

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.

**MEMORANDUM OF LAW IN SUPPORT OF THE STATE
OF FLORIDA, DEPARTMENT OF TRANSPORTATION'S
MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE**

Although there is no rule governing the appearance of an amicus curiae in the United States District Courts, United States v. Alkaabi, 223 F.Supp.2d 583, 592 (D. New Jersey 2002), a district court has inherent authority to designate amici curiae to assist it in a proceeding. Liberty Resources, Inc. v. Philadelphia Housing Authority, 395 F.Supp.2d 206, 209 (E.D. Penn. 2005). The extent and manner of the participation of an amicus is within the discretion of the court. Liberty Resources, Inc., 395 F.Supp.2d at

210.

Amicus curiae status is generally granted when (1) the petitioner has a special interest in the particular case; (2) the petitioner's interest is not represented competently or at all in the case; (3) the proffered information is timely and useful; and (4) the petitioner is not partial to a particular outcome in the case. Liberty Resources, Inc., 395 F.Supp.2d at 209. The courts have found the participation of an amicus especially proper where the amicus will ensure complete and plenary presentation of difficult issues so that the court may reach a proper decision. Id. Indeed, the primary role of the amicus is to assist the court in reaching the right decision in a case affected with the interest of the general public. Russell v. The Board of Plumbing Examiners of the County of Westchester, 74 F.Supp.2d 349, 351 (S.D. New York 1999).

With respect to the first criterion, the Department has a significant interest in the injunctive remedy the Court employs. The affidavit of the Department's Chief Engineer demonstrates that a complete or substantial termination of mining in the Lake Belt region will have a disastrous impact upon the Department's transportation projects currently under construction and will result in the indefinite postponement of bidding on proposed projects.

Second, the Department's interest will not be adequately

represented by the parties. Rather than specific commercial or environmental concerns, the Department represents the public interest in the continuing maintenance and improvement of the state transportation system. Moreover, as the Third Circuit observed in Neonatology Associates, P.A. v. Commissioner of Internal Revenue, 293 F.3d 128, 132 (3d Cir. 2002):

Even when a party is well represented, an amicus may provide important assistance to the court. "Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group." Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J.App. Prac. & Process 279 (1999).

See also Harris v. Pernsley, 820 F.2d 592, 603 (3d Cir. 1987) (Permitting persons to appear in court, either as friends of the court or as interveners for a limited purpose, may be advisable where third parties can contribute to the court's understanding of the consequences of the settlement proposed by the parties).

Third, the information proffered in the Department's amicus brief is both timely and useful. The information is drawn from the most current data available and will provide the Court with a valuable insight into the potential, wide-ranging, ramifications of the injunctive remedy ultimately fashioned.

Finally, while it may be argued that the Department is not

impartial insofar as it is advocating that some level of mining continue, there is no rule that amici must be totally disinterested. Alkaabi, 223 F.Supp.2d at 592. Speaking to this point the Third Circuit opined:

The argument that an amicus cannot be a person who has a "pecuniary interest in the outcome" also flies in the face of current appellate practice. A quick look at Supreme Court opinions discloses that corporations, unions, trade and professional associations, and other parties with "pecuniary" interests appear regularly as amici....Parties with pecuniary, as well as policy, interests also appear as amici in our court....I thus reject the appellant's argument that an amicus must be an impartial person not motivated by pecuniary concerns. [Citations omitted]

Neonatology Associates, P.A., 293 F.3d at 131-132.

Accordingly, the State of Florida, Department of Transportation, respectfully requests this Honorable Court grant its motion for leave to file the accompanying Brief of Amicus Curiae.

Dated: April ____, 2006
Tallahassee, Florida

Respectfully submitted,

/s/

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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

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