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3301 Gun Club Road
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Secretary Jonathan Steverson
Florida Department of Environmental Protection
3900 Commonwealth Blvd. M.S. 49
Tallahassee, FL 32399

Dear Mr. Guillory and Secretary Steverson:

I am writing to you on behalf of Tropical Audubon Society and National Parks Conservation Association with regard to the request from Florida Power & Light Company ("FPL") for water withdrawal from the L-31E Canal, application number 150126-17, received by the South Florida Water Management District on January 26, 2015.

Summary

Pursuant to the application, FPL seeks to draw the "maximum available" amount of water from the L31-E canal each year for 20 years and to pump that water into the Industrial Wastewater Facility/Cooling Canal System (IW/CCS) at Turkey Point. The permit application is incomplete and fails to provide reasonable assurances that the proposed use of water: (a) Is a reasonable-beneficial use as defined in §373.019, Fla. Stat.; (b) Will not interfere with any presently existing legal use of water; and (c) Is consistent with the public interest." Fla. Sta. § 373.223. Granting this application will result in the installation of permanent water delivery pipes and divert massive amounts of water to the cooling canals system at Turkey Point. While a previous request for water from the L-31E canal capped the transfer of water to the cooling canal system at 100 million gallons a day for a limited time, this request contains no such cap or restriction. When the request for up to 100 million gallons a day from the L-31E was considered by the Governing Board the South Florida Water Management District (District) in September of 2014 the Governing Board members were clear that the approval given at that time should not set a precedent and L-31E water should not be used in the future. In fact questions raised in September of 2014 as to whether pulling water from the L-31E is consistent with the Everglades restoration goals and CERP have not been addressed at all in this permit application. Granting FPL's request to take the "maximum available"

amount of water will likely have significant impacts on Biscayne Bay, Biscayne Bay National Park, Everglades restoration efforts, wetlands in the area, and the regional water supply and should be denied.

The current freshwater reservation for Biscayne Bay is 518,759 acre-feet per year. This will likely be increased under Phase II of Biscayne Bay Coastal Wetlands Project. Based on Department of Interior's assessment that 960,000 acre-feet per year are needed to meet salinity targets, the current reservation falls woefully short of meeting salinity targets for desired ecological conditions in the Park. Granting the applicant's request for the maximum water available from the L-31E above the current reservation will deprive Biscayne Bay and Biscayne National Park of water needed for restoration purposes.

Also, approval of this application would implement part of an Administrative Order that is currently subject to a Division of Administrative Hearings legal challenge. The permit application should not be considered complete without additional information and analysis, including legal resolution of the issues in the Administrative Order.

Additionally, the jurisdiction for consumptive use permitting lies with the District. The exception to this jurisdiction under the Power Plant Siting Act does not apply to the IW/CCS at Turkey Point because the cooling canal system is not licensed or certified in the conditions of certification.

This permit application is incomplete and should not be granted on that basis

FPL has failed to provide reasonable assurances that the proposed use of water: (a) Is a reasonable-beneficial use as defined in §373.019, Fla. Stat.; (b) Will not interfere with any presently existing legal use of water; and (c) Is consistent with the public interest." Fla. Sta. § 373.223. This permit should be considered incomplete and not be issued without reasonable assurances it is in compliance with § 373.223, including consideration of those issues raised by petitioners challenging the Administrative Order.

FPL has failed to supply information to address significant concerns that have been raised in relation to pulling water from the L-31E for the IW/CCS, including the fact that granting this permit application goes directly against Everglades restoration goals. The application itself is open-ended and does not cap water withdrawals in any way. The question of whether this approval is consistent with CERP has not been answered. We believe it would be inconsistent with CERP to issue this permit and that it should not be issued on that basis. Further, the fact that this takes water needed to meet salinity targets and ecological needs of Biscayne Bay makes it against the public interest.

In August 2014, the South Florida Water Management District ("SFWMD") issued an Emergency Final Order authorizing temporary withdrawals from the L31-E Canal. The issuance of this order was conditioned upon the following: 1) the authorized quantity of withdrawals were defined daily by SFWMD and monitored and reported daily by FPL; and 2) these withdrawals were a temporary measure ending in October 15, 2014 with the removal of all withdrawal facilities, infrastructure, and equipment associated with

regional water system withdrawals. The current consumptive use permit (“CUP”) application does not contemplate restrictions attached to the emergency withdrawals approved in 2014. The CUP, if approved, will allow for water withdrawal at any time of the year, despite seasonal fluxes of water, for a 20-year period.

The request for temporary diversion of fresh surface water from the L-31E considered by the Governing Board in September 2014 was met with widespread opposition, including that of Biscayne National Park and the undersigned organizations.¹ At the September 11, 2014 meeting of the District’s Governing Board, executive director, Blake Guillory, made clear that the approval was only recommended because the situation was truly considered an emergency. Board member Portuondo specifically asked staff to do everything necessary that this would not become a precedent. Board member Hutchcraft made clear that the approval was emergency temporary approval and that a permanent solution is needed. Chairman O’Keefe also made clear that withdrawals from the L-31E should not become a precedent. It would go against the Governing Board’s previous position regarding withdrawals from the L-31E if the District were to approve this application. Evidence has not been presented by FPL to identify another permanent solution as the Governing Board requested. Furthermore, it is not clear whether FPL even analyzed other solutions or options. The permit should be considered incomplete for its failure to address these concerns previously raised and for FPL’s failure to analyze alternative options to address the impacts of the cooling canal system.

When the Miami-Dade County Commission considered the temporary emergency application for construction activities that allowed for diversion of the L-31E water to the IW/CCS in 2014, the Commission asked for additional studies to determine the causation of increasing salinity in the IW/CCS. In March of 2015 the Metropolitan Services Committee of the Miami-Dade Board of County Commissioners will consider this resolution and the entire County Commission will likely consider the resolution for approval in April 2015.² This study will shed further light on the causation of increasing salinity trends and the algal bloom in the IW/CCS and provide additional materials to inform an appropriate solution to these problems. The results of that forthcoming study should be considered in reviewing the permit application.

Legal challenge of Administrative Order raises additional questions regarding completeness of analysis for freshening the canals

On December 23rd, 2014 the Interim Secretary of the Florida Department of Environmental Protection executed an Administrative Order, which is currently the subject of a legal challenge.³ The goal of the Administrative Order is the reduction of the salinity in the cooling canal system by freshening it with fresh and brackish water. Diversion of water from the L-31E is one of the proposed options for reducing salinity of the IW/CCS in the disputed Administrative Order.⁴ This diversion of L-31E water to the

¹ Letter from BNP re L-31E withdrawals, attached hereto as Ex. 1.

² See <http://www.miamidade.gov/govaction/matter.asp?matter=150110&file=true&yearFolder=Y2015>

³ See Executed Administrative Order, 12-23-2014, attached hereto as Ex. 2.

⁴ See Id. At p. 6, ¶ 37 d.

IW/CCS is highly controversial and directly contested in the legal challenge to the Administrative Order.

The Administrative Order is the subject of legal challenges by Miami-Dade County, Atlantic Civil, Inc., The City of Miami, Tropical Audubon Society and several individual petitioners. Miami-Dade County and Tropical Audubon Society have both noted that the freshening of the cooling canal system, “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.”⁵ It is now the role of an Administrative Law Judge to determine whether freshening of the cooling canal system using water from the L-31E canal should be the selected remedy for addressing the impacts of the cooling canal system. Based on the allegation of the petitioners in the challenge to the Administrative Order, the diversion of water from the L-31E to the IW/CCS may actually cause more harm to the public interest and the environment than any benefit it would provide. Additional analysis and studies must be required to understand the issues raised by petitioners to the Administrative Order.

Additionally, Tropical Audubon Society’s Petition challenging the Administrative Order raises a disputed issue of material fact as to “[w]hether 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.” An Administrative Law Judge will determine whether evaluation of additional remedies is needed before freshening of the IW/CCS is selected as an appropriate remedy. This permit application should not be approved for the various reasons expressed in this letter. Additionally, it should not be approved unless and until the Administrative Law Judge approves the freshening approach in the Administrative Order.

This permit application if granted would divert ecologically needed water from Biscayne Bay and Biscayne National Park

The current reservation under Phase I of Biscayne Bay Coastal Wetlands does not provide adequate freshwater for restoration. The proposed CUP will likely have serious impacts on Biscayne Bay and Biscayne National Park (“Park”) and is inconsistent with the Biscayne Bay Coastal Wetlands (“BBCW”) Central Everglades Restoration Project (“CERP”). The BBCW project provides for the freshwater delivery to Biscayne Bay based on the BBCW Phase I Water Reservation (“Reservation”) amount of 518,759 acre-feet/year. However, this Reservation target understates the amount of water needed for Biscayne Bay’s fish and wildlife and ignores the variation of flows needed in wet and dry seasons. In its report *Estimates of Flows to Meet Salinity Targets for Western Biscayne National Park*, the U.S. Department of the Interior, “determined that approximately 960,000 acre-feet/year of freshwater flows would be required to meet the salinity targets [for desired ecological conditions in the Park.]” The 960,000 acre-feet/year of freshwater flows the Department of Interior identifies as needed to meet desired ecological conditions in Biscayne National Park is far more than the 518,7509 acre-feet/year in the current reservation, which the permit application is based on. Planning for Phase 2 of BBCW contemplates mechanisms to store and redistribute freshwater from the wet

⁵ See Tropical Audubon Petition p. 7, ¶ 18, attached hereto as Ex.3.

season in order to moderate the extensive deficits of the dry season needs and requires the identification of additional water sources. Phase II of BBCW will likely include a larger and more appropriate water reservation for Biscayne Bay and this must be factored into FPL's request to take the "maximum" amount of water. Withdrawing water from the L31-E canal would remove essential freshwater from the system in direct contravention of ongoing and proposed restoration project.

Moreover, when the Reservation was codified, the Park was assured that the water in the canals would not be available for withdrawal because there would be neither demand nor means to withdraw significant quantities of water. Although a temporary emergency order was previously granted to FPL, this limited withdrawal should not constitute a precedent establishing the availability of freshwater from the coastal canal system. Because the current Reservation level is insufficient to provide for the ecological needs of the park, any additional flows should be deemed unavailable for the proposed use in the Turkey Point cooling canal system.

Jurisdiction over consumptive use permits of this type squarely lies with the Water Management District

The South Florida Water Management District's mission is "to manage and protect water resources of the region by balancing and improving water quality, flood control, natural systems, and the water supply." In doing so, it directs the Governing Board to implement a program for the issuance of permits authorizing the consumptive use of water.⁶ Moreover, the SFWMD has adopted rules for regulating the consumptive use of water, which are set forth in Chapters 40E-2, Florida Administrative Code, (F.A.C.). Of note, individual or general water use permits must be obtained from the SFWMD prior to the use or withdrawal the District's policy is to control all water uses in its boundaries.⁷

The Florida legislature intended that the Water Management Districts should have exclusive authority over permitting the consumptive use of water.⁸ The only exception to this exclusive authority occurs with regards to the Power Plant Siting Act ("PPSA").⁹ The permit application should remain within the jurisdiction of the SFWMD, and not be considered by the Florida Department of Environmental Protection, because the cooling canals are not licensed or certified under the PPSA. The SFWMD should retain jurisdiction over FPL's CUP application and deny the permit in order to uphold the tenets of its mission to protect the water resources of the region.

Conclusion

Thank you for your time and consideration. We believe that the denial of FPL's permit application is necessary to prevent severe ecological impacts in Biscayne Bay, Biscayne

⁶ § 373.216 Fla. Stat. (2014).

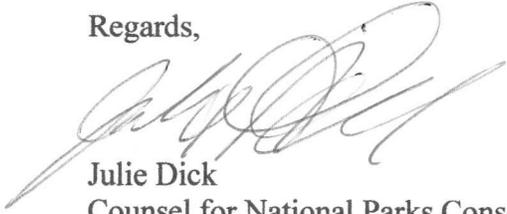
⁷ Fla. Admin. Code r. 40E-1.602(1)(2014).

⁸ § 373.217(2), Fla. Stat. (2014). *See also Nw. Fla. Water Mgmt. Dist. v. Dep't of Comty Affairs*, 7 So. 3d 1129, 1139 (Fla. 1st DCA 2009).

⁹ § 373.217(3), Fla. Stat. (2014).

Bay National Park, wetlands in the area, and the regional water supply and to ensure the success of future Everglades restoration projects.

Regards,



Julie Dick

Counsel for National Parks Conservation Association and Tropical Audubon Society

Cc:

South Florida Water Management District Governing Board Members

Miami-Dade County Board of County Commissioners

Mayor Carlos Gimenez, Miami-Dade County

Deputy Mayor Jack Osterholt, Miami-Dade County

Lourdes Gomez, Miami-Dade County

Lee Hefty, Miami-Dade County

Brian Carlstrom, Superintendent, Biscayne National Park

Peter Cocotos, Florida Power & Light

Jeffrey Brown, Florida Department of Environmental Protection

Jeffery Collier, South Florida Water Management District

Laura Reynolds, Tropical Audubon Society

Caroline, McLaughlin, National Parks Conservation Association