

MEMORANDUM

Agenda Item No. 11(A)(9)

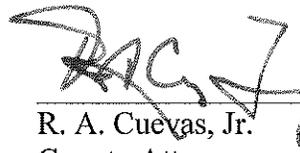
TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: March 18, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving Mayor's
recommendations relating to
proposed Consent Decree with
Federal and State Environmental
Enforcement agencies and
authorizing the Mayor and
County Attorney to modify
proposed Consent Decree and
advise the Court accordingly

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairwoman Rebeca Sosa.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Date: March 18, 2014

To: Honorable Chairwoman Rebeca Sosa
and Board, of County Commissioners

From: Carlos A. Gimenez
Mayor 
R. A. Cuevas, Jr.
County Attorney 

Subject: Water and Sewer Consent Decree Status

COUNTY'S HISTORIC AND CURRENT COMPLIANCE WITH CONSENT DECREES

Over the course of almost twenty (20) years, the County has never missed a submission or delivery deadline required by the two existing Clean Water Act Consent Decrees. This Administration has every intention of maintaining that perfect record of scheduling and project management.

To that end, consistent with the deadlines in the proposed Consent Decree, this Administration has already timely completed Phase I and II of the project to replace the 54-inch underwater force main from Miami Beach to Fisher Island and has begun work on Phase III of the project from Fisher Island to Virginia Key. Additionally, the Board of County Commissioners (Board) recently approved an ordinance (file number 132506) required by the proposed Consent Decree relating to volume sewer customers, and an additional ordinance relating to adequate treatment and transmission capacity—also required by the proposed Consent Decree—is scheduled for first reading on March 18, 2014.

COURT'S NOTICE ON PROPOSED CONSENT DECREE

As you may already be aware, on Friday, March 7, 2014, the Court entered a Notice on the proposed Consent Decree. A copy of the Notice is attached hereto. In the Notice, the Court suggested that by March 21, 2014, the parties provide additional submissions to the Court with regard to two issues: (1) possible appointment of a special master to oversee the repairs and ensure that funding for Consent Decree projects does not get transferred to non-environmental projects, and (2) possible increased stipulated penalties for failure to complete projects on schedule. These are suggestions from the Court that, according to the Court, would enhance the Court's confidence in the County's compliance with the Clean Water Act. Accordingly, in an effort to work with the Court's suggestions to move the Consent Decree forward, the Administration proposes the following recommendations:

1. The County will provide the Court with a report regarding the County's compliance with the requirements of the Consent Decree on a semi-annual basis. If, in the future, after reviewing the County's submissions, the Court believes that additional oversight is necessary to oversee the County's compliance with the Consent Decree, the County agrees to pay for any additional oversight required by the Court.
2. The County will agree to double the stipulated penalties throughout Consent Decree.

3. The proposed Consent Decree already requires the County to notify the federal and state enforcement agencies prior to any transfer or use of funds obtained by the County "from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System" with the exception of "funds internally used within the Miami-Dade Water and Sewer Department and funds transferred or used to administratively reimburse other departments or agencies within the County for services rendered to the Miami-Dade Water and Sewer Department for purposes related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System." In furtherance of this objective, the Administration recommends to the Board that the Board pass a resolution setting forth a County policy that neither the Mayor nor Board will transfer or use funds obtained by the County "from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System" with the exception of "funds internally used within the Miami-Dade Water and Sewer Department and funds transferred or used to administratively reimburse other departments or agencies within the County for services rendered to the Miami-Dade Water and Sewer Department for purposes related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System." To the extent that the Board or Mayor proposes to change this County policy at some point in the future, the County will notify the Court and the enforcement agencies of the proposed policy change.
4. The Mayor will recommend to the Board passage of an ordinance accelerating the procurement process specific to Consent Decree projects. The Board has approved similar accelerate ordinances in the past, including Miami-Dade County Code §2-8.1.6, Expedited Purchasing Program; Miami-Dade County Code § 2-285.1, North Terminal; Miami-Dade County Code §2-8.2.7, Economic Stimulus; and Miami-Dade County Code §2-8.2.11, WASD Accelerate Ordinance.

The first two recommendations would be included in the Consent Decree following approval by the state and federal enforcement agencies. The County Attorney's Office is already in contact with them to discuss the issues.

The Board will continue to be notified of any developments on this matter. Cooperation is absolutely essential and most appreciated as we continue to work towards our common goal of performing the Consent Decree projects in an expeditious and efficient manner to further protect the environment and the public's health, safety and welfare.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 12-24400-CIV-MORENO

UNITED STATES OF AMERICA, STATE OF
FLORIDA, and STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Plaintiffs,

vs.

MIAMI-DADE COUNTY, FLORIDA,

Defendant.

NOTICE ON PROPOSED CONSENT DECREE

THIS CAUSE came before the Court upon the Motion to Enter Consent Decree (D.E. No. 86), filed on November 26, 2013.

After careful review, the Court suggests that the parties' submit additional pleadings before it can approve the settlement and enter a Consent Decree. Possible additions to the settlement that would enhance the Court's confidence in compliance by Miami-Dade County with the Clean Water Act could be (1) the appointment of a Special Master to oversee that the repairs that have been promised continue and that the funding for them does not get deviated to other non-environmental projects that the County may deem more important and (2) an increase in the penalties the County would be required to pay for failing to make the repairs.

The Court recognizes that the County, its leader Mayor Gimenez, and both executive branches of the State of Florida and the United States have the same goal by this proposed Consent Decree -- to maintain Miami-Dade County's sewage system in a manner that protects the residents'

health and the surrounding environment. Court supervision, through a Special Master, and heftier penalties for non-compliance would assist the Court in enforcing the settlement entered into by Florida, the United States, and Miami-Dade County.

The remaining objections are overruled as not sufficient to overcome the presumption in favor of approval of the proposed Consent Decree. The parties may submit any additional comments, including proposed supplemental agreements to the Consent Decree by March 21, 2014. After that date, the Court will enter a final ruling, either rejecting or approving the settlement.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th day of March, 2014.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: March 18, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A)(9)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(9)
3-18-14

RESOLUTION NO. _____

RESOLUTION APPROVING MAYOR'S
RECOMMENDATIONS RELATING TO PROPOSED
CONSENT DECREE WITH FEDERAL AND STATE
ENVIRONMENTAL ENFORCEMENT AGENCIES AND
AUTHORIZING THE MAYOR AND COUNTY ATTORNEY
TO MODIFY PROPOSED CONSENT DECREE AND ADVISE
THE COURT ACCORDINGLY

WHEREAS, Miami-Dade County has entered into a proposed Consent Decree with the Environmental Protection Agency, the State of Florida and the Florida Department of Environmental Protection (collectively, the "Enforcement Agencies") that settles all environmental violations and brings the County's wastewater system into compliance with the Clean Water Act; and

WHEREAS, the proposed Consent Decree is currently pending before the United States District Court for the Southern District of Florida (the "Federal Court") for approval; and

WHEREAS, on March 7, 2014, the Court sent the parties a Notice on the proposed Consent Decree in which the Court suggested that by March 21, 2014, the parties provide additional submissions to the Court with regard to two issues: (1) possible appointment of a special master to oversee the repairs and ensure that funding for Consent Decree projects does not get transferred to non-environmental projects, and (2) possible increased stipulated penalties for failure to complete projects on schedule; and

WHEREAS, the Mayor has provided this Board with recommendations in the attached memorandum ("Mayor's Recommendations") that address the Federal Court's concerns regarding the enforcement of the proposed Consent Decree and the County's compliance with the Clean Water Act; and

WHEREAS, this Board desires to ensure that the Federal Court should have full confidence in the County's commitment to comply with the requirements of the proposed Consent Decree, including the timely completion of all work on the wastewater system,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The Board approves the Mayor's Recommendations relating to the proposed Consent Decree with the Enforcement Agencies, as provided in the attached memorandum which is incorporated herein and made a part hereof, and authorizes the Mayor and County Attorney to advise the Court of the following modifications to the proposed Consent Decree subject to agreement by the Enforcement Agencies:

(a) The Court will be provided with a semi-annual report regarding the County's compliance with the requirements of the Consent Decree. If, in the future, after reviewing the County's submissions, the Court believes that additional oversight is necessary to oversee the County's compliance with the Consent Decree, the County agrees to pay the reasonable expenses associated with the additional oversight required by the Court; and

(b) The County will agree to double the amount of the stipulated penalties throughout the Consent Decree.

Section 2. The Board further authorizes the Mayor and County Attorney to advise the Court that the Board shall approve in a separate resolution a County policy that neither the Board nor the County Mayor will recommend, transfer or use funds obtained by the County "from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System" with the exception of "funds internally used within the Miami-Dade Water and Sewer

Department and funds transferred or used to administratively reimburse other departments or agencies within the County for services rendered to the Miami-Dade Water and Sewer Department for purposes related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.” In the event that the Board proposes to change this County policy in any way, the County will provide notice of such proposed change to the Federal Court and Enforcement Agencies before any such change is adopted.

The Prime Sponsor of the foregoing resolution is Chairwoman Rebeca Sosa. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Jean Monestime
Sen. Javier D. Souto
Juan C. Zapata

Esteban L. Bovo, Jr.
Audrey M. Edmonson
Barbara J. Jordan
Dennis C. Moss
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of March, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Henry N. Gillman