

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

**Case Number: 12-24400-CIV-MORENO**

UNITED STATES OF AMERICA, STATE OF  
FLORIDA, and STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Plaintiffs,

vs.

MIAMI-DADE COUNTY, FLORIDA,

Defendant.

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**ORDER DENYING MOTION TO REOPEN CASE**


THIS CAUSE came before the Court upon the Biscayne Bay Waterkeeper's Motion to Reopen Case (**D.E. No. 159**), filed on **April 24, 2014**.

THE COURT has considered the motion, the response, and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

**ADJUDGED** that the motion is DENIED. The Court agrees with the United States and Miami-Dade County that the Consent Decree resolves the Clean Water Act violations raised in this litigation. Beyond the Consent Decree, there is no further relief available under the Clean Water Act to be gained by additional litigation. Even if the Court were inclined to reopen the case to litigate Counts II and III of the Biscayne Bay Waterkeeper's Amended Complaint, it would be futile. Count II, the citizen suit under the Clean Water Act, is barred because the Plaintiffs in this case have diligently prosecuted this action. 33 U.S.C. § 1365(b)(1)(B) (barring citizen suits when government commences diligent prosecution of Clean Water Act violations); *Piney Run Pres. Ass'n v. County*

*Comm'rs of Carroll County, MD*, 523 F.3d 453, 459-60 (4th Cir. 2008) (holding that citizen suits are intended to “supplement rather than supplant governmental action” especially where a consent judgment is capable of “requiring compliance and is in good faith calculated to do so.”). Likewise, it would be futile to reopen Count III, as this Court lacks jurisdiction to adjudicate a claim that the Environmental Protection Agency unreasonably delayed in reissuing a Clean Water Act permit. *See* 33 U.S.C. 1369 (b)(1)(F) (vesting the Circuit Courts of Appeals with jurisdiction to adjudicate an administrator’s action in granting or denying a Clean Water Act permit).

DONE AND ORDERED in Chambers at Miami, Florida, this 8<sup>th</sup> day of May, 2014.

  
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FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record