

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**RECEIVED**

Feb 9, 2015

Dept. of Environmental Protection  
Office of General Counsel

TROPICAL AUDUBON SOCIETY, INC.,  
BLAIR BUTTERFIELD, CHARLES MUNROE  
AND JEFFREY MULLINS;

Petitioners,

v.

OGC NO.: 14-0741

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION AND  
FLORIDA POWER & LIGHT COMPANY;

Respondents.

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**PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Petitioners, Tropical Audubon Society Incorporated (“TAS”), Blair Butterfield, Charles Munroe, and Jeffrey Mullins (collectively “Petitioners”), by and through their undersigned counsel, pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rules 28-106.111 and 28-106.201, Florida Administrative Code, file this Petition for Formal Administrative Hearing and state as follows:

1. On December 23, 2014, the State of Florida Department of Environmental Protection (“FDEP”) proposed to issue Florida Power & Light Company (“FPL”) an Administrative Order pursuant to Consolidated Condition X.D. of the 2009 Conditions of Certification for Units 3, 4 and 5 of the FPL Turkey Point Power Plant. The Administrative Order (“AO”) requires, among other things, that FPL reduce the salinity in its Industrial Wastewater Cooling Canal System (“IW/CCS”) over time by freshening the IW/CCS with fresh and/or brackish water. Freshening of the IW/CCS is necessary,

according to FDEP, to “abate” the westward movement of IW/CCS hypersaline contaminated groundwater which has leached from the IW/CCS into the G-II aquifer. For purposes of the AO, FDEP defines “abate” to mean “reduce in amount, degree or intensity; lessen; [or] diminish.”

2. The IW/CCS was constructed in the early 1970s as a result of a lawsuit brought by the United States against FPL to abate (i.e., stop) the thermal discharge from the Turkey Point Plant into Biscayne Bay. The requirement to stop discharging heated water into Biscayne Bay and to build the IW/CCS was embodied in a 1971 Final Judgment of the United States District Court for the Southern District of Florida (Case No. 70-328-CA). As constructed, the IW/CCS consists of 32 unlined feeder canals, each about 5.2 miles long, an unlined collector canal, and seven unlined return canals. The IW/CCS occupies approximately 6,100 acres along the coast of Biscayne Bay National Park, the Biscayne Bay Aquatic Preserve, Card Sound and the Florida Keys Marine Sanctuary.

3. The IW/CCS was permitted by FDEP as an industrial wastewater facility. The FDEP permit (FL0001562) authorizes the discharge of condenser cooling water, auxiliary equipment cooling water, chemical treatment system wastewater, boiler blowdown, reverse osmosis concentrate, condensate polishing system backwash water, other process waste-streams and stormwater associated with industrial activity into the unlined canals.

4. The IW/CCS is characterized as a recirculating “closed loop” system but the unlined canals discharge IW/CCS wastewater directly into the groundwater and evidence suggests the IW/CCS wastewater is also discharging to surface waters. IW/CCS wastewater lost to evaporation and seepage into the aquifer is made up by rainfall, the addition of process water, groundwater inflow, and water pumped from the adjacent Interceptor Ditch.

5. The Interceptor Ditch (“ID”) was dredged along the west side of the IW/CCS for the purpose of creating a hydraulic barrier to prevent the western migration of IW/CCS contaminated

groundwater. From the beginning, FPL committed to operate the ID to “restrict movement of saline water from the cooling water system westward of Levee 31 E adjacent to the cooling canal system to those amounts which would occur without the existence of the cooling canal system.” FPL’s original agreement with the predecessor to the South Florida Water Management District, dated February 2, 1972, was updated and modified on October 21, 1974, August 14, 1975, September 10, 1976, and July 15, 1983. Each of those four supplemental agreements maintained the requirement that FPL operate the ID to “restrict movement of saline water from the cooling water system westward of Levee 31 E adjacent to the cooling canal system to those amounts which would occur without the existence of the cooling canal system.”

6. In January 2008 FPL applied under the Florida Power Plant Siting Act to “uprate” (increase) the allowable maximum amount of electricity generated by the two nuclear facilities (Units 3 and 4) at Turkey Point. Miami-Dade County and the SFWMD expressed concern that the uprate would result in an increase in the temperature of IW/CCS water and the temperature increase would in turn increase the rate of evaporation of IW/CCS water resulting in increased salinity and they questioned whether FPL’s projected temperature and salinity increases in the IW/CCS were accurate. In exchange for the County and SFWMD’s agreement to support (or not oppose) the uprate application, FDEP agreed to include in the 2009 Power Plant Siting Act Conditions of Certification, PA03-45, a “Consolidated Condition,” the language of which was agreed upon by FDEP, Miami-Dade County, and the SFWMD. Consolidated Condition X of the Conditions of Certification sets forth the framework for new surface water, groundwater and ecological monitoring and, as may be needed, remediation, abatement or mitigation measures to address the impacts of IW/CCS groundwater contamination. Consolidated Condition X required, among other things, that FPL enter into a new agreement with the SFWMD, the

Fifth Supplemental Agreement, which updated and replaced the July 1983 Fourth Supplemental Agreement between FPL and the SFWMD.

7. Consistent with the requirements of Consolidated Condition X, in 2009 FPL entered into the Fifth Supplemental Agreement with the SFWMD. The Fifth Supplement Agreement required, among other things, that (a) FPL operate the ID in the manner required by a SFWMD approved Interceptor Ditch Operation Procedures manual (b) like each prior agreement, the ID restrict movement of saline water from the cooling water system westward of Levee 31 E adjacent to the cooling canal system to those amounts which would occur without the existence of the cooling canal system; and (c) FPL implement the 2009 Monitoring Plan approved by FDEP, the SFWMD and Miami-Dade County incorporated and attached to the Fifth Supplement Agreement.

8. In addition, the Fifth Supplement Agreement provides that should the SFWMD find (i) the ID is not effective in restricting the movement of saline water west of the L-31 canal, (ii) harm or potential harm to the water resources, including ecological resources of the SFWMD, (iii) impacts to water quality or (iv) impacts inconsistent with the goals and objectives of the Comprehensive Everglades Restoration Plan Biscayne Bay Coastal Wetland project, then, following a period of consultation between the SFWMD and FPL, the SFWMD may require that FPL implement specified mitigation, abatement and remediation measures, within SFWMD identified timeframes.

9. Data generated by FPL under the Fifth Supplemental Agreement indicates that hypersaline contaminated water from the IW/CCS had migrated downward into the aquifer and has spread in all directions. The leading edge of the hypersaline plume was found to have migrated nearly four miles to the west. In addition, the plume has migrated under Biscayne Bay, Biscayne National Park, the Biscayne Bay Aquatic Preserve, Card Sound and the Florida Keys National Marine Sanctuary. In

addition, data indicates contamination from the IW/CCS has reached surface waters in the L-31E Canal, the L-31E Discharge Canal, the Card Sound Canal, and the Card Sound Road Canal.

10. By letter dated April 16, 2013, the SFWMD notified FPL that it had determined that “saline water from FPL’s Turkey Point Power Plant cooling canal system (CCS) has moved westward of the L-31E Levee in excess of those amounts that would have occurred without the existence of the CCS and has moved into the water resources outside the plant’s property boundaries.” Based on this finding, the SFWMD initiated the consultation process described in the Fifth Supplemental Agreement for the purpose of identifying the appropriate means to abate, remediate or mitigate impacts from the IW/CCS.

11. Measures to mitigate, abate or remediate impacts from the IW/CCS identified in the Fifth Supplemental Agreement include (a) revisions to the IW/CCS and ID operating criteria, (b) alterations in the design of the ID, (c) alterations to the IW/CCS, (d) other engineering and/or hydrologic measures regarding the IW/CCS, (e) other engineering and/or hydrologic measures to mitigate impacts to the region’s water supply or remediation thereof, and (f) development of a 3D surface and groundwater density dependent flow model to evaluate the best alternative for abatement, mitigation or remediation.

12. In response to the SFWMD’s consultation letter, FPL proposed to freshen the hypersaline water in the IW/CCS with 14 million gallons a day of fresh or brackish water which it proposes to take from the L-31E, the Floridan aquifer, and/or the Card Sound Canal. FPL claims once the salinity in the IW/CCS is reduced to a concentration comparable to Biscayne Bay water, its 2D groundwater model shows that “by year 30, the hypersaline plume has dissipated significantly and has begun to recede eastward.”

13. The coastal wetlands and coastal waters adjacent to the IW/CCS have been artificially starved of fresh water and operation of the IW/CCS has and is continuing to contribute to the

deprivation of fresh water in these areas. This deprivation of fresh water has impacted ecological resources in the area surrounding the IW/CCS.

14. In September 2014 FPL obtained emergency approval from the SFWMD to draw up to 100 million gallons per day of fresh water from the L-31E canal for use in the IW/CCS and recently submitted an application to the SFWMD to take the maximum available water from the L-31E canal for the next 20 years for the purpose of freshening the IW/CCS. If approved, FPL would divert significant amounts of ecologically needed fresh water to the IW/CCS for 20 years. The U.S. Department of Interior concluded that 960,000 acre-feet per year of freshwater flows are required to achieve the desired ecological conditions in Biscayne National Park. See U.S. Dept. of Interior, *Estimate of Flows to Meet Salinity Targets for Western Biscayne National Park*. Under the current reservation established under the Biscayne Bay Coastal Wetlands Phase I, the water reservation for Biscayne Bay is 518,759 acre-feet per year. Rule 40E-10.061, Fla. Adm. Code. If, consistent with the proposed AO, FPL receives the maximum water available above the reservation, Biscayne Bay and Biscayne National Park will be deprived of ecologically needed fresh water.

15. ID operations also affect ecological systems by drawing down surface waters during its pumping to equilibrate the IW/CCS hydrologic head and the AO requires continued operation of the ID pumps without consideration of the adverse impacts that continued pumping will have on environmentally sensitive lands (e.g. the Model Lands) by endorsing future surface water drawdowns and impacting the overall goals of CERP projects planned in the area such as Biscayne Bay Coastal Wetlands Phase 2 and the C-111 spreader canal.

16. The SFWMD evaluated the FPL model and found it relied on faulty data which completely undermined its conclusions. In addition, the SFWMD ran its own model, the results of which led the SFWMD to disagree with FPL's conclusion that freshening of the IW/CCS would cause the

plume to recede. According to the SFWMD, “FPL’s model indicated that the proposed action will not only reduce the salinity of the CCS water, but will also reverse the western movement of the hypersaline plume. In contrast, SFWMD’s model does not indicate such a reversal in the inland groundwater movement. In fact, SFWMD’s model indicates a continued increase in the western movement of the hypersaline plume.” SFWMD October 2013 *FPL Turkey Point Cooling Canal System Salinity Reduction Proposal Review*, p. 4. Rather than causing the plume to recede to the east, the SFWMD concluded that in 30 years freshening the IW/CCS will, at best, only “moderate westward migration of the saltwater interface compared to the no action alternative.” SFWMD November 14, 2013, *FPL Turkey Point Cooling Canal Salinity Management Evaluation* powerpoint, p. 19.

17. The SFWMD has yet to take final agency action identifying the appropriate means to remediate, abate or mitigation the IW/CCS impacts under the Fifth Supplemental Agreement.

18. Miami-Dade County also reviewed the FPL freshening proposal described in the AO and concluded it will actually exacerbate the contamination by conveying the existing salt content of the IW/CCS into the groundwater as fresh and/or brackish water is added to the IW/CCS. November 26, 2014, Comments on draft Administrative Order, from Lee Hefty, Director of Environmental Resources Management, to Phil Coram, FDEP.

## **PARTIES**

19. Tropical Audubon Society, Incorporated is a Florida non-profit corporation. Its mailing address is 5530 Sunset Drive, Miami, Florida, 33143.

20. Blair Butterfield is a resident of Miami-Dade County. Her mailing address is 37051 S.W. 212 Avenue, Homestead, Florida, 33034.

21. Charles Munroe is a resident of Miami-Dade County. His mailing address is 3530 Saint Gaudens Court, Miami, Florida, 33133.

22. Jeffrey Mullins is a resident of Miami-Dade County. His mailing address is 17505 South Dixie Highway, Miami, Florida, 33157.

23. For purposes of this proceeding, all legal papers and correspondence shall be directed to the undersigned counsel at James M. Porter, P.A., 9350 South Dixie Highway, 10<sup>th</sup> Floor, Miami, Florida, 33156.

24. The agency affected by this Petition is the State of Florida Department of Environmental Protection. FDEP's address is Florida Department of Environmental Protection, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000.

25. FPL is a person as defined under Florida law. Its mailing address is 700 Universe Boulevard, Juno Beach, FL 33408.

#### **PETITIONERS' SUBSTANTIAL INTERESTS**

26. Petitioners' substantial interests will be affected by the proposed agency action.

27. Established in 1947 and incorporated in Florida in 1960, Tropical Audubon is a chapter of the National Audubon Society. Its mission is to "conserve and restore South Florida's ecosystems, focusing on birds, other wildlife and their habitats for the benefit of humanity and the earth's biological diversity." More generally the purpose of TAS is (1) to protect natural resources and promote wise stewardship of those resources, including native plants, animals and their habitats; (2) promote through education an understanding and appreciation of nature, the environment, and ecological relationships; and (3) enjoy with its members and others the study and protection of nature. For more than 50 years Tropical Audubon has been actively advocating on behalf of its members who share an interest in improving, preserving and protecting the health and aesthetic qualities of the Everglades ecosystem, Biscayne Bay, Biscayne National Park, the Biscayne Bay Aquatic Preserve, Florida Keys National



Marine Sanctuary, Card Sound, the wetlands adjacent to these waters and the wildlife which depend on these waters for their survival.

28. Tropical Audubon has approximately 400 members, a majority of who live in Miami-Dade County, and a substantial number of who recreate, use, observe wildlife and otherwise enjoy the Everglades, Biscayne Bay, Biscayne National Park, the Biscayne Bay Aquatic Preserve, Florida Keys National Marine Sanctuary, and Card Sound and the areas adjacent to these waters. These members share an interest in improving, preserving and protecting the natural ecological resources of these areas, including wildlife, and in improving water conservation, improving water quality and in the restoration of the historic Everglades.

29. Blair Butterfield lives with her husband and children on a two and one-half acre farm due west of the IW/CCS. Ms. Butterfield is an artist, writer, gardener, homeschooler and primary director of Art of Cultural Evolution, a non-profit engaged in, among other things, urban agriculture. Ms. Butterfield grows organic vegetables and fruits at the farm which are used to support the Art of Cultural Evolution urban agriculture project. Water for their crops is drawn from a private well on their property. Likewise, Ms. Butterfield and her husband and children draw their drinking water from a well located on their property. Ms. Butterfield and her children frequently recreate at Homestead Beach which is located on Biscayne Bay at Homestead Bayfront Park. Ms. Butterfield has an interest in the improvement, preservation and protection of the water quality and ecological resources of Biscayne Bay.

30. Mr. Charles Munroe is a board member of The Friends of Biscayne Bay, a non-profit, citizen support organization whose purpose is to support the Biscayne Bay Aquatic Preserves. Mr. Munroe has an interest in and advocates for the protection and enhancement of the Biscayne Bay Aquatic Preserve, its ecological resources, wetlands and water quality, among other things. Mr. Munroe also recreates in Biscayne National Park, sailing, fishing and diving with his family and friends, and for

that reason also has an interest in the protection and enhancement of the Park's water quality and ecological resources.

31. Jeffrey Mullins is a member of the Biscayne Bay Regional Coordination Restoration Team. He recreates, uses and enjoys Biscayne Bay and Card Sound for boating, fishing and wildlife observation and has an interest in the improvement, preservation and protection of the resources of Biscayne Bay and Card Sound, their water quality, and the adjacent wetlands. In addition to his conservation and recreational interests, Mr. Mullins also has an interest in the improvement, preservation and protection of the resources of Biscayne Bay and Card Sound arising from the fact that Mr. Mullins holds a license authorizing the commercial trapping of blue crabs in Biscayne Bay and Card Sound. Some of those traps are located in close proximity to the FPL Turkey Point Plant.

32. Hypersaline water from the FPL IW/CCS has contaminated and is continuing to contaminate groundwater which would otherwise be available both for potable use and as a source of fresh water for Biscayne Bay, its coastal wetlands and Everglades restoration. The concentration of chloride in the groundwater plume emanating from the IW/CCS violates applicable water quality standards. Hypersaline water from the IW/CCS is also leaching into surface waters and may be adversely affecting wetlands and aquatic resources. Freshening of the IW/CCS as proposed in the AO adversely affects the substantial interests of Ms. Butterfield, Mr. Munroe, Mr. Mullins, and TAS because (a) it will exacerbate the contamination of fresh water which is an important natural resource that supports critical marsh and wetlands communities and is used for water supply, (b) it will allow the plume to continue to spread to the west and to the east under Biscayne Bay for at least another 30 years, (c) is dependent on the use of fresh water which would otherwise be available for Everglades restoration or would flow into wetlands and Biscayne Bay and is inconsistent with the CERP Biscayne Bay Coastal Wetland Project, (d) may cause continued impacts to ecological resources, (e) will allow continued

degradation of groundwater and surface water quality, and (f) may result in the loss or degradation of wetlands. These impacts may also adversely affect the Petitioners' substantial interests in using Biscayne Bay, Biscayne National Park, the Biscayne Bay Aquatic Preserve, Florida Keys National Marine Sanctuary, and/or Card Sound for boating, fishing, wildlife observation, and other recreational activities.

33. The injury is sufficiently immediate and of the type and nature that Chapters 120 and 403, Florida Statutes, are designed to protect.

#### **NOTICE OF AGENCY DECISION**

34. TAS received notice of the proposed AO on December 26, 2014, when a copy of the AO was provided to the TAS Executive Director and timely acquired an extension of time to February 9, 2015, within which to file this Petition.

35. Ms. Butterfield received actual notice the week of February 2, 2015, when she was provided with a copy of the AO. She received constructive notice on January 17, 2015, and timely requested an extension of time to February 9, 2015, within which to file this Petition.

36. Mr. Munroe received actual notice the week of February 2, 2015, when he was provided with a copy of the AO. He received constructive notice on January 17, 2015, and timely requested an extension of time to February 9, 2015, within which to file this Petition.

37. Mr. Mullins received actual notice on January 16, 2015, when he was provided with a copy of the AO. He also timely obtained an extension of time to February 9, 2015, within which to file this Petition.

38. This Petition was timely filed pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rule 62-110.106, Florida Administrative Code.

## DISPUTED ISSUES OF MATERIAL FACT

The following are Petitioners' disputed issues of material fact. Petitioners reserve the right to amend, delete or supplement these disputed issues of material fact as discovery progresses.

39. Whether the IW/CCS is a "closed loop" system or whether the IW/CCS discharges to surface waters.

40. Whether the horizontal and vertical extent of the plume of hypersaline contamination emanating from the IW/CCS has been fully delineated and whether the requirements of Rule 62-520.700, and/or Chapter 62-780, Florida Administrative Code, have been satisfied.

41. Whether mitigation, abatement or remediation measures other than freshening of the IW/CCS were evaluated and if not whether the failure to do so is a scientifically sound method for selection of a remedy.

42. Whether other or additional mitigation, abatement or remediation measures are necessary to abate, remediate or mitigate the western migration of the plume, harm to water resources (including ecological resources), violations of water quality standards, or impacts inconsistent with the goals and objectives of the CERP Biscayne Bay Coastal Wetlands project.

43. Whether FDEP has defined "abate" and "abatement" in the AO in a manner consistent with the intent of the SFWMD and Miami-Dade County at the time Consolidated Condition X was agreed upon by those parties.

44. Whether freshening of the IW/CCS will abate the western migration of the hypersaline plume emanating from the IW/CCS within the meaning of the term "abate" in Consolidated Condition X and if so whether this will occur within a reasonable time.

45. Whether freshening of the IW/CCS will abate harm to water resources of the state, the SFWMD and the County within the meaning of the term “abate” in Consolidated Condition X and if so whether this will occur within a reasonable time.
46. Whether freshening of the IW/CCS will abate harm to ecological resources within the meaning of the term “abate” in Consolidated Condition X and if so whether this will occur within in a reasonable time.
47. Whether freshening of the IW/CCS will abate existing and ongoing violations of applicable water quality standards within the meaning of the term “abate” in Consolidated Condition X.
48. Whether freshening of the IW/CCS will abate further contamination of drinking water within the meaning of the term “abate” in Consolidated Condition X and if so whether this will occur within a reasonable time.
49. Whether freshening of the IW/CCS will cause, rather than abate, additional harm to water resources, water quality and ecological resources.
50. Whether freshening of the IW/CCS will usurp fresh water that would otherwise flow into the coastal wetlands and Biscayne Bay.
51. Whether freshening of the IW/CCS will usurp fresh water otherwise required for implementation of the Comprehensive Everglades Restoration Plan (CERP) or is otherwise inconsistent with CERP.
52. Whether freshening of the IW/CCS will harm the water or ecological resources of Biscayne Bay, Biscayne National Park, Card Sound or the Florida Keys National Marine Sanctuary.
53. Whether FPL provided reasonable assurances that freshening of the IW/CCS will prevent further harm to the waters of the State, waters of the District, or waters of the County.

54. Whether FPL provided reasonable assurances that freshening of the IW/CCS will abate the western migration of the hypersaline plume.
55. Whether freshening of the IW/CCS will result in the discharge of chlorides and other contaminants into the groundwater.
56. Whether the monitoring data is sufficient to evaluate changes as a result of the Uprate, evidences violations of State or County water quality standards or demonstrates an inconsistency with the goals and objectives of the CERP Biscayne Bay Coastal Wetlands Project in addition to indicating harm or potential harm to the waters of the State.
57. Whether the purpose of the Interceptor Ditch is to prevent the migration IW/CCS water in shallow groundwater from migrating west of the L-31 canal or to prevent all IW/CCS water from migrating west of the L-31 canal.
58. Whether the Interceptor Ditch is effective at restricting the westward movement of hypersaline IW/CCS water at all depths.
59. Whether the SFWMD concluded that the Interceptor Ditch was effective at restricting the western movement of saline water from the IW/CCS at all depths.
60. Whether the SFWMD concurred with FPL's report titled "Saltwater Orientation in the Biscayne Aquifer in the Turkey Point Plant Vicinity Prior to Installation of the Cooling Canal System."
61. Whether the SFWMD concluded the two dimensional model used by FPL to support its freshening proposal was a reasonable proof of concept that the reduction of salinity within the IW/CCS would abate the western movement of hypersaline IW/CCS water in the aquifer.
62. Whether the SFWMD agrees that the historic regulatory role the District has held with regard to monitoring and operation of the IW/CCS is redundant with the authority vested in FDEP under the Power Plant Siting Act.

63. Whether the AO provides for the termination of the Fifth Supplemental Agreement without the concurrence of the SFWMD.
64. Whether the AO provides for termination or modification of the 2009 Monitoring Plan without the concurrence of the SFWMD.
65. Whether the AO allows for modification to the ID Operation Procedures Manual approved by the SFWMD without the concurrence of the SFWMD.
66. Whether the AO modifies FPL's reporting requirements under the Fifth Supplemental Agreement without the concurrence of the SFWMD.
67. Whether the AO modifies Consolidated Condition X of the COC and if so whether FDEP has followed the procedures necessary to modify the COC.
68. Whether the SFWMD and Miami-Dade County agreed to FDEP's changes to Consolidated Condition X of the COC.
69. Whether the AO monitoring plan requirements are sufficient for the purpose of determining whether migration of the hypersaline plume has been abated in all directions.
70. Whether a chloride concentration of 34 parts per thousand accurately represents the appropriate "background" concentration of Biscayne Bay coastal waters and whether it is appropriate for use as the standard of success under the AO.
71. Whether the trigger for determining success of the freshening proposal (i.e., "decreasing salinity trends in the monitor wells TPGW-1, TPGW-2, TPGW-13, L-3 and L-5") is sufficiently defined.
72. Whether a decrease in salinity trends in monitor wells TPGW-1, TPGW-2, TPGW-13, L-3 and L-5 is an appropriate measure to determine success of the AO.

73. Whether the monitoring occurring under the 2009 Monitoring Plan is sufficiently robust to identify and delineate the present extent and future movement of the IW/CCS hypersaline groundwater plume, nutrients, and other industrial wastes discharged from the IW/CCS.

74. Whether the AO provides a Chapter 120 point of entry for challenges to FDEP approval of the Salinity Management Plan (AO ¶ 39), whether FPL achieved the goals identified in paragraph 37.a. (AO ¶ 47), modifications to the COC (AO ¶ 48), the selection of alternative or additional measures to mitigate, abate or remediate impacts (AO ¶ 49-50), and force majeure decisions (AO ¶ 58).

75. Whether a comprehensive regional model is too lengthy and too expensive for FPL to run; whether such a model would produce inconclusive results, and whether the potential that the model results might be inconclusive justifies not asking that FPL undertake the work, particularly given that the need for such modelling was anticipated in the COC and Fifth Supplemental Agreement.

76. Whether the freshening of the IW/CCS under the AO in any way prevents the SFWMD from selecting and requiring the implementation of other abatement, remediation or mitigation alternatives under the Fifth Supplemental Agreement.

#### **ULTIMATE AND SPECIFIC FACTS ALLEGED**

77. Freshening of the IW/CCS is not abatement within the meaning of the COC or the Fifth Supplemental Agreement.

78. Freshening of the IW/CCS does not abate, remediate or mitigate harm to water resources, harm to ecological resources, violations of applicable water quality standards, or the movement of the hypersaline groundwater plume emanating from the IW/CCS within a reasonable time.

79. The monitoring required by the AO is not sufficient to determine whether western migration of the hypersaline plume has been abated within the meaning of the COC.



80. The AO modifies the terms of the COC but FPL and FDEP failed to follow the legally required procedure for modifying the COC.

81. FDEP lacks the authority to unilaterally modify the terms of the Fifth Supplemental Agreement, the 2009 Monitoring Plan and the Interceptor Ditch Operation Procedures manual.

82. FPL failed to provide reasonable assurances that freshening of the IW/CCS will abate, remediate or mitigate harm to water resources, harm to ecological resources, violations of applicable water quality standards, or the movement of the hypersaline groundwater plume emanating from the IW/CCS within a reasonable time.

#### **RULES OR STATUTES THAT REQUIRE REVERSAL OR MODIFICATION**

83. The AO violates Florida Statute Section 403.151 because it does not specify a reasonable time for compliance.

84. The AO violates Florida Statute Section 403.061(8) because that statute does not empower FDEP to authorize the continuation of pollution or the continued violation of water quality standards.

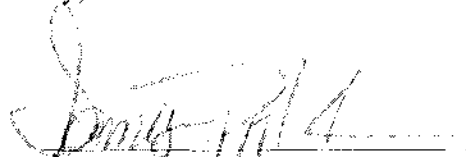
85. The AO violates Florida Statute Section 403.516 and Florida Administrative Code Rule 62-17.211 because it improperly modifies the terms of the COC.

86. The AO violates Rule 62-520.700 and Chapter 62-780, Florida Administrative Code, because freshening of the canals does not satisfy the procedural or substantive requirements of those requirements.

**RELIEF REQUESTED**

87. Petitioners respectfully request that a formal administrative hearing be conducted and that the Administrative Law Judge issue a Recommended Order recommending denial of the AO. Alternatively, Petitioners request that the AO be revised to comply with Florida law.

Respectfully submitted this 9th day of February, 2015.



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