



County Administration

P.O. Box 1989
West Palm Beach, FL 33402-1989
(561) 355-2030
FAX: (561) 355-3982
www.pbcgov.com



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February 24, 2020

Via Email: EAAReservoir@usace.army.mil

U.S. Army Corps of Engineers
Jacksonville District
Attn: Andrew LoShiavo and Krista Sabin
701 San Marco Boulevard
Jacksonville, FL 32207-8175

Dear Mr. LoShiavo and Ms. Sabin,

**Subject: Palm Beach County Comments on the Final
Environmental Impact Statement (EIS) for the
Everglades Agricultural Area (EAA) Southern
Reservoir and Stormwater Treatment Area (STA)**

Thank you for the opportunity to comment on this important Comprehensive Everglades Restoration Plan (CERP) project. Palm Beach County (County) supports the proposed EAA Southern Reservoir and STA and other state and federal efforts to restore the ecosystem throughout the Central and Southern Florida (C&SF) water management system. The County greatly values its natural environment and has invested approximately \$500 million to acquire, restore, and manage 32,000 acres of natural areas and approximately \$90 million to restore the Lake Worth Lagoon. Palm Beach County, like many South Florida governments, also relies on the C&SF system to protect its citizens from flooding and to protect public water supply from depletion and salt water intrusion.

The U.S. Army Corps of Engineers (Corps) presently solicits comment on a single CERP project, but the County notes the context in which the proposed EAA Southern Reservoir and STA fit within the overall C&SF system and Lake Okeechobee management. Unfortunately, this appears the fourth in a series of intertwined actions over the past 16 months where the Corps believes Congress provided the agency discretion to deviate from longstanding law in the pursuit of ecosystem restoration. These laws require thoughtful, transparent decision making and reconcile potential tensions between C&SF system purposes; they are not obstacles to restoration. When the Corps "discovers" new discretion to avoid applying established law, the Corps leaves stakeholders in a state of unpredictability, and unpredictability undermines support for restoration.

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First, in October 2018, the Corps discovered “additional operational flexibility” to depart from the 2008 Lake Okeechobee Regulation Schedule (LORS2008) operating plan. The Corps then used this purported discretion to discharge unwanted Lake Okeechobee water to the Lake Worth Lagoon. The LORS2008 operating plan for Lake Okeechobee may very well be outdated, but the Corps subjected that plan, and its potential impacts, to prior public scrutiny through the comprehensive National Environmental Policy Act (NEPA) EIS process. The Corps did not invite the same scrutiny when implementing “additional operational flexibility.”

Next, in August 2019, the Corps proposed a “planned deviation” from LORS2008. This Corps’ proposal suggested that new circumstances, information, and environmental concerns warranted a change in Lake Okeechobee operations from the LORS2008 operating plan. Again, the Corps found discretion to *not* analyze the potential impacts of its new proposal through a NEPA EIS process. Of particular concern to the County, the Corps conducted no technical analysis to assist in understanding the consequences of its proposed operations on the Lake Worth Lagoon or public water supply.

Then, in December 2019, the Corps announced that its next formal Lake Okeechobee operating plan, the Lake Okeechobee System Operating Manual (LOSOM), will not incorporate principles of CERP and will not incorporate operation of the proposed EAA Southern Reservoir. The Corps discovered discretion to not include CERP principles or projects in its new Lake Okeechobee operating plan in a single word of the America’s Water Infrastructure Act of 2018. The Corps takes this position despite CERP providing the framework for all post-adoption modifications and operational changes to the C&SF system, and the Corps itself consistently recognizing “interdependencies” between Lake Okeechobee management and CERP.

Now, the Corps *must* apply CERP principles in its consideration of the proposed EAA Southern Reservoir and STA because this new infrastructure is without question CERP infrastructure. Notably, CERP, as authorized by Congress in the Water Resources Development Act of 2000, established reciprocal protections that reserve “new” water for ecosystem restoration but preserve “existing” levels of service for flood protection and water available for urban and agricultural use. The CERP “Savings Clause” provides that the Corps must preserve the levels of service for flood protection and quantity of water available for urban and agricultural use that were in existence *on the date of enactment of the Act*, i.e., a year 2000 baseline condition.

The Corps’ analysis of the proposed EAA Southern Reservoir and STA for compliance with the Savings Clause indicates that the Corps believes Congress afforded it the discretion to establish a year other than 2000 as



the baseline condition for preservation of levels of flood protection and water available for public water supply. There is no such permission in law. That the Corps relies on *its own draft guidance memorandum* to support this proposition demonstrates that the Corps extends its presumed discretion too far.

The Corps' discretion to modify the C&SF system in pursuit of ecosystem restoration is not boundless. The Corps must follow the laws enacted by Congress. In enacting the Savings Clause, Congress acknowledged that state and local entities cannot support ecosystem restoration at the expense of communities that rely on the C&SF system for flood protection and public water supply. Accordingly, the Corps must revise its analysis of the proposed EAA Southern Reservoir and STA under the Savings Clause to be consistent with Congressional direction to use year 2000 as a baseline condition.

Sincerely,

Jeremy McBryan, PE, CFM
County Water Resources Manager

cc: Patrick Rutter, Assistant County Administrator
Deborah Drum, Director, Environmental Resources Management