

THE PERIPHYTON STA FIELD TEST IN STA-1E SHOULD BE COMPLETED AS PLANNED

Considerations of Science, Everglades Restoration, and Public Integrity Require Completing the Mission

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The Miccosukee Tribe of Indians of Florida urges that the United States keep its commitment to the Tribe to complete a full field test of the periphyton-based stormwater treatment area technology, notwithstanding political pressures to once again abandon science and public integrity to placate agencies which continually have been found to violate legal requirements and deviate from so-called "firm" commitments. The Tribe has been treated as second-rate citizens for far too long, while in fact being the only people whose homelands are in the Miccosukee Everglades within the Florida Everglades. The United States Congress entered into a formal commitment in 1982 to preserve the Miccosukee Everglades "in its natural state for the use and enjoyment of the Miccosukee Tribe" and the public, and to preserve "fresh water aquatic life, wildlife, and their habitat".

With reference to the Miccosukee Tribe, US District Judge Moreno recently (March 31, 2010) observed that "..the Tribe's environmental harm is immediate," and that "...their lands will ultimately be sacrificed to nutrient pollution..." Further, Judge Moreno concluded that "...the projects derived years ago to remedy Consent Decree violations are waiting in a standstill." Ironically, in response to this Order, the TOC does not meet to expedite promised projects, but instead meets to consider outright abandonment of one of the long-standing promised projects.

US District Judge Gold (April 14, 2010) ruled recently that "[the hard reality is that ongoing destruction due to pollution within the Everglades Protection Area continues to this day at an alarming rate." The Judge found: "To protect the Everglades from further significant environmental degradation, it is essential that discharges into, and within, the Everglades Protection Area not exceed more than 10 parts per billion of phosphorus ("ppb")." In addition, he observed: "...the rate of destruction of the Everglades due to excessive phosphorus discharge is significant, grave, and unacceptable."

With respect to the lack of public integrity in Everglades restoration, Judge Gold stated: "None of the governmental agencies involved directly told the public the hard truth..." Judge Gold echoed the feelings of the Miccosukee Tribe in expressing "in the strongest possible terms my frustration and disappointment". Current US and State practices "leaves the situation in the Everglades 'rudderless'".

Regarding constantly changing plans and objectives, Judge Gold rejected reasoning that “...justifies non-compliance by falling back on its mantra, now echoed over the past 24 years, [of]... ‘adaptive management’...”. “However, arguing that ‘something is better than nothing’ ignores the undeniable scientific fact that we are falling further behind, and that time is running out. As Dr. Rice put it, ‘[a]adaptive management is not an excuse for never accomplishing anything.’”

The Corps of Engineers should take note of the federal Court finding with respect to the SFWMD: “In fact, the South Florida Water Management District has chosen to ignore this Court’s Summary Judgement Order”. “[The State of Florida has violated the Summary Judgment Order and evidenced a consistent disregard for the requirements of the CWA in the Everglades Protection Area.”

“I echo Judge Moreno, who quotes from Judge William M. Hoeweler in the original 1992 Consent Decree, that “[the time has come, indeed has passed, when admitted problems facing the Everglades must be addressed.” Judge Gold noted “Glacial Slowness”, that “EPA has...chosen to ‘drag its feet’”, and “EPA [allows]... impermissible escape clauses...” Each of these judicial findings are relevant to the Corps of Engineers obligation to perform its duty despite objections from the SFWMD. The Civil War of 1861-65 is over; states are not entitled to evade federal law. Federal agencies have a primary duty to the accomplishment of their missions, not to “get along” with state agencies or to choose the “easy way”.

The established wrong in this PSTA issue is the desire of the State to avoid the science-based obligations, which may be demonstrated by completion of the PSTA Field Test; this situation is similar to the finding of Judge Gold, that “...the ‘established wrong’ here is the failure of the EPA and the State of Florida to comply with th WCA for more than two decades”.

Abandonment of the PSTA field test in STA-E would represent a continued movement in the destructive and immoral direction articulated by these federal Judges. The secret deal, behind closed doors, to shut down the PSTA field test in order to avoid collecting scientifically-credible data represents public policymaking at its worst. Substituting a public meeting among those who already cut the private deal, after being caught with “hands in the cookie jar”, is little more than a charade. The veil does not cover the reality of the distorted process; so-called public meetings do not cleanse the stench of the corrupt behind-the-scenes action. The only remedy to cleanse the taint is to reject the entire issue of abandoning the PSTA field test, and to complete the PSTA filed test as envisioned in the operational documents previously adopted.

The following considerations support maintaining the integrity of the Everglades restoration process by maintaining the PSTA filed test in STA-1E:

1. Advanced STA Research is Required by the Consent Decree, the PSTA Field Test Was Promised; and the PSTA Field Test Is Needed

*** The Consent Decree requires advanced research**

- The PSTA Field Test in STA -1E was promised to the Tribe and the Special Master
- The Corps itself claimed the full PSTA Field Test in STA-1E was important

*** The full PSTA Field Test in STA-1E is essential in evaluating the ability to achieve 10 ppb phosphorus**

- Science-based decisions require scientific evidence (not speculation)
- The PSTA Test is required to eliminate continuing "impossibility" claims by dischargers

2. The PSTA Field Test in STA-1E Is Entering Its Operational Phase to Produce Scientifically-Credible

*** The PSTA Test in 1E is beginning to produce usable data**

- the Operational Plan provided for two years of operational test data from this point (Corps now envisions 1-1/2 years)
- Corps claims \$13 million expenditures in preparing Field Test
- Corps renewed contract on December 17, 2009

*** Abandonment now represents rejection of science approach to Everglades restoration**

- Only reasonable conclusion for motivation in abandoning the Field Test at this time is to avoid generating uncomfortable data (if one does not want the answer, then one does not ask the question)

3. The PSTA Field Test in STA-1E Does Not Hamper STA Operations

*** PSTA Cells Equal Only 140 acres from 5,132 STA-1E total (less than 3%)**

- Substantially inaccurate claims distributed without support
- PSTA Test could have occupied more space (e.g., 20%), but that plan was rejected

*** Water flow through STA-1E is limited by no more than 1%, given flow through within PSTA cells**

- PSTA cells could not possibly impair flow more than 3%, even if the PSTA cells were paved over with asphalt
- likely not restrict flow by even 1/4 of 1%
- Again, substantially inaccurate claims distributed without support

*** PSTA Cells in 1E are structurally and hydrologically separate from the remaining STA**

- PSTA cells are not within sequence of any other water flow (PSTA cells are not “choke points” for any water flow)
- PSTA cells discharge directly out of STA-1E, not holding up any other water
- Remaining 1E Cells which discharge out of 1E (such as cell 2, and all other southern cells) are not hydrologically or structurally connected to PSTA cells

4. The P-SAV STA Test in STA-3/4 (100 Acres) Does Not Test the Same Factors as the PSTA Test in STA-1E, and Does Not Justify Abandoning the PSTA Test

*** The 3/4 Test is a test of Periphyton with Submerged Aquatic Vegetation (P-SAV STA)**

- Only 100 acres in 2/4 tests periphyton in any way (involving limerock base); SFWMD labels remaining 300 acres as “Upper “SAV” and “Lower SAV”)
- The 100 acre site (labeled “PSTA”) is in fact a periphyton (microbe) community with submerged aquatic vegetation (plants) i.e., P-SAV STA)
- Therefore, the 3/4 P-SAV STA test is not a pure PSTA test

*** P-SAV STA test in 3/4 tests only one water level**

- PSTA test in 1E tests multiple water levels

*** P-SAV site in 3/4 tests only one constituent condition (one type limerock with SAV plants)**

- PSTA test in 1E tests three limerock constituents (lime sludge and two types of limerock), without SAV plants

*** P-SAV STAs cannot tolerate dry-downs (causing SAV plant death and consequent unacceptable phosphorus discharges)**

- Dry-down intolerance is generally considered an unfavorable trait)
- PSTA (as in 1E) utilize dry-downs
- Tolerance of dry-downs renders STA more flexible (dry-down toleration is generally considered a favorable trait)

5. The US (Corps of Engineers) Is Responsible for Meeting Water Quality (10 ppb) in STA-1E, and Therefore Is Obligated to Complete the PSTA Field Test

*** WRDA 1996 directs the Corps to construct STA 1E with water quality components**

--100% federal funding was accepted as a federal contribution to overall Everglades restoration

- Asst Sec (Civil Works) approved Corps role in 1E water quality with Corps funds

*** Corps promised PSTA Field Test in STA-1E and should continue PSTA Field Test as a matter of public integrity**

- Promises should be kept
- Waste of public money (\$13 million)
- Rejection of prior planning assumptions and assertions makes Corps look incompetent, eroding confidence of public in Corps competency and integrity

*** Destroying the PSTA Field Test site makes no sense if PSTA is proven to work**

- If PSTA works, then destruction of the PSTA site is foolish
- Plans to for eventual final use of PSTA Field Test site cannot logically precede analysis of the results of the PSTA Field Test

*** Federal Indian Trust Doctrine supports continuing PSTA test**

- The impact of failure to clean water will be visited upon Miccosukee Tribe of Indians
- The United States promised that the Miccosukee Everglades would be “preserved in its natural state for the use and enjoyment of the Miccosukee Tribe” and the public, and “fresh water aquatic life, wildlife, and their habitat” would be preserved”.

*** end ***