

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 03-23427-CIV-(HOEVELER)

SIERRA CLUB, NATURAL RESOURCES DEFENSE
COUNCIL, NATIONAL PARKS CONSERVATION
ASSOCIATION,

Plaintiffs,

vs.

ROBERT B. FLOWERS, Chief of Engineers,
U.S. Army Corps of Engineers, and
STEVE WILLIAMS, Director, U.S. Fish
and Wildlife Service; and MIAMI-DADE
LIMESTONE PRODUCTS ASSOCIATION, INC.,
VECELLIO & GROGAN, INC., TARMAC
AMERICA LLC, FLORIDA ROCK INDUSTRIES,
INC., SAWGRASS ROCK QUARRY, INC.,
APAC-FLORIDA, INC., and RINKER
MATERIALS OF FLORIDA, INC.,

Defendants/Defendant-Intervenors.

_____ /

AMICUS CURIAE BRIEF OF
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

PRELIMINARY STATEMENT

Sierra Club, Natural Resources Defense Council, and National Parks Conservation Association will be referred to herein as the Plaintiffs. Robert B. Flowers, Chief of Engineers, U.S. Army Corps of Engineers, and Steve Williams, Director, U.S. Fish and Wildlife Service, will be referred to herein as the Defendants. Miami-Dade

Limestone Products Association, Inc.; Vecellio & Grogan, Inc.; Tarmac America LLC; Florida Rock Industries, Inc.; Sawgrass Rock Quarry, Inc.; APAC-Florida, Inc.; and Rinker Materials of Florida, Inc., will be referred to herein as the Intervenors. Amicus Curiae, State of Florida, Department of Transportation, will be referred to herein as the Department.

INTEREST OF AMICUS

This case centers on Plaintiffs' challenge to permits issued by the Army Corp of Engineers under the authority of Section 404 of the Clean Water Act to the Intervenors for dredge and fill activities in an area of Miami-Dade County, Florida, known as the "Lake Belt" region. On March 22, 2006, the Court entered an Order on Motions for Summary Judgment which called into question the continued prospect of mining in the Lake Belt. The Court set a deadline of April 19, 2006, for briefs to be filed relating to the scope of any injunction which might issue as a result of the Order on Motions for Summary Judgment.

The Department represents the public interest in the continuing maintenance and improvement of the State's transportation system. Specifically, the Department's interest in this matter stems from the impact the cessation of mining activities in the Lake Belt region will have on current and near-term Department construction projects, and the concomitant impact

on the public. The Department takes no position with respect to the bases underlying the Order on Motions for Summary Judgment. The Department's primary concern is that the Court be fully informed regarding the importance of the Lake Belt mining to the continued safe and efficient operation of the State Highway System.

ARGUMENT

The Department's transportation maintenance and construction programs are inextricably linked to limestone aggregate production from the Lake Belt mines. For the past forty (40) years, the Department has obtained approximately fifty percent (50%) of its construction materials from the mines in this region. The Affidavit of Mr. Ananth Prasad, Chief Engineer of the Department, is attached hereto and sets out many of the reasons why the Department is critically dependent upon Lake Belt mining for transportation construction. With reference to the Order on Motions for Summary Judgment, the Department is concerned with the scope of any injunction because of the significant and lasting negative impacts to the transportation programs of the Department and local governments supported by state and federal funding. Costly delays, stop work situations, and project cancellations throughout the state will result from closing of Lake Belt aggregate mines. In addition, there will be severe disruptions to on-going and planned transportation construction projects for the

foreseeable future. These circumstances will have far-reaching impacts.

Department construction projects generally fall into two main categories - preservation and capacity construction. Preservation projects include safety, resurfacing and bridge repair and replacement. Capacity construction primarily involves reconstructing highways to add travel lanes. The loss of Lake Belt aggregates will impact the majority of both types of projects statewide because the projects depend on those aggregates.

Shutting down construction on both types of projects will have immediate safety ramifications for Florida drivers. When lanes are closed or rerouted during construction, due to safety considerations the Department requires its contractors to have maintenance of traffic devices and operational plans to minimize driving disruption. However, highway work zones inevitably create driver distractions and more congestion, leading to temporarily reduced safety for the traveling public. During periods of suspended construction, the maintenance of traffic plans and devices will need to remain in place, prolonging the congested situation and costing the Department funds that could otherwise have been put toward transportation and safety improvements.

With respect to preservation projects, the Department has developed performance standards for all roadways, and by law the

Department is required to maintain those standards. See § 334.046(4), Fla. Stat. For fiscal year 2004-05, the Department let contracts totaling \$982 million for bridge and resurfacing preservation projects. The loss of Lake Belt aggregate materials will compromise the Department's ability to continue to provide the public with safe driving surfaces. The primary source of skid-resistant "friction course" aggregates will be eliminated by Lake Belt mine closures. The Lake Belt mines are the primary sources of aggregates developed and used by the Department for resurfacing projects since 1994 as a durable and skid-resistant pavement surface, i.e. "Superpave," that reduces and prevents hydroplaning conditions, especially on high volume and high speed roads.

Loss of Lake Belt aggregates will also shut down Department capacity construction projects. Florida's ever-increasing population already requires greater capacity on the state and local transportation systems than can be added. In fiscal year 2004-05, the Department alone let contracts for capacity construction totaling over \$2 billion. Typically, these projects are for adding lanes on existing highways, not for new transportation corridors.

All told, in fiscal year 2004-05 the Department's construction program was nearly \$3 billion. Projections for fiscal year 2005-06 indicate spending as high, if not higher. Significant loss of Lake Belt aggregate will jeopardize the vast majority of this work, and

in some locations will halt all ongoing and planned highway preservation and capacity construction projects, as is set forth in detail in Mr. Prasad's affidavit. For example, a complete termination of Lake Belt mining will require the suspension of construction on every current and imminent Department job in Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, and Indian River counties (Department Districts 4 and 6), at least seventy percent (70%) of the Department jobs in the Tampa Bay area (District 7), sixty percent (60%) of the jobs in Southwest Florida (District 1) and the Turnpike, and twenty-five percent (25%) of the jobs in Central Florida and Northeast Florida (Districts 5 and 2). Finding aggregate materials of comparable quality to Lake Belt supplies to complete those projects will likely exceed current funding, which in turn will require the Department to postpone some additional jobs even when additional material becomes available, and to postpone future work due to insufficient funding.

Such a wholesale interruption of the Department's work program will also have a direct impact on local governments. For example, in determining whether traffic capacity concurrency requirements for development approval have been or will be met, local governments rely on capacity projects due to begin construction within the first three years of the Department's work program. See § 163.3180(2)(c), Fla. Stat. Interruption of projects under

construction now and the postponement or cancellation of projects scheduled to begin within the next six months will cause more traffic congestion and stagnation of local economies.

The loss of aggregate will not be short term. The Department's best estimates indicate that the mining industry will not be able to replace aggregates from the Lake Belt mines from any other source in Florida in a time period of less than five (5) years, if then. Based on the Department's inventory of other approved Florida sources, there is simply not enough mining capacity for high quality rock materials that will meet Department construction specifications. Notwithstanding the lower quality rock outside the Lake Belt, stringent land use regulations for permitting new mines, stringent regulations on blasting, and environmental permitting regulations preclude rapid start up of new mines in the state.

The location of the Lake Belt mines is also critical to the well-established distribution system of aggregates throughout the state. Local projects in the Department's District 6 region are supplied by trucks hauling to project sites directly from Lake Belt mines. A rail distribution system supplies high quality aggregates including Superpave materials to projects in the Tampa, Orlando, and Jacksonville areas (Districts 7, 5 and 2). With the closure of Lake Belt mines some materials can be brought in from ocean

terminals and by rail from mines for the most part located in north Georgia (north of Atlanta). However, based upon existing information, the quantity of aggregates required cannot be replaced or supplanted in the foreseeable future from any other permitted and approved sources. This is particularly the case for Superpave and friction surface materials used for highway maintenance. The existing rail transport system infrastructure of rail cars and offloading systems is insufficient to replace lost aggregate production from Lake Belt mines from sources outside the state. Rail hauls from out of state mines will likely require materials to be hauled on several different railroads, resulting in higher tariffs and higher freight charges. Existing mines outside Florida, both national and international, will not be able to supply aggregates through waterborne commerce in a quantity sufficient to meet demands of road projects due to lack of approved sources and shipping.

Another aspect of Lake Belt mine closures will be the economic consequences of removing a large quantity of a strategic material from the marketplace. While some of this material can be replaced by lower quality materials from other Florida mines and some of the high quality materials can be shipped to the state by rail or vessel, there will remain a significant shortfall in the aggregate marketplace. The Department is attempting to model the actual

impacts of the closure of mines. It is safe to say that a shortage of aggregates will have the following effects:

1. Short and long-term disruptions and shortages of aggregates for transportation projects and for commercial and residential construction;
2. Rapid rises in tonnage prices for future aggregate products, perhaps escalating two to four times present prices; and
3. Price spikes for supplies that are available.

The ripple effect of these pricing issues will impact other sectors of the Florida economy and are expected to cause rapid escalation of residential and commercial construction costs, more frequent scheduling delays on on-going construction projects, cancellation of projects, layoffs and economic hardships to other supporting trades and suppliers, and a recession in the Florida primary and secondary home markets.

CONCLUSION

With respect to compliance with the National Environmental Policy Act, the Clean Water Act, and the Endangered Species Act, the Department is extremely mindful of the balancing of the needs of the natural environment and the demand for infrastructure to support the developed environment. For transportation facilities statewide, there is a direct and largely irreplaceable connection

to mining activities in the Lake Belt region, and this connection has existed for forty (40) years. Whether continued mining in the Lake Belt region passes environmental muster is a serious matter, but so too is the impact that closing those mines will have on the people of Florida.

Dated: April ____, 2006
Tallahassee, Florida

Respectfully submitted,

/s/ _____
ROGER B. WOOD
Assistant General Counsel
FLORIDA BAR NO. 0999253
Department of Transportation
Haydon Burns Building, MS 58
605 Suwannee Street
Tallahassee, Florida 32399-0458
Phone: (850) 414-5385
Fax: (850) 414-5264
e-mail: roger.wood@dot.state.fl.us
*Counsel for Amicus Curiae,
State of Florida,
Department of Transportation*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by United States Mail on all counsel or parties of record on the attached service list on the _____ day of April, 2006.

/s/ _____
ROGER B. WOOD

SERVICE LIST
CASE NO. 03-23427 (WMH) - CIVIL

Paul J. Schweip, Esquire
Burlington, Weil, Schweip,
Kaplan & Blonsky, P.A.
Office in the Grove, Penthouse
2699 South Biscayne Drive
Miami, Florida 33133
Phone: (305) 858-2900
Fax: (305) 858-5261
e-mail: pschweip@bwskb.com
Counsel for Plaintiffs

Eric R. Glitzenstein, Esquire
Meyer, Glitzenstein & Crystal
1601 Connecticut Avenue, N.W.,
Suite 700
Washington, D.C. 20009
Phone: (202) 588-5206
Fax: (202) 588-5049
Counsel for Plaintiffs

Bradford H. Sewell, Esquire
Natural Resources Defenses
Counsel
40 West 20th Street
New York, New York 10011
Phone: (212) 727-4507
Fax: (212) 727-1773
Counsel for Plaintiffs

Mark A. Brown, Esquire
U.S. Department of Justice
Environmental & Natural
Resources Div.
Wildlife & Marine Resources
Section
Post Office Box 7369
Ben Franklin Station
Washington, D.C. 20044
Phone: (202) 305-0204
Fax: (202) 514-0097
e-mail: mark.brown@usoj.gov
Counsel for Federal Defendants

Norman L. Rave, Esquire
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources
Division
Environmental Defense Section
Post Office Box 23986
Washington, D.C. 20026-2986
Phone: (202) 616-7568
Fax: (202) 514-8865
e-mail: norman.rave@usdoj.gov
Counsel for Federal Defendants

Adam J. Siegel, Esquire
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources
Division
General Litigation Section
Post Office Box 663
Washington, D.C. 20044-0663
Phone: (202) 305-0448
Fax: (202) 305-0506
e-mail: adam.j.siegel@usdoj.gov
Attorney for Federal Defendants

Lawrence R. Liebesman, Esquire
Holland Knight, LLP
2099 Pennsylvania Avenue, N.W.,
Suite 100
Washington, D.C. 20006-1816
Phone: (202) 955-3000
Fax: (202) 955-5564
e-mail: rapeters@hkklaw.com
*Counsel for Rinker Materials of
Florida, Inc.*

Douglas M. Halsey, Esquire
T. Neal McAliley, Esquire
White & Case LLP
Wachovia Financial Center
Suite 4900
200 South Biscayne Boulevard
Miami, Florida 33131-2352
Phone: (305) 371-2700
Fax: (305) 358-5744
*Counsel for Miami-Dade Limestone
Products Association, Inc., et al*

Roger B. Wood, Esquire
Assistant General Counsel
Department of Transportation
Haydon Burns Building, MS 58
605 Suwannee Street
Tallahassee, Florida 32399
Phone: (850) 414-5385
Fax: (850) 414-5264
e-mail: roger.wood@dot.state.fl.us
*Counsel for Amicus Curiae,
State of Florida,
Department of Transportation*

