



Public Employees for Environmental Responsibility

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December 9, 2016

Via Email--foia-saj@usace.army.mil

CESAJ-OC
P.O. Box 4970
Jacksonville, FL 32232-0019

RE: FOIA REQUEST-- Cudjoe Regional Wastewater System/Facility

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests that your agency provide us with a copy of any and all documents concerning federal reviews in which your agency ("THE AGENCY") was involved in relation to the construction and operation of a wastewater treatment facility and associated collection and transmission system commonly referred to as the Cudjoe Regional Wastewater System/Facility ("Facility") in Monroe County, Florida. This Facility is to be operated under the management of the Florida Keys Aqueduct Authority ("FKAA"). Specifically, we request the following:

1. A copy of any and all environmental impact statements ("EIS") issued by THE AGENCY in regards to the construction and operation of the Facility insofar as said construction and/or operation will comply with requirements under NEPA, the CLEAN WATER ACT, the SAFE DRINKING WATER ACT and/or impact endangered and/or threatened species in the area.
2. A copy of any and all environmental assessments ("EA") issued by THE AGENCY in regards to the construction and operation of the Facility insofar as said construction and/or operation will comply with requirements under NEPA, the CLEAN WATER ACT, the

SAFE DRINKING WATER ACT and/or impact endangered and/or threatened species in the area.

3. A copy of any and all federal findings of no significant impact (“FFONSI”) issued by THE AGENCY in regards to the construction and operation of the Facility insofar as said construction and/or operation will comply with requirements under NEPA, the CLEAN WATER ACT, the SAFE DRINKING WATER ACT and/or impact endangered and/or threatened species in the area.
4. A copy of any and all programmatic environmental impact statements (“PEIS”) issued by THE AGENCY in regards to the construction and operation of the Facility insofar as said construction and/or operation will comply with requirements under NEPA, the CLEAN WATER ACT, the SAFE DRINKING WATER ACT and/or impact endangered and/or threatened species in the area.
5. A copy of any and all documents concerning the provision of federal funds to the FKAA and/or Monroe County under the Clean Water State Revolving Fund (CWSRF) Program in order to facilitate the construction and/or operation of the Facility.
6. A copy of any and all correspondence, including emails, between THE AGENCY and any and all of the following entities in regards to the construction and operation of the Facility:
 - a. The U.S. Environmental Protection Agency
 - b. The U.S. Fish & Wildlife Service and all other Bureaus of the U.S. Department of the Interior
 - c. The State of Florida, Department of Environmental Protection
 - d. The State of Florida, South Florida Water Management District
 - e. The State of Florida, Fish and Wildlife Conservation Commission
 - f. Monroe County, Florida
 - g. The FKAA
7. A copy of any and all correspondence, including emails, between THE AGENCY and any and all of members of the public in regards to the construction and operation of the Facility.

This request includes all documents that have ever been within your custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of

Government officials at the expense of those they are supposed to serve... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that THE AGENCY needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of THE AGENCY and its employees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The requested material consists of documents concerning the federal role in the planning, construction and eventual operation of the Facility and the extent to which these activities will impact critical governmental functions and programs such as compliance with NEPA and the CLEAN WATER ACT, the SAFE DRINKING WATER ACT and the oversight of the Endangered Species Act. As such, the requested records are the most meaningful documents that could be requested on this topic.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested information concerns the federal role in the planning, construction and eventual operation of the Facility and the extent to which these activities will impact critical governmental functions and programs such as compliance with NEPA and the CLEAN WATER ACT, the SAFE DRINKING WATER ACT and the oversight of the Endangered Species Act. Thus, this request concerns the impacts that the Facility will have upon the nation’s wetlands and waterways as well as upon endangered and threatened species in this environmentally sensitive area of the nation.

The general public has always had a keen interest in any factor bearing upon the nation's wetlands and waterways as well as endangered and threatened species. Moreover, the geographical area in question is one of the most environmentally sensitive areas in the country. It is an area that annually attracts millions of people, both residents and tourists alike, who are drawn to multiple environmental activities as well as by the animals, flora and fauna that call this region home. Environmental destruction of this area would thus have a significant impact upon the public and the public has a right to know the extent to which their government oversees projects that would harm the area and the species that call it home.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on PEER's web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in PEER's newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

As THE AGENCY well knows from past direct experience, PEER has a long track record of attracting media and public attention to the internal records of federal agencies. For example, In August 2016 we notified the public about numerous problems associated with the management of the National Park Service <http://www.peer.org/news/news-releases/national-park-service-left-with-centennial-hangover.html> and Florida PEER has reported on the EPA's failure to hold state officials accountable for blatant conflicts of interest that violated the Clean Water Act, e.g. <http://www.peer.org/news/news-releases/epa-drops-conflict-of-interest-probe-of-top-florida-officials.html>.

Moreover, PEER believes that THE AGENCY also maintains that this information is of interest to the general public. THE AGENCY routinely updates the public about its efforts to protect endangered species on its website <https://www.fws.gov/endangered/index.html>.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

While it is difficult to warrant in advance to seeing it just how significant the information will be to the general public, the nature of the information should shed some direct light on the extent to which THE AGENCY complied with NEPA, the CLEAN WATER ACT and the SAFE DRINKING WATER ACT requirements and exercised its authority to protect the endangered species that will be affected by operations conducted by the Facility.

If, as we strongly suspect, the records show that the Facility obtained authorization for its operation

U.S. Army Corps of Engineers
Re: FOIA Request—Cudjoe Regional Wastewater System/Facility
December 9, 2016

by circumventing or otherwise limiting THE AGENCY's oversight, we will apprise the public of this fact so that the public can exercise greater vigilance in this and future projects in which THE AGENCY is involved.

In addition, we believe these records will provide more detail and cast direct sunlight on the extent to which THE AGENCY has communicated and worked with sister agencies such as the EPA and the U.S. Department of the Interior on complex projects such as the one at the heart of this request.

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving THE AGENCY's final response within 20 working days.

Cordially,

/s/

Jerry Phillips
Director, *Florida* PEER