UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 08-CV-80553-MIDDLEBROOKS/JOHNSON

PALM BEACH COUNTY ENVIRONMENTAL COALITION; **PETER "PANAGIOTI" TSOLKAS; PETER SHULTZ; SHARON WAITE; and ALEXANDRIA LARSON**

Plaintiffs,

vs.

THE STATE OF FLORIDA; **PALM BEACH COUNTY**, as a political subdivision of the State of Florida**; CHARLES J. CRIST, JR.**, as Governor, in his official capacity; the **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**; and **MICHAEL W. SOLE**, as Secretary, in his official capacity; the **UNITED STATES ARMY CORPS OF ENGINEERS**; **Lt. Gen. ROBERT L. VAN ANTWERP**, Commander and Chief of Engineers, in his official capacity; **GULFSTREAM NATURAL GAS SYSTEMS, L.L.C.,** and **PALM BEACH AGGREGATES, INC.**, a Florida corporation

Defendants.
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AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs **PALM BEACH COUNTY ENVIRONMENTAL COALITION** ("**PBCEC**"), **PETER "PANAGIOTI" TSOLKAS**, **PETER SHULTZ, SHARON WAITE** and **ALEXANDRIA LARSON**, by and through Plaintiffs' undersigned counsel, hereby sue the **STATE OF FLORIDA**, **PALM BEACH COUNTY**, as a political subdivision of the State of Florida**, CHARLES J. CRIST, JR.**, as Governor of the State of Florida, in his official capacity, the **FLORIDA DEPARTMENT OF ENVIRONMENTAL**

PROTECTION, and **MICHAEL W. SOLE**, as Secretary, in his official capacity ("State Defendants"); the **UNITED STATES ARMY CORPS OF ENGINEERS**; and **LT. GEN. ROBERT L. VAN ANTWERP**, Commander and Chief of Engineers, in his official capacity ("Corps Defendants"), **GULFSTREAM NATURAL GAS SYSTEM, L.L.C**. and **PALM BEACH AGGREGATES, INC.** ("Private Defendants") for improper agency action and violations of the **NATIONAL ENVIRONMENTAL POLICY ACT**, ("NEPA") 42 U.S.C. §4321, *et seq.*; the **ENDANGERED SPECIES ACT**, ("ESA")16 U.S.C. 460 *et seq.*; the **FEDERAL CLEAN WATER ACT**, ("CWA") 33 U.S.C. §1344 *et seq.*; the **RIVERS AND HARBORS ACT OF 1899**, 33 U.S.C. §403; and regulations promulgated under these acts; and violations of the **FEDERAL AND STATE RICO ACTS** and the **FLORIDA IN THE SUNSHINE LAW** and state:

1. This is an action for Declaratory and Injunctive relief challenging the federal and state approvals, reviews and permits to construct segmented components of Florida Power & Light Company's ("FP&L") electrical generation plant expansion, including supporting infrastructure (e.g., Gulfstream Natural Gas pipeline) located in and throughout western unincorporated Palm Beach and Martin Counties. That expansion is to be known as the West County Energy Center ("WCEC Project" or "Project" or "WCEC segment" or "Corbett FPL").

2. The WCEC Project requires a complex series of permits and approvals from the various Defendants, some or all of which are governed by federal environmental law.

3. The Corps Defendants actions in reviewing and permitting and approving aspects of the WCEC Project failed to consider the cumulative effects of the construction and operation of the Project and its supporting infrastructure, in conjunction with earlier phases of the projects ("historical projects") and foreseeable future projects on environmentally sensitive surrounding areas and endangered species under federal law.

4. The State Defendants' actions in reviewing, permitting and approving aspects of the WCEC Project failed to consider the cumulative effects of the construction and operation of the Project and its supporting infrastructure, in conjunction with earlier phases of the project

("historical project") and foreseeable future projects on environmentally sensitive surrounding areas and endangered species under state law.

5. The WCEC Project is a single phase of a much larger project which has been illegally segmented to avoid compliance with the National Environmental Policy Act and other federal environmental statutes.

6. A portion of the WCEC Project is governed by the Nation Wildlife Refuge Act.

7. As a result of the segmentation of this large project, the Corps Defendants have failed to complete an Environmental Impact Statement ("EIS") for all segments and to identify and consider the cumulative effects of the entire project.

8. The WCEC Project also includes the construction of a cooling water inlet structure to and within the South Florida Water Management District's L-10/12 Canal which has been federally permitted under a reauthorized Nationwide Permit ("NWP 12") issued by the Corps Defendants.

9. The WCEC Project includes a natural gas pipeline expansion and storage facilities which is itself a phase of a larger, phased and segmented project with both historic and planned future phases

10. Some of the segments of that phased and segmented gas pipeline project independently require and required the preparation of Environmental Impact Statements.

11. The failure to undertake proper reviews of certain aspects of the project will result in violations of NEPA, the ESA, the CWA and the Rivers and Harbors Act.

12. Failure to adhere to state law has subjected the approval and permitting process for the entire project to public and private corruption and has resulted in harmful and unlawful siting of this project.

JURISDICTION

13. This Court has jurisdiction over this civil action under 28 U.S.C. Section 1331 (federal question); the Administrative Procedure Act ("APA"), 5 U.S.C. Sections 702 and

706(1),(2)(A),(C),(D); 28 U.S.C. Section 1361 (action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff); pursuant to 33 U.S.C. §1365 the Clean Water Act; 15 U.S.C. § 1531 et seq. (citizen suit under the Endangered Species Act); and the Declaratory Judgment Act, 28 U.S.C. Section 2201 and 2202. The Court has pendant jurisdiction over Plaintiffs' state law claims.

14. In compliance with 42 U.S.C. § 7604(b)(1)(A) and 16 U.S.C. 1540(g)(1)(A) and (C), to the extent it was necessary, on July 27, 2007, PBCEC notified in writing the various state and federal agencies of the violations alleged in this complaint and of PBCEC's intent to sue.

15. More than sixty days have passed since the above notices were served by U.S. Mail. The Defendants remain in violation of NEPA, the Clean Water Act, the Rivers and Harbors Act of 1899 and the Endangered Species Act.

VENUE

16. Venue is proper in this district under 28 U.S.C. 1391(b) as the actions giving rise to this claim and its effects occur in the Southern District of Florida; and under 28 U.S.C. 1391(e) because it is a civil action against an agency and/or officers or employees of an agency of the United States acting in their official capacities.

PLAINTIFFS

17. Plaintiff PALM BEACH COUNTY ENVIRONMENTAL COALITION is a nonprofit citizen organization comprised of environmental groups and individuals that are concerned about the environment and quality of life in Palm Beach County. PBCEC has undertaken public outreach, protests, and other advocacy efforts targeting the center of the segmented West Coast Energy Center ("WCEC") Project. Members of the PBCEC regularly use the area in and around the segmented project area, including the Dupuis Wildlife and Environmental Area, the Loxahatchee National Wildlife Refuge, the Loxahatchee River and Slough, Lake Okeechobee, the J.W. Corbett Wildlife Management Area and associated ecosystems, for recreation including

hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife are in an unaltered and natural state and they are adversely effected when any part of these areas are impacted or destroyed by excess development, loss of wildlife and wildlife habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat.

18. The ability of the PBCEC and its members to engage in advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these laws, rules and regulations, these agencies, individuals and corporations are causing the unnecessary destruction of wildlife habitat and wetlands, the reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by the PBCEC's members.

19. The PBCEC has participated in numerous administrative and state court proceedings including its opposition to the local Scripps/Mecca Farms project, in support of its mission and its members.

20. Plaintiff PETER "PANAGIOTI" TSOLKAS is an individual who regularly uses the area in and around the Project area, including the Dupuis Wildlife and Environmental Area, the Loxahatchee National Wildlife Refuge, the Loxahatchee River and Slough, Lake Okeechobee, the J.W. Corbett Wildlife Management Area and associated ecosystems, for recreation including hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife are in an unaltered and natural state and they are adversely effected when any part of these areas are impacted or destroyed by excess development, loss of wildlife and wildlife habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat.

21. The ability of PETER "PANAGIOTI" TSOLKAS to engage in advocacy activities

in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these statutes, these agencies, individuals and corporations are causing the unnecessary destruction of habitat and wetlands, reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by this Plaintiff.

22. Plaintiff PETER SHULTZ is an individual who regularly uses the area in and around the Project area, including the Dupuis Wildlife and Environmental Area, the Loxahatchee National Wildlife Refuge, the Loxahatchee River and Slough, Lake Okeechobee, the J.W. Corbett Wildlife Management Area and associated ecosystems, for recreation including hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife are in an unaltered and natural state and they are adversely effected when any part of these areas are impacted or destroyed by excess development, loss of wildlife and wildlife habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat. PETER SHULTZ also is an executive committee member of the Loxahatchee Sierra Club and is active in a number of environmental group activities in the Project area.

23. The ability of PETER SHULTZ to engage in educational, recreational and advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these statutes, these agencies, individuals and corporations are causing the unnecessary destruction of habitat and wetlands, reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by this Plaintiff.

24. Plaintiff SHARON WAITE is an individual who regularly uses the area in and

around the Project area, including the Dupuis Wildlife and Environmental Area, the Loxahatchee National Wildlife Refuge, the Loxahatchee River and Slough, Lake Okeechobee, the J.W. Corbett Wildlife Management Area and associated ecosystems, for recreation including hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife are in an unaltered and natural state and they are adversely effected when any part of these areas are impacted or destroyed by excess development, loss of wildlife and wildlife habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat.

25. The ability of SHARON WAITE to engage in educational, recreational and advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these statutes, these agencies, individuals and corporations are causing the unnecessary destruction of habitat and wetlands, reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by this Plaintiff.

26. Plaintiff ALEXANDRIA LARSON is an individual who regularly uses the area in and around the Project area, including the Dupuis Wildlife and Environmental Area, the Loxahatchee National Wildlife Refuge, the Loxahatchee River and Slough, Lake Okeechobee, the J.W. Corbett Wildlife Management Area and associated ecosystems for recreation, including hiking, biking, bird watching, fishing, boating and other activities, and for aesthetic and spiritual purposes. These interests are protected when the natural areas and wildlife are in an unaltered and natural state and they are adversely effected when any part of these areas are impacted or destroyed by excess development, loss of wildlife and wildlife habitat or restriction of wildlife and habitat or the taking of indigenous endangered species or alteration of critical habitat.

27. The ability of ALEXANDRIA LARSON to engage in educational, recreational and

advocacy activities in this area is injured by the Defendants' failure to comply with the CWA, NEPA, ESA, Federal and Florida RICO and the Florida in the Sunshine Act. By violating these statutes, these agencies, individuals and corporations are causing the unnecessary destruction of wildlife habitat and wetlands, reduction in wildlife populations, the destruction of migratory birds, nests, and eggs, and they are preventing the recovery of, and hastening the extinction of threatened and endangered species enjoyed by this Plaintiff.

DEFENDANTS

28. STATE OF FLORIDA, (hereinafter referred to as "State") is a state governmental entity which has been delegated certain permitting responsibilities under federal environmental laws and which may be sued for prospective declaratory and injunctive relief for acts in excess of its statutory authority and for willful violations of federal law. Palm Beach County ("Palm Beach County Commission" or "Board of County Commissioners" or "Commissioners") is a political subdivision of the State and is the governing authority for Palm Beach County, Florida. The State Defendant, through its actions and approvals for the Project is an indispensable party to this action.

29. CHARLES J. CRIST, JR. is the Governor of the State of Florida and the chief executive officer of the State who may be sued, in his official capacity, for prospective declaratory and injunctive relief for acts in excess of its statutory authority and for willful violations of federal law. This Defendant, through his actions and approvals for the Project is an indispensable party to this action.

30. The FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, (hereinafter referred to as "FDEP") is an agency of the state which has been delegated certain permitting responsibilities under federal environmental laws and which may be sued for prospective declaratory and injunctive relief for acts in excess of its statutory authority and for willful violations of federal law. FDEP is the state agency responsible for the protection of the

natural environment and the resources of the State of Florida, and which is also charged with the responsibility and duty to regulate and enforce the laws applicable to the approval of new power plants in the State of Florida and is an indispensable party to this action.

31. MICHAEL W. SOLE is the Secretary of the State of Florida Department of Environmental Protection who may be sued, in his official capacity, for prospective declaratory and injunctive relief for acts in excess of its statutory authority and for willful violations of federal law.

32. The UNITED STATES ARMY CORPS OF ENGINEERS is an agency of the federal government which may be named as a defendant and against which a writ in the nature of mandamus, a declaratory judgment and injunctive relief may be entered, pursuant to 28 U.S.C. §§ 1361, 2201 and 2202, and Fed. R. Civ. P. 57, and 65 (a).

33. LT. GEN. ROBERT L. VAN ANTWERP, Commander and Chief of Engineers, is an officer and employee of the United States and its agency, the UNITED STATES ARMY CORPS OF ENGINEERS. In this capacity, LT. GEN. VAN ANTWERP may be named as a defendant and against whom mandamus, a declaratory judgment, and injunctive relief may be entered, pursuant to 28 U.S.C. §§1361, 2201 and 2202, and Fed. R. Civ. P. 57, and 65(a).

34. PALM BEACH AGGREGATES, INC. is a Florida corporation, whose principal place of business is 20125 STATE ROAD 80, LOXAHATCHEE FL 33470, in this district. PALM BEACH AGGREGATES, INC. participated in various acts as alleged in this Amended Complaint and in violation of state and federal law.

35. GULFSTREAM NATURAL GAS SYSTEM, L.L.C., a foreign limited liability company whose principal place of business is 5400 WESTHEIMER COURT HOUSTON TX 77056, is currently doing business in this district. GULFSTREAM NATURAL GAS SYSTEM, L.L.C., participated in various acts as alleged in this Amended Complaint in violation of state and Federal law.

FACTUAL BACKGROUND

36. On or around September 2005, the permitting process for the West County Energy Center Project segment was announced by Florida Power & Light in the Sports pages of the Palm Beach Post. No known local residents or environmental groups were contacted directly to discuss potential impacts to local communities, wildlife, threatened and endangered species or protected public land. The WCEC Project segment was to be built on land owned by Palm Beach Aggregates.

37. At multiple public meetings held in the spring of 2006, Plaintiff, the Palm Beach County Environmental Coalition ("PBCEC"), which also includes several active Sierra Club members, participated public comment with respect to the proposed WCEC Project to be constructed in the Loxahatchee area, raising concerns about pollution, over-development, lack of adequate water supply, impacts to wildlife, impacts to public recreation and climate change (among others) as reasons not to go forward with the project.

38. PBCEC participant and Sierra Club member Alexandria Larson also attended the Public Service Commission ("PSC") meeting with Sharon Waite, another PBCEC participant, and resident of western Palm Beach County. The meeting was held in Tallahassee, in July 2006. They attended the meeting to address environmental concerns regarding the WCEC Project segment and its Gulfstream gas pipeline infrastructure, however, were told that there would be future opportunities to raise these issues and were not allowed to address their concerns.

39. The PSC approves the "needs determination" for the WCEC Project as a part of the state approval process under Florida Electrical Power Plant Siting Act, §403.502, et seq., Florida Statutes.

40. On Sept 6, 2006 FP&L and DEP held an Administrative Hearing at Wellington Community Center as a prelude to the Governor's cabinet meeting, presided over by

Administrative Law Judge Mahoney.[1] PBCEC participants and Sierra members attended as members of the public, inquiring about several issues that have still not been resolved to date regarding required permits for State and Federal certification, including, but not limited to: aquifer injection of industrial wastewater and sewage effluent under the Loxahatchee National Wildlife Refuge; air pollution and acid rain; risk assessments of large-scale onsite diesel fuel storage operations; 34 miles of pipeline construction along conveyance canals for regional navigable waterways (L-8 and L-65); impacts of the segmented project to Everglades Restoration projects (CERP); impacts of the segmented project to public land access and recreation (including a designated National Scenic Trail); public health and contamination from emissions; and impacts on Threatened/Endangered Species and Species of Special Concern (over 30 of which reside in and around the Arthur R. Marshall Loxahatchee National Wildlife Refuge). All of their concerns were dismissed and ignored.

41. On December 19th, 2006, PBCEC participants traveled to Tallahassee to ask Governor Bush and his Cabinet to allow more time for the public and reviewing state and federal agencies to review the segmented project, but their request was ignored. At that time there was not even a cursory evaluation in the record from the Florida Fish and Wildlife Conservation Commission. Then FDEP director Colleen Castille said that they never received anything from the FFWCC, however, a FFWCC comment letter later surfaced, citing concerns over cumulative environmental and air quality impacts of the segmented project and other issues. This letter was never included in the permit certification.

42. In December 2006, the Florida Natural Gas Storage Company, LLC (FGS), submitted documents to a federal certification authority, the Federal Energy Regulatory Commission, requesting initiation of the NEPA pre-filing process in Indiantown, Martin County,

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[1] Though the meeting was noticed as a public meeting, and advance background materials were advertised as available at the local library, no copies of any such materials were

Florida for a future phase of the project.

43. On January 11, 2007, former County Commissioner Tony Masilotti was sentenced to Federal Prison for his involvement in purchases and Commission approvals of land and land use regulations. The FP&L WCEC Project and the Palm Beach Aggregates sites are listed in the indictment.

44. In the Factual Basis for Guilty Plea in the Federal indictment, count 14 states: "Masilotti had his brother, Paul F. Masilotti, contact Enrique Tomeau, the President of Palm Beach Aggregates for the purpose of buying an option to purchase sixty (60) acres of land...owned by the Aggregates.' Count 16 continues, "Shortly after receiving this option, Masilotti first voted before the Board of County Commissioners to allow Aggregates to have Florida Power and Light build a power plant on a different portion of Aggregates property within Palm Beach County. Masilotti voted on this measure in February 2004 without disclosing to the public that he and his brother Paul Masilotti had a concealed financial interest in the Aggregates property holdings."

45. Later in the year, July 23, 2007, former County Commission Warren Newell was also found guilty of similar corruption charges also related to the proposed WCEC Project site and Palm Beach Aggregates. According to the US Southern District Court of Florida, Case No: 07-80121-CR-MARRA/HOPKINS, paragraph 20, Warren Newell "owned approximately 19% [of the company] Rio Bravo, which was created as a holding company to receive profits from an executed and secret success fee contract between the Aggregates and Rio Bravo for an anticipated contract between the SFWMD and Aggregates concerning regional water storage within the cells." "This success fee contract was not disclosed to the SFWMD, the BCC, or the public."

46. These investigations and indictments are on-going. In their midst, the PBCEC

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made available until the actual time of the meeting.

participants have requested a revisitation of the votes connected to the Palm Beach Aggregates land deals and the WCEC Project segment, however the County has refused, citing legal threats.

47. In September 2007, while the Plaintiffs combed through secondary documents from the state related to the WCEC and Gulfstream pipeline project segments, they discovered correspondence authored by the Fish & Wildlife Commission regarding the WCEC Project segment asking about the cumulative impact of emissions from various power projects under simultaneous review. These documents were not made a part of the record when the Governor and Cabinet had their expedited hearing on December 19, 2006 in Tallahassee.

48. Some of the concerns raised by the FFWCC document dated ***October 17, 2005***, were:

> (1) Air quality impacts associated with fossil fuel burning power plants include emission of greenhouse gases; bioaccumulation of methylmercury in fish and wildlife; increased regional haze; and acidification of lakes and streams (DEP 2005)... "***We are concerned that this plant combined with the build out third unit, other existing power plants and two planned new power plants in St. Lucie County, cumulatively will have adverse effects to fish and wildlife and the habitats***."
> (2) Florida has many nights in the spring, summer and fall when stagnation indexes are very high. Of particular concern are the nights heavy fog is present, especially in the Everglades WMA, Loxahatchee NWR, Everglades Agricultural Area (EAA), and mid to western county areas. Low ph fog and air laced with nitrous and sulfur dioxide could be having detrimental effects to plant life, water quality and fish during these periods...

49. On October 4, 2005, the FWC also reviewed another project in the region, the Treasure Coast Energy Center (TCEC), by Florida Municipal Power Agency (FMPA), with an ultimate site certification of 1,200 MW of fossil fuel energy (gas/diesel). This document also references the WCEC stating: "two other power plants currently seeking certification in southeastern Florida would exert further cumulative air quality impacts on fish and wildlife and their habitats."

50. The Treasure Coast Regional Planning Council, as recently as May 16, 2008,

reported that FP&L's "ten year power plant site plan" dealing with WCEC units 1, 2 and 3 is "inconsistent" with Regional Policy Plan Goal 9.1: Decrease vulnerability of the region to fuel price increases and supply interruptions; and Strategy 9.1.1: Reduce the regions reliance on fossil fuels.

51. On June 19, 2007, the FFWCC submitted a letter to the Public Service Commission, where it once again referenced the WCEC Project segment, stating: "When more detailed information is developed as part of the site specific permitting process, we will review the submitted information for potential impacts to fish and wildlife and their habitats." This indicates that the power plant received final certification from the State ***prior*** to FFWCC review.

52. During the summer of 2007, construction began at the WCEC Project segment, despite incomplete permitting. In September, the pipeline's route was changed with minimal review and was resubmitted for a permit.

53. On December 13, 2007, the SFWMD Governing Board voted to approve selling its L-8 canal right-of-way to Gulfstream for the pipeline portion of the WCEC project. Governing Board member, landowner and US Sugar representative Bubba Wade, with undisclosed financial interests in the affected area, participated in the voting and voted for the sale.

54. On April 4, 2008, construction of the Gulfstream Pipeline began at the most sensitive and controversial sites on the route: the Couse Midden archaeological site. Gopher tortoises are present on this site, their habitat already has been obstructed by hasty clearing activities along the construction access road.

WEST COUNTY ENERGY CENTER & THE GULFSTREAM PIPELINE

55. In conjunction with the creation of the West County Energy Center Project and for the purpose of facilitating its development, a natural gas pipeline is being built by Gulfstream

Natural Gas System, L.L.C. as a part of the WCEC Project. The proposed pipeline will be a 34.26-mile, 30-inch diameter natural gas pipeline.

56. The proposed pipeline for this segment starts in the vicinity of the Barley Barber power plant segment in western Martin County, slightly northwest of Indiantown and ends in western Palm Beach County at the propose WCEC Project segment site.

57. The proposed pipeline is the third phase of this infrastructure that runs from natural gas supply areas on the coasts of Alabama and Mississippi across the Gulf of Mexico into central and southern Florida. Thus far, the entire pipeline is 691 miles long, with approximately 240 miles in Florida.

58. The first phase of the pipeline began operating in May 2002, and the second phase began operating in February 2005. The pipeline currently transports approximately 1.1 billion cubic feet per day of natural gas into Florida. The fourth phase of the pipeline has already been permitted, subjected to NEPA analysis and will entail the construction of approximately 17.8 miles of 20-inch pipeline in Tampa Bay connecting the existing Gulfstream pipeline to the Bartow Power Plant.

59. The proposed pipeline begins at an existing Gulfstream station in the vicinity of the Barley Barber power plant segment in Martin County.

60. It will run in a southerly direction along the east side of the L-65 Canal, crossing the St. Lucie Canal and continuing to the Martin/Palm Beach county line; then it will run east to a point west of the Dupuis Wildlife and Environmental Area and then south along the western boundary of the Dupuis Wildlife and Environmental Area adjacent to an existing power line right-of-way; then turns southeast and will run on the east side of the L-8 Canal crossing twice; and then will turn due south and runs in an existing FP&L transmission line right-of-way to its terminus on the WCEC project site.

61. The path of the proposed pipeline impacts federal jurisdictional waters that require it to obtain certain federal permits under the CWA and the Rivers and Harbors Act. Though the initially proposed path for the pipeline was slightly changed in an effort to remove the Corps' jurisdiction and approvals, the Corps still has jurisdiction over the entire unsegmented Project, including the Barley Barber and WCEC Project segments.

62. Gulfstream acquired a pipeline easement from the South Florida Water Management District ("SFWMD"), which authorizes it to install the proposed pipeline within the L-8 and L-65 canal rights-of-way, limiting the width of the permanent easement to 20 feet, but it providing for a 95-foot wide temporary construction easements along the pipeline route.

63. The proposed pipeline would cross 122 water bodies including the navigable L-8 Canal, the L-65 Canal and the St. Lucie Canal.

64. The passive land uses along the route include the Dupuis Wildlife and Environmental Area and J.W. Corbett Wildlife Management Area ("WMA"), which are state-owned wildlife conservation areas. There is an existing mining operation adjacent to the pipeline route (approximately 290 feet from the proposed pipeline at its closest point) that uses blasting as a part of its operation.

65. The proposed pipeline actually crosses approximately 3.67 acres of the J.W. Corbett WMA and the listed species whose potential habitat includes the pipeline corridor are the wood stork, the Southeastern American kestrel, the crested caracara, the bald eagle, the Eastern indigo snake and the gopher tortoise and its commensal species.

66. The wood stork also uses areas within and along the proposed pipeline corridor; the Southeastern American kestrel and crested caracara habitat exists adjacent to the first four miles of the proposed pipeline corridor; and at least one Bald eagle nest is in the vicinity of the

proposed pipeline route in the Dupuis Wildlife and Environmental Area.

67. At least 102 gopher tortoise burrows have been observed within the proposed pipeline route, but have not been monitored for impacts from the proposed pipeline construction. The burrows are located along the berm of the L-65 Canal. The permit under which these gopher tortoises are to be relocated is currently being challenged. The Eastern indigo snake relies on gopher tortoise burrows as refugia.

68. The proposed WCEC Project is the only reason for the pipeline's construction on the path chosen for it. Without the proposed pipeline, the proposed WCEC Project would likely not be sited where it is sited. Consequently, the proposed WCEC Project is clearly a segmented part of, or a secondary impact of, the pipeline project.

69. The proposed WCEC Project also requires certain federal permits under CWA and the Rivers and Harbors Act.

70. The proposed pipeline and proposed WCEC Project are each phases of an even larger series of segmented historic projects, some of which were also subject to independent NEPA reviews by federal agencies - including findings that these earlier phases required an EIS evaluation.

71. The proposed pipeline itself is phase three of a larger series of interconnected and dependent projects also requiring federal permits (phase four is already being permitted and constructed).

72. Rather than finding significant cumulative environmental impacts from the entire, unsegmented projects and supplementing earlier EIS's, EA's were generated for discrete additions to the earlier phases of the historic project by the Corps of Engineers for the purpose of segmenting these projects and circumventing CWA and Rivers and Harbors Act permitting

and the requirements under NEPA to fairly evaluate the cumulative environmental impacts of the entire project and its historic and foreseeable future phases.

73. Taken in its entirety, including the proposed pipeline/WCEC Project segments will have significant impacts sufficient to require a comprehensive EIS review under NEPA. The proposed pipeline/WCEC Project segments will result in the release of at least 12 million tons of greenhouse gases (CO^2) per year, will release thousands of tons of other noxious gases in and around sensitive wildlife and natural areas, will consume at least 6.5 billion gallons of water per year at a time of extreme drought in the region, and will literally fuel the continued uncontrolled western growth of Palm Beach County, which in turn will destroy the agricultural base of this region and destroy our quality of life still further.

74. As indicated infra, some of the work for the proposed pipeline/WCEC Project segments has been authorized by the Corps under a reissued NWP 12. This permit entitled "Utility Line Activities," authorizes the construction, maintenance, and repair of utility lines, including underground gas transmission lines that have minimal adverse effects on the aquatic environment.

75. The Corps has improperly expanded the scope of NWP 12 to approve/authorize the construction of a cooling water inlet structure to and within the South Florida Water Management District's L-10/12 Canal which will have significant environmental impacts for the purpose of evading its NEPA responsibilities.

STATUTORY CONSTRUCT

ADMINISTRATIVE PROCEDURES ACT

76. Under the Federal Administrative Procedures Act, 15 USC §702, any person who has suffered legal wrong because of agency action, or who is adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

77. Under 15 USC §706, to the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall:

> (1) compel agency action unlawfully withheld or unreasonably delayed; and
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> (2) hold unlawful and set aside agency action, findings, and conclusions found to be:
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> > (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
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> > (B) contrary to constitutional right, power, privilege, or immunity;
> > (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
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> > (D) without observance of procedure required by law;
> >
> > (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
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> > (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
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> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

CLEAN AIR ACT

78. The Clean Air Act, 42 U.S.C. §§ 7401 et seq. (Act) includes a number of regulatory programs "to protect and enhance the quality of the Nation's air resources so as to

promote the public health and welfare and productive capacity of its population." Act § 101(b), 42 U.S.C. § 7401(b). The Act is federally administered by the United States Environmental Protection Agency (EPA). That agency has promulgated regulations to carry out the Act and to regulate substances considered "air pollutants."

79. Many of the CAA's regulatory requirements apply only to those air pollutants which EPA determines "may reasonably be anticipated to endanger public health or welfare". CAA 108(a)(1), 42 U.S.C. § 7408(a)(1) (establishing list of criteria pollutants).

80. The CAA operates pursuant to a "cooperative federalism" scheme, in which states receive delegated power to administer federal law. States must develop State Implementation Plans (SIPs), which explain how the states plan to administer the CAA within their borders, and submit the SIPs to EPA for review and approval. *See* CAA § 110; 42 U.S.C. § 7410.

81. The CAA uses several mechanisms to control emissions of regulated air pollutants. These include the establishment of ambient air standards, emissions limitations for stationary sources, emissions limitations for mobile sources, and other regulatory programs designed to address specific environmental problems, including acid rain and ozone depletion.

National Ambient Air Quality Standards

82. National Ambient Air Quality Standards (NAAQS) are nationwide air quality goals that are meant to protect public health and public welfare. NAAQS reflect the maximum concentrations of pollutants in the ambient (i.e., outdoor) air that will still protect health and welfare. The CAA directs EPA to establish a list of air pollutants "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources." CAA § 108(a)(1)(B); 42 U.S.C. § 7408(a)(1)(B).

83. To date, EPA has established NAAQS for six pollutants: sulfur dioxide (SO^2), particulate matter (PM), nitrogen oxide (NOx), carbon monoxide (CO), ozone, and lead. 40 C.F.R. Part 50. Once EPA has established NAAQS for a given air pollutant, air emissions may not exceed the applicable NAAQS.

Stationary Source Emissions Standards or Limitations

84. The Clean Air Act contains two main schemes for regulating emissions of air pollutants from stationary sources. First, the New Source Performance Standards (NSPS) program requires certain categories and classes of stationary sources to comply with certain "standards of performance," which are emissions standards that "reflect the degree of emission limitation achievable through the application of the best system of emission reduction which . . . the Administrator [of the EPA] determines has been adequately demonstrated." 42 U.S.C. § 7411(a)(1). NSPS apply to new sources, modified sources, and, at times, existing sources. 42 U.S.C. § 7411(a)(2) & (d). For NSPS to apply to a particular facility, the facility must fall within a category of sources which, in the EPA Administrator's judgment "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare," 42 U.S.C. § 7411(b)(1)(A), and for which EPA has established standards of performance. 42 U.S.C. § 7411(b)(4).

85. Second, some of the CAA's most important stationary source controls are found in the CAA's new source review (NSR) program. If a stationary source proposes to operate in an area that is in compliance with the NAAQS, that source will be subject to the prevention of significant deterioration (PSD) program. 42 U.S.C. §§ 7475-7479. If a stationary source proposes to operate in an area that has not attained any of the NAAQS (*i.e.*, if actual air pollution concentrations exceed the applicable air quality standards), that source will be subject to nonattainment new source review (NNSR).

86. A source is "major" if it will emit more than a threshold level of pollutants. For most parts of the statute, a facility is considered "major" if it emits or has the potential to emit at least 100 tons per year of any air pollutant. CAA § 302(j); 42 U.S.C. § 7602(j). Under the PSD program, however, the threshold level is 100 tons per year for specifically listed facilities and 250 tons per year for all other facilities. CAA § 169(1); 42 U.S.C. § 7479(1).

87. The PSD and NNSR programs have some similar requirements. First, the programs apply to "major" sources. Second, the programs apply to the construction and operation of any new or modified sources. 42 U.S.C. §§ 7475(a), 7502(b)(5). Thus, a company must insure that it complies with the new source review requirements before it constructs a new or modified facility.

88. A facility subject to new source review must install pollution control technology prior to operation. The use of these technology controls is meant to insure compliance with any air quality standards. For the PSD program, the facility must use the "Best Available Control Technology" (BACT).

89. Facilities subject to NNSR must use technology controls that insure that the facility will comply with the "Lowest Achievable Emissions Rate" (LAER). LAER typically requires installation of more effective pollution controls than BACT requires.

90. PSD and NNSR permitting is "pollutant-specific" in that most specific requirements of both programs apply with respect to emissions of particular pollutants. Consequently, a prospective new or modified source may be subject to both PSD and NNSR requirements for different pollutants, depending on the amount of each pollutant it will emit and the attainment status of the area for that pollutant. Despite the pollutant-specific focus of NSR on two main provisions, it is comprehensive and open-ended in considering the environmental impacts of any proposed new source.

Best Available Control Technology/Lowest Available Control Technology

91. The control technology provisions of NSR require minimization of emissions from new sources of pollution. BACT and LAER are "technology-forcing," intended to stimulate the development of improved methods for reducing air pollution. Emissions minimization in turn serves several broader statutory purposes that are precautionary in nature. These include maximizing opportunities for economic growth while meeting air quality goals, serving as a backstop in light of the acknowledged inability of the NAAQS to protect against all adverse health and welfare effects of air pollution emitted by "numerous and diverse sources," and compensating for the repeated failure of SIPs to meet air quality goals through comprehensive planning.

92. BACT is defined as follows:

> The term "best available control technology" means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by- case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. . . .

93. The definition of LAER is more rigorous than that of BACT, in keeping with the need for more stringent measures in areas that have not attained the NAAQS. LAER provides only the smallest of economic cost windows to avoid use of the most stringent emissions limit possible:

> (3) The term "lowest achievable emission rate" means for any source, that rate of emissions which reflects—
> (A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
> (B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

94. BACT and LAER plainly require the review of available pollution control methods to be comprehensive, but neither the statute nor regulations specify in detail how this is to be accomplished. Basically, the application must consider all available alternatives, and the permitting authority must either select the most stringent option or demonstrate why it should not be adopted. **A necessary first step in the analysis is to determine what alternatives are technically available to the applicant**.

95. While there are other stationary controls, and other important aspects to new source review, the main point to understand is that Congress intended for air emission sources to use pollution control technology to achieve ambient air standards.

Limiting CO^2 Emissions from Natural Gas Power Plants through New Source Review

96. The recent trend in the United States is for natural gas power plants to replace older high-pollution coal fired plants, based on the misconception that natural gas is a “clean” source of power. Contrary to popular belief, however, natural gas power plants are large emitters of greenhouse gases. Under business as usual, each natural gas power plant would release hundreds of millions of tons of CO^2 over an expected lifespan of half a century or more.

97. These replacement plants are not entitled to a free pass on greenhouse gases. Instead, replacement plants should limit CO^2 emissions using currently available technology, as well as stimulate future technological advancement here and in the developing world.

98. In 2007, over the EPA’s strong objections, the Supreme Court held that the CAA authorizes the EPA to regulate greenhouse gases, particularly CO^2. *Massachusetts v. EPA*, 127 S.Ct. 1438 (2007). Faced with the ruling in *Massachusetts* that CO^2 is an “air pollutant” under the Act, there is no question that any new power plant must go through an entire NSR for CO^2.

NATIONAL ENVIRONMENTAL POLICY ACT

99. The purpose of the National Environmental Policy Act is set forth in 42 U.S.C. §

4331:

> (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, ***particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation***, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, ***in cooperation with State and local governments, and other concerned public and private organizations***, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, ***to create and maintain conditions under which man and nature can exist in productive harmony***, and fulfill the social, economic, and other requirements of present and future generations of Americans.
>
> (b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, ***to improve and coordinate Federal plans, functions, programs, and resources*** to the end that the Nation may:
> (1) ***fulfill the responsibilities of each generation as trustee of the environment for succeeding generations***;
> (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
> (3) ***attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences***;
> (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
> (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
> (6) ***enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources***.
>
> (c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. (emphasis added)

100. Pursuant to §4342, Congress created the Council on Environmental Quality ("CEQ") for the purpose of promulgating regulations applicable to all federal agencies consistent with the intent and purposes of the Act. Those regulations are set forth in the Federal Code of Regulations at 40 C.F.R. 1500 *et seq.*

101. Pursuant to the CEQ regulations, Federal agencies are required to assess the impacts of major Federal actions to determine if those actions will significantly affect the human environment. If it is determined that an action will likely adversely affect the human environment, a Federal agency is required to prepare and Environmental Impact Statement ("EIS").

102. Pursuant to 40 C.F.R. Section 1502.14, an EIS is required to present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. ***The EIS should rigorously explore and objectively evaluate all reasonable alternatives***, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated; Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; Include reasonable alternatives not within the jurisdiction of the lead agency; Include the alternative of no action; Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference, and include appropriate mitigation measures not already included in the proposed action or alternatives.

103. Pursuant to 40 C.F.R. Section 1502.16 the EIS is required to present a discussion of the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The direct effects and their significance; Indirect effects and their significance; Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a

reservation, Indian tribe) land use plans, policies and controls for the area concerned; The environmental effects of alternatives including the proposed action; Energy requirements and conservation potential of various alternatives and mitigation measures; Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures; Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures and means to mitigate adverse environmental impacts.

104. Pursuant to 40 C.F.R. Section 1502.23 the EIS is required to present a cost-benefit analysis relevant to the choice among environmentally different alternatives being considered for the proposed action, which shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an EIS should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

105. Pursuant to the regulations, an EIS is required to evaluate the “cumulative impacts” of the agency action. Pursuant to 40 C.F.R. § 1508.7, “cumulative impact” is defined as the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. ***Cumulative impacts can result from individually minor but collectively significant actions taking place over a***

period of time.

106. Pursuant to NEPA, its regulations, and the Corps regulations, the Corps is required to conduct NEPA reviews when issuing permits under the CWA and the Rivers and Harbors Act.

ENDANGERED SPECIES ACT

107. The Endangered Species Act, 15 U.S.C. 1531 *et seq*. was established by Congress to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species and to require all Federal departments and agencies to conserve endangered species and threatened species.

108. Section 1536 requires that each Federal agency shall, in consultation with and with the assistance of the Department of the Interior, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Department, after consultation as appropriate with affected States, to be critical. In fulfilling the requirements of this section each agency must use the best scientific and commercial data available.

109. The regulatory functions of the Act have been divided and delegated to the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration-Fisheries. The Fish and Wildlife Service has primary responsibility for terrestrial and freshwater organisms.

110. Federal agencies are required to consult with the USFWS on any prospective agency action if the action agency has reason to believe that an endangered species or a threatened species may be present in the area affected by the project and that implementation of such action will likely affect such species.

111. Each Federal agency must confer on any agency action which is likely to

jeopardize the continued existence of any species listed under §1533 or which would result in the destruction or adverse modification of critical habitat designated for such species.

112. Pursuant to regulations, if the USFWS is required to prepare a biological assessment for such agency action, the biological assessment should contain the results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally, the views of recognized experts on the species at issue, a review of the literature and other information, an analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies, and an analysis of alternate actions considered by the Federal agency for the proposed action.

113. If the agency action is found likely to adversely affect listed species, the USFWS must prepare a biological opinion.

CLEAN WATER ACT

114. Under the Clean Water Act, it is illegal for anyone to discharge dredged or fill material into the navigable waters of the Untied States without a permit except under circumstances specifically set forth under the statute and regulations.

115. The Clean Water Act, 33 U.S.C. § 1251 et seq., is designed to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a)(2). Dredged or fill materials are pollutants under the CWA. See 33 U.S.C. § 1362(6).

116. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Corps to issue permits to discharge or place "dredged or fill materials" into waters of the United States, including wetlands, only at specified sites and under prescribed circumstances and conditions.

117. The Section 404 program places a high priority on the control of activities that are potentially damaging to the Nation's wetlands and other waters. Regulation promulgated by the Environmental Protection Agency pursuant to section 404(b)(1) and a memorandum of

understanding between EPA and the Corps further define the Corps' duty in evaluating individual permits under CWA.

118. The 404(b)(1) Guidelines mandate a sequential review process whereby the Corps evaluates individual permits.

119. First the Corps must evaluate whether an activity is water dependent. If a proposal is not water dependant, the Corps must presume that an environmentally less damaging practicable alternative exists. See 40 C.F.R. § 230.10(a)(3).

120. The applicant proposing a project that is not water dependant must show that all available alternatives to the impacts resulting from the discharge of dredged or fill material have been considered, and that no practicable alternative exists which would have less adverse impact on the aquatic environment. See 40 C.F.R. § 230.10(a).

121. Although a particular alteration of a wetland may constitute a minor change, the cumulative effect of numerous piecemeal changes can result in a major impairment of wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it may be part of a complete and interrelated wetland area. 33 C.F.R. 320.4.

122. If the permit applicant establishes that no less damaging, practicable alternative is available, the applicant must then show that all appropriate and practicable steps will be taken to minimize adverse impacts of the discharge onto wetlands. See 40 C.F.R. § 230.10(d).

123. Only after the permit applicant has shown that the avoidance and minimization criteria are satisfied can the Corps even consider mitigation.

124. In establishing mitigation requirements, the Corps must strive to achieve a goal of no overall net loss of wetland values and functions, meaning a minimum of one-for-one functional replacement with an adequate margin of safety to reflect scientific uncertainty.

125. The Corps cannot permit a discharge if the discharge would violate other

applicable laws.

126. The Corps must also independently determine that the project will not cause or contribute to violations of State water quality standards. See 40 C.F.R. § 230.10(b)(1); 40 C.F.R. § 230.10(c). This duty exists independently of any obligation of the State to determine whether a project will cause or contribute to State water quality standards under CWA Section 401.

127. The Corps must also fully and independently assess each project impact relating to:

(a) water circulation, fluctuation, salinity, and temperature (see 40 C.F.R. § 320.11 (b));

(b) the substrate underlying and surrounding the aquatic environment, including the degree and impact of soil compaction (see 40 C.F.R. § 320.11(a));

(c) the kinds and concentrations of suspended particulate/turbidity in the aquatic environment (see 40 C.F.R. § 230.11(c));

(d) the degree the fill material will impact the aquatic environment (see 40 C.F.R. § 230.11(d));

(e) the degree of impact on the aquatic ecosystem and organisms (see 40 C.F.R. § 230.11(e));

(f) the degree of cumulative effects on the aquatic environment (see 40 C.F.R. § 230.11 (g)); and

(g) the degree of secondary effects on the aquatic environment (see 40 C.F.R., § 230.11(h)).

128. Pursuant to 40 C.F.R. § 230.5, the permitting authority for any discharge of dredge or fill material under the statute must, among other things, examine practicable alternatives to the proposed discharge, that is, not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences, evaluate the various physical and chemical components which characterize the non-living environment of the candidate sites, the substrate and the water including its dynamic

characteristics, identify and evaluate any special or critical characteristics of the candidate disposal site, and surrounding areas which might be affected by use of such site, related to their living communities or human uses, evaluate the material to be discharged to determine the possibility of chemical contamination, identify appropriate and practicable changes to the project plan to minimize the environmental impact of the discharge and impose zero net loss mitigation within the action area.

129. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impact that the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments.

RIVERS AND HARBORS APPROPRIATIONS ACT

130. Sec. 403 of the Rivers and Harbors Appropriations Act states that the creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor or refuge, or enclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.

131. 33 CFR parts 321 - 330 prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army (DA) permits for controlling certain activities in waters of the United States or the oceans.

132. Nationwide Permits are issued and reissued, pursuant to regulations, to satisfy some of the permit requirements of section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, section 103 of the Marine Protection, Research, and Sanctuaries Act, or some combination thereof, where the environmental impacts are minimal.

133. The District Engineer will review the applications and determine if the individual and cumulative adverse environmental effects are more than minimal. If the adverse effects are more than minimal the District Engineer will notify the prospective permittee that an individual permit is required rather than simple authorization under a Nationwide Permit.

134. The issuance of, or reauthorization of, or determination of the applicability of a Nationwide Permits is a final agency action reviewable under the APA.

COUNT I
VIOLATIONS OF THE CLEAN AIR ACT
AS TO CORPS AND STATE DEFENDANTS

Plaintiffs reallege the allegations in paragraphs 1-134 as though fully set forth herein.

135. Pursuant to the Act, the proposed West County Energy Center Project segment is considered a major emitting facility that must obtain a permit before commencing construction. See 42. U.S.C. § 7479.

136. The site for the proposed WCEC Project segment is designated by the Florida Department of Environmental Protection as an attainment area for sulfur dioxide, carbon monoxide, and nitrogen oxide. As an attainment area, the proposed WCEC Project segment is subject to prevention of significant deterioration (PSD) permits. The granting agency failed to utilize the criteria established by law, and instead approved these permits without question.

137. The proposed WCEC Project segment would operate in an area designated as a

maintenance, or nonattainment zone for the pollutant Ozone. As such, the proposed WCEC Project segment is subject to nonattainment new source review (NNSR) permits, which were never obtained. The PSD and NNSR programs were designed to apply to the construction and operation of any major sources. Thus, a company must insure that it complies with these requirements before it begins construction. The proposed WCEC Project segment began construction without properly obtaining these permits and is therefore in violation of the Act.

138. As a facility that is subject to NNSR permitting for Ozone, the WCEC Project must use technology controls that insure that the facility will comply with the "lowest achievable emissions rate" (LAER). LAER would require the WCEC Project to install more effective pollution controls than the best available control technology (BACT) that would be required in an attainment area for Ozone. As such, the WCEC project has commenced without a properly adhering to the Act's NSPS permit requirements for the pollutant Ozone.

139. Direct emissions of CO^2 from the proposed WCEC Project segment would be 12 million tons per year. Following the *Massachusetts* decision in 2007, the WCEC Project is required to adhere to the BACT requirements for CO^2 as specified in the Act, but failed to do so. This project expansion should not be entitled to a free pass on greenhouse gases at the expense of the public for generations to come. Furthermore, additional, uncalculated but significant emissions of CO^2 would result from the proposed Gulfstream pipeline and WCEC Project segments due to destructive fires fueled by excessive water use by this segmented project. Those destructive wildfires consume organic soils and trees, two of the most significant natural storage components for CO^2 in the vicinity of the segmented project.

140. Destructive wildfires in the vicinity of and caused by existing segments of this phased project not only increase CO^2 emissions, they generate significant releases of particulate matter as the organic soils and trees burn. Those destructive wildfires would increase in extent and magnitude as a result of the proposed Gulfstream pipeline and WCEC

Project segments. Particulate matter is one of six pollutants for which EPA has established NAAQS, yet the air emissions of particulate matter from the destructive wildfires caused by this segmented project have not been addressed and would exceed the established levels. See 40 C.F.R. Part 50.

WHEREFORE, Plaintiffs respectfully request the following:

A. Declare that the actions of the Corps and State Defendants violate the CAA;

B. Declare that the Corps Defendants' decision not to prepare an EIS or a Supplemental EIS arbitrary and capricious and in violation of NEPA;

C. Declare that all permits and approvals of the State and Corps Defendants, including those predicated upon the Corps Defendants' EA's for these projects, were approved without question, rubberstamped and therefore invalid;

D. Preliminarily and permanently enjoin the State and Corps Defendants from taking any action that in any way supports or furthers funding, design, permit acquisition, construction or development of the proposed expansion of the segmented project based on the EA's until the Corps Defendants have remedied their violations of NEPA;

E. Issuance of an Order requiring State and Corps Defendants to adequately and fully analyze all impacts and reasonable alternatives to the proposed expansion of the segmented project, including the "no action" alternative, as required by NEPA and its implementing regulations;

F. Issuance of an Order requiring the State and Corps Defendants to prepare an EIS integrating all segments of the project necessary to achieve the purpose of the proposed expansion of the segmented project, including all cumulative impacts as required by NEPA and its implementing regulations;

G. Issuance of an Order awarding Plaintiffs their reasonable attorneys fees, costs and expenses pursuant to 28 U.S.C. §2412, the Equal Access to Justice Act and Rule 54(d), Fed.R.Civ.P.;

H. Such other and further relief as the Court may deem just and proper.

COUNT II
VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT AS TO CORPS AND STATE DEFENDANTS

Plaintiffs reallege the allegations in paragraphs 1-134 as though fully set forth herein.

141. The current phases of the construction of the Gulfstream Natural Gas pipeline and WCEC segments require Corps authorization and permits under the CWA and the Rivers and Harbors Act.

142. Issuance of such authorizations and permits constitutes major federal action for purposes of the National Environmental Policy Act, ("NEPA") 42 U.S.C. §4321, et seq.

143. The Corps Defendants issued authorizations and permits for the Gulfstream Natural Gas pipeline and WCEC segments without preparing adequate environmental analysis and documentation as required by NEPA.

144. The State and Corps Defendants failed to evaluate the environmental impacts of the direct and indirect release of more than 12 million tons of CO^2 into the atmosphere per year; the use of at least 6.5 billion gallons of water per year for only two of three proposed new powerplant units – which is the equivalent water use of 50,000 new homes in the Everglades watershed, adjacent to the Loxahatchee National Wildlife Refuge; the storage of 18.9 million gallons of fuel oil on the premises by the proposed expansion of the segmented project in such proximity to environmentally sensitive lands; or the reasonable alternatives to the proposed expansion of the segmented project.

145. Authorization was given and permits were issued for the proposed expansion of the segmented project without the appropriate level of environmental review under NEPA.

WHEREFORE, Plaintiffs respectfully request the following:

A. Declare that the Corps Defendants' actions violate NEPA;

B. Declare that the Corps Defendants' decision not to prepare an EIS

or a Supplemental EIS arbitrary and capricious and in violation of NEPA;

C. Declare that all permits and approvals of the State and Corps Defendants, including those predicated upon the Corps Defendants' EA's for these projects, are invalid;

D. Preliminarily and permanently enjoin the State and Corps Defendants from taking any action that in any way supports or furthers funding, design, permit acquisition, construction or development of the segmented project based on the EA's until the Corps Defendants have remedied their violations of NEPA;

E. Issuance of an Order requiring Corps Defendants to adequately and fully analyze all impacts and reasonable alternatives to the proposed segmented project, including the no action alternative, as required by NEPA and its implementing regulations;

F. Issuance of an Order requiring the Corps Defendants to prepare an EIS integrating all segments of the proposed project necessary to achieve the purpose of the Project, including all cumulative impacts as required by NEPA and its implementing regulations;

G. Issuance of an Order awarding Plaintiffs their reasonable attorneys fees, costs and expenses pursuant to 28 U.S.C. §2412, the Equal Access to Justice Act and Rule 54(d), Fed.R.Civ.P.;

H. Such other and further relief as the Court may deem just and proper.

COUNT III
VIOLATIONS OF THE ENDANGERED SPECIES ACT AS TO CORPS AND STATE DEFENDANTS

Plaintiffs reallege the allegations in paragraphs 1-134 as though fully set forth herein.

146. The Endangered Species Act, 15 U.S.C. 1531 et seq. and its implementing regulations require all Federal departments and agencies to assure that their actions conserve endangered species and threatened species.

147. The ESA specifically prohibits major federal agency action that is likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.

148. The ESA specifically requires federal agencies to consult with the US Fish and Wildlife Service and the National Marine Fisheries Service with respect to any action which is likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.

149. The current construction phases of the segmented project, including the Gulfstream Natural Gas pipeline and WCEC Project, in combination with the historic and foreseeable future phases of the project, including the Barley Barber segment, have jeopardized the continued existence of endangered and threatened species and resulted in the destruction and adverse modification of habitat critical for the survival and recovery of these species.

150. Issuance of Corps authorizations and permits constitutes major federal agency action for purposes of the Endangered Species Act, 15 U.S.C. 1531 et seq. and its implementing regulations.

151. The Corps Defendants, by limiting the scope of review of the segmented project, failed to adequately consult with the US Fish and Wildlife Service and the National Marine Fisheries Service with respect to threatened and endangered species affected by the historic and foreseeable future components of this segmented project.

152. The Corps Defendants' actions are in violation of the Endangered Species Act.

WHEREFORE, Plaintiffs respectfully request the following:

A. Declare that the Corps Defendants' actions violate the ESA;

B. Declare that all permits and approvals issued in violation of the ESA, including the Barley Barber segment, are invalid;

C. Preliminarily and permanently enjoin the Private, State and Corps Defendants from taking any action which in any way supports or furthers funding, design, permit acquisition, construction or development of the segmented project until the Corps Defendants have remedied their violations of the ESA;

D. Issuance of an Order awarding Plaintiffs their reasonable attorneys fees, costs and expenses pursuant to the ESA;

E. Such other and further relief as the Court may deem just and proper.

COUNT IV
VIOLATIONS OF THE CLEAN WATER ACT AND THE RIVERS AND HARBORS ACT AS TO CORPS AND STATE DEFENDANTS

Plaintiffs reallege the allegations in paragraphs 1-134 as though fully set forth herein.

153. The Clean Water Act and the Rivers and Harbors Act permit the Corps to issue authorizations and permits for activities that fall under their jurisdictional purview.

154. The existing Barley Barber plant and proposed Gulfstream Natural Gas pipeline and WCEC Project segments involve activities that fall under the Corps Defendants' jurisdictional permitting authority. The existing Barley Barber segment of this phased project has failed to maintain the chemical, physical and biological integrity of the Nation's waters, in violation of CWA 33 U.S.C. § 1251 (a)(2). See 33 U.S.C. § 1362(6). The proposed WCEC project expansion would result in a significant increase of the area failing to maintain the chemical, physical and biological integrity of the Nation's waters, in violation of CWA 33 U.S.C. § 1251 (a)(2). See 33 U.S.C. § 1362(6).

155. The Corps Defendants issued authorizations and permits allowing the existing Barley Barber and proposed Gulfstream Natural Gas pipeline and WCEC Project segments to go forward. Those authorizations and permits constitute final agency action under the APA, CWA and Rivers and Harbors Act.

156. The Corps Defendants improperly allowed the Barley Barber segment to be constructed, reissued Nationwide Permit 12 and granted authorizations for the Gulfstream Natural Gas pipeline and WCEC Project segments under the permit that were beyond the scope of the permit.

157. Consequently, actions that required an Individual Permit under the CWA were

unlawfully granted authorizations under the NWP system.

158. The Corps Defendants' actions violated both the CWA and the Rivers and Harbors Act.

WHEREFORE, Plaintiff respectfully requests the following:

A. Declare that the Corps Defendants' actions violate the CWA and the Rivers and Harbors Act;

B. Declare that all permits and approvals issued in violation of the Acts, including the Barley Barber segment, are invalid;

C. Preliminarily and permanently enjoin the Private, State and Corps Defendants from taking any action which in any way supports or furthers funding, design, permit acquisition, construction or development of the segmented project until the Corps Defendants have remedied their violations of the Acts;

D. Issuance of an Order awarding Plaintiffs their reasonable attorneys fees, costs and expenses pursuant to the CWA;

E. Such other and further relief as the Court may deem just and proper.

COUNT V
VIOLATIONS OF F.S. 373.013, *ET SEQ*.
AS TO STATE DEFENDANTS

Plaintiffs reallege the allegations in paragraphs 1-134 as though fully set forth herein.

159. The approval of the WCEC Project segment by the Florida DEP is a violation of all of its obligations under F.S. 373.013, *et seq*.

160. On March 10, 2005, the United States Environmental Protection Agency ("EPA") issued the Clean Air Interstate Rule (CAIR), which along with the federal Clean Air Act is designed to reduce nitrogen oxides emissions, sulfur dioxide emissions, and the emissions of greenhouse gases. Additionally, EPA has established NAAQS for particulate matter, yet the air emissions of particulate matter from the destructive wildfires caused by this segmented project have not been addressed and would exceed the established levels. See 40 C.F.R. Part 50.

161. In violation of the requirements of the Florida Power Line Siting Act, as well the

above referenced Statutes, when the Florida DEP granted approval for the WCEC Project segment, it failed to consider the impact of the WCEC Project segment upon such critical issues as global warming, the drought which currently plagues this region, the impact upon the Everglades watershed and multibillion dollar Everglades restoration effort; Loxahatchee National Wildlife Refuge; J.W. Corbett Wildlife Management Area; Dupuis Wildlife and Environmental Area; Lake Okeechobee; Loxahatchee River and Slough; and Grassy Waters Preserve, which are in close proximity to the proposed WCEC Project segment, and the health, safety, and general welfare of the people of Florida.

162. In violation of its obligations under the Power Line Siting Act, the Florida DEP failed to require affected agencies, such as the United States Army Corps of Engineers, the Florida Fish and Wildlife Conservation Commission, the SFWMD and the Department of Transportation to submit proper reports detailing the likely effects of the WCEC Project segment upon the matters within their jurisdiction.

163. The Florida DEP further violated its obligations under the Power Line Siting Act by failing to even attempt a balance between the need for the power plant and the impact upon the public and the environment resulting from the location, operation and the maintenance of the power plant as required by F.S. 403.529 (4)(e).

164. The Florida DEP was presented with unrebutted evidence from FP&L and others that "[A]long with the major sources of new pollution from the known harmful emissions including SO^2, PM/PM 10, NOx, CO, VOC and Sulfuric Acid Mist, this plant would also be a major contributor to greenhouse gases (GHGs). Although currently unregulated, the 8.5-11.5 million tons of CO^2 emissions per year (estimated by FP&L) would be an undeniably noticeable increase to Florida's overall GHG's".

165. Rather than analyzing this data, and evaluating the impact of the WCEC upon the air, water, and land resources of Florida and the nation as it is required to do under the

above-referenced laws of Florida, the FDEP failed to perform its duties as acknowledged in written correspondence to the PBCEC, dated April 16, 2007, wherein the Secretary of the Florida DEP, Michael Sole, admitted that “At this time, the emissions of carbon dioxide (CO^2) are unregulated at both state and federal levels.”

166. In the recently decided case of Massachusetts et al. vs. Environmental Protection Agency, et al., 549 U.S. April 2, 2007, the United States Supreme Court rejected similar efforts by the Environmental Protection Agency (EPA) to shirk its duty to address and regulate air pollution that will exacerbate global warming.

167. In the above referenced case, the United States Supreme Court made the following findings of fact, “A well documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere. Respected scientists believe the two trends are related. For when carbon dioxide is released into the atmosphere, it acts like the ceiling of a greenhouse, trapping solar energy and retarding the escape of reflected heat. It is therefore a species-the most important species-of a greenhouse gas.”

168. The United States Supreme Court went on to observe that the United States Congress and leading federal environmental agencies from the executive branch have identified global warming as a major threat to our planet and our nation.

169. The Court rejected the claim by the EPA that it was not required to act, unless it “determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do.” In the case at bar, the Florida DEP has admitted that it has failed to even consider the impact of massive amounts of greenhouse gases upon the environment and upon global warming. As such, its approval of FP&L’s permit for the WCEC Project segment is contrary to federal and state law and must be reversed.

170. The failure to regulate greenhouse gases is in direct violation of the obligations of the Florida DEP which has the power and the responsibility to protect the natural resources of this State according to the above-referenced laws.

171. Global warming has a particularly harmful effect upon the people and natural environment of Florida due to Florida's large coastline, the already endangered Everglades, and the harm caused to the people and the economy of Florida from hurricanes, all of which problems are exacerbated by the effects of global warming.

172. The approval of the permit by the Florida DEP violates all the above-referenced laws and statutes because this approval will serve as a catalyst for urban sprawl and will literally fuel the growth of large developments into the western areas of Palm Beach County. Those foreseeable future actions will have a gravely adverse effect on the Everglades watershed and multibillion dollar Everglades restoration effort; Loxahatchee National Wildlife Refuge; J.W. Corbett Wildlife Management Area; Dupuis Wildlife and Environmental Area; Lake Okeechobee; Loxahatchee River and Slough; Grassy Waters Preserve and water quality and storage, ultimately violating the provisions of Florida's Growth Management Act and Palm Beach County's local Comprehensive Plan.

173. The approval of the WCEC Project and other segments must also be reversed, or in the alternative sent back to the Florida DEP and the Siting Board for reconsideration due to changes of circumstances since the approval that include, but are not limited to the following:

(a) Since the approval of the WCEC Project segment, South Florida has experienced an extensive and wide-spread drought. The excessive water demands of the WCEC Project segment, which has been estimated at 600 million gallons per month – or the equivalent water use of 50,000 new homes in the Everglades watershed, adjacent to the Loxahatchee National Wildlife Refuge - were never sufficiently considered by the State and Corps Defendants, the SFWMD, and other necessary agencies prior to approval. In light of recent drought conditions, there is an even stronger basis to require the Corps and State Defendants and the SFWMD to consider the impact of this segmented project on South Florida's lack of water.

(b) The approval of the WCEC Project segment was based upon an assumption that

has been proven erroneous by recent developments. FP&L claimed that the WCEC Project segment was needed in order to provide power for a large population of people who were projected to move into currently uninhabited or sparsely populated areas of western Palm Beach County. Recently, it has come to light that the projected, rapid increase in population in Palm Beach County has failed to materialize, and for the first time in history, many people are beginning to leave this County due to economic reasons unanticipated by the agencies involved in the permitting process. In addition, after a large number of people publicly expressed their opposition to the type of massive new growth in the western areas of this County, the Palm Beach County Commission recently unexpectedly rejected a proposal to place 10,000 residential units on the Callery Judge parcel in the western area of Palm Beach County, expressing concerns about urban sprawl.

(c) On May 14, 2007 a memo was sent from Palm Beach County Administrator Robert Weisman to the members of the Palm Beach County Commission regarding the WCEC Project segment, advising the Commissioners that "[T]he indicated water usage is significant and essentially comes from the same sources as would serve development in the western communities. The volume of water usage anticipated is equivalent to approximately 50,000 houses." In light of this new information, which apparently never has been considered by the Palm Beach County Commission. The permit approval should be reconsidered. The State Defendants and SFWMD should be instructed, as required by law, to balance the need for the power plant and the water needs of the environment and the people of South Florida as they are required to do under F.S. 403.529 (4)(e), but failed to do prior to considering the permit request for the WCEC Project segment. The composition of the SFWMD Governing Board has changed significantly since the time that it was required to review the permit application for the WCEC Project segment and now consists of new members who appear willing to perform the statutory duties of the Governing Board in regards to the WCEC Project segment, and to assume its true role as protector of Florida's waterways.

(d) Recently revealed adverse impacts from the historic Barley Barber segment of this phased project extending far from the Barley Barber site of that segmented project provide additional evidence that the comparable proposed WCEC Project segment would have comparably far-reaching adverse environmental impacts.

(e) Irreversible adverse environmental impacts from the mining operations co-located at the site of the proposed WCEC Project segment preclude the extraction of any additional water for industrial use in the environmentally sensitive area.

174. The proposed WCEC Project segment should not be permitted due to the fact that FP&L has failed to obtain the necessary permits for the aquifer-injection of billions of gallons of contaminated industrial wastewater and sewage effluent. Additionally, the adverse impacts of the proposed aquifer injection of billions of gallons of contaminated industrial wastewater and sewage effluent have not been evaluated for compliance with the Clean Water

Act and the Endangered Species Act and would violate those Acts. The Corps Defendants cannot permit a discharge that would violate other applicable laws. The aquifer injections for the proposed WCEC Project segment ensure that billions of gallons of water would be diverted from environmentally sensitive areas in the Everglades watershed, adversely affecting the multibillion dollar Everglades restoration effort; Loxahatchee National Wildlife Refuge; J.W. Corbett Wildlife Management Area; Dupuis Wildlife and Environmental Area; Loxahatchee River and Slough; and Grassy Waters Preserve. If the duties of the State and Corps Defendants and the SFWMD are performed in accordance with applicable laws, rules and regulations, the aquifer injection and water use permits will be unattainable due to the magnitude of irreversible negative impacts the aquifer injections and water use would cause to wetlands, flood plains, special aquatic sites, nearshore coastal waters, other waters of the state and waters of the United States and other environmentally sensitive areas.

175. Plaintiffs are not required to exhaust administrative remedies prior to the filing of this lawsuit due to factors stated above and others, which include, but are not limited to the following:

(a) the changed circumstances since the approval of the WCEC, such as the reduction in population projections in the western areas of this County, the expression of the will of the people recently to oppose more western development at Callery Judge and elsewhere, the recent drought, and the concerns expressed by County administrator Robert Weisman that the WCEC will require the equivalent amount of water as 50,000 houses, and will compete with the water needs of projected western development;

(b) (the futility of pursuing an administrative challenge under agencies headed by the former Governor of this state;

(c) the numerous and serious violations of law which would have required multiple administrative challenges, and thus which would not have served the interests of justice or judicial economy, and which would have been cost prohibitive for the Plaintiffs;

(d) the recent decision of the United States Supreme Court in Massachusetts v. EPA, which has been decided since the approval of the proposed WCEC Project segment, and which now provides far more stringent criteria for the approval of the proposed WCEC Project segment than previously existed;

(e) the expression of a new focus on combating global warming was expressed by the Governor in his inaugural address in 2007 and has radically altered the priorities of Florida's executive branch towards far greater protection for our environment and our natural resources and towards efforts to reduce the emission of greenhouse gases;

(f) an operational permit for the proposed aquifer injection of billions of gallons of contaminated industrial wastewater and sewage effluent from the proposed WCEC Project segment still not been obtained by FP&L, negating the validity of any other permits or approvals granted for the proposed expansion segments of this project;

(g) on June 16, 2008, after Plaintiffs' administrative challenge of the proposed WCEC Project segment, Palm Beach County Chairwoman Addie Green announced that FP&L intends to add a third gas unit at the proposed WCEC Project segment (aka Corbett site), presumably increasing the water use to 19.2 Million Gallons per Day or the equivalent water use of 75,000 new homes;

(h) violations and environmental harm of the previously constructed Barley Barber plant segment of this phased project was only recently discovered, years after expansion of that segment

176. The Florida DEP and those agencies it is mandated to oversee, such as the SFWMD and the Fish and Wildlife Conservation Commission, have been charged with protecting the public's health and welfare. None of these agencies have performed the duties and obligations required by Florida law when by approving the proposed WCEC Project segment.

177. The Florida DEP has offered no reasoned explanation for its refusal to regulate greenhouse gases and for its refusal to decide whether greenhouse gases cause or contribute to climate change. Its actions are therefore arbitrary and capricious, and as such constitute a violation of the federal Clean Air Act, (CAIR), the Florida Power Plant Siting Act and the Florida Water Resources Act and other state and federal laws.

178. Public participation was not encouraged in the administrative process and violated Florida law due to improper notice, and an unreasonable refusal to allow interested parties to intervene and otherwise participate in the proceedings. When valid objections and observations were made during the administrative process by interested and affected parties, the Florida DEP failed to properly carry out its duties by its refusal to properly respond to such

concerns, and to refute the factual assertions raised by the public.

179. Plaintiffs have retained the undersigned to represent it in this matter and have agreed to pay a reasonable fee for these services. Under the Clean Air Act and other relevant law, Plaintiff seeks attorney's fees and costs from the Defendants if it prevails.

WHEREFORE, Plaintiffs demand injunctive relief and/or certiorari review of the decision by the Florida DEP and the Siting Board and respectfully request that this Honorable Court:

A. Reverse the permit approval for the proposed WCEC Project segment and instruct the State and Corps Defendants not to permit the construction of the proposed WCEC Project segment, or in the alternative;

B. Remand this action back to all appropriate administrative agencies, to commence the process of permit approval from the beginning, after providing ample opportunity for the public and all relevant organizations and governmental agencies to participate in the process;

C. Issue an Order award Plaintiffs costs and attorney's fees, to be recovered from the Defendants under the Clean Water Act and other relevant laws; and

D. Such other and further remedy deemed just and equitable by this Court.

COUNT VI
VIOLATION OF FLORIDA STATUTE 286.011 *ET SEQ.*
(FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW)
AS TO STATE AND PRIVATE DEFENDANTS

Plaintiffs reallege the allegations in paragraphs 1-134 as though fully set forth herein.

180. The Defendants made numerous decisions regarding the proposed West County Energy Center Project segment as described herein which were required to be made "in the Sunshine", but which instead violated the Florida Sunshine Law.

181. Pursuant to Florida Statute 286.011, *et seq.*, all such decisions regarding the proposed WCEC Project segment must be made in the Sunshine, which requires inter alia, that for each such decision there be conducted a public meeting which meets the following criteria:

(a) the meetings must be open to the public;

(b) reasonable notice of such meetings must be given; and

(c) minutes of the meetings must be taken.

182. As described herein, many, if not all of the meetings concerning the proposed WCEC Project segment violated all of these above-required provisions of the Sunshine Law.

183. Many decisions regarding the proposed WCEC Project segment were made in the absence of any public meeting, and were made behind closed doors in secret.

184. Many of the decisions regarding the proposed WCEC Project segment were made without proper notice to the public, in that they were not advertised properly in the local newspaper, and if they were advertised at all, were advertised in the sports section or the obituary section of the newspaper, where concerned citizens would be unlikely to find them, and which arbitrarily discriminated against women, who do not read the sports sections as often as men, as well as many men who do not read such pages, and who do not expect to find important public notices in such pages.

185. Many of the decisions regarding the proposed WCEC Project segment were made without any public meetings, or if public meetings were conducted, proper minutes were not taken.

186. Due to the great importance to the public and the environment of all meetings concerning the proposed WCEC Project segment, all meetings should have been prominently advertised to the public rather than buried in the newspapers, or not advertised at all.

187. According to the opinion of the Florida Attorney General, AGO 03-53 "In the spirit of the Sunshine Law, the city commission should be sensitive to the community's concerns that it be allowed advanced notice and, therefore, meaningful participation on controversial issues before the commission."

188. It is hard to imagine any issue more controversial than those surrounding the proposed WCEC Project segment, which:

(a) would cost taxpayers billions of dollars;

(b) would jeopardize comprehensive Everglades restoration funded by billions of additional local, state and federal tax dollars;

(c) involves the release of more than12 million tons of greenhouse gases per year at a time when global warming is the urgent issue of our time according to the United States Supreme Court and as articulated in the case of Massachusetts vs. United States EPA;

(d) flies in the face of recent state-wide initiatives and press conferences by Florida's Governor Crist regarding global warming;

(e) involves the use of more than 6.5 billion gallons of water per year in a time of significant drought throughout Florida;

(f) involves the unnecessary use of fossil fuel and energy at a time when such issues are of extreme importance to our nation's economy and security;

(g) would encourage, promote and support more development in this county, which is one of the most controversial issues in Palm Beach County, and which implicates a host of other issues of paramount importance including environment and quality of life issues;

(h) involves a power plant which has been the source of repeated protests and legal challenges, including a protest that received national attention, and culminated in the arrest of scores of people;

(i) the agencies and governmental authorities are well aware is of major significance to thousands of people throughout the county, including the Plaintiffs and members of various environmental organizations;

(j) would result in the destruction and diversion of water from vast areas of farmland and open space at a time when locally grown food is becoming a critical commodity due to the rapidly increasing cost of fuel;

(k) would contaminate, dewater, defoliate and infest with alien and invasive species the adjacent Loxahatchee National Wildlife Refuge and nearby J.W. Corbett Wildlife Management Area, Dupuis Wildlife and Environmental Area, Loxahatchee River and Slough, Grassy Waters Preserve and the other environmentally sensitive ecological areas in the Everglades watershed where the multibillion dollar Everglades restoration effort is underway.

189. In addition, the meetings violated the Sunshine Law for the following reasons:

(a) the agenda or proper summary was not included with the meeting notice;

(b) notice of the meeting was not prominently noticed in the agency or county's office;

(c) the agency and/or governmental entity convening the meeting failed to notify the public that they had the right and the responsibility to have the meeting transcribed in order to later challenge the decision rendered at such meeting in court;

(d) the notice of such meetings failed to comply with the requirements of F.S. 120.525 and F.S. 166.041 (3) (c). The meetings were held in facilities that were not large enough to reasonably accommodate the large number of people reasonably expected to attend such meetings;

(e) some or all of the meeting was conducted in such manner that some or all of the conversations were not generally audible to those attending the meeting;

(f) the meetings were not open to all members of the public, as required by the Act and by AGO 99-53, including those who presented opposing points of view, such as Plaintiffs Panagioti Tsolkas and members of Plaintiff PBCEC, who were sometimes escorted from the meetings by force due to their expression of views in opposition to the Palm Beach County Commission, or due to their expression of such views in a non-disruptive manner, unreasonably deemed unacceptable by the Commission;

(g) the public was not afforded a meaningful opportunity to participate at each stage of the decision-making process of the proposed WCEC Project segment, including, but not limited to all workshops, as required by Inf. Op. to Thrasher, January 27, 1994 and Inf. Op. to Conn., May 19, 1987;

(h) minutes of the meetings were not promptly recorded and made available to public inspection in a timely fashion.

190. As a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed according to all case law on the subject. The courts have also recognized that the Sunshine Law should be construed so as to frustrate all evasive devices.

191. The Courts consider the Sunshine Law to be of such importance, especially when relating to issues of such importance as those involved herein, that the Courts require that if a Board member is unable to determine whether a meeting is subject to the Sunshine Law, her or she should either leave the meeting or ensure that the meeting complies with the Sunshine law.

192. Not only was the Sunshine Law freely and frequently violated as described herein, there are presently two former Palm Beach County Commissioners who are now in jail

due to their criminal activities in connection with decisions they rendered involving the proposed WCEC Project segment, which personally benefited themselves, and which were made secretly in clear violation of the Sunshine law. County Commissioners Tony Masilotti and Warren Newell pled guilty to and admitted to committing acts in their criminal proceedings that constitute numerous, substantial and incontrovertible admissions against interest that provide irrefutable and overwhelming evidence of violations of the Florida Sunshine Law. While the rest of the County Commission has discussed the legality of its decisions which involve the issues and the Commissioners who are presently in jail, they failed to recognize the necessity to ensure that their actions comply with the Sunshine Law, and thus failed to review such decisions, failed to vitiate such decisions, and failed to reconsider such decisions in compliance with the Sunshine law.

WHEREFORE, Plaintiffs respectfully request the following relief:

A. Declare the actions of all Defendants and of all governmental agencies and bodies named herein, including but not limited to the Palm Beach County Board of County Commissioners, the State of Florida, Charles J. Crist, Jr., the Governor and his cabinet, the South Florida Water Management District, the Florida Wildlife Commission, and the Florida Department of Environmental Protection to be in violation of the Florida Sunshine Law, F.S. 286.011 et seq.;

B. Declare invalid and of no legal force and effect all permits and approvals for the proposed WCEC Project segment, and/or permits and approvals in any way connected with the proposed WCEC Project segment, including the Barley Barber segment, and/or decisions and approvals for the Gulfstream Natural Gas pipeline infrastructure, and/or for aquifer injection of contaminated industrial wastewater and sewage effluent from the proposed WCEC Project segment, and/or the acquisition of any lands connected with the WCEC, and all agreements and contracts concerning the proposed WCEC Project segment, and/or any expenditures of public funds in any way connected to or supporting the decision to construct the proposed WCEC Project segment;

C. Preliminarily and permanently enjoin all Defendants and any other entities from taking any action in furtherance of the construction, planning, and/or financing of the proposed WCEC Project segment and associated Gulfstream Natural Gas pipeline infrastructure segment;

D. Enter an Order awarding the Plaintiffs their reasonable costs and attorney's fees pursuant to F.S. 286.011(4);

E. Provide such further relief as this Court deems fit and proper to accomplish the goals and intent of the Florida Sunshine Act.

COUNT VII
VIOLATION OF FEDERAL RICO (18 U.S.C. SECTION 1961)
AS TO STATE AND PRIVATE DEFENDANTS

Plaintiffs reallege the allegations in paragraphs 1-134 as though fully set forth herein.

193. The provision of energy in the form through the construction and maintenance of the proposed WCEC Project segment constitutes an enterprise as defined in the Federal RICO Act.

194. The Defendants conspired with each other and with others including, but not limited to former County Commissioners Tony Masilotti and Warren Newell, the Palm Beach Board of County Commissioners, Gulfstream, Palm Beach Aggregates and others, in a pattern of racketeering activity in connection with the proposed WCEC Project segment, as described herein, for their own personal financial gain, and/or the gain of the bodies and agencies they represent, and/or their own political and professional gain, which resulted in their own personal financial gain, in violation of the Federal RICO Act. These county commissioners pled guilty to and admitted to committing acts in their criminal proceedings that constitute numerous, substantial and incontrovertible admissions against interest that provide irrefutable and overwhelming evidence of violations of the Federal RICO law.

195. Even after the Defendants, including but not limited to the Palm Beach County Commission, recognized that decisions involving the proposed WCEC Project segment were made illegally by two former County Commissioners, who are now in jail due to their criminal activities, the other County Commissioners, and the other Defendants, condoned, ratified, and approved of these criminal activities, by failing to review these decisions, and by failing to reconsider such decisions which were illegally made in violation of the RICO laws.

196. The violations of the Federal RICO Act described herein, resulted in the financial gain to the Defendants and the two former County Commissioners who are now in jail as a result of their criminal activities, and further resulted in financial harm to the Plaintiffs and all members of the public, who are now required to pay staggering amounts of money in the form of higher taxes and higher energy bills from FP&L, and other governmental entities, and who will suffer staggering financial losses due to the devastating environmental harm and havoc that will result from the proposed WCEC Project segment.

197. As a further direct and proximate result of the criminal enterprise described herein, FP&L has benefited financially, Gulfstream has benefited financially, all those who would build and construct the proposed WCEC Project segment would benefit financially, and those who own land where the proposed WCEC Project segment may be constructed and in the immediate vicinity would benefit financially, and those who provide power from natural gas have benefited over those who provide other types of energy, such as solar or wind energy, which do not require the use of billions of gallons of water or the aquifer injection of billions of gallons of contaminated industrial wastewater and sewage effluent.

198. As described herein the Defendants and their co-conspirators have engaged in numerous acts of racketeering activity that constitutes a pattern.

199. The predicate criminal acts as defined by Federal RICO and as described herein include, but are not limited to the following:

(a) misuse of public office by Commissioners Warren Newell and Tony Masilotti and others;

(b) bribery;

(c) extortion under color of official right (i.e., the use by governmental officials of their official powers in order to gain personal or illegitimate rewards, including campaign contributions and personal gain by Newell and Masilotti);

(d) obstruction of justice by Commissioners Warren Newell and Tony Masilotti and others; and

(e) mail and wire fraud.

200. As a direct and proximate cause of the RICO violations described herein, the Plaintiffs and the public have been harmed.

WHEREFORE, Plaintiffs respectfully request the following relief:

A. Declare the actions of the Defendants to be in violation of the Federal RICO Act;

B. Declare invalid and of no legal force and effect all permits and approvals for the proposed WCEC Project segment, and/or permits and approvals in any way connected with the proposed WCEC Project segment, including the Barley Barber segment, and/or decisions and approvals for the Gulfstream Natural Gas pipeline infrastructure, and/or for aquifer injection of contaminated industrial wastewater and sewage effluent from the proposed WCEC Project segment, and/or the acquisition of any lands connected with the WCEC, and all agreements and contracts concerning the proposed WCEC Project segment, and/or any expenditures of public funds in any way connected to or supporting the decision to construct the proposed WCEC Project segment;

C. Preliminarily and permanently enjoin all Defendants and any other entities from taking any action in furtherance of the construction, planning, and/or financing of the WCEC;

D. Enter an Order awarding the Plaintiffs their reasonable costs and attorney's fees pursuant to the Federal RICO Act;

E. Award Plaintiffs damages of $1;

F. Provide such further relief as this Court deems fit and proper to accomplish the goals and intent of the Federal RICO Act.

COUNT VIII
VIOLATION OF STATE RICO (F.S.A. SECTION 895.01)
AS TO STATE AND PRIVATE DEFENDANTS

Plaintiffs reallege the allegations in paragraphs 1-134 as though fully set forth herein.

201. The provision of energy in the form through the construction and maintenance of the WCEC constitutes an enterprise as defined in the State RICO Act section 895.02(3).

202. The State and Private Defendants conspired with each other and with others including, but not limited to former County Commissioners Tony Masilotti and Warren Newell, the Palm Beach Board of County Commissioners, Gulfstream, Palm Beach Aggregates and

others, in a pattern of racketeering activity in connection with the proposed WCEC Project segment, as described herein, for their own personal financial gain, and/or the gain of the bodies and agencies they represent, and/or their own political and professional gain, which resulted in their own personal financial gain, in violation of the State RICO Act section 895.02(1). These county commissioners pled guilty to and admitted to committing acts in their criminal proceedings which constitute numerous, substantial and incontrovertible admissions against interest which provide irrefutable and overwhelming evidence of violations of Florida's RICO law.

203. Even after the State and Private Defendants, including but not limited to the Palm Beach County Commission, recognized that decisions involving the proposed WCEC Project segment were made illegally by two former County Commissioners, who are now in jail due to their criminal activities, the other County Commissioners and the other Defendants, condoned, ratified, and approved of these criminal activities, by failing to review these decisions and by failing to reconsider such decisions which were illegally made in violation of the RICO laws.

204. The violations of the State RICO Act described herein, resulted in the financial gain to the State and Private Defendants and the two former County Commissioners who are now in jail as a result of their criminal activities, and further resulted in financial harm to the Plaintiffs and all members of the public, who are now required to pay staggering amounts of money in the form of higher taxes and higher energy bills from FP&L, and other governmental entities, and who will suffer staggering financial losses due to the devastating environmental harm and havoc that will result from the proposed WCEC Project segment.

205. As a further direct and proximate result of the criminal enterprise described herein, FP&L has benefited financially, Gulfstream has benefited financially, all those who will build and construct the proposed WCEC Project segment will benefit financially, and those who own land where the proposed WCEC Project segment will be constructed and in the immediate

vicinity will benefit financially, and those who provide power from natural gas have benefited over those who provide other types of energy, such as solar or wind energy.

206. As described herein the State and Private Defendants and their co-conspirators have engaged in numerous acts of racketeering activity that constitutes a pattern.

207. The predicate criminal acts as defined by State RICO and as described herein include, but are not limited to the following:

(a) misuse of public office by Commissioners Warren Newell and Tony Masilotti and others pursuant to section 895.02(1)(a)(37);

(b) bribery pursuant to section 895.02(1)(a)(37);

(c) extortion under color of official right (i.e., the use by governmental officials of their official powers in order to gain personal or illegitimate rewards, including campaign contributions and personal gain by Newell and Masilotti) pursuant to section 895.02(1)(a)(35);

(d) obstruction of justice by Commissioners Warren Newell and Tony Masilotti and others pursuant to section 895.02(1)(a)(38); and

(e) mail and wire fraud pursuant to section 895.02(1)(a)(30).

208. As a direct and proximate cause of the RICO violations described herein, the Plaintiffs and the public have been harmed.

WHEREFORE, Plaintiffs respectfully request the following relief:

A. Declare that the actions of the State and Private Defendants to be in violation of the State RICO Act;

B. Declare invalid and of no legal force and effect all permits and approvals for the proposed WCEC Project segment, and/or permits and approvals in any way connected with the proposed WCEC Project segment, including the Barley Barber segment, and/or decisions and approvals for the Gulfstream Natural Gas pipeline infrastructure, and/or for aquifer injection of contaminated industrial wastewater and sewage effluent from the proposed WCEC Project segment, and/or the acquisition of any lands connected with the WCEC, and all agreements and contracts concerning the proposed WCEC Project segment, and/or any expenditures of public funds in any way connected to or supporting the decision to construct the proposed WCEC Project segment;

C. Issue a temporary restraining order and a preliminary injunction pursuant to F.S.A section 895.05(6) that shall enjoin all Defendants and any other entities

from taking any action in furtherance of the construction, planning, and/or financing of the proposed WCEC Project segment;

D. Enter an Order awarding the Plaintiffs their reasonable costs and attorney's fees pursuant to the Federal and State RICO Acts;

E. Award Plaintiffs damages of $1;

F. Provide such further relief as this Court deems fit and proper to accomplish the goals and intent of the State RICO Act.

DATED: August 25, 2008.

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/S/ BARRY M. SILVER
By: ________________________________
BARRY M. SILVER; Florida Bar No. 382108

CERTIFICATE OF SERVICE

I HEREBY CERTIFY *that on August 25, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.*

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