



Everglades Coalition

Sent via email.

May 8, 2020

Benjamin M. Melnick, Deputy Director
Division of Water Resource Management
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida, 32399-2400

Office of the General Counsel
Department of Environmental Protection
3900 Commonwealth Boulevard, Mail Station 35
Tallahassee FL 32399-3000
Agency_Clerk@dep.stste.fl.us

**RE: REQUEST FOR AN EXTENSION OF TIME IN
ACCORDANCE WITH SECTION 120.57 OF THE FLORIDA
STATUTES, RULE 62-110.106(4) F.A.C. REGARDING FPL DRAFT
NPDES PERMIT NUMBER FL-0001562**

Dear Benjamin Melnick,

On April 27, 2020 the Everglades Coalition, an alliance of over 60 local, state and national conservation and environmental organizations dedicated to a shared mission to restore and protect the greater Everglades ecosystem, received a copy of the Florida Department of Environmental Protection's (FDEP) Notice of Intent to issue a new National Pollutant Discharge Elimination System (NPDES) permit to the Florida Power and Light (FPL) Company to continue to operate a wastewater treatment and effluent disposal facility at the Turkey Point energy generating facility in Southern Miami Dade County on the Shores of Biscayne National Park. Specifically, this permit, numbered FL-0001562, governs FPL's rights to utilize a 5,900-acre network of cooling canals used to provide cooling for three steam electric generating units (3, 4 and 5) at the Turkey Point facility. As you are aware, this new permit comes in response to an application originally sent by FPL in 2009.

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1000 Friends of Florida
Angler Action Foundation
Audubon Florida
Audubon of Southwest Florida
Audubon of the Western Everglades
Audubon Society of the Everglades
Backcountry Fly Fishers of Naples
Calusa Waterkeeper
Cape Coral Friends of Wildlife
Center for Biological Diversity
Conservancy of Southwest Florida
Defenders of Wildlife
"Ding" Darling Wildlife Society
Earthjustice
Environment Florida
Everglades Foundation
Everglades Law Center
Everglades Trust
Florida Bay Forever
Florida Conservation Voters Education Fund
Florida Defenders of the Environment
Florida Keys Environmental Fund
Florida Native Plant Society
Florida Oceanographic Society
Friends of the Arthur R. Marshall
Loxahatchee National Wildlife Refuge
Friends of the Everglades
Hendry-Glades Audubon Society
International Dark-Sky Association,
FL Chapter
Izaak Walton League of America
Izaak Walton League Florida Division
Izaak Walton League Florida Keys Chapter
Izaak Walton League Mangrove Chapter
Lake Worth Waterkeeper
Last Stand
League of Women Voters of Florida
Martin County Conservation Alliance
Miami Pine Rocklands Coalition
Miami Waterkeeper
National Audubon Society
National Parks Conservation Association
National Wildlife Refuge Association
Natural Resources Defense Council
North Carolina Outward Bound School
Ocean Research & Conservation Association
Peace River Audubon Society
Reef Relief
Sanibel-Captiva Conservation Foundation
Sierra Club
Sierra Club Florida Chapter
Sierra Club Broward Group
Sierra Club Calusa Group
Sierra Club Central Florida Group
Sierra Club Loxahatchee Group
Sierra Club Miami Group
South Florida Audubon Society
Southern Alliance for Clean Energy
The Florida Wildlife Federation
The Institute for Regional Conservation
The National Wildlife Federation
Theodore Roosevelt Conservation
Partnership
Tropical Audubon Society

Controversy has swirled around the operations of this system since 2012, when South Florida Water Management District monitoring operations documented a large plume of hypersaline and polluted water emanating from the cooling canal system (CCS) into surrounding waters. This new NPDES permit language departs from previous permit iterations, because it allows the seepage of groundwater to reach surface water and degrade G-II or potable water and the L-31E canal. This new draft permit significantly changes the allowable impacts to the surrounding environment but does not require mitigation for those damages. It is our position that the implications of the new language in this NPDES would significantly undermine Everglades restoration efforts (specifically the Biscayne Bay Coastal Wetlands and C-111 Canal projects), would undermine the health and vitality of Biscayne Bay ecosystem, and is incompatible with recent precedent set by the United States Supreme Court in *County of Maui v. Hawaii Wildlife Fund, et al.* For this reason, we request an extension of time under Rule 62-110.106(4), F.A.C of at least 60 days in light of the current Covid pandemic and the disruption it has caused to try to resolve these concerns with the department.

We have been in open communication with your department and other relevant authorities about our concerns throughout this process. In April of 2016, the Everglades Coalition passed a resolution stating our concern that pollution emanating from the Turkey Point CCS would serve to undermine everglades restoration initiatives and urging all relevant local, state, and federal regulators to work together to correct those conflicts ([Link](#)). We elaborated on many of our concerns and the implications of continuing to operate the cooling canal system without significant operational changes in greater detail in our 2018 letter to the Nuclear Regulatory Commission urging them to attach conditions to the secondary relicensing of nuclear generating units 3 and 4 ([Link](#)). Upon FDEP's publication of the notice of draft NPDES permit in 2019, the Coalition sent a letter to your office identifying specific concerns about the conflict between operations at Turkey Point and ongoing Everglades Restoration projects which contained many of these same concerns ([Link](#)). We presented these concerns alongside a series of questions about the processes and intentions of the Department meant to serve as an opportunity to provide reasonable assurance that the interests of the environment and Everglades restoration were adequately taken into account in drafting this new language. We did not receive answers to our queries and those issues have not been resolved in this new draft permit.

1. The permit is incompatible with Everglades Restoration projects.

The cooling canal system is situated in a highly ecologically sensitive area. Biscayne National Park, the Biscayne Bay Aquatic Preserve, and the Florida Keys Marine Sanctuary all border the Cooling Canal System on the east, and the freshwater wetlands known as the 'model lands' (which are part of the CERP footprint) border the property to the west. The model lands have experienced significant degradation due to ongoing operations of the canals. Saltwater intrusion is moving at approximately 500 feet per year in this area, but nowhere else in the county¹. The L-31E Canal system, which was recently a freshwater canal, has now been

¹ Miami Dade County DERM, Letter RE Request for an Extension of Time in accordance with section 120.57, Florida Statutes regarding Florida Power & Light (FPL) Permit No. 0193232-182, Everglades Phase II Modification

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degraded by chloride and other pollutants. Absent operational changes or mitigation, the model lands will cease to function as a freshwater system, potentially in under five years². Research conducted by Dr. James Fourqurean also presents a credible argument that continuing operations without changes could lead to continued degradation and eventual collapse of the seagrass beds in neighboring Biscayne Bay³.

As referenced in our previous letter, our chief concern in the lower east coast water supply and saltwater intrusion and the ability to store water that can be available to achieve restoration benefits, especially in the dry season. The cooling canal system acts a large radiator pulling in over 40 million gallons of water per day from many sources, leaving behind tons of salt, and concentrating nutrients and other pollutants. While this may first be discharged to G-III groundwater (a designated section of the aquifer), it moves in all directions to impact beneficial use of G-II or potable water, as well as reaching surface waters of protected Biscayne Bay National Park approximately 30 % of the time, when tidal and hydrologic conditions align⁴.

The U.S. Army Corps of Engineers and South Florida Water Management District is currently moving through its planning phase for the combined Biscayne Bay Coastal Wetland Project Terminal phases and C-111 canal east projects, dubbed “Biscayne Bay and Southeastern Everglades Ecosystem Restoration Project” or “BBSEER”(Link).

Without requiring further conditions and remediation within this permit to address these impacts, it would be impossible to achieve full success of the BBSEER project which is currently in the planning phase. We respectfully ask for a time extension so that the Coalition and its partner organizations working in this region can work with FDEP to suggest operational changes and mitigation that will ensure that a privately held corporation is not allowed to continue to impede this crucial taxpayer funded program so important to the regions resiliency, diminish the available potable water, and damage the highly protected Biscayne Bay and Everglades ecosystems. But instead will require FPL to find ways to better operate the system and work with the SFWMD and ACOE to achieve the best possible outcomes for BBSEER.

2. The permit is premature in light of FPL’s unmet obligations to the state and local governments

FPL is currently under a Consent Order with the Florida Department of Environmental Protection (Link) and a Consent Agreement with Miami Dade County’s Division of

and Credit Release, Miami Dade County Division of Environmental Resources Management, July 18, 2018. Map of the Approximate Inland Extent of Saltwater at the Base of the Biscayne Aquifer in the Model Land Area of Miami-Dade County, Florida, 2016

² Expert Report of Dr. William Nuttle, Case No.: 1:16-cv-23017-DPG, May 14, 2018

³ Expert Report of James Fourqurean, Southern Alliance for Clean Energy, Tropical Audubon Society Incorporated, & Friends of the Everglades, Inc. v. Florida Power and Light Company. J.W. Fourqurean. May 14, 2017.

⁴ Reynolds, L. Fourqurean, J. Nuttle, W.K. Future Impacts on Biscayne Bay of Extended Operation of Turkey Point Cooling Canals [online:

https://www.researchgate.net/publication/333717294_Future_Impacts_on_Biscayne_Bay_of_Extended_Operation_of_Turkey_Point_Cooling_Canals; accessed 3 Mar 2020]

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Environmental Resources Management ([Link](#)) to adhere to strict guidelines and corrective actions over a 10-year timeframe. Many of these remedial actions would help to resolve conflicts with Everglades Restoration. However, after several years of remediation efforts, data and modeling shows that the Consent Order and Agreement targets have not been met and operations have not been modified as outlined. Because of the sensitive nature of this region and the importance of Everglades Restoration, we respectfully request that FPL be required to come into compliance with the Consent Order and Consent Agreement targets fully before any new NPDES permit is issued.

3. The permit is incompatible with reading of the US Clean Water Act supported by Defenders of Wildlife v. County of Maui

The current permit does not allow for discharge to surface waters of the U.S., and with the U.S. Supreme Court's recent decision in *Defenders of Wildlife v. County of Maui*, we now know that groundwater to surface water discharge is a violation of the Clean Water Act ([Link](#)). This new draft allows for seepage of groundwater to enter surface waters of the U.S. and the G-II potable water supply through the G-III designated aquifer and counts on the success of the Consent Order to ensure the beneficial uses is not degraded. The aforementioned verdict demonstrates that discharges to surface water through a groundwater conduit are still covered by the Clean Water Act. Our concern is there has already been degradation, and this must be corrected before moving forward, because the ecosystem cannot handle more degradation.

4. The Permit does not incorporate the 5th supplemental agreement which acts as a consumptive use permit in this area and is what regulates groundwater currently.

The plume was originally discovered through South Florida Water Management District Monitoring activities associated with the SFWMD Fifth Supplemental Agreement with FPL ([Link](#)). The Fifth Supplemental Agreement acts as a consumptive use permit (preceding that requirement) and currently serves as the chief regulatory document concerning groundwater contamination resultant from the operation of the CCS. The Fifth Supplemental Agreement mandates that FPL “operate the interceptor ditch (an operational component of the CCS) system to restrict movement of saline water from the cooling water system westward of the Levee 31E adjacent to the cooling canal system to those amounts which would occur without the existence of the cooling canal system,” calls for FPL to “immediately begin consultation with the district in order to identify measures to mitigate, abate or remediate impacts from the cooling canal system,” and calls for measures be taken to ensure operations do not interfere with everglades restoration⁵. The fifth Supplemental Agreement should be referenced within the NPDES permit, because this permit draft also attempts to regulate groundwater and not just surface water discharges.

⁵ Fifth Supplemental Agreement Between the South Florida Water Management District and Florida Power and Light Company, October 16, 2009

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For all the above reasons, we feel the language of this permit must be amended or put on hold until remediation is achieved. We would like to engage with the Department as soon as possible to find a way to work with you to address these concerns.

On page three of the Notice of Intent under the section titled “extension of time,” the Department states that “Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time.” We believe in addition to the concerns we have outlined above, the Covid-19 Pandemic, which has caused unprecedented disruption to the normal operation of virtually every citizen, business, and non-profit organization, both in this country and throughout the world, and which presents organizations such as ours with additional hurdles and challenges in reaching out to affected members and coordinating a response to this notice, constitutes “good cause” to request an extension of time to work with the department to address the conflict with Everglades Restoration.

In light of this major disruption, we respectfully request a 60-day extension of time to try to resolve our concerns with the department with the many known conflicts with continued operations and Everglades Restoration. We feel certain amendments to the language of the permit as well as, inclusion of language regarding mitigations measures, would help address our concerns, help slow the migration of saline water into adjoining wetlands, and help protect valuable water dependent industries, such as fishing and tourism, and ensure restoration goals and benefits are achieved in BBSEER.

We feel a conference on this issue is warranted as soon as possible, given the current BBSEER planning process and the current rate of saltwater intrusion in this area. We would appreciate the opportunity to work with you and your staff to find a solution that works for the Everglades and the citizens of Florida.

Sincerely,



Mark Perry
Co-Chair



Marisa Carrozzo
Co-Chair

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