

***Amici* briefs vindicate water managers' appellate efforts**

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Since its passage in 1972, the federal Clean Water Act, through National Pollutant Discharge Elimination System (NPDES) permits, has laudably cleaned up point-source discharges that were polluting our nation's waters. The Clean Water Act also created a separate process to address non-point source pollution including that caused by local water management transfers, largely deferring to the states to regulate these activities.

The once-clear lines delineating state and federal authority in this matter blurred in June 2007 when a federal judge ruled that the South Florida Water Management District must obtain federal NPDES permits for water management transfers, specifically for operating pump stations S-2, S-3 and S-4 along the shore of Florida's Lake Okeechobee. Regulatory permits for these pumps had, since 1972, been left to state discretion. The South Florida Water Management District believes the federal ruling to be in error and, after complying with the judge's order to apply for the permits, took its case to the U.S. Court of Appeals for the Eleventh Circuit, in Atlanta.

The South Florida Water Management District, it turns out, is not alone. The U.S. Department of Justice representing the federal position filed a brief aligned with the District's view. Additionally, more than 40 other agencies and organizations have intervened by filing *amicus curiae* briefs with the court. Perhaps most significantly, the states of Colorado, New Mexico, Alaska, North Dakota, Utah, Idaho, Nebraska, Nevada and Florida also intervened, filing their *amicus curiae* brief in late December. The intervention of these states is particularly striking, because all – aside from our home state of Florida – are outside the boundaries of the Eleventh Circuit's jurisdiction. In their brief, the states explain the following:

"States depend upon thousands of water transfers to move billions of gallons of water every day to meet essential domestic, municipal, commercial, industrial, agricultural and other water supply needs. . . . the ability to divert, transport, store, and use water is critical to the social and economic well-being of the United States. Moving water from one basin to another is essential to meet domestic, municipal, commercial, industrial, and agricultural demands. Extension of the NPDES program to water transfers gravely threatens the continued vitality of this system."

Intervention by so many *amici* demonstrates, once again, the national significance of the growing dispute over NPDES permits. Here in Florida, federal permitting offers no added protection to our regional water resources. The state legislature passed the Florida Water Resources Act of 1972 to help manage the state's

waters, and based on that authority, the District's Governing Board provides well-informed direction on the operation of our extensive water management system.

Other states have similar water boards and appropriate regulatory programs in place. Like Florida, they too believe that the principles of our Federalist system should be left intact and that the Clean Water Act should not be radically reinterpreted to impose ill-fitting federal requirements on states' decisions to manage their own waters for flood control, water supply and the environment.

Neither the U.S. Congress nor the Florida legislature ever expected NPDES permits to dictate the local decisions needed to effectively manage local water resources and to operate local water structures. Indeed, the District appealed a very similar case to the Supreme Court only two years ago. The Court vacated and remanded the case, and the fundamental question whether structures responsible for transferring flood waters would require NPDES permits remained unanswered.

Soon, the Eleventh Circuit will have the chance to address this question again, with a new record and submissions of the *amici*. Whatever the outcome, the District will continue to comply with the orders of the judiciary. However, the outpouring of support for the District's position, including the support from other states, clearly validates the decision to appeal.

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