



# Miccosukee Tribe of Indians of Florida

Business Council Members  
Billy Cypress, Chairman

Jasper Nelson, Ass't. Chairman  
Max Billie, Treasurer

Andrew Bert Sr., Secretary  
Jerry Cypress, Lawmaker

January 19, 1995

Arch Creek trust  
ATTN: Elmore Kerkela  
8000 NW 185th Street  
Hialeah, FL 33015

**CONFIDENTIAL**

Dear Elmore:

On July 21, 1994 the Miccosukee Tribe of Indians filed a 60 day letter with the United States Environmental Protection Agency (EPA) requesting they compel the State of Florida to comply with their anti-degradation requirements under the Clean Water Act (CWA). Our objective is simple, **the Tribe wants clean unpolluted water for the Everglades**; not partially clean water as contemplated by the Everglades Forever Act.

We have waited long enough. The Tribe has directed our attorneys to begin drafting the CWA lawsuit against the EPA. The Miccosukee Tribe invites you and your organization to join us in our efforts to save the Everglades. If your organization would like to add it's name to the suit, you need to send a 60 day notice to EPA from your organization. Since the Everglades Coalition meeting last week, we have at least 10 environmental organizations who have joined us.

Should you decide to join us, I am enclosing our 60 day notice as an example for you to use. If you decide to send the 60 day notice to EPA, please fax me a copy. Regardless of your decision, the Miccosukee Tribe appreciates your continued support. Tribal coordination may be accomplished by contacting me at (305) 223-8380, ext. 380 or fax number (305) 553-3644 .

Sincerely yours,

Truman E. Duncan, Jr.  
Water Resources Director

LEHTINEN, CORTINAS, VARGAS & REINER  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

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7700 N. KENDALL DRIVE  
SUITE 303  
MIAMI, FLA 33156

July 21, 1994

Hon. Carol Browner  
Administrator  
Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

BY FACSIMILE AND MAIL

**Re: EPA's Failure to Require the State of Florida to Comply with the Procedures for Review and Revision of Water Quality Standards prescribed in 40 C.F.R. §131.20 et seq. and Anti-Degradation Requirements of 33 U.S.C. §1313(d)(4)(B) of the Clean Water Act.**

Dear Madame Administrator:

On behalf of the Miccosukee Tribe of Indians of Florida (hereinafter "the Tribe"), this letter is to notify you that the Environmental Protection Agency (hereinafter "EPA") has failed to require the State of Florida to comply with the procedures for review and revision of water quality standards prescribed in 40 C.F.R. §131.20 et seq. and anti-degradation requirements of the Clean Water Act.

As you know, the "Everglades Forever Act" was passed by the Florida legislature and signed into law by the Florida Governor more than thirty days ago. Because enactment of that legislation effectively changed and weakened Florida's water quality standards as they apply to the Everglades ecosystem, the State was required to comply with the procedures set forth 40 C.F.R. §131.20 et seq., including but not limited to the requirement that it notify EPA within thirty days of its changes to water quality standards. The Tribe also maintains that the changes in water quality standards violate anti-degradation requirements of 33 U.S.C. §1313(d)(4)(B) of the Clean Water Act.

As the only life-long citizens residing in the heart of the Everglades ecosystem, the Tribe is directly and negatively affected by the State's changes to its water quality standards in this area. The State's failure to comply with the provisions of the federal Clean Water Act and its historical failure to enforce State water quality standards, as evidenced by its admissions in the Everglades federal lawsuit (88-1886-CIV-Hoeveler), demonstrates its disregard

for the enforcement of water quality standards that are necessary to protect the environment generally and the Everglades ecosystem particularly.

I trust you will take appropriate action within 60 days to compel the State of Florida to comply with the procedures for review and revision of water quality standards prescribed in 40 C.F.R. §131.20 et seq. and anti-degradation requirements of the Clean Water Act. The Tribe is confident that, upon such review, EPA will find numerous substantive and procedural violations of federal law in the "Everglades Forever Act", rendering the Act void, unenforceable and of no effect. The Tribe requests the opportunity to provide comments and to participate in such review.

In the alternative, this letter is intended to allow the violator State to cure its violations within 60 days.

In the event that appropriate action is not taken by EPA or the State to cure the aforesaid violations, the Tribe will have no other choice but to file a lawsuit against EPA and/or the State, including the South Florida Water Management District, in federal district court under 28 U.S.C. §1361 (mandamus action) and/or 33 U.S.C. §1365 (citizen suit) to protect its interests in the enforcement of the Clean Water Act.

Sincerely,

LEHTINEN, CORTIÑAS, VARGAS & REINER

Attorneys for the Miccosukee Tribe  
of Indians of Florida

By: *Dexter W. Lehtinen*  
DEXTER W. LEHTINEN, ESQ.

By: *Angel A. Cortinas*  
ANGEL A. CORTIÑAS, ESQ.

cc: Virginia Wetherell, Secretary, Florida DEP  
Kenneth J. Plante, General Counsel, Florida DEP  
Tilford C. Creel, Executive Director, SFWMD  
Barbara Markham, General Counsel, SFWMD