

**Audubon Florida * Captains for Clean Water * Conservancy of Southwest Florida
Everglades Foundation * Everglades Law Center * Everglades Trust
Friends of the Everglades * Florida Oceanographic Society * National Audubon Society
National Parks Conservation Association * National Wildlife Federation
Sanibel-Captiva Conservation Foundation * Tropical Audubon Society**

Florida Congressional Delegation

Sent via email

April 30, 2020

Dear Florida Congressional Delegation,

The undersigned representatives of organizations committed to the restoration of America's Everglades have been advised of a proposal to add language to the 2020 Water Resources Development Act that would make the "Savings Clause" found in section 601(h)(5) of Public Law 106-541 (WRDA 2000) applicable to the Lake Okeechobee regulation schedule and direct the Army Corps of Engineers (Corps) to use the lake regulation schedule in place in December 2000 as the base condition for such analysis. **We urge you to reject this proposal for the following reasons.**

Savings Clause analysis only applies to changes from date of enactment of WRDA 2000 that result from implementation of the Comprehensive Everglades Restoration Plan (CERP) and is to be conducted as CERP projects are brought online to ensure ecosystem benefits are realized while protecting water users as those ecosystem benefits are delivered to the Everglades. The Lake Okeechobee regulation schedule, however, is not a CERP project and predates CERP by decades. The effort currently underway by the Corps to develop a new lake regulation schedule was authorized in WRDA 2018 to address concerns about the integrity of the Herbert Hoover Dike, not part of CERP implementation for purposes of Everglades restoration. In addition, the Corps' Programmatic Regulations promulgated pursuant to WRDA 2000 which have been in force for over 10 years conclude that changes to lake regulation schedules as well as the issuance of consumptive use permits under state law are examples of "intervening non-CERP activities" which do not trigger Savings Clause analysis. The Corps has consistently applied this reasoning when evaluating the Savings Clause in the context of numerous project reports and analyses and there is no-compelling reason that is consistent with the goals of Everglades restoration that would warrant changing directions.

The Lake Okeechobee regulation schedule requires the Corps to balance 5 congressionally authorized project purposes for flood control, water supply, navigation, recreation, and preservation of fish and wildlife resources. The proposed language expands the interests of consumptive users far beyond that contemplated in WRDA 2000 and puts an even larger thumb on the scale to the sole benefit of one, but to the detriment of all other stakeholder interests. Indeed, changing a founding principle of CERP after the fact to gain benefit for one party undermines the cooperative spirit of the entire endeavor.

Not only is applying the Savings Clause analysis to the lake regulation schedule without justification, reverting back to the regulation schedule in place in December 2000, the Water Supply and Environment (WSE) schedule, as the base line for such analysis would be disastrous. Under WSE, high water events in 2003, 2004 and 2005 created serious problems in the lake, including extreme high risk that the Herbert Hoover Dike would fail placing surrounding communities at risk of catastrophic flooding and the loss of 45,000 acres of nutrient absorbing marsh vegetation. Fisheries crashed and it took almost a decade for the black crappie population to recover. Hurricanes stirred up the mud bottom in the center of the Lake which raised phosphorus levels and degraded water quality. Nutrient and sediment enriched discharges to the St. Lucie and Caloosahatchee estuaries contributed to harmful algal blooms and damage to estuary ecosystems. By 2004, the Corps had to officially adopt deviations from the WSE schedule to help keep Lake levels lower to avoid these issues. WSE also had no provision to supply the Caloosahatchee Estuary with water during the dry season, even when the Lake was dangerously deep. It was a deeply flawed schedule that should not be returned to.

Lake regulation schedules should be adopted based on sound scientific data, improvements that have been made in weather forecasting, hydrological monitoring and modeling, and performance metrics that reflect optimal conditions for the lake and downstream ecosystems. Following that script is our best chance to manage toxic blue green algae, benefit the greater ecosystem and equitably balance the interests of all stakeholders. Peer reviewed studies and performance metrics that are currently part of the lake regulation schedule record demonstrate the folly of reverting back to the WSE schedule. Doing so condemns us to repeat the mistakes we are aware of and have the ability to avoid.

The proposed language would significantly undermine restoration efforts currently underway and jeopardize billions of dollars of taxpayer money allocated by the federal government and the state of Florida for Everglades and ecosystem restoration that is critical to the long term well-being of Floridians and the Sunshine State Economy. We urge you to reject it.

Sincerely,

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Congressman Ted Deutch
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