

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

MIKE LAUDICINA and  
DON DEMARIA,

Individual Petitioners,

vs.

Case No. 15-1233

FLORIDA KEYS AQUEDUCT  
AUTHORITY and STATE OF FLORIDA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Respondents,

and

MONROE COUNTY, FLORIDA

Intervener.

\_\_\_\_\_ /

**STIPULATED SETTLEMENT AGREEMENT**

THIS STIPULATED SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into by and among the State of Florida, Department of Environmental Protection (“DEP”), the Florida Keys Aqueduct Authority (“FKAA”), Monroe County, Florida (“County”), Mike Laudicina and Don DeMaria (the “Individual Petitioners”) (collectively, the “Settling Parties”), as a complete and final settlement of all claims raised in the above-styled proceedings.

**RECITALS**

WHEREAS, on September 21, 2009, DEP issued to FKAA a certain Domestic Wastewater Facility Permit for the Cudjoe Regional Wastewater Treatment Plant (the “Plant”) including underground injection wells, Permit No. FLA671932-001 and UIC Permits Nos. 295404-001, -002, -003 and -004 (collectively, the “2009 Permits”); and,

WHEREAS, on July 14, 2014, DEP issued a Notice of Intent to Issue Wastewater Treatment Permits for the Plant, proposed Permit No. FLA671932-003-DWIP and UIC Permits Nos. 295404-020, -021, -022, and -023 (collectively, the “2014 Permits”); and,

WHEREAS, on February 24, 2015, the Individual Petitioners filed a second amended petition for formal administrative hearing on the compliance of the 2009 Permits and the 2014 Permits with applicable state law; and,

WHEREAS, the Cudjoe Gardens Property Owners Association and the Sugarloaf Shores Property Owners Association (collectively, the “POA Petitioners”) also filed various amended petitions; and,

WHEREAS, on March 11, 2015, DEP referred the Individual Petitioners’ and the POA Petitioners’ petitions to the Division of Administrative Hearings (“DOAH”), where they were collectively assigned Case No. 15-1233; and

WHEREAS, in addition to the claims in their various DOAH petitions (the “DOAH Claims”), the Individual Petitioners have asserted additional claims against FKAA and others as reflected in communications dated March 11, 2015, June 18, 2015, and June 19, 2015 (the “Additional Claims”); and,

WHEREAS, FKAA, DEP, and the County dispute the allegations of the Individual Petitioners’ DOAH Claims and Additional Claims; and,

WHEREAS, Individual Petitioners dispute the allegations of FKAA, DEP, and the County; and,

WHEREAS, the Individual Petitioners’ trial counsel has recently become ill and obtaining and preparing substitute counsel may delay resolution of this matter; and,

WHEREAS, the Settling Parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and in consideration of the benefits to accrue to each of the Settling Parties, the receipt

and sufficiency of which are hereby acknowledged, the Settling Parties hereby represent and agree as follows:

1. Subsequent to the Individual Petitioners' assertion of the DOAH Claims and the Additional Claims, the Settling Parties conferred and agreed to resolve all of those claims through this Settlement Agreement. It is the intent of this Settlement Agreement to resolve fully all pending issues between the Settling Parties.

2. Composite Exhibit A to this Settlement Agreement consists of a copy of the Individual Petitioners' second amended petition alleging the DOAH Claims, and copies of the communications dated March 11, 2015, June 18, 2015, and June 19, 2015, alleging the Additional Claims. Exhibit A is incorporated into and made part of this Settlement Agreement.

3. Exhibit B to this Settlement Agreement consists of a Notice of Draft Permit that DEP issued on August 12, 2015, concerning draft Permit No. 336267-001-UC/5W for construction and testing of a deep injection well at the Plant. Exhibit B is incorporated into and made part of this Settlement Agreement.

4. FKAA agrees to continue expeditiously and in good faith its efforts to complete the permitting and construction of the deep well at the Plant.

a. FKAA represents that the design of the deep well has been completed, and that FKAA currently is in the process of competitively selecting the contractor to complete the deep well. FKAA reasonably believes the construction will commence before the end of 2015, and the deep well will be completed before the end of 2016 (barring unforeseen conditions outside FKAA's control).

b. FKAA stipulates to expeditious completion of the deep well and to its use as the only primary means of disposal of treated effluent from the Plant, as soon as the deep well is permitted for operational testing. FKAA agrees that it will not seek to use the 2009 Permits or the 2014 Permits for primary disposal of effluent after the deep well is in operation and will not seek renewal of the 2014 Permits to authorize use of the shallow wells as the primary means of disposal. In any use of the shallow wells, on an interim basis pending completion of the deep

well or thereafter as backup facilities, FKAA agrees to comply with the maximum disposal limits of the 2014 Permits, even though they are more restrictive than the requirements of the 2009 Permits. FKAA stipulates and agrees to construct and operate the deep well in compliance with new permits that it expects DEP will issue as expeditiously as possible.

c. As further evidence of its good faith intention to expeditiously complete and operate the deep well as the Plant's sole method of primary disposal of effluent, FKAA stipulates that in its use of the shallow wells on an interim basis pending completion of the deep well FKAA will not exceed fifty percent (50%) of the permitted flow rate under the 2009 Permits.

5. The County stipulates to continue expeditiously and in good faith its financing of the deep well at the Plant and stipulates that the funding is in place.

6. DEP agrees to exercise its best reasonable efforts to expedite the review of the permit application for the deep well.

7. The Individual Petitioners release and agree not to later assert any claims or arguments that are presently asserted in the DOAH Claims or the Additional Claims, except as may be asserted in an action to enforce this Settlement Agreement in accordance with paragraph 20 of this Settlement Agreement, or as may be re-asserted in a challenge to the 2014 Permits if this matter is re-referred to DOAH after being held in abeyance in accordance with paragraph 17 of this Settlement Agreement.

8. The Settling Parties enter into this Settlement Agreement in the spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of the permits that are the subject of the DOAH Claims or the Additional Claims. The acceptance of settlement terms for purposes of this Settlement Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these terms in any other circumstances.

9. Nothing in this Settlement Agreement shall be construed to relieve any of the Settling Parties from adhering to the law.

10. Nothing in this Settlement Agreement shall be deemed to affect the rights of any person not a party to this Settlement Agreement. This Agreement is not intended to benefit any third party, including but not limited to the POA Petitioners.

11. Each of the Settling Parties shall bear its own costs, including attorney fees, incurred in connection with the above-captioned proceedings and this Settlement Agreement.

12. No Settling Party or its prior or current counsel will seek attorneys' fees, costs or sanctions against any other Settling Party or its prior or current counsel with respect to the events that have occurred up to the effective date of this Settlement Agreement. By the terms of this Settlement Agreement, each Settling Party and its prior or current counsel intends to fully release each other Settling Party and its prior or current counsel from all claims related to this matter which could have been asserted by any Settling Party against the other or against prior or current counsel up to the effective date of this Settlement Agreement; provided, however, that notwithstanding anything to the contrary in this Settlement Agreement, DEP does not release FKAA from any permit compliance requirements.

13. This Settlement Agreement shall become effective immediately upon the date of execution by an authorized representative of the last Settling Party.

14. Within seven days after the effective date of this Settlement Agreement, the Settling Parties shall file a joint motion with DOAH to relinquish jurisdiction over the Individual Petitioners' second amended petition to DEP, for action consistent with this Settlement Agreement.

15. Within seven days after DOAH relinquishes jurisdiction over the Individual Petitioners' second amended petition, the Settling Parties other than DEP will jointly request that DEP enter a final order dismissing the Individual Petitioners' second amended petition, with prejudice and without leave to amend, but only insofar as the second amended petition directly challenges the 2009 Permits. The requested final order will confirm the issuance of the 2009

Permits, without revision, as final agency action, but will otherwise preserve jurisdiction over the Individual Petitioners' second amended petition, without prejudice to their right to demand referral back to DOAH pursuant to paragraph 17 below. The Individual Petitioners and their counsel waive and release any further administrative challenges and judicial appeals of the 2009 Permits.

16. Except for the portions that are dismissed by final order as provided in the preceding paragraph, the Settling Parties will jointly request that DEP hold in abeyance any further action with respect to the Individual Petitioners' second amended petition. The Settling Parties will also jointly request that DEP hold the second amended petition in abeyance until the deep well is completed and in operation, at which time the Settling Parties other than DEP will jointly request that DEP enter a final order dismissing the remainder of the Individual Petitioners' second amended petition, with prejudice and without leave to amend. If and when DEP dismisses the second amended petition in accordance with this paragraph, the Individual Petitioners and their counsel waive and release any further administrative challenges and judicial appeals of the 2014 Permits. Counsel for DEP joins in these requests, but counsel's position is not binding on DEP in its consideration of a final order.

17. If the Individual Petitioners reasonably and in good faith believe that FKAA is not proceeding with construction and operation of the deep well in substantial compliance with the terms of this Settlement Agreement, or that the County is not proceeding with funding therefor, then the Individual Petitioners may demand that DEP refer their second amended petition back to DOAH. FKAA and the County agree not to oppose the demand.

18. All of the Settling Parties to this Settlement Agreement, and their counsel, are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Settlement Agreement, the Settling Parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

19. This Settlement Agreement is not intended to bind DEP, FKAA, or the County in the exercise of governmental discretion which is exercisable in accordance with law upon the

giving of appropriate public notice and required public hearings. However, to the extent that the exercise of such discretion is deemed by the Individual Petitioners to violate the terms of this Settlement Agreement, the Individual Petitioners may seek relief pursuant to paragraph 20 of this Settlement Agreement.

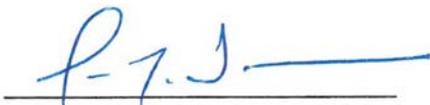
20. Any action in law or equity for the enforcement or breach of this Settlement Agreement shall be litigated in the circuit court for Monroe County, Florida. In any such action, the Settling Parties waive any right to jury trial they may have. This paragraph 20 does not apply to, or in any way restrict, the Individual Petitioners' right to demand referral of their second amended petition back to DOAH pursuant to paragraph 17 above.

21. This Settlement Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

22. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this Settlement Agreement.

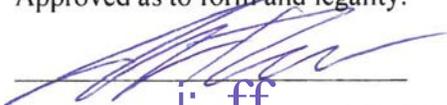
In witness whereof, the parties hereto have caused this Settlement Agreement to be executed by their undersigned officials as duly authorized.

STATE OF FLORIDA,  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:   
DIRECTOR OF DISTRICT MANAGEMENT

CJtrD6€72.... 1, 201  
Date

Approved as to form and legality:





FLORIDA KEYS AQUEDUCT AUTHORITY

By: Karl Howell

... 9/15-  
Date

Approved as to form and legality:

[Signature]

MONROE COUNTY, FLORIDA

By: \_\_\_\_\_

\_\_\_\_\_  
Date

Approved as to form and legality:

\_\_\_\_\_

\_\_\_\_\_  
MIKE LAUDICINA

\_\_\_\_\_  
Date

\_\_\_\_\_  
DON DEMARIA

\_\_\_\_\_  
Date

\_\_\_\_\_  
CHRISTOPER T. BYRD  
Attorney for Individual Petitioners

\_\_\_\_\_  
Date

\_\_\_\_\_  
CARON BALKANY  
Personal Counsel for Individual Petitioners

\_\_\_\_\_  
Date

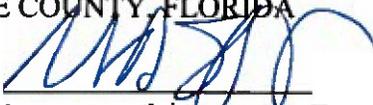
By: \_\_\_\_\_

\_\_\_\_\_  
Date

Approved as to form and legality:

\_\_\_\_\_

MONROE COUNTY, FLORIDA

By:   
Robert B. Shingler, Jr.  
County Attorney

10-2-15  
Date

Approved as to form and legality:

*i.lbd* 10- J- "J\_o!,-  
■

\_\_\_\_\_  
MIKE LAUDICINA

\_\_\_\_\_  
Date

\_\_\_\_\_  
DON DEMARIA

\_\_\_\_\_  
Date

\_\_\_\_\_  
CHRISTOPER T. BYRD  
Attorney for Individual Petitioners

\_\_\_\_\_  
Date

\_\_\_\_\_  
CARON BALKANY  
Personal Counsel for Individual Petitioners

\_\_\_\_\_  
Date

Date

Approved as to form and legality:

\_\_\_\_\_

MONROE COUNTY, FLORIDA

By: \_\_\_\_\_

\_\_\_\_\_ Date

Approved as to form and legality:

\_\_\_\_\_

  
\_\_\_\_\_  
MIKE LAUDICINA

**9-22-18**  
\_\_\_\_\_ Date

\_\_\_\_\_  
DONDEMARIA

\_\_\_\_\_ Date

\_\_\_\_\_  
CHRISTOPER T, BYRD  
Attorney for Individual Petitioners

\_\_\_\_\_ Date

\_\_\_\_\_  
**CARONBALKANY**  
Personal Counsel for Individual Petitioners

\_\_\_\_\_ Date

10/10 39v'd

11 :9Ni>1tl0M

5t; ,9EU8S0E

09/25/2015 20:05

Date

Approved as to form and legality:

\_\_\_\_\_

MONROE COUNTY,FLORIDA

By: \_\_\_\_\_

\_\_\_\_\_ Date

Approved as to form and legality:

\_\_\_\_\_

\_\_\_\_\_  
MIKE LAUDICINA



\_\_\_\_\_  
DON DEMARIA

\_\_\_\_\_ Date

*-1,·r,l, :27-;Jc15-*

\_\_\_\_\_ Date

\_\_\_\_\_  
CHRISTOPER T. BYRD  
Attorney for Individual Petitioners

\_\_\_\_\_ Date

\_\_\_\_\_  
CARON BALKANY  
Personal Counsel for Individual Petitioners

\_\_\_\_\_ Date

Date

Approved as to form and legality:

\_\_\_\_\_

MONROE COUNTY, FLORIDA

By: \_\_\_\_\_

\_\_\_\_\_ Date

Approved as to form and legality:

\_\_\_\_\_

\_\_\_\_\_  
MIKE LAUDICINA

\_\_\_\_\_ Date

\_\_\_\_\_  
DON DEMARIA

\_\_\_\_\_ Date

**P:>tL**

\_\_\_\_\_  
CHRISTOPER T. BYRD  
Attorney for Individual Petitioners

\_\_\_\_\_  
09/25/15

Date

\_\_\_\_\_  
CARON BALKANY  
Personal Counsel for Individual Petitioners

\_\_\_\_\_ Date

Date

Approved as to form and legality:

\_\_\_\_\_

MONROE COUNTY, FLORIDA

By: \_\_\_\_\_

\_\_\_\_\_ Date

Approved as to form and legality:

\_\_\_\_\_

\_\_\_\_\_  
MIKE LAUDICINA

\_\_\_\_\_ Date

\_\_\_\_\_  
DON DEMARIA

\_\_\_\_\_ Date

\_\_\_\_\_  
CHRISTOPER T. BYRD  
Attorney for Individual Petitioners

\_\_\_\_\_ Date

( ) . 0 1  
k\_")Cit !(a), "

\_\_\_\_\_  
CARON BALKANY  
Personal Counsel for Individual Petitioners

\_\_\_\_\_ 9-25-15  
Date

## **EXHIBIT A**

- Individual Petitioners' Second Amended Petition
- Letter from Balkany and Byrd to Jewel et al. dated March 11, 2015
- Letter from Balkany and Byrd to McCarthy et al. dated June 18, 2015 (w/o exhibit)
- Letter from Balkany and Byrd to Bigham et al. dated June 19, 2015