

RIVERS COALITION DEFENSE FUND

Press Release

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NEW FEDERAL LAWSUIT DEMANDS CLEANUP OF ST. LUCIE RIVER

Using an "historic new weapon," river advocates today filed a federal lawsuit seeking an end to discharges from Lake Okeechobee that in most years send hundreds of billions of gallons of muddy, polluted fresh water into the St. Lucie estuary.

The Rivers Coalition Defense Fund, based in Stuart, Florida, filed the lawsuit in the Court of Federal Claims, in Washington, D.C., against the U. S. Government. The action targets the U.S. Army Corps of Engineers, which operates the control structures at Lake Okeechobee.

Basically, the action contends that the Corps violates the federal constitution when it degrades the riparian property of waterfront land owners along the estuary, amounting to a "taking" of property without compensation.

The waterfront property of 22 plaintiffs named in the suit is appraised at \$50 million, and overall waterfront property in Martin County alone is valued at more than \$6 billion.

The individual plaintiffs, however, are not seeking any monetary damages. The Rivers Coalition goal is to get the discharges stopped and have the estuary restored. The Coalition and other environmental groups have long argued that water discharged from the lake should instead be moved south, as it did in the natural "river of grass." The Coalition is represented by the Washington-based law firm of Marzulla & Marzulla.

Rivers Coalition Chairman Leon Abood said plaintiffs in the new action "should be strongly commended for standing tall and devoting efforts to this great cause, with no desire for personal gain."

The riparian rights property principle has been used in certain situations across the nation, but not concerning large pollution claims such as the embattled Everglades pollution wars.

"This is really an historic new weapon for us that should lead to real change," said Defense Fund coordinator Karl Wickstrom. "Even though private property owners are the

plaintiffs, the lawsuit is, in effect, on behalf of all citizens who love this troubled estuary."

Riparian rights refer to an ability to use and enjoy the waters adjacent to the waterfront. The intangible riparian area has real value similar to the land. It may not be "taken" without compensation under the body of law involved.

"We are convinced that government has been continually guilty of an unconstitutional taking," Wickstrom commented. "And when the court confirms that guilt, government will see the immensity of the potential award and come up with a program to halt the discharges sent to the Atlantic ocean through the St. Lucie."

That could involve a settlement agreement, carried out under careful court supervision.

No one knows how long the lawsuit may take. "That depends on just how stubborn and intransigent government and the forces that influence it choose to be," said Wickstrom.

Huge discharges "to tide" also are made to the west coast through the Caloosahatchee canal. Advocates to the west are considered likely to take related action.

On a state level, the South Florida Water Management District has "partnered" with federal authorities in devising the Comprehensive Everglades Restoration Plan (CERP), which has come under heavy fire for not addressing a goal of conveying water south from the lake watershed.

Engineer hydrologist Kevin Henderson, who is a plaintiff in the new lawsuit, said: "Damages to the estuaries and Lake O go back to government giving absolute, first priority to complete drainage of the Everglades Agricultural Area, so that the water is wasted to the coasts where it causes tremendous harm and losses." He added: "Now, it's being made much worse by the fact that we're in a 30-year wet cycle, and this was not factored in when modeling for CERP was done. So a bad plan is now made much worse."

Various storm events have caused some of the discharge woes, but the immense releases of tainted fresh water have occurred in most years since 1995 with or without hurricanes or large storms.

Injury to the St. Lucie estuary reached a visual peak last year when toxic blue-green algae coated virtually all waters with a green and blue slime that made the waters unusable and unsafe for some six months. The Florida Health Department warned residents not to touch the water and posted signs at public access points.

Authorities said contact could cause symptoms ranging from difficult breathing and nausea to infections, poisoning of pets and liver problems.

In previous years the muddy discharges were blamed for causing fish kills and lesions,

deaths of millions of oysters, wipeouts of seagrasses, muck buildups and the loss of forage for porpoises, eagles, turtles and other life. Mark Perry, director of the Florida Oceanographic Society on Hutchinson Island, has demonstrated an unmistakable correlation between the problems and the freshwater discharges.

More recently, Dr. Brian LaPointe, of the Harbor Branch Oceanographic Institution in Fort Pierce, reported to local governments that he found a correlation between the discharges and findings of high levels of fecal coliform counts. He says the released freshwater created an environment for the fecal coliform to blossom.

Dr. Grant Gilmore, a renowned biologist consulting for a number of agencies, says the St. Lucie was the most biological diverse estuary in North America until the discharges periodically changed its fundamental estuarine character into a muddy and dangerous fresh water body.

The Rivers Coalition Defense Fund is the legal arm of the overall Rivers Coalition which includes 43 organizations from Martin and St. Lucie Counties. It was formed in 1998 when outraged citizens were confronted with some of the heaviest damaging releases.

"We've had important victories for the local watershed," Chairman Abood said, "but government has totally failed us in stopping the inundations of lake water. We have no choice but to take this crisis to federal court."

The Defense Fund is sponsoring numerous fund-raising projects to support the court case. All citizens are urgently needed to help. See Riverscoalition.org for more information, including the complete text of the lawsuit and ways that persons can take part.