

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA WILDLIFE FEDERATION, INC.;
et al.,

Plaintiffs,

vs.

CASE NO. 4:08-cv-00324-RH-WCS

LISA P. JACKSON, Administrator of the
United States Environmental Protection
Agency; and the UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY,

Defendants.

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**EPA'S MOTION FOR EXTENSION
OF CONSENT DECREE DEADLINES**

Defendants Lisa P. Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency, and the United States Environmental Protection Agency (collectively "EPA" or "the Agency") hereby move for a 120-day extension of the current deadlines for: (1) the proposed and final rulemaking with respect to numeric nutrient criteria for flowing waters outside of the South Florida region and downstream protection values for unimpaired lakes ("the Phase I Remand rulemaking"), which was remanded to the Agency by the Court in its Order of February 18, 2012 (ECF No. 351); and (2) the

proposed and final rulemaking with respect to numeric nutrient criteria for coastal and estuarine waters and flowing waters in the South Florida region (“the Phase II rulemaking”). The purpose of the requested extension is to allow EPA to continue discussions with the State of Florida’s Department of Environmental Protection (“FDEP”) concerning FDEP’s tentative plans to adopt new or revised water quality standards relevant to the control of nutrients for additional waters not included within FDEP’s recently promulgated regulations and to reflect those discussions in EPA’s proposals. EPA will provide status reports to the Court every 30 days if this motion is granted.

Counsel for EPA have consulted with counsel for Plaintiffs to the Consent Decree, who have represented that they oppose this motion.

EPA states the following in support of this motion:

1. The Consent Decree entered in this matter set a schedule for EPA to take certain actions regarding the development of numeric nutrient criteria for Florida waters unless the State of Florida adopts such criteria and EPA approves the State-adopted criteria before the applicable deadline. ECF No. 153 at ¶¶ 4-11.
2. Consistent with the Consent Decree, on November 14, 2010, the Administrator signed for publication a final rule setting numeric nutrient criteria for streams (other than in the South Florida region), lakes, and springs in Florida

(“the Phase I rule”).

3. The Phase I rule was the subject of a number of complaints filed under the Administrative Procedure Act and subsequently consolidated by this Court for case management purposes. ECF No. 216 at 3.

4. On February 18, 2012, this Court issued an Order on the merits of motions for summary judgment in the consolidated challenges to the Phase I rule. ECF No. 351. While upholding most of the Phase I rule, the Court concluded that the stream criteria and default downstream protection values (“DPVs”) for unimpaired lakes promulgated by EPA were invalid. The Court directed the Administrator, by May 21, 2012, to (1) sign for publication proposed criteria or final criteria for Florida streams outside the South Florida region, and (2) sign for publication proposed or final DPVs for unimpaired lakes (unless by that date the Administrator has filed a notice that she has decided not to propose or adopt such criteria).

5. The Court has since extended the deadlines for further EPA action under the Consent Decree. Pursuant to the Court’s Order of July 13, 2012, the Administrator is to sign for publication the proposed Phase I Remand and Phase II rulemakings by November 30, 2012, and sign for publication the final Phase I Remand rulemaking by August 31, 2013 and the final Phase II rulemaking by

September 30, 2013. ECF No. 404.

6. On June 13, 2012, FDEP submitted to EPA for review and approval under 33 U.S.C. § 1313(c) new or revised state water quality standards for nutrients that cover certain Florida waters. EPA is nearing completion of its review of the submitted standards and expects to approve the standards in the near future. Declaration of James D. Giattina at ¶¶ 7-9 (Attachment 1).

7. The State rules submitted by FDEP adopt nutrient standards for lakes, some flowing waters, some estuaries, and some coastal waters. They do not, however, apply to all of the waters that EPA determined require numeric nutrient criteria in its January 16, 2009 Determination and which are covered by the Consent Decree.

8. In light of EPA's expectation to approve the State's standards in the near future, EPA has commenced discussions with FDEP and has learned of FDEP's tentative plan to adopt new or revised water quality standards relevant to the control of nutrients for Florida waters not covered by the submitted standards other than the remaining estuaries and some South Florida flowing waters. Giattina Decl. at ¶ 10.

9. EPA requests a 120-day extension, until March 29, 2013, of the current deadlines for the Phase I Remand and Phase II rulemaking proposals, and a

corresponding extension until December 28, 2013 and January 28, 2014 for signature of the final Phase I Remand and Phase II rules. The purpose of this extension is to allow EPA to continue its discussions with FDEP concerning FDEP's tentative plan to adopt new or revised water quality standards relevant to the control of nutrients for waters not covered by FDEP's rule other than the remaining estuaries and some South Florida flowing waters. EPA could then reflect this new information in its proposed rulemakings for Phase I Remand and Phase II, and take comment on if and how FDEP's plans would factor into EPA's final action on those rules. Giattina Decl. at ¶¶ 12, 13.

10. EPA recognizes that the Court has previously stated that the Agency should expect no further extensions of the Consent Decree deadlines. ECF No. 395 at 2. However, EPA believes that there would be significant benefit in allowing EPA and FDEP additional time to discuss FDEP's tentative plans before signing the rulemaking proposals. EPA believes that the proposed extension would be in the public interest by facilitating coordination between EPA and FDEP's efforts to address these waters.

11. If the extension is granted, EPA will provide status reports to the Court every 30 days.

12. Although EPA believes that good cause exists to grant the requested

extension, EPA is prepared to sign the proposed Phase I Remand and Phase II rules by November 30 if the extension is not granted by that date. Giattina Decl. ¶ 15.

Respectfully submitted,

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Dated: November 21, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2012, the foregoing was filed with the United States District Court for the Northern District of Florida's electronic filing system, to which all registered attorneys of record are to be provided notice of this filing.

/s/ Martha C. Mann
MARTHA C. MANN
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Environment and Natural Resources
Division