

**EVERGLADES WATER QUALITY RESTORATION FRAMEWORK AGREEMENT  
BETWEEN U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IV, AND  
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

WHEREAS, the Florida Department of Environmental Protection (FDEP), the South Florida Water Management District (SFWMD), and the United States Environmental Protection Agency (USEPA) seek prompt restoration of water quality in the Florida Everglades;

WHEREAS, Florida has constructed approximately 60,000 acres of large, state of the art manmade treatment wetlands, known as stormwater treatment areas ("STAs"), to remove excess phosphorus from surface waters that flow into the Everglades Protection Area ("EPA");

WHEREAS, the STAs have greatly reduced the amount of phosphorus entering the EPA, but the State's water quality criterion for phosphorus has not been met in all the ambient waters of the EPA;

WHEREAS, pursuant to the Clean Water Act, USEPA has authorized FDEP to administer the National Pollutant Discharge Elimination System (NPDES) permitting program in accordance with the NPDES Memorandum of Agreement between the State of Florida and USEPA Region 4 (Nov. 30, 2007) (the "MOA");

WHEREAS, pursuant to the MOA, FDEP is responsible for drafting, providing public notice, and issuing NPDES permits;

WHEREAS, FDEP prepared and submitted certain permits and other documents intended to authorize the operation of the STAs, including certain expansions and USEPA, after review, submitted objections to those permit documents;

WHEREAS, FDEP has incorporated into these prepared permits a water quality based effluent limit ("WQBEL") for total phosphorus discharges from the STAs into the EPA which would ensure that the STA discharges do not cause or contribute to exceedances of Florida's water quality standard for total phosphorus in the Everglades and the WQBEL would become effective and enforceable on the effective date of the permit;

WHEREAS, SFWMD and FDEP have agreed upon a suite of projects consisting of flow equalization basins, STA expansions and infrastructure and conveyance improvements, and a schedule for construction of the projects which DEP has determined provides reasonable assurance that the WQBEL will be achieved;

WHEREAS, FDEP has provided to USEPA a technical support document for the WQBEL and proposed projects, in accordance with a detailed schedule for the planning, design, construction and operation of the projects, which are intended to assure compliance with FDEP's permit and incorporated WQBEL;

WHEREAS, FDEP and USEPA agree that as the projects are constructed the SFWMD shall develop and implement a plan that will: evaluate the scientific and technical factors that influence phosphorus treatment; investigate key factors that influence STA treatment performance; improve the understanding of the design and operation of the STAs; and identify additional research and studies to support efforts to improve STA performance;

WHEREAS, FDEP and SFWMD have identified the costs associated with implementation of the projects, as well as a plan to finance that implementation;

WHEREAS, FDEP and SFWMD have negotiated proposed enforcement orders on consent (Consent Orders) that would require SFWMD to implement corrective actions according to a sequence of detailed deadlines;

WHEREAS, the requirement to implement the proposed corrective actions according to the deadlines would also be incorporated into, and made separately enforceable through, the NPDES permit;

WHEREAS, FDEP has developed an enforceable framework designed to achieve compliance with the WQBEL and this framework includes (1) FDEP's issuance of an NPDES permit that would incorporate the immediately effective WQBEL and would incorporate by reference the corrective actions and deadlines from the Consent Orders, as well as a State law Everglades Forever Act (EFA) permit, and (2) the associated Consent Orders that become enforceable and effective under Florida law;

WHEREAS, USEPA retains its independent federal oversight and enforcement authorities under the Clean Water Act and the MOA, including the ability to enforce the WQBEL directly, as well as the corrective actions and deadlines incorporated into the NPDES permit;

WHEREAS, FDEP's notice of the NPDES and EFA permits and Consent Orders will provide opportunities for public participation;

IT IS AGREED:

A. General Provisions:

1. If FDEP expeditiously takes action to enter the Consent Orders and issue the EFA and NPDES permits, USEPA would agree that the FDEP will retain its leadership role in assuring Everglades water quality restoration for purposes of, and consistent with, the Clean Water Act;
2. FDEP commits to take prompt final action to issue NPDES and EFA permits and accompanying Consent Orders to the SFWMD for discharges from the STAs. In the event any permit or Consent Order is challenged in a state administrative or judicial proceeding, FDEP also

commits to exercise its best efforts to move for expedited consideration, and to oppose any request for continuance or abatement of any such administrative or judicial proceedings.

3. If any permit or order is challenged, FDEP commits to seek relief from the relevant hearing tribunal to the extent necessary to begin implementation of the remedies identified in the orders pending completion of such challenge. If the NPDES permit provisions are substantively modified as a result of such challenge, then before the NPDES permit becomes final FDEP will submit the permit to USEPA for review in accordance with the MOA.

4. FDEP will notify USEPA as soon as practicable after receiving a request from SFWMD to modify the NPDES and/or EFA permit or accompanying orders to accommodate requests for substitution of remedial measures or extension of remedial schedules identified in Paragraph 10 of the NPDES Consent Order and incorporated by reference into the NPDES permit. FDEP will request USEPA's comment on the proposed modification prior to FDEP agreeing to modification of any provision of either Consent Order.

5. FDEP and USEPA agree that the corrective actions and deadlines incorporated by reference into the NPDES permit are incorporated as in effect on the date that the accompanying NPDES Consent Order becomes effective. Modification of any provision of Paragraph 10 in the Consent Order is considered a major modification and does not automatically modify the requirements of the NPDES permit that are incorporated by reference from Paragraph 10 of the Consent Order. The parties agree that to modify the requirements of the NPDES permit requires compliance with NPDES permit modification procedures. To the extent that any of the NPDES requirements that are incorporated by reference are themselves modified, those NPDES requirements will be processed as permit modifications subject to USEPA review under Clean Water Act section 402(d).

7. FDEP will file a motion to stay its appeals, Nos. 10-12752 and 11-12455, until such time as the NPDES and EFA permits and associated Consent Orders are effective and no longer subject to judicial review in State court; and then upon lapse of such stay FDEP may pursue or withdraw its appeals. In any appeal arising from *Miccosukee Tribe of Indians of Florida v. United States*, Case No. 04-21448 (S.D. Fla.) FDEP will not challenge the validity of, the authority to issue or the effectiveness and enforceability of the permits or consent orders issued pursuant to this Agreement, nor will it argue any issue that would delay or prevent the NPDES and EFA permits proposed pursuant to this Agreement as well as the associated Consent Orders from becoming final and effective.

8. Nothing in this Agreement governs or supersedes any requirements of the Consent Decree or other orders of the Court in United States v. SFWMD, No. 88-1886-CIV-MORENO (S.D. Fla.).

## B. Agreement to Meet

The Regional Administrator, USEPA Region IV, and the Secretary of FDEP (Principals), and appropriate staff as needed, shall meet twice annually to discuss Everglades water quality conditions and progress toward attainment of water quality standards until each of the STAs meets the WQBEL necessary to meet water quality standards for total phosphorus in the Everglades. One or both of the Principals may invite the SFWMD Executive Director to such meetings, including appropriate staff as needed. The Everglades water quality conditions to be discussed will include: TP concentrations and loads entering each of the STAs; TP concentrations and loads discharged from or diverted around each of the STAs; monitoring results for downstream monitoring (as described in paragraph 14 of the NPDES Consent Order results from research conducted in accordance with the Science Plan described below and in paragraph 13 of the NPDES Consent Order); progress of the SFWMD in achieving the milestones in the NPDES permits; enforcement matters as noted in section F below; and resolution, as necessary, of any differing technical opinions of the science representatives of the USEPA, FDEP and the SFWMD.

## C. Information and Reporting

In addition to the monitoring and reporting requirements described in the permits and respective accompanying Consent Orders, USEPA and the FDEP agree to the following:

1. Anticipated delay or actual failure to achieve any of the deadlines identified in either of the respective Consent Orders, including the deadlines identified in the NPDES Consent Order and specifically incorporated by reference as independently enforceable conditions of the NPDES permit, shall be reported to USEPA (either by SFWMD directly or by FDEP) within the time frames described in the permits and accompanying Consent Orders;
2. Monitoring, notification, and written reports required under the NPDES permit Sections I.A.5-10; I.E.4, 6, 9 and 10; VIII.17, 19, 20, 21 and 22; and as described in the accompanying Consent Order paragraphs 11, 12, 13, 14, 18, and 19, shall also be provided to USEPA in accordance with the timeframes contained in the permits.

## D. Scientific Review

1. FDEP and USEPA, in consultation with appropriate federal and State agencies, will identify in writing to each other, within 30 days of this Agreement, technical expert representatives who will meet at least twice annually or more often as needed, to assess water quality and progress in achieving the deadlines in the permits and accompanying Consent Orders, review the results of research conducted under the Science Plan described in Section E, evaluate the ongoing operation of the STAs, and provide input to their respective Principals identified in section B above, prior to their semi-annual meetings.

2. The individual representatives may report to their Principals both on matters where there is technical consensus and matters where there is not technical consensus, but particularly on any of the latter matters which in the representatives' opinion warrant heightened consideration by the Principals, including the identification of information gaps and priority research needs, the adequacy of existing monitoring approaches, and the application of new data or information to evaluation of existing or proposed-but-not-yet-completed treatment technology.

#### E. Science Plan Development and Implementation

1. The NPDES Consent Order at paragraph 14 would require the SFWMD to develop and implement a Science Plan in accordance with its terms. FDEP and USEPA agree the Science Plan described in paragraph 13 of that NPDES Consent Order should be developed collaboratively and in consultation with the agency representatives described in Section D.

2. The objective of the Science Plan is to identify the critical factors that collectively govern phosphorus treatment performance; to maximize the understanding that can be gained from existing data, designs and operations; to identify the critical information gaps and research areas that will further treatment objectives in order to meet the WQBEL at each STA.

3. The Consent Orders will require SFWMD to convene regular meetings of the representatives as often as needed, but no less than once every six (6) months. The first meeting of the representatives shall take place no later than six (6) months after the date of permit issuance. The results of scientific studies and the interim operational performance will be presented to and evaluated by the representatives and ultimately used by the representatives to inform their respective agencies as to how the information could be utilized to optimize phosphorus reduction and treatment performance.

#### F. Enforcement

1. The FDEP issued permits and accompanying Consent Orders identify deadlines for the design, construction and completion of Stormwater Treatment Areas 1W, 1E, 2, 3/4, and 5/6, associated conveyances and flow equalization basins.

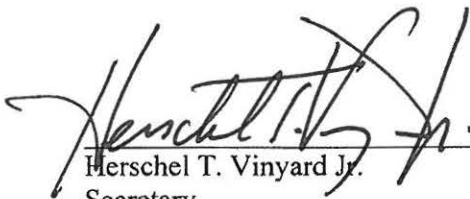
2. Based upon the information provided to USEPA by FDEP and under present circumstances, the NPDES permit and consent order (as attached to this agreement), if expeditiously issued and final after public participation, would represent timely and appropriate enforcement action by FDEP, and, the parties acknowledge under the express terms of the attached proposed Consent Orders, unless terminated by mutual consent of the parties, the Consent Order, setting forth corrective actions, shall remain in effect for all flow-paths and until the corrective actions for all flow-paths described in the Consent Order are completed and sufficient discharge data required under the permit exists to assess compliance with both components of the WQBEL for all flow paths.

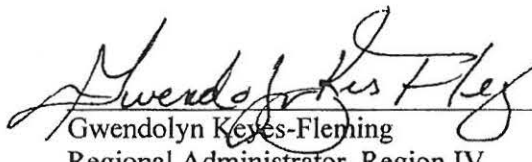
3. Any future USEPA enforcement of the FDEP issued NPDES permits will be consistent with the provisions of Section IV of the MOA, including USEPA's determination of the timeliness and appropriateness of FDEP enforcement actions to respond to concerns that would otherwise warrant USEPA enforcement;

4. FDEP and USEPA agree that FDEP will promptly notify USEPA as soon as FDEP is notified by the SFWMD regarding the possibility of delays in meeting the deadlines, failure to meet the deadlines, and upon termination of each Consent Order.

5. In the event there is disagreement between FDEP and USEPA at the staff level about the appropriateness of modification of either the NPDES or EFA Consent Orders or whether an enforcement action should be initiated (including the appropriateness of corrective actions and/or deadlines to be pursued in such enforcement), the parties agree to refer these matters to the Principals for discussion for the purpose of resolution. The parties retain independent discretion authorized by law in their respective enforcement decisions.

6. In the event the parties do not resolve any disagreement about whether an enforcement action should be initiated (including the appropriateness of corrective actions and/or deadlines to be sought), FDEP and USEPA acknowledge that pursuant to Section VI. B of the MOA, USEPA retains the authority under the CWA to take direct enforcement action for any alleged violation of the FDEP-issued NPDES permit.

  
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Herschel T. Vinyard Jr.  
Secretary  
Florida Department of Environmental  
Protection

  
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Gwendolyn Keyes-Fleming  
Regional Administrator, Region IV  
U.S. Environmental Protection Agency

Date 6/12/12

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