

Issues Regarding the Load Reductions of the Settlement Agreement
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The TOC has asked us to prepare the following general questions for consideration by the principals and attorneys from a policy/legal perspective. Once these issues are resolved, the technical details of the assessment method can be worked out.

1. Are the load reductions "expectations" or "requirements"?
 - a. Expectation:
 - i. reference Appendix C, page C-2: "The combined load reductions attributed to land use changes (6%), BMPs (25%) and STAs (70%) applied in series can therefore be reasonably expected to achieve a total reduction of approximately 80% relative to the amount of phosphorus that was historically discharged from the EAA into the EPA."
 - ii. reference Appendix C, page C-1: "The control program is designed to achieve approximately an 80% reduction in phosphorus loads from the Everglades Agricultural Area (EAA) to the Everglades Protection Area (EPA) by October 1, 2003 and greater than an 85% reduction in phosphorus loads to the Refuge by December 31, 2006, relative to the average annual loads measured in Water Years 1979 through 1988."
 - b. Requirement: reference paragraph 8.A.: "Phosphorus loads discharged from the EAA will be reduced by approximately 80% to the EPA by October 1, 2003, and will be reduced by approximately 85% to the Refuge by February 1, 1999, a compared to mean levels measured from 1979 to 1988."
2. Is the objective to remove 80%/85% of "loads from the EAA", or to limit loads to the EPA/Refuge to 20/15% of the 1979-1988 loads?
3. What sources of phosphorus are included in the phrase "loads from the EAA"?
 - a. Runoff from the EAA Basin to the EPA within the magnitude that occurred in Water Years 1979-1988, or
 - b. Loads from sources that were discharged through the EAA structures into the EPA within the magnitude that occurred in Water Years 1979-1988.
4. Should compliance be measured based upon:
 - a. Estimated reductions in load "from the EAA" to the EPA/Refuge due to BMPs and STAs, including appropriate diversions (see 5. below)?
 - b. Measured loads to the Refuge/EPA from all sources relative to the 1994 Conceptual Design (CD), with allowance for anticipated loads from sources that were not considered under the 1992 Settlement Agreement (SA)?
 - i. Bill's comment: Regardless of assumptions etc., the 1994 CD describes the interim control plan adopted under the 1995 Amended Consent Decree. The projected loads from 1992 SA sources under that plan were similar to those projected in the 1994 CD. Current source flows and loads are greater due primarily to reality, not to errors in

assumptions. Any differences related to "error" in the estimated historical loads can be resolved in technical refinements to the compliance tests. The principals should decide whether subsequent increases in source loads should be considered by modifying the test (i.e. adjusting expectations) or by enhancing the control plan, given the objectives of the load reductions (see 2. above).

- ii. Gary's comment: The 1994 CD expands the source basins and control program beyond the EAA, and contains numerous assumptions that have been identified by all parties as being seriously flawed, resulting in an underestimate of the phosphorus loads entering the EPA; knowing they are incorrect, it is unreasonable to adopt these. For example: TP concentrations from Lake Okeechobee are significantly higher; flows and TP loads from L-8 basin are higher; STA-1E is not fully operational; and flows and TP loads from the Ch. 298 Districts are higher.
 - c. Measured loads to the Refuge/EPA from sources that were treated under the 1992 SA, with the monitoring data adjusted to exclude loads from other sources?
5. Should the assessment method include all flood control diversion loads? If not, should all flood control diversions be excluded (per the proposed USEPA Water Transfer Rule) or just those in excess of the storms that occurred in Water Years 1979-1988?
6. The control program and remedies outlined in the Appendices are limited to the EAA BMPs and the STAs. If the sources of phosphorus included in the phrase "loads from the EAA" extend beyond the EAA, should additional remedies be included that apply to those other basins?
7. Question on new flows:
 - a. Gary's comment: A fundamental goal of Everglades restoration is to increase the quantity of flow to the Everglades compared to the quantities that were discharged during the Water Years 1979-1988. Should the assessment method penalize the State Parties for this sending additional water to the EPA, even if it meets the discharge concentration limits of the Settlement Agreement? In addition, until federal CERP projects are completed in 7-10 years, additional water above and beyond the 1994 CD projections will be discharged to the STAs & EPA from the northern basins.
 - b. Bill's comment: An allocation for an additional 236 kac-ft/yr of lake release above historical values is included in the 1994 CP. This topic should be considered by the principals with respect to further increases that are explicitly targeted for Everglades restoration. Treatment beyond that required to achieve the 80/85% load reductions is required to allow increases in flow without secondary water quality impacts.
8. Deliveries for Water Supply. Should the assessment method exclude water supply deliveries made to the Refuge/EPA, including those mandated by the Refuge Regulation Schedule to precede water supply releases?