IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA WILDLIFE FEDERATION, INC.; ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA, INC.; and SAVE OUR CREEKS, INC., Plaintiffs, v. CAROL M. BROWNER, Administrator, United States Environmental Protection Agency; and THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Defendants.	CIVIL ACTION FILE NO. 4: 98CV356-WS

JOINT MOTION TO ENTER CONSENT DECREE AND MEMORANDUM IN SUPPORT THEREOF

Plaintiffs Florida Wildlife Federation, Inc., Environmental Confederation of Southwest Florida, Inc., and Save Our Creeks, Inc. ("Plaintiffs"), and defendants, Carol M. Browner, Administrator, United States Environmental Protection Agency, and the United States Environmental Protection Agency ("EPA"), jointly move the Court, through undersigned counsel, jointly move the Court for entry of the parties' Consent Decree ("Decree").

In support of this joint motion, EPA and Plaintiffs state:

1. On April 22, 1998, Plaintiffs filed a complaint in the United States District Court for the Northern District of Georgia pursuant to Sections 303(d) and 505 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1313(d), 1365, and section 706 of the Administrative Procedure Act, against EPA seeking declaratory and injunctive relief. By Order dated October 14, 1998, the Court transferred this case to the United States District Court for the Northern District of Florida.

2. Section 303(d) of the CWA, 33 U.S.C. § 1313(d), and EPA's implementing regulations, 40 C.F.R. § 130.7(b)-(e), provide for: (1) identification of waters for which applicable technology-based effluent limitations and other controls are not stringent enough to implement water quality standards (the "Section 303(d) list"); (2) establishment of a priority ranking for such waters; and (3) establishment of total maximum daily loads ("TMDLs") for pollutants for which those waters are not in attainment with water quality standards.

3. Plaintiffs' complaint alleges that EPA (1) has failed to disapprove Florida's Section 303(d) lists and to promulgate adequate Section 303(d) lists on behalf of the State in violation Section 303(d)(2) of the CWA and its implementing regulations, including 40 C.F.R. § 130.7(d), (Count I); (2) has failed to disapprove Florida's deadlines for TMDL development and to establish a schedule for TMDL development in violation of Section 303(d)(2) of the CWA and EPA regulations, including

40 C.F.R. § 130.7,(Count II); (3) has failed to promulgate TMDLs on Florida's behalf in violation of 33 U.S.C. § 1313(d)(2) of the CWA and EPA's implementing regulations, including 40 C.F.R. § 130.7(d), (Count III); and (4) has unlawfully withheld agency action in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1), by failing to perform non-discretionary duties under 33 U.S.C. § 1313(d)(2) as outlined in Counts I though III (Count IV).

4. EPA and Plaintiffs have negotiated the accompanying Consent Decree as a full resolution of Plaintiffs' claims in these consolidated matters.

7. Under the Consent Decree, EPA commits to establish TMDLs for the State of Florida, if the State does not do so, for waters on Florida's 1998 Section 303(d) List by December 31, 2011 in accordance with the schedule set forth as Attachment A of the Consent Decree

8. The Consent Decree does not alter or supplant EPA's existing regulations that govern the Section 303(d) listing process and the TMDL development process. EPA will look to those regulations to guide its activities under the Consent Decree.

9. The Consent Decree also does not alter or supplant the rights of any citizen to participate in the development of Section 303(d) lists or TMDLs, or to challenge the substantive adequacy of subsequent lists or TMDLs. Those opportunities

remain available under and governed by state and federal procedural regulations and requirements.

10. It is in the interest of the public, the parties and judicial economy to resolve the issues in this action without protracted litigation. "It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement." Armstrong v. Board of School Directors, 616 F.2d 305, 312 (7th Cir. 1980); Metropolitan Housing Development v. Village of Arlington Heights, 616 F.2d 1006, 1013 (7th Cir. 1980). Consent decrees "encourage[] informal resolution of disputes, thereby lessening the risks and costs of litigation." SEC v. Randolph, 736 F.2d 525, 528 (9th Cir. 1984); see also Metropolitan Housing Development, 616 F.2d at 1014 & n. 10 (noting benefits of consent decrees).

11. The Court should approve a settlement if it is fair, adequate, reasonable and not the product of collusion. Leverso v. Southtrust Bank, 18 F.3d 1527, 1530 (11th Cir. 1994); United States v. Akzo Coatings of America, Inc., 949 F.2d 1409, 1435 (6th Cir. 1991). In reviewing a settlement, inquiry is directed not to whether the Court itself would have reached a particular settlement but rather, to whether the proposed settlement is a reasonable compromise and otherwise in the public interest.

12. The Consent Decree is fair, reasonable and consistent with the goals and requirements of the CWA. The Decree is the

product of good faith negotiations between the settling parties, each represented by counsel. The Decree represents a reasonable result that allows the parties to resolve this matter without the time and expense of further litigation. The Decree is consistent with the goals of the CWA by requiring the development of TMDLs pursuant to section 303(d) of the Act, 33 U.S.C. § 1313(d).

Wherefore, EPA and Plaintiffs move the Court to sign and enter the Consent Decree herein.

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