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## Fishermen Against the Destruction of the Env't, Inc. v. Closter Farms, Inc., 300 F.3d 1294 (1 1th Cir. 2002)

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The decree only required that the EPA establish TMDLs. Because the EPA had established TMDLs, the district court should have sustained EPA's motion to dismiss the case as moot. The Eleventh Circuit reversed and remanded the case to the district court.

*James Siegesmund*

**Fishermen Against the Destruction of the Env't, Inc. v. Closter Farms, Inc., 300 F.3d 1294 (11th Cir. 2002)** (holding the Clean Water Act did not require that farm obtain a permit to discharge water from its water management system into lake).

Fishermen Against the Destruction of the Environment, Inc. ("FADE") brought a Clean Water Act ("CWA") suit against Closter Farms, Inc. ("Closter Farms") alleging that Closter Farms discharged pollutants into Lake Okeechobee without a National Pollutant Discharge Elimination System ("NPDES") permit. After trial, the United States District Court for the Southern District of Florida found the pollutants either fell within agricultural exemptions not requiring a permit under the CWA or were covered by other permits, and entered judgment for Closter Farms. FADE appealed to the Eleventh Circuit Court of Appeals.

Closter Farms operated a sugar cane farm adjacent to Lake Okeechobee. Closter Farms leased its land from the State of Florida, and the lease required Closter Farms to operate a water management system. The water management system provided drainage for Closter Farms' lands, as well as for an airport, a wastewater treatment plant, a county park, a vacant lot previously occupied by a tractor sales operation, and a county road, all adjacent to Closter Farms. The water management system took excess water from Closter Farms' irrigation canals and pumped it into Lake Okeechobee.

Closter Farms argued it was not required to obtain a permit for two reasons. First, the CWA exempted discharge from agricultural operations from the NPDES permit requirement. Second, the adjacent properties that share the water management system all had NPDES permits for their lands. The district court found FADE failed to establish discharge of a non-exempt pollutant and entered judgment for Closter Farms.

Reviewing the district court's decision de novo, the appellate court identified two implicit findings in the district court's ruling. First, any pollutants that originated on Closter Farms' property fell within the agricultural exemptions of the CWA. Second, either an existing NPDES permit or exemptions to the permitting requirements covered pollutants that originated elsewhere.

Agricultural storm water discharges and return flows from irrigation agriculture are exempted from the CWA permitting requirements. FADE alleged Closter Farms' discharges were neither.

The court found three sources of the discharged water: (1) rainfall; (2) groundwater withdrawn into the canals from the areas being drained; and (3) seepage from the lake. Additionally, it found that each of these sources fell within the CWA exemptions as either “agricultural storm water discharge or “return flows from irrigation agriculture.” Closter Farms was thus not required to obtain a permit for any waters discharged into Lake Okeechobee that originated on its lands.

Finally, the court found insufficient evidence in the record to conclude that Closter Farms discharged non-agricultural pollutants into Lake Okeechobee. The only testimony that supported such a conclusion was from an environmental manager with the Florida Department of Environmental Protection. Without identifying any studies or research, the manager tentatively concluded that runoff from the waste treatment plant, the county road and the county park likely contributed pollutants. The court found such evidence insufficient to conclude these sources discharged any pollutants, affirming the district court’s ruling.

*Brian L. Martin*

**Georgia v. United States Army Corps of Eng’rs, 302 F.3d 1242 (11th Cir. 2002)** (holding that parties can intervene as a matter of right when the parties have a legally protected interest in water quantity, such as, the right to an equitable apportionment of water flowing through the interstate stream and the right to hydropower production).

The State of Georgia (“Georgia”) sued the U.S. Army Corps of Engineers (“Corps”) in the United States District Court for the Northern District of Georgia to compel increased releases of water from a reservoir managed by the Corps. The district court denied a motion to intervene submitted by State of Florida (“Florida”) and Southeastern Federal Power Customers, Inc. (“SeFPC”). The Court of Appeals for the Eleventh Circuit reversed and held that both Florida and SeFPC could intervene as a matter of right.

The Chattahoochee River originates in Georgia and becomes the Apalachicola River at the Florida Border. The Flint River joins with the Chattahoochee and the Apalachicola Rivers to form the Apalachicola-Chattahoochee-Flint Basin (“ACF Basin”). Florida, Georgia and Alabama share the water supply of these interconnected rivers, and in 1997 enacted the Apalachicola-Chattahoochee-Flint (“ACF”) Compact. The ACF Compact required the states to negotiate water allocation, however, no agreement was ever reached. In the 1940s, Congress authorized the Corps to build and manage the Buford dam across the Chattahoochee River. The resultant lake, Lake Lanier, is within the ACF Basin and thus subject to the ACF Compact. In 2000,