

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FOLKS - FRIENDS OF THE LOWER
KEYS, LLC,

Plaintiff,

Civil Case No. _____

v.

CITY OF MARATHON, FLORIDA,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL
PENALTIES PURSUANT TO THE CLEAN WATER ACT AND
THE ENDANGERED SPECIES ACT**

FOLKS - Friends of the Lower Keys (“FOLKS”), by and through its counsel, hereby alleges as follows:

I. SUMMARY OF THE CASE

1. The City of Marathon (“Marathon”) is violating the federal Clean Water Act by discharging pollutants from shallow sewage wells to the waters of the Florida Keys without a National Pollutant Discharge and Elimination System (“NPDES”) permit.

2. Marathon disposes of sewage through shallow wells that release pollutants 60 to 120 feet underground. But the ground into which Marathon has drilled its shallow sewage wells is the highly porous limestone geology known as karst that makes up the Florida Keys. The rock is riddled with voids, tunnels and conduits that act as pipelines for sewage pollution to move away from the wells. Using these subsurface highways, pollutants migrate quickly—in a matter of days, and without substantial change in chemical composition—from Marathon’s wells to adjacent surface waters.

3. Marathon is also violating the Clean Water Act by discharging sewage pollution that contributes to exceedances of state water quality standards. The nearshore waters that receive Marathon's shallow sewage well discharges are already in violation of Florida water quality standards for nutrients. Yet Marathon continues to discharge sewage with harmful levels of nutrients into these waters—as well as bacteria, pharmaceuticals, illicit drugs, personal care products, pesticides, and other pollutants.

4. Marathon is also violating the federal Endangered Species Act. When it reaches surface waters, Marathon's sewage pollution harms threatened and endangered species of fish, corals, turtles, and other animals, and thus constitutes prohibited “take” of these species under that law. The waters near Marathon, part of the Florida Keys National Marine Sanctuary, are home to at least 23 species of animals that are federally listed as threatened or endangered. Many of the waters surrounding Marathon have been identified as “critical habitat” for several of these threatened or endangered species. Marathon's sewage pollution injures endangered corals, fish, and other animals directly and indirectly too, by damaging sensitive habitats they rely upon, like coral reefs and seagrass beds.

5. Florida law and Monroe County policies both direct Marathon to abandon shallow sewage wells for a better technology: deep sewage wells that dispose of pollution 2000 feet or more below ground. Deep sewage wells are economically practical and are widely used by other municipalities across the Keys. They would eliminate Marathon's impacts on nearby surface waters and Marathon's violations of federal law. But despite decades of notice that deep wells should be used in the Florida Keys, and although the other major population centers in the Keys moved from shallow to deep sewage wells, Marathon continues to use shallow sewage wells and recently sought authorization to discharge even more sewage pollution through them.

6. FOLKS brings this action to compel Marathon to (1) cease discharges from shallow sewage wells to surface waters without NPDES authorization, (2) stop contributing to violations of water quality standards, (3) use only deep wells for future subsurface disposal of sewage pollution, and (4) end the illegal “take” of threatened and endangered animals.

II. JURISDICTION AND VENUE

7. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq. (“Clean Water Act”) and the Endangered Species Act, 16 U.S.C. §§ 1531. This Court has subject matter jurisdiction over the parties and this action pursuant to Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), Section 11 of the Endangered Species Act, 16 U.S.C. § 1540(c), and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States).

8. On November 8, 2021, FOLKS issued a sixty (60) day notice letter (“Notice Letter”) to the City of Marathon. The Notice Letter is incorporated by reference and attached as Exhibit 1. The Notice Letter informed Marathon of its violations of the Clean Water Act and Endangered Species Act and of FOLKS’ intention to file suit against Marathon. The Notice Letter was also sent to the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region IV, and the Secretary of the Florida Department of Environmental Protection (“FDEP”) as required by the Clean Water Act. *See* 33 U.S.C. § 1365(b)(1)(A). Further, the Notice Letter was sent to the Secretaries of the Departments of the Interior and Commerce, and their respective representatives, the Director of the Fish and Wildlife Service and Administrator of the National Marine Fisheries Service, as required by Section 11 of the Endangered Species Act, 16 U.S.C. § 1540(g)(2)(A), and the Services’ implementing regulations.

9. More than sixty (60) days have passed since the Notice Letter was issued to Marathon and the state and federal agencies.

10. FOLKS is informed and believes, and therefore alleges, that neither the EPA, the Department of Interior, the Department of Commerce, nor the state of Florida has commenced or is diligently prosecuting an action to redress the violations alleged in the Notice Letter and in this Complaint under the Clean Water Act, 33 U.S.C. § 1365(b)(1)(B) or the Endangered Species Act, 16 U.S.C. § 1540(g)(2)(A). This action is not barred by any prior administrative penalty matter. Accordingly, because the requirements of 33 U.S.C. § 1365(b)(1)(B) and 16 U.S.C. § 1540(g) have been met, this matter may be commenced.

11. Venue is proper in the Southern District of Florida, pursuant to 33 U.S.C. § 1365(c)(1) and 16 U.S.C. § 1540(g)(3)(A), because the sources of the violations are located within this judicial district, specifically within Monroe County.

III. PARTIES

A. Plaintiff FOLKS - Friends of the Lower Keys

12. FOLKS is an all-volunteer Florida limited liability corporation, with members and supporters throughout Monroe County, that works to preserve the low-density community character of the Florida Keys, to protect and improve the nearshore water quality of the Florida Keys, and to protect and preserve the wildlife and habitats found in those nearshore waters. FOLKS works with other organizations to protect water quality and local ecosystems together as a community. FOLKS' approach combines sound science, policy advocacy, grassroots community engagement, education, and where necessary litigation. FOLKS' organizational purposes include the elimination of shallow sewage wells in the Florida Keys as a key measure to protect water quality and preserve aquatic ecosystems. Members and supporters of what is now FOLKS have been active in opposing shallow sewage wells in the Florida Keys since 2014. FOLKS represents

its members and supporters in and around Monroe County who have personally suffered harm to their aesthetic, recreational, and economic interests due to discharges of sewage pollution to the groundwater beneath the Florida Keys that rapidly travels to the Atlantic Ocean, Florida Bay, and the Gulf of Mexico. FOLKS members and supporters use these waters for boating, recreational fishing and commercial fishing, wading, body contact water sports and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation.

13. FOLKS represents its members and supporters in and around Monroe County who have personally suffered harm to their aesthetic, recreational, and economic interests due to Marathon's illegal discharges of sewage pollution that harms endangered species in the waters of the Florida Keys. FOLKS members and supporters are concerned for the wellbeing and continued existence of endangered corals, turtles, fish, manatees, and other animals that make the Keys ecosystem unique and vibrant. FOLKS members and supporters use, repeatedly visit, and will continue to use and visit the waters and ecosystems that these animals inhabit, and their associated beaches, for wildlife observation, photography, aesthetic enjoyment, spiritual contemplation, and/or in support of their commercial endeavors.

14. FOLKS members and supporters include residents and property owners of Marathon who reside, recreate, and/or work in the vicinity of the waters directly impacted by Marathon's violations and who have reasonably founded fears that the pollutants contained in Marathon's sewage have and will continue to cause or contribute to: (1) poor water quality in the nearshore waters that affects human health, endangered species, and the environment; (2) harmful algal blooms ("HABs") that are dangerous to human health, endangered species, and the environment; (3) the decline in abundance and distribution of seagrasses and coral reef colonies that support local marine life; and (4) damage to nearshore benthic communities that serve as

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