

West coast can't join east coast in Lake O suit

By Julio Ochoa

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Lee County residents can't join their east coast neighbors in a lawsuit against the federal government over polluted releases from Lake Okeechobee, an attorney for the case said this week.

They could, however, file their own, said Sasha Nell, an attorney with the Washington, D.C., firm Marzulla & Martin, which is representing the east coast residents.

The suit, filed by 22 east coast residents last week, is seeking \$50 million in damages from the Army Corps of Engineers. The residents, who live along the St. Lucie River, contend that Florida law protects the rights of property owners to fish, boat and swim in water that is free of pollution.

The west coast could have a similar case because several property owners along the river and coast feel the effects of pollution caused by the lake, said Mary Rawl, an environmentalist with Caloosahatchee Riverwatch.

"One thing we've been saying all along is the property value on both coasts is being destroyed," Rawl said. "Could you imagine if every riverfront owner in Lee County and beyond would join this suit? The economic impact would be staggering."

After the east coast announced its lawsuit, Rawl said she received several phone calls from property owners on the west coast wanting to join.

But a single suit for both coasts likely wouldn't work because the rivers and their basins are so different, Nel said.

The Caloosahatchee River is much longer than the St. Lucie, has a much larger river basin that drains into it and the water travels farther before reaching the sea, she said.

"It's a little confusing when you bring a lawsuit like that," Nel said. "The facts have to be really similar for all plaintiffs and I don't think they are similar enough."

There are advantages to private property owners filing a lawsuit as opposed to the suit coming from the government.

"The good part about it being a private suit is that the county will be able to continue dialogue with the Army Corps," said Kurt Harclerode, operations manager for Lee County Natural Resources. "Generally, when you have a lawsuit, attorneys

talk to attorneys and you stop the dialogue at the staff level."

That dialogue has been helpful as county staff works with the Corps to lessen damaging releases from Lake Okeechobee.

If all else fails the county or city of Sanibel could choose to sue on several grounds, Rawl said.

They could contend the Corps is violating the Clean Water Act or the Endangered Species Act, she said. There are also five national wildlife refuges and several Outstanding Florida Waters being damaged by the lake's releases.

For now, the City of Sanibel is most concerned with working with the Corps to put in protections before the 2007 hurricane season starts, said Mayor Carla Johnston.

"One thing filing a lawsuit does is to make it very clear that the private sector is feeling a hardship here," Johnston said. "If I thought filing a lawsuit tomorrow would protect us during hurricane season, I would probably be at the front signing on the dotted line."