

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CUDJOE GARDENS PROPERTY
OWNERS ASSOCIATION, INC., and
SUGARLOAF SHORES PROPERTY
OWNERS ASSOCIATION, INC.,

POA Petitioners,

vs.

Case No. 15-1233

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

Respondents,

and

MONROE COUNTY, FLORIDA

Intervener.

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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"), the Cudjoe Gardens Property Owners Association, Inc., and the Sugarloaf Shores Property Owners Association, Inc. (the "POA 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 23, 2015, the POA filed a second amended petition for formal administrative hearing on the compliance of the 2014 Permits with applicable state law; and,

WHEREAS, other individuals (collectively, the "Individual Petitioners") also filed various amended petitions; and,

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

WHEREAS, FKAA, DEP, and the County dispute the allegations of the POA Petitioners' claims; and,

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

WHEREAS, on September 30, 2015, DOAH conducted phase one of the final hearing in this matter; and,

WHEREAS, on October 6, 2015, DOAH issued an order finding that the 2009 Permits authorized construction and operation of the Plant, that the 2014 Permits were a renewal of the 2009 Permits, and that the POA Petitioners may only assert in this proceeding that FKAA does not meet the applicable criteria to renew the permit to operate the Plant, including the wells; and,

WHEREAS, on October 13, 2015, DEP entered an order confirming that the 2009 Permits are final agency action; and,

WHEREAS, on October 15, 2015, DEP confirmed that it has no objection to FKAA placing the Plant in operation; 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 POA Petitioners' assertion of their 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. Exhibit A to this Settlement Agreement consists of a copy of the POA Petitioners' second amended petition alleging their claims. Exhibit A is incorporated into and made part of this Settlement Agreement. The claims asserted in Exhibit A are collectively referred to as the "Settled Claims."

3. FKAA agrees to continue expeditiously and in good faith its efforts to complete the permitting and construction of the deep well at the Plant, the draft permit for which is attached as Exhibit B to this Settlement Agreement.

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.

d. As further evidence of its good faith intention to operate in a manner that protects the environment, FKAA stipulates to the follow water quality monitoring program until the deep well is in operation:

- i. FKAA will collect surface water samples from at least 12 locations nearby and surrounding the injection wells as on the figure attached as Exhibit C to this Settlement Agreement. FKAA may, at its option, continue to collect samples from other locations.
- ii. FKAA will continue to monitor groundwater conditions at the 5 landfill observation wells.
- m. On a monthly basis, FKAA will analyze the samples for nutrients (TN, TP and chlorophyll A).
- iv. On a quarterly basis, FKAA will analyze the samples for the constituents tested in July 2015.
- v. FKAA will post all test results on a Project website accessible by the public.

v1. If over a minimum of a three-month period the test results show a statistically significant increasing trend in tested nutrient-related constituents (TN, TP, or chlorophyll A) over background values (pre-injection test results) that are not explained as naturally occurring fluctuations, then FKAA will cease to issue invitations to connect to the Cudjoe Regional Wastewater Treatment System until the deep well is in operation. Anyone who has received an invitation to connect may rely on it and proceed to connect.

e. As further evidence of its good faith intention to operate in a manner that protects the environment, FKAA stipulates that it will not handle off-site biosolids at the Plant until the deep well is in operation.

f. As further evidence of its good faith intention to operate in a manner that protects the environment, FKAA stipulates that it will provide a dedicated, on-site backup emergency source of power for the deep well.

4. 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.

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

6. The POA Petitioners release and agree not to later assert any claims or arguments that are presently asserted in the Settled Claims, except as may be asserted in an action to enforce this Settlement Agreement in accordance with paragraph 18 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 15 of this Settlement Agreement.

7. 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 Settled 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.

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

9. 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 Individual Petitioners.

10. 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.

11. 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.

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

13. 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 POA Petitioners' second amended petition to DEP, for action consistent with this Settlement Agreement.

14. Within seven days after DOAH relinquishes jurisdiction over the POA Petitioners' second amended petition, the Settling Parties other than DEP will jointly request that

DEP hold in abeyance the POA Petitioners' second amended petition 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 POA 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 POA Petitioners and their counsel waive and release any further administrative challenges to 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.

15. If the POA 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 POA Petitioners may demand that DEP refer their second amended petition back to DOAH. FKAA and the County agree not to oppose the demand.

16. 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.

17. 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 POA Petitioners to violate the terms of this Settlement Agreement, the POA Petitioners may seek relief pursuant to paragraph 18 of this Settlement Agreement.

18. 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 18 does not apply

to, or in any way restrict, the POA Petitioners' right to demand referral of their second amended petition back to DOAH pursuant to paragraph 15 above.

19. 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.

20. 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: _____ Date _____

Approved as to form and legality:

FLORIDA KEYS AQUEDUCT AUTHORITY

By: _____ Date _____

Approved as to form and legality:

MONROE COUNTY, FLORIDA

By: _____ Date

Approved as to form and legality:

Jan Edelstein

CUDJOE GARDEN JAN EDELSTEIN ASSOCIATION, INC.
At

By: _____ Date

SUGAR CREEK HOMEOWNERS ASSOCIATION, INC.

By: _____ Date

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Date

Authorized Representative of POA Petitioners

Diana Davis

DIANA DAVIS
Counsel for POA Petitioners
