



LAKE WORTH DRAINAGE DISTRICT



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October 7, 2020

Mr. Chauncey Goss, Board Chairman
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

Dear Chairman Goss:

Subject: Lake Worth Drainage District Comments on the Central Everglades Planning Project Everglades Agricultural Area A-2 Reservoir Water Reservation Rule

Thank you for the opportunity to review and provide comments on the Central Everglades Planning Project Everglades Agricultural Area A-2 Reservoir Water Reservation Rule. The Lake Worth Drainage District (LWDD) has long been a supporter of the Comprehensive Everglades Restoration Plan (CERP), including the construction of a reservoir south of Lake Okeechobee. In 2000, Congress intended for the project to reduce estuary discharges, provide water for the environment and water supply for municipal and agricultural uses.

The Post Authorization Change Report (PARC) recognized these objectives through the proposal for additional dynamic reservoir storage in the Central and Southern Florida Project (C&SF Project). As you are aware, the operation of Lake Okeechobee is integral to the function of the C&SF Project. Its operation affects numerous stakeholders across south Florida, including a broad range of both environmental and economic interests. While it must be managed to address critical ecological functions within the Lake itself, it also relies upon dynamic storage to meet flood control, water supply and environmental needs within the C&SF Project.

The relationship between Lake Okeechobee and the EAA A-2 Reservoir is undeniable, and as a result, operations of both the structures surrounding the Lake and the EAA A-2 Reservoir must be integrated to meet the water resource objectives established in CERP. Given that the current operating schedule (LORS 08) is not expected to be replaced until at least 2022 (LOSOM) and the EAA A-2 Reservoir is not expected to be constructed until at least 2027, adopting a prospective water reservation of this magnitude is premature.

We believe this Reservation Rule can be successfully implemented with a more reasonable approach. Given that operations cannot be determined at this time, the Reservation should be the amount identified in the EAA Reservoir Final Environmental Impact Statement and Project Implementation Report equal to 370,000-acre feet of water. This is the amount of new water expected to be generated from the project and the amount necessary to secure the Project Partnership Agreement (PPA). As the project gets closer to being operational, a Reservation based on updated modeling can be simulated to determine if the amount should be greater than the report is currently indicating. Without doing that, this Rule may not meet several of the criteria for adoption.

1. THE RULE IS CONTRARY TO STATUTE

The Water Reservation being prospectively proposed is ambiguous because there is not a lot of specificity in how the reservation amount is calculated. We understand that it is basically the volume that is released from the EAA Reservoir—but it's not clear what constitutes the inflow. Certainly, it would include EAA runoff—but it also most likely includes releases from Lake Okeechobee. If the models are using a 'demand' for Everglades needs, then this volume from the Lake (through the reservoir) might exceed the releases necessary to simply manage stages in the Lake. This could have significant impact on water users and needs to be addressed prior to adoption.

To address, the Rule language and Applicant's Handbook need to be amended to state that "the Reservation is interim and must be reevaluated, revised, and readopted at least one year before the EAA Reservoir is deemed operational." If not addressed, the Rule cannot be implemented to meet the clear legislative intent to protect Legal Existing Users pursuant to s.373.223(4), F.S., thereby making the Rule unlikely to survive a challenge. Given the duration of the planning and construction period, a greater degree of certainty for all interests could be provided thereby obviating the need for lengthy and costly disputes at a time when there is no certainty.

2. THE RULE DOES NOT ACCOMPLISH THE EXPRESSED OBJECTIVES OF LAW

The environment and all water users need a level of certainty to survive -- the environment through reservations and the water user through permits and other applications. Both State and Federal Law provided assurances to water users that existing uses would be protected or replaced as a result of restoration. Those assurances were relied on but have come into question as of late.

There are two basic levels of water users related to Lake Okeechobee; 1) 'Permitted' users within the Lake Okeechobee Service Area (LOSA), and 2) Lower East Coast users (Lower East Coast Service Area – LECSA) that rely on the Lake as an emergency source during major droughts. LWDD, Palm Beach, Broward, Miami-Dade & Monroe counties fall into the latter category. As a Diversion & Impoundment System, LWDD's permit is focused primarily on Water Conservation Area No. 1 (The Arthur R. Marshall Loxahatchee National Wildlife Refuge). However, the USACE WCA-1 Regulation Schedule, states that when stages fall below the schedule, any water withdrawn from WCA-1 must be preceded with water brought in from another source, which in almost all cases is Lake Okeechobee. Thus, the regional drought management contingencies for LWDD (and associated counties) are almost exclusively tied to Lake Okeechobee.

If the reserved water for the EAA A-2 Reservoir is essentially water stored in Lake Okeechobee, the diversion of this water to meet Everglades demands has the real potential to detrimentally impact the water storage volume needed to assist the LEC during a major drought. It is premature to reserve from allocation the amount of water that is expressed in this rule without a clearer understanding of whether these amounts are even feasible. The EAA Reservoir Final Environmental Impact Statement (FEIS) and Project Implementation Report (PIR) specified less than half of what the District's current modeling simulates. A more reasonable approach would be to reserve from allocation the amount specified in the EAA Reservoir FEIS and PIR and reevaluate after you get closer to operation. By not doing so you put existing legal uses of water at risk.

By reserving the unverifiable 825,000 acre feet identified by the District's modeling you clearly are not accomplishing the objectives of WRDA 2000, where at 33 CFR § 385.36 in the Elimination or transfer of existing legal sources of water section it states, "Pursuant to the provisions of section 601(h)(5)(A) of WRDA 2000, Project Implementation Reports shall include analyses to determine if existing legal sources of water are to be eliminated or transferred as a result of project implementation. If implementation of the project shall cause an elimination or transfer of existing legal sources of water, then the Project Implementation Report shall include an implementation plan that ensures that such elimination or transfer shall not occur until a new source of water of comparable quantity and quality is available to replace the water to be lost as a result of implementation of the Plan . . ."

3. THE RULE IS NOT A REASONABLE IMPLEMENTATION OF THE LAW AS IT AFFECTS PERSONS PARTICULARLY AFFECTED BY THE LAW

In the current version of the rule at 40E-10.061(3)(c), the "Model simulations predicted the EAA Reservoir, together with existing and planned infrastructure and modified Lake Okeechobee schedule, will convey 825,000-acre feet during an average annual water year . . ." It has been difficult at best to try and confirm these model simulations and is over twice the amount that was simulated in models for the EAA Reservoir Final Environmental Impact Statement (FEIS) and Project Implementation Report (PIR).

Additionally, at 40E-10.061(3)(b), "The water prospectively reserved under this subsection is not available for fish and wildlife until the Governing Board makes a formal determination pursuant to state and federal law, that the EAA Reservoir is operational." If the amounts being reserved could be more accurately specified, a person or entity particularly affected could determine to what extent they are being affected. Since this is not the case, to make this a reasonable implementation, the next provision after subsection (3)(b) should be amended to read "all permitted uses and applications of water are not considered reserved."

The Savings Clause is of extreme importance to LWDD and all of the LECSA. We recognize that as CERP is implemented, changes in the control and movement of regional water is necessary to meet CERP goals. And the Savings Clause was intended to assure that 'existing legal users' would not be impacted by these changes, either by avoiding the diversion of our water sources or by providing an alternate, equivalent source. It appears that neither of these options have been incorporated or even evaluated in the implementation of this project. It appears once again that the Savings Clause is essentially held hostage to the incorrect assumption that the authorization of the Herbert Hoover Dike (the structural basis for the current Lake Okeechobee Regulation Schedule [LORS08]) is somehow separate from, and independent of, the authorization of CERP. Obviously the two are completely integrated—as the reserved volume of water for the Everglades that is produced by the EAA A-2 Reservoir appears to indicate.

The Lake Worth Drainage District remains committed to Everglades Restoration and we look forward to working with SFWMD and the U.S. Army Corps of Engineers to ensure that it is successfully implemented in a fashion that adheres to the legal mandates, objectives and processes established by Congress and the State of Florida.

Mr. Chauncey Goss, SFWMD

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Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Strowd', written over a horizontal line.

Tommy B. Strowd, P.E.

Executive Director & District Engineer

LAKE WORTH DRAINAGE DISTRICT

c: SFWMD Governing Board Members
Drew Bartlett, Executive Director, SFWMD
Don Medellin, SFWMD