangered Species Act.

Plaintiffs in the lawsuit are the Center for Biological Diversity, Defenders of Wildlife, the Sierra Club, the Conservancy of Southwest Florida, the Florida Wildlife Federation, Miami Waterkeeper and St. Johns Riverkeeper. Defendants include the EPA, the U.S. Fish and Wildlife Service, the Army Corps of Engineers and several officials of the agencies.

The lawsuit raises a series of issues about Florida’s application and the process the EPA used in approving the shift. It alleges, for example, that the application was not complete because it “failed to adequately identify the waters that would be assumed under its proposed program as required by the EPA regulations.”

“Without complete information, members of the public were unable to fully evaluate and comment on the impact the EPA’s approval would have on waters that are of ecological, historical, cultural, and economic benefit to the public,” the lawsuit said.

Jim Saunders writes for the News Service of Florida.