

To: Representatives of the Technical Oversight Committee
Nicholas Aumen, Everglades National Park
Mike Walden, A.R.M. Loxahatchee National Wildlife Refuge
Paul DuBow, Jacksonville District, Army Corps of Engineers
Frank Nearhoof, Florida Department of Environmental Protection
Garth Redfield, South Florida Water Management District

From: Principals of the Consent Decree
Dan Kimball, Acting Superintendent, Everglades National Park
Mark Musaus, Manager, A.R.M. Loxahatchee National Wildlife Refuge
Robert Carpenter, District Engineer, Jacksonville District, U. S. Army
Corps of Engineers
Colleen Castille, Secretary, Florida Dept. of Environmental Protection
Henry Dean, Executive Director, S. Florida Water Management District

Date: November 9, 2004

Re: 2004 Exceedance of the Interim Levels in the Refuge

The Principals of the Consent Decree have been notified that the Interim Levels in the Refuge were exceeded in August 2004. This would be the second excursion of interim limits within 12 sampling events (the previous excursion was September 2003). This presents a situation that must be reviewed by the Technical Oversight Committee (TOC) as specified in Appendix B, Compliance Review (pages B-4 – B-5) and recommendations forwarded to respective agencies by the TOC representatives. It is our understanding that this matter was the subject of a special session of the TOC on November 8, 2004.

The Principals recognize that the TOC invested substantial effort to arrive at consensus recommendations responding to the exceedance in 2001/2002, culminating in our letter agreement dated April 2004. In that agreement, we stated that the Parties are implementing appropriate remedial and monitoring measures designed to assist us in gaining scientific understanding of historic and future exceedances and to decrease the likelihood of future exceedances. Based on information conveyed to us by our respective representatives on the TOC, we continue to support the course of action outlined in the TOC's recommendations dated July 24, 2003 and our April 2004 agreement.

We also understand that during the November 8, 2004, TOC meeting there was a robust discussion of the potential causes of the recent exceedance and additional measures that could be explored to further our goal of reducing phosphorus loads entering the Refuge. Subsequent to the November 8 TOC meeting, the Principals met and discussed additional measures proposed by the State that will further reduce phosphorus loads to the Refuge and WCAs, including expansion of treatment areas. We request that the TOC discuss these additional measures at the November 30, 2004, TOC meeting.

Among those measures, at its November 30, 2004 meeting the TOC should analyze the relationship between the current water management practices and water quality compliance, as well as opportunities to alter water management to improve water quality while maintaining water quantity benefits. The Principals anticipate further recommendations from the TOC regarding these additional measures. In addition, we request a report summarizing the progress to date on implementing the remedial measures addressed in our April 2, 2004 agreement, including controlling phosphorus loads to the Refuge, enhancing monitoring of the Refuge and modeling of the Refuge. We ask that this report be presented no later than the February 2005 quarterly meeting.

In addition, the Principals raised concerns regarding the impacts of the 2004 hurricane season on the Everglades and performance of the STAs. We request that the TOC initiate fact gathering and where appropriate review Recovery Plans, including lessons learned for future design and operation of STAs.

In light of the fact that the District and Refuge staff are developing hurricane recovery plans, and given the amount of work assigned to the TOC, we recommend the following priority:

1. Refuge exceedance and additional measures
2. Hurricane impacts.