

May 23, 2008

STEVEN M. LARIMORE
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. **08-80553-Civ-MARRA/JOHNSON**

**PALM BEACH COUNTY
ENVIRONMENTAL COALITION; PETER
“PANAGIOTI” TSOLKAS; PETER SHULTZ;
SHARON WAITE; and ALEXANDRIA LARSON**

Plaintiffs,

vs.

**THE STATE OF FLORIDA; CHARLES J.
CRIST, JR., as Governor, in his official
capacity; the FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION; and
MICHAEL W. SOLE, as Secretary, in his
official capacity; the UNITED STATES
ARMY CORPS OF ENGINEERS; Lt. Gen.
ROBERT L. VAN ANTWERP, Commander
and Chief of Engineers, in his official
capacity; GULFSTREAM NATURAL GAS
SYSTEMS, L.L.C., PALM BEACH
AGGREGATES, INC., a Florida
corporation; and**

Defendants.

_____ /

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, **PALM BEACH COUNTY ENVIRONMENTAL COALITION (“PBCEC”),
PETER “PANAGIOTI” TSOLKAS, PETER SHULTZ, SHARON WAITE and ALEXANDRIA
LARSON** by and through its undersigned counsel, hereby sue the **STATE OF FLORIDA,
CHARLES J. CRIST, JR., as Governor, in his official capacity; the FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION, and MICHAEL W. SOLE, as Secretary, in his official
capacity (“State Defendants”); the UNITED STATES ARMY CORPS OF ENGINEERS; and LT.**

GEN. ROBERT L. VAN ANTWERP, Commander and Chief of Engineers, in his official capacity (“Corps Defendants”), **PALM BEACH AGGREGATES, INC.** and **GULFSTREAM NATURAL GAS SYSTEM, L.L.C.** (“Private Defendants”) for improper agency action and violations of the **NATIONAL ENVIRONMENTAL POLICY ACT**, (“NEPA”) 42 U.S.C. §4321, *et seq.*; violations of the **ENDANGERED SPECIES ACT**, (“ESA”) 16 U.S.C. 460 *et seq.*; and violations of the **FEDERAL CLEAN WATER ACT**, (“CWA”) 33 U.S.C. §1344 *et seq.* and the **RIVERS AND HARBORS ACT OF 1899**, 33 U.S.C. §403; and regulations promulgated under these acts; and violations of the **FEDERAL AND STATE RICO ACTS** and the **FLORIDA IN THE SUNSHINE LAW** and state:

1. This is an action for Declaratory and Injunctive relief challenging the federal and state approvals and reviews and permits to construct certain components of Florida Power & Light Company’s new electrical generation plant and supporting infrastructure (Gulfstream Natural Gas pipeline) located in and throughout western unincorporated Palm Beach County that is to be known as the West County Energy Center (“WCEC Project” or “Project”).
2. The WCEC Project requires a complex series of permits and approvals from the various Defendants, some or all of which are governed by federal environmental law.
3. The Corps Defendants actions in reviewing and permitting and approving aspects of the WCEC Project failed to consider the cumulative effects of the construction and operation of the Project and its supporting infrastructure, in conjunction with earlier phases of the projects (“historical projects”) and foreseeable future projects on environmentally sensitive surrounding areas and endangered species under federal law.
4. The State Defendants actions in reviewing and permitting and approving aspects of the WCEC Project failed to consider the cumulative effects of the construction and operation of the Project and its supporting infrastructure, in conjunction with earlier phases of the

projects ("historical projects") and foreseeable future projects on environmentally sensitive surrounding areas and endangered species under state law.

5. The WCEC Project is a single phase of a much larger project which has been illegally segmented to avoid compliance with the National Environmental Policy Act and other federal environmental statutes.
6. A portion of the WCEC Project is governed by the Nation Wildlife Refuge Act.
7. As a result of the segmentation of the larger project, some segments of which required the completion of Environmental Impact Statements the Corps Defendants have failed to review the cumulative effects of the entire project.
8. The WCEC project also includes the construction of a cooling water inlet structure to and within the South Florida Water Management District's L-10/12 Canal which has been federally permitted under a reauthorized Nationwide Permit ("NWP 12") issued by the U.S. Army Corps of Engineers.
9. The WCEC project includes a natural gas pipeline expansion and storage facilities which is itself a phase of a larger phased and segmented project with both historic and planned future phases
10. Some of the segments of that phased and segmented gas pipeline project independently require and required the preparation of Environmental Impact Statements.
11. The failure to undertake proper reviews of certain aspects of the project will result in violations of NEPA, the ESA, the CWA and the Rivers and Harbors Act.
12. The failure to adhere to state law has subjected the entire process approval and permitting process for the project to public and private corruption and has resulted in harmful and unlawful siting of this project.

JURISDICTION

13. This Court has jurisdiction over this civil action under 28 U.S.C. Section 1331 (federal question); under the Administrative Procedure Act ("APA"), 5 U.S.C. Sections 702 and 706(1),(2)(A),(C),(D); 28 U.S.C. Section 1361 (action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff); pursuant to 33 U.S.C. §1365 the Clean Water Act; 15 U.S.C. § 1531 et seq. (citizen suit under the Endangered Species Act); and the Declaratory Judgment Act, 28 U.S.C. Section 2201 and 2202. The Court has pendant jurisdiction over Plaintiffs' state law claims.
14. In compliance with 42 U.S.C. § 7604(b)(1)(A) and 16 U.S.C. 1540(g)(1)(A) and (C), to the extent it was necessary, on July 27, 2007, PBCEC notified in writing the various state and federal agencies of the violations alleged in this complaint and of PBCEC's intent to sue.
15. More than sixty days have passed since the above notices were served by U.S. Mail. The Defendants remain in violation of the Clean Water Act and the Endangered Species Act.

VENUE

Venue is proper in this district under 28 U.S.C. 1391(b) as the actions giving rise to this claim and its effects occur in the Southern District of Florida; and under 28 U.S.C. 1391(e) because it is a civil action against an agency and/or officers or employees of an agency of the United States acting in their official capacities.

PLAINTIFFS

16. Plaintiff, PALM BEACH COUNTY ENVIRONMENTAL COALITION, is a nonprofit citizen organization comprised of environmental groups and individuals that are concerned about the environment and quality of life in Palm Beach County. PBCEC has undertaken public outreach, protests, and other advocacy efforts targeting the development of the West Coast Energy Center at the center of the WCEC Project. The members of the PBCEC regularly

use the area in and around the Project area, including the Dupuis, the Loxahatchee National Wildlife Refuge, Lake Okeechobee and the J.W. Corbett Wildlife Management Areas, for recreation including hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife in their current, unaltered and natural state, and they are adversely effected when any part of these areas are impacted or destroyed by excess development, loss of wildlife and habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat.

17. The ability of the PBCEC and its members to engage in and advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these statutes, these agencies, individuals and corporations are causing the unnecessary destruction of habitat and wetlands, reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by the PBCEC's members.
18. The PBCEC has participated in numerous administrative and state court proceedings including locally its opposition to the Scripps/Mecca Farms project, in support of its mission and its members.
19. Plaintiff, PETER "PANAGIOTI" TSOLKAS, is an individual who regularly uses the area in and around the Project area, including the Dupuis, the Loxahatchee National Wildlife Refuge, Lake Okeechobee and the J.W. Corbett Wildlife Management Areas, for recreation including hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife in their current, unaltered and natural state, and they are adversely effected when any part of

these areas are impacted or destroyed by excess development, loss of wildlife and habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat.

20. The ability of PETER "PANAGIOTI" TSOLKAS to engage in and advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these statutes, these agencies, individuals and corporations are causing the unnecessary destruction of habitat and wetlands, reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by this Plaintiff.
21. Plaintiff, PETER SHULTZ, is an individual who regularly uses the area in and around the Project area, including the Dupuis, the Loxahatchee National Wildlife Refuge, Lake Okeechobee and the J.W. Corbett Wildlife Management Areas, for recreation including hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife in their current, unaltered and natural state, and they are adversely effected when any part of these areas are impacted or destroyed by excess development, loss of wildlife and habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat. PETER SHULTZ is also the Director of the Loxahatchee Sierra Club and is active in a number of environmental group activities in the Project area.
22. The ability of PETER SHULTZ to engage in educational, recreational and advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these statutes, these agencies, individuals and corporations are causing the unnecessary

destruction of habitat and wetlands, reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by this Plaintiff.

23. Plaintiff, SHARON WAITE, is an individual who regularly uses the area in and around the Project area, including the Dupuis, the Loxahatchee National Wildlife Refuge, Lake Okeechobee and the J.W. Corbett Wildlife Management Areas, for recreation including hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife in their current, unaltered and natural state, and they are adversely effected when any part of these areas are impacted or destroyed by excess development, loss of wildlife and habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat.
24. The ability of SHARON WAITE to engage in educational, recreational and advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these statutes, these agencies, individuals and corporations are causing the unnecessary destruction of habitat and wetlands, reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by this Plaintiff.
25. Plaintiff, ALEXANDRIA LARSON, is an individual who regularly uses the area in and around the Project area, including the Dupuis, the Loxahatchee National Wildlife Refuge, Lake Okeechobee and the J.W. Corbett Wildlife Management Areas, for recreation including hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife in

their current, unaltered and natural state, and they are adversely effected when any part of these areas are impacted or destroyed by excess development, loss of wildlife and habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat.

26. The ability of ALEXANDRIA LARSON to engage in educational, recreational and advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these statutes, these agencies, individuals and corporations are causing the unnecessary destruction of habitat and wetlands, reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by this Plaintiff.

DEFENDANTS

27. STATE OF FLORIDA, (hereinafter referred to as "State") is a state governmental entity which has been delegated certain permitting responsibilities under federal environmental laws and which may be sued for prospective declaratory and injunctive relief for acts in excess of its statutory authority and for willful violations of federal law. This Defendant, through its actions and approvals for the Project is an indispensable party to this action.
28. CHARLES J. CRIST, JR., is the Governor of the State of Florida and the chief executive officer of the State who may be sued, in his official capacity, for prospective declaratory and injunctive relief for acts in excess of its statutory authority and for willful violations of federal law. This Defendant, through its actions and approvals for the Project is an indispensable party to this action.
29. The FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, (hereinafter referred

to as "FDEP") is an agency of the state which has been delegated certain permitting responsibilities under federal environmental laws and which may be sued for prospective declaratory and injunctive relief for acts in excess of its statutory authority and for willful violations of federal law. FDEP is the state agency responsible for the protection of the natural environment and the resources of the State of Florida, and which is also charged with the responsibility and duty to regulate and enforce the laws applicable to the approval of new power plants in the State of Florida and is an indispensable party to this action.

30. MICHAEL W. SOLE, is the Secretary of the State of Florida Department of Environmental Protection who may be sued, in his official capacity, for prospective declaratory and injunctive relief for acts in excess of its statutory authority and for willful violations of federal law.
31. The UNITED STATES ARMY CORPS OF ENGINEERS is an agency of the federal government which may be named as a defendant and against which a writ in the nature of mandamus, a declaratory judgment and injunctive relief may be entered, pursuant to 28 U.S.C. §§ 1361, 2201 and 2202, and Fed. R. Civ. P. 57, and 65 (a).
32. LT. GEN. ROBERT L. VAN ANTWERP, Commander and Chief of Engineers, is an officer and employee of the United States and its agency, the UNITED STATES ARMY CORPS OF ENGINEERS. In this capacity, LT. GEN. VAN ANTWERP may be named as a defendant and against whom mandamus, a declaratory judgment, and injunctive relief may be entered, pursuant to 28 U.S.C. §§1361, 2201 and 2202, and Fed. R. Civ. P. 57, and 65(a).
33. PALM BEACH AGGREGATES, INC. is a Florida corporation, whose principal place of business is 20125 STATE ROAD 80, LOXAHATCHEE FL 33470, in this district. PALM BEACH AGGREGATES, INC. participated in various acts as alleged in this Complaint and in violation of state and federal law.

34. GULFSTREAM NATURAL GAS SYSTEM, L.L.C., a foreign limited liability company whose principal place of business is 5400 WESTHEIMER COURT HOUSTON TX 77056, who is currently doing business in this district. GULFSTREAM NATURAL GAS SYSTEM, L.L.C., participated in various acts as alleged in this Complaint in violation of state and Federal law.

FACTUAL BACKGROUND

35. On or around September 2005, the permitting process for the West County Energy Center was announced by Florida Power & Light in the Sports pages of the Palm Beach Post. No known local residents or environmental groups were contacted directly to discuss potential impacts to local communities, wildlife or protected public land. The WCEC was to be built on land owned by Palm Beach Aggregates.
36. At multiple public meetings held in the spring of 2006, Plaintiff, the Palm Beach County Environmental Coalition ("PBCEC"), which also includes several active Sierra Club members, participated public comment with respect to the proposed West County Energy Center to be constructed in the Loxahatchee area, raising concerns about pollution, over-development, lack of adequate water supply, impacts to wildlife, impacts to public recreation and climate change (among others) as reasons not to go forward with the project.
37. PBCEC participant and Sierra Club member Alexandria Larson, also attended the Public Service Commission ("PSC") meeting, with Sharon Waite, another PBCEC participant, and resident of western Palm Beach County, in Tallahassee, in July 2006, to address environmental concerns regarding the West County Energy Center project, and its adjacent Gulfstream gas pipeline, however, were told that there would be future opportunities to raise these issue and were not allowed to raise them.
38. The PSC approves the "needs determination" for the WCEC as a part of the state approval process under Florida Electrical Power Plant Siting Act, §403.502, et seq., Florida Statutes.

39. On Sept 6, 2006 FPL and DEP held an Administrative Hearing at Wellington Community Center as a prelude to the Governor's cabinet meeting, presided over by Administrative Law Judge Mahoney.¹ PBCEC participants and Sierra members attended as members of the public, inquiring about several issues that have still not been resolved to date regarding required permits for State and Federal certification, including, but not limited to: deep well injection of industrial effluent under the Loxahatchee National Wildlife Refuge; air pollution and acid rain; risk assessments of large-scale onsite diesel fuel storage operations; 34 miles of pipeline construction along conveyance canals for regional navigable waterways (L-8 and L-65); impacts of project to Everglades Restoration projects (CERP); impacts of project to public land access and recreation (including a designated National Scenic Trail); public health and contamination from emissions; and impacts on Threatened/Endangered Species and Species of Special Concern (over 30 of which reside in and around the Arthur R. Marshall Loxahatchee National Wildlife Refuge) - all of which were dismissed and ignored.
40. On December 19th, 2006 PBCEC participants traveled to Tallahassee to ask Governor Bush and his Cabinet to allow more time for review the projects by both the public and reviewing state and federal agencies to no avail. At that time there was not even a cursory evaluation in the record from the Florida Fish and Wildlife Conservation Commission. Then FDEP director Colleen Castille said that they never received anything from the FFWCC, however, a FFWCC comment letter later did surface citing concerns over cumulative environmental and air quality impacts of the projects and other issues, but was never included in permit certification.
41. In December 2006, the Florida Natural Gas Storage Company, LLC (FGS), submitted

¹ Though the meeting was noticed as a public meeting, and advance background materials were advertised as available at the local library, no copies of any such materials were

documents to a federal certification authority, the Federal Energy Regulatory Commission, requesting initiation of the NEPA pre-filing process in Indiantown, Martin County, Florida for a future phase of the project.

42. On January 11, 2007, former County Commissioner Tony Masilotti is sentenced to Federal Prison for his involvement in purchases and Commission approvals of land and land use regulations. The FP&L WCEC and the Palm Beach Aggregates sites are listed in the indictment.
43. In the Factual Basis for Guilty Plea in the Federal indictment, count 14 states: "Masilotti had his brother, Paul F. Masilotti, contact Enrique Tomeau, the President of Palm Beach Aggregates for the purpose of buying an option to purchase sixty (60) acres of land...owned by the Aggregates." Count 16 continues, "Shortly after receiving this option, Masilotti first voted before the Board of County Commissioners to allow Aggregates to have Florida Power and Light build a power plant on a different portion of Aggregates property within Palm Beach County. Masilotti voted on this measure in February 2004 without disclosing to the public that he and his brother Paul Masilotti had a concealed financial interest in the Aggregates property holdings."
44. Later in the year, July 23, 2007, former County Commission Warren Newell was also found guilty of similar corruption charges also related to WCEC site and Palm Beach Aggregates. According to the US Southern District Court of Florida, Case No: 07-80121-CR-MARRA/HOPKINS, paragraph 20, Warren Newell "owned approximately 19% [of the company] Rio Bravo, which was created as a holding company to receive profits from an executed and secret success fee contract between the Aggregates and Rio Bravo for an anticipated contract between the SFWMD and Aggregates concerning regional water

made available until the actual time of the meeting.

storage within the cells.” “This success fee contract was not disclosed to the SFWMD, the BCC, or the public.”

45. These investigations and indictments are on-going. In their midst, the PBCEC participants have requested a revisitation of the votes connected to the Palm Beach Aggregates land deals and the WCEC, however, the County has refused citing legal threats.

46. In September 2007, while the Plaintiffs combed through secondary documents from the state related to the WCEC and Gulfstream Pipeline, correspondence was uncovered authored by the Fish & Wildlife Commission regarding the WCEC power plant asking about the cumulative impact of emissions from various power projects under simultaneous review. These documents were not made a part of the record when the Governor and Cabinet had their expedited hearing on December 19, 2006 in Tallahassee.

47. Some of the concerns raised by the FFWCC document dated **October 17, 2005**, were:

(1) Air quality impacts associated with fossil fuel burning power plants include emission of greenhouse gases; bioaccumulation of methylmercury in fish and wildlife; increased regional haze; and acidification of lakes and streams (DEP 2005)... ***“We are concerned that this plant combined with the build out third unit, other existing power plants and two planned new power plants in St. Lucie County, cumulatively will have adverse effects to fish and wildlife and the habitats.”***

(2) Florida has many nights in the spring, summer and fall when stagnation indexes are very high. Of particular concern are the nights heavy fog is present, especially in the Everglades WMA, Loxahatchee NWR, Everglades Agricultural Area (EAA), and mid

to western county areas. Low ph fog and air laced with nitrous and sulfur dioxide could be having detrimental effects to plant life, water quality and fish during these periods...

48. On October 4, 2005, the FWC also reviewed another project in the region, the Treasure Coast Energy Center (TCEC), by Florida Municipal Power Agency (FMPA), with an ultimate site certification of 1,200 MW of fossil fuel energy (gas/diesel). This document also references the WCEC stating: "two other power plants currently seeking certification in southeastern Florida would exert further cumulative air quality impacts on fish and wildlife and their habitats."
49. The Treasure Coast Regional Planning Council, as recently as May 16, 2008, reported that FP&L's "ten year power plant site plan" dealing with WCEC units 1, 2 and 3 is "inconsistent" with Regional Policy Plan Goal 9.1: Decrease vulnerability of the region to fuel price increases and supply interruptions; and Strategy 9.1.1: Reduce the regions reliance on fossil fuels.
50. On June 19, 2007, the FFWCC submitted a letter to the Public Service Commission, where it once again referenced the WCEC, stating: "When more detailed information is developed as part of the site specific permitting process, we will review the submitted information for potential impacts to fish and wildlife and their habitats." This indicates that the power plant received final certification from the State *prior* to FFWCC review.
51. During the summer of 2007, construction began at the WCEC, despite incomplete permitting. In September, the pipeline's route is changed with minimal review and is resubmitted for a permit.
52. On December 13, 2007, the SFWMD Governing Board voted to approve selling its L-8 canal right away to Gulfstream for the pipeline portion of the WCEC project. Governing Board

member, landowner and US Sugar representative Bubba Wade, with undisclosed financial interests in the affected area, participated in the voting and voted for the sale.

53. On April 4, 2008, construction of the Gulfstream Pipeline began, starting with the most sensitive and controversial sites on the route: the Couse Midden archaeological site. Gopher tortoises are present on this site, their habitat has now already been obstructed by hasty clearing activities along the construction access road.

WEST COUNTY ENERGY CENTER & THE GULFSTREAM PIPELINE

54. In conjunction with the creation of the West County Energy Center and for the purpose of facilitating its development, a natural gas pipeline is being built by Gulfstream Natural Gas System, L.L.C. as a part of the WCEC Project. The proposed pipeline will be a 34.26-mile, 30-inch diameter natural gas pipeline.
55. The proposed pipeline starts in western Martin County, slightly northwest of Indiantown, and ends in western Palm Beach County at the site of the WCEC.
56. The proposed pipeline is the third phase a pipeline that runs from natural gas supply areas on the coasts of Alabama and Mississippi across the Gulf of Mexico into central and southern Florida. The entire pipeline, thus far is 691 miles long, with approximately 240 miles in Florida.
57. The first phase of the pipeline began operating in May 2002, and the second phase began operating in February 2005. The pipeline currently transports approximately 1.1 billion cubic feet per day of natural gas into Florida. The fourth phase of the pipeline has already been permitted, subjected to NEPA analysis and will entail the construction of approximately 17.8

miles of 20-inch pipeline in Tampa Bay connecting the existing Gulfstream pipeline to the Bartow Power Plant.

58. The proposed pipeline will begin at an existing Gulfstream station in Martin County.
59. It will run in a southerly direction along the east side of the L-65 Canal, crossing the St. Lucie Canal and continuing to the Martin/Palm Beach county line; then it will run east to a point west of the Dupuis WMA and then south along the western boundary of the Dupuis WMA adjacent to an existing power line right-of-way; then turns southeast and will run on the east side of the L-8 Canal crossing twice; and then will turn due south and runs in an existing FPL transmission line right-of-way to its terminus on the WCEC project site.
60. The path of the proposed pipeline impacts federal jurisdictional waters which require it to obtain certain federal permits under the CWA and the Rivers and Harbors Act. Though the initially proposed path for the pipeline was slightly changed in an effort to remove the Corps' jurisdiction and approvals, the Corps still has jurisdiction over the entire unsegmented Project.
61. Gulfstream acquired a pipeline easement from the South Florida Water Management District ("SFWMD"), which authorizes it to install the proposed pipeline within the L-8 and L-65 canal rights-of-way, limiting the width of the permanent easement to 20 feet, but it providing for a 95-foot wide temporary construction easements along the pipeline route.
62. The proposed pipeline would cross 122 water bodies including the navigable L-8 Canal, the L-65 Canal, and the St. Lucie Canal.
63. The passive land uses along the route include the Dupuis and J.W. Corbett WMAs, which are state-owned wildlife conservation areas and there is an existing mining operation

adjacent to the pipeline route (approximately 290 feet from the proposed pipeline at its closest point) which uses blasting as a part of its operation.

64. The proposed pipeline actually crosses approximately 3.67 acres of the J.W. Corbett WMA and the listed species whose potential habitat includes the pipeline corridor are the wood stork, the Southeastern American kestrel, the crested caracara, the bald eagle, and the gopher tortoise and its commensal species.
65. The wood stork also uses areas within and along the proposed pipeline corridor; the Southeastern American kestrel and crested caracara habitat exists adjacent to the first four miles of the proposed pipeline corridor; and at least one Bald eagle nest is in the vicinity of the proposed pipeline route in the Dupuis WMA.
66. At least 102 gopher tortoise burrows have been observed within the proposed pipeline route. The burrows are located along the berm of the L-65 Canal. The permit under which these gopher tortoises are to be relocated is currently being challenged.
67. The WCEC project is the only reason for the pipeline's construction on the path chosen for it and without it the WCEC project would likely not be sited where it is sited, consequently the WCEC project is clearly a part of, or a secondary impact of, the pipeline project.
68. The WCEC project also requires certain federal permits under CWA and the Rivers and Harbors Act.
69. The pipeline and the WCEC are each phases of an even larger series of historic projects, some of which were also subject to independent NEPA reviews by federal agencies - including findings that these earlier phases required an EIS evaluation.
70. The pipeline itself is phase three of a larger series of interconnected and dependent projects

also requiring federal permits (phase four is already being permitted and constructed).

71. Rather than finding significant cumulative environmental impacts from the entire, unsegmented projects and supplementing earlier EIS's, EA's were generated for discrete additions to the earlier phases of the historic project by the Corps of Engineers for the purpose of segmenting these projects and circumventing CWA and Rivers and Harbors Act permitting and the requirements under NEPA to fairly evaluate the cumulative environmental impacts of the entire project and its historic and foreseeable future phases.
72. Taken in its entirety, the pipeline/WCEC projects will have significant impacts sufficient to require a complete EIS review under NEPA. **The pipeline/WCEC will result in the release of at least 12 million tons of greenhouse gases (CO 2) per year, will release millions of tons of other noxious gases in and around sensitive wildlife and natural areas, will consume at least 6.5 billion tons of water per year at a time of extreme drought in the region, and will literally fuel the continued uncontrolled western growth of Palm Beach County, which in turn will destroy the agricultural base of this region and destroy our quality of life still further.**
73. As indicated infra, some of the work for the pipeline/WCEC projects has been authorized by the Corps under a reissued NWP 12. This permit entitled "Utility Line Activities", authorizes the construction, maintenance, and repair of utility lines, including underground gas transmission lines that have minimal adverse effects on the aquatic environment.
74. The Corps has improperly expanded the scope of NWP 12 to approve/authorize the construction of a cooling water inlet structure to and within the South Florida Water Management District's L-10/12 Canal which will have significant environmental impacts for

the purpose of evading its NEPA responsibilities.

STATUTORY CONSTRUCT

ADMINISTRATIVE PROCEDURES ACT

75. Under the Federal Administrative Procedures Act, 15 USC §702, any person who has suffered legal wrong because of agency action, or who is adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

76. Under 15 USC §706, to the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

The reviewing court shall:

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be:
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those

parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

NATIONAL ENVIRONMENTAL POLICY ACT

77. The purpose of the National Environmental Policy Act is set forth in 42 U.S.C. § 4331:

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, ***particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation,*** and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, ***in cooperation with State and local governments, and other concerned public and private organizations,*** to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, ***to create and maintain conditions under which man and nature can exist in productive harmony,*** and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, ***to improve and coordinate Federal plans, functions, programs, and resources*** to the end that the Nation may:

- (1) ***fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;***
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) ***attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;***
- (4) preserve important historic, cultural, and natural aspects of our

national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) **enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.**

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. (Emphasis added).

78. Pursuant to §4342, Congress created the Council on Environmental Quality ("CEQ") for the purpose of promulgating regulations applicable to all federal agencies consistent with the intent and purposes of the Act. Those regulations are set forth in the Federal Code of Regulations at 40 C.F.R. 1500 *et seq.*
79. Pursuant to the CEQ regulations, Federal agencies are required to assess the impacts of major Federal actions to determine if those actions will significantly affect the human environment. If it is determined that an action will likely adversely affect the human environment, a Federal agency is required to prepare and Environmental Impact Statement ("EIS").
80. Pursuant to 40 C.F.R. Section 1502.14, an EIS is required to present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. **The EIS should rigorously explore and objectively evaluate all reasonable alternatives**, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated; Devote substantial treatment to each

alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; Include reasonable alternatives not within the jurisdiction of the lead agency; Include the alternative of no action; Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference, and include appropriate mitigation measures not already included in the proposed action or alternatives.

81. Pursuant to 40 C.F.R. Section 1502.16 the EIS is required to present a discussion of the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The direct effects and their significance; Indirect effects and their significance; Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned; The environmental effects of alternatives including the proposed action; Energy requirements and conservation potential of various alternatives and mitigation measures; Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures; Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures and means to mitigate adverse environmental impacts.
82. Pursuant to 40 C.F.R. Section 1502.23 the EIS is required to present a cost-benefit analysis relevant to the choice among environmentally different alternatives being considered for the

proposed action, which shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

83. Pursuant to the regulations, an EIS is required to evaluate the "cumulative impacts" of the agency action. Pursuant to 40 C.F.R. § 1508.7, "cumulative impact" is defined as the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. ***Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.***
84. Pursuant to NEPA, its regulations, and the Corps regulations, the Corps is required to conduct NEPA reviews when issuing permits under the CWA and the Rivers and Harbors Act.

ENDANGERED SPECIES ACT

85. The Endangered Species Act, 15 U.S.C. 1531 *et seq.* was established by Congress to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such

endangered species and threatened species and to require all Federal departments and agencies to conserve endangered species and threatened species.

86. Section 1536 requires that each Federal agency shall, in consultation with and with the assistance of the Department of the Interior, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Department, after consultation as appropriate with affected States, to be critical. In fulfilling the requirements of this section each agency must use the best scientific and commercial data available.
87. The regulatory functions of the Act have been divided and delegated to the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration-Fisheries. The Fish and Wildlife Service has primary responsibility for terrestrial and freshwater organisms.
88. Federal agencies are required to consult with the USFWS on any prospective agency action if the action agency has reason to believe that an endangered species or a threatened species may be present in the area affected by the project and that implementation of such action will likely affect such species.
89. Each Federal agency must confer on any agency action which is likely to jeopardize the continued existence of any species listed under §1533 or which would result in the destruction or adverse modification of critical habitat designated for such species.
90. Pursuant to regulations, if the USFWS is required to prepare a biological assessment for such agency action. The biological assessment should contain the results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally, the views of recognized experts on the species at issue, a review of the literature and other information, an analysis of the effects of the action on the

species and habitat, including consideration of cumulative effects, and the results of any related studies, and an analysis of alternate actions considered by the Federal agency for the proposed action.

91. If the agency action is found likely to adversely affect listed species, the USFWS must prepare a biological opinion.

CLEAN WATER ACT

92. Under the Clean Water Act, it is illegal for anyone to discharge dredged or fill material into the navigable waters of the United States without a permit except under circumstances specifically set forth under the statute and regulations.
93. The Clean Water Act, 33 U.S.C. § 1251 et seq., is designed to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a)(2). Dredged or fill materials are pollutants under the CWA. See 33 U.S.C. § 1362(6).
94. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Corps to issue permits to discharge or place "dredged or fill materials" into waters of the United States, including wetlands, only at specified sites and under prescribed circumstances and conditions.
95. The Section 404 program places a high priority on the control of activities that are potentially damaging to the Nation's wetlands and other waters. Regulations promulgated by the Environmental Protection Agency pursuant to section 404(b)(1) and a memorandum of understanding between EPA and the Corps further define the Corps' duty in evaluating individual permits under CWA.
96. The 404(b)(1) Guidelines mandate a sequential review process whereby the Corps evaluates individual permits.
97. First the Corps must evaluate whether an activity is water dependent. If a proposal is not water dependant, the Corps must presume that an environmentally less damaging

practicable alternative exists. See 40 C.F.R. § 230.10(a)(3).

98. The applicant proposing a project that is not water dependant must show that all available alternatives to the impacts resulting from the discharge of dredged or fill material have been considered, and that no practicable alternative exists which would have less adverse impact on the aquatic environment. See 40 C.F.R. § 230.10(a).
99. Although a particular alteration of a wetland may constitute a minor change, the cumulative effect of numerous piecemeal changes can result in a major impairment of wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it may be part of a complete and interrelated wetland area. 33 C.F.R. 320.4.
100. If the permit applicant establishes that no less damaging, practicable alternative is available, the applicant must then show that all appropriate and practicable steps will be taken to minimize adverse impacts of the discharge onto wetlands. See 40 C.F.R. § 230.10(d).
101. Only after the permit applicant has shown that the avoidance and minimization criteria are satisfied can the Corps even consider mitigation.
102. In establishing mitigation requirements, the Corps must strive to achieve a goal of no overall net loss of wetland values and functions, meaning a minimum of one-for-one functional replacement with an adequate margin of safety to reflect scientific uncertainty.
103. The Corps cannot permit a discharge if the discharge would violate other applicable laws.
104. The Corps must also independently determine that the project will not cause or contribute to violations of State water quality standards. See 40 C.F.R. § 230.10(b)(1); 40 C.F.R. § 230.10(c). This duty exists independently of any obligation of the State to

determine whether a project will cause or contribute to State water quality standards under CWA Section 401.

105. The Corps must also fully and independently assess each project impact relating to:

(a) water circulation, fluctuation, salinity, and temperature (see 40 C.F.R. § 320.11 (b));

(b) the substrate underlying and surrounding the aquatic environment, including the degree and impact of soil compaction (see 40 C.F.R. § 320.11(a));

(c) the kinds and concentrations of suspended particulate in the aquatic environment (see 40 C.F.R. § 230.11(c));

(d) the degree the fill material will impact the aquatic environment (see 40 .F.R. § 230.11 (d));

(e) the degree of impact on the aquatic ecosystem and organisms (see 40 C.F.R. § 230,11(e));

(f) the degree of cumulative effects on the aquatic environment (see 40 C.F.R. § 230.11 (g)); and

(g) the degree of secondary effects on the aquatic environment (see 40 C.F.R, § 230.11(h)).

106. Pursuant to 40 C.F.R. § 230.5, the permitting authority for any discharge of dredge or fill material under the statute must, among other things, examine practicable alternatives to the proposed discharge, that is, not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences, evaluate the various physical and chemical components which characterize the non-living environment of the candidate sites, the substrate and the water including its dynamic characteristics,

identify and evaluate any special or critical characteristics of the candidate disposal site, and surrounding areas which might be affected by use of such site, related to their living communities or human uses, evaluate the material to be discharged to determine the possibility of chemical contamination, identify appropriate and practicable changes to the project plan to minimize the environmental impact of the discharge and impose zero net loss mitigation within the action area.

107. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments.

RIVERS AND HARBORS APPROPRIATIONS ACT

108. Sec. 403 of the Rivers and Harbors Appropriations Act states that the creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor or refuge, or enclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been

recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.

109. 33 CFR parts 321 - 330 prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army (DA) permits for controlling certain activities in waters of the United States or the oceans.
110. Nationwide Permits are issued and reissued, pursuant to regulations, to satisfy some of the permit requirements of section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, section 103 of the Marine Protection, Research, and Sanctuaries Act, or some combination thereof, where the environmental impacts are minimal.
111. The District Engineer will review the applications and determine if the individual and cumulative adverse environmental effects are more than minimal. If the adverse effects are more than minimal the District Engineer will notify the prospective permittee that an individual permit is required rather than simple authorization under a Nationwide Permit.
112. The issuance of, or reauthorization of, or determination of the applicability of a Nationwide Permits is a final agency action reviewable under the APA.

**COUNT I
VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT
AS TO CORPS DEFENDANTS**

Plaintiff realleges the allegations in paragraphs 1-112 as though fully set forth herein.

113. The current phases of the construction of the Gulfstream Natural Gas pipeline and West County Energy Center projects require Corps authorization and permits under the CWA and the Rivers and Harbors Act.
114. Issuance of such authorizations and permits constitutes major federal action for purposes of the National Environmental Policy Act, ("NEPA") 42 U.S.C. §4321, et seq.
115. The Corps Defendants issued authorizations and permits for the Gulfstream Natural Gas

pipeline and West County Energy Center without preparing adequate environmental analysis and documentation as required by NEPA.

116. The Corps' failed to evaluate the environmental impacts of the WCEC release of more than 12 million tons of CO² into the atmosphere per year; the WCEC use of at least 6.5 billion gallons of water per year; and the storage of 18.9 million gallons of fuel oil on premises in such proximity to environmentally sensitive lands.
117. That authorization was given and those permits were issued without the appropriate level of environmental review under NEPA.

WHEREFORE, Plaintiff respectfully requests the following:

- A. Declare the Corps Defendants' actions violate NEPA;
- B. Declare that the Corps Defendants' decision not to prepare an EIS or a Supplemental EIS arbitrary and capricious and in violation of NEPA;
- C. Declare that all permits and approvals predicated upon the Corps Defendants' EA's for these projects are invalid;
- D. Preliminarily and permanently enjoin the Corps Defendants from taking any action which in any way supports or furthers funding, design, permit acquisition, construction or development of the Projects based on the EA's until the Corps Defendants have remedied their violations of NEPA;
- E. An Order requiring Corps Defendants to adequately and fully analyze all impacts and reasonable alternatives to

the proposed projects as required by NEPA and its implementing regulations;

F. An Order requiring the Corps Defendants to prepare an EIS integrating all segments of the projects necessary to achieve the purpose of the Project, including all cumulative impacts as required by NEPA and its implementing regulations;

G. An Order awarding Plaintiffs their reasonable attorneys fees, costs and expenses pursuant to 28 U.S.C. §2412, the Equal Access to Justice Act and Rule 54(d), Fed.R.Civ.P;

H. Such other and further relief as the Court may deem just and proper.

COUNT II VIOLATIONS OF THE ENDANGERED SPECIES ACT AS TO CORPS DEFENDANTS

Plaintiff realleges the allegations in paragraphs 1-112 as though fully set forth herein.

118. The Endangered Species Act, 15 U.S.C. 1531 et seq. and its implementing regulations require all Federal departments and agencies to assure that their actions conserve endangered species and threatened species.

119. The ESA specifically prohibits major federal agency action which is likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.

120. The ESA specifically requires federal agencies to consult with the US Fish and Wildlife Service and the National Marine Fisheries Service with respect to any action which is likely

to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.

121. The current phases of the construction of the Gulfstream Natural Gas pipeline and West County Energy Center projects in combination with the historic and foreseeable future phases of the projects are likely to jeopardize the continued existence of endangered species and threatened species and result in the destruction or adverse modification of habitat these species.
122. Issuance of Corps authorizations and permits constitutes major federal agency action for purposes of the Endangered Species Act, 15 U.S.C. 1531 et seq. and its implementing regulations.
123. The Corps Defendants, by limiting the scope of review of the projects, failed to adequately consult with the US Fish and Wildlife Service and the National Marine Fisheries Service with respect to threatened and endangers species affected by the historic and foreseeable future components of the projects.
124. The Corps Defendants actions are in violation of the Endangered Species Act.

WHEREFORE, Plaintiff respectfully requests the following:

- A. Declare the Corps Defendants' actions violate the ESA;
- B. Declare that all permits and approvals issued in violation of the ESA are invalid;
- C. Preliminarily and permanently enjoin the Corps Defendants' from taking any action which in any way supports or furthers funding, design, permit acquisition, construction or development of the Project until the Corps Defendants' have remedied their violations of the ESA;

D. Issuance of an Order awarding Plaintiff their reasonable attorneys fees, costs and expenses pursuant to the ESA;

E. Such other and further relief as the Court may deem just and proper.

**COUNT III
VIOLATIONS OF THE CLEAN WATER ACT AND
THE RIVERS AND HARBORS ACT
AS TO CORPS DEFENDANTS**

Plaintiff realleges the allegations in paragraphs 1-112 as though fully set forth herein.

125. The Clean Water Act and the Rivers and Harbors Act permit the Corps to issue authorizations and permits for activities which fall under their jurisdictional purview.

126. The Gulfstream Natural Gas pipeline and West County Energy Center construction projects contemplate activities which fall under the Corps' jurisdictional permitting authority.

127. Upon applications, the Corps issued authorizations and permits allowing the Gulfstream Natural Gas pipeline and West County Energy Center construction projects to go forward. Those authorizations and permits constitute final agency action under the APA, CWA and Rivers and Harbors Act.

128. The Corps improperly reissued Nationwide Permit 12 and granted authorizations for the Gulfstream Natural Gas pipeline and West County Energy Center under the permit which were beyond the scope of the permit.

129. Consequently, actions which require individual permits under the CWA were unlawfully granted authorizations under the NWP system.

130. The Corps' actions violated both the CWA and the Rivers and Harbors Act.

WHEREFORE, Plaintiff respectfully requests the following:

- A. Declare the Corps Defendants' actions violate the CWA and the Rivers and Harbors Act;
- B. Declare that all permits and approvals issued in violation of the Acts are invalid;
- C. Preliminarily and permanently enjoin the Corps Defendants' from taking any action which in any way supports or furthers funding, design, permit acquisition, construction or development of the Project until the Corps Defendants' have remedied their violations of the Acts;
- D. Issuance of an Order awarding Plaintiff their reasonable attorneys fees, costs and expenses pursuant to the CWA;
- E. Such other and further relief as the Court may deem just and proper.

**COUNT IV
VIOLATIONS OF F.S. 373.013, ET SEQ.
AS TO STATE DEFENDANTS**

Plaintiff realleges the allegations in paragraphs 1-112 as though fully set forth herein.

- 131. The approval of the WCEC by the Florida DEP is a violation of all of its obligations under F.S. 373.013, *et seq.*
- 132. On March 10, 2005, the United States Environmental Protection Agency issued the Clean Air Interstate Rule (CAIR), which along with the federal Clean Air Act is designed to reduce nitrogen oxides emissions, sulfur dioxide emissions, and the emissions of greenhouse gases.
- 133. In violation of the requirements of the Florida Power Line Siting Act, as well the above

referenced Statutes, when the Florida DEP granted approval for the WCEC, it failed to consider the impact of the WCEC upon such critical issues as global warming, the drought which currently plagues this region, the impact upon the Loxahatchee National Wildlife Refuge and the Everglades, which are in close proximity to the proposed WCEC, and the health, safety, and general welfare of the people of Florida.

134. In violation of its obligations under the Power Line Siting Act, the Florida DEP failed to require affected agencies, such as the United States Army Corps of Engineers, the Florida Fish and Wildlife Conservation Commission, the SFWMD and the Department of Transportation to submit proper reports detailing the likely effects of the WCEC upon the matters within their jurisdiction.

135. The Florida DEP further violated its obligations under the Power Line Siting Act by failing to even attempt a balance between the need for the power plant and the impact upon the public and the environment resulting from the location, operation and the maintenance of the power plant as required by F.S. 403.529 (4)(e).

136. The Florida DEP was presented with unrebutted evidence from FP&L and others that “[A]long with the major sources of new pollution from the known harmful emissions including SO₂, PM/PM₁₀, NO_x, CO, VOC and Sulfuric Acid Mist, this plant would also be a major contributor to greenhouse gases (GHGs). Although currently unregulated, the 8.5-11.5 million tons of CO₂ emissions per year (estimated by FPL) would be an undeniably noticeable increase to Florida’s overall GHG’s”.

137. Rather than analyzing this data, and evaluating the impact of the WCEC upon the air, water, and land resources of Florida and the nation as it is required to do under the above-referenced laws of Florida, the FDEP failed to perform its duties as acknowledged in written correspondence to the PBCEC, dated April 16, 2007, wherein the Secretary of the Florida

DEP, Michael Sole, admitted that "At this time, the emissions of carbon dioxide (CO₂) are unregulated at both state and federal levels."

138. In the recently decided case of Massachusetts et al. vs. Environmental Protection Agency, et al., 549 U.S. ____, 2007, the United States Supreme Court rejected similar efforts by the Environmental Protection Agency (EPA) to shirk its duty to use its efforts to address and regulate air pollution which will exacerbate global warming.

139. In the above referenced case, the United States Supreme Court made the following findings of fact, "A well documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere. Respected scientists believe the two trends are related. For when carbon dioxide is released into the atmosphere, it acts like the ceiling of a greenhouse, trapping solar energy and retarding the escape of reflected heat. It is therefore a species-the most important species-of a greenhouse gas."

140. The United States Supreme Court went on to observe that the United States Congress and leading federal environmental agencies from the executive branch have identified global warming as a major threat to our planet and our nation.

141. The Court rejected the claim by the EPA that it was not required to act, unless it "determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do." In the case at bar, the Florida DEP has admitted that it has failed to even consider the impact of massive amounts of greenhouse gases upon the environment and upon global warming. As such, its approval of FP&L's permit for the WCEC is contrary to federal and state law and must be reversed.

142. The failure to regulate greenhouse gases is in direct violation of the obligations of the

Florida DEP which has the power and the responsibility to protect the natural resources of this State according to the above-referenced laws.

143. Global warming has a particularly harmful effect upon the people and natural environment of Florida due to Florida's large coastline, the already endangered Everglades, and the harm caused to the people and the economy of Florida from hurricanes, all of which problems are exacerbated by the effects of global warming.

144. The approval of the permit by the Florida DEP violates all the above-referenced laws and statutes because this approval will serve as a catalyst for urban sprawl and will literally fuel the growth of large developments into the western areas of Palm Beach County, which will have a gravely adverse effect upon the Loxahatchee National Wildlife Refuge, the Everglades, the Comprehensive Everglades Restoration Plan, and water quality and storage, and which also violates the provisions of Florida's Growth Management Act and Palm Beach County's local Comprehensive Plan.

145. The approval of the WCEC must also be reversed, or in the alternative sent back to the Florida DEP and the Siting Board for reconsideration due to changes of circumstances since the approval which include, but are not limited to the following:

- a) since the approval of the WCEC, South Florida has experienced an extensive and wide-spread drought. The excessive water demands of the WCEC, which has been estimated at 600 million gallons per month, were never sufficiently considered by the Florida DEP, the United States Army Corps of Engineers, the SFWMD, and other necessary agencies, when the permit was approved, and in light of recent drought conditions, there is an even stronger basis to require the Florida DEP and the SFWMD to consider the impact of the WCEC upon South Florida' lack of water.

- b) the approval of the WCEC was based upon an assumption that has been proven erroneous by recent developments. FP&L claimed that the WCEC was needed in order to provide power for a large population of people who were projected to move into currently uninhabited or sparsely populated areas of western Palm Beach County. Recently, it has come to light that the projected, rapid increase in population in Palm Beach County has failed to materialize, and for the first time in history, many people are beginning to leave this County due to economic reasons unanticipated by the agencies involved in the permitting process. In addition, after a large number of people publicly expressed their opposition to the type of massive new growth in the western areas of this County, the Palm Beach County Commission recently unexpectedly rejected a proposal to place 10,000 residential units on the Callery Judge parcel in the western area of Palm Beach County, expressing concerns about urban sprawl.
- c) On May 14, 2007 a memo was sent from Palm Beach County Administrator Robert Weisman to the members of the Palm Beach County Commission regarding the WCEC advising the Commissioners that “[T]he indicated water usage is significant and essentially comes from the same sources as would serve development in the western communities. The volume of water usage anticipated is equivalent to approximately 50,000 houses.” In light of this new information which has apparently never been considered by the Palm Beach County Commission, the permit approval should be reconsidered, and the SFWMD and the Florida DEP should be instructed, as required by law, to balance the need for the power plant and the water needs of the environment and the people of South Florida as they are required to do under F.S. 403.529

(4)(e), but failed to do prior to considering the permit request for the WCEC. The composition of the SFWMD has significantly changed since the time that it was required to review the permit application for the WCEC, and now consists of new members who appear willing to perform its statutory duties in regards to the WCEC, and to assume its true role as protector of Florida's waterways.

146. The WCEC should not be permitted due to the fact that FP&L has failed to obtain the necessary permit for the deep well injection of the vast amounts of water that it will consume, and if the SFWMD properly performs its duties, this permit is unattainable due to the tremendous negative impacts this will cause to Florida's waterways.

147. Plaintiffs are not required to exhaust administrative remedies prior to the filing of this lawsuit due to factors stated above and others, which include, but are not limited to the following:

- a) the changed circumstances since the approval of the WCEC, such as the reduction in population projections in the western areas of this County, the expression of the will of the people recently to oppose more western development at Callery Judge and elsewhere, the recent drought, and the concerns expressed by County administrator Robert Weisman that the WCEC will require the equivalent amount of water as 50,000 houses, and will compete with the water needs of projected western development;
- b) the futility of pursuing an administrative challenge under agencies headed by the former Governor of this state;
- c) the numerous and serious violations of law which would have required multiple administrative challenges, and thus which would not have served the interests of justice or judicial economy, and which would have been cost prohibitive for the Plaintiff.

d) the recent decision of the United States Supreme Court in *Massachusetts v. EPA*, which has been decided since the approval of the WCEC, and which now provides far more stringent criteria for the approval of the WCEC than previously existed.

e) the expression of a new focus on combating global warming as expressed by the Governor in his inaugural address in 2007, which has radically altered the priorities of Florida's executive branch towards far greater protection for our environment and our natural resources, and towards efforts to reduce the emission of greenhouse gases;

f) a deep-well injection permit has still not been obtained by FP&L, and thus any approvals granted without such permit are invalid.

148. The Florida DEP, as well as those agencies that it is mandated to oversee, such as the SFWMD and the Fish and Wildlife Conservation Commission have been charged with protecting the public's health and welfare. None of these agencies have performed their duties and obligations as required by Florida law when they approved the WCEC.

149. The Florida DEP has offered no reasoned explanation for its refusal to regulate greenhouse gases and for its refusal to decide whether greenhouse gases cause or contribute to climate change. Its actions are therefore arbitrary and capricious, and as such constitute a violation of the federal Clean Air Act, (CAIR), the Florida Power Plant Siting Act and the Florida Water Resources Act and other state and federal laws.

150. Public participation was not encouraged in the administrative process and violated Florida law due to improper notice, and an unreasonable refusal to allow interested parties to intervene and otherwise participate in the proceedings. When valid objections and observations were made during the administrative process by interested parties, the Florida DEP failed to properly carry out its duties by its refusal to properly respond to such concerns, and to refute the factual assertions raised by the public.

151. Plaintiff has retained the undersigned to represent it in this matter, and has agreed to pay a reasonable fee for these services. Under the Clean Air Act and other relevant law, Plaintiff seeks attorney's fees and costs from the Defendants if it prevails.

WHEREFORE, Plaintiffs demand injunctive relief and/or certiorari review of the decision by the Florida DEP and the Siting Board and request that this Honorable Court reverse the permit approval for the WCEC, and instruct the Defendants not to permit the construction of the WCEC, or in the alternative, to remand this action back to all appropriate administrative agencies, to commence the process of permit approval from the beginning, after providing ample opportunity for the public and all relevant organizations and governmental agencies to participate in the process, plus an award of costs and attorney's fees, to be recovered from the Defendant under the Clean Water Act and other relevant law, and any other remedy deemed just and equitable by this Court.

**COUNT V
VIOLATION OF FLORIDA STATUTE 286.011 ET SEQ.
(FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW)
STATE AND PRIVATE DEFENDANTS**

Plaintiff realleges the allegations in paragraphs 1-112 as though fully set forth herein.

152. The Defendants made numerous decisions regarding the West County Energy Center as described herein which were required to be made "in the Sunshine", but which instead violated the Florida Sunshine Law.

153. Pursuant to Florida Statute 286.011, *et seq.*, all such decisions regarding the WCEC must be made in the Sunshine, which requires inter alia, that for each such decision there be conducted a public meeting which meets the following criteria:

a) the meetings must be open to the public;

- b) reasonable notice of such meetings must be given ; and
- c) minutes of the meetings must be taken.

154. As described herein, many, if not all of the meetings concerning the WCEC violated all of these above-required provisions of the Sunshine Law.

155. Many decisions regarding the WCEC were made in the absence of any public meeting, and were made behind closed doors in secret.

156. Many of the decisions regarding the WCEC were made without proper notice to the public, in that they were not advertised properly in the local newspaper, and if they were advertised at all, were advertised in the sports section or the obituary section of the newspaper, where concerned citizens would be unlikely to find them, and which arbitrarily discriminated against women, who do not read the sports sections as often as men, as well as many men who do not read such pages, and who do not expect to find important public notices in such pages.

157. Many of the decisions regarding the WCEC were made without any public meetings, or if public meetings were conducted, proper minutes were not taken.

158. Due to the great importance to the public and the environment of all meetings concerning the WCEC, all meetings should have been prominently advertised to the public rather than buried in the newspapers, or not advertised at all.

159. According to the opinion of the Florida Attorney General, AGO 03-53 "In the spirit of the Sunshine Law, the city commission should be sensitive to the community's concerns that it be allowed advanced notice and, therefore, meaningful participation on controversial issues before the commission."

160. It is hard to imagine any issue more controversial than those surrounding the WCEC, which will cost taxpayers billions of dollars, involve the release of over 12 million tons of

greenhouse gases per year at a time when global warming is the urgent issue of our time according to the United States Supreme Court as articulated in the case of Massachusetts vs. United States EPA, when global warming was the subject of the Governor's recent state-wide initiatives and press conferences, involves the use of 6.5 billion gallons of water per year in a time of significant drought in this state, which involves the use of fuel and energy at a time when such issues are of extreme importance to our nation's economy and security, will fuel more growth in this county, which is one of the most controversial issues in Palm Beach County, and which implicates a host of other issues of paramount importance including the environment and quality of life issues, involves a power plant which has been the source of repeated protests and legal challenges, including a protest that received national attention, and culminated in the arrest of scores of people, and concerning which the agencies and governmental authorities are well aware is of major significance to thousands of people throughout the county, including the Plaintiffs and major environmental organizations, and which will result in the destruction of vast areas of farmland and open space, and which will be constructed adjacent to major wildlife areas and will affect the most environmentally sensitive ecological areas in the State of Florida.

161. In addition, the meetings violated the Sunshine Law for the following reasons:
- a) the agenda or proper summary was not included with the meeting notice;
 - b) notice of the meeting was not prominently noticed in the agency or county's office;
 - c) the agency and/or governmental entity convening the meeting failed to notify the public that they had the right and the responsibility to have the meeting transcribed in order to later challenge the decision rendered at such meeting in court;

d) the notice of such meetings failed to comply with the requirements of F.S. 120.525 and F.S. 166.041 (3) (c). They were held in facilities which were not large enough to reasonably accommodate the large number of people reasonably expected to attend such meetings;

e) some or all of the meeting was conducted in such manner that some or all of the conversations were not generally audible to those attending the meeting;

f) the meetings were not open to all members of the public are required by the Act and by AGO 99-53, including those who presented opposing points of view, such as Plaintiffs Panagioti Tsolkas and members of Plaintiff PBCEC, who were sometimes escorted from the meetings by force due to their expression of views in opposition to the Palm Beach County Commission, or due to their expression of such views in a non-disruptive manner, unreasonably deemed unacceptable by the Commission;

g) the public was not afforded a meaningful opportunity to participate at each stage of the decision-making process of the WCEC, including, but not limited to all workshops, as required by Inf. Op. to Thrasher, January 27, 1994 and Inf. Op. to Conn., May 19, 1987;

h) minutes of the meetings were not promptly recorded and made available to public inspection in a timely fashion.

162. As a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed according to all case law on the subject. The courts have also recognized that the Sunshine Law should be construed so as to frustrate all evasive devices.

163. The Courts consider the Sunshine Law to be of such importance, especially when relating to issues of such importance as those involved herein, that the Courts require that if

a Board member is unable to determine whether a meeting is subject to the Sunshine Law, her or she should either leave the meeting or ensure that the meeting complies with the Sunshine law.

164. Not only was the Sunshine Law freely and frequently violated as described herein, there are presently two former Palm Beach County Commissioners who are now in jail due to their criminal activities in connection with decisions they rendered involving the WCEC, which personally benefited themselves, and which were made secretly in clear violation of the Sunshine law. While the rest of the County Commission has discussed the legality of its decisions which involve the issues and the Commissioners who are presently in jail, they failed to recognize the necessity to ensure that their actions comply with the Sunshine Law, and thus failed to review such decisions, failed to vitiate such decisions, and failed to reconsider such decisions in compliance with the Sunshine law.

WHEREFORE, Plaintiffs respectfully request the following relief:

A. Declare the actions of all Defendants and of all governmental agencies and bodies named herein, including but not limited to the Palm Beach County Board of County Commissioners, the State of Florida, Charles J. Crist, Jr., the Governor and his cabinet, the South Florida Water Management District, the Florida Wildlife Commission, and the Florida Department of Environmental Protection to be in violation of the Florida Sunshine Law, F.S. 286.011 et seq.;

B. Declare that all permits and approvals for the WCEC, and/or permits and approvals in any way connected with the WCEC, and/or decisions and approvals for the Gulfstream Pipe Line, and/or for the Deep Well injection of water from the WCEC, and/or the acquisition of any lands connected with the WCEC, and all agreements and contracts concerning the WCEC, and/or any expenditures of public funds in any way

connected to or supporting the decision to construct the WCEC be declared invalid and of no legal force and effect;

C. Preliminarily and Permanently enjoin Defendants and any other entities from taking any action in furtherance of the construction, planning, and/or financing of the WCEC;

D. Enter an Order awarding the Plaintiffs their reasonable costs and attorney's fees pursuant to F.S. 286.011(4):

E. Provide such further relief as this Court deems fit and proper to accomplish the goals and intent of the Florida Sunshine Act.

**COUNT VI
VIOLATION OF FEDERAL RICO (18 U.S.C. SECTION 1961)
AND FLORIDA RICO
STATE AND PRIVATE DEFENDANTS**

Plaintiff realleges the allegations in paragraphs 1-112 as though fully set forth herein.

165. The provision of energy in the form through the construction and maintenance of the WCEC constitutes an enterprise as defined in the Federal and State RICO Acts.

166. The Defendants conspired with each other and with others including, but not limited to former County Commissioners Tony Masilotti and Warren Newell, the Palm Beach Board of County Commissioners, Gulfstream, Palm Beach Aggregates and others, in a pattern of racketeering activity in connection with the WCEC, as described herein, for their own personal financial gain, and/or the gain of the bodies and agencies they represent, and/or their own political and professional gain, which resulted in their own personal financial gain, in violation of the Federal and State RICO Acts.

167. Even after the Defendants, including but not limited to the Palm Beach County Commission, recognized that decisions involving the WCEC were made illegally by two

former County Commissioners, who are now in jail due to their criminal activities, the other County Commissioners, and the other Defendants, condoned, ratified, and approved of these criminal activities, by failing to review these decisions, and by failing to reconsider such decisions which were illegally made in violation of the RICO laws.

168. The violations of the Federal and State RICO Acts described herein, resulted in the financial gain to the Defendants and the two former County Commissioners who are now in jail as a result of their criminal activities, and further resulted in financial harm to the Plaintiffs and all members of the public, who are now required to pay staggering amounts of money in the form of higher taxes and higher energy bills from FP&L, and other governmental entities, and who will suffer staggering financial losses due to the devastating environmental harm and havoc that will result from the WCEC.

169. As a further direct and proximate result of the criminal enterprise described herein, FP&L has benefited financially, Gulfstream has benefited financially, all those who will build and construct the WCEC will benefit financially, and those who own land where the WCEC will be constructed and in this vicinity will benefit financially, and those who provide power from natural gas have benefited over those who provide other types of energy, such as solar or wind energy.

170. As described herein the Defendants and their co-conspirators have engaged in numerous acts of racketeering activity which constitutes a pattern.

171. The predicate criminal acts as defined by Federal and State RICO and as described herein include, but are not limited to the following: a) misuse of public office by Commissioners Warren Newell and Tony Masilotti and others; b) bribery; c) extortion under color of official right (i.e. the use by governmental officials of their official powers in order to gain personal or illegitimate rewards, including campaign contributions and personal gain by

Newell and Masilotti); d) obstruction of justice by Commissioners Warren Newell and Tony Masilotti and others; e) and mail and wire fraud.

172. As a direct and proximate cause of the RICO violations described herein, the Plaintiffs and the public have been harmed.

WHEREFORE, Plaintiffs respectfully request the following relief:

A. Declare the actions of the Defendants to be in violation of the State and Federal RICO Acts.;

B. Declare that all permits and approvals for the WCEC, and/or permits and approvals in any way connected with the WCEC, and/or decisions and approvals for the Gulfstream Pipe Line, and/or for the Deep Well injection of water from the WCEC, and/or the acquisition of any lands connected with the WCEC, and all agreements and contracts concerning the WCEC, and/or any expenditures of public funds in any way connected to or supporting the decision to construct the WCEC be declared invalid and of no legal force and effect;

C. Preliminarily and Permanently enjoin Defendants and any other entities from taking any action in furtherance of the construction, planning, and/or financing of the WCEC;

D. Enter an Order awarding the Plaintiffs their reasonable costs and attorney's fees pursuant to the Federal and State RICO Acts;

E. Award Plaintiffs damages of \$1;

F. Provide such further relief as this Court deems fit and proper to accomplish the goals and intent of the Federal and State RICO Acts.

DATED: May 23, 2008.



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By: 

DAVID P. REINER, II; Florida Bar No. 416400

08-80553-Civ-MARRA/JOHNSON
CIVIL COVER SHEET

JS 44 (Rev. 11/05)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court in the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases**

May 23, 2008

STEVEN M. LARIMORE
 CLERK U.S. DIST. CT.
 S. D. OF FLA. - MIAMI

I. (a) PLAINTIFFS *Palm Beach County Environmental Coalition et al*

DEFENDANTS *State of Florida*

(b) County of Residence of First Listed Plaintiff *Palm Beach*
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)
*Barry M. Silver, P.A.
 1200 S. Rogers Circle #8
 Boca Raton, FL 33487*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)
08cv80553-KAM/LRU

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State	<input checked="" type="checkbox"/> 1	PTF	<input checked="" type="checkbox"/> 1	DEF	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF	<input type="checkbox"/> 4	DEF	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2		<input type="checkbox"/> 2		<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State		<input type="checkbox"/> 5		<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3		<input type="checkbox"/> 3		<input type="checkbox"/> 3	Foreign Nation		<input type="checkbox"/> 6		<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Re-filed- (see VI below)

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO

b) Related Cases YES NO

(See instructions second page): JUDGE *Middlebrooks* DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): *33 U.S.C. §1251 (Clean Water Act) 42 U.S.C. §433 (NEPA) 15 U.S.C. §1531 (Endangered Species Act) 18 U.S.C. §1761 (ATCA)*

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ *INJUNCTION*

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: *Barry M. Silver* DATE: *5/23/08*

FOR OFFICE USE ONLY

AMOUNT: *350.00* RECEIPT # _____ IFP _____

724200