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Monday, January 6, 2003

Feds to end protection of 'isolated' wetlands

Michigan is among states that need to set new regulations

By Faith Bremner / Gannett News Service

WASHINGTON -- Two federal agencies charged with guarding the nation's water quality are preparing to do away with regulations that protect many of the country's wetlands from developers and polluters.

As early as today, the Environmental Protection Agency and the Army Corps of Engineers are expected to issue sweeping new guidelines for their field offices instructing them to stop protecting so-called isolated wetlands under the Clean Water Act. Thirty percent to 40 percent of all wetlands in the lower 48 states are isolated, which means they have no apparent surface water connection to rivers and streams that flow year-round, estuaries or the ocean.

Prairie potholes in the Northern Great Plains, sinkhole wetlands in Idaho and west Texas, desert playas in Nevada and Utah, Delmarva potholes in Delaware, kettle-hole bogs in Michigan and pocosin wetlands in North Carolina could all be left unprotected if states do not step in to fill the void.

Wetlands are important to the survival of many plants and animals, for recharging groundwater, filtering out pollutants and lessening the impact of floods.

"The majority of my state, which is east of the continental divide, gets less than 15 inches of precipitation a year," said Tom Hinz, coordinator of Montana Wetlands Legacy, a partnership of state and federal agencies and conservation groups that is trying to protect marshy areas. "These wetlands provide oases in a landscape that's pretty much bone dry."

The new instructions are needed, developers say, to bring the EPA and Army Corps in line with a January 2001 U.S. Supreme Court ruling that found they could not stop an Illinois garbage company from destroying an isolated wetland in an old gravel pit used by migratory birds. The Clean Water Act applies only to bodies of water that are used in interstate commerce. In its 5-4 opinion, the court said the agencies could not use the fact that migratory birds use the body of water as their sole basis for determining that the gravel pit wetland is part of interstate commerce and therefore protected under the act.

Federal agencies have been too creative in finding ways to connect small, inconsequential water bodies to interstate commerce and regulate them, said Susan Asmus, spokeswoman for the National Association of Home Builders. These smaller water bodies should instead be left to the states to regulate, she said.

With all their financial problems, states are not in a good position to

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start regulating isolated wetlands, said Bob Perchiaspe, the National Audubon Society's senior vice president for public policy.

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