Message

From: Nagrani, Kavita [Nagrani.Kavita@epa.gov]
Sent: 1/14/2021 10:59:56 PM
To: Creswell, Michael [Creswell.Michael@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]
Subject: RE: NEW LITIGATION: Center for Biological Diversity et al. v. USEPA et al. (D.D.C. 1:21-cv-00119) (CWA)

Not surprising. See FN1 – P. 27: "Plaintiffs intend to amend the complaint to add the ESA claims after the required 60-day pre-suit notice, 16 U.S.C. 1540(g)(2)(A)(i), period has expired."

This is as far as I'll make it today. Will finish reading the rest of the complaint in the AM.

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Thursday, January 14, 2021 4:20 PM
To: Palmer, Leif <Palmer.Leif@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Creswell, Michael <Creswell.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; Hurld, Kathy <Hurld.Kathy@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Mcgill, Thomas <Mcgill.Thomas@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>
Subject: FW: NEW LITIGATION: Center for Biological Diversity et al. v. USEPA et al. (D.D.C. 1:21-cv-00119) (CWA)

All,

Earthjustice, representing the Center for Biological Diversity, Defenders of Wildlife, the Sierra Club, and several Florida-based environmental organizations, has filed a complaint today in the US District Court for the District of Columbia challenging EPA's approval of Florida's assumption of the Clean Water Act (CWA) section 404 program and related underlying actions of the US Fish and Wildlife Service (USFWS) and the US Army Corps of Engineers (the Corps). The complaint identifies EPA, the USFWS, and the Corps as defendants, as well as individuals in senior leadership positions at these agencies.

The complaint alleges that:

1. EPA's interlocutory determination that Florida's submission was complete violated the CWA and the Administrative Procedure Act (APA);
2. EPA's approval of Florida's assumption violated the CWA and the APA because Florida did not make the necessary showing that it would issue permits that assure compliance with the requirements of Section 404, that the public would have notice and an opportunity for hearing on every permit application; and that Florida would abate violations of any permit and the permit program via civil and criminal enforcement;
3. USFWS' Biological Opinion, No Jeopardy determination, and Incidental Take Statement violated the Endangered Species Act (ESA) and the APA;
4. EPA's "No Effect" determination violated the CWA and the APA;
5. The Corps' retained waters determination violated the Rivers and Harbors Act and the APA;
6. EPA's immediate effective date for Florida's Section 404 program violated the APA; and
7. EPA's failure to codify Florida's program prior to its effective date violated the APA.

I will send a more detailed summary of the complaint soon.

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105