



## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

September 30, 2010

The Honorable Alan S. Gold  
United States District Judge  
Chambers Suite 11S56  
400 North Miami Avenue  
Miami, Florida 33128

Dear Judge Gold:

**SUBJECT: *Miccosukee Tribe of Indians v. United States of America, et al.*, Case No. 04-21448-CIV-GOLD (S.D. Fla.)**

Thank you for the invitation to appear at your hearing scheduled for October 7, 2010, with U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson, U.S. EPA Regional Administrator Gwen Keyes Fleming and Florida Department of Environmental Protection Secretary Mimi Drew. Although the South Florida Water Management District (District) is not a party to this case, I respect the request of this Court. I am honored to make myself available to assist the Court in understanding the significant progress made to date in restoring the entire South Florida ecosystem—from the Kissimmee River to Florida Bay—along with the challenges and frustrations in improving water quality in this diverse, sensitive and complex natural system.

While the District has served only a limited role in the proceedings, the outcome of this case has substantial implications for the agency. For this reason, it is essential that the Court be aware of the many advancements the state and federal partners have made in improving the system over the past decade. It is also important to note that Everglades restoration is only one component of the District's multi-faceted mission in overseeing the water resources throughout a 17,930-square-mile area—a jurisdiction twice the size of the State of New Jersey. The oldest and largest of the state's five water management districts, the District's primary responsibility lies in operating and maintaining the largest water management system in the world—an extensive network of 2,600 miles of canals and levees, 64 pump stations and 1,300 water control structures. As local sponsor of this system, known as the federal Central and Southern Florida Project, the District takes seriously its flood control responsibilities, investing almost \$200 million annually to guarantee protection for a growing population of more than 7.5 million Floridians. Significantly, it is the dramatic alterations to the South Florida watershed made a century ago by the construction of the federal flood control system that led to today's water quality and distribution challenges—challenges that the District is now tasked with resolving.

### **Progress in Achieving Water Quality Improvements**

Although many may presume that little has been done to improve the quality of water flowing into the Everglades Protection Area, the facts illustrate a different picture. Because of our history with the Everglades, Florida has become a national leader in conducting scientific research and developing environmental engineering solutions to combat phosphorus pollution.

More than twenty years ago, the State of Florida together with the District entered into a Settlement Agreement with the federal government (now before the Honorable Federico A. Moreno) to address water quality and set a course for large-scale restoration engineering and construction never before attempted. At a time when the science of the Everglades was poorly understood, the agreement specified a series of milestones for achieving water quality improvements, including the construction of 35,100 acres of stormwater treatment area (STA) required to treat water to an outflow concentration of 50 parts per billion (ppb); implementation of best management practices, which were to achieve a 25-percent reduction in phosphorus flows from the Everglades Agricultural Area; and a first-of-its-kind research program to establish and adopt a numeric criterion for phosphorus in the Everglades.

Today, with the investment of more than \$1.2 billion in taxpayer funds, the District is operating 45,000 acres—more than 80 square miles—of treatment wetlands to clean water flowing into the Everglades. These specialized wetlands are performing better than expected, last year treating more than 1.4 million acre-feet of water and cutting nutrient loads to the Everglades Protection Area by more than 76 percent. At nearly 17,000 acres, STA 3/4—the largest constructed wetland in the world—is discharging water with levels of phosphorus as low as 13 ppb. Ten years ago, before the implementation of this ‘green’ technology, phosphorus discharges into the Everglades were as high as 300 ppb and averaged 170 ppb. Yet during the past decade, constructed wetlands and improved farming practices have prevented more than 3,500 metric tons, or 160 truckloads, of phosphorus from entering the Everglades. To ensure continued improvement, the District has invested another \$160 million since 2006 to build an additional 17,000 acres of treatment wetlands, 5,270 acres of which are complete with another 11,500 acres under way.

Because of the cutting-edge science and engineering associated with large-scale constructed wetlands, these biological treatment systems are, in fact, living laboratories. Our first-hand experience operating the STAs over the past decade has demonstrated that while effective under stable conditions, these treatment facilities still remain variable and unpredictable, as might be expected with biologically based ‘green’ technologies. While the STAs are regularly surpassing their original design objective of a 50 ppb outflow concentration, achieving compliance with the ultra-low ambient water quality criterion of 10 ppb of phosphorus—a standard seven times more stringent than drinking

water and cleaner than even rainwater—can present, at times, an almost insurmountable challenge because of both the laws of man and Mother Nature.

Hurricanes, floods, droughts and South Florida's sub-tropical climate; changing federal regulation schedules; and the unanticipated nesting of endangered species and migratory birds in the STAs all can readily disrupt operations and impair STA performance. The 5,350-acre STA-1 East facility built by the U.S. Army Corps of Engineers has been impacted by construction deficiencies and has performed far below its design objectives. Further, the District cannot by law make operational decisions for the STAs or the Everglades in isolation; rather, we must also consider the needs of Lake Okeechobee, the Caloosahatchee and St. Lucie estuaries as well as regional water users. Last, but by no means least, we are confronted by the natural phenomenon known as reflux: the slow release over time of legacy pollutants locked in the Everglades' sediments. It is likely to take decades for water in the areas impacted by legacy phosphorus to attain water quality goals.

With conflicting responsibilities and nature's own actions, it is an extraordinarily complex setting within which this agency is striving to achieve its water quality objectives for the Everglades. These challenges, along with our successes, are well-documented in the South Florida Environmental Report, an internationally acclaimed and peer-reviewed status report submitted annually to Florida's Governor and Legislature.

### **Restoration Challenges and Solutions**

Despite the District's best efforts, a single decade of progress clearly remains insufficient to undo more than a century's worth of modifications to the natural system. Water quality is not our only challenge; delivering the right amount of water to the right places at the right time is also key to a healthy Everglades ecosystem. Because of these multiple needs of the *River of Grass*, the District has aggressively pursued other monumental efforts to restore the Everglades in addition to implementing the Everglades Forever Act and federal Settlement Agreement.

During the 1990s, the District worked closely with the state and federal government to develop the Comprehensive Everglades Restoration Plan (CERP), a \$13.5 billion undertaking to improve the quantity, quality, timing and delivery of water to the Everglades watershed through a series of 68 construction projects. Since 2000, Florida has invested more than \$2.5 billion to acquire land for CERP implementation and to accelerate construction on six key restoration projects. Although CERP has faced its own constraints, particularly a lag in federal funding since the program's inception, tangible progress has been made in the last two years as reported by the National Academies' National Research Council in its third biennial review of CERP released just last week.

Irrespective of the multi-billion dollar legislative initiative or legal proceeding in which the District is involved, we fully recognize that there is more work to be done to fix this over-plumbed, over-burdened but unique system. With this in mind, the District's Governing Board in 2008 seized an opportunity to purchase land in the Everglades Agricultural Area from the United States Sugar Corporation (U.S. Sugar). Although the economy and a decline in District revenues have hindered initial plans, the District's Governing Board approved in August 2010 a modified purchase to take ownership of 26,800 acres of strategically located land south of Lake Okeechobee utilizing \$197 million in revenue for a cash transaction.

Under the amended terms, the District will acquire two parcels: 8,900 acres and 17,900 acres in the Everglades Agricultural Area and C-139 basin, respectively, for water quality projects. The District has options to purchase the remaining 153,000 acres of land from U.S. Sugar for up to 10 years, should economic conditions allow. In identifying the initial acreage for this acquisition, the District evaluated science and engineering factors as well as its existing legal requirements and mandates, including those under the jurisdiction of this Court. This acquisition, together with another 16,000 acres known as the Talisman lands, would give the District access to more than 40,000 acres needed for project construction that could, given adequate time and funding, bring meaningful water quality improvements to the Everglades. The District's Governing Board, at an upcoming Special Meeting scheduled for October 8, will be updated on the land transaction to purchase the initial U.S. Sugar lands, and absent any legal injunction, is expected to proceed with closing on the acquisition on October 12, 2010.

#### **U.S. EPA's Amended Determination and Escalating Financial Constraints**

In considering this \$197 million purchase, the agency worked in good faith with state and federal regulators to define commonsense solutions that meet the needs of the Everglades Protection Area. While we are encouraged that the EPA's recently issued Amended Determination acknowledges the efficacy of the District's initial purchase of U.S. Sugar lands in achieving compliance with federal water quality requirements, we also harbor very real concerns that it proposes an unrealistic implementation schedule when weighed against the District's current financial capabilities.

In its prior rulings, this Court suggested that taxpayers need to understand the "heavy lift" needed to restore the Everglades. The District, however, has a statutorily imposed maximum taxation authority. In addition, the collapse of Florida's property values has reduced the *ad valorem* revenue available for accomplishing mission-critical work by 30 percent over the past three years alone, from a high of \$550 million in 2008 to less than \$400 million today. For Fiscal Year 2011, the District's *ad valorem* budget—which is the agency's only discretionary funding source—has fallen by more than 12 percent, or \$61 million, compared to the previous year. Not only are we challenged financially at the local level, but continuous declines in state revenues are also impacting the ability of the

State of Florida to invest in the Everglades. With State General Revenue plummeting by \$5.42 billion since 2007, appropriations to the District for Everglades restoration have fallen by \$224 million, or 78 percent. As Special Master John Burkett recognized in his report to Judge Moreno this month, “plunging revenues now severely limit the remedial choices of the District.” No truer words could be written.

At an estimated cost of more than \$1.5 billion over the next nine years, the projects and schedules put forward by the EPA are, regrettably, not achievable within our existing revenue streams. Additionally, our experience has demonstrated that from the time of inception, it can take up to 12 years to properly construct, complete and stabilize an STA. Equally important, a directive from this Court to implement these far-reaching solutions within EPA’s proposed timeframe could necessarily come at the expense of all other critical and ongoing restoration projects, including the Comprehensive Everglades Restoration Plan, Kissimmee River restoration and the statutorily mandated restoration of Lake Okeechobee and our coastal estuaries.

These are not easy choices, and the District respectfully encourages this Court to allow sufficient room for adaptive management. Careful planning by qualified state and federal engineers, scientists and expert professionals—with meaningful public involvement and an open embrace of adaptive management—best defines the actions needed to improve Everglades water quality. Allowing the District to proceed with its 26,800-acre purchase, to build and operate treatment facilities, to optimize remedies based on results and to deliver additional water quality improvements on an achievable schedule is a rational solution that will ease the burden on Florida’s taxpayers and ensure sound science, rather than litigation, guides the path forward.

As the National Research Council points out, attaining water quality goals throughout the ecosystem is likely to be very costly and could take several decades of continued commitment to a system-wide, integrated planning and design effort that simultaneously addresses source controls, storage and treatment over a range of timescales. “Challenges in achieving targets for both water quality and water flow have become more apparent, requiring further scientific analysis to determine the repercussions of trading off one for the other,” the 2010 report notes, calling for a “comprehensive cost-effectiveness analysis to assess short- and longer-term restoration alternatives and optimize outcomes given financial constraints.”

This is a time of nationwide economic challenges, with governments at all levels struggling to balance budgets. I remain hopeful that the federal Court will recognize the sizeable constraints that EPA’s Amended Determination would place on the District and direct the EPA to work collaboratively with the state to define reasonable, cost-effective and achievable solutions for the benefit of not only the natural system but also Florida’s taxpayers and our economy. EPA’s filing, with all its impacts upon this regional water



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resource agency, stems specifically from contempt of court proceedings directed at the federal government and the Florida Department of Environmental Protection. Yet in the end, it is South Florida's taxpayers who alone are expected to carry the heavy financial load to meet the Court's mandates.

**The District's Continued Commitment to Water Quality**

During the last ten years, the District and the State of Florida have done more to restore the Everglades than in Florida's entire preceding history. No other government in the world has attempted an environmental restoration effort of this scale nor committed as much time or money to improve the quality of one single waterbody or natural system. While no single legal order can resolve the complex financial, technological and resource difficulties we face—nor force a natural system to respond beyond its ecological capacity and within specific timeframes—we share the same vision as the U.S. Congress, the Florida Legislature and this Court: a healthy and restored South Florida ecosystem.

Although the challenges of meeting multiple and competing obligations are daunting indeed, I can assure you the District is directing all of its expertise and experience to make the right decisions for the natural system, to advance scientifically sound restoration strategies and to demonstrate continued and measurable progress. As scientists and experts agree, the impacts to the Everglades can be reversed with time, and the District is steadfastly committed to this long-term and important endeavor.

I would like to invite you at your convenience to tour our STAs and Everglades restoration projects, which would affirm the vast complexity of the system and our achievements to date. In the meantime, I appreciate the opportunity to appear before you on October 7 and will make every effort to answer the questions this Court may have for the South Florida Water Management District.

Sincerely,



Carol Ann Wehle  
Executive Director  
South Florida Water Management District

CAW/dr

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