

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.

_____/

**INJUNCTION AFFIDAVIT OF PANAGIOTI TSOLKAS
CO-CHAIR OF PALM BEACH COUNTY ENVIRONMENTAL COALITION**

I, Peter “Panagioti” Tsolkas, make this affidavit based on my personal knowledge, belief, and state the following:

A. PERSONAL INFORMATION AND RELATION TO CASE

1. My name is Peter “Panagioti” Tsolkas. I am an individual plaintiff in the above referenced case. I am a delegated representative and co-chairperson of the Palm Beach County Environmental Coalition (PBCEC). I have live in

coastal areas of central and south Florida since 1984. I have lived in Palm Beach County for over eight years. I currently reside in Lake Worth, Florida.

2. The PBCEC 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. The PBCEC is the organizational plaintiff in the above-styled case. The PBCEC has undertaken public outreach, protests and other advocacy efforts targeting the development of the West County Energy Center (WCEC) segment of the expanded project in the interior of the Everglades.

3. The members of the PBCEC and I regularly use the area in and around the Project area, including the Dupuis Wildlife and Environmental Area, the Loxahatchee National Wildlife Refuge, the J.W. Corbett Wildlife Management Area, Lake Okeechobee, St. Lucie Canal and associated estuaries and hydrologically-associated lands in the Loxahatchee and Hungryland sloughs. We use these areas 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 their current, unaltered and natural state and they are adversely effected when any part of these areas are impacted or destroyed by development, loss of wildlife and wildlife habitat or restriction of wildlife and its habitat or the taking of indigenous endangered and threatened species and species of special concern or alteration of habitat for the survival and recovery of those species.

4. My ability, and the ability of PBCEC, 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 wetlands and other habitat, the reduction in wildlife populations, the destruction of migratory birds, nests, and eggs and the prevention of the recovery of, and hastening the extinction of threatened and endangered species and species of special concern enjoyed by me and other PBCEC members.

B. PERSONAL KNOWLEDGE OF UNADDRESSED ADVERSE IMPACTS IN THE VICINITY OF CONSTRUCTED AND PROPOSED WEST COUNTY ENERGY CENTER (WCEC) PROJECT SEGMENTS AND SUPPORTING INFRASTRUCTURE

5. I have visited the vicinity of the construction of these interconnected project segments, including the WCEC Project segment, the Gulfstream Phase II and III Pipeline segments and the Barley Barber Martin County FPL Power Plant and cooling pond segments. I have observed and documented ongoing immediate impacts and threats of impact to wildlife, habitat, water quality and public access to lands intended for recreational use. Several of these actions have resulted in violations of non-compliance through permitting agencies. See Attachments A and B, incorporated into my affidavit. These impacts and others, not yet documented, have occurred and are continuing to occur, despite ongoing legal challenges that we have filed in State and Federal court.

6. Construction has proceeded without required permits, as is the case with the aquifer injection component of the WCEC project through defendant Florida Department of Environmental Protection's (DEP) "Underground Injection Control" (UIC) program. See Attachment C, incorporated into my affidavit.

7. In my opinion, the failure to review the cumulative impacts of these projects through the NEPA-required Environmental Impact Statement (EIS) and failure to address corrupt and criminal-influenced decisions by public officials is allowing damage to occur and avoidable risks to continue, inviting even greater impacts if the facilities are to be put into full operation. Gulfstream was authorized to initiate flow of gas on August 21, 2008. See Attachment D, incorporated into my affidavit.

8. Impacts of this segmented project that I have observed involve immediate threats to endangered and threatened species and species of special concern, including direct takes of gopher tortoise. Gopher tortoises are listed as a Species of Special Concern in Florida. The federally endangered Eastern indigo snake is a gopher tortoise commensal and seeks refuge in gopher tortoise burrows. Daily construction, operations and maintenance vehicular traffic along pipeline route are causing irreparable harm to these species. I have marked these observations by GPS point. See Attachment E, page 2, incorporated into my affidavit.

9. I have witnessed indirect impacts to federally endangered red cockaded woodpeckers (RCW). I believe these impacts are caused by massive diversion of water to the Barley Barber power plant segment of the proposed expansion. Live slash pine trees in pine flatwoods in the surrounding wildlife areas, including J.W. Corbett and Dupuis are required by RCWs for survival. This was apparent when I saw the enormous cooling pond in close proximity to the existing Martin County/Barley Barber FPL power plant facility. That segment of the expanded project consumes a comparable quantity of water to the proposed

WCEC Project segment. See Attachment F, incorporated into my affidavit. This is cumulative impact that is not addressed by existing environmental reviews.

10. I have witnessed the disturbance of endangered, threatened and other protected species including woodstorks, bald eagles, snail kites and other protected wading and migratory birds, by construction operations along the canal systems. Increased turbidity above levels regulated by DEP occurred in these areas, as was confirmed by the DEP compliance report in Attachment G, incorporated into my affidavit.

11. I am also an individual plaintiff in a State Administrative proceedings initiated by PBCEC regarding the protection of gopher tortoises. Our objections have been delayed by the failure of the Florida Fish and Wildlife Conservation Commission (FFWCC), to provide needed documentation to assess health and safety of displaced tortoises and their neighboring species, such as the Eastern indigo snake. See Attachment G, incorporated into my affidavit. The Florida DEP relies on the FFWCC to evaluate impacts of proposed project expansion on wildlife and to provide comments to defendant DEP about those impacts.

12. A group of PBCEC volunteers, including myself, have initiated and participated in a volunteer monitoring effort, realizing that official agencies have limited capacity and appear to have limited interest, in ensuring the protection of natural resources and public access.

13. In the process of engaging in monitoring and participating in litigation, I have found myself the victim of intimidation by the Gulfstream company, resulting in a warrant, in which felony trespassing charges were filed

against me and later dropped. An arrest was made during a press conference announcing our litigation at the Federal Courthouse in West Palm Beach. The charge against me was dropped by Martin County State Attorney on August 13, 2008. It is my opinion, this was an attempt to silence our monitoring and observations of this segmented project's threats and impacts.

14. An effort of monitoring has been to ensure that Environmental Inspectors were present, as required by the Joint Application for Environmental Resource Permit and Federal Dredge and Fill Permit. According to Gulfstream's Upland Erosion Control, Revegetation, and Maintenance Plan, II. A. 1. "At least one Environmental Inspector is required for each construction segment during construction and restoration." Upon observation and request for communication with this inspector, we found there was no Environmental Inspector available to speak with us. See my previously referenced Attachment E.

C. PHOTOGRAPHS OF THE VICINITY OF THE CONSTRUCTED AND PROPOSED SEGMENTS OF THE PROJECT EXPANSION

15. Attachment I, included in my affidavit, is a composite of photographs taken by me or in my presence in the vicinity of the constructed and proposed segments of the project expansion this year. Attachment I-1, taken in May 2008, shows pipeline construction crossing the intended wildlife corridor. This construction of the pipeline is limiting public access and disturbing an area intended to provide habitat for wildlife. This corridor is adjacent to the Loxahatchee Basin project of Comprehensive Everglades Restoration Plan (CERP). Construction of FPL's WCEC Power plant is in clear view of this environmental corridor-in-progress.

16. The photograph in Attachment I-2, taken by me in April 2008, shows a sign posted at the Gulfstream pipeline segment construction site acknowledging threat of project operation and maintenance to the federally endangered Eastern Indigo snakes in the vicinity of the project expansion.

17. The photograph in Attachment I-3, taken by me in May 2008, shows Gulfstream sign indicating the construction's threat to gopher tortoises. Gopher tortoises are designated as a Species of Special Concern by Florida. Gopher tortoise habitat also is habitat to the federally endangered Eastern indigo snake, which rely on burrows for refuge from summer heat. As of this filing, the reports from relocation of 18 tortoises or unintended takes from 102 tortoise burrows along the L-65 and construction access roads have not yet been made available for public review.

18. The photograph in Attachment I-4, taken by me in May 2008, shows Juvenile Bald Eagle perched on a power pole located between the proposed site of WCEC project expansion and Gulfstream construction operations, above the L-8 canal, where turbidity has increased, in violation of defendant DEP's regulations. This species is protected by the Bald and Golden Eagle Protection Act (BGEPA).

19. The photograph in Attachment I-5, taken by me in May 2008, shows people fishing in the L-8 canal for enjoyment and/or subsistence. Turbidity levels were observed beyond legal levels in construction areas at this location too. This water body is regarded as a primary component of the Loxahatchee River watershed and is a conveyance for the Loxahatchee Basin CERP reservoir project.

20. The photograph in Attachment I-6, taken by me in April 2008, shows Gulfstream construction equipment piling up cleared native forest land on the Couse Midden archaeological site, where Horizontal Directional Drilling (HDD) was used, along the National Scenic Florida Trail. That trail was closed to the public by the Gulfstream pipeline segment construction operations.

21. The photograph in Attachment I-7, taken by me in June 2008, shows a sign indicating a threatened water body in the area of impact by construction and operations between Lake Okeechobee, the Dupuis Wildlife and Environmental Area and the St. Lucie Canal.

22. The photograph in Attachment I-8, taken by me in July 2008, shows construction operation along L-8 canal, disruptive to local wildlife. That construction was to lay a pipe along Corbett-Loxahatchee Corridor, with construction cranes visible in background on Palm Beach Aggregates site.

23. The photograph in Attachment I-9, taken by me in July 2008, shows an embankment of L-8 canal altered and impacted by the Gulfstream pipeline expansion crossing, causing potential for increases in turbidity.

D. ADDITIONAL DOCUMENTS RELATED TO THE CONSTRUCTED AND PROPOSED SEGMENTS OF THE PROJECT EXPANSION

24. A copy of my Public Comment to Environmental Assessment review process of Federally Energy Regulatory Commission (FERC), dated May 12, 2008, is included in my affidavit as Attachment J. My comments describe various failures and oversights in the Gulfstream pipeline segment construction operation.

25. Attachment K, included in my affidavit, is a Gulfstream construction document dated May 14, 2008. It acknowledges the existence of gopher

tortoises in the area of impact identified by my independent monitoring. See page 7.

26. Attachment L, included in my affidavit, is a Gulfstream construction document dated April 30, 2008. This document addresses immediate impacts. See the section entitled “Problems Encountered and Each Instance of Non-Compliance Observed by Environmental Inspector; Corrective Actions Implemented and Their Effectiveness; Cost Associated with Corrective Actions.” See also pages 5-10.

27. Attachment M is a Gulfstream document dated August 11, 2008. This document acknowledges violations of turbidity levels set by the DEP defendant.

28. Attachment N is the “Commencement of Service for the Gulfstream Phase III Project” issued August 21, 2008.

29. Attachment O is a page from the FPL web site showing the Martin Power Plant expansion. I downloaded that document from the following FPL website: <http://www.fpl.com/environment/plant/martin.shtml> Direct, indirect and cumulative impacts from this FPL expansion segment were not acknowledged in assessments of the most recent Gulfstream and WCEC proposed expansion segments. The size and nature of this power plant project segment are comparable to the WCEC expansion segment.

30. Attachment P is from the following web page that illustrates the 100 Largest Power Plants in the World: <http://www.industcards.com/top-100-pt-3.htm>. It shows the FPL Barley Barber facility as #69. The Barley Barber expansion segment of this project is the largest fossil fuel combustion power plant in the

United States, yet it is unrecognized by permitting agencies, including those listed as defendants in this case.

31. Attachment Q is a copy of the article dated Friday, August 1, 2008, titled "Fuel pressure line ruptures at FPL power plant facility" downloaded from the following web page: <http://www.tcpalm.com/news/2008/aug/01/fuel-pressure-line-ruptures-fpl-power-plant-facili/>. That article describes an accident at the Barley Barber power plant project segment, stating "*A fuel pressure line ruptured at a Florida Power and Light Co. power plant facility late Wednesday, spilling between 5,500 and 6,000 gallons of petroleum and causing a small fire to start, Martin County Fire Rescue officials said Thursday. The incident in the 25900 block of Southwest Warfield Boulevard happened about 11:20 p.m.*"

32. Attachment R is a copy of an electronic communication I had with Joseph May of defendant DEP's UIC office. Although the injection well infrastructure for the WCEC expansion segment of the project has been constructed and test injections conducted, the electronic communication in Attachment R confirms that the operation permit for those injection wells has not been submitted to DEP defendant for review. This provides additional evidence of the project's segmentation.

33. I intend to testify in greater detail, as an eye-witness to impacts related to this segmented project, during the scheduled court proceedings. It is my opinion, however, that if actions by defendants, including construction and vehicular traffic, altered water conditions, aquifer injections, gas transport and combustion and other activities related to this segmented project continue to occur in the environmentally sensitive vicinities of this segmented project,

environmental harm will occur and will not be able to be repaired. For all these reasons, and others that have not been discovered, I am requesting and immediate injunction to prevent additional direct, indirect and cumulative impacts from the constructed and proposed expansion of this segmented project.