

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Florida Wildlife Federation, Inc.,

Petitioner,

DEPT. OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL

v.

Case No.: _____

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
and BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND,

Respondents.
_____ /

PETITION FOR ADMINISTRATIVE HEARING

Pursuant to section 120.57, Florida Statutes, Florida Wildlife Federation, Inc.

(“Federation”) respectfully petitions the Florida Department of Environmental Protection (“DEP”) and the Trustees of the Internal Improvement Trust Fund (“Trustees”) for a formal administrative hearing challenging the Trustees’ January 23, 2013 decision to authorize 30-year lease extensions of agricultural leases on state-owned lands that are located in the Everglades Agricultural Area.

I. INTRODUCTION

1. This petition concerns the Trustees’ 30-year extension of seven agricultural leases located in the Everglades Agricultural Area. Two leases, 1935 and 3422, are held by A. Duda & Sons (“Duda”). Five other leases, 1447, 1971, 3420, 3433, 3543, are held by companies that are subsidiaries of Florida Crystals, Inc. (New Hope Sugar Company, Okeelanta Corporation, Closter Farms, Inc., New Hope South, Inc., and Vandegrift-Williams Farms, Inc.) (“Florida Crystals”). Together these leases comprise 13,952 acres.

II. IDENTIFICATION OF THE PARTIES

2. Florida Wildlife Federation (“the Federation”) is a Florida not-for-profit corporation with its principal place of business at 2545 Blairstone Pines Drive, Tallahassee, Florida, 32314. It is a membership-based organization with approximately 14,000 members throughout Florida. The organization’s mission includes the preservation, management, and improvement of Florida’s water resources and its fish and wildlife habitat. The Federation has a long history of representing its members in administrative, state, and federal litigation brought to preserve and protect Florida’s lakes, rivers, and conservation lands including Lake Okeechobee, the Everglades, the Holey Land and Rotenberger Tracts, and the Water Conservation Areas.

III. NOTICE

3. Petitioners received notice of the Trustees’ action on January 23, 2013, the date of the Trustees’ vote, as the President of Federation attended the hearing and provided comments. This petition is filed within fourteen (14) days of that notice.

IV. PETITIONERS’ SUBSTANTIAL INTEREST

4. A substantial number of the members of the Federation use and enjoy Lake Okeechobee, the Holey Land and Rotenberger Tracts, the Loxahatchee Wildlife Refuge, and the Water Conservation Areas which lie downstream of the pollution stream emanating from the agricultural activities that take place upon these EAA agricultural leases. The members’ use and enjoyment of these conservation and recreation areas includes, but is not limited to, wading, walking, swimming, canoeing, sailing, wildlife observation, photography, personal and commercial research, sport and commercial fishing, and collecting aquatic life for personal and commercial consumption.

5. Excessive levels of phosphorus from the EAA have resulted in long-term adverse impacts to these downstream ecosystems, including changes in naturally occurring fauna and flora, loss of habitat, and loss of wildlife. These pollution induced changes to the Everglades ecosystem has adversely affected the Federation's members' use and enjoyment of the downstream conservation lands recreational uses such as birding, fishing, wildlife observation, and general aesthetic enjoyment. For example, introduction of polluted water into the Holey Land and Rotenberger Tracts resulted in a rapid and extensive expansion of a cattail monoculture at the expense of the original, native sawgrass marsh.

6. Furthermore, continued farming necessarily results in loss of the naturally occurring muck soil which is necessary to support the native Everglades habitat. Continued farming on these lands for another 30 years adversely impacts the ability of these tracts of state-owned lands to support the native and unique flora and fauna which provide much of source of the members enjoyment of the Everglades.

V. DISPUTED ISSUES OF MATERIAL FACT

7. Whether a thirty-year extension of 14,000 acres of EAA agricultural leases is in the public interest.

8. Whether competitive bidding was required.

9. Whether these are standard agricultural leases.

10. Whether the leases constitute leases in excess of 50 years.

11. Whether the leases as authorized provide the greatest combination of benefits to the public.

12. Whether the lessees have ceased to be "impacted" as that term is defined in Chapter 373.4595(5), Florida Statutes.

13. Whether the leases contain the legally required termination provisions.
14. Whether the lease extensions are actually “necessary” for the projects proposed.
15. Whether any analysis of the “necessity” of obtaining the lease extensions was actually conducted by the Trustees.
16. Whether any analysis of whether additional best management practices would lower pollution levels was conducted.
17. Whether the lessees should have been allowed to set the terms of the leases.
18. Whether the grant of Leases 1935 and 3433 will interfere with restoration projects necessary to restore the state-owned Holey Land and Rotenberger Tract.

VI. ULTIMATE FACTS DEMONSTRATING THAT THIS ACTION SHOULD NOT PROCEED AS PROPOSED.

19. The leases are standard agricultural leases which are to be issued for a term of six years.
20. The leases at issue comprise all the state owned lands that are being leased for agricultural purposes in the EAA
21. The leases which are being extended were granted pursuant to the provisions of Chapter 373.4592(5) which allows only a one time 20-year extension of existing leases.
22. The lessees are no longer “impacted” as defined by that statute.
23. The leases produce some of the highest pollution levels in the EAA.
24. The District has a technically and economically feasible project for using Lake Hicpochee as a water dispersal project that does not require any additional lands from Duda.
25. The leases fail to contain termination provisions which would allow restoration projects to go forward in a timely manner.

VII. APPLICABLE STATUTES AND RULES OF LAW

26. Chapter 253.002(1), Florida Statutes provides that the Trustees have the authority to make decisions regarding leasing of state lands and Chapter 253.03(7), Florida Statutes, requires the Trustees to manage state lands in a way that “ensure[s] maximum benefit and use.” The Trustees failed to comply with their statutory obligation in connection with their approval of these leases as facts show the District was acting in its own interest and not that of the Trustees, that the District failed to conduct the analysis required by Trustees’ rules, and that, as a result, the lessee was allowed to dictate the terms of the lease to the Trustees – an impermissible result.

27. Chapter 373.4592(5), Florida Statutes, defines “impacted” farmers in the EAA and allows those farmers a one-time lease extension of 20 years. The leases which are being extended were granted pursuant to this statute. The leases being extended do not provide for extensions or renewals.

28. Chapter 373.4592(5), Florida Statutes, authorizes use of surplus lands to offset designated impacted acres. Leases 1971 and 3433 allow consideration of use of other “government” lands during the termination process. That is not allowed by the statute’s termination provisions.

29. Chapter 373.4592(5), Florida Statute has specific termination provisions which are not included in the lease extensions.

30. Chapter 18-2.018(1), F.A.C. contains the public interest evaluation which must be made to determine whether an application for an agricultural lease on state lands is not contrary to the public interest. This public interest evaluation failed to take into consideration all the factors.

31. Chapter 18-2.018(2), F.A.C. contains the general policies that guide the Trustees in their decision making.

- a. Section (b) states that state lands will be administered to provide the greatest combination of benefits to the general public. There is no evidence this evaluation was made by the Trustees.
- b. Section (c) states that uses of uplands must comply with specific statutory or legislative mandates. The legislature mandated that states agricultural leases in the EAA would be available only for certain impacted farmers and only for a specific amount of time. The lessees no longer qualify as impacted farmers and the lease extension vastly exceed the length of time the legislature allowed for continued farming on state owned lands.
- c. Section (i) requires competitive bidding unless the Trustees examined all the impacts both direct and indirect of the proposed use. The Trustees failed to examine all the impacts and therefore failed to conduct the public interest analysis required by this section.

32. Chapter 18-2.018(3), F.A.C. states that the standard lease term for agricultural leases is 6 years and, unless determined to be in the public interest, leases are not to be greater than 50 years. The Trustees made no determination as to whether these leases were in fact for longer than 50 years and therefore made no analysis of whether a lease term of greater than 50 years was warranted.

VIII. RELIEF SOUGHT

33. The Federation respectfully requests that DEP and the Trustees refer this matter to the Division of Administrative Hearings for a formal administrative hearing pursuant to section 120.57, Florida Statutes. The Federation seeks a Recommended Order setting aside the

Trustees' approval on January 23, 2013 of the 30-year extension of leases 1935, 3422, 1447, 1971, 3420, 3433, and 3543.

Respectfully submitted this 6th day of February, 2013.



Monica K. Reimer
Fla. Bar No. 0090069
mreimer@earthjustice.org
David G. Guest
Fla. Bar. No. 2672228
dguest@earthjustice.org
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32301
(850) 681-0031
(850) 681-0020 (facsimile)

Counsel for the Federation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing petition was hand delivered on February 6, 2013, to the Clerk of the Florida Department of Environmental Protection in the Office of General Counsel for the Department, 3900 Commonwealth Blvd., Mail Station 35, Tallahassee, Florida 32399-3000. In addition, a copy of the petition was served on the individual Trustees at their offices in the Capitol that same date:



Attorney