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August 27, 2020

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Ms. Toni Edwards
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406
tedwards@sfwmd.gov

Re: EAA Reservoir Water Reservation Rulemaking

Dear Ms. Edwards:

I am writing on behalf of Florida Crystals Corporation and its affiliates (including Okeelanta Corporation and New Hope Sugar Company) to provide comments on the South Florida Water Management District's ("SFWMD") proposed Water Reservation Rule for the EAA Reservoir. These comments supplement our previous comments, and we also join in the separate comments of U.S. Sugar Corporation and other urban and agricultural water users. Florida Crystals remains supportive of the EAA Reservoir, but there are still important questions about how it will be operated to provide environmental benefits and protect existing legal water users.

The rule proposed by the SFWMD states that it would reserve all surface water released from the EAA Reservoir through three water control structures. In our previous comments on the SFWMD's draft technical document, we pointed out that the SFWMD must identify an amount of water to be reserved. The proposed rule now states, "Model simulations of the EAA Reservoir, together with existing and planned infrastructure and a modified Lake Okeechobee schedule, indicate the EAA Reservoir could convey 825,000 acre-feet of surface water on an average annual basis." Draft Section 40E-10.061(3). We interpret this to mean that the rule would reserve 825,000 acre feet of water.

It is ambiguous which project features are the basis of the reservation. The proposed rule indicates that the reservation is for the "EAA Reservoir." Yet, the language quoted above suggests that the SFWMD is proposing to reserve water not just associated with the EAA Reservoir, but also water from other "planned infrastructure" and also a "modified Lake Okeechobee schedule." The rule does not identify the "planned infrastructure" or state how the Lake Okeechobee regulation schedule would be modified. It is unclear whether, how, and when the "planned infrastructure" and "modified Lake Okeechobee schedule" would be implemented. The U.S. Army Corps of Engineers is currently developing a revised regulation schedule for Lake Okeechobee, but it is still in the planning stages and no final schedule has been identified. We do not understand how the SFWMD can reserve water that may or may not be available

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based on future projects and operational changes and which have not been fully designed, finalized or implemented. Therefore, it seems premature for the SFWMD to reserve water for such speculative future projects until their details are finalized.

The amount of water proposed to be reserved by the SFWMD in the current iteration of its draft rule bears little relationship to the planning for the EAA Reservoir. The SFWMD and Corps have indicated that the EAA Reservoir will deliver approximately 370,000 acre-feet of additional freshwater to the Everglades on an average annual basis. See Central and Southern Florida, Everglades Agricultural Area Reservoir and Stormwater Treatment Area, Final Environmental Impact Statement for SFWMD's Section 203 Study, at 3-25 (May 2020). Yet, the proposed rule would reserve 825,000 acre feet of water, more than double the amount of water modeled to be delivered by the EAA Reservoir. This raises several significant questions.

The proposed rule would reserve approximately 455,000 acre feet of water that currently is being provided by the Central and Southern Florida Project. The Comprehensive Everglades Restoration Plan ("CERP") was designed to improve environmental conditions by developing "new water" – essentially storing water that currently is lost to tide – and making that water available for environmental and other uses. By growing the proverbial water "pie," the SFWMD could reserve water for environmental use without fear that it might impact existing legal users. However, the proposed rule would essentially re-divide the pie by reserving half a million acre feet of water already in the system ("existing water"). This approach appears to be at odds with the concept behind CERP.

Florida law mandates that the SFWMD ensure that it is not impacting existing legal users when it makes the water reservation. Moreover, Florida's CERP – related law, section 373.1501(5)(d), Florida Statutes, provides that the SFWMD must "provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components so as to adversely impact existing legal users." We have seen no analysis of how this existing 455,000 acre feet of water is currently being used, or whether it is relied on by existing legal users such as urban water utilities with wellfields near the Everglades. The only analysis we have seen that addresses the protection of existing legal users was done for the 370,000 acre feet of incremental deliveries to be provided by the EAA Reservoir (the "new water"), regarding which we previously provided comments, not the 455,000 acre feet of "existing water" that also is covered by this proposed rule. An analysis of a significantly smaller quantity of water does not provide reasonable assurance that the proposed rule will protect existing legal users.

In addition, if in fact the EAA Reservoir and related projects will deliver an average of 825,000 acre feet of additional water to the Everglades, then there are major flaws in the planning for the reservoir. The Corps and SFWMD analyzed the environmental effects of the reservoir on the Everglades, Lake Okeechobee, and other water bodies based on modeling that it would deliver an additional 370,000 acre feet of water. If the SFWMD now believes that the reservoir will deliver more than twice that amount of water, then the agencies could not have accurately evaluated the environmental effect of the project. This suggests that the Corps must prepare a Supplemental Environmental Impact Statement before it moves forward, because there is either significant new information or there has been a substantial change in the project. It also suggests that any Savings Clause analysis conducted for the EAA Reservoir is invalid, because the agencies only analyzed the effects of sending an additional 370,000 acre feet to the Everglades, not 825,000 acre feet. Both federal and Florida law require the SFWMD to

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demonstrate that its restoration actions will not eliminate existing legal sources of water, and no such demonstration has been conducted for this proposed rule. These are not inconsequential considerations.

Similarly, the Corps recently issued its final Environmental Impact Statement and Record of Decision for the EAA Reservoir Project. The Corps' authorization documents set several key parameters regarding construction and operation of the EAA Reservoir Project, including the project's relationship to Florida's infrastructure, which may also change to the project. It is unclear if the District plans to update its reservation rule analysis in light of the operational guidelines stated in the Record of Decision.

Another change to the understood project relates to the A-2 STA portion of the EAA Reservoir is currently under construction and expected to be operational in 2023. It would be helpful if staff could explain how SFWMD will be addressing Florida's reservation rule requirement as related to stand-alone operation of the A-2 STA.

The SFWMD needs to resolve these questions before it moves forward with the proposed rule. We support providing additional water to the Everglades consistent with the CERP, but the agency needs to do this in a transparent, straightforward and clear manner that ensures that no existing legal users will be affected.

Thank you for considering our comments. Florida Crystals looks forward to continuing to work with the SFWMD and Corps on this important project.

Sincerely,

Neal
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