

MEMORANDUM

TO: Governing Board Members

FROM: Kenneth G. Ammon, P.E., Deputy Executive Director,
Everglades Restoration Resource Area

DATE: March 12, 2009

SUBJECT: Pre-Partnership Credit Agreement for the Taylor Creek/Nubbin Slough Storage and Treatment Area Project – Contract Number 4600001749

Background: Staff requests Governing Board approval to enter into a Pre-Partnership Credit Agreement with the U.S. Army Corps of Engineers (USACE), at no-cost to the SFWMD, to establish eligibility to receive credit for the costs of constructing a stormwater treatment area (STA) on the Lakeside Ranch property toward the SFWMD's 50 percent share of the costs for the Comprehensive Everglades Restoration Plan (CERP).

Staff intends to award a contract for construction of an STA on the Lakeside Ranch property in March 2009, subject to Governing Board approval at the March Governing Board Meeting (Contract No. 4600001746). This STA is a feature that is included in the Taylor Creek/Nubbin Slough Storage and Treatment Area Project, a component of the Comprehensive Everglades Restoration Plan (CERP) that was conditionally authorized by Congress in Section 601(b)(2)(C)(vii) of the Water Resources Development Act of 2000. This authorization by Congress is subject to the USACE first completing a Project Implementation Report and Chief of Engineers' Report for the project. The Taylor Creek/Nubbin Slough Storage and Treatment Area Project is being formulated along with three other CERP project components, some of which have not yet been authorized by Congress, in the Lake Okeechobee Watershed Project Implementation Report. Consequently, this Project Implementation Report will have to be submitted to Congress for authorization.

In Section 6004 of the Water Resources Development Act of 2007, Congress authorized the Assistant Secretary of the Army to provide credit for construction costs incurred by the SFWMD prior to signing a Project Partnership Agreement, if the construction is carried out in accordance with the terms and conditions of an agreement between the SFWMD and the Assistant Secretary of the Army. The USACE's implementation guidance for Section 6004 specifies that in order to maintain eligibility for credit, the SFWMD must execute a Pre-Partnership Credit Agreement with the Assistant Secretary of the Army prior to awarding the construction contract. The SFWMD and the USACE have developed a Pre-Partnership Credit Agreement covering SFWMD's proposed construction of the Lakeside Ranch STA and the USACE-Jacksonville District Engineer has been approved to sign this agreement.

This Pre-Partnership Credit Agreement does not provide credit, nor does it guarantee that credit will be provided at any time in the future. It merely establishes eligibility for future credit if the following occur:

1. The USACE completes a Project Implementation Report and Chief of Engineers' Report for the Lake Okeechobee Watershed Project and includes the Lakeside Ranch STA feature in the recommended plan;
2. The USACE determines that the Lakeside Ranch STA construction is integral to the project and cost-sharable under the Army's water quality cost-share policy;
3. Congress authorizes construction of the Lake Okeechobee Watershed Project and authorizes cost-share for the water quality improvement features (i.e., STAs) in the recommended plan; and
4. The USACE determines that the SFWMD's construction costs are necessary, reasonable, allowable, allocable and auditable.

How this helps meet the District's 10-Year Strategic Plan: This agreement will establish eligibility for future credit toward the SFWMD's 50 percent cost-share on CERP, which is a major component of the Strategic Plan. If credited for this expenditure, it would reduce the SFWMD's future required contribution for the remainder of CERP.

Funding Source: No funding is needed for this action.

This Board item impacts what areas of the District, both resource areas and geography: Because this action influences credit toward the 50/50 cost-share for CERP, it has potential impact on the entire SFWMD. Staff from the Everglades Restoration Resource Area will manage the contract.

What concerns could this Board item raise? By approving this Pre-Partnership Credit Agreement, the Governing Board will be agreeing that the SFWMD will not receive credit for the following out-of-pocket costs associated with real estate and construction for the Lakeside Ranch STA project: 1) costs for management and maintenance of the Lakeside Ranch lands prior to signing a Project Partnership Agreement; 2) the costs of remediation for soils contaminated with hazardous materials (no requirement for remediation has been identified to date); and 3) the costs of operating and maintaining the project prior to signing a Project Partnership Agreement. Similar to previous cost-share agreements between the USACE and the SFWMD, the USACE has determined that providing credit for these costs is inconsistent with its statutory authority and/or its nationwide policy.

Why should the Governing Board approve this item? If SFWMD does not sign this Agreement, it will not be eligible to receive credit for the costs of constructing the Lakeside Ranch STA.