

PRESS RELEASE

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July 29, 2008 - Miami, Florida

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Miccosukee Tribe and Friends of the Everglades Win Everglades Forever Act Amendments and Phosphorus Rule Case.

In a landmark 101 page decision ending a four years of litigation, Federal District Court Judge Alan Gold sided with Friends of the Everglades and the Miccosukee Tribe of Indians of Florida finding that the US EPA's decision to approve/allow the State of Florida to continue to pollute the Everglades for at least ten more years violated the Clean Water Act.

The case: Miccosukee Tribe & Friends of the Everglades v. U.S. EPA and the State of Florida Department of Environmental Protection; SDFL Case No. 04-21448-CIV-GOLD/McALILEY.

The Court said in part:

"Florida Legislature, in 2003, by adopting the State's draft Long-Term Plan, as proposed by the South Florida Water Management District's Governing Board, changed water quality standards under the Federal Clean Water Act, and violated its fundamental commitment and promise to protect the Everglades, by extending the December 31, 2006 compliance deadline for meeting the phosphorus criterion for at least ten more years"

"In short, what EPA has done is to allow "Florida to radically modify its water quality standards, simply disavow that a change had taken place" and then "rely on Florida's disavowal to avoid its mandatory review of the modified standards."

"Federal law does not authorize anything like a twenty-two year compliance schedule, which is what the 1994 EFA, the Amended EFA and the Phosphorus Rule now allow with regard to achieving the narrative and numeric phosphorus criterion (the original EFA took effect in 1994 but compliance is not contemplated until 2016)"

"In addition, finding this case as one where a generic remand is not alone appropriate, I enjoin the DEP from issuing permits pursuant to those sections of the Phosphorus Rule that I have set aside, and enjoin the DEP from considering blanket exemptions or variances under the current Phosphorus Rule pending compliance with the CWA and its implementing regulations. I further enjoin the DEP from enforcing the "no action" provision in subsection 4 of the Phosphorus Rule, and from utilizing subsection 4 and 5(b)(3) of the Phosphorus Rule to avoid the 10 ppb phosphorus numeric criterion as otherwise established by the Phosphorus Rule."

We are pleased with the Court's decision and hope that its detailed and thoughtful analysis will give the State and Federal government much needed guidance going forward.

David P. Reiner, President

Friends of the Everglades

A copy of the decision is available at:

www.everglades.org/orders/EFAopinion.pdf