## COMMENTS FROM THE MICCOSUKEE TRIBE

Comment 1: Objective 1-B.2: Prepare plans with strategies and schedules to comply with total maximum daily loads for 100% of the impaired water bodies by 2011. Meet the long term limits or Class II criteria (10ppb), whichever is lower, by December 31, 2006 as required by the federal Settlement Agreement in the Everglades case. Ensure that the requirements of the Clean Water Act, including its NPDES permitting requirements are complied with in implementing restoration. Complete the long delayed Water Quality Feasibility Study.

Comment 2: In 1988 the federal government sued the State of Florida and the SFWMD alleging that they had failed to enforce state laws to regulate and protect water quality and exercise their power to issue and enforce permits resulting in a violation of state water quality standards in the natural waters of the Everglades and Loxahatchee and causing conditions that allowed for the replacement of native species in the Everglades marsh with invasive vegetation. (Note: This added language is from the Complaint at 21 and 36) After three years and much additional litigation, no settlement had been reached. In 1991 Governor Lawton Chiles agreed to reach a settlement. For several years, mediation efforts helped reduce the scope of conflict between the state and federal governments and between agricultural and environmental interests. In February 1992 a court settlement was achieved to reduce the level of phosphorus entering ENP and the Arthur R. Marshall Loxahatchee National Wildlife Refuge (NWR) by creating artificial wetlands designed to process and remove nutrients from agricultural runoff. In 1993 the sugar industry agreed to adopt best management practices (BMPs) and to pay for approximately one-third of the costs of the artificial wetlands to help reduce the phosphorous pollution in the Everglades. The settlement also called for additional measures to be implemented over the long term to meet either a long term phosphorus limit, or the class III phosphorus criterion, whichever is lower by December 31, 2006. The Settlement Agreement entered as a Consent Decree continues to be monitored by a Federal Court Judge and a Special Master.

Comment 3: 2005 USEPA approves State's phosphorus rule for the Everglades Protection Area. The Miccosukee Tribe challenges the State's Amended EFA and EPA's approval of the State's phosphorus rule in federal court as violating the Clean Water Act

Comment 4: The Miccosukee Tribe contends that the short term or interim water management actions that have been taken are neither appropriate nor consistent with long term restoration goals and have destroyed vast areas of the Everglades in WCA 3A and beyond and a 50% decline in the population of the endangered Snail Kite. The Task Force is committed to facilitating the resolution of these issues, consistent with its statutory duties, without compromising its long-term focus on restoring natural conditions to south Florida. The Task Force has not resolved this so-called interim water management issue which has been going on since 1998. Where there may be conflicts between existing statutes and strategic goals, the Task Force recognizes that it may be necessary to have Congress address such issues.

Comment 5: The Miccosukee Tribe contends that litigation is often necessary to force the government entities involved to comply with requirements of federal law, including the National Environmental Policy Act ("NEPA"), the Endangered Species Act ("ESA"), the Federal Advisory Committee Act ("FACA") and the Clean Water Act.

Comment 6: The Tribe continues to contend that hydrological indicators are preferable.

Comment 7: Clean Water Act. The CERP Yellow Book requires the implementation of CERP to comply with the Clean Water Act (P.L. 92-500), including National Pollutant Discharge Elimination System (NPDES) point and non-point source pollution reduction requirements and Total Maximum Daily Loads established under Section 303 (d) of the CWA. (Final Feasibility Report and PEIS at pp. 5-5 to 5-6. Pursuant to Section 402 of the CWA, NPDES permits are required for all new and existing point sources

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from which pollutants are discharged to navigable waters. (Id. Appendix H at H-12.) (This section on water quality is likely to be addressed in a minority report by the Tribe.)

The Federal Settlement Agreement: The Settlement Agreement entered as a Consent Decree in the federal Everglades case requires the State and SFWMD to meet interim and long term phosphorus limits and levels and phosphorus loads, in discharges to the Everglades, Everglades National Park, and the Loxhatachee National Wildlife Refuge. The Consent Decree provides that long term concentration levels or Class III phosphorus criteria, whichever is lower, will be implemented by December 31, 2006.

*Everglades Forever Act.* In 1994 the Florida Legislature passed the Everglades Forever Act (EFA), which codified measures to improve water quality within the Everglades Protection Area (EPA), defined as the Loxahatchee NWR, WCAs 2 and 3, and ENP. As a result of the federal Settlement Agreement, the EFA contained a provision that established the Everglades Construction Project, a set of six stormwater treatment areas (STAs) between the EAA and the natural areas to the south. The main purpose of these treatment areas is to reduce the phosphorus loads and concentrations in waters entering the EPA. Additionally, the state uses regulatory programs and landowners implement best management practices to reduce phosphorus from urban and agricultural discharges. These programs and practices have reduced the phosphorus levels discharged from the EAA and neighboring basins into the Everglades. However, the final standards have not yet been met. The federal Settlement Agreement requires the final phosphorus limits to be met by December 31, 2006. A plan of construction projects, source controls, and continuing scientific investigations has been developed by the SFWMD to ensure that discharges from all basins impacting the Everglades meet state water quality standards but no date for compliance when the numeric phosphorus criterion will actually be met has been established. This plan is referred to as the Long-Term Plan.

In March 2003 the SFWMD presented a conceptual plan for achieving long-term water quality goals the district strategy for meeting water quality standard. During the 2003 legislative session, the Everglades Forever Act was amended to include reference to the SFWMD Long-Term Plan as the Best Available Phosphorus Reduction Technology. The Amended EFA substituted the Long Term Plan for the prior condition in the 1994 EFA which required actually meeting the numeric phosphorus criterion in all waters being discharged to the EPA by December 31, 2006. In the 1999 Yellow Book adopted by Congress for CERP, Congress assumed that the December 31, 2006 date for discharges from the Everglades Construction Project to the EPA would be met as a base condition for CERP. Due to the passage of the Amended EFA, the requirement that all discharges to the EPA meet the numeric phosphorus criterion by December 31, 2006 no longer applies and it will have a profound impact on Everglades restoration and its support. The amended act required the SFWMD to implement the Long-Term Plan without delay. In July 2003 the DEP proposed a rule establishing a long-term geometric mean of 10 ppb with associated natural variability as the numeric phosphorus criterion for class III waters in the EPA. The rule also establishes moderating provisions for permits authorizing discharges into the EPA in compliance with water quality standards, including the numeric phosphorus criterion and a method for determining achievement of the numeric phosphorus criterion. The rule also establishes moderating provisions authorizing discharges above the criterion until at least 2016, provided measures are taken to implement the best available phosphorus reduction technologies and a compliance methodology for determining achievement of the criterion. Important to restoration, the hydropattern moderating provisions also allows the State and SFWMD to rehydrate sections of the Everglades with water that does not meet water quality. The rule was approved by the USEPA in July 2005. In 2004, the Miccosukee Tribe filed a lawsuit in Federal Court against the Environmental Protection Agency for its failure to disapprove the State law under the Clean Water Act and amended its case in 2005 to challenge EPA's arbitrary and capricious approval of the State's phosphorus rule.

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Comment 8: Regulatory actions could also include an NPDES permit under the Clean Water Act for point source discharges. Once these plans have been adopted and implemented, progress is monitored until waters are eventually certified as meeting water quality standards.

Comment 9: The Tribe continues to contend that hydrological indicators should be used in the restoration process and that the biology will follow.

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Comment 10: Objective 1-B-2 makes no sense and is too limited to only TMDLs. The Tribe suggests: Comply with the long term phosphorus limits or the Class III phosphorus criteria (whichever is lower) in waters discharged to the Everglades by December 31, 2006. Follow the requirements of the Clean Water Act and its permitting requirements when implementing restoration. Follow plans with strategies and schedules and use regulatory enforcement to ensure compliance with the total maximum daily loads in 100 percent of impaired water bodies... Complete the Water Quality Feasibility Study.

Comment 11: The rule also establishes moderating provisions authorizing discharges above the numeric phosphorus criterion through at least 2016, provided measures are taken to implement the best available phosphorus reduction technologies and a compliance methodology for determining achievement of the criterion. The rule also contains a moderating provision that allows rehydration of dehydrated areas of the Everglades with water that does not meet water quality. These moderating provisions are not good for the health of the Everglades of for Everglades restoration. The rule was submitted to the USEPA for approval. The USEPA approved the rule, with the exception of one provision, in January 2005. The DEP initiated rulemaking to revise the rule and the revised rule was adopted by the Florida Environmental Regulation Commission (ERC) in May 2005. The revised rule was submitted to the USEPA in June 2005 and approved by the USEPA in July 2005. The Miccosukee Tribe has filed suit against EPA in federal court concerning the Amended EFA and the phosphorus rule which the Tribe contends are contrary to the Clean Water Act.

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Comment 12: The water pumped through the S-9A for the first two years of operation has been above 10ppb phosphorus. Moreover, the S-9 pump continues to operate and pump elevated levels of phosphorus and other pollutants into the Everglades in WCA 3A from the C-11 canal in urban Broward County.

Comment 13: Concerns about the delay of this project continue to exist as evidenced by the U.S. Department of the Interior Inspector General Report on the MWD project dated March 2006 which found that DOI had contributed to project delays and cost increases. It further found that the damage to tree islands caused by the delay could be as much as 246 acres per year and the cost to restore the islands ranges from $12.3 million to $123 million per year.

Comment 14: This project is not scheduled to be implemented as part of CSOP until 2010. In the meantime, the Corps interim water management plan will continue to flood Tribal Everglades and tree islands and destroy vast areas of the Everglades that CERP plans to restore.

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Comment 15: (The average 41 ppb should be removed as it is meaningless since outflow was as high as 98 ppb for STA 1W which discharges into Loxahatchee.)

Comment 16: Additionally, as a result of a finding of a violation of the SettlementAgreement by Judge Moreno in the federal Everglades in 2005 due to exceedances of the interim level in the Loxahtachee National Wildlife Refuge, the SFWMD has agreed to construct approximately 18,000 additional acreas of additional STAs as a remedy.

Comment 17: what are locally based plans, what about using regulatory action

Comment 18: The Tribe continues to contend that this so-called early start is improper, since it was prior to NEPA completion  and Congressional authorization and continues to object to any State attempts to take its lands used for cultural purposes.

Comment 19:  The Tribe continues to contends that hydrological indicators are the most appropriate.

Comment 20: An indicator for the growth of the expanse of cattail would help assess the impact deleterious water quality conditions continue to have on the Everglades..