

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

OGC Case No. 16-1375, P.A. FILE NUMBER: FLA671932-005-DW1P

MIKE LAUDICINA and
DON DEMARIA,

Petitioners,

vs.

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

Respondents,

_____ /

**Withdrawal of Amended Petition for Administrative Hearing and Withdrawal
of Request to Release DOAH Case # 15-1233 from Abeyance**

Petitioners, Mike Laudicina and Don DeMaria, (Petitioners) through undersigned counsel, having been advised that Florida Keys Aqueduct Authority (FKAA) has withdrawn its application for permit in this case filed July 1, 2016, and having been advised that Florida Department of Environmental Protection (DEP) has therefore issued its Order dated March 3, 2017, voiding the intended agency action it had issued in the within case and closing its file on the intended agency action, state:

1. In September, 2015, Petitioners and FKAA and DEP resolved longstanding litigation between them in DOAH Case # 15-1233 concerning the intended use of shallow wells for sewage disposal at Cudjoe Regional Wastewater Treatment Plant (Cudjoe) and the need for a deep injection well for primary disposal instead. The resolution was made by way of a Settlement Agreement signed by all parties. **Exhibit A.** In October 2015, Cudjoe Gardens Property Owners Association and Sugarloaf Shores Property Owners Association (POAs) who had also sued FKAA and DEP, signed a Settlement Agreement which resolved that litigation. **Exhibit B.** Among other provisions, the Settlement Agreements required FKAA to expeditiously construct a deep well for Cudjoe as the sole primary method of sewage effluent disposal and to use the shallow wells only as backup facilities. Pursuant to the September 2015 Settlement Agreement, an Order was entered on October 13, 2015

which placed into abeyance DOAH Case # 15-1233, pending FKAA's "substantial compliance with the terms of the settlement agreement." **Exhibit C.**

2. On July 1, 2016, FKAA filed its application for permit for substantial modification of a 2009 Cudjoe Plant permit #FLA671932-001-DWIP in order to use the deep well. The application was later supplemented.

3. The application and FKAA's supplements formed the bases for the issuance by DEP of a notice of intended agency action in the within OGC Case # 16-1375.

4. On December 1, 2016, upon receiving delayed notice of the intended agency action in OGC Case # 16-1375, Petitioners timely filed a Petition for Administrative Hearing alleging that FKAA's application violated the September 2015 Settlement Agreement. Petitioners also challenged the intended agency action as a violation of DEP regulations, including 62-600.540 (4) (b), F.A.C., concerning the intended dual use of an existing Plant clearwell for the deep injection well in addition to its existing use for the Plant PEW for which it had been designed. Petitioners requested that DOAH Case # 15-1233 be released from abeyance so it could be consolidated with the within case.

5. On December 14, 2016, DEP dismissed the Petition for Administrative Hearing in this case, contending that the Administrative Law Judge did not have jurisdiction to consider alleged violations of the Settlement Agreement which had resolved a case assigned to him and to which DEP was a party. DEP apparently also declined to include the terms of the Settlement Agreement affecting the deep well in the proposed permit, as requested by FKAA and by Petitioners. **Exhibit D.**

6. On January 1, 2017, Petitioners filed an Amended Petition for Administrative Hearing because, by Order entered October 13, 2015, DEP had "adopted and incorporated" the Settlement Agreements and because DEP was a party to the Settlement Agreements. **Exhibit C.** Petitioners also realleged their challenge to the intended use of the Plant clearwell.

7. FCAA and Petitioners resolved the controversy concerning the Settlement Agreements through various stipulations between them, and FCAA then withdrew the application for permit in this case.

8. There are several documents governing the operation of the deep injection well and the backup shallow wells at Cudjoe which reside in different permit application files and DOAH case files. Therefore, Petitioners provide the following summary of the various provisions of the Settlement Agreements, stipulations, and permits which impact the Cudjoe deep well and the backup shallow wells, which should be incorporated into the next FCAA permit application and the next DEP intended agency action concerning the Cudjoe deep well and backup shallow wells:

a. “[T]he deep injection well will be the sole primary injection well at the Plant and will serve as the sole primary method of effluent disposal.” FCAA Stipulation February 24, 2017. **Exhibit E**. This will commence at the start of the operational testing phase of the deep well, and continue thereafter. September 2015 Settlement Agreement, **Exhibit A**.

b. Upon commencement of operational testing of the deep well, the shallow wells at Cudjoe will be “used only as backup wells.” September 2015 Settlement Agreement, **Exhibit A**, and FCAA Stipulation dated November 30, 2016, **Exhibit D**. “The use of the shallow wells is governed by Section 403.086 (10) (e) (3), FS,” FCAA Stipulation dated March 3, 2017, **Exhibit F**¹, as further restricted by the provisions of the 2014 proposed permit disposal limit of “326.4 gallons per minute per well daily maximum” upon commencement of operational testing and thereafter. Settlement Agreement, **Exhibit A** and proposed 2014 permit.

c. “FCAA 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

¹ This stipulation resolved inferences to the contrary which had been made at an earlier time in Exhibit D.

of the 2014 Permits to authorize use of the shallow wells as the primary means of disposal.”

September 2015 Settlement Agreement, **Exhibit A**.

d. “FKAA stipulates that it will provide a dedicated, on-site backup emergency source of power for the deep well.” October 2015 Settlement Agreement, **Exhibit B**. “The mobile generator will be dedicated solely to provide for the back-up power needs of the deep injection well and will remain on site at all times, other than for required maintenance or repair. It will be located at the Cudjoe AWRF, at a place at or above the 100 year flood elevation and will be connected to the electric service with an automatic transfer switch. The fuel supply at the site will be sufficient to run the deep well generator for a minimum of 144 consecutive hours (6 days).” FKAA Stipulation dated June 23, 2016, **Exhibit G**.

9. Petitioners hereby withdraw their Amended Petition for Administrative Hearing filed January 9, 2017 and also withdraw their request to DEP to release Case # 15-1233 from abeyance pursuant to the September 2015 Settlement Agreement, **Exhibit A**, reserving all rights thereunder.

Certificate of Service

I certify that the foregoing has been FILED on March 6, 2017 with the Florida Department of Environmental Protection, Lea.crandall@dep.state.fl.us and Agency_Clerk@dep.state.fl.us

and by fax at (850) 245-2303 and copies have been sent the same date to the Respondent

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