



FOR IMMEDIATE RELEASE

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## WLF: Clean Water Act Does Not Displace State and Federal Regulatory Regimes for Certain Groundwater Releases

*(Prairie Rivers Network v. Dynegy Midwest Generation, LLC)*

**“By refusing to expand the reach of the Clean Water Act’s general permitting provision, the district court honored Congress’s clear statutory intent.”**

—Cory Andrews, WLF Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) yesterday asked the U.S. Court of Appeals for the Seventh Circuit to affirm a trial court decision that refused to expand the reach of the Clean Water Act (CWA) over certain groundwater releases. WLF’s *amicus* brief was prepared with the *pro bono* assistance of Bill Brownell, Elbert Lin, Nash Long, Brent Rosser, and Melissa Romanzo with Hunton Andrews Kurth LLP.

The case arises in the wake of the Supreme Court’s recent decision in *County of Maui v. Hawaii Wildlife Fund*, which considered the reach of the CWA’s National Pollution Discharge Elimination System (NPDES). Adopting the “functional equivalent” test, the Supreme Court held that, if no other regulation applies, the CWA requires NPDES permits for certain discharges by “point sources” into navigable waters. Relying on that holding, the plaintiff here seeks to require an NPDES permit for the defendant’s groundwater releases of coal ash.

But as WLF contends in its *amicus* brief, construing the CWA to require an NPDES permit for such releases would displace Congress’s regulation under the Resources Conservation and Recovery Act (RCRA) and the EPA’s Coal Combustion Residuals (CCR) Rule, both of which govern the very releases at issue here. It would also undermine comprehensive state regulation of groundwater, leading to the kind of broad expansion of NPDES jurisdiction that *County of Maui* rejected.

*Celebrating its 43rd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

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