Everglades Restoration and the River of Grass Land Acquisition

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Summary

The Florida Everglades is a unique network of subtropical wetlands that is now half its original size. The federal government has had a long history of involvement in the Everglades, beginning in the 1940s with the U.S. Army Corps of Engineers constructing flood control projects that shunted water away from the Everglades. Many factors, including these flood control projects and agricultural and urban development, have contributed to the shrinking and altering of the wetlands ecosystem. Federal agencies began ecosystem restoration activities in the Everglades more than 15 years ago, but it was not until 2000 that Congress integrated the majority of restoration activities under an integrated plan, known as the Comprehensive Everglades Restoration Plan (CERP).

The River of Grass acquisition is a proposed land acquisition by the State of Florida, which has the potential to affect the implementation of CERP. The proposal is to purchase tracts of land south of Lake Okeechobee from the U.S. Sugar Corporation. The state argues that the purchase would reduce phosphorus loads and help restore the historic north-south flow of water from Lake Okeechobee to the Everglades. Initially, acquisition of 187,000 acres was announced by Florida Governor Charlie Crist and subsequently approved by the South Florida Water Management District (SFWMD) in December 2008. Since then, the original proposal has been downsized on multiple occasions, both in terms of the size of the purchase and the purchase price. Most recently, a revised land purchase agreement was announced and approved by the SFWMD in August 2010. SFWMD now proposes a direct cash purchase of 26,800 acres, or approximately 14% of the original purchase proposed by the governor in 2008. The purchase would cost SFWMD $197 million.

Questions have been raised regarding the proposed acquisition. Some of these questions center on potential positive and negative consequences of the land purchase agreement. These include the effectiveness of the land acquisition in reducing nutrient loads that are detrimental to the Everglades and in restoring historic flows, as well as the effect of the initiative's funding requirements on Florida's other restoration projects, including projects with a non-federal cost share requirement under CERP. Since state funding for CERP activities is expected to decline in the coming years, some have questioned whether the proposed funding for the land acquisition deal might be better spent on CERP projects.

The impact of the land acquisition on CERP and other Everglades restoration projects will depend in part on budgetary decisions to be made by the state in late September 2010, which could potentially reduce or delay state funding for some CERP projects. Near-term delays resulting from any funding reductions for CERP projects may be of interest to Congress, as they would affect the overall federal effort to restore the Everglades ecosystem under CERP.

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Introduction

The Florida Everglades is a unique network of subtropical wetlands that is now half its original size. The federal government has had a long history of involvement in the Everglades, beginning in the 1940s with the U.S. Army Corps of Engineers constructing flood control projects that shunted water away from the Everglades. Many factors, including these flood control projects and agricultural and urban development, have contributed to the shrinking and altering of the wetlands ecosystem.

Federal agencies began ecosystem restoration activities in the Everglades more than 15 years ago, but it was not until 2000 that the majority of restoration activities became coordinated under an integrated plan. With the Water Resources Development Act of 2000 (WRDA 2000; P.L. 106-541), Congress approved the Comprehensive Everglades Restoration Plan (CERP) as a framework for Everglades restoration. The legislation authorized $700 million for the federal share of appropriations for initial projects.[1] According to the process established in WRDA 2000, additional Everglades projects are to be presented to Congress for authorization as their planning is completed. Once authorized, the projects will be eligible to receive federal appropriations, but must also receive appropriations from the State of Florida in order to be completed. In WRDA 2007 (P.L. 110-114), three additional projects were authorized.

Indirectly related to combined federal and state work under CERP is a subset of Everglades restoration projects being undertaken by the state. These projects may contribute to Everglades restoration, but are not formally credited toward non-federal requirements under CERP. The River of Grass acquisition by the State of Florida is the most recent of these "non-CERP" projects by the state.[2] It involves a proposed land acquisition agreement by the South Florida Water Management District (SFWMD) to purchase large tracts of land south of Lake Okeechobee from the U.S. Sugar Corporation. The goal of the purchase is to acquire lands that will improve water quality and help regulate outflows from Lake Okeechobee. Under the plan, SFWMD would remove U.S. Sugar land from cultivation for sugarcane and citrus farming, and use it to move, store, and treat water flowing south to the Everglades. This proposal is of interest to Congress because it could affect the state's ability to contribute funding under CERP and, as a result, has the potential to alter the schedule of work on some CERP projects.

Chronology of Events: River of Grass Acquisition

The River of Grass land acquisition dates to mid-2008, and has been revised on multiple occasions since then.[3] In June 2008, Florida Governor Charlie Crist and the U.S. Sugar Corporation announced that the State of Florida would pursue purchasing all of the firm's agricultural lands and assets (including 187,000 acres of farmland and additional associated sugar and citrus processing facilities) at a cost of $1.75 billion. The acquired sugarcane and citrus farmland around Lake Okeechobee would be used to store and treat water flowing south toward the Everglades and eventually into Florida Bay.

[1] For more information on CERP and the required 50:50 state and federal cost share, see CRS Report RS22048, *Everglades Restoration: The Federal Role in Funding*, coordinated by (name redacted).

[2] The purchase is referred to by the State of Florida as the "River of Grass" purchase for its potential to help create the north-south flow of water from Lake Okeechobee to the Everglades.

[3] A chronology summarizing the multiple announcements is provided in **Table A-1**.

Based on subsequent real estate evaluations, a slightly scaled-back version of the original proposal (180,000 acres) was approved by the SFWMD Governing Board in December 2008, at an estimated cost of $1.34 billion. The land acquisition would be financed by the sale of bonds issued by SFWMD, which would be repaid from a portion of the property taxes collected by the 16 counties that comprise SFWMD. Under Florida law, these bonds are subject to judicial review to determine whether they serve a "valid public purpose."

In May 2009, SFWMD announced an amended proposal that further scaled back the original proposal. (See **Table A-1**.) Under the amended proposal, SFWMD would purchase 40% of the lands originally envisioned (i.e., 73,000 acres) for $536 million. Notably, U.S. Sugar would lease back some of the land sold to SFWMD for a minimum of seven years, with provisions that would allow this arrangement to be extended for up to 20 years. SFWMD would have the option to acquire the other 107,000 acres included in the initial plan at a fixed price per acre during the first three years, and at the appraised market value during the next seven years.

As a result of a combination of factors, including ongoing financial difficulties, SFWMD announced in August 2010 a second amended purchase agreement. This purchase, which proposes to scale down the River of Grass acquisition yet again, was approved by the SFWMD Governing Board on August 12, 2010. Under the revised agreement, SFWMD will purchase 26,800 acres immediately at a cost of $197 million. (See **Figure A-2**.) The acreage consists primarily of sugarcane and citrus acreage in Hendry and Palm Beach Counties, and the majority of it will be leased back to U.S. Sugar Corporation until restoration projects can be fully designed. The remainder of the land from the initial proposed purchases (153,200 acres) would be available for optional purchases over a 10-year period.[4] In contrast to previous versions of the acquisition, this land would be bought directly with SFWMD funds, and will not be funded through bonds.

Since late 2008, opponents have filed objections in state court to the bonds initially issued by SFWMD. These opponents claim that SFWMD did not have authority to finance the transaction because the acquisition is not a "valid public purpose." A major sugar producing firm, Florida Crystals, has argued that the purchase gives an unfair advantage to its main competitor at taxpayer expense. Additionally, the Miccosukee Tribe of Indians, whose reservation lies south of U.S. Sugar lands, has argued that SFWMD is not financially able to meet the terms of the deal, which does not provide public benefits in the form of Everglades restoration. Supporters, including SFWMD and some environmental groups, argue that the land acquisition is in the public interest and will contribute significantly toward ecosystem restoration goals. On April 7, 2010, the Florida Supreme Court heard arguments from all sides on the opponents' appeal of an earlier court ruling that limits the amount of bonds the District could issue.[5] The court's final decision could affect the latest version of the land acquisition, which will not be finalized until October 11, 2010.[6]

[4] The full terms of the land purchase options available to SFWMD under the second amended agreement, including tracts and costs, are available at https://my.sfwmd.gov/portal/page/portal/pg_grp_sfwmd_koe/pg_sfwmd_koe_riverofgrass.

[5] *New Hope Sugar Company, et al. vs. South Florida Water Management District*, SC-091818 (Florida Supreme Court 2010). Filings in this case are available at http://www.floridasupremecourt.org/.

[6] See Andy Reid, "Crist's Downsized Everglades Restoration Land Deal Still Faces Legal Scrutiny," *Orlando Sentinel*, August 14, 2010. Available at http://www.orlandosentinel.com/news/local/fl-everglades-land-deal-outlook-20100814,0,3422998,full.story. Accessed August 18, 2010.

Analysis of Potential Consequences

Several questions have been raised regarding previous versions of the proposed land acquisition by the State of Florida. Some questions center on the potential advantages and disadvantages of the land sale for restoring the Everglades, the effect of the land acquisition on Florida's role in implementing restoration projects under CERP, and the overall effect of the land acquisition on reducing excessive phosphorus in the ecosystem.

Potential Consequences of Land Purchase

Proponents of the land purchase point out several restoration benefits that they expect to result from the land acquisition. As currently proposed, the purchase would eventually take approximately 42 square miles of land in the Everglades Agricultural Area (EAA) out of production.[7] This land was chosen for its high value and ability to contribute to other restoration goals. For instance, the 17,900 acres proposed for purchase in Hendry County are noted by SFWMD to be in the C-139 basin, an area with historically high phosphorus loads. Once this land is taken out of production, lower phosphorus inputs into the ecosystem are expected.[8] Lands taken over by SFWMD could also be used to enlarge stormwater treatment areas that mitigate phosphorus outflows coming from Lake Okeechobee.[9] If storage structures are built on this land at some point in the future, they could allow for increased flexibility to manage water during floods and droughts, as well as for ecosystem restoration.

There are several concerns associated with the proposed land acquisition. These concerns range from the location and continuity of the land parcels to the timing and benefits of the purchase itself. Most of the remaining 26,800 acres that currently are planned for purchase are in two tracts south of Lake Okeechobee, with approximately 86% of the original acreage proposed for purchase in 2008 remaining under cultivation for the foreseeable future. (See **Figure A-2**.) The fragmentation of land parcels may make it difficult to achieve some of the broader restoration objectives, including the original objective to restore a flow-way south to Everglades National Park that replicates the historical flow of the "River of Grass." Additionally, some contend that the land proposed for purchase is infested with canker (typically a microbial disease that affects the woody tissue of plants), rendering it useless for restoration.[10]

[7] As previously noted, the current agreement would remove 26,800 acres from sugarcane and citrus production, although the exact date for this removal will depend on subsequent design and implementation of restoration projects by SFWMD.

[8] Pollution from excessive levels of phosphorus and other nutrients has long been recognized as a major contributor to the environmental degradation of the Florida Everglades ecosystem. Phosphorus is one of the primary water pollutants in the Everglades and is generally thought to be caused by urban runoff, natural leaching from soils, and agricultural runoff from sugar plantations, vegetable farms, and livestock operations (e.g., from animal waste). Addressing excessive phosphorus levels in the Everglades is a concern because of its detrimental effects on the environment. Excessive phosphorus levels in the Everglades have also been addressed by several regulatory and legal actions that have aimed to reduce levels.

[9] Scientists have previously emphasized that reducing phosphorus from waters entering and leaving Lake Okeechobee is a priority for restoration. See National Research Council, Committee on Independent Review of Everglades Restoration Progress, *Progress Towards Restoring the Everglades: The Second Biennial Review, 2008, Pre-publication Copy* (National Academies Press, Washington, DC: 2008). Hereafter known as *The Second Biennial Review.*

[10] Damien Cave, "Renewed Support for an Everglades Land Deal, but Cost Is Still in Question," *New York Times*, March 20, 2010, p. pg. 8.

Some also note that potential benefits of the land purchase in restoring the Everglades are tempered by potential delays in land transfers and the initiation of actual restoration projects. Some have pointed out that under the terms of the deal proposed with U.S. Sugar, the majority of the land proposed for immediate purchase under the River of Grass acquisition will actually stay in production.[11] Any delay in removing this land from cultivation and beginning restoration projects will lower the overall restoration value of the land, as the current effects of farming would continue. For example, a 10-year schedule could delay freeing up land for restoration projects until 2020, after most other restoration activities are expected to be well underway. Concerns about delays in restoration and a desire for near-term progress are shared by many stakeholders. According to the National Research Council (NRC), delays in restoring the Everglades are affecting the state of the ecosystem and closing opportunities for restoration. The NRC emphasized that "unless near-term progress is made, the Everglades ecosystem may experience irreversible losses to its character and function."[12]

Potential Effect on Federal/State CERP Projects

Some question the effect of the proposed land acquisition on the implementation of CERP. The proposed acquisition by the State of Florida is not being carried out under CERP, and according to SFWMD, the purchase will not be credited toward the 50:50 state/federal cost share mandated under CERP.[13] While SFWMD has publicly argued for the overall benefits of the land transfer for Everglades restoration, it has not directly linked the land purchase to any existing CERP projects, and it is unclear if the purchase is intended to benefit any future CERP projects.

Some contend that the current purchase (and any future purchase of option lands) could affect other Everglades restoration projects, including those federal projects that require a non-federal cost-sharing partner under CERP.[14] In 2008, the state suspended construction on the A-1 reservoir, a CERP storage reservoir in the EAA.[15] The decision to abandon the project along with the announcement of the original proposed River of Grass purchase caused some to conclude that the River of Grass land acquisition was replacing a CERP project, and the suspension of construction on the reservoir was at issue in a recent lawsuit before the U.S. District Court in Miami.[16] In his March 2010 ruling in this case, Judge Federico Moreno ordered that the A-1 reservoir project be reinstated. This ruling may further constrain financing for other restoration projects.

Some also note that the land purchase could indirectly affect other CERP projects by creating a funding shortfall for these projects. State funding for all restoration activities, including CERP, is

[11] See footnote 7.

[12] *The Second Biennial Review*, ibid.

[13] CRS correspondence with Garrett Wallace, South Florida Water Management District. June 10, 2010. Under CERP, the federal government and the non-federal sponsor (i.e., SFWMD) are directed to split the costs of restoration evenly (50:50 cost share). SFWMD is largely responsible for land acquisition, whereas the federal government is to contribute more toward construction. As of FY2006, the state has provided $2.3 billion for land acquisition, making this proposed land purchase approximately 25% of all previous land purchases combined.

[14] For more information on federal and non-federal responsibilities under CERP, see CRS Report RS22048, *Everglades Restoration: The Federal Role in Funding*, coordinated by (name redacted).

[15] This project, authorized under WRDA 2000 (P.L. 106-541), §601, would create a large water storage reservoir south of Lake Okeechobee. The estimated cost of the project is $800 million.

[16] *United States of America vs. South Florida Water Management District, et al.*, 88-1886-CIV-MORENO (United States District Court for the Southern District of Florida, Miami Division 2010).

expected to decline in the coming years. In light of this, some have questioned whether the proposed funding for the land acquisition deal might be better spent on CERP projects. For instance, some have noted that the L-8 reservoir (a CERP project) may be a potential item for reduction.[17] Significantly, state funding decisions for these projects will not be finalized until the end of the current fiscal year in September 2010. It is unknown whether the state will be able to fund its cost-share requirements for all ongoing CERP projects in FY2011.

Potential Effect on Phosphorus Reduction

Some are concerned about the effect of the proposed land acquisition on phosphorus loading into the Everglades ecosystem. As discussed earlier, the proposed land acquisition has the potential to reduce phosphorus entering the Everglades ecosystem if stormwater treatment areas are constructed and sugar and citrus farms are taken out of production. The treatment areas would capture nutrient-rich outflow and runoff from agricultural areas and Lake Okeechobee itself, thereby reducing loads into other parts of the ecosystem. The state notes that some of the areas proposed for acquisition are known for previously having high nutrient loads. However, it is unclear if the 26,800 acres currently planned for purchase are strategically located to maximize phosphorus reduction. The ability of land to reduce phosphorus depends on its proximity to flows out of Lake Okeechobee, as well as other factors.

Additionally, if purchasing the land delays other restoration projects intended to reduce phosphorus, phosphorus loads might not meet previously set targets. For example, the A-1 reservoir, discussed above, is intended to capture releases of water from Lake Okeechobee and reduce phosphorus input into the Everglades ecosystem. Delaying or abandoning this project could affect phosphorus mitigation.

Issues for Congress

The proposed land acquisition is an investment in restoration that may be realized over a longer time horizon than many restoration projects that are currently planned or under construction, including federally authorized CERP projects. The impact of the land acquisition on other Everglades restoration projects will depend on budgetary decisions made in late September 2010, which could potentially reduce or delay state funding for some CERP projects.

Near-term delays resulting from any funding reductions for CERP projects could affect the Everglades ecosystem, including those efforts pertaining to phosphorus mitigation and planned water storage capacity. Congress may have to decide whether currently planned CERP activities should be reconsidered in light of these circumstances.

[17] This project is being conducted under the North Palm Beach County project. For more information, see http://www.evergladesplan.org/pm/projects/proj_17_npbc_1.aspx.

Appendix. Chronology and Maps of Purchase.

Table A-1. Chronology of River of Grass Land Purchase

June 2008	Governor Crist announces plan for a land purchase of up to 187,000 acres of U.S. Sugar land (including agricultural land and facilities) to aid in restoring historic flows in the Everglades. The total cost of the plan was originally estimated at $1.75 billion.
December 2008	After several months of negotiations and real estate appraisals, the SFWMD Governing Board votes to purchase 180,000 acres of the land at a price of $1.34 billion, contingent upon financing and affordability. The purchase was to be financed through Certificates of Participation, or public debt that does not require voter approval.
May 2009	As a result of ongoing financial difficulties, SFWMD announces a revised agreement to purchase 73,000 acres immediately for $536 million. SFWMD would also have options to purchase the remaining 107,000 acres over the next 10 years at fair market value.
August 2010	SFWMD announces a second amended purchase of 26,800 acres for immediate purchase, with options to acquire an additional 153,200 acres over the next 10 years. The immediate purchase no longer proposes to utilize Certificates of Participation.

Figure A-1. River of Grass Land Acquisition: May 2009

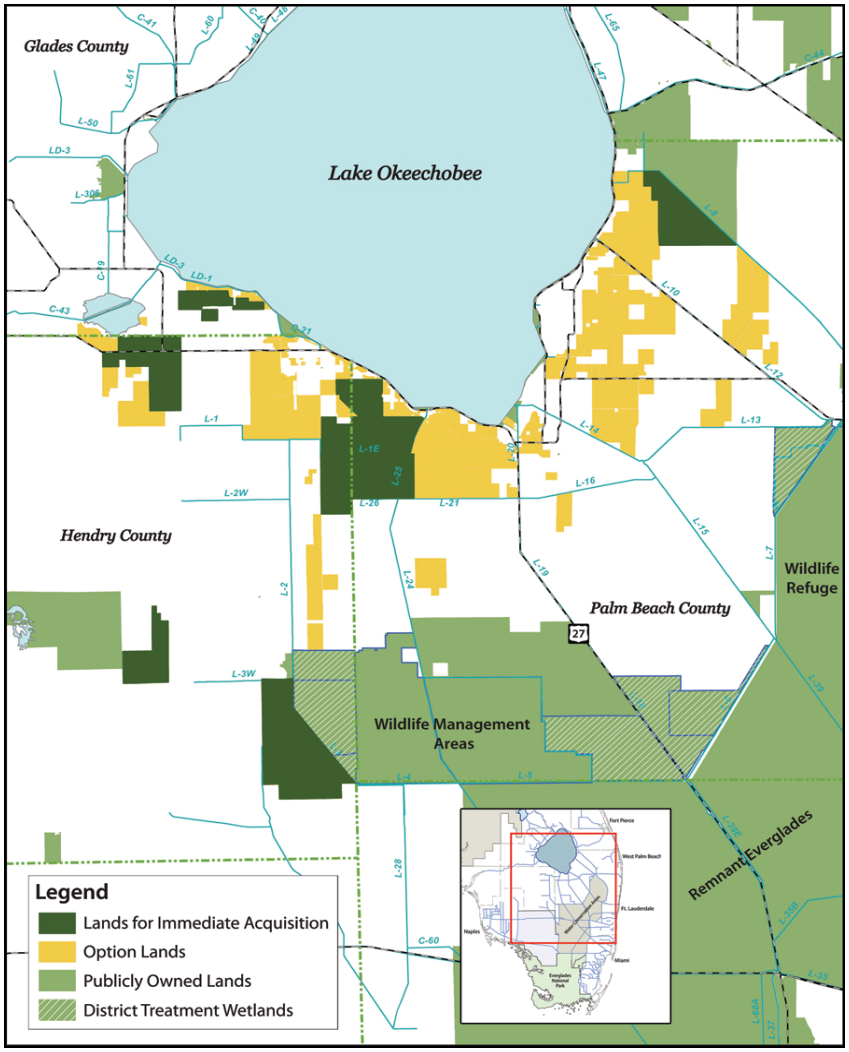
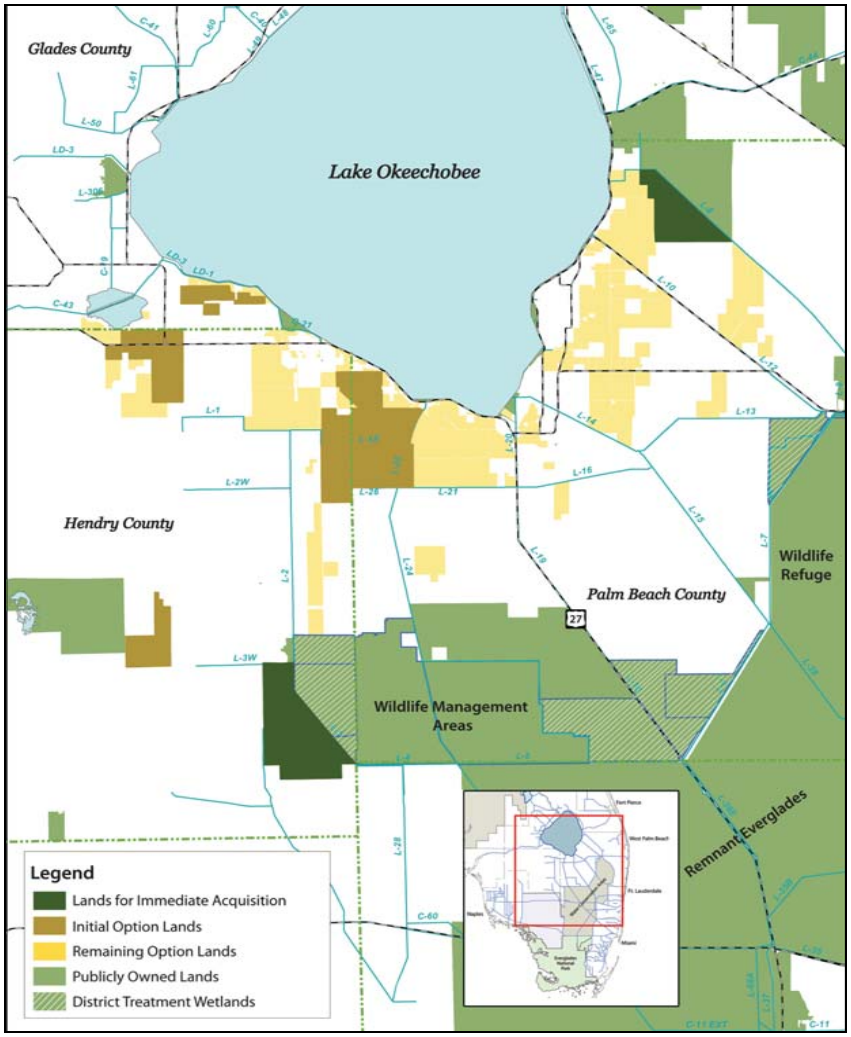


Figure A-2. River of Grass Land Acquisition: August 2010



Source: South Florida Water Management District, Available at https://my.sfwmd.gov/portal/page/portal/pg_grp_sfwmd_koe/pg_sfwmd_koe_riverofgrass

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