

**ORDER ESTABLISHING COMPLIANCE SCHEDULE
UNDER SECTION 403.088 (2)(f), F.S.**

IN THE MATTER OF:

National Pollutant Discharge
Elimination System
Permit No. FL0300195

STA-3/4 Project
Administrative Order No. AO-007-EV

Issued January 9, 2004

The Department of Environmental Protection (Department) issues this Administrative Order under the authority of Section 403.088 of the Florida Statutes (F.S.)

I. FINDINGS

Project Background

1. In 1994, the Florida Legislature passed the Everglades Forever Act (the EFA), Section 373.4592, F.S. This landmark piece of legislation identifies the importance of the Everglades ecosystem, recognizes that the Everglades ecosystem is endangered as a result of adverse changes in water quality and in the quantity, distribution, and timing of flows, and mandates the implementation of the Everglades Construction Project (ECP) as an important component of Everglades restoration.
2. The Stormwater Treatment Area 3/4 Project (STA-3/4 Project) consists of the Diversion Structures, Project Inflow Pump Stations, Project Supply Canal, Interior Works, STA-3/4 Discharge Canal, STA-3/4 Seepage Collection System, and US 27 New Bridges.
3. The STA-3/4 Project is one of the ECP projects included in the Everglades restoration effort, pursuant to Section 373.4592(4) of the EFA.
4. To address water quality standards and facilitate restoration of the Everglades ecosystem, the EFA establishes a compliance schedule of events to be undertaken by the Department and the District so that waters delivered to the Everglades Protection Area meet water quality standards by no later than December 31, 2006, pursuant to Section 373.4592(10) of the EFA.

Public Interest

6. The Florida Legislature has declared the combination of Stormwater Treatment Areas (STAs) and Best Management Practices (BMPs) to be the best available technology for

achieving the interim goals of the Everglades restoration program, pursuant to Section 373.4592(1)(g) of the EFA. Furthermore, the Florida Legislature found that STAs and BMPs are intended to restore the Everglades ecological system and protect the system from adverse changes in water quality, quantity, and timing of water delivery, pursuant to Section 373.4592(1)(a) of the EFA.

Project Permitting

7. It has been determined that the STA-3/4 Project will require a National Pollutant Discharge Elimination System (NPDES) Permit, pursuant to the State of Florida's federally approved NPDES program and Section 403.0885, F.S.
8. Although the NPDES permit for STA-3/4, Permit No. FL0300195, requires compliance with the narrative water quality criterion for phosphorus and the numeric water quality criterion for dissolved oxygen, pursuant to Rule 62-302, Fla. Admin. Code, those standards may not be immediately achieved by the STA-3/4 discharges. In fact, the District is presently unable to comply with the dissolved oxygen limitation of condition I.A.1. of NPDES permit number FL0300195.

Standards for Administrative Orders

9. Section 403.088(2)(e), F.S., states that if a discharge will not meet permit conditions or applicable statutes and rules, the Department may issue, renew, or reissue the operation permit if:
 - a. the applicant is constructing, installing, or placing into operation, or has submitted plans and a reasonable schedule for constructing, installing, or placing into operation, an approved pollution abatement facility or alternative waste disposal system;
 - b. the applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternative waste disposal system;
 - c. there is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;
 - d. the granting of an operation permit will be in the public interest; or,
 - e. the discharge will not be unreasonably destructive to the quality of the receiving waters.

Analysis for Dissolved Oxygen

10. Dissolved oxygen concentrations fluctuate naturally in marsh environments such as the Everglades and routinely fall below the Class III water quality criterion of 5 milligrams per liter (mg/L). The treatment marsh of the STA-3/4 Project is also expected to experience natural fluctuations in dissolved oxygen which routinely fall below the Class III water quality criterion of 5 mg/L. *See*, Robert H. Kadlec and Robert L. Knight, Treatment Wetlands (Lewis, 1996) pp. 102-118, enclosed as Exhibit 1.
11. Based upon information submitted by the District, the operation and maintenance of the STA-3/4 project complies with the requirements of Section 403.088, F.S., as follows:
 - a. the District has plans and a reasonable schedule for collecting data to determine if the discharge is having an adverse impact on water quality or causing an imbalance in the natural populations of aquatic flora and fauna in the receiving waters, in accordance with Section 403.088(2)(e)1., F.S.;
 - b. the District needs permission to discharge from the STA-3/4 facility in order to begin Everglades restoration and the removal of pollutants from the watershed, while it also continues to implement the Everglades research and monitoring program in accordance with Section 373.4592(4)(e) of the EFA, and the Long Term Compliance Plans, which shall be developed by December 31, 2003, in accordance with Section 373.4592(10) of the EFA;
 - c. there is no present, reasonable, alternative means to this discharge, which is driven by rainfall, other than by discharging it untreated into the waters of the state, in accordance with Section 403.088(2)(e)3., F.S.;
 - d. the granting of this permit will be in the public interest, in accordance with Section 403.088(2)(e)4., F.S., and Section 373.4592(9)(a) of the EFA, as the permitted facility is a treatment wetland that is expected to provide significant removal of phosphorus and other pollutants from the contributing basins;
 - e. the granting of this permit will not allow discharge of waters unreasonably destructive to the quality of the receiving waters, in accordance with Section 403.088(2)(e)5., F.S. Low levels of dissolved oxygen can occur naturally in the Everglades, and furthermore, since the facility is removing pollutants, the discharges authorized by this Administrative Order will be beneficial to the overall quality of downstream waters.
12. In addition, in recognition of the fact that all water bodies may not naturally meet their respective water quality criteria, the Department has the authority under rules 62-302.500 and 62-302.800, F.A.C., to establish a Site Specific Alternative Criteria (SSAC) for any parameter, including dissolved oxygen criterion, and may base that SSAC on natural

background conditions or man-induced conditions which cannot be controlled or abated.

13. The Department is also directed by Sections 373.4592(4)(e)3. and 4. of the EFA, to evaluate existing Class III water quality standards in the Everglades Agricultural Area canals and the Everglades Protection Area.

Administrative Order Analysis for Phosphorus

14. Section 373.4592(1) of the EFA recognizes that waters flowing into the Everglades Protection Area contain excessive levels of phosphorus. The primary objective of the ECP is to reduce the levels of excess nutrients in the Everglades, in accordance with Sections 373.4592(1)(d) and (g) of the EFA. That objective is also consistent with state anti-degradation requirements, which acknowledge excessive nutrients as one of the most severe water quality problems facing the state. Rule 62-302.300(13), F.A.C.
15. Based upon information from the Everglades Nutrient Removal project, and other information contained in the administrative record for the NPDES Permit No. FL0300195, the STA-3/4 facility is likely to produce substantial reductions in loads and concentrations of phosphorus being delivered to the Everglades Protection Area.
16. Section 373.4592(4)(e)2 of the EFA requires the Department to establish a numeric criterion for phosphorus in the Everglades Protection Area by December 31, 2003. Based upon the best available technical information, the ECP identified an interim numeric goal for phosphorus of 50 parts per billion (ppb) until a numeric interpretation for the narrative nutrient criterion for phosphorus in the Everglades Protection Area is established by rulemaking, pursuant to Section 373.4592(4)(e) of the EFA.
17. The Department has concluded that the most appropriate way to measure whether the STA-3/4 project is achieving the design goal for phosphorus of 50 ppb requires consideration of the known characteristics of wetland treatment systems. Wetland treatment systems reach optimal performance only after initial periods called "startup" and "stabilization" phases. This conclusion is consistent with the findings contained in pages 474-475 of the reference book entitled "Treatment Wetlands" by Dr. Robert Kadlec and Dr. Robert Knight, and the document entitled "Test for Evaluating Performance of Stormwater Treatment Areas," by Dr. William W. Walker, dated January 3, 1996, enclosed as Exhibits 2 and 3, respectively.
18. Based upon information submitted by the District, the operation and maintenance of the STA-3/4 project complies with the requirements of Section 403.088, F.S., as follows:
 - a. the District has plans and a reasonable schedule for collecting data to determine if the discharge is having an adverse impact on water quality or causing an imbalance in the natural populations of aquatic flora and fauna in the receiving waters, in accordance with Section 403.088(2)(e)1., F.S.

- b. the District needs permission to discharge from the STA-3/4 facility in order to begin Everglades restoration and the removal of pollutants from the watershed, while it also continues to implement the Everglades research and monitoring program in accordance with Section 373.4592(4)(e) of the EFA, and the Long Term Compliance Plans, which shall be developed by December 31, 2003, in accordance with Section 373.4592(10) of the EFA;
- c. there is no present, reasonable, alternative means to this discharge, other than by discharging it into the waters of the state, in accordance with Section 403.088(2)(e)3., F.S.;
- d. the granting of this permit will be in the public interest, in accordance with Section 403.088(2)(e)4., F.S., and Section 373.4592(9)(a) of the EFA, as the permitted facility is a treatment wetland that is expected to provide significant removal of phosphorus from the contributing basins;
- e. the granting of this permit will not allow discharge of waters unreasonably destructive to the quality of the receiving waters, in accordance with Section 403.088(2)(e)5., F.S. In fact, since the facility is removing pollutants, including phosphorus, the discharges authorized by this Administrative Order will be beneficial to the quality of downstream waters.

II. ORDER

Based on the foregoing findings, IT IS ORDERED THAT:

Monitoring and Operation

- 1. The District shall collect the data, submit the reports, modifications, and other deliverables on schedule, and maintain and operate its facilities in compliance with the conditions and monitoring requirements of NPDES Permit No. FL0300195, unless otherwise specified herein.
- 2. The District shall submit an Annual Report (the Everglades Consolidated Report) demonstrating compliance with the terms of this Administrative Order. The Annual Report shall be received by the Department no later than January 1st of each year following the date of issuance of this order. Each Annual Report shall present the information for the previous water year, from May 1st to April 30th. Upon approval by the Department, the District may modify the Annual Report submission date to coincide with multiple reporting requirements and time periods needed for data acquisition and analysis.

Dissolved Oxygen Conditions

3. In lieu of the effluent limit contained in Condition I.A.1., of NPDES Permit No. FL0300195 for dissolved oxygen, the District shall comply with the following requirements for dissolved oxygen.
4. Dissolved oxygen levels shall be monitored upstream of the G-370 and G-372 inflow pump stations and downstream of the G-376B, G-376E, G-379B, G-379D, G-381B, and G-381E discharge culverts with insitu multi-parameter probe readings from bi-weekly grab samples.
5. The Department shall be provided by the District, in an STA-3/4 Annual Report, to be submitted within 60 days of the annual reporting period, an analysis of dissolved oxygen demonstrating that dissolved oxygen levels in the STA-3/4 discharge do not adversely change the downstream Everglades ecological system or downstream water quality based upon the following:
 - a. a comparison of dissolved oxygen levels in STA discharges with background conditions in receiving waters;
 - b. an evaluation of dissolved oxygen levels at representative interior Everglades Marsh Stations, demonstrating that STA discharges fully maintain and protect the existing designated uses of the downstream waters and the level of water quality consistent with applicable anti-degradation requirements;
 - c. an evaluation of whether discharges are necessary or desirable, and otherwise in the public interest;
 - e. a comparison of STA-3/4 effluent with other historic DO data from the Everglades Protection Area.
6. If the Department, based upon a review of the information submitted pursuant to condition 2 above, determines that STA-3/4 discharges are adversely changing the downstream Everglades ecological system or downstream water quality, then within 90 days of receipt of notice of the Department's determination, the District shall submit for review and approval, a remedial plan to address the DO levels. This plan must include an implementation schedule.
7. In accordance with Section 373.4592(4)(d) of the EFA, the Department shall review dissolved oxygen water quality standards in the Everglades, and shall, by July 1, 2003, take proposed agency action, if necessary, on:
 - a. a revised dissolved oxygen criterion;
 - b. a site-specific alternative criterion; or

- c. some other form of moderating provision for dissolved oxygen.
8. In accordance with Section 373.4592(10) of the EFA, the District shall, by no later than December 31, 2003, submit plans, cost estimates, and schedules for compliance with:
- a. the revised dissolved oxygen criterion established by the Department;
 - b. the site-specific alternative criterion established by the Department;
 - c. the moderating provision for dissolved oxygen established by the Department; or,
 - d. the dissolved oxygen limits established in Rule 62-302.Fla. Admin. Code
9. The District shall be in compliance with the permit limit for dissolved oxygen as soon as possible, but no later than December 31, 2006, in accordance with Section 373.4592(10)(a) of the EFA.

Phosphorus Conditions

10. **Start-Up.** During the Start-Up Phase, the District shall monitor phosphorus concentrations within STA-3/4 to demonstrate that the project is achieving a net reduction in phosphorus. Start-Up Phase operation and phosphorus monitoring within STA-3/4 shall be performed as follows:
- a. *Recirculation.* During Start-Up, the District may recirculate waters within the STA.
 - b. *Treatment Cell Start-Up.* Portions of the STA-3/4 facility may operate independently of each other. Under those circumstances, performance of operating portions of the STA shall be measured as follows:
 - 1) Flow-through operation of independent cell(s) during the start-up phase shall be allowed unless the cell(s) become a net source of phosphorus. The cell(s) shall be considered a net source of phosphorus if the 12-month moving flow-weighted mean total phosphorus concentration at the outflow site is greater than the 12-month moving flow-weighted mean total phosphorus concentration from the corresponding inflow site.
 - 2) In order to ensure that no discharge of pollutants occur due to the inundation of soils within STA-3/4, the District shall comply with the following:
 - a) The District shall manage water depths in the treatment cells to facilitate the recruitment of marsh vegetation.
 - b) On a weekly basis, the permittee shall monitor water quality at the upstream side of inflow stations G-370 (flow path Cell 1) and G-

372 (flow path Cells 2 & 3), and the upstream side of outflow structures G-376B and G-376E (Cell 1B), G-379B and G-379D (Cell 2B), and G-381B and G-381E (Cell 3) (See Figure 1).

- c) The Start-Up Phase for STA-3/4 shall end when these samples demonstrate, over a four-week period, a net reduction in phosphorus occurs. This net reduction shall be deemed to occur when the 4-week geometric mean total phosphorus water column concentration from samples collected at the G-376B, G-376E, G-379B, and G-379D outflow structures is less than the 4-week geometric mean total phosphorus water column concentration collected at G-370 pump station for the eastern flow-ways (Cells 1A/1B and Cells 2A/2B) and the 4-week geometric mean total phosphorus water column concentration from samples collected at the G-381B and G-381E outflow structures is less than the 4-week geometric mean total phosphorus water column concentration collected at the G-372 pump station for the western flow-way (Cells 3A/3B). If STA-3/4 has not met this test within two months after beginning start-up operations, the permittee shall submit monthly reports of the 4-week geometric mean difference. If after six months, the system has not met the 4-week start-up test, the permittee shall evaluate vegetative conditions and identify strategies to achieve that test.
 - d) Discharge from STA-3/4 may commence at the end of the start-up period.
 - e) During the Start-Up Phase, the District may recirculate waters within the STA.
- c. *Alternative Data.* When required by flow or water levels, alternative representative data may be provided by the District to demonstrate that any portion of the STA-3/4 facility is achieving start-up compliance requirements.
- d. *Initiation of Flow-Through (Stabilization and Post-Stabilization) Operation.* Start-Up Phase documentation shall be submitted to the Department and shall include all supporting data and analyses. When STA-3/4, or individual cells of STA-3/4, meets Start-Up criteria, routine flow through operation for STA-3/4, or individual cells of STA-3/4, may begin. Once flow-through discharges begin, the District shall initiate routine water quality monitoring consistent with the monitoring program described in this permit.
- e. Prior to the full flow-through operation of STA-3/4, discharge of excess inflows may be diverted through the G-371 and G-373 structures during times when the

discharges from S-7 and/or S-8 exceed the safe flow-through capacity of STA-3/4, when stages within the cells exceed target levels, or established vegetation is threatened.

11. **Stabilization.** Following completion of the Start-Up phase for all the treatment cells, the project shall begin a period of stabilization, in accordance with Subsection 373.4592(9)(h) of the EFA. The stabilization period for STAs is generally anticipated to last 2 to 3 years after the Start-Up phase ends. During that period, compliance with the criteria in Subsection 373.4592(9)(h) of the EFA shall be evaluated as set forth below.

After start-up operations have ended and flow project flow-through operations and discharges have begun from each flow-way, the District shall operate and monitor STA-3/4, allowing for a stabilization period. The stabilization period for STA-3/4 shall end when the 12 month flow-weighted average total phosphorus concentration at the outflow stations is less than or equal to 50 ppb. Starting 12 months after commencing discharge from each flow-way, the District shall provide rolling 12 month flow-weighted average total phosphorus concentration in monitoring reports. If, after the first two years of full project flow-through operation, the STA has not met this stabilization test, the District shall submit a report which shall compare the flow weighted mean of the total phosphorus discharge data from the most recent 12-month period (e.g., months 13 - 24) with the flow-weighted mean of the total phosphorus discharge data from the previous 12 month period (e.g., months 1 - 12) to ensure that performance of the STA is not declining, based upon a Student's t-test at the 95% confidence interval. This report is to be submitted 90 days after the end of each reporting period. If at any time, the STA performance indicates that this test will not be met by December 31, 2006, the permittee shall submit a report on the progress made towards meeting the stabilization requirements and an analysis of the system operation and shall submit and initiate implementation of an optimization plan designed to reach the phosphorus stabilization goal by December 31, 2006.

12. **Post Stabilization Operations.** From the end of the stabilization period, until the beginning of the long-term compliance period (as established by Specific Condition VII.E. of NPDES permit number FL0300195 and condition II.13. of this Administrative Order) discharges from STA-3/4, via the G-376B, G-376E, G-379B, G-379D, G-381B, and G-381E structures, shall meet an annual flow-weighted average total phosphorus concentration at the outflow stations of less than or equal to 76 ppb for each water year, (May 1 - April 30). In addition, the discharges shall not exceed an annual flow weighted average total phosphorus concentration of 50 ppb for three or more consecutive water years. Both tests are simultaneously applied to ensure that the design objectives of the STA-3/4 project are met.
13. **Long Term Compliance.** Pursuant to Subsection 373.4592(10)(a) of the EFA, the District shall submit to the Department a permit modification to incorporate proposed changes to the Everglades Construction Project and NPDES Permit No. FL0300195 by

December 31, 2003. These changes shall be designed to achieve compliance with the phosphorus criterion and the other state water quality standards by December 31, 2006.

Factors Impacting Compliance

14. In the event that discharges are not meeting any of the compliance requirements set forth above, the District and Department shall evaluate the performance of STA-3/4 relative to the design documents, the Operations Plan, the District's Pollution Prevention Plan, dated May 13, 2002, and any other documentation addressing STA-3/4 operation. Design parameters to be evaluated shall include, but not be limited to, phosphorus loads, hydraulic loading rates, hydraulic retention times, and minimum, mean and maximum depths. Appropriate remedial measures shall be taken after that review is completed.

Relationship Between Administrative Order and Other Legal Authorities

15. This order does not operate as a permit under Section 403.088 of the Florida Statutes.
16. Failure to comply with the requirements of this order shall constitute a violation of this order and may subject the District to penalties as provided in Section 403.161 of the Florida Statutes.
17. This order may be modified following the procedures for a permit modification as set forth in Chapter 62-620 of the Florida Administrative Code. The District shall design and request modifications to the STA-3/4 Project, if analysis of the monitoring data reveals the project is not achieving the design objectives, or, if technologies become available that are determined to be superior at achieving the goals of the Everglades restoration program.
18. This order is final when filed with the clerk of the Department, and the District shall then implement this order unless a petition for an administrative proceeding (hearing) is filed in accordance with the notice set forth in the following section.

III. NOTICE OF RIGHTS

A person whose substantial interests are affected by the Department's proposed decision may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions by the applicant or any of the parties listed below must be filed within twenty-one days of receipt of this written notice. Petitions filed by any persons other than those entitled to

written notice under section 120.60(3) of the Florida Statutes must be filed within twenty-one days of publication of the notice or within twenty-one days of receipt of the written notice, whichever occurs first.

Under section 120.60(3) of the Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within twenty-one days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

(a) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any; the Department case identification number and the county in which the subject matter or activity is located;

(b) A statement of how and when each petitioner received notice of the Department action;

(c) A statement of how each petitioner's substantial interests are affected by the Department action;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;

(f) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Issued January 9, 2004

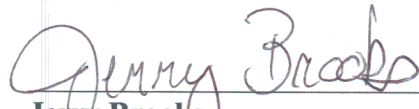
Mediation under section 120.573 of the Florida Statutes is not available for this proceeding.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

Any party to the order has the right to seek judicial review of the order under section 120.68 of the Florida Statutes, by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

DONE AND ORDERED on this 9th day of January, 2004, in Tallahassee, Florida.

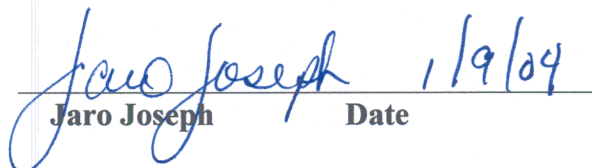
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jerry Brooks
Deputy Division Director
Water Resource Management

FILING AND ACKNOWLEDGMENT

FILED, on this date, under Section 120.52 (7), F.S., with the designated deputy clerk, receipt of which is hereby acknowledged.



Jaro Joseph **Date**

ORIGINAL FURNISHED TO APPLICANT BY CERTIFIED MAIL NO.:

PARTIES REQUESTING NOTICE:

Miccosukee Tribe of Indians of Florida, c/o Dexter Lehtinen, Esq.
Miccosukee Tribe of Indians of Florida, c/o Kelly Brooks, Esq.
United States Sugar Corporation, c/o Bubba Wade
Seminole Tribe of Indians of Florida, c/o Stephen A. Walker, Esq.
Sugar Cane Growers Cooperative, Roth Farms, Inc., and Wedgeworth Farms, Inc.,
c/o William H. Green, Esq.
Keith Saxe, Esq., U. S. Department of Justice
Michael Stevens, U.S. Department of the Interior (fax)
Jeffrey J. Ward, Sugar Cane Growers Cooperative
Philip S. Parsons, Landers & Parsons
Helen Hickman, Brown & Caldwell
Tom MacVicar, MacVicar, Frederico, & Lamb
Charles Lee, Florida Audubon Society
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