

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS, *et al.*,

Federal Defendants,

and

FG LA LLC,

Defendant-Intervenor.

Civil Case No. 1:20-cv-103-RDM

STIPULATION, PROPOSED SCHEDULING ORDER, AND [PROPOSED] ORDER

On January 15, 2020, Plaintiffs Center for Biological Diversity, Rise St. James, Healthy Gulf, and Louisiana Bucket Brigade filed a Complaint alleging that Federal Defendant United States Army Corps of Engineers' (the "Corps") issuance of a permit to Defendant-Intervenor FG LA, LLC violated the National Environmental Policy Act, National Historic Preservation Act, Clean Water Act, and Rivers and Harbors Act. ECF No. 1. Plaintiffs filed a motion for preliminary injunction on July 14, 2020. ECF No. 28.

Pursuant to the Court's July 15, 2020 Minute Order, Plaintiffs, Federal Defendants, and Defendant-Intervenor (collectively "the Parties") have met and conferred to determine whether there is a mutually agreeable basis for FG LA LLC to adjust its construction schedule to allow an opportunity for this Court to review the merits of the Complaint on the basis of a motion for summary judgment and to avoid the necessity of adjudicating Plaintiff's motion for a preliminary

injunction. As a result of these discussions, the Plaintiffs and FG LA LLC hereby stipulate to the following terms and conditions:

1. Except as described below, FG LA LLC is deferring construction-related activities for the permitted facility until no earlier than February 1, 2021, with the expectation of this Court's decision on the merits of the Complaint by that date, in exchange for Plaintiffs agreeing to forego their motion for a preliminary injunction.

a. During the remainder of 2020, FG LA LLC plans to conduct only the project activities identified in ECF No. 33-1 (soil testing, utilities relocation, removal of Florida Gas pipeline, highway 3127 expansion, and test pile program), subject to the following conditions:

- i. With the exception of soil testing, FG LA LLC will not conduct any activities within jurisdictional wetlands, which are delineated in ECF No. 33-1 at p. 7.
- ii. FG LA LLC will not conduct activities (including access to and from activity sites) within the Acadia site or the Buena Vista burial site, and will not conduct activities that will impact the three anomaly sites on the Sunshine property that Plaintiffs have identified.
- iii. For the items described in Paragraphs 1.a.i, FG LA LLC will flag or otherwise mark the boundaries to the extent that FG LA LLC has not already done so. FG LA LLC also will place a second set of flagging or cautionary marking 20' from the marked boundaries, so that workers may be further alerted to the proximity of these items.
- iv. For those items described in Paragraph 1.a.ii, FG LA LLC will flag or otherwise mark the boundaries to the extent that FG LA LLC has not already

done so. Except for the Buena Vista site, which is already fenced, FG LA LLC also will place a second set of flagging or cautionary marking 50' from the marked boundaries, so that workers may be further alerted to the proximity of these items.

- b. FG LA LLC previously announced that it planned to build a construction/contractor dock in 2020. Consistent with the list of activities identified in ECF No. 33-1, FG LA LLC hereby confirms that it is deferring such work until no earlier than February 1, 2021.

2. FG LA LLC acknowledges that any activities conducted in furtherance of the project may be affected by rulings in the pending litigation, including the possibility that this Court (or an appellate court) may ultimately rule that the Corps violated federal law in issuing its permit to FG LA LLC. In the event that the challenged agency decision is remanded to Federal Defendants, the Parties acknowledge that although FG LA LLC retains its full authority and discretion to advocate for its preferred project, no otherwise feasible alternative will be foreclosed as a result of the activities authorized by this Stipulation.

3. FG LA LLC agrees to make monthly disclosures on the same day each month pertaining to the status of activities undertaken with photos representative of the work underway and completed.

4. Plaintiffs agree, in exchange for FG LA LLC's agreement set out in paragraphs 1-3 above, not to pursue preliminary injunctive relief (unless FG LA LLC undertakes construction activities not agreed to in this Stipulation) prior to February 1, 2021. In addition, Plaintiffs agree to expedite the merits briefing in this case to ensure a timely outcome for all Parties.

5. Plaintiffs and FG LA LLC's obligations under this agreement cease on February 1, 2021, or a merits determination by the Court, whichever is earliest. Should the court not issue its merits determination by February 1, 2021, or should any party appeal this Court's merits determination, the Parties agree that they will engage in good faith negotiations at that point to discern whether any further agreement is reachable to avoid a motion for injunctive relief to maintain the then-extant status quo during the course of further proceedings.

6. Separately from the Stipulation, and to facilitate the orderly resolution of this case, the Parties propose the following schedule for resolution of the merits and record motion:

- a. August 3, 2020—Federal Defendants and Defendant-Intervenor file responses to Plaintiffs' motion to admit extra-record evidence [45 pages per local rules].
- b. August 17, 2020—Plaintiffs file their reply on their motion to admit extra-record evidence [25 pages per local rules].
- c. 28 days from order on Plaintiffs' motion to admit extra-record evidence—Plaintiffs file their motion for summary judgment [45 pages per local rules].
- d. 35 days from Plaintiffs' motion for summary judgment—Federal Defendants and Defendant-Intervenor file their opposition and any cross-motion [45 pages per local rules].
- e. 21 days from Federal Defendants' and Defendant-Intervenor's oppositions to Plaintiffs' motion for summary judgment and cross-motions—Plaintiffs file their opposition and reply brief [25 pages per local rules].
- f. 14 days from Plaintiffs' opposition to cross-motions for summary judgment and reply brief—Federal Defendants and Defendant-Intervenor file their reply briefs [25 pages per local rules].

7. The Parties respectfully request that the Court waive its requirement for scheduling a pre-motion conference in this case unless it deems it helpful to resolving the anticipated motion and cross-motions for summary judgment.

8. The Parties all respectfully request oral argument should the Court deem it helpful to resolving the legal claims raised in this case.

9. The Parties reserve their respective rights to move to alter or amend the deadlines and page limits set forth in the schedule proposed in Paragraph 6.

Dated: July 23, 2020.

Respectfully submitted:

/s/

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Counsel for Federal Defendants

IT IS SO ORDERED,

Date: _____

UNITED STATES DISTRICT JUDGE