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Alligators and Litigators: A Recent History of Everglades Regulation and Litigation

by Keith W. Rizzardi

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To many Florida lawyers, litigation in the Everglades seems as old as the Everglades itself. Its history can be traced back to the 1800s when Hamilton Disston and Henry Flagler were draining, dredging, and filling Florida's land while fighting in the courts with shareholders, speculators, and state land administrators.¹ The modern history of litigation in the Everglades is dominated by agricultural interests, environmental interest groups, the Miccosukee Tribe of Indians, and state and federal agencies. Along the way, important precedents have been created, affecting the Everglades as well as Florida administrative and environmental law in general.

U.S. vs. South Florida Water Management District

The recent history of Everglades litigation really begins in 1988, when the federal government, through then acting U.S. Attorney Dexter Lehtinen, sued the South Florida Water Management District and the then Florida Department of Environmental Regulation (DER), now known as the Department of Environmental Protection (DEP). The lawsuit alleged violations of state water quality standards, particularly phosphorus, in the Loxahatchee National Wildlife Refuge and Everglades National Park.²

Numerous agricultural groups, including the Florida Sugar Cane League, sought to intervene in the federal suit against the water management district. The trial court

initially denied intervention but was overturned by the appellate court, which ruled that the farmers had the right to participate in proceedings that would translate the local water quality standards from existing narrative standards to more specific numeric criteria.³

With litigation continuing to expand, Governor Lawton Chiles walked into the federal courthouse in Miami on May 21, 1991, and announced that the State of Florida was prepared to put an end to the litigation:

I came here today convinced that continuing the litigation does little to solve the problems or restore the Everglades. I am more convinced than ever of that We talked about water in the glass I am ready to stipulate today that water is dirty. I think that is [what this is] about, Your Honor, is how do we get clean water? What is the fastest way to do that? I am here and I brought my sword. I want to find out who I can give that sword to and I want to be able to give that sword up and have our troops start the reparation, the clean up We want to surrender. We want to plead that the water is dirty. We want the water to be clean, and the question is how can we get it the quickest.⁴

The governor's statements marked a turning point for the Everglades, beginning a new process to solve the water quality problems. But the litigation would still continue.

Settlement Agreement

In July 1991, after months of intense technical negotiations, the water management district, Florida DER, and U.S. Department of Justice signed a settlement agreement in the original federal lawsuit. The settlement agreement was then approved by the judge and adopted as a consent decree.⁵ The execution of the settlement by state officials was also challenged, although the challenge

was ruled to be premature in *Florida Sugar Cane League v. Department of Environmental Regulation*, 617 So. 2d 1065 (Fla. 4th DCA 1993), because the execution of a settlement agreement was not subject to an administrative proceeding. Instead, the court ruled, the settlement agreements would be subjected to administrative challenges when a subsequent action was taken by the agencies that affects the substantial interests of a party.⁶

The settlement agreement and consent decree required a series of programs to improve water quality and meet state standards in Everglades National Park and the Loxahatchee National Wildlife Refuge by July 2002. Among its provisions were a commitment to construct a series of stormwater treatment areas and to implement a regulatory program requiring agricultural growers to use best management practices to control and cleanse discharges from the Everglades Agricultural Area, located to the north of the Everglades and south of Lake Okeechobee.

These substantive provisions of the settlement agreement were also challenged by agricultural groups based upon due process, subject matter jurisdiction, and other statutory grounds. In an important decision, Judge William H. Hoeveler made a number of major findings, including: the settlement agreement did not impose duties on nonconsenting parties, because they still had an opportunity to pursue remedies through subsequent legal proceedings; the court had subject matter jurisdiction over claims filed by the federal government, including breach of contract claims; the U.S. Attorney General could bring the action based upon violation of state laws, even without consent of other federal agencies; the proposed changes to the Central and South Florida Flood Control Project did

not require prior congressional approval and did not violate the Flood Control Act, 33 U.S.C. §701; and, although an environmental impact statement (EIS) was necessary, its absence was not a precondition to approval of the settlement agreement because the National Environmental Policy Act, 42 U.S.C. §4331, was not intended to be used as a litigation tactic to delay actions intended to prevent an irretrievable loss of a natural resource.⁷ The appellate court upheld Judge Hoeveler's rulings on jurisdiction, but reversed his ruling that an EIS would be required. Instead, the 11th Circuit held that NEPA required federal decisionmaking, not just federal involvement, and that preparation of the EIS based on the settlement agreement was premature.⁸ In addition, the 11th Circuit remanded the case for further consideration of the Everglades Forever Act, discussed below. The Supreme Court denied a petition for certiorari.⁹

Public Records Litigation

When the state and federal governmental agencies refused to disclose draft documents related to the settlement negotiations, the agricultural groups filed another series of lawsuits, this time based upon the State of Florida's public records laws.¹⁰ In two cases, *Florida Sugar Cane League v. Department of Environmental Regulation*, No. 91-2108 (Fla. 2d Cir. Ct. Sept. 20, 1991), *per curiam affirmed*, 606 So. 2d 1267 (Fla. 1st DCA 1992), and *Florida Sugar Cane League v. Department of Environmental Regulation*, No. 91-2108 (Fla. 2d Cir. Ct. June 5, 1992), the courts ruled that draft documents and technical documents prepared not for litigation, but for settlement discussions, were not exempt from disclosure under Florida's public records laws. After those decisions, the other public records cases with other agencies were settled.

Everglades Protection Act and SWIM Plan

Initially, the water management district sought to resolve the problems in the Everglades and implement the settlement agreement and consent decree through its surface water improvement and management (SWIM) planning process. In fact, in 1991, the Florida Legislature passed the Everglades Protection Act to provide a specific framework for the restoration.¹¹ But when the water management district produced its proposed SWIM plan for the Everglades in March 1992, more litigation ensued. Consistent with the settlement agreement and consent decree, the SWIM plan called for solutions to the ecological and water quality problems in the Everglades, including acquisition, design, and construction of 35,000 acres of manmade marshes to treat stormwater runoff from the Everglades Agricultural Area.¹² Funding sources and schedules for implementation also were provided. The SWIM plan would not be implemented, because agricultural groups in the Everglades Agricultural Area quickly challenged the plan pursuant to the Florida Administrative Procedure Act.¹³

Interim Permits

In addition to preparing a SWIM plan, the water management district also applied for interim permits to operate the structures discharging into the Everglades pursuant to the Everglades Protection Act. To obtain these permits, the water management district was required to demonstrate reasonable assurances to the department that it would comply with interim concentration levels for phosphorus.¹⁴ But when the Florida DER proposed to issue the interim permits, additional administrative challenges were filed.¹⁵ The later revision of the underlying statute, however, would make these permitting cases moot.

Rulemaking Efforts

Rulemaking was yet another controversial aspect of the

Everglades restoration efforts being implemented by the water management district and DER. When the water management district proposed a rule requiring the implementation of runoff-controlling agricultural practices, also known as best management practices, in the Everglades Agricultural Area, the rule was challenged by agricultural interest groups,¹⁶ although constitutional issues were dismissed. Rulemaking issues proved equally controversial for the Florida DER, as agricultural groups sought to force the agency—through litigation, of course¹⁷—to engage in rulemaking related to the establishment of a numeric water quality criteria for phosphorus to replace the existing narrative water quality standard that required no imbalance of flora and fauna.¹⁸ Subsequent changes to Florida law would expressly require the agency to use formal rulemaking when establishing a phosphorus criterion.¹⁹

Everglades Nutrient Removal Project

One of the first construction projects associated with the Everglades restoration involved a manmade marsh in the Everglades Agricultural Area, immediately north of the Loxahatchee National Wildlife Refuge. The marsh, known as the Everglades Nutrient Removal Project, was ultimately subjected to the permitting provisions of the Clean Water Act, including a National Pollutant Discharge Elimination System permit issued by the U.S. Environmental Protection Agency to the water management district pursuant to 33 U.S.C. §1342. When EPA proposed the permit, however, it was challenged by both agricultural groups and the Miccosukee Tribe of Indians of Florida.

But the water management district fared well in these NPDES disputes. The agricultural groups' request for a hearing was denied by the EPA and the Environmental

Appeals Board in *In re: South Florida Water Management District, NPDES Permit No. FL0043885 for Everglades Nutrient Removal Project*. In addition, the administrative law judge issued an order authorizing interim operation of the facility after the Miccosukee Tribe failed to show that irreparable harm would result from the short-term operation of the marsh, which was intended to use natural vegetation to cleanse phosphorus from the watershed.²⁰ Before the case was finally resolved, the district modified the project, in accordance with the Everglades Forever Act (discussed below). A new set of NPDES and state permits—which, miraculously, were not challenged—were issued for the new facility, known as Stormwater Treatment Area 1 West,²¹ and the previously filed federal administrative cases became moot.

By December 1992, the district concluded that it was facing over 30 different lawsuits related to the Everglades restoration effort, and sought to achieve a mediated solution. The result was the statement of principles, signed in July 1993 by state and federal agencies as well as numerous agricultural groups. The document established a joint commitment to ending litigation, improving Everglades water quality, implementing stormwater treatment areas and best management practices to control phosphorus levels flowing into the Everglades, and identifying multimillion-dollar financial commitments by the signatories.

Everglades Forever Act

In 1994, the Everglades Protection Act was substantially rewritten, creating the Everglades Forever Act (EFA), F.S. §373.4592, which has served as the primary framework for implementation of the Everglades restoration since its passage. The EFA did, however, differ from the settlement agreement and consent decree, especially because it

included the entire Everglades, not just the federal areas of Everglades National Park and the Loxahatchee National Wildlife Refuge, and because it changed the timelines for implementing project components, requiring compliance with all water quality standards in the Everglades by December 31, 2006. Major—and often controversial—portions of the EFA included §4(a), authorizing the Everglades Construction Project, including schedules for construction and operation of six stormwater treatment areas to cleanse waters flowing from the Everglades Agricultural Area and further authorizing the use of ad valorem taxes for the project; §4(d), creating a research program to understand phosphorus impacts on the Everglades and to develop additional treatment technologies; §4(e), requiring rulemaking to establish a numeric criterion for phosphorus, and creating a default criterion in the event rulemaking is not complete by December 31, 2006; §4(f), requiring the district to enforce best management practices in the Everglades Agricultural Area in accordance with administrative rules; §5, authorizing acquisition of agricultural lands; §§6 and 7, creating an agricultural privilege tax and incentive program with tax credits for regional growers; §8, allowing special assessments to be levied upon beneficiaries of stormwater systems; §§9 and 10, requiring permits for the implementation of the EFA; and §11, with a savings clause acknowledging other laws and prohibiting the use of variances or moderating provisions by the agricultural groups regulated by §4(f).

The new legislation did not end the old patterns of litigation, although the opponents have changed. Instead of agricultural groups, many of the challenges have involved environmental groups or, alternatively, the Miccosukee Tribe—represented by Dexter Lehtinen, who

previously served as acting U.S. attorney in the original *U.S. v. South Florida Water Management District* lawsuit.

Proposed Modified Consent Decree

As a result of the EFA, the federal government and state agencies reviewed the consent decree and proposed modifications to it.²² In general, the modifications were intended to make the deadlines and procedures for Everglades restoration that were in the federal consent decree consistent with the deadlines and procedures established in the state statute. The proposed modifications were attacked, however, by the Miccosukee Tribe, alleging that the EFA was an unconstitutional impairment of contract under both the state and federal constitutions.²³ The Tribe's argument was rejected by U.S. District Court Judge William H. Hoeveler, who made four important rulings: 1) the Tribe, as an intervenor, was not part of any contractual relationship regarding the settlement agreement and, therefore, lacked standing to raise the argument; 2) even if a contractual relationship existed, the EFA was not intended to impair the agreement; 3) there were legitimate public purposes in enacting the EFA, which provides a funding mechanism for Everglades restoration; and 4) the enactment of the EFA was reasonable and constituted a broad and far-reaching effort to solve problems on a larger scale than encompassed by the consent decree.²⁴ The joint motion to modify the consent decree, however, remains under consideration by Judge Hoeveler.

Proposed Numeric Criterion for Phosphorus

Despite the timelines established by the EFA, the Miccosukee Tribe used litigation to force the Florida DEP to begin rulemaking proceedings to establish a numeric criterion for phosphorus. Although the Florida DEP rejected the Miccosukee Tribe's petition for rulemaking, Florida's Fourth District Court of Appeal reversed the

Florida DEP decision. In *Miccosukee Tribe v. Florida Department of Environmental Protection*, 656 So. 2d 505 (Fla. 3d DCA 1995), the court concluded that only the Environmental Regulation Commission had the authority to review the tribe's petition, based on F.S. §403.804, which grants the ERC the exclusive standard setting authority of the Florida DEP. In a subsequent decision, however, the same court ignored the tribe's demands for immediate rulemaking; instead acknowledging the EFA and the Florida DEP assertions that rulemaking was proceeding expeditiously with rule development in accordance with the EFA timelines. Finding no legal error, the court concluded that only the Florida Legislature could further expedite the Florida DEP's rulemaking efforts.²⁵

Permitting Everglades Restoration

Like the Everglades Protection Act, the EFA also required the water management district to obtain permits for its projects, including federal dredge and fill permits pursuant to the Clean Water Act, National Pollutant Discharge Elimination System (NPDES) permits pursuant to the State of Florida's delegated program, and other EFA permits.

404 Dredge and Fill Permits

The first major permit for the Everglades Construction Project was a §404 dredge and fill permit issued by the U.S. Army Corps of Engineers to the water management district. The permitting process included a substantial environmental impact statement, concluding that the project was in the public benefit.²⁶ Although generally 404 permits regulated the construction of a facility and its wetland impacts, the Corps expressed concern about long term operations of the stormwater treatment areas and eventual compliance with water quality standards.²⁷ As a result, the Corps took the unprecedented step of including operating and monitoring conditions in the 404 permit.²⁸

Although the permit was controversial and was immediately followed by the creation of the Joint Legislative Committee on Everglades Oversight,²⁹ no lawsuits were filed.

NPDES and EFA Permits for Stormwater Treatment Areas

In addition to the 404 construction permit, a second set of operational permits were required for the Everglades Construction Project and the six stormwater treatment areas. Some of those permits have already been issued by the Florida DEP to the water management district.³⁰ The permits generally require the stormwater treatment areas to meet their design objective, an annual average discharge concentration of 50 parts per billion for phosphorus, and outflows better than inflows for other parameters. However, the permits have also been issued with administrative orders, which recognize that future modifications will be necessary to ensure compliance with all state water quality standards by December 31, 2006. Currently, one of those permits is facing a legal challenge: the NPDES permit for Stormwater Treatment Area 5, which has been challenged by the Friends of the Everglades, who allege that the permit violates state water quality standards including anti-degradation requirements, and that the permit must not allow discharges to the state land area known as the Rotenberger Tract, a section of remnant Everglades within the Everglades Agricultural Area.³¹ Although it did not challenge the permit initially, the Miccosukee Tribe has also sought to intervene in this proceeding.

Non-Everglades Construction Project Permit

In addition to the permits for the Everglades Construction Project and the stormwater treatment areas, the EFA also required the water management district to obtain a permit for discharges into, within, or from the Everglades that were not included in the Everglades Construction Project.

To obtain the permit, which became known as the Non-ECP permit, the water management district was required to demonstrate reasonable assurances to the Florida DEP that it had schedules and strategies to meet water quality standards to the maximum extent practicable and an adequate monitoring program for the region. The permit was challenged by both the Miccosukee Tribe and the Friends of the Everglades, who challenged the schedules and strategies for restoring the Everglades restoration and who attempted to litigate matters of federal law, including the Clean Water Act and Endangered Species Act, in the state administrative proceeding. Notably, numerous agricultural interests intervened in the case on behalf of the water management district. Eventually, the challenge was limited by the administrative law judge to only the state permitting criteria established by the EFA. The recommended order, as well as the Florida DEP's final order, both concluded that the permit included the correct structures, contained the necessary schedules, strategies, and monitoring programs, and that the permit represented the maximum extent practicable that could be done at the time by the water management district to achieve compliance with all water quality standards.³² The procedural rulings narrowing the issues and the substantive conclusions supporting the issuance of the permit all were upheld on appeal.³³ Today, the permit requirements are being implemented as part of the Everglades Stormwater Program. Through this program, the water management district works with other local governmental entities, including urban basins along Florida's Atlantic coastline, to find methods to ensure that discharges into the Everglades comply with water quality standards.

S-9 Pump Station

In a related dispute, the Friends of the Everglades and

Miccosukee Tribe of Indians filed separate suits against the water management district alleging that one particular structure in Broward County, the S-9 pump station along the eastern edge of the Everglades, required an NPDES permit.³⁴ The water management district argued that the structure did not require an NPDES permit, and that it was already operating pursuant to the Non-ECP permit. Nevertheless, federal Judge Wilkie D. Ferguson, Jr., ruled that because the S-9 pump station effected an unnatural flow, transferring polluted waters from a canal into relatively pristine Everglades waters, the pump was a point source for which an NPDES permit was required.³⁵ A motion for rehearing by the water management district and Florida DEP is currently pending on the case.

The order also enjoined operation of the S-9 pump station, which is an important flood control structure for areas of western Broward County. At a November 10, 1999, governing board meeting, however, the water management district and Miccosukee Tribe agreed to a stay of the injunction, thereby allowing the continued operation of the S-9 structure, provided that certain efforts to improve water quality were implemented in the basin on an accelerated basis.³⁶

EFA Impact on Water Quality Standards

In another series of lawsuits, the Miccosukee Tribe challenged the EFA as an invalid change in water quality standards, filing a federal case based upon the Clean Water Act and Administrative Procedure Act. Initially, the case was dismissed by the U.S. district court based on representations by the U.S. Environmental Protection Agency that the EFA did not change water quality standards.³⁷ On appeal, the case was remanded to the lower court for further fact-finding proceedings.³⁸

To facilitate a resolution of the matter, the U.S. Environmental Protection Agency independently conducted a review of the EFA, and concluded that the EFA did not change or revise existing water quality standards because it did not change any water quality criterion, because it did not change any designated uses of downstream waters, and because it did not change anti-degradation policy. U.S. Environmental Protection Agency, *Determination Concerning the Everglades Forever Act* 10---14, 29 (January 30, 1998). Upon review, and despite the great deference generally accorded administrative agencies, the U.S. district court concluded that the U.S. EPA determination was arbitrary and capricious, and devoid of reasonable evidence supporting the agency decision. Judge Edward B. Davis concluded that the EFA was not a valid compliance schedule pursuant to the Clean Water Act, that the EFA actually authorized violations of the narrative water quality criterion for nutrients until 2006, and that the EFA allowed agricultural interests to violate state water quality standards.³⁹ A petition for rehearing or to certify a question for the Supreme Court of Florida is currently pending before the 11th Circuit.

Tribal Water Quality Standards

The Miccosukee Tribe has not limited its involvement in the regulation and restoration of the Everglades to the courtroom. In addition, and in accordance with the Clean Water Act and federal regulations, the Miccosukee Tribe has taken affirmative actions to establish its own water quality standards. Stating that “the most stringent nutrient standards will be applied to the most upstream reaches of the Tribal waters,” the Miccosukee Tribe adopted a numeric criterion for phosphorus, ruling that “total phosphorus shall not exceed 10 parts per billion.” Miccosukee Tribe of Indians of Florida, *Water Quality*

Standards (Adopted December 19, 1997). These standards were approved by the U.S. Environmental Protection Agency, which specifically concluded that the phosphorus criterion was not overly protective, met Clean Water Act requirements, and was scientifically defensible.⁴⁰

Constitutional Amendments

While litigation involving the Miccosukee Tribe has often involved specific projects and the implementation of existing state laws, a handful of Florida citizens have turned to the courts and the legal process to change the laws altogether. In 1995, after an extensive public campaign and debate, the citizens of Florida voted to approve two constitutional amendments that were placed on the ballot for referendum.⁴¹ One provision, commonly known as the “polluter pays” provision, in Art. II, §7 of the Florida Constitution, states: “Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution.”

The second amendment, in Art. X, §17 of the Florida Constitution, created a trust fund for purposes of conservation and natural resource protection in the Everglades.

After passage of the amendments, the water management district requested an advisory opinion from the attorney general on the polluter pays provision. The attorney general concluded that the provision was self-executing, and that although supplemental legislation could be passed by the Florida Legislature, the water management district had an obligation to implement its requirements. Op. Att’y Gen. Fla. 96-92 (1996). Governor Lawton Chiles

then requested an advisory opinion from the Supreme Court of Florida pursuant to Art. IV, §1 of the Florida Constitution, asking whether the polluter pays provision was self-executing, whether it required the Florida Legislature to take actions affecting the EFA, and what the term “primarily responsible,” as used in the amendment, meant. The Supreme Court addressed these questions in *Advisory Opinion to the Governor – 1996 Amendment 5 (Everglades)*, 706 So. 2d 278 (Fla. 1997). First, the court concluded that the provision was not self-executing because it failed to lay down a sufficient rule for accomplishing its purpose. *Id.* Second, the court held that when a constitutional amendment is not self-executing, existing legislation, including the EFA, remained in effect until repealed by the legislature. *Id.* Third, and finally, the court determined that the term “primarily responsible” should be given its common-sense meaning, and that no one person in the EAA was responsible for 100 percent of the pollution; rather those in the EAA who are determined to be responsible must pay their share of the costs of abating that pollution. *Id.*

Subsequently, a group of Florida citizens turned to the courts, contesting the Everglades Forever Act’s grant of authority to the district to levy property taxes, and arguing that the act was an unconstitutional action violating the polluter pays amendment.⁴² The case was dismissed, however, by Judge Lawrence R. Kirkwood, by a judgment on the pleadings, concluding that the plaintiffs had no enforceable rights under the amendment, and that the judiciary could not direct the legislature to act to implement a non-self-executing amendment.⁴³ In a recent opinion that has been appealed to the Florida Supreme Court, the Fifth District Court of Appeal upheld the lower court ruling, concluding that “until the legislature repeals

or amends the Everglades Forever Act, there is a statutory basis to levy taxes against nonpolluting land owners to abate pollution."⁴⁴

Endangered Species in the Everglades

Another recent area of Everglades-related litigation involves Everglades National Park and the endangered Cape Sable seaside sparrow. In 1999, after an assessment of the species' status, the U.S. Fish and Wildlife Service concluded in a biological opinion that historical operation of the flood control system and certain programs being implemented in Everglades National Park by the U.S. Army Corps of Engineers and the water management district were placing the bird in jeopardy of extinction.⁴⁵ Subsequent to the issuance of that biological opinion, the Natural Resources Defense Council and other environmental groups filed suit against the U.S. Army Corps of Engineers and the water management district. The suit alleged that the agencies were causing harm to and takings of an endangered species, in violation of the Endangered Species Act, 16 U.S.C. §1538, and is currently in its early stages.⁴⁶

Comprehensive Everglades Restoration Plan

Eventually, many of the problems in the Everglades will be addressed by the implementation of the Comprehensive Everglades Restoration Plan, also known as the Restudy.⁴⁷ Specifically, the plan seeks to achieve improvements in water storage and supply for the long-term water needs of south Florida residents and agriculture, the restoration of more natural hydroperiods, including sheetflow, in the south Florida ecosystem, improvements to water quality, and improvements to native flora and fauna including endangered and threatened species.

Implementing the plan, however, will require additional

legislative authority and administrative review. In fact, as part of the review process, the Florida Legislature passed a new law in 1999 requiring the water management district to submit a report to the Florida DEP on each project component, and requiring the Florida DEP to determine with reasonable certainty that the project components are feasible and can be permitted and operated as proposed.⁴⁸

Conclusion

Since the filing of the original *U.S. v. South Florida Water Management District* lawsuit, litigation and the Everglades have become almost synonymous words. While the earlier cases were dominated by interagency disputes and related disputes with agricultural interests, recent cases have involved conflicts between agency actions and environmental groups or the Miccosukee Tribe. But once the long-term objectives of the Everglades Forever Act (EFA), F.S. §373.4592(10), and the Comprehensive Everglades Restoration Plan are met—compliance with all state water quality standards—the litigation may finally come to an end. Meanwhile, the agencies will continue to implement the Everglades restoration, and their lawyers will continue to have plenty of work.

¹ See Nelson Manfred Blake, *Land into Water—Water into Land: A History of Water Management in Florida* (1980).

² *U.S. v. South Florida Water Management District*, Case No. 88-1886 CIV-HOEVELER (S.D. Fla.).

³ *U.S. v. South Florida Water Management District*, 922 F.2d 704 (11th Cir. 1991).

⁴ *U.S. v. South Florida Water Management District*, Case No. 92-4314 CIV-HOEVELER (Transcript of court proceedings, May 21, 1991) available online at University of Miami Everglades Litigation Collection,

http://www.law.miami.edu/everglades/litigation/federal/usdc/88_1886/hearings/fl

(visited by author July 19, 2000).

⁵ *U.S. v. South Florida Water Management District*, 847 F. Supp. 1567 (S.D. Fla. 1992).

⁶ See *Florida Sugar Cane League v. South Florida Water Management District*, 617 So. 2d 1065 (Fla. 4th D.C.A. 1993)

⁷ *U.S. v. South Florida Water Management District*, 847 F. Supp. 1567 (S.D. Fla. 1992).

⁸ *U.S. v. South Florida Water Management District*, 28 F.3d 1563 (11th Cir. 1994).

⁹ *Western Palm Beach County Farm Bureau v. U.S.*, 115 S. Ct. 1956 (1995).

¹⁰ *Florida Sugar Cane League v. United States Department of Justice*, Case No. 91-2134-CIV-HOEVELER; *Florida Sugar Cane League v. DER*, Case No. 91-2108; *Florida Sugar Cane League v. DER*, Case No. 91-4218; *Florida Sugar Cane League v. SFWMD*, Case No. CL-91-8901.

¹¹ 1991 Fla. Laws ch. 80 (1991).

¹² South Florida Water Management District, *Surface Water Improvement and Management Plan for the Everglades* (March 13, 1992).

¹³ *Sugar Cane Growers Cooperative of Florida; Roth Farms, Inc.; and Wedgworth Farms, Inc. v. SFWMD*, DOAH Case No. 92-3038 (petition filed 4/9/92); *Florida Sugar Cane League, Inc.; U.S. Sugar Corporation; and New Hope South, Inc. v. SFWMD*, DOAH Case No. 92-3039 (petition filed 4/27/92); *Florida Fruit and Vegetable Assn.; Lewis Pope Farms; W.E. Schlechter & Sons, Inc.; and Hundley Farms, Inc. v. SFWMD*, DOAH Case No. 92-3040 (petition filed 4/9/92).

¹⁴ Fla. Stat. §373.4592(6) (1992)

¹⁵ *Sugar Cane Growers Cooperative of Florida; Roth Farms, Inc.; and Wedgworth Farms, Inc. v. DER*, DOAH

Case No. 92-006796 (petition filed 11/12/92); *Florida Sugar Cane League, Inc.; U.S. Sugar Corp.; and New Hope South, Inc. v. DER*, DOAH Case No. 92-006797 (petition filed 11/3/92); *Florida Fruit and Vegetable Association v. DER*, DOAH Case No. 92-006799 (petition filed 11/6/92).

¹⁶ *Sugar Cane Growers Cooperative of Florida v. SFWMD*, DOAH Case No. 92-2500RP (petition filed 4/24/92).

¹⁷ *Florida Sugar Cane League v. DER*, OGC Case No. 91-0890 (petition filed 4/16/91); *Florida Sugar Cane League v. DER*, OGC Case No. 91-0890 (petition filed 6/26/91).

¹⁸ Fla. Admin. Code R. 62-302.500.

¹⁹ EFA, Fla. Stat. §373.4592(4)(f).

²⁰ *In the matter of: South Florida Water Management District*, NPDES Permit No. FL0043885 (Order Authorizing Interim Discharge and Setting Matter for Oral Argument, August 8, 1994); and *In the matter of: South Florida Water Management District*, NPDES Permit No. FL0043885 (Supplemental Order Authorizing Interim Discharge, August 8, 1994).

²¹ Florida Department of Environmental Protection NPDES Permit No. FL0177962 (May 11, 1999); *In the Matter of: National Pollutant Discharge Elimination System Permit No. FL0177962*, Administrative order No. AO-001-EV; Florida Department of Environmental Protection Everglades Forever Act Permit No. 503074709 (May 11, 1999); and *In the Matter of: Everglades Forever Act Permit No. 503074709*, Administrative Order No. AO-002-EV (Order Establishing Compliance Schedule, April 13, 1999)

²² *U.S. v. South Florida Water Management District*, Case No. 88-1886-CIV-HOEVELER (Joint Motion of the United States of America, The South Florida Water Management District, the Florida Department of Environmental Protection for Approval of Modifications to the Settlement

Agreement Entered as Consent Decree, June 16, 1995).

²³ *U.S. v. South Florida Water Management District*, Case No. 88-1886-CIV-HOEVELER (Miccosukee Tribe of Indians' Motion to Invalidate the Everglades Forever Act (EFA), Fla. Stat. §373.4592 as an Unconstitutional Impairment of Contract, August 8, 1995).

²⁴ *U.S. v. South Florida Water Management District*, Case No. 88-1886-CIV-HOEVELER (Order Denying Motion to Invalidate the Everglades Forever Act, October 13, 1998).

²⁵ *Miccosukee Tribe v. Florida Department of Environmental Protection*, 677 So.2d 110 (Fla. 4th D.C.A. 1996).

²⁶ U.S. Army Corps of Engineers, Jacksonville District, *Florida's Everglades program Everglades Construction Project Final Programmatic Environmental Impact Statement* (September 1996).

²⁷ Col. Terry Rice and Bob Barron, U.S. Army Corps of Engineers, *Memorandum for Record*, Permit No. 199404532 (March 13, 1997).

²⁸ Department of the Army Permit No. 199404532 (March 13, 1997).

²⁹ Fla. Stat. §11.80.

³⁰ See, e.g., Florida Department of Environmental Protection NPDES Permit No. FL0177962 (May 11, 1999); *In the Matter of: National Pollutant Discharge Elimination System Permit No. FL0177962*, Administrative order No. AO-001-EV; Florida Department of Environmental Protection Everglades Forever Act Permit No. 503074709 (May 11, 1999); and *In the Matter of: Everglades Forever Act Permit No. 503074709*, Administrative Order No. AO-002-EV (Order Establishing Compliance Schedule, April 13, 1999).

³¹ Friends of the Everglades, *Petition for Administrative Hearing*, (filed with Florida Department of Environmental Protection, October 14, 1999). See also *Friends of the*

Everglades v. Florida Department of Environmental Protection and South Florida Water Management District, DOAH Case No. 99-4797, (Motion of the Miccosukee Tribe of Indians of Florida to Intervene as Plaintiff, July 10, 2000).

³² *Miccosukee Tribe of Indians and Friends of the Everglades v. South Florida Water Management District and Florida Department of Environmental Protection*, DOAH Case No. 96-3151, ER FALR 98:119 (Florida Department of Environmental Protection Final Order, April 20, 1998).

³³ *Miccosukee Tribe v. South Florida Water Management District*, 721 So. 2d 389 (Fla. 3d D.C.A. 1998).

³⁴ *Miccosukee Tribe of Indians v. South Florida Water Management District*, Case No. 9806056 CIV-FERGUSON (January 21, 1998) and *Friends of the Everglades v. South Florida Water Management District*, Case No. 98-6057-CIV-ZLOCH (January 21, 1998).

³⁵ *Miccosukee Tribe v. South Florida Water Management District*, Case No. 98-6057-CIV-FERGUSON (Final Summary Judgment, September 30, 1999).

³⁶ South Florida Water Management District, Resolution No. 99-110: Electing to Meet All Applicable Water Quality Standards in the Western C-11 Basin by December 2005, One Year Earlier Than State Law Requires, (November 10, 1999).

³⁷ *Miccosukee Tribe v. U.S.*, Case No. 95-0533-CIV-DAVIS (July 26, 1995).

³⁸ *Miccosukee Tribe v. U.S.*, 105 F.3d 599 (11th Cir. 1997).

³⁹ *Miccosukee Tribe v. U.S.*, Case No. 95-0533-CIV-DAVIS (Omnibus order, September 11, 1998).

⁴⁰ Dan Scheidt, Memorandum to Robert McGhee entitled "Numeric phosphorus water quality criterion for the Everglades as adopted by the Miccosukee Tribe of

Indians of Florida for Class III-A Waters,” (May 20, 1999).

⁴¹ Initiative Petition filed with Secretary of State of Florida (March 26, 1996).

⁴² *Barley et al. v. South Florida Water Management District*, Case No. CI 97-10228 (Fla. 9th Cir. 1998).

⁴³ *Barley et al. v. South Florida Water Management District*, Case No. CI 97-10228, Order Granting Dependant’s Motion for Judgment on the Pleadings (Fla. 9th Cir. October 22, 1998).

⁴⁴ *Barley v. South Florida Water Management District*, Fla. 5th D.C.A., Case No. 5D98-3178 (August 25, 2000).

⁴⁵ U.S. Fish & Wildlife Service, *Final Biological Opinion for the U.S. Army Corps of Engineers Modified Water Deliveries to Everglades National Park, Experimental Water Deliveries Program, Canal 111 Project* (February 19, 1999).

⁴⁶ *Natural Resources Defense Council v. U.S. Army Corps of Engineers*, (October 26, 1999).

⁴⁷ See, e.g., U.S Army Corps of Engineers and South Florida Water Management District, *Central and Southern Florida Comprehensive Review Study final Integrated Feasibility Report and Programmatic Environmental Impact Statement*, (April 1999).

⁴⁸ Fla. Stat. §373.1501(5).

Keith W. Rizzardi is an attorney with the South Florida Water Management District working on environmental and administrative law issues affecting the Everglades restoration. A special editor for the forthcoming *Florida Environmental Law Treatise*, he is also a certified eco-tour guide. Mr. Rizzardi is a graduate of the University of Virginia (B.A. 1991), the University of Florida (J.D. 1994), and Florida Atlantic University (M.P.A. 1998). Any opinions expressed in the article are the author’s and are not the position of the South Florida Water Management District.

District.

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