



For Immediate Release

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New Jersey Court Decision on Deepening Appealed by Environmental Plaintiffs

Philadelphia, PA – Delaware Riverkeeper Network, the Delaware Riverkeeper, New Jersey Environmental Federation, Clean Water Action, Delaware Nature Society and National Wildlife Federation filed their appeal to the Third Circuit Court of Appeals of the January 13, 2011 ruling by Judge Joel A. Pisano, U.S. District Court in the District of New Jersey regarding the Delaware deepening project. Judge Pisano ruled the project could move forward despite the arguments by the State of New Jersey and five environmental organizations that the project violates multiple state and federal laws. The five environmental organizations will challenge both the legal interpretations and factual errors included in the District Court ruling. This appeal is the second one filed by the five environmental organizations. The first appeal was filed on February 1, 2011 and challenged the ruling by Judge Sue Robinson of the U.S. District Court in the District of Delaware.

“New information is constantly emerging about how this project harms our communities and how the Army Corps has manipulated the numbers to try to make this bad project appear good. If the law were followed, these false claims by the Corps would have been uncovered.

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Even the Government Accountability Office doesn't believe the Army Corps," says Maya van Rossum, the Delaware Riverkeeper. Van Rossum continues, "If the law were followed, we wouldn't be wasting over \$300 million on a project that will harm jobs in New Jersey and Delaware and harm our communities by threatening the water they drink, the fish and oysters they eat, and the lands that protect us from the ravages of storm and climate change."

The Environmental Plaintiffs filed this appeal the day after the State of New Jersey Department of Environmental Protection filed its own appeals of Judge Pisano's and Judge Robinson's decisions. Says Maya van Rossum: "New Jersey's appeal stands in defense of all states whose legal authorities over federal projects are stripped if these Judges' decisions are allowed to stand." It is likely that the challenges to the two district court cases will be consolidated and heard together by the Third Circuit Court of Appeals.

Dave Pringle of the New Jersey Environmental Federation stated: "There is something very wrong when citizens and states have to join together to defend themselves from a federal arm of government, but that is exactly what is happening here. New Jersey communities are being ravaged by the Army Corps. Thank goodness we have a Governor and local environmental organizations tough enough to stand up to them."

"It is crucial for the Delaware River's future health and its wildlife that are vital to the region's communities and economy that these lower court decisions be reversed and that this boondoggle project gets the environmental and economic scrutiny the law requires," said Jim Murphy, Wetlands and Water Resources Counsel for the National Wildlife Federation. "The Corps' consistent arrival at self-serving conclusions should not pass for legal compliance, and we hope that distinction is recognized by the appeals court."

Jane Davenport, Senior Attorney for the Delaware Riverkeeper Network, noted that "Judge Pisano apparently accepted the Corps' assertions that the Project complied with multiple federal environmental laws without fully examining the evidence in the record to the contrary, or even requiring the Army Corps to provide the complete record in the first place. It is puzzling, to say the least, that the judge could fail to require the Corps to conduct a new environmental analysis based on today's science and data when the Corps' last in-depth look at the Project's impacts in 1997 is pushing fourteen years old."

Richard Fleming of the Delaware Nature Society emphasized "the Society's concern that Judge Pisano's decision could extinguish Delaware's legal right to reasonable environmentally-protective requirements covering the Corp's dredging operations.

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The judge's decision is far-reaching, and Delaware's rights should not be yielded without forcing an independent examination of his reasoning via the appeals process."

The five environmental organizations and the Delaware Riverkeeper contend that the Deepening Project violates multiple federal and state laws including the Clean Water Act, National Environmental Policy Act, Coastal Zone Management Act, Clean Air Act, and Delaware State law.

The Deepening Project is a 1992 proposal by the US Army Corps of Engineers, in partnership with the Philadelphia Regional Port Authority, to deepen the Delaware River's main navigation channel from 40 to 45 feet for 102 miles. The last Environmental Impact Statement for the project was completed in 1997. The New Jersey Department of Environmental Protection revoked its Coastal Zone Consistency Determination for the project in 2003. In 2009, the Delaware Department of Natural Resources and Environmental Control denied the project State Subaqueous Lands and Wetlands permits. The Army Corps has already been allowed by the courts to deepen a 12 mile stretch known as Reach C.

For the third year in a row, the President's budget as submitted to Congress contains no appropriations for the deepening project.

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