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Honorable Bob Perciasepe
Acting Administrator
U.S. EPA
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Honorable Gwen Keyes Fleming
Regional Administrator
U.S. EPA Region IV
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

Re: Clean Water Act Notice of Intent to Sue for Failure to Perform
Non-Discretionary Section 303(d) Antidegradation Assessment Duties

Dear Acting Administrator Perciasepe and Region IV Administrator Fleming:

The Florida Wildlife Federation (FWF) hereby gives notice of intent to file suit under the both Section 1365 citizen suit (33 U.S.C. §1365) provision of the Clean Water Act (CWA) and the federal Administrative Procedures Act (APA) (5 U.S.C. Section 701-706) against the U.S. Environmental Protection Agency (EPA), Acting Administrator Bob Perciasepe in his official capacity as EPA Administrator, and against Gwen Keyes Fleming in her official capacity as EPA Regional Administrator for Region IV, for their failure to perform EPA's following non-discretionary duty under Section 303(d) of the CWA and 40 C.F.R. §130.7 .

1. EPA has non-discretionary duty under Section 303(d) and 40 C.F.R. §130.7 to require Florida to assemble and evaluate the available water quality-related information, including the available water quality-related information related to antidegradation requirements of Florida's water quality standards. Florida has available water quality-related information to establish the baselines for Florida's antidegradation water quality standards, namely, the existing assimilative capacity of Florida's Tier 2 waters and the Tier 2.5 Outstanding Florida Water (OFW) existing ambient water quality. However, Florida has admitted it has not assembled and evaluated this existing and readily available water quality-related data and information to establish either the baseline Tier 2 assimilative capacity of Florida waterbodies, or the Tier 2.5 OFW existing ambient water standard for any of Florida's 309 OFWs. EPA has no discretion to allow Florida not to assemble and evaluate the available water quality-related information to establish the baseline existing assimilative capacity of Tier 2 waters and the failure to establish the Tier 2.5 Outstanding Florida Water (OFW) existing ambient water quality.

2. EPA has the non-discretionary duty under Section 303(d) and 40 C.F.R. §130.7 to

disapprove the lists of impaired waters submitted by State of Florida to EPA for the past six years due to Florida's admitted failure to evaluate all existing and readily available water quality-related data and information to determine whether current water quality in Florida's waters complies with Florida's antidegradation water quality standards. Florida's admission that it has established neither the baseline Tier 2 assimilative capacity for Florida waters nor the Tier 2.5 OFW existing ambient water standard for any of the 309 OFWs in Florida is an admission Florida has not implemented Florida's antidegradation water quality standards. It is legally and factually impossible for Florida and EPA to implement the antidegradation water quality standards of Florida's water quality standards without establishment of the baseline Tier 2 assimilative capacity for Florida waters nor the Tier 2.5 OFW existing ambient water standard for any of the 309 OFWs in Florida EPA has the non-discretionary duty to disapprove of all of Florida's Section 303(d) lists for the past six years given Florida's admission of its failure to establish the baseline Tier 2 assimilative capacity for Florida waters and the Tier 2.5 OFW existing ambient water standard for any of the 309 OFWs in Florida . EPA has the non-discretionary duty to disapprove of the lists of impaired waters submitted by State of Florida to EPA for the past six years.

3. EPA has the non-discretionary duty to evaluate all existing and readily available antidegradation water quality-related data and information for Florida's surface waters. Sufficient existing and readily available antidegradation water quality-related data and information for Florida's surface waters to establish for Florida the baseline Tier 2 assimilative capacity for Florida waters and the Tier 2.5 OFW existing ambient water standard for all of the 309 OFWs in Florida is available to EPA, and EPA has the non-discretionary duty to evaluate this existing and readily available antidegradation water quality-related data and information for Florida's surface waters to establish for Florida the baseline Tier 2 assimilative capacity for Florida waters and the Tier 2.5 OFW existing ambient water standard for all of the 309 OFWs in Florida. EPA cannot avoid this non-discretionary duty by approving impaired water lists submitted by Florida during the past six years. Such an action would also be the illegal revision of Florida's water quality standards.

The FWF is a not-for-profit Florida corporation with over 12,000 members who reside in Florida and use and enjoy Florida surface waters which are subject to Florida's antidegradation water quality standards. The FWF has provided comments to EPA on these issues by means of email and telephone conference calls on numerous occasions. The FWF respectfully requests EPA promptly correct these violations of the Clean Water Act.

Sincerely,

/S/ Thomas W. Reese
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cc: Honorable Eric. H. Holder, Jr.
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