

Water Quality Litigation: An Update From the Everglades

By Michael Soukup

Nutrient enrichment of the Everglades by the Everglades Agricultural Area (EAA) had been reported by scientists since the 1970s. In 1988, the acting U.S. Attorney in Miami filed suit against the State on behalf of Everglades NP and Loxahatchee National Wildlife Refuge to compel enforcement of State water quality law. The Settlement Agreement reached between the State and Federal governments in 1991 obligated the State to construct wetlands in the EAA and to force the primarily sugar cane growers to reduce the phosphorus in their runoff by 25 percent.

When the State sought to effect this Agreement through implementation of a Surface Water Improvement and Management (SWIM) Plan (under the State SWIM Act), the agriculture industry filed more than 30 legal and administrative suits to block implementation. After six months of intensive preparation for trials set to begin in mid-1993, all parties agreed to enter into mediation. Mediation began in January 1993 and is still in progress.

The process began on two levels: Policy and Technical. Technical representatives from all parties met for several months to hammer out a consensus plan; the Technical Mediation Group went further than the SWIM

Plan in attacking the water quality issue, including greater protection for the Miccosukee Tribal Lands and Lake Okeechobee, and added additional constructed wetland treatment capacity for Lake Okeechobee and C-51 (a suburban basin) water as a first step in restoring Everglades hydroperiods to pre-drainage levels. The new plan costs roughly \$465 million in today's dollars (of which roughly \$200 million covers the hydroperiod benefits.)

The Policy level group, with direct involvement of DOI Asst. Secretaries Frampton and Cohen, reached a financial agreement in July. The industry would pay \$233 million over 20 years while increasing their on-farm reductions of phosphorus runoff gradually to 45 percent (or pay up to \$322 million). This led to an announcement by DOI Secretary Babbitt and the other potential signatories of a Statement of Principles on July 13, 1993.

The Statement was not well received by environmentalists, largely due to a perception that the sugar industry was not paying its fair share, (their payments were not indexed for inflation, etc.), and some public lands in the EAA were to be used for cleaning Lake Okeechobee waters.

Since July, intense negotiations have attempted to produce a detailed agreement that includes some accommodation of the environmental position plus all the difficult issues not addressed in the broad Statement of Principles. Negotiations have been difficult, partly because the agriculture industry remains unwilling to admit in the agreement that there is a problem or that they are the cause. This posture preserves their rights to challenge the agreement if additional clean-up expense is necessary.

A good probability exists that a Phase II effort will be necessary to get down to threshold levels for phosphorus when such levels are experimentally determined. The exact level of phosphorus necessary to maintain the Everglades as it originally evolved, and the effectiveness of the proposed constructed wetlands, are important areas of research during the first 10 years of any eventual agreement.

The construction and operation of over 40,000 acres of wetland for low level phosphorus removal never before has been attempted. As with all Everglades projects, the problems and their solutions are grand in scale, and the potential reward for restoring and preserving the system is equally so.

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