

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Complainant,

vs.

OGC FILE NO. 12-1148

SOUTH FLORIDA
WATER MANAGEMENT DISTRICT.

Respondent.

_____ /

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and the South Florida Water Management District ("Respondent") to reach settlement of certain matters at issue between the Department and the Respondent.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce Chapter 373 and Chapter 403, Florida Statutes ("F.S."), and the rules promulgated and authorized thereunder, Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Consent Order. The Department is authorized by Section 403.121, Florida Statutes, to institute

administrative proceedings to order the prevention, abatement, or control of the conditions creating a violation of Chapter 403, and to order other appropriate corrective action.

2. Respondent is a public corporation of the State of Florida existing by virtue of Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, F.S., and Title 40E, F.A.C., as a multipurpose water management district with its principal office at 3301 Gun Club Road, West Palm Beach, Florida, 33406. Respondent is a person within the meaning of Sections 373.019(15) and 403.031(5), F.S.

3. Respondent is the local sponsor for the Central and Southern Florida Flood Control Project ("C&SF Project") which provides flood control in the EAA, C-139, and other tributary basins and urban, agricultural, and environmental water supply to the Everglades and Lower East Coast of Florida.

4. As authorized pursuant to Section 373.4592, F.S., Respondent built and operates large, state of the art manmade treatment wetlands, known as stormwater treatment areas ("STAs"), to remove excess phosphorus from surface waters that flow from Lake Okeechobee, the EAA, the C-139 Basin, the L-8 Basin and the C-51 West Basin to the Everglades Protection Area ("EPA"). Respondent is required to obtain a National Pollutant Discharge Elimination System ("NPDES") permit from the Department pursuant to 403.0885, F.S., to operate, maintain and discharge from the STAs.

5. Respondent is the operator of STA-1 East and the owner and operator of STA-1 West, STA-2, STA-3/4 and STA-5/6 which discharge into Water Conservation Area ("WCA") 1, 2 and 3 of the EPA. WCA-1, 2 and 3 are designated Class III waters of the State and WCA-1 is also an Outstanding Florida Water pursuant to Rule 62-302.700, F.A.C.

6. Respondent, to date, has constructed approximately 60,000 acres of STAs. While the STAs have greatly reduced the amount of phosphorus entering the EPA, the phosphorus criterion established in Rule 62-302.540, F.A.C., has not been met in all the ambient waters of the EPA.

7. In the accompanying permit (NPDES Permit No. FL0778451-001-GL7A/RA), issued concurrently with this Consent Order, the Department is establishing a water quality based effluent limitation ("WQBEL") for total phosphorus ("TP") discharges from the STAs into the EPA. The WQBEL was derived to ensure that STA discharges do not cause or contribute to exceedance of the Everglades phosphorus criterion in Rule 62-302.540, F.A.C., throughout the EPA (See Exhibit A). The WQBEL consists of two components 1) a maximum TP annual flow-weighted mean ("AFWM") of 19 parts per billion ("ppb"); and, 2) a TP long-term flow-weighted mean ("LTFWM") of 13 ppb not to be exceeded in more than three (3) out of five (5) years.

To date, TP levels in discharges from the best performing STA, STA-3/4, have averaged 17 ppb. No STA has achieved an annual flow-weighted mean of 13 ppb in more than three out of five years. As such, the STAs are not predicted to achieve the

WQBEL without additional corrective actions.

8. While the phosphorus levels in the STA discharges have not yet achieved concentrations necessary to meet the phosphorus criterion, significant reductions in the levels of phosphorus delivered to the EPA have occurred since their initial construction and operation. As of water year 2011 the STAs, in combination with best management practices, have removed 3,800 metric tons of phosphorus from water that would have alternatively been delivered to the EPA untreated. If the STAs cease operations, untreated water would flow directly into the EPA. The Department finds that it is clearly in the public interest to exercise its enforcement discretion to allow the continued operation of STAs while the corrective actions required by this Consent Order are implemented so long as the STAs are operated in compliance with Paragraph 12.

Having reached a resolution of the matter, Respondent and the Department mutually agree and it is,

ORDERED:

9. Respondent shall operate and maintain STA-1 East, STA-1 West, STA-2, STA 3/4 and STA 5/6 in accordance with the terms and conditions of NPDES Permit No.: FL0778451-001-GL7A/RA, except as specified in Paragraph 12 below. This Order does not alter the obligation to comply with the WQBEL for TP in Section I.A.1 of the permit upon its effective date. However, effluent from the STAs is not predicted to

achieve the WQBEL for TP until completion of the corrective actions described in Paragraph 10 below.

10. In order to bring discharges from STA 1 East, 1 West, STA 2, STA 3/4 and STA 5/6 into compliance with the WQBEL, Respondent shall expeditiously proceed with the planning, design, construction and operation of the Eastern (STA-1 East and STA-1 West), Central (STA-2 and STA-3/4) and Western (STA-5/6) Flow-path corrective actions which are more particularly described in Exhibit B. Respondent shall obtain all necessary local, state and federal authorizations, including appropriate Department permits, for these activities. These corrective actions and the associated deadlines for completion and operation are as follows:

Eastern Flow-path Corrective Actions and Deadlines	
<u>Activity</u>	<u>Deadline</u>
Eastern Flow-path: 4,700 Acre Expansion	
Complete land acquisition for expansion	09/30/2013
Initiate design of expansion	09/30/2013
Submit state and federal permit applications for expansion	07/30/2014
Complete design of expansion	07/30/2015
Initiate construction of expansion	01/31/2016
Construction status report	03/01/2017
Construction status report	03/01/2018
Complete construction of expansion	12/31/2018
Initial flooding and optimization period complete	12/31/2020
Eastern Flow-path: S-375 Expansion	
Initiate design of structure expansion	09/30/2013
Complete design of structure expansion	07/30/2015
Initiate construction of structure expansion	01/31/2016
Complete construction of structure expansion	12/31/2018
Eastern Flow-path: L-8 Divide Structure	
Initiate design of structure expansion	10/01/2012
Complete design of structure expansion	09/30/2014
Initiate construction of structure expansion	10/01/2016
Complete construction of structure expansion	09/30/2018

Eastern Flow-path: S-5AS Modifications	
Initiate design of structure modifications	10/01/2012
Complete design of structure expansion	09/30/2014
Initiate construction of structure expansion	10/01/2014
Complete construction of structure expansion	09/30/2016
Eastern Flow-path: 1,800 Acre Expansion	
Complete land acquisition for expansion	03/31/2018
Initiate design for expansion	10/01/2018
Submit state and federal permit applications for expansion	08/01/2019
Complete design of expansion	07/31/2020
Initiate construction of expansion	11/30/2020
Construction status report	03/01/2021
Construction status report	03/01/2022
Complete construction of expansion	12/31/2022
Initial flooding and optimization period complete	12/31/2024
Eastern Flow-path: Flow Equalization Basin (FEB) 45,000 acre-feet	
Submit state and federal permit applications	01/31/2014
Construction status report	03/01/2014
Construction status report	03/01/2015
Completion of construction (multi-purpose operation begins)	12/31/2016 ¹
Long-term operations commence	12/31/2022 ²
Eastern Flow-path: Conveyance Improvements	
Initiate design of G-341 and related improvements	10/01/2020
Submit state and federal permit applications for G-341 and related improvements	08/01/2021
Complete land acquisition for G-341 related improvements (if required)	09/30/2021
Complete design of G-341 and related improvements	07/31/2022
Initiate construction of G-341 and related improvements	11/30/2022
Construction status report	03/01/2023
Construction status report	03/01/2024
Completion of construction for G-341 and related improvements	12/31/2024
Eastern Flow-path: Repairs and Modifications of Stormwater Treatment Area 1 East	
Periphyton Stormwater Treatment Area Decommissioning complete	Prior to Long-term operations commencing
Culvert repairs complete	Prior to Long-term Operations Commencing
Cell 5 and 7 improvements complete	Prior to Long-term Operations Commencing
Eastern Flow-path Corrective Action Completion Date	
	12/31/2024

¹ Multi-purpose operations until replacement storage on-line

² Long term operations- replacement storage on-line

South Florida Water Management District
 OGC No.: 12-1148
 FDEP NPDES Permit No.: FL0778451-001-GL7A/RA

Central Flow-path Corrective Actions and Deadlines	
<u>Activity</u>	<u>Deadline</u>
Central Flow-path STA-2 Expansion: Compartment B North and South Build-outs	
Initial flooding and optimization period complete	05/31/2014
Central Flow-path: Flow Equalization Basin (FEB) 54,000 acre-feet	
Initiate design of A-1 FEB	04/01/2012
Submit state and federal permit applications	12/01/2012
Design status report	03/01/2013
Complete design of A-1 FEB	08/01/2013
Initiate construction of A-1 FEB	06/30/2014
Construction status report	03/01/2015
Construction status report	03/01/2016
Complete construction of A-1 FEB	07/30/2016
FEB Operational monitoring and testing period complete	07/29/2018
<u>Central Flow-path Corrective Action Completion Date</u>	<u>07/29/2018</u>

Western Flow-path Corrective Actions and Deadlines	
<u>Activity</u>	<u>Deadline</u>
Western Flow-path STA-5/6 Expansion: Compartment C	
Initial flooding and optimization period complete	05/31/2014
Western Flow-path: Internal Stormwater Treatment Area Improvements	
Initiate design of scraping/earthwork improvements	10/31/2019
Submit state and federal permit applications	08/30/2020
Complete design of scraping/earthwork improvements	10/31/2021
Initiate scraping/earthwork activities	01/31/2022
Construction status report	03/01/2023
Construction status report	03/01/2024
Completion of scraping/earthwork activities	12/31/2024
Initial flooding and optimization period complete	12/31/2025
Western Flow-path: Flow Equalization Basin (FEB) 11,000 acre-feet	
Initiate design of FEB	10/31/2018
Submit state and federal permit applications	08/30/2019
Complete design of FEB	10/31/2020
Initiate construction of FEB	01/31/2021
Construction status report	03/01/2021
Construction status report	03/01/2022
Construction status report	03/01/2023
Complete construction of FEB	12/31/2023
Operational monitoring and testing period	12/31/2024
<u>Western Flow-path Corrective Action Completion Date</u>	<u>12/31/2025</u>

Unless terminated by mutual consent of the parties, this Consent Order, setting forth the corrective actions, shall remain in effect for all flow-paths until the corrective actions for all flow-paths in this Paragraph are completed and sufficient discharge data required under the permit exists to assess compliance with both components of the WQBEL for all flow-paths.

11. The Respondent commits to expediting the corrective actions set forth in Paragraph 10, to the maximum extent practicable while fulfilling its other agency responsibilities, in an effort to incrementally improve water quality discharges into the EPA.

12. Upon completion of the specific corrective actions identified in Paragraph 10, it is anticipated that the facilities will be discharging consistent with the WQBEL for TP established in Section I.A.1 of the permit. Until such time as the corrective actions identified in Paragraph 10 are completed consistent with the deadlines set forth therein, the Department will exercise its enforcement discretion to allow the STAs to maintain operations. In the interim, the Respondent shall operate and maintain all STA facilities and systems of treatment control in an effort to maximize reductions in TP concentrations to the Everglades Protection Area. Such operations shall be in accordance with any approved operational plan, pollution prevention plan and the accompanying permit.

13. Whereas it is predicted that discharges from the facilities will not achieve the WQBEL until the corrective actions in Paragraph 10 have been completed, this

Order provides the following alternate reporting provisions in lieu of those required in Section I.A.6 through I.A.10 of the permit: 1) The Respondent shall provide, as part of the annual report in Section I.E.6. of the permit, status updates on the activities described in Paragraph 10 and TP AFWM concentrations for each STA over the course of the prior water year (May 1st through April 30th). The TP AFWM shall also be reported in accordance with Section I.A.5. of the permit. In both cases, the TP AFWM shall be calculated in accordance with Section I.A.1. of the permit; and 2) The Respondent shall prepare a weekly STA performance summary (report) that sets forth inflow volumes, inflow FWM TP concentrations, outflow volumes, outflow FWM TP concentrations for the prior 7 day, 28 day and 365 day period of record and inflow and outflow TP load for the prior 28 day and 365 day period of record. The weekly report shall also include the 365 day loading rate, 6 month trend in outflow TP concentrations, and concentration, load and flow in comparison to the period of record observed conditions. Copies of the weekly reports shall be transmitted to the Department and USEPA representatives to be identified in accordance with Paragraph 14. The District shall consult with the representatives on a semi-annual basis to evaluate the STAs performance and the District shall determine what, if any, operational changes may be implemented to ensure compliance with the Operational and Pollution Prevention Plans. Other relevant information collected by the Respondent shall be presented to the representatives of the State and Federal agencies designated under Paragraph 14 prior

to their semi-annual consultation to ensure that adequate time is available to review and facilitate informed technical discussions.

Interim reporting requirements established by this Paragraph shall no longer apply subsequent to the Flow-path Corrective Action Completion Deadline.

14. The Respondent shall develop and implement a science plan in order to identify the factors that collectively influence phosphorus reduction and treatment performance in order to meet the WQBEL. The Respondent shall develop the science plan in consultation with representatives as designated by the Department and the United States Environmental Protection Agency, Region IV (USEPA), respectively, on behalf of State and Federal agencies.

After consulting with the representatives, the Respondent shall: 1) identify the critical information gaps and research areas that influence treatment performance; 2) prioritize the science needs; 3) develop and implement the science plan; 4) evaluate the results of ongoing scientific efforts to meet the prioritized science needs; 5) modify the science plan as needed based on results of completed or ongoing scientific studies, and 6) determine how the results of the scientific studies could be implemented to improve phosphorus reductions and treatment performance. Of particular interest is a better understanding of design and operations that sustain outflow concentrations at low phosphorus concentrations (<20 ppb).

Key areas that should be considered for further scientific studies include the effect of the following factors on STA performance: 1) phosphorus loading rates; 2)

inflow phosphorus concentration; 3) hydraulic loading rates; 4) inflow water volumes, timing, pulsing, peak flows, and water depth; 5) phosphorus speciation at inflows and outflows; 6) effects of microbial activity and enzymes on phosphorus uptake; 7) phosphorus re-suspension and flux; 8) the stability of accreted phosphorus; 9) phosphorus concentrations and forms in soil and floc; 10) soil flux management measures; 11) influence of water quality constituents such as calcium; 12) emergent and submerged vegetation speciation; 13) vegetation density and cover; 14) weather conditions such as hurricane and drought; and 15) the inter-relationships between those factors.

The representatives will perform only technical functions such as:

- Information gathering and fact-finding regarding scientific studies presented to it.
- Evaluation and comparison of the results of the scientific studies through identification of positive, neutral and negative impacts of any options presented in the results of the scientific studies.
- Provide expert technical opinions regarding viability and outcomes of any options presented in the results of the scientific studies.
- Develop and provide technical opinions on STA interim operational data with regard to observed water year conditions and resulting phosphorus reductions;
- Assess water quality and progress in achieving the corrective actions and deadlines in this Consent Order.

The representatives shall not vote nor shall they make any consensus recommendations or decisions regarding matters that are presented.

The results of scientific studies and interim operational performance will be presented to and evaluated by the representatives and ultimately used by the agency representatives to inform their respective agencies as to how the information could be utilized to optimize phosphorus reduction and treatment performance.

The Respondent shall convene regular meetings of the representatives as often as needed, but no less than once every six (6) months. The first meeting of the representatives shall take place no later than six (6) months after the date of permit issuance. The Respondent shall develop a detailed science plan including a work plan and schedules within nine (9) months of issuance of the permit. The Respondent shall begin to implement studies and research identified in the work plan within twelve (12) months of issuance of the permit.

15. Respondent shall conduct monthly monitoring at a series of sites downstream of STA-1E, STA-1W and STA-2 in order to characterize the effects of the STAs' discharge on the receiving water bodies. The tables below identify thirty one (31) downstream sampling sites. Of the thirty one (31) sites, eighteen (18) are located in areas currently identified as impacted (i.e., sediment TP concentration greater than 500 mg/kg) and ten (10) sites are located in areas currently identified as unimpacted. Three sampling sites are located in the Rim Canal. Upon demonstration that an additional sampling site or removal of an existing sampling site or parameter is warranted, the

Respondent may request a modification to the monitoring program as appropriate. The Department shall review and approve such requests on a case by case basis after consultation with USEPA. Any alteration in the monitoring program must be approved by the Department. The Department will assess whether continuance of, modifications to, or elimination of downstream monitoring efforts are warranted prior to the conclusion of this Order.

All water quality, sediment, and vegetation samples shall be collected and reported for the parameters and at the frequency specified in the Respondent's March 2012 "Downstream STA1W, STA1E, and STA2 Transect Monitoring Plan (Project Code: STAT) SFWMD-FIELD-MP-078-01".

Transect Monitoring for STA-1E			
Station	Latitude	Longitude	Category
LOXA-135	26° 37' 24.1" N	80° 18' 58.0" W	Rim Canal
LOXA-136	26° 37' 7.7" N	80° 19' 7.2" W	Impacted
LOXA-137	26° 36' 54.4" N	80° 19' 18.1" W	Impacted
LOXA-138	26° 36' 24.5" N	80° 19' 36.0" W	Unimpacted
LOXA-139	26° 35' 36.0" N	80° 20' 13.8" W	Unimpacted

Transect Monitoring for STA-1W			
Station	Latitude	Longitude	Category
LOXA-104	26° 35' 52.7" N	80° 26' 24.2" W	Rim Canal
LOXA-104.5	26° 35' 38.8" N	80° 26' 20.8" W	Impacted
LOXA-105	26° 35' 30.8" N	80° 26' 9.9" W	Impacted
LOXA-106	26° 35' 31.9" N	80° 25' 52.6" W	Impacted
LOXA-107	26° 35' 14.6" N	80° 25' 17.2" W	Impacted
LOX-107U	26° 34' 52.3" N	80° 24' 43.2" W	Unimpacted
LOXA-108	26° 34' 40.7" N	80° 24' 21.1" W	Unimpacted
Z-0 ³	26° 28' 1.1" N	80° 26' 31.8" W	Rim Canal
Z-1 ³	26° 28' 5.9" N	80° 26' 24.4" W	Impacted

³ Monitoring of the Z transect station, in accordance with the parameters and frequencies in the March 2012 'Downstream STA-1W, STA-1E and STA-2 Transect Monitoring Plan' shall not commence until such time as the Respondent initiates construction activities associated with the 1,800 acre STA Expansion identified in Paragraph 10 of this Order.

Z-2 ³	26° 27' 52.3" N	80° 25' 40.6" W	Impacted
Z-3 ³	26° 27' 29.9" N	80° 24' 31.0" W	Impacted
Z-4 ³	26° 26' 46.2" N	80° 23' 18.6" W	Unimpacted

Transect Monitoring for STA-2			
Station	Latitude	Longitude	Category
2AN.25	26° 27' 14.34" N	80° 27' 23.34" W	Impacted
2AN1	26° 24' 43.39" N	80° 28' 16.97" W	Impacted
2AN2	26° 26' 20.28" N	80° 27' 14.46" W	Impacted
2AN4	26° 25' 21.48" N	80° 27' 01.38" W	Impacted
2AN5	26° 24' 49.54" N	80° 26' 52.69" W	Unimpacted
2AN6	26° 24' 18.12" N	80° 26' 44.08" W	Unimpacted
2AC0.25	26° 25' 34.68" N	80° 28' 30.90" W	Impacted
2AC2	26° 24' 43.39" N	80° 28' 16.97" W	Impacted
2AC4	26° 23' 42.54" N	80° 28' 05.10" W	Unimpacted
2AC5	26° 23' 09.50" N	80° 28' 00.97" W	Unimpacted
2AFS.25	26° 20' 44.77" N	80° 31' 36.59" W	Impacted
2AFS1	26° 20' 38.46" N	80° 31' 10.32" W	Impacted
2AFS3	26° 20' 15.84" N	80° 30' 01.62" W	Impacted
CA 29	26° 19' 31.40" N	80° 28' 21.54" W	Unimpacted

16. Except as provided for in Paragraph 17, Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to complete any of the corrective actions by the respective deadlines identified in Paragraph 10 of this Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the "State of Florida Department of Environmental Protection" by cashier's check or money order and shall include thereon the notations "OGC Case No. 12-1148" and "Ecosystem Management and Restoration Trust Fund." The Department may make demands for payment at any time after violations occur. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any of

the terms of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this Paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this Paragraph.

17. If any event occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving that the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Upon occurrence of such an event, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within seven (7) days and as soon thereafter as possible shall notify the Department and USEPA in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures. If the Department agrees that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the Department will notify the Respondent in writing that the time for performance for specified project activities in this Consent Order shall be extended for a period equal to the agreed delay resulting from such circumstances, including all reasonable measures necessary to avoid or minimize future delay.

18. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

19. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69, 373.129 and 403.121 and 403.131, F.S. Failure to comply with the terms of this Order shall constitute a violation of Sections 373.430 and 403.161, F.S.

20. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$10,000 per day per violation and criminal penalties.

21. The Department and Respondent hereby irrevocably, knowingly, voluntarily, and intentionally waive their right to trial by jury with respect to any litigation based wholly or partially on the enforcement of this Consent Order.

22. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, F.S., to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the Petition must also be mailed to the Office of Ecosystem Projects, Program Coordination and Regulation Section, 3900 Commonwealth Boulevard, MS 24, Tallahassee, Florida 32399-3000. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, F.S.

The petition shall contain the following information:

- a) OGC No. 12-1148 and the county in which the subject matter is located;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) A statement of all material facts disputed by the petitioner, if any;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Consent Order. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must

conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Department's Office of General Counsel at the address specified above. Failure to file a petition within the allowed timeframe constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, F.A.C.

23. Because this Consent Order accompanies and references NPDES Permit No. FL0778451-001-GL7A/RA, this Consent Order shall not be effective until NPDES Permit No. FL0778451-001-GL7A/RA becomes effective.

24. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order.

25. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations addressed in this Consent Order.

26. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order

pursuant to Section 120.68, F.S., and waives that right upon signing this Consent Order. Respondent waives no other rights or defenses other than those explicitly addressed in this Consent Order.

27. This document constitutes the entire agreement and understanding of the parties to this Consent Order concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Order. Nothing in this Consent Order shall prohibit the Respondent from petitioning for other available relief, waiver, or variance provisions provided for under Chapters 120 or 403, F.S., and the rules promulgated there under.

28. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by Respondent and the Department. The corrective actions and deadlines identified in Paragraph 10 (as in effect on the effective date of this Order) are incorporated by reference as separately and independently enforceable requirements in NPDES Permit No. FL0778451-001-GL7A/RA. Modifications of this Consent Order do not automatically modify the NPDES permit requirements. This Consent Order gives no rights or benefits to any third party beneficiary and shall not serve as a waiver of any claims Respondent may have against any third parties. This Consent Order cannot be assigned by Respondent.

29. This Consent Order is issued in conjunction with Consent Order 12-1149. The material provisions in these Orders are non severable. This Order shall not become effective until the date Consent Order 12-1149 becomes effective.

30. All submittals and payments required by this Consent Order to be submitted to the Department, unless otherwise indicated, shall be sent to the Department of Environmental Protection, Office of Ecosystem Projects, 3900 Commonwealth Boulevard, MS 24, Tallahassee, Florida 32399-3000.


31. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities that may arise under Florida law, nor is it a settlement of any violation that may be prosecuted criminally or civilly under federal law.

32. This Consent Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective as provided in Paragraphs 23 and 29 and when filed with the Clerk of the Department.

South Florida Water Management District
OGC No.: 12-1148
FDEP NPDES Permit No.: FL0778451-001-GL7A/RA

FOR THE RESPONDENT

8/10/12
DATE

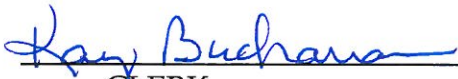

Melissa L. Meeker, Executive Director
South Florida Water Management District

DONE AND ORDERED this 15th day of August, 2012, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Herschel T. Vinyard Jr.
Secretary

Filed, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.


CLERK

8/15/12
DATE

cc: Lea Crandall, Agency Clerk (Mail Station 35)