Protecting States' Rights over State Resources

An important issue now being considered in federal court impacts all those who care about a state's constitutional right to govern its citizens and manage its resources. The case relates to three pump stations (S-2, S-3 and S-4) along the south shore of Lake Okeechobee that are, on rare occasions, used to move water from the surrounding agricultural area into the big lake. A federal judge ruled earlier this year that the South Florida Water Management District must obtain federal permits, authorized through the Clean Water Act, to run these pumps.

The District has complied with this order and applied for the permits. However, the agency also has appealed the judge's decision on significant and far-reaching grounds. The District firmly holds that the federal permitting program does not encompass the regulation of a state's water management activities. The current ruling, if upheld on appeal, would allow federal authority to intrude on a state's right—granted in the U.S. Constitution—to govern its people and resources. A seemingly minor case involving three local pump stations has the potential, remarkably, to set an undesirable national precedent with resounding consequences.

A decision by the appeal court to require federal permits at pump stations S-2, S-3 and S-4—and, by extension, structures throughout the District's entire water management system—has the potential to impair our ability to uphold this agency's very mission: to provide timely flood control, protect regional water supplies, improve water quality and protect natural areas. Inevitably, it will also slow our progress on Everglades restoration.

The goal of federal permits is indeed a laudable one: to control pollution from an identified source. In Florida, the Department of Environmental Protection actively administers this permitting program, which has been effective in regulating industries with point-source discharges that could add pollutants to America's waters. In addition, the State of Florida has its own clear and effective pollution control laws that assure full compliance with federal water quality standards.

Within the federal system itself, the U.S. Environmental Protection Agency has recognized the misinterpretation surrounding its permit program and has a rule now under consideration specifically aligned with the District's position: that state and county agencies across the country should be exempt from federal permitting for their local and routine water management activities.

The potential impact of this case on the South Florida Water Management District is the burden of unnecessary complexities and significant expense to the District's 16-county operations. Federal permits are time-consuming and costly to obtain, labor-intensive and costly to satisfy compliance and restrictive in the water movement that is allowed. And, they would provide no additional protection above what already exists in Florida's extensive and effective state permitting system.

The potential impact of this case on water management activities throughout the nation is profound. I am heartened that so many states, regional organizations and water management agencies are attentive to the issue and stand with us in our appeal. Florida has become a recognized leader in environmental restoration and natural resource protection, and as a result, we have been handed a rare opportunity to safeguard states' rights over local waters. The District's appeal in this case is intended to do exactly that.

Eric Buermann
Governing Board Chairman
South Florida Water Management District