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U.S. Army Corps of Engineers, Jacksonville District
ATTN: Andrew Loschiavo
701 San Marco Boulevard
Jacksonville, Florida 32207-8175

And

Department of the Army
c/o Ms. Krista Sabin
U.S. Army Corps of Engineers
Palm Beach Gardens Permit Section
4400 PGA Boulevard, Suite 500
Palm Beach Gardens, Florida 33410

Subject: Final Environmental Impact Statement (FEIS) for the Everglades Agricultural Area Southern Reservoir and Stormwater Treatment Area (EAA Project) and Comments on the Everglades Agricultural Area Southern Stormwater Treatment Area ("A-2 STA"), Corps File Name: SAJ-2018-03427(SP-KDS) (A-2 STA)

Dear Mr. Loschiavo and Ms. Sabin:

The City of Okeechobee does thank you for the ability to submit public comment on the Final Environmental Impact Statement (FEIS) and permit application.

The City of Okeechobee, the namesake of Lake Okeechobee is mindful of the varied usages of the waters including but not limited agricultural, municipal and potable usages. We have actively participated in many state and federal efforts to restore America's Everglades since conception in the 1990's and continue to do so. The potential loss of water supply for the usages of our citizens and community as a result of your recent legal position within the LOSOM documentation is troublesome.

We have strong organizational policy which supports the State and the Corps' efforts to restore the Everglades while providing for and maintaining regional water demands as well as making sound operational decisions on Lake Okeechobee.

Our agricultural community understands the requirement for a water supply and more especially a supply that feeds our nation. In fact, the sanctity of an existing legal users' right to water through its permit is a cornerstone of Florida's water law, the SFWMD's water use permitting program, and the state/federal partnership in the Comprehensive Everglades Restoration Plan (CERP). It is undisputed that the EAA Project is a CERP project and therefore subject to the mandates of WRDA 2000, which includes protection of water rights as stated in the Saving Clause of WRDA 2000. Unfortunately, it appears that neither the SFWMD nor the Corps are adhering to this mandate in the EAA Project.

The "Savings Clause" found in Section 601(h)(5), the landmark Water Resources Development Act of 2000 federal legislation requires the Secretary of the Army Corps to ensure that implementation of the plan does not cause substantial adverse impacts on the existing legal uses of water as of the date of the enactment of the legislation. Elimination of existing sources is not only unthinkable and disallowed until another source in equivalent volume and quality is found. This "Savings Clause" is an established fundamental legal and public right policy to the Comprehensive Everglades Restoration Program. The Federal government cannot retract established and permitted water supply from exiting legal users to implement ecosystem restoration projects without alternatives.

Given infrastructure this size, as a combined Reservoir / STA facility, substantial volumes of water will be diverted away from Lake Okeechobee to provide for the EAA Project's objectives. While the reduction in estuary releases made possible by diverting Lake Okeechobee water to the Everglades is a longstanding goal of CERP, continuing to provide water without adversely affects existing water users is crucial and mandatory. Lake Okeechobee is currently operated at an unusually low level due to emergency Herbert Hoover Dike repairs pursuant to the Interim LORS 2008 Lake Regulation Schedule. Lake operations are expected to shift in the year 2022 to the new Lake regulation schedule referred to as the Lake Okeechobee System Operating Manual (LOSOM). However, the EAA Project states that the Interim LORS 2008 Lake Regulation Schedule is an "intervening non-CERP event" and relies on this interim schedule as its base condition. We expected, as promised in WRDA 2000, that the EAA Project would ensure that the water rights that existed in 2000 would be protected and restored.

It is not acceptable and disappointing for the Corps to use the LORS 2008 emergency and interim schedule as justification to avoid complying with WRDA 2000, which was also provides water for future needs.

Sufficient water for all users; agriculture, municipalities and others, should be kept in the Lake Okeechobee. If the EAA Project continues to rely on the Interim LORS 2008 Lake schedule as the base condition, the lost water rights from the interim schedule will not be restored as part of Everglades restoration, and the promises made by the Corps (and the SFWMD) to protect water rights that were in existence in the year 2000, as required in WRDA 2000 will cause a violation of that previous right.

To address these serious concerns, we highly recommend that clear operational protocols be added to the EAA Project, defining their relationship to Lake Okeechobee operations to assure the proposed EAA Project operation will not infringe on the water rights permitted by the SFWMD as of December 2000, and the level of service provided to users at that time. We are

also hopeful that the SFWMD will recognize the seriousness of allowing any infringement in the legal water rights it has permitted and support insertion of such operational protocols.

In conjunction with the Corps during this process of developing a new regulation schedule for Lake Okeechobee process the USACOE has made two fundamental determinations that will cause significant impacts to water users:

- The Corps is using LORS 2008 as the base condition for LOSOM's modeling. LORS08 was established at a lower level for dam repairs, and substantially eroded exiting permitted water rights, this will make users subject to restrictions much more frequently; and
- The Corps recent legal position is that the CERP "Savings Clause" on water supply does not apply to the LOSOM schedule currently being determined. A substantial portion of our community and economy has been established upon the base right as legal water users to utilize these waters without any adverse loss. Any option is unacceptable.

The City of Okeechobee urges Congress to step in and establish a public policy language in the Water Resource Development Act (WRDA 2020) to make clear the "Savings Clause" applies to the LOSOM under development. This is vital and important to our community, its citizens, our municipality, agriculture and our collective interests.

Thank you for your consideration of these comments. We welcome the opportunity for continued collaboration and dialogue as we work toward resolution.

Sincerely,



Marcos Montes De Oca, P.E.
City of Okeechobee
Administrator

CC: Drew Bartlett, Executive Director, South Florida Water Management District
Chauncey Goss, Chair, South Florida Water Management District Governing Board
Okeechobee City Council