

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

RE: Western Everglades Restoration Project

OGC No. 24-0383

FINAL ORDER APPROVING THE
COMPREHENSIVE EVERGLADES RESTORATION PLAN
WESTERN EVERGLADES RESTORATION PROJECT

Pursuant to Sections 373.026(8)(b) and 373.1501(9) of the Florida Statutes (F.S.), the State of Florida Department of Environmental Protection (Department) enters this final agency action in response to the formal submittal of the Final State Compliance Report for the Western Everglades Restoration Project (WERP) by the South Florida Water Management District (District). The submittal was preceded by the Draft Integrated Project Implementation Report (PIR) and Environmental Impact Statement (EIS) proposing the recommended plan for the Comprehensive Everglades Restoration Plan of the Western Everglades Restoration Project in Broward, Collier, Hendry, Miami-Dade, and Monroe counties, Florida. The submittal and associated materials have been reviewed for compliance with the criteria in Section 373.1501(5), F.S., as outlined below.

Ecosystems within the WERP study area have been altered from over 100 years of public and private efforts to drain water off the land, in part by a massive federal project known as the Central and Southern Florida (C&SF) Project. The overall effect of the federal C&SF Project on the hydrology of this ecosystem has been a disruption of the ecological connectivity of wetland and upland habitats, altered freshwater flow paths, flow volumes, flow timing, seasonal hydroperiods, and historic distributions of sheetflow. The distorted hydrology has resulted in the degradation of aquatic ecosystems and associated cultural sites, loss of biodiversity, and shifts in the ecological guilds and

populations throughout the basin. The altered hydrology has also driven decades of unnatural wildfires that have burned away vegetation, peat, and soils to a degree that rarely, if ever, occurred before drainage.

CERP, as documented in the 1999 C&SF Project Comprehensive Review Study Final Integrated Feasibility Report and Programmatic Environmental Impact Statement (also known as the Yellow Book), consists of 68 different components. The purpose of the CERP is to modify structural and operational components of the federal C&SF Project to achieve restoration of the Everglades and the South Florida ecosystem, while providing for other water-related needs such as urban and agricultural water supply and flood protection.

The WERP contains three of the 68 CERP components (Components CCC, RR, and QQ) and has the following purposes:

1. Component CCC purpose: Reestablish sheetflow from the West Feeder Canal across the Big Cypress Reservation and into the Big Cypress National Preserve, maintain flood protection on Seminole Tribal lands, and ensure that inflows to the North and West Feeder Canals meet applicable water quality standards.

2. Component RR purpose: Increase environmental water supply availability, increase depths, and extend wetland hydropatterns in the northwest corner and west-central portions of Water Conservation Area 3A.

3. Component QQ purpose: Reestablish the ecological and hydrological connection between Water Conservation Areas 3A and 3B, the Everglades National Park, and Big Cypress National Preserve.

In issuing this order, the Department finds that the District has provided sufficient

information to demonstrate compliance with the criteria outlined in Section 373.1501(5), F.S. The Department bases this finding on the following documents:

- a) United States Army Corps of Engineers, Jacksonville District — Draft Integrated Project Implementation Report and Environmental Impact Statement — Western Everglades Restoration Project (December 2023);
- b) South Florida Water Management District, Western Everglades Restoration Project Final State Compliance Report (February 26, 2024);
- c) South Florida Water Management District, Letter of Support for the Western Everglades Restoration Project (January 29, 2020).

The Department has reviewed the documents referenced in the paragraph above and bases this order on the information and conditions in those documents by the District, the United States Army Corps of Engineers (Corps), and other federal partners.

CONCLUSIONS OF LAW

Section 373.026(8)(b), F.S., directs the Department to approve or approve with amendments, any project component before it is submitted to Congress for authorization or receives an appropriation of state funds. Such approval is based on a determination of the District's compliance with Section 373.1501(5), F.S., in its role as local sponsor for the project.

1) Section 373.1501(5)(a), F.S.: Comprehensive Needs Analysis and Evaluation: Based upon the information provided, the Department concludes that the District has met the requirements set forth in Section 373.1501(5)(a), F.S. The District has analyzed and evaluated the project such that all needs will be met in a comprehensive

manner and that all applicable water resource issues have been adequately considered, including water supply, water quality, flood protection, threatened and endangered species, and other natural system and habitat needs.

2) Section 373.1501(5)(b), F.S.: Determination of Project Feasibility: Based upon the information provided, the Department concludes that the District has met the requirements set forth in Section 373.1501(5)(b), F.S. The District has determined with reasonable certainty that the project is feasible based upon standard engineering practices and technologies and are the most efficient and cost-effective of feasible alternatives or combination of alternatives, consistent with Restudy purposes, implementation of project components, and operation of the project.

3) Section 373.1501(5)(c), F.S.: Consistency with Applicable Law and Regulations: Based upon the information provided, the Department concludes that the District has met the requirements set forth in Section 373.1501(5)(c), F.S. The District has determined with reasonable certainty that the project is consistent with applicable laws and regulations and can be permitted and operated as proposed; except that for WERP Component CCC the District must provide the Department a separate demonstration that state water quality standards, including water quality criteria and moderating provisions, will be met prior to construction commencing for that WERP feature. As required by Section 373.1501(5)(c), F.S., the District held a pre-application meeting for the WERP Project on April 11, 2023 between agencies with applicable regulatory jurisdiction. The Department subsequently permitted the first phase of WERP, the L-28 South Culverts Project, on January 12, 2024 under its authority in Section 373.1502, F.S.

4) Section 373.1501(5)(d), F.S.: Reasonable Assurances: Based upon the information provided, the Department concludes that the District has met the requirements set forth in Section 373.1501(5)(d), F.S. The District has provided reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of the project so as to adversely impact existing legal users, that existing levels of service for flood protection will not be diminished outside the geographic area of the project, and that water management practices will continue to adapt to meet the needs of the restored natural environment. During the design phase of the project, the Corps and the District will undertake and incorporate additional analysis to ensure adjacent private properties are not adversely impacted. The Corps and the District will undertake updated project assurances and savings clause analyses for the implementation phases that are selected to be included in a Project Partnership Agreement (PPA) or amendment thereto prior to entering into the PPA or PPA amendment. Additional Reasonable Assurances include the following:

- a. Physical or operational modifications to the project will not interfere with existing legal uses and will not adversely impact existing levels of service for flood management or water use consistent with state and federal law.

5) Section 373.1501(5)(e), F.S.: Coordination with Existing Utilities and Public Infrastructure: Based upon the information provided, the Department concludes that the District has met the requirements set forth in Section 373.1501(5)(e), F.S. The District provided information to ensure that implementation of the project has been coordinated with existing utilities and public infrastructure, and that impacts to and relocation of existing utilities or public infrastructure are minimized.

The Department finds that the WERP components of the CERP, which are proposed by the District, meet the criteria of Section 373.1501, F.S.¹ Such finding is predicated upon acceptance of the conditions in the referenced documents by the Corps without substantive changes and implementation of the conditions listed in Section 4 of this Order. If the Department finds that the Corps has made substantive changes to the referenced documents, or the conditions are not addressed, the Department may vacate this Order.

THEREFORE, IT IS ORDERED that the WERP components of the Comprehensive Everglades Restoration Plan is APPROVED under Section 373.026(8)(b), F.S.

NOTICE OF RIGHTS

This agency action is final and effective unless a timely petition for an administrative hearing is filed under §§ 120.569 and 120.57, F.S., before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Department's proposed agency action may petition for an administrative proceeding (hearing) under §§ 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Petitions by the applicant or any of the parties listed below must be filed within 21 days of receipt of the written notice. Petitions filed by other persons must be filed within 21 days of publication of the notice or receipt of the written notice, whichever occurs

¹ It is noted that none of the WERP components are part of the Everglades Construction Project as defined in Paragraph 373.4592(2)(g), F.S.

first. The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of the person's right to request an administrative determination (hearing) under §§120.569 and 120.57, F.S. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

a) The name and address of each agency affected and each agency's file or identification number, if known;

b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding ; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

c) A statement of when and how the petitioner received notice of the agency decision;

d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

g) A statement of the relief sought by the petitioner, precisely stating the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available in this proceeding.

Any party to this order has the right to seek judicial review of it under § 120.68, F.S., by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days after this order is filed with the clerk of the Department.

DONE AND ORDERED on this 19th day of March, 2024, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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Hamilton
Date: 2024.03.19 11:26:05 -04'00'

Shawn Hamilton
Secretary

FILED on this date pursuant to Section 120.52, Florida Statutes, with the designated
Department Clerk, receipt of which is hereby acknowledged.

Lea Crandall

Digitally signed by Lea Crandall
Date: 2024.03.19 11:30:52 -04'00'

Clerk

Date