

MEMO: Colonel Grosskruger, Paul Souza, Dan Kimball, Carol Wehle, Ron Bergeron

FROM: Terry Rice, Miccosukee Tribe Representative to the Recover Leadership Group

RE: **Miccosukee Tribe Objections to the Proposed Revision to the RECOVER Performance Measures for Extreme High and Low Water Levels in the Everglades that will *Trade-Off* Vast Portions of the Ecosystem, including the Tribal Everglades, and Request for Your Review**

DATE: January 9, 2009

The Miccosukee Tribe strenuously objects to the revisions to the high water portion of the *Extreme High and Low Water Levels in the Greater Everglades Wetlands Performance Measure* being proposed by the Greater Everglades sub-team of RECOVER. (See proposal and comments/analysis at attached) The revised PM would completely remove the *only* RECOVER evaluation tool left to evaluate how extreme high water impacts the Tribal Everglades in WCA 3A and other areas. **This proposed PM, which was developed by sub-team members from the Corps (Shawn Komlos & Jed Redwine - latter EPJV), FWS (Dan Nehler & Freddie James), ENP (Agnes McLean & Gregg Reynolds), and SFWMD (Patty Goodman, Andy Gottlieb, & Jana Newman),** will result in a trade-off vast portions of the Everglades to allegedly benefit Everglades National Park. Given the severe adversity that WCA 3A and other areas north of Tamiami Trail has endured over several decades, such a trade-off is anathema to the Tribe and, hopefully, is totally unacceptable to you. As the leaders of Everglades Restoration, we request your review of this matter in light of Tribal concerns.

While the Tribe has long suspected that the Department of the Interior (DOI) would flood the Tribal Everglades to get water to the Park, the proposed PM actually sanctions such. The June 3, 2008 revision states: “The NSM version 4.62 is used to develop target envelopes for the number and duration of extreme high and low water depth events except where deviations from NSM are deemed ecologically beneficial.” A review of the PM shows that high water will no longer be used as a performance target in vast areas of the Everglades, including WCA 3A, Loxahatchee, WCA 2A, and the Rotenberger. The PM document makes its intentions clear: “Targets in subsided areas remain for informational purposes, but the evaluation of ecosystem restoration potential will not be negatively affected by exceeding high water event NSM targets in these areas since meeting these targets would necessarily have negative effects on the restoration of ecological communities that occur downstream of these locations[i.e. ENP].”

The Tribe agrees with Tim Towles of the Florida Fish and Wildlife Conservation Commission (FFWCC) that: “the proposed revision would essentially remove a safeguard against excessive extreme high water events as a measure of restoration success over more than 500,000 acres of freshwater Everglades and would therefore be inconsistent with the Everglades Ridge and Slough CEM.” The sub-team’s response to comments shows their intention to accept negative high water impacts to parts of the Everglades north of Tamiami Trail (including the Tribal Everglades) to benefit the Park. It states at 4e: “The current perspective among the team members is that the subsidence issue triggers a trade-off discussion, and we as a team think that the potential negative impacts that may occur due to high water in the northern WCA 3A, Holey Land, Rotenberger, and to some extent WCA2 and”

3... should be accepted as a tradeoff for the positive impacts we could expect to occur in Everglades National Park and the southern estuaries.”

This statement not only ignores recent science by Dr. Wiley Kitchens and Phil Darby that shows the damage that sustained high water has had on the vegetation, apple snail production, and the Snail Kite in WCA 3A, and science that shows sustained high water damages tree islands, it is totally against the policy of ecosystem restoration that we all endorsed in the Comprehensive Everglades Restoration Plan (CERP). Rather than embrace ecosystem restoration, the sub-team response telegraphs that they actually intend to decide which parts of the Everglades will be saved and which will not. The response at 2d states: “Developing our Performance Measures to the condition where we can conduct trade-off analysis is clearly our goal.” Who instructed this sub-team that to conduct such a trade-off analysis? A review of the Indicator Regions where the high water PM will no longer apply shows that vast portions of WCA 3A will be traded off under this proposal, apparently to achieve some downstream benefit of the Park. There is no scientific basis to ignore the adverse effects of high water on WCA 3A and other areas. Any trade-off of Tribal Everglades is totally unacceptable to the Tribe and violates the promise in the perpetual lease agreement under the Indian Land Claims Settlement Act of 1982 that promises to preserve this area in its natural state for the use and enjoyment of the Tribe. The Tribe will vigorously oppose any attempt by this sub-team to trade-off the Tribal Everglades in WCA 3A.

While the Tribe has learned that it must deal with the fact that there are staff members from ENP that promote such Animal Farm equality for the Everglades, it is surprised that members from the FWS (the agency in the past fought for the high water tree island PM), the SFWMD, and the Corps would support such a discriminatory restoration policy. (Note: FFWCC does not have a member on the sub-team, but has provided thorough comments that capture many of the Tribe's concerns.) FWS and the Corps, who funded the science of Phil Darby and Dr. Kitchens, are fully aware of the damage that high water has done to WCA 3A and the Snail Kite. Staff should not be making a policy decision that will sacrifice vast areas of the Everglades to benefit ENP. The Tribe is alerting the leadership of the respective agencies/entities of this matter in the hope that they will educate their Staffs about CERP goals and rectify this situation. You should also demand that your Staff members review all the science that shows the devastating impacts that sustained high water has had on tree islands and vegetation in the Everglades, which has led to the alarming decline in the Snail Kite population. Dr. Kitchens has clearly shown the connection between habitat degradation in WCA 3A and the decline of the endangered Snail Kite from 3,400 birds to less than 700 today.

The Tribe has additional comments about the proposed PM and the RECOVER sub-team:

- **Subsidence**: It appears that the NSM version being used (4.6.2) has been only partially (and unevenly) adjusted for subsidence above Tamiami Trail but not to the south. What is the justification for using a model that is adjusted for subsidence north of Tamiami Trail but not in Everglades National Park? The Tribe would like to be provided with justification for the subsidence figures north of the Trail that are used in the model. Also, there is no sound scientific basis to support using a model that has been only partially adjusted for subsidence to attempt to discontinue the NSM envelope of protection target against extreme high water events north of the Trail. There has clearly been subsidence in Everglades National Park, which should be measured and used in any model adjusted for subsidence.

- **Conflicts with Other PMs:** The proposed PM is incompatible with other Greater Everglades performance measures and the habitat needs of the Snail Kite, apple snail, wading birds, alligators and other wildlife. The Tribe agrees with the FFWC that the use of NSM water stage levels, rather than water stage depths, in indicator regions that the PM claims have experienced subsidence “would result in greatly lengthened inundation periods that would not support historic Everglades plant and animal communities.”
- **Short-Term Damage:** The Tribe, whose Everglades in WCA 3A has suffered irreversible damage to tree islands and other vegetation under ten years of water management actions for the Sparrow, is unwilling to accept even short term damage to the Tribal Everglades in WCA 3A. The Tribal Everglades has suffered irreversible damage from these actions which DOI and the Corps claimed would be short-term but have gone on for more than decade. The Tribe will not accept the so-called “short-term damage” trade-off discussed in the documents. It is simply not necessary for restoration.
- **Justification for 2.5 ft. or Less:** The Tribe is disturbed that an ENP sub-team member (Vic Engel) actually believes that there is no ecological justification for the extreme high water events thresholds, including the 2.5 ft. that has been used as a PM. There is abundant scientific information concerning the damage to Everglades biota caused by sustained high water levels that would support using even less than 2.5 ft. The sub-team has provided no scientific proof for its support of the McVoy research that allegedly shows that the average maximum depth in the ridge and slough landscape should be 3.0.’ The Tribe continues to support the Extreme High & Low PM depth targets of 2.5’ or less for tree islands and the wildlife on Tribal Everglades. A detailed study by (Heisler et al 2002) on tree islands in WCA 3A demonstrated that prolonged marsh water depths greater than 24” resulted in a decrease in tree and shrub species richness there. More recent studies by Dr. Kitchens show the rapid and extreme habitat damage that can be caused by sustained high water, which in turn impacts the endangered Snail Kite.
- **Tree Island PM:** RECOVER should not have discontinued the use of the Hydrologic Suitability for Elevated Everglades Tree Islands PM (GE-15), merely because the Park disagreed with it. RECOVER should use the tree island PM to assess performance in all areas of the Everglades except ENP if the Park Staff does not like it. Moreover, the Tribe was asked to submit a tree island PM to RECOVER years ago to be used for the Tribal Everglades in WCA 3A and expects it to be used. If the proposed PM is adopted, and the tree island PM remains unused due to ENP’s objections, there will no longer be any tool to measure the impacts of high water on the vegetation in the Everglades north of Tamiami Trail.
- **Water Quality Impacts Ignored:** The elimination of the extreme high water evaluation criterion for vast areas of the Everglades could result in increased depth and duration that would flood and destroy emergent vegetation. This in turn could increase soil phosphorus and create adverse biological impacts in the WCAs (i.e. cattails). The proposed PM fails to acknowledge, or evaluate, the water quality impacts that could result from high water and the effect it could have on meeting water quality standards and the phosphorous criterion. Moreover, the recent EPA REMAP study shows that almost half of the Everglades now has soil phosphorus levels (400 mg/kg) that exceed

CERP goals. The sub-team has totally ignored water quality impacts in the PM and must address this issue.

- **High Water Events v Drought:** There is no scientific support for the sub-team response at 4e that “deep water events are much less damaging than drought events to terrestrial habitats (tree islands included).” Scientific studies by Phil Darby and Dr. Wiley Kitchens, among others, show just the opposite in terms of impacts on apple snails and the Snail Kite’s critical habitat in WCA 3A.
- **Tree Islands and High Water Damage:** Tim Towles (FFWC) comments at 4e that staff disregarded soil subsidence and added 2.5 ft. to the historic ground elevations predicted by NSM 4.6.2 which lead to predictions of high water depths of 3.3 to 4.5 ft. in WCA 2A, WCA 2B and WCA 3B and 4.7 to 5.5 feet in WCA 3A above mean marsh floor. The Tribe shares his concern at 4e that: “These ultra high depths could reoccur frequently with no limit on their durations, and would be considered to be ecologically beneficial under the revisions being proposed for GE-3.” He further points out that the extreme depths predicted by the model output (3.3-5.9 ft.) “would result in the complete inundation of all elevated tree islands in the central Everglades for an indeterminate amount of time.” The sub-team’s response that: “There is a clear trade-off between meeting targets in subsided areas versus sacrificing the ability of the flow-path to deliver water to the southern portion of the ecosystem that is located south of Tamiami Trail” is unacceptable to the Tribe. The Tribe, which has already lost more than half its tree islands in WCA 3A, will accept no trade-offs.

BOTTOM LINE: The Tribe will vigorously oppose the proposed revision to the RECOVER *Extreme High and Low Water Levels in Greater Everglades Wetlands Performance Measure*. The Tribe will not allow Staff of the agencies charged with ecosystem restoration to adopt a PM that will result in a trade-off of vast portions of the Everglades, including the Tribal Everglades in WCA 3A, to allegedly benefit Everglades National Park, and neither should you. We urge you to review this matter at once and make clear to your RECOVER Staff on the sub-team and higher levels that the restoration of all of the remaining Everglades ecosystem is the goal of CERP. We continue to wonder why those involved cannot seem to understand that Everglades restoration should and can be a win-win endeavor ... there are compatible and reasonable solutions if we truly look for them. And you as the leaders of Everglades Restoration are the ones best positioned to instill this purpose and attitude in all.

cc: Chairman Billy Cypress
Congressman Alcee Hastings
Dexter Lehtinen, Esquire
RECOVER Leadership Group