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Friends of the Everglades, Inc. v. S. Fla. Water Mgmt. Dist., No. 02-80309, 2003 U.S. Dist. LEXIS 13827 (S.D. Fla. July 1, 2003)

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requested inappropriate relief and moved for dismissal of the CWA claims for lack of both adequate notice and standing. Chicago further argued for and established discretionary immunity for the other counts.

Allstate attempted to proceed under the doctrine of associational standing as measured in *Hunt v. Washington State Apple Advertising Commission*, allowing an association to sue on behalf of its members if (1) the individual members otherwise had standing to sue, (2) the individual's participation was not required, and (3) the association's interest in the suit is "germane to the organization's purpose." The court rejected this argument citing *Group Health Plan, Inc. v. Philip Morris Inc.*, where the court found that an insurance company did not qualify as an association, those insured did not qualify as members, and thus their relationship did not support an assertion of associational standing. The court stated that even if Allstate had fulfilled the criteria for associational standing, the interests that Allstate sought in the present case were not germane to the organization's purpose. The court stated that Allstate's purpose was to collect, pay out and recoup claims, not to prevent discharges as regulated by the CWA or to protect their clients' desire for a clean ecosystem.

The court ruled that Allstate's subrogation claims allowed for only flood damages and similarly related damages and refused to apply the subrogation doctrine to either the CWA claim or the claim for loss of recreational use of water affected by the discharge. The court therefore dismissed the CWA claim for lack of subject matter jurisdiction.

Gerritt James Koser

Friends of the Everglades, Inc. v. S. Fla. Water Mgmt. Dist., No. 02-80309, 2003 U.S. Dist. LEXIS 13827 (S.D. Fla. July 1, 2003) (granting joint emergency motion for immediate stay when the United States Supreme Court granted certiorari on the same issue of whether an NPDES permit under the Clean Water Act was required to operate pumps that do not themselves add pollutants to U.S. Waters, but pump water from sources containing preexisting pollutants).

Friends of the Everglades ("Friends") brought suit in the United States District Court for the Southern District of Florida against the South Florida Water Management District ("SFWMD") for discharging pollutants into Lake Okeechobee through pumps S2, S3, and S4 by back pumping water containing pollutants from canals south of the Lake into the Lake. Friends argued that the Clean Water Act ("Act") required National Pollutant Discharge Elimination System ("NPDES") permits because the back pumping constituted a discharge of pollutants from point sources into navigable water of the United States. Both parties moved the court for an immediate stay of

proceedings.

In a related case, *South Florida Management District v. Miccosukee Tribe of Indians*, the United States Supreme Court had granted certiorari to decide the same issue of whether the conveyance of water by SFWMD from one body of water to another body of water, where the transfer of water would not otherwise occur, through a pump that does not itself add pollutants to the receiving water, constituted an "addition" of a pollutant from a point source under the Act, thus requiring an NPDES permit.

Because district courts are justified in granting a "stay pending the resolution of a related case in another court" the court granted the stay of proceedings pending the United States Supreme Court's decision in *Miccosukee Tribe*

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Kan. Natural Res. Council, Inc., v. Whitman, 255 F. Supp. 2d 1208 (D. Kan. 2003) (granting summary judgment and holding the Environmental Protection Agency must meet statutory deadlines under the Clean Water Act for promulgating proposed regulations).

Kansas Natural Resources Council, Inc. ("KNRC") filed suit in the United States District Court for the District of Kansas in an action to compel the United States Environmental Protection Agency ("EPA") to promulgate regulations proposed to correct the State of Kansas' deficient water quality standards in a timely manner as mandated by the Clean Water Act ("CWA"). Both parties moved for summary judgment.

On February 19, 1998, the EPA determined certain water quality standards filed by the State of Kansas failed to comply with the CWA-mandated plan for the reduction and eventual elimination of water pollution. On August 10, 1999, Kansas submitted revisions in an attempt to comply with the CWA. Shortly thereafter KNRC filed this action. While the suit was pending, the EPA approved some of the revised quality standards submitted by the State. One group of deficient quality standards remained, regarding 1456 water bodies. Due to a May 19, 2000, consent decree, the EPA published proposed water quality standard regulations on July 3, 2000, correcting Kansas' remaining deficient standards. The EPA failed to promulgate the regulations by October 1, 2000, as required by section 1313(c)(4) of the CWA, mandating promulgation within ninety days after proposal. The EPA contended the July 2000 proposal generated a high level of interest resulting in an increased number of public hearings regarding the proposal and that an extended public comment period, past the ninety-day requirement, was necessary to ensure all interested parties received sufficient opportunity to comment. The EPA further argued the information received by these public hearings demonstrated a need to perform use attainability analyses on all 1456 bodies of water, a