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Subject: PABIODIV: NC Court Upholds State Authority to Protect Wetlands

Pennsylvania would do well to follow North Carolina's lead especially considering the Bush Administration's recent attack on wetlands protection, using the SWANCC decision to eliminate protection for 60% of America's wetlands.

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Court Upholds State's Authority to Protect Wetlands

Raleigh - The North Carolina Court of Appeals ruled today that the Environmental Management Commission has authority to protect the state's wetlands - a critical measure as federal protection has weakened over the last several years, environmentalists say. In a unanimous decision, a three judge panel of the court rejected claims by development and farming organizations that the commission did not have the authority to adopt regulations protecting wetlands and that the regulations were improperly enacted.

The Environmental Management Commission adopted regulations in 1996 requiring authorization for activities that would destroy or degrade wetlands in North Carolina. The regulations require that landowners avoid impacts to wetlands during development, and mitigate unavoidable impacts by restoring wetlands. Wetlands including North Carolina's famed swamps, marshes, pocosins and bogs perform vital functions such as removing pollutants, recharging groundwater, retaining floodwater, and providing nurseries for fisheries and habitat for wildlife. North Carolina has lost about half of its original wetlands to development, farming, and intensive forestry.

In 1996, development and farming organizations sued the commission, claiming it did not have the legal authority to adopt the regulations. The Southern Environmental Law Center, on behalf of the Sierra Club, the North Carolina Coastal Federation, Environmental Defense, the Neuse River Foundation and four Riverkeepers, intervened in the case to help defend the rules.

"This decision clearly affirms the state's authority to protect wetlands as a critical part of maintaining and restoring the water quality of our rivers and sounds," said Derb Carter, a senior attorney with SELC.

State protection of wetlands has become even more important in light of recent federal court decisions and actions by the Bush Administration limiting the federal government's ability to rigorously protect wetlands. After one federal court decision in 1998, thousands of acres of wetlands in southeastern North Carolina were ditched and drained. Enforcement of the Environmental Management Commission's rules halted this massive wetland destruction.

"North Carolina's wetland regulations fill a significant gap in current wetland protection efforts," said Carter, adding that the decision puts North Carolina among the states with the strongest wetland protection programs. "Without state protection, we would surely see the continued destruction of these vital, irreplaceable natural resources," Carter said.

The Court of Appeals decision is available at:
<http://www.aoc.state.nc.us/www/public/coa/opinions/2002/020099-1.htm>