

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

JORGE and SUSAN GARCIA, NELSON
RUIZ, and OSVALDO E. CUELI,

CASE NO. 01-801 CIV-MOORE
Magistrate Judge John O'Sullivan

Plaintiffs,

v.

UNITED STATES OF AMERICA,
U.S. ARMY CORPS OF ENGINEERS,
and R.L. BROWNLEE, ACTING ASSISTANT
SECRETARY OF THE ARMY (CIVIL
WORKS), in his official capacity,

Defendants.

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PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT

Plaintiff, Osvaldo E. Cueli, moves the Court to enter final judgment in his favor and against Defendants, United States of America, U.S. Army Corps of Engineers, and R.L. Brownlee, Acting Assistant Secretary of the Army (Civil Works),¹ in his official capacity, and as grounds would show:

1. Plaintiff filed this action against Defendants under the Administrative Procedure Act, 5 U.S.C. § 701, to set aside the Corps' plan to acquire and flood developed property in the Eight and One-Half Square Mile Area as unauthorized and contrary to specific provisions of the Everglades National Park Protection and Expansion Act, 16 U.S.C. § 410r-8. The complaint also sought declaratory and injunctive relief and attorney's fees under the Equal Access to Justice Act.

¹ Pursuant to Fed. R. Civ. P. 25(d)(1), R.L. Brownlee, the current Acting Assistant Secretary of the Army, is automatically substituted as a party in place of his predecessor, Michael Parker.

2. On May 8, 2002, the Magistrate Judge recommended that the Corps' plan be set aside because it was unauthorized and contrary to the clear statutory directive of section 410r-8. This Court approved and adopted the Magistrate Judge's recommendations in an order dated July 5, 2002.

WHEREFORE, Plaintiff requests that this court enter summary final judgment in favor of Plaintiff setting aside the Record of Decision, declaring that the Record of Decision is void, and permanently enjoining Defendants from any acts pertaining to the implementation of Alternative 6D.

MEMORANDUM OF LAW

The Administrative Procedure Act provides that the remedy for unauthorized agency action is an order declaring it to be unlawful and setting it aside.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

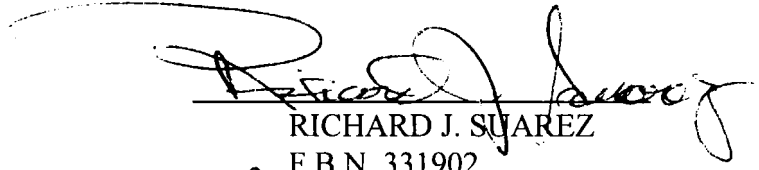
(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

5 U.S.C. § 706 (emphasis added). *See Andrx Pharms., Inc. v. Biovail Corp.*, 276 F.3d 1368, 1379 (11th Cir. 2002) ("If a party has standing and prevails under its APA claim, it is entitled to a remedy under the statute, which normally will be a vacatur of the agency's order.").

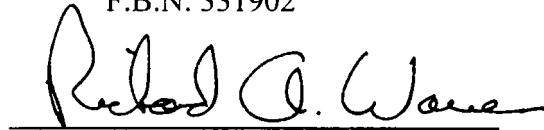
The APA also allows for an injunction against unauthorized agency action. Section 702 provides that a judgment in an action for judicial review of agency action may be entered against the United States and that “any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance.”

Respectfully submitted,

HARDEMAN & SUAREZ, P.A.

A handwritten signature in dark ink, appearing to read "Richard J. Suarez", is written over a horizontal line.

RICHARD J. SUAREZ
F.B.N. 331902

A handwritten signature in dark ink, appearing to read "Richard A. Warren", is written over a horizontal line.

RICHARD A. WARREN
F.B.N. 336041

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was mailed on July 10, 2002 to the attorneys listed below:

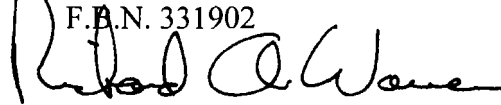
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