

# **Frequently Asked Questions About the Northern Everglades Payment for Environmental Services Program**

## **Introduction**

The following Frequently Asked Questions (FAQs) have been compiled by the South Florida Water Management District (SFWMD), the Florida Department of Agriculture and Consumer Services (FDACS) and the United States Department of Agriculture's Natural Resources Conservation Service (USDA-NRCS) to answer questions that ranchers may have about the Northern Everglades – Payment for Environmental Services (NE-PES) Program solicitation, proposal selection, and contracting process. These FAQs are a complement to the second NE-PES solicitation documents currently being developed for an anticipated March 2012 release.

## **1. Why do agencies of the State of Florida want to work with private landowners?**

Private land owners can manage water to provide two water management services: water retention or nutrient (total phosphorus (TP) or total nitrogen (TN)) load reduction. Agencies of the state of Florida recognize that water management alternatives on private land can complement the Northern Everglades and Estuaries Protection Program (NEEPP) regional reservoirs and stormwater treatment areas (STAs). Together with regional projects, private land owner water management will:

- Reduce extreme Lake Okeechobee water levels;
- Reduce damaging discharges of freshwater and nutrients to the estuaries;
- Contribute to improvements in Lake Okeechobee water quality; and
- Contribute to the financial viability of cattle ranching to maintain the inherent value of ranchlands.

## **2. What is a water management alternative (WMA)?**

Water Management Alternatives (WMAs) are combinations of construction and management practices selected and implemented by the landowner within a defined drainage basin of the ranch in order to produce the water retention or nutrient load reduction (TP and TN) services. WMAs on ranch parcels are intended to take advantage of existing water management infrastructure or make minor additions to infrastructure in order to generate cost-effective water management services.

Examples of construction practices that a rancher might consider individually or in combination on a WMA site are:

- Flashboard riser and/or weirs in existing uncontrolled ditches that drain by gravity from a site;
- Constructing earthen berms or increasing the elevation of existing berms;

- Constructing new above-ground impoundments or enhanced utilization of existing impoundments that require pumped inflows;
- Rehydration of wetlands;
- Collecting surface runoff from offsite areas that typically by-pass the site and diverting it to the connected onsite retention; and or
- Site improvements that increase the potential for vertical infiltration from the site.

The selection of the practices and management actions that comprise the WMA as well as the number of acres the rancher includes in the WMA drainage basin vary as a result of the specific physical characteristics of the ranch, and the rancher's preferences that take into consideration the perception of risks and potential effects of enhanced water management on current land uses.

### **3. Are there different types of WMAs to provide water management services?**

For the purposes of the NE-PES program there are two types of WMAs.

Water Retention WMAs retain *on-ranch* stormwater to reduce the volume and rate of water flow to Lake Okeechobee during periods of high Lake levels as well as harmful estuary releases. As a consequence of retaining water, Water Retention WMAs also will retain nutrients that would otherwise leave the ranch in stormwater runoff.

Nutrient Removal WMAs divert *off-site* water onto the WMA and return water with reduced nutrients to the regional system. Nutrient Removal WMAs also will reduce the volume and slow the movement of water toward the Lake and estuaries under high lake level conditions.

### **4. Are there different sizes of WMAs?**

WMA submissions will be divided into large and small classes and the evaluation by the SFWMD will be among the proposed WMAs in each size class. For the water retention service, less than 5,000 acre-feet per year will separate the smaller and larger service projects and for the nutrient removal service, less than 3.5 metric tons load reduction per year will separate the smaller and larger projects.

Current available funds for the solicitation will initially be partitioned equally between the smaller and larger service projects. Based upon the cost-benefit evaluation of the proposed WMAs during the evaluation process, this distribution of funding may be shifted in response to obtaining the greatest amount of service at the least cost.

### **5. What is the program that will pay ranchers to implement WMAs and provide water management services?**

The Northern Everglades, Payment for Environmental Services (NE-PES), is a *voluntary program* of the South Florida Water Management District (SFWMD), cooperatively implemented with the Florida Department of Agriculture and Consumer Services (FDACS), the Florida Department of Environmental Protection (FDEP), and the United States Department of

Agriculture's Natural Resources Conservation Service (USDA-NRCS), to pay ranchers who provide water retention and nutrient (TP & TN) load reduction services.

Selection into the NE-PES program requires ranchers to participate in a SFWMD administered competitive process. The rancher will submit a proposal describing one or more Water Management Alternatives (WMA) the rancher is willing to construct and operate over a contract period, an estimate of the service amount that will be provided, and the payment requested. The format for the proposal submission is described in solicitation documents made available by the SFWMD. The rancher is responsible for all aspects of the preparation and submission of a complete proposal to the SFWMD. Following completion of an evaluation and ranking of the submitted proposals, the SFWMD will enter into not-to-exceed, fixed term contracts with selected landowners. The program will pay the agreed to service payment amount on an annual basis upon receipt of required documentation. At the end of the contract, an extended or amended contract may be considered by both parties, or the landowner can return to baseline water management conditions, subject to the reversion plan specified in the contract.

## **6. How much funding is available?**

NE-PES is one of the components of the SFWMD's Dispersed Water Management Program. The program has designated approximately \$46 million in funding through fiscal year 2016 for the most cost-effective existing and future water resource improvement projects.

## **7. What is the relationship between the NE-PES program and FRESP?**

The NE-PES program was created based on the lessons learned from the Florida Ranchlands Environmental Services Project (FRESP). FRESP was a demonstration project implemented by partners that included 8 volunteer ranchers, World Wildlife Fund, the SFWMD, the FDACS, the Florida Department of Environmental Protection, the USDA NRCS, the MacArthur Agro-Ecology Research Center and the University of Florida IFAS. The purpose of FRESP was to design a Payment for Environmental (PES) program. The lessons learned by the FRESP collaborators during the 6 year pilot phase (2005-2011) were considered in the design of the NE-PES program. FRESP will be phased out by the end of 2012.

## **8. What's the process for submitting a WMA proposal to the NE-PES program?**

In March 2012 the SFWMD will issue an invitation to eligible ranchland owners to submit one or more proposal(s) for Water Retention and / or Nutrient Removal WMAs. The invitation will include solicitation guidelines that will provide detailed instructions on how to prepare a proposal in response to the solicitation and the deadline for submitting it to the SFWMD.

Ranchers will need to work with an engineering consultant of their choice to collect the required data and make the service estimate using tools provided by the SFWMD. Costs associated with preparation of the proposal are borne by the rancher and are not reimbursed by the SFWMD.

The solicitation has been developed to minimize to the greatest extent practicable the costs associated with preparation of the proposal.

## **9. Who is eligible to submit a proposal?**

To be eligible to respond to the 2012 solicitation for the NE-PES program, a land owner must:

- Have lands classified as ranchlands and be engaged in the production of beef cattle;
- Be located within the Northern Everglades as defined in section 373.4595, Florida Statutes);
- Have enrolled the ranchlands containing the proposed Water Management Alternative(s) in the FDACS BMP Program, or be in the process of enrolling the lands, by the date of the solicitation release.
- Be in compliance with SFWMD rules and regulations and federal wetlands regulations with regard to all of the lands in their ownership.

The NE-PES program envisions issuing solicitations in future years for proposals for water management services subject to budget availability.

## **10. What is the application process and who pays the cost of application to the program?**

The NE-PES program assumes that the rancher will be responsible for all costs associated with preparing and submitting a proposal to the SFWMD. In designing the NE-PES program, every effort was made to create a streamlined application process that minimizes costs to ranchers understanding that not all ranchers will be selected and awarded a contract through the competitive solicitation process. WMAs not selected in one solicitation would be encouraged to reapply in a future year's solicitation.

All proposals must include an estimate of services using one of approved estimation tools, the Potential Water Retention Model (PWRM) and Potential Phosphorous Removal Formula (PPRF), developed specifically for the NE-PES program. To obtain this estimate an applicant will need to work with an engineering consultant in order to collect the site and WMA design information necessary to use the tools to make the service estimate.

During the second solicitation, the technical assistance provided by FDACS and NRCS includes:

- Information and technical outreach meetings and workshops on the program design, application process, tools to assist ranchers in applying to the program;
- Conducting a site visit to discuss potential water management alternatives; and
- Conducting a Pre-Permitting site visit by NRCS to determine whether the WMA design is eligible for the streamlined permitting process.

## **11. Who selects the WMA type, size, design and operation?**

The rancher chooses the WMA type, size, design and an operational plan in consideration of:

- The payment requested, including the rancher's willingness to accept some level of production risk over the life of the contract, especially in wet years, associated with increased water retention on the ranch parcel;
- Existing regulatory rules governing water management (for example, allowable changes to wetlands hydroperiod, canal stages that determine allowable pumping from public water bodies, effects on neighboring properties, and other requirements included in existing water use and other permits).
- WMA design guidelines that allow a rancher to take advantage of a streamlined permitting process which combines state and federal agency regulatory requirement into one process that addresses jurisdictional wetland and threatened and endangered (T&E) species issues.

## 12. What is the NE-PES contract for?

A rancher is being paid over the 10 year life of the contract for the following activities, depending on the nature of the WMA (i.e. water retention or nutrient removal):

- Retention of on-ranch stormwater that would have flowed offsite, contributing to high Lake water conditions and/or estuary regulatory releases); or
- Removal of nutrients (TP and TN) from regional water.

## 13. Who will rancher have the contract with?

The contract will be with the SFWMD, as the organization that issues the solicitation in the NE-PES program.

The SFWMD will:

- Administer the solicitation including the evaluation, ranking and selection of WMA proposals, following standard requirements of the SFWMD procurement process;
- Issue and sign the contract with the ranchers selected to provide the services;
- Annually verify compliance with the terms of the contract, before making payments for services; and
- Make the payments upon verification of compliance, in a timely manner.

## 14. How is the amount of service provided by the WMA determined?

Ranchers proposing either a Water Retention or Nutrient Removal WMAs to the NE-PES Program must use one of two NE-PES approved methods to estimate the average annual change in water retention, or nutrient removal. The difference between estimated service levels *with* versus *without* the WMA is the average annual change in the water management service from the WMA and is the incremental amount of service provided by the WMA. In addition to providing the required service estimate, the tools can be used to help design the WMA in ways that maximize the service and at the same time recognize the potential changes to cattle production.

For Water Retention WMAs, the Potential Water Retention Model (PWRM) computes average annual water retention over a 10 year period of rainfall record that includes low and high rainfall days, weeks and months, in addition to extreme events such as hurricanes. The PWRM user guide and the model itself are publically available and a training workshop on the use of the model was conducted on January 31, 2012.

To obtain the PWRM estimate, ranchers will need to work with an engineering consultant of their choice to both collect the required data and to run the model. The SFWMD will make available, if requested, a list of engineering consultants that attended the January 31, 2012 PWRM training workshop.

District staff will verify service estimate proposed by the rancher prior to Selection Committee review and ranking of proposals. Any discrepancy in service estimate provided may result in the respondent being determined to be non-responsible by the District for this solicitation and its proposal may not be considered for further review by the Selection Committee.

For Nutrient Removal WMAs, the Potential Phosphorous Removal Formula (PPRF) computes average annual TP removal, recognizing the conditions that limit water diversion from the waters of the State to only excess conditions, the expected TP inflow concentrations in the water, the size of the proposed WMA and the current vegetative characteristics and management practices of the proposed WMA (existing wetlands or pasture). In WMAs with primarily pasture conditions, a 30% TP load removal efficiency will be assumed.

In the estuary basins where nitrogen is the nutrient of concern, the PPRF, as developed for TP, will be utilized for service estimation until TN removal estimation tools are developed. The rancher's proposal will provide an estimate of the potential TP removal from using the PPRF, and the solicitation will require applicants to provide a conceptual plan for the WMA.

For all Nutrient Removal WMAs, data collected over a period of 3 years will be used to determine TP and TN removal efficiencies once the WMA is operational. These data may be used to modify the terms of the contract or the operation of the WMA during the life of the contract to optimize nutrient removal and better establish the level of service provided.

## **15. What are the environmental services compensated for payment in the NE-PES program?**

For *Nutrient Removal WMAs* the potential average nutrient removal service as estimated by the PPRF is used as the estimate of service. If a proposed nutrient removal WMA sites has permits that currently allow pumping water from the regional system according to a regulation schedule into the WMA site an estimate will be made using available pump records, regulation schedules and average nutrient concentration levels in the intake water to establish a pre-WMA nutrient removal baseline, using the PPRF. The estimated pre-WMA nutrient removal baseline will be subtracted from the PPRF's annual estimated nutrient removal service under the WMA design and operation to calculate the amount of environmental service eligible for compensation in the NE-PES program.

For *Water Retention WMAs*, the NE-PES program has established a baseline water management expectation for on-ranch stormwater within the WMA footprint. The service eligible for compensation under the NE-PES program will be the water retention service provided above that baseline.

Because submission of a proposal for a Water Retention WMA to the NE-PES demonstrates that water management on the WMA area is technically feasible and economically practical if a payment is received, the amount of water retention service offered to the NE-PES must be greater than what would be realized under the FDACS standard cost share program. In reviewing water retention BMPs funded by FDACS or NRCS, the SFWMD calculated that on average these sites provided .36 acre feet of retention /acres of combined wetland and ditch area.

Therefore, the NE-PES program has defined a baseline water management expectation that will be calculated by multiplying .36 acre feet by the number of acres of combined wetland and ditch area. The estimated WMA baseline water management will be subtracted from the PWRM total to calculate the amount of incremental water retention service compensable under the NE-PES program. It is this amount of environmental service that is eligible for compensation that is included in the proposal for the NE-PES solicitation.

## **16. How much will a rancher get paid?**

Ranchers will structure their total payment request in two parts:

1) An initial payment to cover the costs of design, permitting, soil sampling, contract compliance monitoring, and construction of the WMA. The expectation is that rancher will accurately estimate and include in the proposal the design, permitting and construction costs of the WMA. The solicitation documents will provide methods for estimating soil sampling and contract compliance monitoring equipment and installation costs for the rancher to include in their payment request.

2) An annual total service payment that the rancher believes is fair compensation for the environmental service eligible for compensation being provided in the NE-PES program. Worksheets will be provided to ranchers in the Technical Information Workbook provided by the SFWMD during the solicitation process to assist them in developing their annual service payment requests. Other considerations:

- The water management service for each year is based on the PWRM or PPRF estimate of the average annual service provision for the WMA. Therefore, if the terms of the contract are met, and the rancher has provided the required documentation, the payment will be made to the rancher, regardless of the rainfall and pumping regime for the WMA in that particular year.
- Service payments for Nutrient Removal WMAs will be re-evaluated after three years of operation based on actual site monitoring data.

During the evaluation and ranking process the WMA submissions by ranchers will be evaluated based on criteria which may include quantity of environmental services eligible for compensation, total payment requests and other conditions that are specified in the invitation guidelines.

The SFWMD evaluation committee will review and compare the proposed ranchers' service payment requests. The Governing Board may give direction to enter into negotiations.

## **17. How does a rancher get paid?**

For capital construction costs associated with the design, permitting and construction:

The rancher will submit invoices with receipts to the SFWMD for reimbursement as specified in the contract. The SFWMD may choose to inspect the project before making any payment. However, before receiving the final payment the rancher's licensed engineer must certify construction completion as specified in the approved design and SFWMD staff may choose to conduct a site visit to confirm terms of the contract have been met.

For annual service payments:

As specified in the contract the rancher will compile each month the required documentation consisting of a Monthly Rancher Report and Monthly Data Report currently provided by the Field Coordinator, the program's third party agent collecting the data. The rancher will submit it to the SFWMD on a monthly basis. Upon verification by the project manager of the SFWMD that all monthly reports are complete and contract compliance verified, the payment will be authorized. The annual payment will be made by the SFWMD within 30 days of the submission of the required documentation assuming all other contract requirements are met to the satisfaction of SFWMD.

## **18. Who is responsible for collecting the monitoring data from NE-PES WMA sites?**

Currently, the SFWMD has a contract with a third party field coordinator to perform duties related to the monitoring of the NE-PES projects. The rancher needs to allow the SFWMD's field coordinator to access the WMA for the purpose of monitoring project performance. The SFWMD's field coordinator will be responsible for installing the monitoring equipment as specified in the contract and for conducting the monthly WMA site visit. During the WMA site visit they will collect the field data from the monitoring equipment installed at the WMA site (e.g. rainfall, stage, and pump record), take a quarterly water sample, and review the rancher's Monthly Rancher Report. Within two weeks of the site visit the field coordinator will provide the rancher with a monthly Data Report that the rancher then submits along with the Monthly Rancher report to the SFWMD project manager to demonstrate contract compliance.

## **19. How should the rancher think about the requested annual service payment?**

The annual payment is not based on an announced price per unit of service. Instead, applicants choosing to participate in the NE-PES program will make a request for a total annual service



payment. That request for water management services should take into consideration the following:

Increases in ranch operations cost:

- Return to land ownership and management that justifies participation in the NE-PES program;
- Possible loss of production on the WMA in certain years of the contract (depending on rainfall);
- Operation and management costs for WMA;
- Costs for monitoring and reporting required as a condition for payment (Contract compliance reporting); and
- Possible cost for pasture reestablishment in certain WMA areas at end of contract and other reversion plan costs.

Benefits to ranch operations:

- Counting on a certain and predictable annual payment, as compared to other ranch enterprises where net returns are affected by market volatility and weather; and
- Potential increased moisture/water during drier conditions that can maintain pasture into the dry season.

Competitive payment requests and other sources of services:

- The SFWMD will combine the two- part request (refer to FAQ 17) into an annualized present value total payment and then calculate a cost per service unit, for comparison purposes. The SFWMD is not obligated to select any proposal for payment, if the payment request is not deemed cost effective;
- The SFWMD will compare the total annual service payment over the life of the contract to the cost-effectiveness of implementing other projects.
- The SFWMD will assess the service value considering the lack of permanence and costs for managing multiple dispersed water management contracts;

## **20. Can EQIP pay part of WMA construction costs?**

Ranchers who meet USDA Farm Bill eligibility requirements are encouraged to seek EQIP funding to cover some or all of the capital costs related to the installation of one (or more) practices allowed under the EQIP program. EQIP funding applied to a NE-PES selected WMA would reduce the state's capital costs allowing funds to be spread over a bigger pool of applicants.

The process is as follows:

- Ranchers prepare and submit proposals to the SFWMD per the instructions outlined in the solicitation guidelines provided by the SFWMD. In the proposal ranchers indicate willingness, if selected into the NE-PES program, to apply for EQIP cost share funding for one or more of the infrastructure modifications.

- USDA NRCS may create an NE-PES EQIP Special Project Fund based upon demand that only ranchers selected in the NE-PES program could compete for. EQIP eligible ranchers who get selected to the NE-PES program would then be ranked and NRCS would allocate the EQIP funds from the NE-PES special project fund based on their ranking criteria and available funds.
- For the rancher selected into the NE-PES program and who receives EQIP cost-share funding, the amount of the EQIP cost-share funding would be deducted from the construction capital funding request submitted to the SFWMD. The rancher receives the total amount of capital construction funding requested in their submission; however, the cost is split between SFWMD and federal (EQIP) funds.
- Willingness to apply for EQIP funding if selected into the NE-PES program, if eligible, will be considered during the evaluation and ranking process.

## **21. What does the rancher need to do to receive the annual service payment?**

Contract compliance for receiving the annual payment will require the rancher to provide information and allow the Field Coordinator to collect data from monitoring equipment installed at the WMA site that will be used to document that the water management services were provided over the life of the contract.

For Water Retention WMAs, this information will include:

- Daily surface water stage, pumping and rainfall records collected by the Field Coordinator from monitoring equipment installed at the WMA site.
- Records of changes in board management, damages to the structures that compromise water retention capability, date of the damages or changes and the basis for making any changes.
- Documentation that board elevations at each WMA outlet were maintained as specified by the WMA design and operation plan.
- Four quarterly water samples for TP and TN collected by the Field Coordinator.

For Nutrient Removal WMAs, this will include:

- Pump records for daily volume of inflow, stage and nutrient (TP & TN) sampling by the Field Coordinator.

For both types of WMAs rancher will keep and submit to SFWMD on an annual basis:

- Copy of the most recent Implementation Assurance Evaluation conducted by FDACS;
- Records of nutrient management practices within the WMA footprint following a reporting format specified by the NE-PES.

## **22. Can the rancher predict how an increase in water retention will affect ranch operations?**

The WMA site will be incrementally wetter in certain areas, especially in high rainfall years, but more likely will be wetter for longer into the dry season. Most typical WMA sites were often wet before construction of the NE-PES WMA.

## **23. At the end of the contract, can the rancher return to the original water management conditions?**

No, at the end of the contract the rancher will be allowed to return to the original water management conditions that now include a baseline water retention requirement that is slightly more than the pre-project baseline. The SFWMD has established a water retention baseline that must be maintained, *in perpetuity*. This water retention baseline is calculated as .36 acre feet multiplied by the number of wetland and ditch acres in the WMA site. In the reversion plan agreed to in the contract, the rancher must specify how the water retention baseline requirement will be met when returning to pre-WMA conditions.

## **24. What assurances can the SFWMD make that the contract payments will be made?**

SFWMD's budgets are approved on an annual basis even though the SFWMD contracts for terms longer than a year. Please note that all Governmental entities are subject to the same requirements for annual budgeting, since by law we are not able to make definitive funding commitments beyond what is appropriated for the current fiscal year. There exists wide-spread support for DWM, the NE-PES program and other partnerships between the public and private landowners and SFWMD staff has been directed to pursue a second solicitation

## **25. Can the rancher graze, use or otherwise manage the WMA area as in past?**

As a result of entering into a contract, water management practices affecting the WMA drainage basin will change and the production possibilities of some or all of the acres within the WMA drainage basin may be affected. However, within the WMA drainage area, the rancher may:

- Continue grazing, at stocking density and grazing strategy consistent with the NOI on file with FDACS;
- Fertilize in accordance with the practices specified in the FDACS cow-calf BMP manual;
- Lift sod in compliance with FDACS cow-calf BMP manual;
- Plant and maintain forage grasses desired by the rancher, including replacement of current forages with water tolerant species, to support grazing and sod lifting activities; and
- Continue or initiate other income producing activities that do not constitute a land use change or a change to the surface water management system, as defined by SFWMD regulations.

## **26. What will the rancher be able to use the retained water for?**

The water management is for the environmental services desired by the SFWMD as the buying agency. Any use of retained water by the rancher (such as for irrigation) would be subject to the standard SFWMD water use application and permitting process.

## **27. What are the nutrient management requirements for a Water Retention WMA?**

Most often, retaining ranch stormwater results in reduced nutrient loads leaving the ranch parcel. However, not always, as soils can be saturated and actually release TP and TN instead of sequestering it. To minimize the chance of an adverse outcome of increasing TP or TN leaving a water retention WMA the NE-PES program has developed nutrient management requirements for Water Retention WMAs. On the WMA site landowners will be expected to:

- Conduct soil tests at the start of the contract; and
- Collect quarterly (4/year) water samples at the WMA outfall structure(s) during discharges over the life of the contract.

The information provided by the soil and water samples will help the District assess the risk that the WMA can become a source of TP during initial operations or at the end of the contract life. Based on the results of the soil analysis, modifications to the conceptual design or operation of the proposed WMA may be made and any resulting cost changes in construction or annual operations will be incorporated into the terms of the payment specified in the contract.

In the last 2 years of the contract, Close Out procedures will be negotiated with the landowner based on the results of the TP water samples taken over the life of the contract. A close out operational requirement would consist of a modified board management plan that would manage for first flush and returning the sites hydroperiod back to baseline conditions. In addition, subject to funding available from the SFWMD, additional physical activities could be requested such as harvesting vegetation and application of soil amendments.

The costs for implementing the soil sampling protocol required in the first year of the contract are a reimbursable expense. In the solicitation guidelines the SFWMD will provide a cost estimating tool that the applicant can use to prepare an estimate of sampling costs to be included in the payment request incorporated in the proposal. It is the landowner's responsibility to make sure that the sampling protocol is followed, samples sent to the University of Florida lab, and results provided to the SFWMD project manager in a timely fashion.

The 4 quarterly water samples during discharge conditions will be collected by the Field Coordinator who will be responsible for monitoring the agreed to contract compliance requirements. It is the responsibility of the landowner upon receipt of the analysis of the water samples to provide the results to the SFWMD project manager in a timely fashion.

## **28. What are the phosphorous and/or nitrogen management requirements for a Nutrient Removal WMA?**

Nutrient removal WMAs do not have TP or TN management plans except as needed for verification of contract compliance.

## **29. If the WMA gets too wet can rancher let the water go?**

The rancher must maintain board heights at the WMA outlet(s) and operate pumps as specified in the proposal and as agreed to in the contract. Agreed to board heights at all WMA outlets will be secured in place over the length of the contract. If the integrity of any of the structures that comprise the WMA is threatened by an extreme weather event ranchers are allowed to remove boards without penalty of delayed and possibly reduced payment.

The contract under Exhibit "A" states "Service Provider may request to remove flashboards in the event of imminent structure failure due to an extreme weather event. Service Provider shall return flashboards to the board elevations at each WMA outlet as specified by the WMA design and operation plan within the timeframe specified by the District's Project Manager. Service Provider shall document any damages to the structures that comprise water retention capability, date of the damages or changes, and the reasons for making any changes to the water management operation, including approvals from the District during the reporting period."

The rancher may petition the SFWMD to adjust the contract specified board heights and pump operations, if the rancher believes that the adverse effects on ranch operations are unacceptable. However, because, the SFWMD will maintain the ability to a) accept or reject the request for WMA modification and b) reduce the annual payment, if the NE-PES approved WMA modification reduces the expected annual water retention service estimate.

The WMA design should include facilities such as emergency spillway or other means to by-pass large volumes of water to protect the WMA structural integrity while allowing for flood protection during extreme events.

## **30. What if the rancher or the SFWMD want to make changes to the contract?**

As with any contract, the contract can be modified or terminated by either party. However, any modification or termination will be subject to conditions and consequences specified in the contract.

- Article 3.5 of the contract states "This Contract may be amended only with the written approval of the Parties.
- Financial consequences for termination of the contract by rancher or the District will be related to the magnitude of the initial design, permitting and construction payment made by the SFWMD and the number of years left on the contract. The contract will spell out the process for determining the financial consequences.

- Article 7.3 of the contract states “In the event of termination, the District shall compensate the Service Provider for all authorized and accepted work performed through the termination date.”
- Article 7.5 states “In the event the Service Provider elects to terminate this contract prior to the full ten year term, the District shall seek a prorated reimbursement of all capital costs incurred by the District to date for this WMA project. For example, if the Service Provider cancels in Year One of the Contract, the Service Provider agrees to reimburse the District 90% of the capital costs incurred. If the cancellation occurs in Year Nine of the ten year contract, the Service Provider will reimburse 10% of total capital costs.”
- Any termination of the contract by the SFWMD will be accompanied by advance written notification to the rancher and cannot be done for reasons that are arbitrary or capricious. It is important to note that historically, contract termination actions by the SFWMD have been rare for any reasons other than non-performance.

As a general matter, reasons for contract modification or termination under the NE-PES program could include, but are not limited to, the following situations:

- Changes in surrounding hydrology, not under the control of the rancher, alter the effect of the WMAs operation on ranch production or alter the effectiveness of the WMA in providing the expected service. The result can be an agreement by the parties to a different WMA operation and payment regime.
- During the contract period for a Water Retention WMA, a specified number of water quality samples will be collected each year. There will be an interpretation by the SFWMD of the samples for any evidence of adverse water quality effects from the WMA. If there is a finding of adverse water quality effects, then the SFWMD in consultation with the rancher may request modification of the WMA design or operation, or, if modifications are not successful, seek to cease operation of the WMA.
- Because of the developmental stage of the PPRF service estimation tool, and any associated nitrogen removal estimation methods, Nutrient Removal WMAs will be monitored and pre-contract model removal efficiencies can be updated with realized removal efficiencies based on WMA operation. The estimated service level can be reevaluated and the result can be mutual agreement by the parties to a different WMA operation and payment regime.
- Budget constraints. As an agency of the State, all SFWMD contracts are subject to annual budgetary approval by the SFWMD Governing Board for each fiscal year that the contract remains in place. This is standard for all government agencies since funding must be made available on an annual basis in order for work to continue.

### **31. How will contract disputes between the SFWMD and the rancher be addressed?**

In the contract Article 7.6 states “In the event a dispute arises which the Project Managers cannot resolve between themselves, the Parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the

cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law.” Each contract will name a technical representative (Project Manager) for each party and any disputes that cannot be resolved by the technical representatives (Project Managers) will be elevated and resolved through a non-binding mediation process.

## **32. What about Endangered Species Act and federal and state wetlands regulations?**

Ranchers interested in participating in the NE-PES need clear guidelines in designing a WMA to ensure that they will remain in compliance with state and federal regulations regarding water use, wetlands and threatened and endangered species during the construction, operation and reversion to the water management baseline of the WMA site at the end of the contract. Specifically, upon completion of their contract they will want assurances that there will be no regulations prohibiting them from returning to the water management baseline following the timeline and process described in their contract’s reversion plan. To create these assurances and a streamlined process for obtaining the required permits, the FRESP team worked with the FDEP, SFWMD, ACOE and the USFWS to develop permitting procedures designed specifically for the NE-PES program.

A NE-PES Regional General Permit (RGP 106) was developed by the ACOE. The RGP 106 states the WMA design requirements that the landowner must adhere to during the construction and operation and maintenance of the WMA over the course of the contract, and reversion to the water management baseline after the contract expires that will meet federal regulations regarding protected resources such as wetlands, cultural resources, and threatened and endangered species. To comply with the Endangered Species Act, NRCS and the FWS have developed streamlined procedures to avoid or mitigate adverse impacts to threatened or endangered species that may be in the area when designing and constructing the WMA and in the reversion process, thus expediting the NRCS environmental review and the Corps and SFWMD permitting processes.

If the design of the WMA meets the conditions of the RGP then the ACOE will issue to the landowner via the SFWMD the NE-PES-RGP. The RGP will allow the landowner to enter into, operate and exit from the NE-PES contract and return to the BMP water management baseline without further Federal agency review. As the holder of the contract, the SFWMD will be responsible for assuring that the landowner follows the reversion plan outlined in the contract and agreed to by the landowner prior to signing the contract.

A WMA design that does not meet the requirements of the RGP is not automatically eliminated from consideration in the NE-PES. In this case, the rancher would not be able to take advantage of the streamlined permitting process and would apply for an individual or other types of Section 404 permits from the ACOE which could require that the ACOE consult with the US FWS on potential project impacts to threatened or endangered species.

### **33. How Does a Rancher Apply For an ACOE Regional General Permit?**

To apply for the RGP 106 a rancher requests technical assistance from the NRCS to develop the WMA design concepts that the rancher is willing to consider. While conducting a ranch site visit NRCS will initiate an Environmental Evaluation. In conducting the review NRCS will inform the rancher about any apparent regulatory concerns regarding T & E species, wetlands, cultural resources, contamination, etc., on the WMA designs being considered. This will allow the rancher to modify the design to avoid these concerns. A rancher could also, but is not obligated to, apply for EQIP funding. If a rancher wanted to apply for EQIP, NRCS would also need to verify that there were not any violations of its Swampbuster (wetlands) or Sodbuster (highly erodible land) compliance criteria and that the ranch met USDA Adjusted Gross Income criteria.

Ranchers interested in competing for a NE-PES contract would submit their proposal per the solicitation guidelines and indicate whether they are willing to apply for NRCS EQIP funding for some of the WMA construction costs. After the selection process contracts will be signed between the SFWMD and selected respondents. Ranchers will work with their engineer to develop technical drawings of the WMA and a reversion plan that will guide the rancher in returning the WMA to the water management baseline at the end of the contract. To be eligible for the RGP, the practices identified in the WMA conceptual plan must be implemented and constructed to NRCS standards and according to the guidelines of the RGP. Ranchers who receive technical assistance from NRCS submit the technical drawings/engineering design (including their reversion plan) to NRCS and the SFWMD for review. NRCS completes an Environmental Evaluation and submits it to the District and the Corps. The District and the Corps receive these materials and issue both the RGP and the state permit (ERP modification) to the landowner.

The District will also certify that the WMA received all necessary state permits and was installed accordingly to the approved final design. At the end of the contract period, the rancher and the buyer would decide if they wanted to extend the contract and under what terms. If the decision is not to renew the contract, the rancher will implement the reversion process as laid out in the reversion plan identified and agreed to in the contract. The SFWMD would be responsible for verifying that the rancher follows the agreed to reversion plan.

### **34. Does participation in the NE-PES make a rancher ineligible for the USDA Wetlands Reserve Program (WRP)?**

No, participation in NE-PES does not make a rancher or the ranch parcel enrolled in the NE-PES ineligible for the USDA WRP. However, a rancher cannot enroll the same ranch parcel in both programs at the same time. Once a ranch parcel is enrolled in the WRP, the acres in that parcel cannot be included in the footprint of a NE-PES WMA. At the end of the NE-PES contract if a rancher chooses to apply to the WRP and is selected, the rancher can enroll the WMA acres in the WRP.