

# Environmental group claims win in ongoing challenge to state 'impaired' waters rule

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A decade-long legal dispute over Florida's process of listing waterways that require cleanups has taken another yet another turn.

**Chief U.S. District Judge M. Casey Rodgers** in Tallahassee last week ordered the **U.S. Environmental Protection Agency** to review Florida's revised "[impaired waters](#)" rule to determine whether it has caused some waterways to be dropped from the state's cleanup list.

Environmental groups, who say the state is attempting to drop waterways from its list rather than clean them up, are claiming victory in the latest ruling. An attorney for industry groups that backed the state rule at issue said it was scientifically valid as upheld by a state hearing officer.

Environmental groups in 2001 challenged the **Florida Department of Environmental Protection** rule that established the process for listing "impaired waters" as required by the federal **Clean Water Act**.

The groups said DEP was seeking to avoid forcing industries to reduce pollution by removing waterways from the list. DEP said in a [news release](#) at the time that the goal was to identify and focus restoration efforts on waterways that are truly degraded.

The **11th Circuit U. S. Court of Appeals** has stated that the U.S. Environmental Protection Agency must determine whether water bodies will be removed from the cleanup list under the initial 2001 rule and subsequent revisions. Rodgers ruled last week that the EPA had not done so and gave the agency 120 days to take action.

A U.S. Environmental Protection Agency spokeswoman said the agency was reviewing the order. A DEP spokeswoman said the agency stands by its state rule, which she said was not questioned by the judge's ruling.

"In fact, the judge's ruling upholds every technical aspect of those sections of the IWR (impaired waters rule) that EPA has reviewed and approved," spokeswoman **Dee Ann Miller** said. "It

simply directs EPA to expand or further document its evaluation and analysis of those sections of the rule that EPA has not reviewed."

The judge's ruling is a huge boost for environmentalists who now want the federal EPA to give up its appeals, said **Linda Young**, director of the **Clean Water Network of Florida**. She said the EPA should review the list to determine what water bodies were being dropped because of the rule changes, not because they had been restored.

"Honestly I'm so happy about this ruling," Young said. "The Obama administration has been so disappointing in so many ways. I'm hoping and praying this will not be another disappointment."

Other environmental groups that are plaintiffs in the latest lawsuit filed in 2009 are the **St. Johns Riverkeeper** and the **Conservancy of Southwest Florida**. The court earlier denied requests by industry groups seeking to intervene on behalf of EPA.

DEP has reported that the number of miles of impaired waterways increased from about 1,000 miles in 2008 to about 1,900 miles in 2010, according to a federal EPA [web site](#). Impaired acres of lakes increased from 350,000 acres in 2008 to 378,000 in 2010.

The case is separate from the dispute over proposed federal water quality rules that has raged during the past two years and led to **HB 7051**, waiving adoption by the Legislature of proposed alternative state rules.

*Reporter Bruce Ritchie can be reached at [britchie@thefloridacurrent.com](mailto:britchie@thefloridacurrent.com).*

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