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Justice Watch: 2 Miami judges try to spur Everglades action

04/26/2010
Daily Business Review
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It was nearly three decades ago that Gov. Bob Graham said the state's entire ecosystem needed to be restored.

Today, the pumping heart of that ecosystem — the Everglades — is still choked from phosphorus pollution from agriculture and is strangled by encroaching development.

Two federal judges in critical rulings two weeks apart say they have had enough of water managers at both the federal and state levels failing to live up to mandates and promises to fix the Everglades. The rulings on water quality come in litigation pressed by the Miccosukee tribe and environmental groups.

U.S. District Judge Alan S. Gold scorched the Environmental Protection Agency in an April 14 ruling, threatening to hold the federal agency in contempt for failing to enforce the Clean Water Act in the Everglades.

"I express in the strongest possible terms my frustration and disappointment," the judge wrote in a 48-page order that set a new timetable for the EPA to comply with the Clean Water Act in the Everglades as he ordered it to do in 2008.

Insisting on progress, he ordered the EPA administrator to appear in his courtroom for an Oct. 7 hearing.

The ruling came in the wake of a March 31 decision by Chief U.S. District Judge Federico Moreno, who ordered the completion of construction of a key reservoir designed to filter polluted runoff.

The \$700 million project in western Palm Beach County stalled when the state changed gears and started buying up

land from sugar farmers near Lake Okeechobee.

"These two judges are fed up with the government's efforts to clean up the Everglades," said Miami attorney Guy Lewis, who has represented the Miccosukee tribe. "You've got two of the finest judges in the district, and both are as patient as Job, and they have come to the conclusion that enough is enough."

David Guest, a Tallahassee attorney who represents a number of environmental groups involved in Everglades cases, said Gold's order was about EPA foot-dragging.

"It means there is a reinvigorated effort to get real control of pollution in the Everglades," he said.

Dexter Lehtinen, the former U.S. attorney representing the Miccosukees, said the judicial branch has become the David to the executive branch's Goliath in the battle for Everglades restoration. He said Moreno and Gold have joined Senior U.S. District Judge William Hoeveler and U.S. District Judge Ursula Ungaro, who have ruled in favor of the tribe.

"I see an emerging struggle between the judicial branch and a recalcitrant executive that doesn't think it's under the law," said Lehtinen, a partner at Lehtinen Riedi Brooks Moncarz in Miami.

The Everglades is naturally a low-nutrient system. Phosphorus from upstream agriculture and residential runoff is a fertilizer that encourages the growth of nonnative species and greatly disrupts the ecosystem. The idea is to filter the phosphorus through stormwater treatment areas before water flows into Everglades National Park and eventually Florida Bay, a brackish nursery for sea and bird life.

The target for phosphorus levels is 10 parts per billion. Gold wonders if it will ever be achieved and says in his order the treatment areas may be at capacity already.

"None of the governmental agencies involved directly told the public the hard truth: We have not solved the problem, we do not know for sure when the problem will be solved, and we do not know if the Everglades will survive by the time we can meet the 10 ppb standard [if at all]."

Lewis said Gold and Moreno have drawn a line in the sand after giving government agencies the benefit of the doubt for years.

"They want to believe their orders are going to be complied with and the government in good faith is going to clean up our backyard, and it's not happening," Lewis said. "It's a shame it's gotten to the point the tribe and others have to go in and say, 'Please, judge, force government to live up to its lawful obligation.' It's extraordinary."

Everglades restoration has been slow going, but a \$7.8 billion restoration plan signed by President George W. Bush and Florida Gov. Jeb Bush in 2003 shows limited success.

"Rule No. 1 in politics is the big dogs eat first," Guest said. "There is a lot of talk and not much walk. ... Everglades restoration entered into a Dark Ages under the Bush administration. The projects didn't get funded even though they were spending money on all sort of things. They built up this giant budget deficit, and it didn't go to Everglades restoration, and it could have."

Guest said Gold's and Moreno's orders are unrelated to a new occupant in the White House. What could be related is President Obama's slowness in getting administrators into their positions.

"The Army Corps of Engineers, the Department of Interior have done a very good job emphasizing Everglades restoration," Draper said. "The EPA has not been focused on it."

There is now a debate about whether Moreno's order sinks Gov. Charlie Crist's plan to buy U.S. Sugar Corp. land with a reservoir system that may be heading toward capacity.

For the Miccosukees, it's not just water quality that is important, but water levels since the pine islands where they hunt can flood under the existing canal system and flood control directives.

"Water quantity is killing the lands, too," Lehtinen said. "Going up and down in the water table causes destruction of the tree islands. We have lost 75 percent of the total acreage of tree islands from 1940 to now."

He asserts Crist's plan was a bailout for U.S. Sugar. Guest said he thinks it is still a good idea to try to buy out as many agriculture polluters as possible.

Moreno wrote in his order that although the sugar acquisition may be in the best interest of the Everglades in the

distant future, the tribe's environmental suffering is immediate.

Guest said the future of Everglades restoration needs to be comprehensive.

"One has to see Everglades restoration long-term, coherent, whole," Guest said.

Lehtinen said Everglades water quality has been somewhat improved thanks to a judiciary that wants to see the cleanup project through.

"If you beat them about the head and shoulders enough with court orders, you do see some progress," he said. "These judges are critical."

John Pacenti can be reached at jpacenti@alm.com or at (305) 347-6638.

Everglades cleanup said to be mired in `glacial delay'

04/25/2010

Miami Herald, The
Morgan, Curtis

Everglades cleanup said to be mired in `glacial delay'

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Judges share environmentalists' concerns about the slow pace of Everglades cleanup -- but not their enthusiasm for Gov. Crist's sugar land deal.

In the two decades since pledging to clean up the Everglades, Florida water managers, environmental regulators and political leaders have professed unwavering commitment to getting the difficult and costly job done.

In a double-barreled legal blast this month, two Miami federal judges found the state, abetted by a lax U.S. Environmental Protection Agency, more committed to something else in the Everglades: foot dragging.

"`Glacial delay" is how an exasperated U.S. District Judge Alan Gold summed it up in a blistering ruling that ordered Florida environmental chief Michael Sole and EPA administrator Lisa Jackson to appear personally in court in October with new plans and hard deadlines.

The orders, issued back to back over just three weeks, could produce significant ripple effects, from potentially derailing Gov. Charlie Crist's controversial sugar land buy to hitting farmers with tougher fertilizer rules to measuring just how much clout federal judges wield over agencies leading Everglades efforts.

"`It really is a test of whether or not we are a rule-of-law country," said Dexter Lehtinen, an attorney for the Miccosukee Tribe, whose lawsuits and motions led to both rulings. "`We have a mandate in this country that the law applies to everyone equally, including the government."

State, federal, environmental and agricultural industry attorneys are still assessing the full implications of the orders, but this much is clear:

Federal judges in two separate cases came to a conclusion long ago reached by the tribe and environmental groups -- that the state is failing to protect the Everglades from damaging phosphorus, which flows from farms, cattle ranches and yards after every rainstorm.

Chief U.S. District Judge Federico Moreno, who oversees the landmark 1992 settlement that originally forced the state to cut the nutrient pollution destroying native plants, was first up with a March 31 ruling.

Saying he was tired of waiting for the promising but twice downsized and repeatedly delayed U.S. Sugar land buy, Moreno ordered the state to restart a stalled \$700 million reservoir and meet with a special master to hash out new construction deadlines and cleanup plans.

Less than two weeks later, Gold followed up in another lawsuit brought by the tribe and environmental group Friends of the Everglades. He expanded on a July 2008 ruling where he found the EPA erred in approving a controversial state

overhaul of Everglades cleanup laws in 2004.

The ruling was a razor-edged rebuke to the state's long-standing insistence that it was doing all it could to clean up the Everglades and that its effort was largely on track, despite a few minor recent violations.

' INCOMPREHENSIBLE'

Gold determined state lawmakers had simply moved the goal line to make it easier to declare victory, crafting "incomprehensible" rules that watered down pollution standards, opened loopholes and effectively pushed back a 2006 deadline by a decade to 2016 -- all in violation of the U.S. Clean Water Act.

Gold wrote that the state, which has spent more than \$1 billion to build some 40,000 acres of storm water treatment marshes, had made progress, but had only marginally improved the health of the Glades.

The legal phosphorous target for the pristine Everglades is a super-low 10 parts per billion and even now, three years after the previous 2006 deadline, the marshes are turning out from 13 to 93 ppb, he wrote.

"None of the governmental agencies involved directly told the public the hard truth: We have not solved the problem, we do not know for sure when the problem will be solved, and we do not know if the Everglades will survive by the time we can meet the 10 ppb standard," he wrote.

Gold gave the EPA until Sept. 3 to craft an enforceable plan with the state to cut phosphorus levels or draft one itself. He stopped short of finding the agencies in contempt but threatened fines and other measures to force compliance if they continue to ignore his orders.

Sole, secretary of the Florida Department of Environmental Protection, issued a statement defending Everglades efforts and calling Gold's ruling "extremely disappointing."

DEP spokeswoman Dee Ann Miller said the state intends to appeal. The EPA issued a statement saying it was reviewing the decision before deciding its next steps.

Both agencies pledged to continue working together.

In the Moreno case, state and federal attorneys had already been negotiating a more cleanup measures after two violations in the Loxahatchee National Wildlife Refuge. Among the steps under consideration: tougher limits on fertilizer use for farms, and possibly suburban yards, and a major expansion of the state's network of marshes -- with talks focusing on the 73,000 acres of groves and fields that state wants to buy from U.S. Sugar.

Environmentalists hope the dual rulings will speed and expand cleanup but they also worry they could ironically undermine the sugar deal they believe offers the best long-term hope to resolving the Glades' persistent water pollution and supply problems.

The South Florida Water Management District, hit with declining tax revenues, already is struggling to pay for the \$536 million deal. Being forced to build the massive reservoir would almost certainly kill it.

MOTION TO BE FILED

Miller said the state plans to file a motion asking for relief from building the reservoir. Thom Rumberger, chairman of the Everglades Trust, said environmentalists will support that plea, arguing the state shouldn't waste dwindling capital on a project that won't get the job done. The state, he said, needs more land -- at least 62,000 acres by the estimates of restoration experts -- and the sugar deal offers the cheaper deal to get it.

"If you can't get that land out of U.S. Sugar, you're going to have to condemn it," he said. "If you condemn it, you're going to pay a lot more. I am not sure of how we lost track of that."

Both judges, however, expressed skepticism the governor's land deal would get done -- or help resolve pollution problems any time soon.

The tribe, which along with rival grower Florida Crystals has been among the most vocal critics of the deal, contends the district won't have money to build anything on the land for decades.

"Our position," said Lehtinen, "is sugar land, schmugar land. It's just an excuse for more delay."

Everglades Cleanup Said to be Mired in 'Glacial Delay'

04/25/2010

Southeast Construction

digital wire

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By Curtis Morgan, The Miami Herald

Apr. 25--In the two decades since pledging to clean up the Everglades, Florida water managers, environmental regulators and political leaders have professed unwavering commitment to getting the difficult and costly job done.

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LETTERS TO THE EDITOR: U.S. Sugar land buy key to saving Everglades

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04/25/2010

Palm Beach Post

U.S. Sugar land buy key to saving Everglades

Thank you for the editorials in support of the South Florida Water Management District's purchase of U.S. Sugar land.

From the moment of my genuine euphoria at the announcement of the initial deal, I was troubled by the sense of 'unease' when revelations about terms of the deal were fully explained. Recognizing that the governor's offer to acquire substantial acreage in the Everglades Agricultural Area was a breakthrough of major proportions, I continued my support even though I had misgivings about certain terms that could have been renegotiated and clarified.

I continue to support the acquisition of this major block of land because I believe it will lead to further purchases, giving the district and Congress the ability to make further investments in land acquisition and methods of storing the vitally needed water to recharge the Everglades.

The editorials over the years carefully explain the options that a new contract gives the district board, including the prospect of a lower price, additional acreage and the ability to modify language that will serve the taxpayers and the cause of Everglades restoration better than the originally agreed-upon contract. Paul Quinlan concluded a news article with Tom Van Lent's wise quote: "It is not only a good idea; it is really the only option." Recognizing that this is "political season," with a U.S. Senate seat in the mix, it is another example of how the sugar subsidy allows, if not encourages, all kinds of political intrigue.

NATHANIEL REED

Jupiter Island

Editor's note: Nathaniel Reed is vice chairman of the Everglades Foundation and a former member of the South Florida Water District Governing Board.

Editorial: Could river projects get swept away?

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04/24/2010

TCPalm.com

What projects will be delayed or not completed if the South Florida Water Management District consummates its \$536 million purchase of 73,000 acres of U.S. Sugar land for Everglades restoration?

The district governing board needs to be forthcoming with the public on this issue.

"The concern around the state is that the U.S. Sugar property purchase is an excellent opportunity, but it does put all our eggs in one basket," said Paul Millar, Martin County's water resource manager and one who is knowledgeable about the Loxahatchee River restoration projects. "This could easily take money away from other projects."

Millar says that the district has a huge commitment to its pumps and canal system and some of these systems will need to be replaced. "For instance, a rock pit has been purchased near West Palm Beach, but the district still needs to have a pump station to bring water out of the 40-foot deep rock pit," Millar said.

Within the month, the court will make a decision whether or not the district has the authority to fund the U. S. Sugar acquisition.

Despite the pending acquisition of what seems to be a tremendous amount of land, the U.S. Sugar property isn't a contiguous parcel, but a patchwork.

Millar says that in order to create this flow-way to allow water to meander into the Everglades, the district will either have to purchase more property or trade some land for other land in this area.

The acquisition is laudable, but the district must let the public know what projects may be shelved or delayed because it wants to complete the deal with U.S. Sugar and how saving the Everglades will be accomplished.

Environmental Dispute goes to Top Court in the Sunshine State

04/23/2010

Green Chip Stocks

Brigid Darragh

By Brigid Darragh

Friday, April 23rd, 2010

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U.S. Sugar Corp met the Sunshine State in Florida's Supreme Court to settle a dispute over a 73,000-acre Everglades restoration deal earlier this month.

The proposed \$536 million deal was signed off on in 2009 by the South Florida Water Management District. The Supreme Court is now being asked to determine if the District was justified in approving the sale of bonds for the land last year. everglades

Members of the Miccosukee Tribe who live near the Everglades are joined by U.S. Sugar's competition (namely, Florida Crystals) in saying the land will only allow U.S. Sugar to farm much of the parcel once the sale is complete.

U.S. Sugar Corp is currently the country's biggest sugarcane grower and would be granting the state 73,000 acres of farmland for its restoration project.

Last August, a Palm Beach County Circuit Court judge authorized the Florida Water Management District to sell as much as \$650 million of certificates of participation for the purchase of Everglade land in an effort to preserve the wetlands and the more than 65 endangered species that inhabit the area.

The opposition protests the land deal in saying that the Water Management District was not authorized to sign off on this deal last year.

In 2008, Florida's governor planned to purchase from U.S. Sugar 180,000 acres of Everglade farmland.

The plan was for the state to buy U.S. Sugar, its manufacturing and production facilities, and allow production for six years more before shutting down the plant and dismissing employees. The land would then be rehabilitated and restored.

But like most states, Florida suffered from the recessions and the land deal was significantly cut down to less than half that acreage. In November 2008, the deal was renegotiated to involve less land at a lower price, allowing sugar production to remain in production.

And come 2009, Florida's water management district decided to levy \$536 million in bonds to pay for the newly proposed 73,000 acres.

Meanwhile, environmentalists and water management officials feel the restoration deal is critical to reviving the River of Grass ecosystem within the acreage that U.S. Sugar Corp would purchase through this deal.

According to environmentalists, the protection of this particular part of the Everglades trumps the complaints of lawyers on the Miccosukee side.

The attorney representing Florida Audubon was quoted as saying, "We believe this land acquisition provides the best and last chance for significant Everglades."

The River of Grass area winds south from Orland through the Kissimmee Lakes, including Lake Okeechobee, and out to the Florida Bay. Restoration efforts of this area have been in effect since 1988, when then Florida Governor Chiles officially committed the state to cleaning up and preserving the Everglades. Since 1988, Florida has invested nearly \$2.5 billion to the \$10.9 billion state-federal Comprehensive Everglades Restoration Plan (CERP).

The Miccosukees continue to challenge the proposed \$536 million deal because they maintain the land is not serving public purpose. The Water Management District does not have the right to float bonds to pay for the land if it lacks this characteristic.

They feel the plan is waste of taxpayer dollars that will actually slow current Everglade restoration projects and those planned for the future. Critics of the revised land deal are also concerned that the new plan will ensure sugarcane is grown on Everglade farmland for at least another ten years.

No ruling has been made yet regarding the case.

Brigid

U.S. SUGAR NOT FEELING FROST'S BITE

04/23/2010

Palm Beach Post

Salisbury, Susan

U.S. Sugar Corp. has completed its 2009-10 sugarcane harvest and is boasting of its best crop since the devastating hurricanes of 2004 and 2005.

Despite several hard freezes and one of the coldest winters on record, the company produced 696,000 tons of raw sugar, an increase over last season's 637,000 tons, said spokeswoman Judy Sanchez.

"We lost less than expected due to the freezes," she said.

The company harvested 6.2 million tons of cane, 500,000 tons more than a year ago.

U.S. Sugar farms about 150,000 acres of sugarcane, the bulk of it in Palm Beach County. Following the freezes, harvesting schedules were adjusted to process the most severely freeze-damaged cane on its own land and the cane produced by its 36 independent growers first.

The company plans to import raw sugar from other countries again this year. With the imports, it expects to produce more than 700,000 tons of refined sugar.

"Our refinery's record production has coincided with increased sugar demand and higher sugar prices, enabling the company to retire \$200million in debt utilized to build the highly automated sugar facilities ahead of schedule," Sanchez said.

Although the South Florida Water Management District is buying 73,000 acres from U.S. Sugar in a \$536 million deal to restore the Everglades, the company plans to remain in the sugar business, Sanchez said.

U.S. Sugar is one of three sugar producers in Florida. Florida Crystals Corp. is headquartered in West Palm Beach, and the Sugar Cane Growers Cooperative of Florida is based in Belle Glade. Total production is 1.63 million tons, up from 1.57 million tons a year ago.

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