IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

FLORIDA WILDLIFE FEDERATION, INC., et al.,

Plaintiffs,

v. CASE NO. 4:08cv324-RH/WCS

LISA P. JACKSON, etc., et al.,

Defendants.

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ORDER GRANTING LEAVE TO INTERVENE

The plaintiffs are environmental groups. They filed this case seeking an injunction compelling the Environmental Protection Agency and its Administrator (collectively "the EPA") to perform an alleged nondiscretionary duty to promulgate rules imposing numeric nutrient standards for waters in Florida. The plaintiffs and the EPA have agreed to settle the case through entry of a consent decree under which the EPA would—by specified deadlines—publish and eventually promulgate rules imposing numeric nutrient standards, unless the State of Florida acted before the deadlines. The numeric nutrient standards are not specified in the settlement agreement or proposed decree; they would be set,

instead, through the administrative process that ordinarily attends the promulgation of such standards.

By order entered February 2, 2009—long prior to entry into the settlement agreement—the South Florida Water Management District and several associations representing agricultural and industrial interests were allowed to intervene. The order determined that they were not entitled to intervene as of right under Federal Rule of Civil Procedure 24(a), but that leave should be granted for permissive intervention under Rule 24(b). The intervenors oppose entry of the consent decree.

Two more associations and the Florida Department of Agriculture and Consumer Services now also have moved to intervene. They, too, oppose entry of the consent decree. Indeed, it apparently was only the proposed consent decree that led them to pursue intervention; they were aware of the case long ago but chose not to move to intervene until settlement appeared imminent.

The new proposed intervenors, like the earlier intervenors, are not entitled to intervene as of right under Rule 24(a). But permissive intervention should be allowed, as it was for the original intervenors, subject to the limitation that the case will not be delayed in any manner as a result of the intervention.

That the motions to intervene were filed belatedly does not change the conclusion. The only substantive issue now pending is whether the consent decree should be approved. By order entered September 9, 2009, a schedule was

established for addressing this issue. In accordance with that schedule, the original parties, the first set of intervenors, and the new proposed intervenors have filed their memoranda and evidence in support of and in opposition to the motion for entry of the consent decree. The motion will be heard on November 16, 2009. If the new proposed intervenors are granted leave to intervene, the proceeding will go forward exactly as would have occurred if they had intervened at the outset. That they moved to intervene late in the proceedings will have made no difference. Under these circumstances, the intervention motions are sufficiently timely. *See, e.g.*, *United States v. Jefferson County*, 720 F.2d 1511, 1516 (11th Cir. 1983) (listing the four factors for determining whether an intervention motion is timely—including whether the existing parties will suffer prejudice if the motion is granted and whether the proposed intervenor will suffer prejudice if it is not).

For these reasons,

IT IS ORDERED:

The motions for leave to intervene filed by the Florida Water Environment Association Utility Council, Inc. (document 89), the Florida Minerals and Chemistry Council, Inc. (document 92), and the Florida Department of Agriculture

and Consumer Services (document 107) are GRANTED.

SO ORDERED on November 10, 2009.

s/Robert L. Hinkle
United States District Judge