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Yesterday, the Florida Second District Court of Appeals sent Mosaic's proposed Ona phosphate strip mine permit back to the Florida Department of Environmental Protection to consider new evidence. While it is unusual for a court to take such action, it is not unheard of. When new evidence is presented in a case that is under appeal and has direct and material impact, the court can relinquish jurisdiction to allow for consideration of the new information.

In this case, the Peace River Manasota Water Supply Authority, Charlotte, Lee and Sarasota Counties asked the judge to consider the Cumulative Impacts Study co-authored by the Florida Department of Environmental Protection and the Southwest Florida Water Management District. The study was mandated by the Florida Legislature.

The Cumulative Effects Study issued in January 2007 concludes that upstream activities have an affect on water supplies downstream and that phosphate strip mining has already had a material impact. Despite the fact that present rules and statutes are supposed to protect the Peace River, the study noted that strip mining and reclamation have failed to achieve that goal.

The study says, "There seems to be little doubt that the loss of streams and wetlands in the Peace River watershed, as well as the loss of base flow...impair the ability of the Peace River to provide sustainable public water supplies."

In the challenge of the Ona strip mining permits, Administrative Hearing Officer Robert E. Meale refused to consider any evidence of cumulative effects. He ruled that if permits were properly issued, there would be no impacts and therefore no cumulative impacts. His final ruling in May 2005, cleared the way for the Florida Department of Environmental Protection to approve the expanded strip mining.

This ruling by the Second District Court of Appeals sends the case back to the Florida Department of Environmental Protection. Now, in light of its own study, FDEP can consider whether to reissue the permit or reconsider based on the evidence.