

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Post Authorization Change Report  
to the Central Everglades Planning Project

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OGC No. 18-0138

FINAL ORDER APPROVING THE CENTRAL EVERGLADES PLANNING PROJECT  
POST AUTHORIZATION CHANGE REPORT  
EVERGLADES AGRICULTURAL AREA RESERVOIR

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 Order in response to the South Florida Water Management District's (District) submittal of the Final State Compliance Report for the Comprehensive Everglades Restoration Plan (CERP) - Central Everglades Planning Project (CEPP) Post Authorization Change Report (PACR). The submittal accompanies the Draft PACR proposing the Tentatively Selected Plan for the Everglades Agricultural Area Reservoir (Alternative C240A) for the CEPP located in Palm Beach County, Florida. The submittal and associated materials have been reviewed for compliance with the criteria in Section 373.1501(5), F.S., as outlined below.

1. Alternative C240A is an ecosystem restoration project designed to improve the quantity, quality, timing, and distribution of water flows to the central Everglades Water Conservation Area (WCA) 3 and Everglades National Park (ENP). The proposed plan also provides flexibility in Lake Okeechobee operations by increasing storage, treatment and conveyance to the south, which will reduce harmful discharges from Lake Okeechobee to the St. Lucie and Caloosahatchee Estuaries. The principle features of Alternative C240A are a 10,500-acre reservoir, approximately 23 feet deep (240,000 acre-feet); a 6,500 acre Stormwater Treatment Area (STA); and conveyance improvements to

the Miami and North New River Canals within the Everglades Agricultural Area.

Alternative C240A will significantly increase CEPP flows to the central portion of the Everglades from an average annual flow of approximately 210,000 acre-feet to an average annual flow of approximately 370,000 acre-feet.

2. Alternative C240A is a modification of CEPP. On April 10, 2014, the Department issued its approval of CEPP pursuant to Sections 373.026(8)(b) and 373.1501(9), F.S.

3. The purpose of the Section 373.026(8)(b), F.S., review procedure is to ensure the State of Florida, at a preliminary stage in the process, is sufficiently familiar and comfortable with the project to allow the District to continue pursuing the project through the remaining state and federal processes. Therefore, before the District submits any project component to Congress for authorization or receives an appropriation of state funds, the Department is required to review the project component in accordance with Section 373.026(8)(b), F.S. This review process does not supercede, nor is a substitute for, any Department permitting action regarding the project.

4. 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., for the amendments to CEPP as set forth in Alternative C240A. The Department bases this finding primarily on the following documents:

a. South Florida Water Management District, Central Everglades Planning Project - Post Authorization Change Report, State Compliance Report, Section 373.1501, F.S. (February 13, 2018);

b. South Florida Water Management District, Central Everglades Planning Project – Draft Post Authorization Change Report (February 16, 2018);

- c. South Florida Water Management District, Governing Board Meeting, Everglades Agricultural Area Storage Reservoir Project Update, Agenda Item 27 (February 8, 2018);
- d. United States Army Corps of Engineers (Corps), Report of the Chief of Engineers, Central Everglades Planning Project, Comprehensive Everglades Restoration Plan, Central and Southern Florida Project (December 23, 2014);
- e. United States Army Corps of Engineers, Jacksonville District – Final Integrated Project Implementation Report and Environmental Impact Statement (PIR/EIS) - Central Everglades Planning Project (December 2014);
- f. South Florida Water Management District, Governing Board Resolution No 2013-0815 (August 2013);
- g. South Florida Water Management District, Governing Board Resolution No 2014-0410 (April 2014);
- h. South Florida Water Management District, Letter of Support for the Central Everglades Planning Project Final Integrated Project Implementation Report and Environmental Impact Statement (April 2014); and
- i. South Florida Water Management District, Central Everglades Planning Project Non-Federal Sponsor's Self-Certification of Financial Capability for Decision Documents (April 2014)

5. 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 their 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.

a. Other Natural System and Habitat Needs – The District has adequately demonstrated that natural system and habitat needs were considered through the plan formulation process, in which alternatives were developed and refined according to their ability to meet the goals and objectives of the project. As required by CERP, the project will produce important environmental benefits by providing specified flows and more natural hydropatterns in the central Everglades and reducing harmful discharges to the Caloosahatchee and St. Lucie Estuaries. Furthermore, the District has stated the additional flows to the Everglades will be protected by rule.

b. Water Quality – The District has adequately demonstrated that all applicable water quality issues have been analyzed and evaluated. These analyses were primarily based on the Dynamic Model for Stormwater Treatment Areas (DMSTA). The DMSTA modeling predicts that STA discharges will meet the applicable water quality based effluent limit (WQBEL). Regardless of the modeling predictions, existing permit conditions ultimately require attainment with the WQBEL. The permit condition will continue to apply to both current and future STAs. The following is also assumed and expected:

- 1) The project will be designed to treat all beneficial flows to the Everglades Protection Area predicted by the Regional Simulation Model so that the applicable WQBEL will be attained.
- 2) The real time operational decisions made by the District will prevent the majority of diversions predicted by DMSTA, as demonstrated in Water

Year 2018. Moreover, the Department's existing permits restrict diversions to specified, limited circumstances, and these permit conditions will continue to apply in the future.

- 3) The modeling contains various conservative assumptions and practices to provide certainty that the applicable WQBEL will be achieved by the project. Although all modeling and associated assumptions have some level of uncertainty, permitting requirements applicable to the STAs ensure the WQBEL will ultimately be achieved. In the event the WQBEL is not attained, additional actions to meet water quality requirements must be undertaken. For example, the District could convert portions of the A-1 Flow Equalization Basin to a STA.

c. Flood Protection – The District has adequately demonstrated that flood protection issues have been analyzed and evaluated. The District performed modeling and engineering analyses to demonstrate the project will maintain or improve levels of flood protection to the project area, including the Seminole Tribe of Florida's Big Cypress Reservation and the Miccosukee Tribe of Indians of Florida's reservation areas. 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.

d. Threatened and Endangered Species – The District has adequately considered potential impacts to threatened and endangered species. To comply with the Endangered Species Act (ESA), the District has drafted a Biological Assessment (Annex A) in preparation for consultation with the U.S. Fish and

Wildlife Service. The SFWMD understands that the USACE will be initiating government-to-government consultation upon submittal of the PACR to the Assistant Secretary of the Army Civil Works. The District has coordinated and will continue to coordinate with the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission to address potential impacts to threatened and endangered species that may arise as a result of the project.

e. Water Supply – The District has demonstrated that water supply issues were adequately considered. The project shall not diminish the quantity of water available to existing legal users. Water for the natural system necessary to ensure project benefits will be protected under Florida law.

6. Section 373.1501(5)(b), F.S.: Determination of Project Feasibility: Based upon the information provided, the Department concludes that the District has met their 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 is the most efficient and cost-effective of feasible alternative, consistent with Restudy purposes, implementation of project components, and operation of the Project.

7. 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 their 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. A pre-application conference for the CEPP-PACR EAA Reservoir was held on January 12, 2018, between agencies with applicable regulatory jurisdiction, as required by Section 373.1501(5)(c),

F.S.

8. Section 373.1501(5)(d), F.S.: Reasonable Assurances: Based upon the information provided, the Department concludes that the District has met their 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. 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.

9. 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 their 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.

10. The Department finds that amendments to CEPP as set forth in Alternative C240A, meet the criteria of Section 373.1501(5), F.S. Such finding is predicated upon acceptance of the conditions in the referenced documents by the Corps without substantive changes. If the Department finds that the District or Corps has made substantive changes to the referenced documents, the Department may vacate this Order.

THEREFORE, IT IS ORDERED that Alternative C240A is approved without amendment 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 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, stating precisely 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.

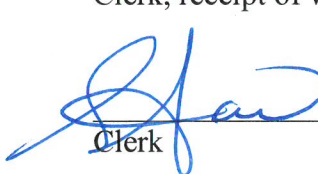
Any party to this order has the right to seek judicial review of it under § 120.68, F.S., by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, 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 5th day of March, 2018, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
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Noah Valenstein  
Secretary

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

  
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Clerk      Date 3/5/18

ELECTRONIC COPIES FURNISHED TO:

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