



# Miccosukee Tribe of Indians of Florida

## Business Council Members

Billy Cypress, Chairman

Roy Cypress Jr., Assistant Chairman

Jerry L. Cypress, Treasurer

Talbert Cypress, Secretary

Petties Osceola Jr., Lawmaker

January 8, 2018

Mr. Ernie Marks, Executive Director  
South Florida Water Management District  
B-1 Headquarters Building  
3301 Gun Club Road  
West Palm Beach, Florida 33406

## **RE: Discrimination in Water Management Decisions/EAA Reservoir Chapter 2017-10**

Dear Mr. Marks:

This letter is in response to the Florida's recent legislation known as Chapter 2017-10, aka the Everglades Agricultural Area (EAA) Storage Reservoir. The Tribe was first briefed concerning the EAA Storage Reservoir by your agency's staff on November 20, 2017. No other agency even bothered to contact the Tribe despite their trust responsibility. Since the initial briefing, the Tribe has participated in at least four other briefings and has watched the EAA Storage Reservoir plan develop. The Miccosukee Tribe Business Council has met to discuss this plan and expresses the following concerns to be relayed to the Florida Legislature at your January 9<sup>th</sup> update.

The Miccosukee Tribe, and Tribal lands located in Water Conservation Area 3A (WCA-3A), have been devastated by several decades of discriminatory water management decisions taken by both the State of Florida and the federal government. These discriminatory actions take several forms involving quantity, quality, distribution and timing of water deliveries. Numerous lawsuits filed by the Tribe have been necessary to protect our lands and yet the discrimination continues. The Tribe had to fight to establish 10 parts per billion of Total Phosphorous as a numeric criterion to protect the Everglades waters. The State and farmers fought us at every turn. The State fought against establishing NPDES permits to regulate the point source discharges entering the Everglades. Instead of embracing these permits as a tool to control the pollution, the State chose to fight the permits. Once the permits were required by the courts, the District and DEP were forced to establish permits but the NPDES permits they issued were extremely lenient and absolutely full of loopholes. More litigation was necessary. As a result, the State passed the Everglades Forever Act (EFA). The EFA authorized compliance schedules and variances and non-enforcement of existing water quality violations which constituted an illegal change in water quality standards. EPA sided with the polluters. The courts once again determined that the Tribe

was correct and ordered the State meet water quality standards. Furthermore, the Tribe has had to engage in litigation to stop the damaging practices of back pumping into Lake Okeechobee and more litigation to stop single-species management of the Cape Sable Seaside Sparrow (CSSS) which results in flooding Tribal lands in WCA-3A and the degradation and elimination of large portions of tree islands on tribal lands. And the list goes on.

This past year, the Florida legislature has passed the Chapter 2017-10 as a direct response to the nationwide attention given to algae blooms in specific areas of the state. This new piece of legislation requires that the EAA Reservoir compartment A-2 be converted to 240,000 acre-feet of storage and/or the A-1 and A-2 Reservoirs be converted to 360,000 acre-feet of storage. This law would divert highly polluted and environmental damaging waters from the northern estuaries and send that polluted water south into the EAA, where it will eventually be passed onto Tribal lands in WCA-3A. Clearly, the purpose of the legislation is to reduce the high volume of polluted water from being discharged into the northern estuaries. While we do advocate for “shared adversity”, it seems that time after time the only adversity is that which is imposed upon Tribal lands in WCA-3A. The Tribe **objects** to the requirement that the water storage must be located in the EAA. Water storage north of Lake Okeechobee makes much more sense. The requirement for southern storage was a blatant attempt to force the purchase of sugar industry land; something pushed by environmentalists. Naturally, the farmers objected and the end result was language prohibiting the use of eminent domain being added to the bill.

The simple fact of the matter is that shallow water “Flow Equalization Basins” (FEBs) provide a critical water quality benefit that an 18 or 23 foot deep water reservoir **cannot** provide. By requiring the SFWMD to use the FEBs, and not acquire more land except land from “willing sellers”, the Florida legislature has made a purposeful and conscious decision to further degrade federally protected Tribal lands in WCA-3A. This legislation also violated court ordered commitments made to the Tribe by the State.

You may recall, it was the Miccosukee Tribe that filed litigation which forced the SFWMD to build the FEBs in the first place. Once built and functioning, significant water quality benefits were the result. On June 5, 2012, the State advised EPA Region IV Administrator that the Restoration Strategies Plan (which rely on the use of FEBs) represented “a significant historic milestone toward restoring America’s Everglades” and that the FEBs provide for a “comprehensive set of projects that will ensure the District fully achieves the stringent water quality requirements”. The State filed the Restoration Strategies Plan with the federal court on June 7, 2012 and represented to the court that the State would utilize the A-1 Reservoir as a FEB. On July 9, 2012 the State further represented to the court that the Restoration Strategies Plan provides for the State “to construct 110,000 acre-feet of new water storage in the form of Flow Equalization Basins”. The State said that it was committed “to rigorous and enforceable technical plan (that) comports with this Court’s directives, satisfies the requirements of the CWA and will resolve this case”. The current proposed EAA reservoir erodes those commitments and may be interpreted to violate the Court’s Order which was based on those commitments. On August 15, 2012, the State and DEP signed OGC Consent Order 12-1148, as a pre-requisite for issuance of FDEP NPDES Permit FL0778451-001 GL7A/RA, which authorize the discharges from the STAs. That Consent Order requires specific acres of FEBs and requires their construction by certain deadlines. In other words, the discharges from the STAs were only authorized because of the commitment to build and operate the FEBs; which Chapter 2017-10 now requires to be changed.

The Miccosukee are left with no other choice than to believe that the State of Florida's commitments and statements to the court mean nothing. Promises to meet stringent water quality standards have been broken. Discharge permits are violated. Yet the District maintains that they are meeting stringent State Water Quality Standards. Perhaps it is because the State uses the "4 Part Test" which relies on two "network of stations" in impacted vs unimpacted parts of the Everglades. By averaging clean water quality sites near the marsh interior with dirty water quality sites at the points of canal discharge, the actual scope of the pollution problem is obscured. The 2018 South Florida Environmental Report acknowledges, "Annual geometric mean TP concentrations for individual interior marsh monitoring stations ranged from less than 2.0 µg/L in some un-impacted portions of the marsh to 850 µg/L at sites that are highly influenced by canal inputs". In the same report, Figure 3A-8 shows a bright red dot on at the location of the S-190 structure, indicating that total phosphorous regularly exceeds 50 µg/L; however, the data table on page 3A-24 shows the geometric mean of all stations averaged together and ... Viola! The problem is solved. The table indicates that total phosphorous inflows to WCA-3A are only 19.6 ppb once the magic averaging is done. And when the District puts out their "News Release" to the public, the big red dot at the S-190 structure (and other problematic data points) are missing altogether! These "News Releases" sound like Fake News to the Tribe. When these obvious discrepancies are brought to the attention of the District in public meetings (Tribal Annual Meetings, Task Force Meetings, WRAC Meetings, etc.) our staff is told that the data points are not shown out of respect to the Tribe. How insulting! This is **not** the Tribe's data that we object to being excluded from your reports; it's **your own data** that you purposefully hide from public disclosure. The impacts of these damaging discharges to Tribal lands are visible from space! Anyone can go to Google Earth and look at the area south of the L-28 Interceptor (L-28I) Canal and see the impacts of discriminatory pollution of Tribal lands. The next red herring that is always thrown up is that it's the Tribal cattle pastures that cause the problem. This is a lie. Zoom in on Google Earth and please observe the existence of two levees, one on each side of the L-28 Interceptor Canal. The presence of those levees precludes any contribution of water from tribal lands including the cattle pastures. The Miccosukee Tribe does not contribute one drop of tributary flow to the L-28I canal – which discharges into the heart of our reservation. Similarly, the L-28 Canal is blocked by a weir at I-75, and another earthen plug at the terminus of the L-28 canal. Obviously, these red herring arguments are only designed to divert attention from the fact that Western Basin pollution is being dumped on Tribal land by the States discriminatory water control practices. The State has steadfastly slow-walked any requirement for STAs in the Western Basins. The Tribe has complained about the cattails at the "Tip of the Triangle" for over three decades (30 years). Sir, the time is now to create STA boundaries on a map. Let's begin to implement real solutions to these long standing water quality problems.

The Miccosukee Tribe acknowledges that the District is planning to construct a 6,500 acre STA if the 240,000 acre-ft reservoir option is chosen and an 11,500 acre STA if the 360,000 acre-ft reservoir is chosen. However, we notice that the District is not committing to discharge water from those STAs at 10 ppb TP or less; nor are they committing to meet Tribal Water Quality Standards – which are immediately downstream of the STA discharges. Continued violation of Tribal Water Quality Standards will no longer be tolerated. The State should plan for discharges that protect the "entire waterbody" as required by the Clean Water Act. To the Miccosukee Tribe that means the State must require compliance at the point of discharge into the marsh – in order to protect all of the Everglades, including meeting Tribal Water Quality Standards at the Tribal boundary.



In 1991 the State and federal government entered a Consent Decree in the federal Everglades lawsuit. The State committed to reduce the total load of phosphorous entering WCA-1 by 85% and reduce the phosphorous load entering the Everglades Protection Area (EPA) by approximately 80% from the base period. The base period had 205 metric tons and an 80% reduction results in an annual phosphorous limit of 41 metric tons. The 2018 Everglades Consolidated Report indicates, at Figure 3A-10, that the EAA discharged 34 metric tons of phosphorous into the EPA in 2017. However, the 9 metric tons of phosphorous which was discharged for “Water Supply and Flood Control” was not shown as entering through the EPA. Let me ask this simple question: If the 553,000 acre-ft of water containing the 9 metric tons of phosphorous didn’t pass through the EPA (and isn’t being counted against the 41 ton limitation), exactly how did the District get the water to Miami? Is there some secret pipeline we are not aware of? The 34 metric tons and the 9 metric tons both pass through the EPA and should be counted to provide an accurate picture of the total load.

The Tribe supports the Comprehensive Everglades Restoration Plan (CERP) and we fully recognize that CERP calls for more water to be sent through the WCAs into the Everglades National Park (ENP) and into Florida Bay. In fact, it is exactly because a healthy Everglades needs more clean water – not less – that we are opposed to wasting water with the use of Deep Well Injections, and we are opposed to damaging estuary releases. Everglades Restoration simply requires more clean water. The Tribe also realizes that more water will bring more phosphorous load. It may be impossible to meet the 1991 load reduction requirements after CERP is fully implemented, 30+ years after the signing of the Consent Decree. It seems to us that the EAA Reservoirs will certainly not meet the load reduction requirements of the Consent Decree.

Since the STAs were designed using the DMSTA model and an annual average increase of water flow of 300,000 ac-ft was used in the DMSTA calculations; what happens during wet years when the Everglades receives as much as 1.3 Million ac-ft of water? These proposals from the District provide no assurances that they will not by-pass the untreated water. This unanswered question tells the Tribe that the discriminatory practice of destroying Tribal Everglades will continue. The Tribe is tired of always having its land used to treat other polluter’s discharges. We expect the State to fully treat the water before it is discharged into the Everglades.

The State is planning to flush between 300,000 ac-ft and 1.3 Million ac-ft more water through the WCAs either through the implementation of CERP or the new EAA Storage Reservoirs. The State must fix the problem of flows across Tamiami Trail first. Currently, the Corps of Engineers and the SFWMD can put water about six times faster into WCA-3A than they can release into Everglades National Park (ENP). Each year the discriminatory flooding of Tribal lands occurs. 2017 water year was particularly damaging to Tribal tree islands and wildlife in the Everglades. Starting in June 2017 and lasting until January 2018, six months of persistent flooding existed on Tribal lands. This is totally unacceptable. The State and federal agencies are killing the Tribe’s homelands, our beloved Everglades. This is not “Shared Adversity”! The ultimate insult to the Tribe happened during the days leading up to Hurricane Irma making landfall. Anticipating further flooding, the Tribe asked for flood control pumps and we were denied. The Tribe was told to seek flood relief from FEMA **after** the flooding of their homes had occurred. The very agencies who denied flood pumps are the ones who pumped flood waters into Tribal lands causing widespread damage.

The answer to flooding WCA-3A is not to push more water south. The answer is to construct Central Everglades Planning Project (CEPP). The projects designed to de-compartmentalize the

Everglades and move more water across Tamiami Trail must take priority over building deep water reservoirs which will only result in more flooding and NOT restore the Everglades! The single-species management practices of closing the S-12 gates must stop. Water cannot continue to be stacked on Tribal lands. Blockages south of the S-12 structures must be removed if the District and Corps of Engineers ever hope to increase flows out of WCA-3A. The L-67A, L-67C levees and L-29 levees hold the water back and prevent the Tamiami Trail "Bridges to Nowhere" from achieving their stated goal. ENP refused to allow the cleaning of the culverts. The Corps of Engineers ignored their responsibility to maintain the culverts (similar to their current refusal to maintain the S-12 structures). Consequently, the failure to maintain the culverts under Tamiami Trail was used as an excuse to justify building the bridges. Now that the first mile of bridging is complete we note that there is very little flow under the bridge. The upstream levees remain and the downstream vegetation remains. The bridges are a total waste of taxpayer money. Meanwhile, Tribal tree islands are completely submerged for 6 months out of the year. No other entity is required to endure 6 months of discriminatory flooding.

The Miccosukee Tribe has watched devastating water management decisions cause irreversible damage to Tribal Everglades in WCA-3A, which is the **last** vast expanse of sawgrass Everglades left in existence. The Tribe has been forced to file numerous lawsuits with the State and federal agencies; always with the ultimate goal of protecting our homeland, the Florida Everglades. The Tribe will continue to monitor the progress of your planning efforts on the EAA Storage Reservoir. Our message to you is simple: Do not flood Tribal Everglades and clean the water before it enters the Everglades.

Sincerely,



Billy Cypress  
Chairman

cc. Business Council  
Mr. Drew Bartlett, DEP  
Mr. Trey Glenn, Region IV EPA  
FL Senator Joe Negron  
Florida Legislature  
COL Jason Kirk, COE  
Shannon Estenoz, DOI  
Pedro Ramos, Superintendent ENP

29 quality criteria were observed for five parameters: dissolved oxygen (DO), alkalinity, pH, specific  
30 conductance, and turbidity. Similar to previous periods, these excursions were localized to specific areas of  
31 the EPA, and all these parameters exhibited excursions in previous water years.

32 For WY2017, a summary of excursions of the DO, alkalinity, pH, specific conductance, and turbidity  
33 criteria, as well as the status of pesticides, phosphorus, and nitrogen within the EPA, is presented below:

34 • Due to excursions of the site-specific alternative criterion (SSACT), DO was classified as  
35 potential concern for the interior portions of LNW, WCA-2, and WCA-3, and concern  
36 for interior portions of ENP. Inflow, outflow, and rim canal monitoring locations were  
37 assessed using the current Class III water quality standard. Inflow portions of LNW,  
38 WCA-3 and ENP, as well as outflow portions of WCA-2 and WCA-3, were classified as  
39 concern, while WCA-2 inflow was classified as potential concern. Outflow of LNW was  
40 classified as no concern and LNW rim portion was classified as minimal concern.

41 • Alkalinity was categorized as minimal concern for LNW interior when assessed against  
42 the updated Class III state standard, and pH was categorized as minimal concern in LNW  
43 interior and LNW rim canal.

44 • Specific conductance was categorized as potential concern for LNW inflow and minimal  
45 concern for LNW rim canal, WCA-2 inflows, and WCA-2 interior.

46 • No exceedances of total ammonia nitrogen or iron were observed in the EPA.

47 • Turbidity was categorized as minimal concern for ENP interior.

48 • No pesticides or pesticide breakdown products exceeded their respective toxicity guideline  
49 concentrations or state water quality standards. However, several pesticides or pesticide  
50 breakdown products were detected at levels above their method detection limit (MDL),  
51 including 2,4-D (dichlorophenoxyacetic acid), ametryn, atrazine, diuron, imidacloprid, and  
52 methabuzin.

53 • TP concentrations were highest in WCA-3 inflow and lowest for ENP inflow. Annual  
54 geometric mean inflow TP concentrations ranged from 8.3 micrograms per liter ( $\mu\text{g/L}$ ) for  
55 ENP to 19.6  $\mu\text{g/L}$  for WCA-3. Annual geometric mean TP concentrations at interior  
56 regions ranged from 4.4  $\mu\text{g/L}$  in ENP to 8.9  $\mu\text{g/L}$  in WCA-2. Annual geometric mean TP  
57 concentrations for individual interior marsh monitoring stations ranged from less than  
58 2.0  $\mu\text{g/L}$  in some unimpacted portions of the marsh to 850  $\mu\text{g/L}$  at sites that are highly  
59 influenced by canal inputs. Of the interior marsh sites, 71 percent exhibited annual  
60 geometric mean TP concentrations of 10.0  $\mu\text{g/L}$  or less, with 79 percent of the marsh sites  
61 having annual geometric mean TP concentrations of 15.0  $\mu\text{g/L}$  or less throughout the larger  
62 ambient monitoring network.

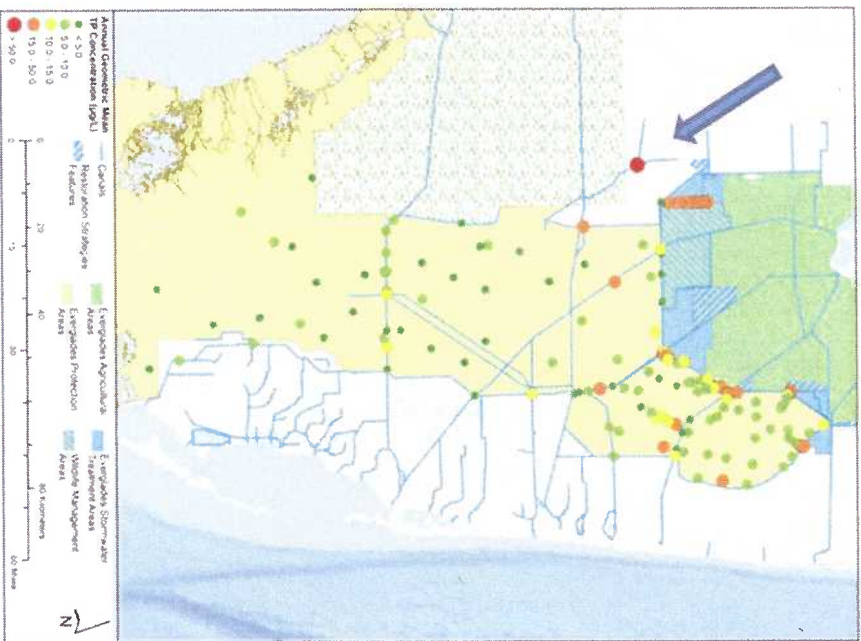
63 • Annual geometric mean inflow and interior orthophosphate (OP) concentrations were less  
64 than 2.0  $\mu\text{g/L}$  for all areas of the EPA.

65 • Similar to previous years' reporting, the five-year (WY2013–WY2017) results for the TP  
66 criterion assessment indicate that unimpacted portions of each WCA passed all four parts  
67 of the compliance test. In contrast and as expected, impacted portions of each water body  
68 failed one or more parts of the test. The impacted portions of the WCAs routinely exceeded  
69 the annual and five-year network TP concentration limits of 11  $\mu\text{g/L}$  and 10  $\mu\text{g/L}$ ,  
70 respectively.

71 • An impacted TP rule station, LOXA140 transitioned to the unimpacted network  
72 during WY2017.



# 2018 South Florida Environmental Report - DRAFT



**Figure 3A-8.** Annual geometric mean TP concentrations for all classifications for WY2017 at stations across the EPA.

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**Table 3A-3.** Summary statistics of TP concentrations (µg/L) for the Baseline (WY1979-WY1993), Phase I (WY1994-WY2004), and Phase II (WY2005-WY2016) periods, and WY2017.

Region	Class*	Water Year	Sample Size	Geometric Mean		Geometric Deviation		Median	Maximum	Minimum
				Mean	SD	CV	Range			
LWR1	Inflow	1979-1993	413	134.3	6.9	5.9	150	14	87.1	292
		1994-2004	1580	46.7	6.1	6.1	44	6	799	10
		2005-2016	1208	32.8	5.6	5.6	27	3	870	42
LWR1	Inflow	1979-1993	194	19.1	4.3	19.3	16.3	8.9	42	10
		1994-2004	1483	7.9	3.7	3.7	6	2	60	10
		2005-2016	3819	5.7	4.1	4.1	8	2	524	40
LWR1	Outflow	1979-1993	223	43.8	8.4	3.2	8	3	60	10
		1994-2004	276	41.6	8.7	8.7	39	6	292	10
		2005-2016	225	21.6	5.2	5.2	19	6	212	17
LWR1	Flow	1979-1993	38	143.2	6.3	6.3	87	22	413	10
		1994-2004	439	87.5	6	6	66	2	203	10
		2005-2016	400	38.6	5.9	5.9	31	1	817	10
WCA2	Inflow	1979-1993	46	47.8	4.2	4.2	18	3	43	10
		1994-2004	319	37.9	5.8	5.8	8	3	392	10
		2005-2016	1342	17.2	4.4	4.4	10	4	245	10
WCA2	Inflow	1979-1993	137	12.9	3.9	12.9	7	36	10	10
		1994-2004	1810	16.3	4.4	4.4	9	4	278	10
		2005-2016	2574	10.0	3.9	3.9	7	3	48	10
WCA2	Outflow	1979-1993	517	24.6	5.6	25	4	401	10	10
		1994-2004	426	14.7	4.8	4.8	16	3	199	10
		2005-2016	614	10.8	4	4	10	2	23	10
WCA3	Inflow	1979-1993	1283	43.1	6.5	47	42	32	323	10
		1994-2004	1894	22.2	5.8	22	3	3	329	10
		2005-2016	3108	22.2	5.2	21	3	3	132	10
WCA3	Inflow	1979-1993	620	10.6	3.2	10	4	436	10	10
		1994-2004	1820	8.2	4.2	8	4	210	10	10
		2005-2016	2587	6.2	3.6	6	4	42	190	10
EPA	Inflow	1979-1993	114	4.8	3.1	5	42	24	24	10
		1994-2004	1326	11.1	4.5	11	4	42	248	10
		2005-2016	3245	10.6	4	10	3	390	140	10
EPA	Inflow	1979-1993	1628	10.1	4.4	10	4	42	248	10
		1994-2004	1884	7.2	3.8	7	2	2	1020	10
		2005-2016	5686	8.6	3.8	8	6	2	33	10
EPA	Inflow	1979-1993	723	8.9	3.6	8	6	2	33	10
		1994-2004	920	5.2	3.8	5	4	2	521	10
		2005-2016	1523	4.6	3.3	4	4	42	251	10
EPA	Inflow	1979-1993	124	4.4	3.3	4	4	42	251	10
		1994-2004	124	4.4	3.3	4	4	42	251	10
		2005-2016	124	4.4	3.3	4	4	42	251	10

\* Inflow and Outflow values only. Inflow data when reductions are being

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# SFWMD defines “Meeting Water Quality Standards” with the 4 Part Test

## PHOSPHORUS CRITERION ACHIEVEMENT ASSESSMENT

An evaluation to determine achievement of the TP criterion was performed consistent with assessment protocol presented by Payne et al. (2007), and the four-part test outlined below and specified in the FDEP’s Water Quality Standards for Phosphorus within the Everglades Protection Area, referred to as the TP rule (Section 62-302.540, F.A.C.). Achievement of the TP rule is assessed for networks of impacted and unimpacted, spatially explicit monitoring locations in WCAs (i.e., LNW, WCA-11, WCA-2, and WCA-3). Achievement of the phosphorus criterion is different for ENP than the established TP criterion for the EPA. As acknowledged by Section 62-302.530(4)(c), F.A.C., achievement of the TP criterion is assessed according to methods set forth in Appendix A of the Settlement Agreement (Case No. 88-1886-CV-MORENO) until the Settlement Agreement is amended or terminated. Reports and supporting information related to TP assessments consistent with Appendix A of the Settlement Agreement can be found at <http://www.sfwmd.gov/tpc>.

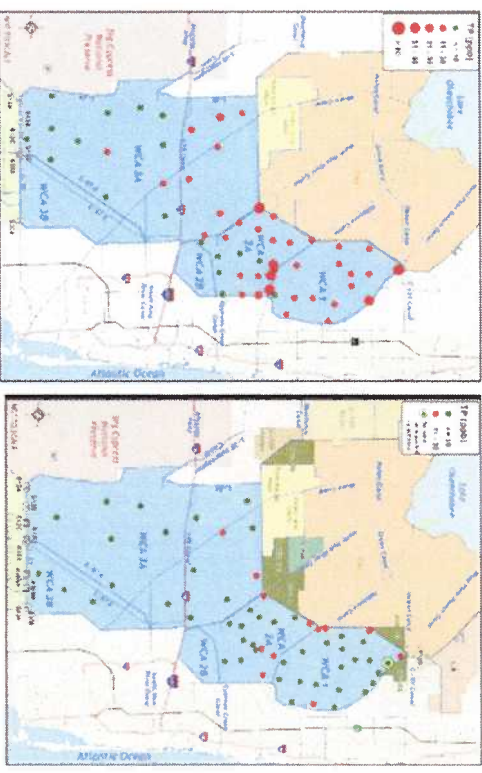
Achievement of the TP criterion is assessed by a four-part test for each WCA using two networks of stations: impacted and unimpacted. The parts of the achievement test are as follows:

1. The five-year geometric mean averaged across all stations is less than or equal to 10 µg/L.
2. The annual geometric mean averaged across all stations is less than or equal to 10 µg/L for three of five water years.
3. The annual geometric mean averaged across all stations is less than or equal to 11 µg/L.
4. The annual geometric mean at all individual stations is less than or equal to 15 µg/L.



Dec. 12, 2017

**Water Quality in the Everglades Stormwater Treatment Areas had their best performance year ever in 2017 as Gov. Rick Scott’s \$880 million Restoration Strategies Plan continues to further improve water quality**



Click on the map to see a larger version showing the total phosphorus concentration of Everglades water measured in the Water Conservation Areas between 1979 and 1983. Most of these monitoring stations now meet the state’s stringent water quality standards.

Click on the map to see a larger version showing the total phosphorus concentration of Everglades water measured in the Water Conservation Areas between 2013 and 2017. The monitoring station highlighted in yellow transitioned to being “unimpacted” in Water Year 2017.



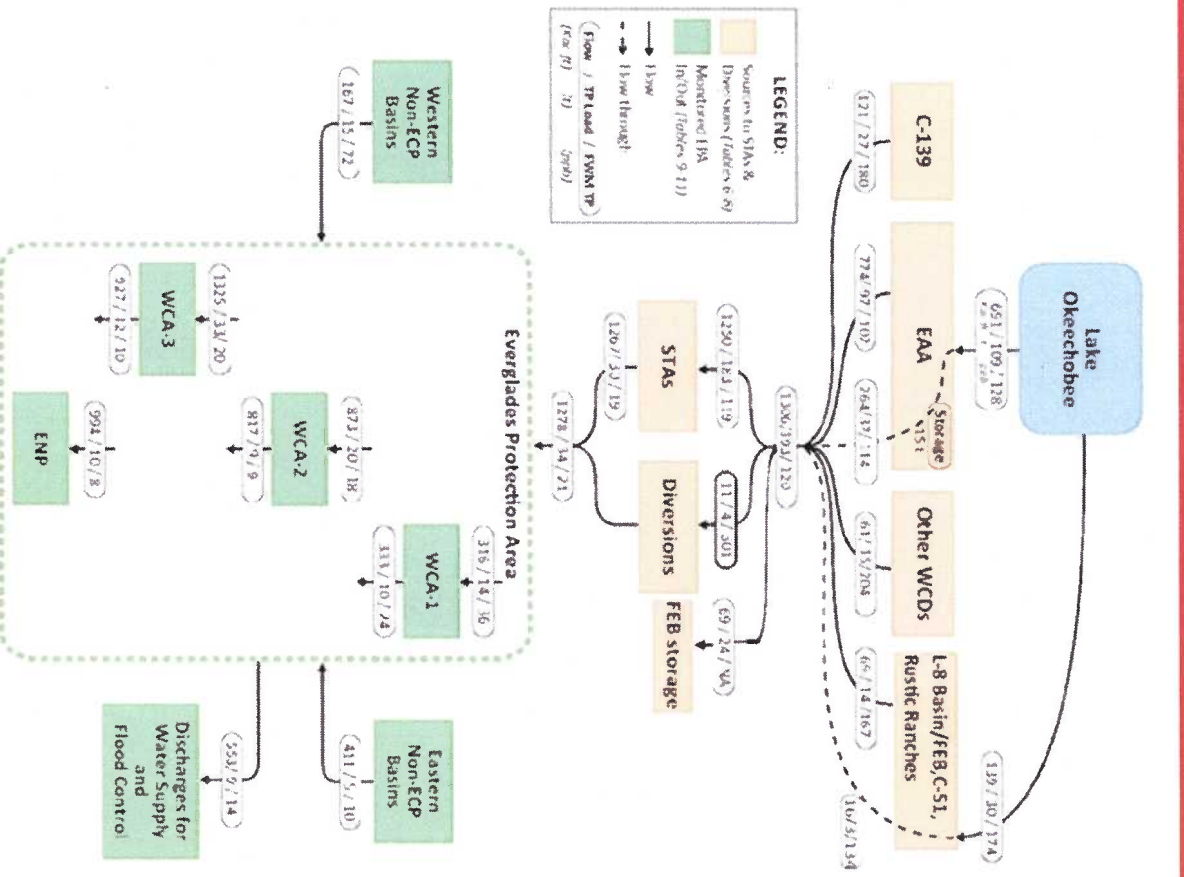
# Everglades Protection Area LOAD REDUCTION REQUIREMENTS

Base Period = 205 Metric Tons  
80% Reduction = 41 Metric Tons

2017 Load to WCAs from EAA =  
34 Metric Tons

Excluding Discharges for Water  
Supply & Flood Control =  
9 Metric Tons

Does not count Load from Non-  
ECP Basins =  
20 Metric Tons



**Figure 3A-10.** Five-year (WY2013–WY2017) average annual flows (1,000 acre-feet [Kac-ft]), TP loads (metric tons [t]), and flow-weighted mean (FWM) TP concentrations (µg/L or parts per billion [ppb]) to the STAs and diversions from inflow tributaries and across the EPA. (Note: WCD = water control district and ECP = Everglades Construction Project. Tables referred to in the legend are in Appendix 3A-5.)

# Six Months of Discriminatory Flooding

