

May 14, 2020

The Honorable Peter DeFazio
Chairman
Committee on Transportation & Infrastructure
U.S House of Representatives
2167 Rayburn House Office Building
Washington, DC 20515

The Honorable Sam Graves
Ranking Member
Committee on Transportation & Infrastructure
U.S. House of Representatives
2164 Rayburn House Office Building
Washington, DC 20515

The Honorable Grace Napolitano
Chair
House T&I Subcommittee on Water Resources
and Environment
2167 Rayburn House Office Building
Washington, DC 20515

The Honorable Bruce Westerman
Ranking Member
House T&I Subcommittee on Water Resources
and Environment
2164 Rayburn House Office Building
Washington, DC 20515

Dear Chairman DeFazio, Ranking Member Graves, Subcommittee Chair Napolitano and Ranking Member Westerman:

We are writing, as a part of a coalition of South Florida urban water utilities and agricultural water users, to clarify the record regarding proposed legislative language that would require the U.S. Army Corps of Engineers (“Corps”) to follow all provisions of the Comprehensive Everglades Restoration Plan (“CERP”) approved in WRDA 2000, including its Savings Clause, in the revision of the Lake Okeechobee Regulation Schedule. A recent letter to Congress from the Everglades Foundation has misstated important facts regarding the proposed language, and we want to make sure that you are fully informed of the issues.

The signatories to this letter, collectively, have more than 100 years’ of experience in Florida water resource protection, restoration and supply. We have been personally involved in all aspects of Everglades restoration policy, program development and authorization. While employed in our public service positions, we were responsible for oversight of our respective agencies’ participation in the assembly of CERP and in crafting final language in Section 601 of WRDA 2000. No element of WRDA 2000 was more important to the State of Florida in securing congressional authorization of CERP, than the inclusion of language referred to as the “Savings Clause.”

The language that our coalition has proposed regarding the Savings Clause would require the Corps to follow all aspects of CERP approved by Congress in WRDA 2000, not just those aspects favored by the nongovernmental organizations who have sent Congress recent letters. The CERP was developed in the 1990s to revise the Central and Southern Florida Project to achieve environmental restoration objectives and meet other water related needs of the region. Congress approved that plan in WRDA 2000, and directed that it serve as the “framework for modifications and operational changes to the Central and Southern Florida Project that are needed to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection.” WRDA 2000, Section 601(b)(1)(A). Congress modified the CERP, however, by prohibiting the Corps from compromising existing water supply and flood control benefits of the project. In particular, Section 601(h)(5) provides:

“Savings Clause. —(A) No Elimination or Transfer. – Until a new source of water supply of comparable quantity and quality as that available on the date of enactment of this Act is available to replace the water to be lost as a result of implementation of the Plan, the

Secretary and the non-Federal sponsor shall not eliminate or transfer existing legal sources of water, including those for –

- (i) An agricultural or urban water supply;
- (ii) Allocation or entitlement to the Seminole Indian Tribe of Florida under section 7 or the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e);
- (iii) The Miccosukee Tribe of Indians of Florida;
- (iv) Water supply for Everglades National Park; or
- (v) Water supply for fish and wildlife.”

The Corps has refused to apply the Savings Clause to revisions to the Lake Okeechobee Regulation Schedule, which is the set of operational rules for the primary water storage feature in the entire Central and Southern Florida Project. Proposed revisions to that regulation schedule would jeopardize the water supply buffer that urban and agricultural users and environmental interests south of Lake Okeechobee rely on in times of drought. The proposed language for WRDA 2020 would make clear that the Corps must apply the Savings Clause when it revises the lake regulation schedule, so that water users are held harmless as the Corps provides additional environmental benefits.

Opponents of this proposal, in particular the Everglades Foundation in its May 4, 2020 letter to members of Congress, have made a series of incorrect statements that must be factually corrected. We have set forth key statements below along with our responses.

Assertion 1: The proposed Savings Clause language would require the Corps to reinstate the so-called “WSE Schedule,” which was in effect when Congress passed WRDA 2000. [Everglades Foundation Letter, paragraph 1]

Response: This is false. Our coalition of water users is not advocating that the Corps reinstate the WSE Schedule. We are asking that the Corps apply the Savings Clause, which requires that the Corps not eliminate a source and level of service of water supply that existed in 2000 until it has developed an alternative source of supply. The Corps can do this by designing a different regulation schedule that keeps enough water in Lake Okeechobee in the dry season when urban, agricultural and downstream environmental users rely on the lake for water supply.

Assertion 2: “The proposed [Savings Clause] language represents a major policy shift.” [Everglades Foundation letter, paragraph 1]

Response: The proposed language represents no policy shift at all. Congress in WRDA 2000 provided that the Corps apply the Savings Clause when it makes “operational changes” to the Central and Southern Florida Project for the propose of restoring, protecting and preserving the environment. The CERP passed with the support of urban and agricultural users because the Savings Clause was part of the comprehensive package of improvements to the Central and Southern Florida Project. The Corps is not applying the Savings Clause in connection with Lake Okeechobee, so the proposed language merely reaffirms the existing direction of Congress.

Assertion 3: “The proposed [Savings Clause] language ... would undermine federal and state investments made to date in critical water infrastructure that is restoring America’s Everglades and recharging the primary water supply for of Miami-Dade, Broward and Monroe Counties and a

substantial portion of Palm Beach County – a population exceeding 5 million.” [Everglades Foundation letter, paragraph 1]

Response: This statement is false. The Savings Clause expressly protects water supply for “Everglades National Park” and “urban water supply.” The urban counties of Southeast Florida rely on Lake Okeechobee as their backup source of water supply in times of drought. The proposed language would require the Corps to protect the water supply of those downstream water users, not take them away. We find it ironic that opponents of the proposed language raise the specter of water supply, when the proposed language explicitly protects water supply for Everglades National Park, fish and wildlife, the Seminole and Miccosukee tribes, and agriculture and public water supply.

Assertion 4: “The ‘Savings Clause’ applies only to Comprehensive Everglades Restoration Plan (CERP) projects implemented under WRDA 2000. The LOSOM is not a CERP project and should not be subject to the CERP authorizing language.” [Everglades Foundation Letter, paragraph 2]

Response: CERP (which includes the Savings Clause) governs all environmental modifications to the Central and Southern Florida Project, whatever their source of authorization. WRDA 2000 made the CERP the “framework” for all “modifications and operational changes to the Central and Southern Florida Project that are needed to restore, preserve, and protect the South Florida ecosystem.” Section 601(b)(1)(A). Congress also ordered the Corps to “integrate” the CERP “with ongoing Federal and State projects and activities.” Section 601(b)(1)(B). Since CERP is the “comprehensive” plan, that is the “framework” for “operational changes” and is “integrated” with other ongoing projects and activities, it applies to new regulation schedules for Lake Okeechobee.

Assertion 5: “The proposed language would lock in consumptive water uses that were in place in 2000 and do so before any CERP projects are brought online to send water south to federally owned resources, including Everglades National Park and Florida Bay.” [Everglades Foundation Letter, paragraph 2]

Response: The proposed language would not “lock in” water uses any more than Congress did in WRDA 2000. The Savings Clause also is about more than “consumptive uses,” because it protects water supply for “Everglades National Park” and “fish and wildlife.” The suggestion that the proposed language hurts Everglades National Park and Florida Bay, when the Savings Clause expressly protects the water supply of those natural resources, is false. We also note that providing water to millions of South Floridians is a “consumptive use.”

Assertion 6: The proposed language “would permanently set the allocation of water in Lake Okeechobee to that in place in December 2000 for this and all future Lake Okeechobee operational changes without taking into account dam safety, toxic blue-green algae, climate change, and the state’s inherent ability to allocate water for non-CERP projects and components.” [Everglades Foundation Letter, paragraphs 3-7]

Response: This is false. The water user coalition is not advocating for a return to the WSE Schedule (which was in place in December 2000), and the Corps has flexibility to adjust the regulation schedule to address the various safety and environmental factors affected by the lake. The Corps currently is developing a new regulation schedule with a list of planning constraints, and the proposed language would include water supply to the list of constraints as mandated in WRDA 2000. We also note that CERP allows the Corps to eliminate a source of water supply if it replaces it first, and there are several CERP projects that would allow the

Corps to provide alternative sources of water supply that could increase the agency's flexibility in managing the lake.

Assertion 7: "Over its twenty-year history, the Savings Clause has been one of the biggest impediments to Everglades restoration." [Everglades Foundation letter, paragraph 8]

Response: This statement is pure fiction, because there is not one project that has been blocked or reconfigured based on the Savings Clause. We also think this statement reveals the real basis for the Everglades Foundation's opposition to the proposed language: the Foundation does not like the Savings Clause and wants to promote its vision of Everglades restoration at the expense of the people who rely on the Central and Southern Florida Project for water supply. Congress approved CERP in WRDA 2000 because it had the support of all stakeholders. Urban and agricultural stakeholders supported the CERP because they believed they were protected by the Savings Clause. The CERP exists because of the Savings Clause, not in spite of it.

The Central and Southern Florida Project is designed to meet all of the water supply needs of South Florida, both community and environmental. Protecting water supply is a central goal of the CERP. We support all the goals of CERP, not just some of them. We ask that the members of Congress consider the interests of urban and agricultural water supply, Everglades National Park, the Seminole and Miccosukee Tribes, and other water supply interests protected by the Savings Clause as you consider the proposed language for WRDA 2020.

Sincerely,

Ernie Barnett, Former Assistant Executive Director, South Florida Water Management District (SFWMD); Former Interim Executive Director, SFWMD; and Former Director of Ecosystem Projects, Florida Department of Environmental Protection

Tommy Strowd, Former Assistant Executive Director, SFWMD; Former Interim Executive Director, SFWMD; and Former Director of Operations, SFWMD

Richard Budell, Former Director of Water Policy, Florida Department of Agriculture and Consumer Services (FDACS); and Former Assistant Director of Environmental Services, FDACS

cc: Florida Delegation, U.S. House of Representatives
Governor Ron DeSantis
The Honorable R.D. James, Assistant Secretary of the Army – Civil Works
Lieutenant General Todd Semonite, Commanding General and Chief of Engineers, U.S.
Army Corps of Engineers
Major General Scott Spellmon, U.S. Army Corps of Engineers
Colonel Andrew Kelly, District Commander, U. S. Army Corps of Engineers
Chauncey Goss, Governing Board Chair, South Florida Water Management District
Secretary Noah Valenstein, Florida Department of Environmental Protection
Drew Bartlett, Executive Director, South Florida Water Management District
Dr. Timothy R. Petty, Assistant Secretary for Water and Science, U.S. Dept. of the Interior
Adam Gelber, Director, Office of Everglades Restoration Initiatives, U.S. Dept. of the Interior