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August 9, 2013

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Submitted via E-Mail to pubcomment-ees.enrd@usdoj.gov

Re: *United States v. Miami-Dade County*;
D.J. Ref. No. 90-5-1-1-4022/1

The National Association of Clean Water Agencies (NACWA) is pleased to provide these comments in support of the proposed consent decree in *United States, et al. v. Miami-Dade County* (S.D. Fla., Civ. No. 1:12-cv-24400-FAM). NACWA is a national advocacy organization working on behalf of the nation's publicly owned wastewater and stormwater utilities, with nearly 300 municipal member agencies nationwide including Miami-Dade County. NACWA's members are true environmental leaders, working on the front lines every day to protect the environment and public health, improve water quality, and serve their communities.

NACWA commends Miami-Dade County, the U.S. Department of Justice (DOJ), the U.S. Environmental Protection Agency (EPA), the State of Florida, and the State of Florida Department of Environmental Protection for negotiating a consent decree that establishes a framework to maximize public health and environmental benefits and achieve compliance with the Clean Water Act (CWA) while also being responsive to the needs of Miami-Dade County's citizens and ratepayers. The proposed agreement provides a rational and responsible path forward that will allow Miami-Dade County to make appropriate infrastructure investments while also ensuring the county's ratepayers receive meaningful water quality improvements in return. NACWA strongly encourages the District Court to approve the proposed consent decree as presented by the parties that negotiated it.

Municipal wet weather consent decrees are complex agreements that take significant time, diligence and expertise to draft and implement. They are also very costly, often resulting in billions of dollars of infrastructure investment. These agreements are painstakingly negotiated, over a period of months or years, by federal and state government officials with knowledge in sewer overflow reduction, along with skilled local municipal representatives with detailed understanding of their unique sewer system and overflow issues as well as their community's specific

financial capability and economic concerns. Given the significant environmental and economic stakes involved in consent decree negotiations, it is critical that the resulting document appropriately balance needed environmental and public health improvements without requiring unnecessary expenditures of limited local ratepayer dollars.

Highly technical issues are tackled by the various government entities involved in consent decree negotiations, including complex engineering projects necessary to address overflow issues and the financial capability assessments required to evaluate implementation and timing of required overflow controls and infrastructure investments. The federal, state, and local experts involved in decree negotiations are best placed to address these challenging issues in the context of consent decree requirements. Federal District Courts have routinely acknowledged and deferred to the expertise involved in the negotiation process when approving proposed decrees. Indeed, nearly 100 of NACWA's public utility members around the country are under some form of consent decree related to sewer overflows, the vast majority of which have been approved by courts without significant change from the proposed agreement as negotiated by federal, state, and local officials.

The proposed Miami-Dade County consent decree is completely consistent with other existing, similar municipal wet weather decrees from around the nation, both in terms of its content and the negotiation process used to draft it. The proposal presents a comprehensive plan for the county to make significant infrastructure investments to reduce sanitary sewer overflows (SSOs) and bring the county into full compliance with the CWA. It was negotiated through a very deliberate process including federal, state and local officials best positioned to address the unique environmental, engineering, and financial considerations involved. The decree also acknowledges and builds on the county's strong performance under its 1993 consent decree which included provisions relating to the successful and now widely used EPA tool of "capacity, management, operations and maintenance programs." The environmental, economic, and social benefits of the proposed decree will be evident to the county and its citizens for decades to come.

NACWA is aware that a number of local environmental stakeholder groups have intervened in the related judicial proceedings arguing that the proposed decree should be revised to deal more directly with climate change factors. While NACWA acknowledges that potential climate change impacts can be important considerations for utilities in long-range planning, NACWA also fully supports the decision of EPA, DOJ, state officials, and Miami-Dade County in this case that such considerations are not required to ensure CWA compliance and that the proposed decree is not the appropriate tool to address climate change. The parties that negotiated the decree are best positioned to make the complex decision about whether to include climate change considerations in the proposal, and the District Court should defer to this reasoned judgment.

Furthermore, Miami-Dade County has already taken significant steps to plan for the impacts of climate change, entering the Southeast Florida Regional Climate Change Compact with a number of surrounding counties in 2009 to partner in mitigating the causes and adapting to the consequences of climate change. The collaborative, comprehensive approach outlined in the Compact represents the most effective and appropriate way for the county to address future climate change concerns, including the potential for sea level rise and the resulting impacts on water and wastewater services. In fact, given the evolving scientific understanding of climate change and the need going forward to adapt quickly to changing circumstances, the county's plan to address climate issues through the Compact and other adaptive approaches is much more practical than doing so through the inflexible means of a federal wet weather consent decree and court order. No other federal consent decree has been altered by a District Court over the objections of the parties that negotiated it to include climate change considerations, and NACWA does not believe this decree should be the first.

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NACWA appreciates the opportunity to provide these comments on the proposed decree, and encourages its approval by the court as quickly as possible. If you have any questions about these comments or would like to discuss them further, please do not hesitate to contact me at ngardner-andrews@nacwa.org or 202-833-3692.

Sincerely,

A handwritten signature in black ink that reads "Nathan Gardner-Andrews". The signature is written in a cursive, flowing style.

Nathan Gardner-Andrews

General Counsel