

Federal judge rules EPA must review state rule on polluted waterways

By ERIC STAATS

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A federal judge is making new ripples in a long-running legal dispute over Florida's rules for putting water bodies on its list of cleanup targets.

Environmental groups say Florida uses the rule to avoid cleaning up polluted water bodies, but the Florida Department of Environmental Protection says the rule establishes scientific criteria to target the most polluted lakes and streams.

In a ruling Friday in Tallahassee, Chief U.S. District Judge M. Casey Rodgers ordered the U.S. Environmental Protection Agency to review whether new parts of the rule are incorrectly tossing water bodies off the list.

"The impact of this decision should be fairly sweeping," said Florida Clean Water Network director Linda Young.

Young and the Clean Water Network have been trying to overturn the Florida rule with three other lawsuits since 2002. The Conservancy of Southwest Florida and the St. Johns Riverkeeper also are plaintiffs in a 2009 lawsuit in which the judge ruled last week.

In the 2009 lawsuit against the EPA, the groups sought a determination that the state rule is a new water quality standard that requires EPA approval before it can go into effect. The EPA had found that the rule did not need its approval.

"We believe when they do the review, they'll have to reject (the rule)," Conservancy President Andrew McElwaine said.

The EPA says it is still reviewing the judge's ruling, but the DEP is standing by its rule, according to a statement on the ruling.

"Judge Rodgers' ruling does not question the validity of the DEP's Impaired Waters Rule, nor does it suggest that the DEP's rule is flawed," according to the statement.

In last week's ruling, Rodgers writes that there was not enough evidence in the record to determine whether the Florida rule needs federal approval and gave the EPA 120 days to review the effect of the rule.

If the EPA finds the state's new rule took water bodies off the list even though they

are just as polluted as they were before, that amounts to the rule being a new water quality standard that needs federal approval, according to the test the ruling requires.

In her ruling, Rodgers wrote that the EPA "argues convincingly" against that test, calling it "impractical and even ill-advised."

Still, Rodgers wrote, she is constrained to apply the test because it was handed down in by the 11th Circuit Court of Appeal in an earlier lawsuit over Florida's rule. In the event of an appeal, Rodgers wrote, the 11th Circuit should clarify how it meant the test to be applied.

Young, with the Clean Water Network, said the decision on whether to appeal the ruling will be the Obama administration's first chance to weigh in on the Florida controversy created when the second President Bush was in office.

"Now we have a new administration," Young said. "Let's get back on track."

