IN THE SUPREME COURT OF FLORIDA
Case No. SC09-713

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

Appellant,

v.

COY A. KOONTZ, etc.,

Appellees.

Brief of the Florida Department of Environmental Protection, the Northwest Florida Water Management District, the South Florida Water Management District, and the Southwest Florida Water Management District as Amici Curiae In Support of Appellant

---

On Appeal From a Decision of the Fifth District Court of Appeal
Case No. 5D06-1116

Thomas M. Beason
General Counsel
Meredith C. Fields (FBN 0022541)
Assistant General Counsel
Florida Department of
Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
(850) 245-2242
(850) 245-2301 (fax)

BILL McCOLLUM
Attorney General
Scott D. Makar (FBN 709697)
Solicitor General
Courtney Brewer (FBN 890901)
Deputy Solicitor General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
(850) 410-2672 (fax)
Counsel for Amici

(Additional counsel on signature page)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutory and Regulatory Provisions

Other Authorities

INTEREST OF AMICI CURIAE

Amici, the Florida Department of Environmental Protection, the Northwest Florida Water Management District, the South Florida Water Management District, and the Southwest Florida Water Management District, have an interest in this case because of its potential effect on the administration of permitting programs statewide and the attendant economic burdens for permitting agencies. The amici administer and issue permits as a regular part of their statutory duties to regulate resource protection. In their efforts to balance the competing interests of growth development and resource protection, they have created permitting processes similar to that which was used herein. The Fifth District's opinion misapplies the concept of an exaction taking to include these permitting processes and negotiations, even when a permit is ultimately denied and no conditions actually imposed. If the Fifth District's decision is affirmed, these processes may expose the amici to exaction taking liability, along with its attendant damages, fees, and costs, despite no constitutional violation occurring. In addition, the decision below creates this exposure when the correctness of the permitting decisions remains untested in the administrative forum, in direct derivation of statutory and caselaw authority. Accordingly, the amici have a significant interest in ensuring that the Fifth District's reasoning is not accepted and that this Court reverses the decision below.

SUMMARY OF ARGUMENT

The Fifth District's decision should be reversed because it misapplies takings jurisprudence to determine that mitigation conditions proposed as part of the ordinary permitting process may expose an agency to exaction taking liability, even when those conditions ultimately are not imposed and the permit is denied. Throughout Florida, whenever a developer applies for a permit, governmental agencies must balance the competing interests of growth development and resource protection. In balancing these interests, applicants as well as agency staff engage in a negotiation process to determine whether a project is permittable. This process is fluid and flexible, and may or may not lead to mutually agreeable terms and conditions. Given the provisional nature of these negotiations, no principled basis exists for imposing liability under an exaction taking theory when the proposed conditions are never imposed and a permit is never issued. The Fifth District's reasoning to the contrary is unprecedented, and is likely to result in outright denials of permits in the future, thereby threatening the use of a mutually advantageous process that attempts to ensure growth development and resources are neither over- nor under-regulated.

The decision below also places its imprimatur on a procedural path that circumvents the administrative review that the statutory framework requires. Rather than challenging the correctness of the agency action under the

administrative process as contemplated by section 373.617(2), Florida Statutes, Koontz brought his dispute to the circuit court, failing to exhaust his administrative remedies. Judicial review at this point is both premature and directly contrary to statutory and caselaw authority. Consequently, permitting agencies are left exposed to liability and fees when the correctness of their permitting decisions remain untested and lack full development by the requisite administrative review. For all these reasons, the Fifth District's decision should be reversed.

ARGUMENT

I. The Fifth District's Decision Should Be Reversed Because It Misapplies the Doctrine of Exaction Takings, Creating Far-Reaching Negative Effects on State and Local Land Regulation Processes.

The Florida Department of Environmental Protection (DEP), the Northwest Florida Water Management District, the South Florida Water Management District, and the Southwest Florida Water Management District [collectively "Amici"] agree, as argued by St. Johns River Water Management District as well as the Florida League of Counties and Florida League of Cities in their briefs, that this Court should reverse the decision in St. Johns River Water Management District v. Koontz, 5 So. 3d 8 (Fla. 5th DCA 2009). Specifically, the majority opinion misapplied United States Supreme Court precedent by extending an exaction taking analysis to circumstances in which no exaction taking occurred. Rather, all that occurred was the denial of development permits following a negotiation process, which was designed to avoid the outright denial of these permits. This process is similar to what occurs throughout Florida whenever the competing interests of resource protection and growth development require Amici to balance these concerns when issuing permits. By imposing exaction taking liability when the permits were subsequently denied and no property was exacted, the Fifth District has put this entire regulatory process in jeopardy.

A. The permitting process that occurred in this case is similar to processes occurring statewide, which are necessary to ensure that the interests of growth development and resource protection are properly balanced.

The Fifth District's decision should be reversed not only because of its misapplication of the federal doctrine on which it relies, but also because of its potentially wide-ranging impacts on the way state agencies regulate land use and ensure protection of environmental resources. Land use and development, being heavily regulated at the federal, state, and local levels, is subject to a myriad of regulations that applicants must consider in designing projects. At the state level, applicants and agency staff work together to create permittable projects.

The permits at issue in the instant case were Management and Storage of Surface Water and dredge-and-fill permits. These regulations were merged into the Environmental Resource Permitting (ERP) program in the mid-1990s to consolidate the required multiple state-level authorizations into one permit. Currently, an ERP is required for almost every type of development statewide, including subdivisions, commercial development, roads, and marinas. The ERP program addresses three types of environmental impacts resulting from development: water quantity (flooding), water quality (stormwater treatment), and environmental (preserving the function of wetlands and other surface waters). ERP is administered by both the water management districts and DEP, depending on the

nature of the project being permitted. Therefore, a developer applies either to DEP or to the appropriate water management district to obtain an ERP.

In a typical ERP scenario, and as was the case herein, if mitigation is required for project approval, it is to offset the environmental impacts associated with the proposed dredging and filling of wetlands. For an agency to approve a project and issue an ERP, a system cannot cause a net adverse impact on wetland functions and other surface water functions, unless that adverse impact is offset by mitigation.[1] *See* § 373.414(1)(b), Fla. Stat. In other words, the agency could issue the permit, but conditioned upon the applicant conducting appropriate mitigation activities to offset adverse impacts.

The reviewing agency's first step in evaluating proposed impacts to wetlands is considering whether an applicant has attempted to eliminate and reduce such impacts. *See, e.g.*, Fla. Admin Code R. 40E-4.301(3). The agency will examine a proposed project and work with the applicant to reduce impacts through practical design modifications. This process involves an analysis of how easily an impact can be mitigated and the environmental benefits of requiring the modification compared to the cost to the applicant of making the modification. For

[1] Sometimes, mitigation cannot offset impacts sufficiently to yield a permittable project. Such cases include activities which significantly degrade Outstanding Florida Waters, adversely impact habitat for listed species, or adversely impact surface waters not likely to be recreated. In such cases, the permit must be denied.

example, in the case of a proposed road, such modification may include altering the alignment and curve of the road around wetlands. In a subdivision, modification may involve the elimination of a few proposed housing lots to preserve high quality wetlands on site.[2]

If adverse impacts to wetlands remain, even after practicable design modifications to eliminate and reduce those impacts have been made, they may be offset by mitigation. *See, e.g.*, Fla. Admin Code R. 40E-4.301(3). Without the potential for mitigation, some development projects would simply be impermissible because they would violate Florida laws protecting natural resources. Mitigation proposals can come either from the applicant or the agency, but the choice of which mitigation to pursue ultimately lies with the applicant:

> If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or the department, in deciding to grant or deny a permit, shall consider measures proposed by *or acceptable to* the applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under s. 373.4136. *It shall be the responsibility of the applicant to choose the form of mitigation.* The mitigation must offset the adverse effects caused by the regulated activity.

[2] At this point, the agency and the applicant could reach an impasse, with the agency concluding a proposed modification is "practical" but the applicant disagreeing. The agency would deny the permit and the applicant could either challenge the correctness of denial in an administrative hearing, or, if the party accepts the permit denial as intrinsically correct, challenge the denial of the permit as a taking, as contemplated by section 373.617, Florida Statutes. *See* § II, *infra*.

§ 373.414(1)(b), Fla. Stat. (emphasis added).

The amount of mitigation required to offset a project's impact, far from being a subjective determination made at the agency's whim, now is governed by Chapter 62-345, Florida Administrative Code, the Uniform Mitigation Assessment Method (UMAM). These rules establish the criteria for determining the amount of adverse impacts to wetlands and other surface waters from a proposed activity and the amount of mitigation needed to offset that impact. UMAM requires a qualitative characterization of the area, including information such as the size and uniqueness of the area, special water classifications, the functions performed in the area, and the anticipated wildlife use. Fla. Admin. Code R. 62-345-400. This characterization is then used to assess the potential effects on the area; the assessment is subject to the rule's formula and scoring system. Fla. Admin. Code R. 62-345-500.

An appropriate mitigation for the loss of wading bird habitat, for example, would be new or improved wading bird habitat. If an applicant proposes construction of a home with impacts to a bay swamp, appropriate mitigation would be the creation of a new area of bay swamp or to restore the conditions of an adversely-impacted, previously-existing bay swamp. Once approved, the mitigation conditions are incorporated into the permit authorizing the wetland resource project, including the mitigation activities to be undertaken by the permittee, the criteria for determining the success of the mitigation, and any monitoring requirements.

As demonstrated, then, environmental permitting involves a series of interactions between the permitting agency and the developer, requiring numerous and complicated degrees of analysis and negotiation to ensure that statutory compliance is maintained and that growth and resource protection are balanced. Given the tightly-regulated and site-specific nature of environmental permitting, and in an effort to bring efficiency to the process, applicants are strongly encouraged to consult with agency staff before and during the application process to identify appropriate mitigation options that will permit the project to proceed. Caselaw reflects that this process occurs in a variety of development contexts. Graham v. Estuary Props., Inc., 399 So. 2d 1374, 1376-77 (Fla. 1981) (permit for development of regional impact); Osceola County v. Best Diversified, Inc., 936 So. 2d 55, 57-58 (Fla. 5th DCA 2006) (landfill operation permit); Dep't of Envtl. Prot. v. Youel, 787 So. 2d 923, 924 (Fla. 5th DCA 2001) ("[I]t was incumbent upon [Youel] to remedy [her] violation, and apparently various methods by which this could have been accomplished were discussed and considered by Youel and DEP, among them being modification of her site plan and mitigation of her violation."); Fox v. Treasure Coast Reg'l Planning Council, et. al, 442 So. 2d 221, 226 (Fla. 1st DCA 1983). As the next sections explain, the Fifth District's holding jeopardizes this established system by allowing a disappointed applicant to proceed directly to circuit court with an exaction taking claim.

B. The Fifth District's decision threatens to alter and discourage the established negotiation process.

Permit negotiations are an established and essential tool of flexible land use regulation. Absent these mitigation negotiations, Koontz's permit application would have been denied outright because his proposed mitigation ratio on the initial application did not comply with the water management district's mitigation guidelines. [IB 2][3] Instead, the water management district and Koontz engaged in a process that is designed to bring an outcome better serving all interests.

Permit conditions "play a crucial regulatory and ideological role in bringing flexibility to an otherwise inflexible process, ameliorating the negative consequences of controversial new development proposals while persuading political opposition to accept them." Mark Fenster, Regulating Land Use In a Constitutional Shadow: The Institutional Contexts of Exactions, 58 Hastings L.J. 729, 741 (2007) [hereinafter Exactions]. Conditions on permits provide a range of benefits to development and the regulatory process, including shifting public infrastructure costs to the developer, promoting "a more efficient use of the infrastructure," mitigating the negative effects of development, and enabling growth in areas where the government cannot provide public facilities fast enough to accommodate growth. Vicki Been, "Exit" as a Constraint on Land Use

[3] Citations to the appellant's brief are [IB #] where # is the page number.

Exactions: Rethinking the Unconstitutional Conditions Doctrine, 91 Colum. L. Rev. 473, 482-83 (1991).

This established practice, however, is threatened by the Fifth District's decision, which turns every mitigation proposal from agency staff into a potential exaction taking claim. Determinations made by staff in the initial mitigation discussions are bound to lack the level of analysis provided in the full and formal permit-issuing process, when all facts and arguments are made available and fleshed out. Field staff members are not attorneys trained in the labyrinthine requirements of constitutional takings law, but rather environmental scientists seeking to carry out the statutory and rule-based requirements for permit approval.

Faced with the risk of exaction taking liability, agencies are likely to consider new policies to maintain silence in the process and refuse to work with applicants lest they propose mitigation the applicant deems unreasonable. Applicants would lose the benefit of the agency staff's expertise in identifying ways a project could become permittable, developers would receive more denials instead of more permits, and the judicial system would become the repository of exaction taking claims in those cases where agency staff works to propose mutually beneficial solutions with which applicants ultimately disagree. The Fifth District's approach would cause a major shift in development regulation, benefitting none of the parties involved and making it more likely that agencies will deny applications outright rather than

attempt to assist applicants in achieving a permittable project. As Judge Griffin stated in her dissent:

> No agency in its right mind will wade into this swamp. It will be too risky for a governmental agency to make offers for conditional permit approvals or to offer a trade of benefits out of fear that the offer might be rejected and the condition later found to have lacked adequate nexus or proportionality. Better to deny the permit and defend the decision under the traditional law of regulatory "takings."

Koontz, 5 So. 3d at 21 (Griffin, J., dissenting). As Judge Griffin notes, the more practical route for Amici to take when presented with a problematic permit would be to deny the permit outright and deal with the lesser scrutiny of a potential regulatory taking claim under Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978).

Takings jurisprudence emphasizes the great respect due to state and local governments "in discerning local public needs." Kelo v. City of New London, Conn., 545 U.S. 469, 482 (2005); *see also* Penn Cent., 438 U.S. at 125 ("[I]n instances in which a state tribunal reasonably concluded that the health, safety, morals, or general welfare would be promoted by prohibiting particular contemplated uses of land, this Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests." (internal quotation omitted)). A "broad range of governmental purposes and regulations" satisfy the requirement of a legitimate state interest sufficient to avoid takings liability. Nollan v. Calif. Coastal Comm'n, 483 U.S. 825, 835 (1987). Such

deference ensures that those with the knowledge and expertise to make land use decisions are permitted to make them. It serves a policy purpose as well, because treating all takings claims based on application of land use regulations "as *per se* takings would transform government regulation into a luxury few governments could afford." Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 324 (2002).

Moreover, the United States Supreme Court does not contemplate a taking claim merely due to the "ineffectiveness or foolishness" of land-use regulations. Lingle v. Chevron U.S.A., Inc. 544 U.S. 528, 543 (2005). Indeed, the Court in Nollan explicitly recognized that the denial of a permit would not be subject to the essential nexus analysis to determine its propriety. Nollan, 483 U.S. at 835-36 (if the Commission had a legitimate state interest, "the Commission unquestionably would be able to deny the Nollans their permit outright if their new house … would substantially impede these purposes, unless the denial would interfere so drastically with the Nollans' use of their property as to constitute a taking."). Neither is the rough proportionality test of Dolan v. City of Tigard, 512 U.S. 374 (1994), "designed to address, [or] readily applicable to, the much different questions arising where … the landowner's challenge is based not on excessive exactions but on denial of development." City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 703 (1999); *see also* Lambert v. City & County of

San Francisco, 67 Cal. Rptr. 2d 562, 568 (Cal. Ct. App. 1997) (holding that denial of permit due to landowners' refusal to pay $600,000 does not trigger the heightened standard of review in Nollan and Dolan because those cases did not "alter the standard for reviewing a decision to deny a conditional use permit."), *cert. denied*, 529 U.S. 1045 (2000). Therefore, when the government has not actually taken property, the court should keep in mind that "local administrative agencies are sufficiently competent, and sufficiently overseen by external political institutions, to deserve deference." Exactions, 58 Hastings L.J. at 769.[4]

If this deference is eradicated such that land use regulators must avoid making recommendations regarding mitigation, the progress of orderly development will inevitably falter. Given that the various permitting systems are structured and balanced to further the interests of both development and protection of resources, while maintaining timeliness and administrative streamlining, certain deference must be afforded the participants in that process, unless and until a condition is imposed and accepted and a property owner actually forfeits something. Only then does established constitutional law require exaction taking

[4] This deference is reflected by this Court's analysis of regulatory takings claims, which expressly considers the governmental reasons for the regulation and refuses to create a right for owners to the most profitable use of property. Estuary Props., Inc., 399 So. 2d at 1380-81; *see also* Fox, 442 So. 2d at 226 (holding that a landowner cannot establish a taking "merely because the agency denies a permit for the particular use that a property owner considers to be the most desirable or profitable use of the property.").

analysis to protect the interests of the property owner. *See* Koontz, 5 So. 3d at 20 (Griffin, J., dissenting) ("It is not the demand that is compensable, only the taking."). Because the Fifth District's decision both impermissibly departs from established takings jurisprudence and will inevitably result in adverse practical implications for all entities involved in the permitting process, this Court should reverse the decision below.

II. The Fifth District's Decision Should Be Reversed Because It Confuses the Proper Forum for Challenging Agency Action.

Both statutory and caselaw authority establish that the administrative review process is the proper route for challenging the correctness of agency action. The proceedings below and the Fifth District's decision, however, confuse this well-established course. Although Koontz ostensibly filed his suit as a taking claim in circuit court, he was undoubtedly challenging the correctness of the water management district's action. [IB 38] If the decision below is allowed to stand, the path forward for challenging agency action will be muddied, with agencies hauled into circuit court to defend a taking claim on decisions that have not had the chance to be vetted in the administrative forum before a neutral fact-finder prior to becoming final, potentially exposing agencies to damages as well as attorney fees. Such exposure is significant, as in this case Koontz seeks costs and fees nearly twice the amount of his awarded damages, all totaling over one million dollars. [IB 39] This Court should therefore reverse the Fifth District's decision and restore the

administrative process as the proper venue for challenging the propriety of agency action.

Koontz originally brought the action below pursuant to section 373.617, Florida Statutes.[5] While this statute gives affected parties, such as Koontz, the ability to proceed directly to circuit court to determine whether final agency action constitutes a taking without just compensation, the circuit court's jurisdiction is limited to consideration of the taking claim only. "Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent, substantial evidence shall proceed in accordance with chapter 120." *See* § 373.617(2), Fla. Stat. However, as explained by appellant, here the trial consisted of evidence such as wetlands assessments and testimony from wetlands experts indicating that the amount of wetlands on the

---

[5] The statute provides as follows:

> Any person substantially affected by a final action of any agency with respect to a permit may seek review within 90 days of the rendering of such decision and request monetary damages and other relief in the circuit court in the judicial circuit in which the affected property is located; however, circuit court review shall be confined solely to determining whether final agency action is an unreasonable exercise of the state's police power constituting a taking without just compensation. Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent substantial evidence shall proceed in accordance with chapter 120.

See § 373.617(2), Fla. Stat. (2009).

property was less than originally submitted in Koontz's application. [IB 6] Therefore, the trial court focused on whether the agency correctly applied the statutes and rules when proposing the mitigation conditions for Koontz's development. As is well-established by statute and caselaw, such claims are properly brought in the administrative forum under chapter 120, Florida Statutes. *See generally* Bowen v. Fla. Dep't of Envtl. Regulation, 448 So. 2d 566, 569 (Fla. 2d DCA 1984) ("Where procedural or substantive errors in the application or administrative hearing thereon result in a permit denial, administrative and judicial appeal through the applicable substantive statutes and chapter 120 is still the proper remedy."), *approved and adopted*, Dep't of Envtl. Regulation v. Bowen, 472 So. 2d 460 (Fla. 1985).

The Legislature created chapter 120, the Administrative Procedures Act, to determine the rights of anyone affected by agency action, either proposed or final. The chapter 120 process allows an affected person to challenge agency action and go before a neutral fact-finder at an administrative hearing, after which the fact-finder will recommend to the agency whether the action should be modified in any way. The agency head then has the opportunity to make any changes to ensure that the agency's action comports with governing statute and law. In instances such as Koontz's permit denial, the Legislature has clearly specified that it is the

administrative process that must be used for determining whether agencies are acting in a manner consistent with applicable rules and procedures.

Caselaw confirms that a challenge such as the one brought by Koontz, attacking an agency's mitigation proposal as excessive, are to be governed by the chapter 120 process. *See, e.g.*, Key Haven Associated Enters., Inc. v. Bd. of Trs. of the Internal Improvement Trust Fund, 427 So. 2d 153, 156 (Fla. 1982), *superseded by statute on other grounds, as noted in* Bowen, 448 So. 2d at 568. In Key Haven, the developer filed an inverse condemnation suit in circuit court based on the denial of a dredge-and-fill permit. Id. at 154-55. The Court held that Key Haven was required to exhaust all administrative remedies before instituting a circuit court action. Id. at 155. In reaching this conclusion, the Court emphasized:

> once an applicant has appealed the denial of a permit through all review procedures available in the executive branch, the applicant may choose either to contest the validity of the agency action by petitioning for review in a district court or, *by accepting the agency action as completely correct*, to seek a circuit court determination of whether that *correct* agency action constituted a total taking of a person's property without just compensation.

Id. at 156 (emphasis added). The Court concluded, "by electing the circuit court as the judicial forum, a party foregoes any opportunity to challenge the permit denial as improper and may not challenge the agency action as arbitrary or capricious or as failing to comply with the intent and purposes of the statute." Id. at 160.

The Court affirmed this approach in Bowen. In that case (as reflected in the district court opinion, which this Court later adopted), the Bowens went directly to circuit court following the Department of Environmental Regulation's final order denying their dredge-and-fill permit application, without first requesting an administrative hearing. Bowen, 448 So. 2d at 567-68. In foregoing the chapter 120 administrative process, the Bowens relied upon sections 253.763(2) and 403.90(2), Florida Statutes, which reflected, verbatim, the language now contained in section 373.617(2) at issue here and provided the same right of access to circuit court. Id. at 568. Finding the plain meaning of "final agency action" dispositive, the court held that allowing parties to choose an inverse condemnation action instead of an administrative remedy is "in accord with the general policy against requiring exhaustion of administrative remedies where administrative proceedings would be useless, and *where the parties are willing to accept the final agency administrative action as procedurally and substantively correct.*" Id. at 569 (emphasis added).

Here, the record reflects that the very basis of Koontz's lawsuit, although brought in circuit court ostensibly as a taking claim, was whether the challenged permit condition was substantively correct. The administrative process as governed by chapter 120 is the appropriate venue for such review. Its purpose is to formulate correct agency action and ensure that the rights of affected parties are adequately protected. If an agency's preliminary decision does not comport with governing

rules and statutes, the agency head has a chance to modify its action before it becomes final, benefitting both the agency and the applicant. *See* Key Haven, 427 So. 2d at 158 ("administrative remedies must be exhausted to assure that the responsible agency has had a full opportunity to reach a sensitive, mature, and considered decision upon a complete record appropriate to the issue." (internal quotation and citation omitted)). The process also gives the parties a chance to develop a full administrative record before a neutral fact-finder for judicial review, if necessary. If the Fifth District's decision is allowed to stand, the path forward for challenging proposed agency action will become distorted. It will inevitably lead to challenges regarding the propriety of agency action through circuit court litigation, initiated by newly characterizing such challenges as exaction claims. To preclude this unjustified consequence resulting from misapplication of governing substantive and procedural law, the Court should reverse the decision below.

CONCLUSION

For the foregoing reasons, the decision of the Fifth District holding the appellant liable for an exaction taking due to the denial of Koontz's development permits should be reversed.

Respectfully submitted,
BILL McCOLLUM
Attorney General

/s/ Courtney Brewer
Scott D. Makar (FBN 709697)
Solicitor General
Courtney Brewer (FBN 890901)
Deputy Solicitor General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
(850) 410-2672 (fax)

Counsel for Amici

Thomas M. Beason
General Counsel
Meredith C. Fields (FBN 0022541)
Assistant General Counsel
Florida Department of
Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
(850) 245-2242
(850) 245-2301 (fax)

Kevin X. Crowley (FBN 0253286)
Pennington Moore Wilkinson
Bell & Dunbar, P.A.
215 S. Monroe Street, Suite 200
Post Office Box 10095
Tallahassee, Florida 32302-2095
(850) 222-3533
(850) 681-3241 (fax)
Counsel for Northwest Florida
Water Management District

William S. Bilenky (FBN 154709)
General Counsel
Joseph J. Ward (FBN 0144924)
Assistant General Counsel
Office of General Counsel
Southwest Florida Water
Management District
2379 Broad Street
Brooksville, FL 34604-6899
(352) 796-7211
(352) 754-6878 (fax)

Sheryl G. Wood
General Counsel
James E. Nutt (FBN 874868)
Senior Attorney
South Florida Water
Management District
3301 Gun Club Road
West Palm Beach, FL 33406
(561) 682-6976
(561) 682-6276 (fax)

CERTIFICATE OF SERVICE/COMPLIANCE

I certify that this brief was prepared with Times New Roman 14-point in compliance with Fla. R. App. P. 9.210(a)(2), and that a copy of the foregoing has been furnished by U.S. Mail on November 20, 2009, to the following:

Michael D. Jones, Esq.
P.O. Box 196130
Winter Springs, FL 32719-6130

Christopher V. Carlyle, Esq.
The Carlyle Appellate Law Firm
1950 Laurel Manor Dr.
Suite 130
The Villages, FL 32162

William H. Congdon, Esq.
Kathryn L. Menella, Esq.
4049 Reid St.
Palatka, FL 32177

/s/ Courtney Brewer
Attorney