

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

CASE NO. 4:08-cv-00324-RH-WCS

FLORIDA WILDLIFE FEDERATION, INC.;
SIERRA CLUB, INC.; CONSERVANCY
OF SOUTHWEST FLORIDA, INC.;
ENVIRONMENTAL CONFEDERATION
OF SOUTHWEST FLORIDA, INC.; AND
ST. JOHNS RIVERKEEPER, INC.

Plaintiffs,

v.

LISA P. JACKSON, Administrator of the
United States Environmental Protection
Agency; and THE UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY,

Defendants.

**JOINT NOTICE TO THE COURT OF
EXTENSION OF CONSENT DECREE DEADLINES**

WHEREAS, EPA and the Plaintiffs are committed to continue basing the development of numeric nutrient criteria for the State of Florida on best available science;

WHEREAS, EPA and the Plaintiffs agree that peer review by EPA's Science Advisory Board of the underlying methodologies, analyses and data is important to confirm that the best available science is being appropriately used to support development of (1) numeric nutrient criteria for estuarine and coastal waters, (2) downstream protection values for estuarine waters ("DPVs") and (3) numeric nutrient criteria for flowing waters with Class III designated uses in the South Florida region;

WHEREAS, EPA and the Plaintiffs agree that this peer review should be conducted prior to proposing (or soliciting additional comment) on numeric nutrient criteria for the above waters;

WHEREAS, conducting a public peer review process by EPA's Science Advisory Board for the above waters will require additional time beyond that anticipated by the Parties at the time signed the Consent Decree, an extension of deadlines in the Consent Decree for EPA to propose and/or take final rulemaking action on numeric nutrient criteria for the above waters is warranted;

WHEREAS, the Parties understand that canals are "flowing waters" within the meaning of the Consent Decree and that canals with Class I or III designated uses under Florida's use classifications are subject to the obligation that EPA propose and take final rulemaking action on numeric nutrient criteria for "flowing waters" pursuant to Paragraphs 4 and 6 of the Consent Decree and that EPA considers canals as part of other flowing waters with Class I or III designated uses for purposes for developing numeric nutrient criteria;

WHEREAS, EPA received data and public comments on its proposed numeric nutrient criteria for canals in the South Florida region (75 Fed. Reg. 4174, 4225 (January 26, 2010); 40 C.F.R. 131.43(c)(4)), and EPA and the Plaintiffs agree that in light of those comments it would be useful to solicit additional public comment on criteria for all flowing waters in the South Florida region including canals;

WHEREAS, EPA and the Plaintiffs agree that EPA will take rulemaking action on numeric nutrient criteria for South Florida flowing waters (including canals) pursuant to the same deadlines that will apply for proposing and taking final rulemaking action on numeric nutrient criteria for estuarine and coastal waters in Paragraphs 8 and 10 of the Consent Decree;

WHEREAS, EPA received data and public comments on its proposed numeric nutrient criteria for protection of downstream estuarine waters (“DPVs”) (75 Fed. Reg. 4174, 4225 (January 26, 2010); 40 C.F.R. 131.43(c)(2)(iii)) and EPA and the Plaintiffs agree that in light of those comments it would be useful to solicit additional public comment on such criteria;

WHEREAS, such criteria currently are subject to the deadlines in Paragraphs 8 and 10 of the Consent Decree, EPA and the Plaintiffs agree that EPA will solicit public comment on proposed DPVs and take final rulemaking action on such criteria in accordance with the operative deadlines in Paragraphs 8 and 10 of the Consent Decree;

WHEREAS, Paragraph 22 of the Consent Decree entered by this Court on December 30, 2009 (Doc. #153), provides that any deadlines set forth in Paragraphs 4 through 11 may be extended by written agreement of the Parties with notice to the Court;

NOW, THEREFORE, the Parties agree and hereby notify the Court that:

1. The deadline of January 14, 2011, in Paragraphs 8 and 9 of the Consent Decree shall be extended to November 14, 2011.
2. The deadline of October 15, 2011, in Paragraphs 10 and 11 of the Consent Decree shall be extended to August 15, 2012.
3. The deadline of October 15, 2010, in Paragraphs 6 and 7 of the Consent Decree shall be extended to August 15, 2012, but only to the extent those deadlines apply to EPA taking final rulemaking action on numeric nutrient criteria for flowing waters in the South Florida region. The deadline of October 15, 2010, in Paragraphs 6 and 7 remains in effect for EPA taking final rulemaking action on numeric nutrient criteria for lakes and all other flowing waters subject to Paragraphs 6 and 7.

RESPECTFULLY SUBMITTED this 7th day of June, 2010.

/s/ Monica K. Reimer

DAVID G. GUEST
Fla. Bar No. 0267228
Monica K. Reimer
Fla. Bar No. 0090069
P.O. Box 1329
Tallahassee, Florida 32302-1329
Phone: (850) 681-0031
Facsimile: (850) 681-0020
COUNSEL FOR PLAINTIFFS

/s/ Martha C. Mann

MARTHA C. MANN
Florida Bar No. 155950
martha.mann@usdoj.gov
United States Department of Justice
Environmental and Natural Resources
Division
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986
Phone: (202) 305-0897
Facsimile: (202) 514-2664
COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court using CM/ECF on this 7th day of June, 2010. I also certify that the foregoing document is served on this day to the following Service List in the manner specified.

Carol Forthman
FDACS
407 South Calhoun Street, Rm. 520
Tallahassee, Florida 32399
[CM/ECF](#)

Robert Del Stinson
U. S. Department of Justice
111 North Adams Street, 4th Floor
Tallahassee, Florida 32301
[CM/ECF](#)

Keith Rizzardi
South Florida Water Management District
3301 Gun Club Road, MSC 1410
West Palm Beach, FL 33406
[CM/ECF](#)

Winston K. Borkowski
James Alves
Hopping Green & Sams
Post Office Box 6526
Tallahassee, Florida 32314
[CM/ECF](#)

Terry Cole
Oertel, Fernandez Cole & Bryant
301 S. Bronough Street, Suite 100
Post Office Box 1110
Tallahassee, Florida 32301-1110
[CM/ECF](#)

 /s/ Monica K. Reimer
Attorney