



2507 Callaway Road
Suite 103
Tallahassee, FL 32303
Tel. (850) 224-7546
www.audubonofflorida.org

May 15, 2009

The Honorable Charlie Crist, Governor
Plaza Level 05, The Capitol
400 South Monroe Street
Tallahassee, FL 32399-0001

RE: Request to Veto SB 2080

Dear Governor Crist:

SB 2080 was amended during the last days of the legislative session to eliminate public access to water management district governing boards as a forum for the public to express concerns about environmental resource and consumptive use permit decisions. Because of the serious impact on public participation in decisions affecting Florida's water resources, Audubon asks that you protect the rights of people to continue to make public comments and discuss of water use and environmental resource permits. We urge you to protect public interest and veto SB 2080.

We recognize that some will urge that you not veto SB 2080 out fear that the Legislature (under the sunset review process which will otherwise be resolved by this bill) will engage in even more mischief with water policy next year. We ask you to ignore that fearful concern and base your decision on an evaluation of the bad that this bill does. The bill contains some good water conservation policy language through promotion of "Florida Friendly" landscaping. However such good provisions do not come close to outweighing the destructive loss of public access to agency decision-making. The good parts of SB 2080 met little opposition during the legislative session and should be fairly easy to enact next year.

Our water management districts, with their volunteer citizen governing boards and their open meetings held "in the sunshine" have always stood out as a good way to manage and govern some of the most important decisions made in Florida – who gets water, how much water and under what conditions. The question of allocating Florida's water will only be more important in the future. And it will be made evermore important as those who hold and seek permits go to the Legislature to get new advantages by changing criteria for and duration of permits.

That is why we need to keep the volunteer citizens appointed to governing boards in the role of reviewing and voting on permit applications rather than simply handing off vital permit decisions to agency staff.

The amendment (256072) to SB 2080 added late in the Legislative session was originally part of a package of ideas that emerged as proposals from former Speaker Ray Sansom's

call for environmental regulatory “reform”. Somehow he and his colleagues argued that taking permits out of the sunshine would stimulate the economy. That false premise gave way this ill-considered proposal to take the job of reviewing impacts to our water resources away from your appointees. Like many of the ideas for regulatory reform in the House, this one received almost no discussion before it was rolled up into a committee bill and then amended onto to other bills during the waning hours of the session.

Sections 6 and 7 of SB 2080 specifically force the delegation of all permit approvals and all variances and waivers of any rule requirement to the executive director of each water management district. The only permit decisions not delegated are those where the staff of the agency is proposing to deny a permit, variance, or waiver.

This removes the ability of groups such as Audubon to address a water management district governing board about permits, variances, or waivers that would be harmful to the environment. Options for affected parties to object will be limited to filing a petition for formal hearing under FS 120, or an appeal of a WMD decision to the Governor and Cabinet under FS 373.114. That will lead to more protracted litigation through more 120 petitions and appeals to the Governor and Cabinet. Because of the great expense of litigation, for all practical purposes this will exclude most citizens and citizens groups from any ability to have access to, or attempt to influence the regulatory process.

The delegation requirement in SB 2080 is entirely inequitable, in that it gives permit applicants access to governing boards to allow them to attempt to overturn staff decisions, while denying that opportunity to environmental groups and the general public who are simply seeking to have the laws that protect our environment properly enforced. Developers and water users will enjoy an unequal chance to influence the approval of permits while depriving conservation groups and the public of the same opportunity.

Another concern is that not having a chance to review individual permits removes the governing boards from the dynamic role of considering regional water supply and the cumulative impacts of wetlands and stormwater decisions. Rather than have an informed group of citizen representatives working with the district staff to consider the broader implications of permits, those considerations will now be the exclusive decisions of staff. Variances and waivers have broad policy implications that can set precedents for future agency actions. They should not be decided in closed rooms inaccessible to the public. Such variances and waivers could allow (for example) wetlands to be destroyed without mitigation, or lakes, rivers, and wetlands to be drained for consumptive use of water contrary to the protective requirements of agency rules. The absence of public scrutiny over these decisions may lead to some staff members feeling unhindered in making settling otherwise controversial issues with regulated interests.

Removal of governing boards from permit review is simply one more step toward eroding the people’s claim to protection of environmental resources. Each year we witness efforts in the legislature to give advantage to permit applicants and to reduce public participation.

Seeking legislative advantage in permitting is exactly what Section 10 of the bill does. That section, crafted by a lobbyist for a potential water permit applicant very carefully carves out an exception to the consumptive use criteria used by governing boards in

making a decision. The exception virtually ensures that the one applicant will be able to get a 50 year permit - a virtual water right over a huge quantity of water within the Northern Everglades. That water will become unavailable to other users in the future regardless of how beneficial their proposed uses might be. More importantly for the applicant, and unfortunately for the public, the ultimate decision will be made in the back room and removed from the bright light of public scrutiny and comment.

Governor Crist, you need look no further than Section 10 of this bill to see why Sections 6 and 7 providing for mandatory delegation of permit and variance decisions to the Executive Directors are so objectionable. Permit applicants will seek special exceptions through legislation to game the system. Now, with the elimination of public access also inserted into this bill, decisions about the people's water resources will be tilted ever away from sustainable management of our environment.

These are the people's water resources. They do not belong to would-be water users, wetland developers, or to agency staff operating behind closed doors. In 1973 the people of Florida took the extraordinary step of approving a Constitutional Amendment to allow water management district governing boards appointed by the Governor to levy ad-valorem taxes in order to spend that money protecting water resources. If these boards that you appoint are capable of setting an ad valorem levy and approving an annual budget, and then taxing people's homes and businesses, they should be capable of making decisions in the sunshine about consumptive use and environmental resource permits and related variances and waivers.

You have been consistent in your defense of the public's role in environmental decisions, especially those affecting public resources. We encourage you to extend that defense by exercising your authority to veto SB 2080.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Draper". The signature is fluid and cursive, with the first name "Eric" and last name "Draper" clearly distinguishable.

Eric Draper
Deputy Director