



13081 S. MILITARY TRAIL
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Tommy B. Strowd, P.E.
Attorney
Mark A. Perry, P.A.

December 9, 2020

Jan Sluth, Senior Paralegal
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

Dear Ms. Sluth:

**Subject: LWDD Comments on the Proposed Everglades Agricultural Area Reservoir
Water Reservation Rules published October 16, 2020**

The Lake Worth Drainage District (LWDD) has long supported the implementation of the Comprehensive Everglades Restoration Plan (CERP), particularly the major water storage reservoirs, including the proposed Everglades Agricultural Area (EAA) Reservoir. 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 LWDD appreciates the opportunity and has participated in the process leading up to this proposed rule by attending the South Florida Water Management District's (SFWMD) public workshops and meetings and providing written and oral comments. Furthermore, LWDD supports SFWMD's efforts to reserve water for the benefit of fish and wildlife and the environment and we have actively participated in the EAA Reservoir Water Reservation rulemaking process since its inception. Attached are four (4) comment letters previously submitted by LWDD from June – November 2020 as a part of this rulemaking process.

LWDD, like many entities in South Florida, relies on the Central and South Florida (C&SF) Project's regional water management system to protect its citizens from flooding, protect public water supply from depletion, and restore regional ecosystems. The central storage component of this regional system has historically been, and remains to this day, Lake Okeechobee. As envisioned in CERP; clear, consistent, and unambiguous operational strategies and rules for existing and future water management infrastructure are critical to ensuring water supplies are protected and ecosystem restoration objectives are ultimately achieved.

While the relationship between Lake Okeechobee and the EAA A-2 Reservoir is undeniable, it remains unclear how the operations of both the structures surrounding the Lake and the EAA A-2 Reservoir will be integrated to accomplish these results. We therefore make the following recommendations on the proposed EAA Reservoir Water Reservation rule:

- It is currently uncertain what operational protocols associated with Lake Okeechobee or the EAA Reservoir operations will be in place when the EAA Reservoir is operational in 2027 or later. Therefore, a more cautious approach to establishing the EAA Reservoir Water Reservation rule is needed to ensure the project moves forward and unnecessary administrative and legal challenges are avoided.

- A large number of stakeholders are affected by the proposed rule and we understand a letter from the City of West Palm Beach outlining concerns was sent to the Florida Legislature's Joint Administrative Procedures Committee (JAPC). We hope that changes can be made to the proposed rule at the Public Hearing, but if not, it would be reasonable to continue the public hearing until at least January 2021 to allow adequate time to address the multiple comments offered by environmental, water supply and tribal stakeholders. This would also grant additional time for stakeholder coordination and give JAPC the reasonable opportunity to obtain any requested information.
- Additional information should be provided to affected stakeholders and additional clarifying language should be included in the proposed EAA Reservoir Water Reservation rule that assures the rule will not be interpreted as the continuation of the current diminished level of certainty for existing permitted water users that resulted from the implementation of the 2008 Lake Okeechobee Regulation Schedule (LORS2008), which was intended to be a temporary measure to reduce Herbert Hoover Dike failure risk.
- The EAA Reservoir Water Reservation should be re-evaluated, revised and re-adopted once an approved project or system operating manual has been developed that restores the water supply level of certainty for existing legal uses to that which was in place prior to adoption of LORS2008.
- Consider implementing a lower cost regulatory alternative as submitted by the City of West Palm Beach (November 5, 2020), the Seminole Tribe of Florida (Nov. 2, 2020), and agricultural interests (November 6, 2020).

As previously stated, the LWDD fully supports constructing the CERP projects and meeting all the objectives of the Plan, and while doing so, not diminishing the legal existing uses and applications of water.

Thank you for the opportunity to participate in this ongoing process.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tommy B. Strowd', with a stylized flourish at the end.

Tommy B. Strowd, P.E.
Executive Director & District Engineer
LAKE WORTH DRAINAGE DISTRICT

Attachments (4)

- C: Chauncy Goss, Board Chairman, SFWMD
SFWMD Governing Board Members
Drew Bartlett, Executive Director, SFWMD
LWDD Governing Board Members



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Attorney
Mark A. Perry, P.A.

June 25, 2020

Via Email: tedwards@sfwmd.gov

Toni Edwards
Senior Scientist, Applied Sciences Bureau
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

Dear Ms. Edwards:

Subject: Lake Worth Drainage District Comments on the May 2020 Draft Technical Document to Support the Central Everglades Planning Project Everglades Agricultural Area A-2 Reservoir Water Reservation

Thank you for the opportunity to review and provide comments on the May 2020 Draft Report "Technical Document to Support the Central Everglades Planning Project Everglades Agricultural Area A-2 Reservoir Water Reservation." We recognize that the Draft Report provides the basis for South Florida Water Management District's (SFWMD) upcoming reservation rule development, and we look forward to participating in that process.

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 A-2 Reservoir must be integrated to meet the water resource objectives established in CERP. However, there is very little information in the Draft Report regarding the EAA A-2 Reservoir projects operations, particularly as it relates to the function and operation of Lake Okeechobee.

Ms. Toni Edwards

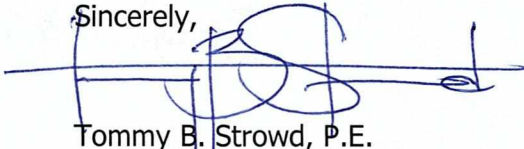
June 25, 2020

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Therefore, it is not possible to make detailed technical comments at this time. 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 now may be premature.

LWDD 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. Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tommy B. Strowd', is written over a horizontal line.

Tommy B. Strowd, P.E.
Executive Director / District Engineer
LAKE WORTH DRAINAGE DISTRICT

c: LWDD Board of Supervisors
Jeremy McBryan, P.E., Palm Beach County



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Mark A. Perry, P.A.

August 27, 2020

Don Medellin
Project Manager
South Florida Water Management District
3301 Gun Club Rd.
West Palm Beach, FL 33401

Subject: EAA A-2 Reservoir Water Reservation

Dear Mr. Medellin:

The Lake Worth Drainage District (LWDD) thanks you for the opportunity to provide comments on the Water Reservations for the EAA A-2 Reservoir. The central role that this proposed facility plays in the restoration of the Everglades also has serious implications for the northern coastal estuaries, Lake Okeechobee, the Lake Okeechobee Service Area and the Lower East Coast of Florida.

LWDD is a single-purpose Special Taxing District created by the Florida Legislature in 1915 to manage water resources in southeastern Palm Beach County for Flood Control and Water Supply purposes. This mission requires that we rely heavily upon the regional water resource network of the federally authorized Central & Southern Florida Project for Flood Control and Other purposes (C&SF Project) for both discharge of excess water during wet periods and as a source of regional supplemental water during dry periods. Maintenance of the appropriate groundwater elevations in our region are critical to protecting the surficial aquifers in southeastern Palm Beach County and the public water supply utilities that rely upon them, from the impacts of Saltwater Intrusion.

While our primary source of supplemental water is Water Conservation Area No. 1 (Arthur R. Marshall Loxahatchee National Wildlife Refuge), the U.S. Army Corps of Engineers (USACE) Water Control Plan for Water Conservation Areas, Everglades National Park, and ENP-South Dade Conveyance System requires that under certain conditions, no supplemental water can be withdrawn unless it is preceded by an equivalent volume of water brought in from Lake Okeechobee. This situation inextricably connects the supplemental water needs of southeastern Palm Beach County to Lake Okeechobee – particularly during drought conditions. Therefore, any proposed alteration in the water resource responses associated with Lake Okeechobee are of particular concern – especially with regard to potential impacts to the water supply objectives of the Lake.

The regional modeling used to prepare the Draft Technical Document to support the EAA A-2 Reservoir water reservation assumed the 2008 Lake Okeechobee Regulation Schedule (LORS2008). The results of the technical analysis are dependent on Lake Okeechobee operations consistent with LORS2008. However, LORS2008 is expected to be superseded by a new operating schedule (i.e. LOSOM) by 2022 and the EAA A-2 Reservoir is not expected to be constructed until 2027 at the earliest. Furthermore, it is not clear how the Savings Clause analysis will be affected by this discrepancy. These facts introduce additional questions on the appropriateness and validity of the technical analysis and leads to the belief that the proposed water reservation may be premature.

It is not clear if and how the EAA A-2 Reservoir reduces the likelihood of water shortage conditions in South Florida that have resulted from implementation of LORS2008, which was intended to be temporary and was implemented to reduce Herbert Hoover Dike failure risk, or if and how the EAA A-2 Reservoir increases the likelihood of meeting water supply requirements for existing permitted users, particularly along the Lower East Coast. How does SFWMD intend to meet their legal obligation to protect existing legal users and provide for other water related needs now and in the future? Furthermore, the uncertainty associated with this proposal places a significant risk to water supply users across south Florida.

Due to the lack of an operational plan for the EAA A-2 Reservoir that aligns with the information provided in the Draft Technical Document, it is not clear if and how the multi-purpose operations of the EAA A-2 Reservoir, as envisioned in CERP, will occur.

It is not clear if and how the EAA A-2 Reservoir reduces the likelihood of water shortage conditions in South Florida that have resulted from implementation of LORS2008, which was intended to be temporary and was implemented to reduce Herbert Hoover Dike failure risk, or if and how the EAA A-2 Reservoir increases the likelihood of meeting water supply requirements for existing permitted users. How does SFWMD intend to meet their legal obligation to protect existing legal users and provide for other water related needs now and in the future?

Thank you again for the opportunity to comment on this important CERP effort.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tommy B. Strowd', is written over a horizontal line.

Tommy B. Strowd, P.E.
Executive Director / District Engineer
LAKE WORTH DRAINAGE DISTRICT



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Mark A. Perry, P.A.

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

October 7, 2020

Page 4

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Strowd', with a horizontal line drawn through the middle of the signature.

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



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November 5, 2020

Via Email: dmedelli@sfwmd.gov; tedwards@sfwmd.gov

Mr. Don Medellin
Ms. Toni Edwards
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

**Subject: Request for the Governing Board to Schedule a Public Hearing on the
EAA Reservoir Water Reservation Rule**

Dear Ms. Edwards and Mr. Medellin:

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 LWDD appreciates the opportunity and has participated in the process leading up to this proposed rule by attending the District's public workshops and meetings and providing written and oral comments.

LWDD concerns, along with the issues and concerns expressed by other governmental, business, and agricultural entities, have not been fully addressed in this process. While the relationship between Lake Okeechobee and the EAA A-2 Reservoir is undeniable, it is not clear how the operations of both the structures surrounding the Lake and the EAA A-2 Reservoir will be integrated.

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 as outlined in the LWDD October 7, 2020 written comments to the Board.

Mr. Don Medellin
Ms. Toni Edwards
November 5, 2020
Page 2

Additionally, the proposed rule at 40E-10.061(3)(b) provides, "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 now, a person or entity particularly affected could determine to what extent they are being affected. But the project is not expected to be completed at the earliest until 2027. Given the significant length of time to plan, fund and construct this project, to make this a reasonable implementation, the next provision after subsection (3)(b) should be amended to add "All permitted uses and applications for water are not considered to use reserved water."

Given that there are still so many uncertainties as a result of this proposed rule, the LWDD respectfully requests the Governing Board schedule a public hearing prior to adoption of its EAA Water Reservation Rule, pursuant to the requirements in s. 120.54(3)(c)1, F.S. At the public hearing it is important that enough time be allotted for staff to fully explain the agency's proposal and to respond to questions or comments regarding the rule. Given the interest in this rule, a presentation, board discussion and public comment are what would be expected.

As previously stated, the LWDD fully supports constructing the CERP projects and meeting all the objectives of the projects, and while doing so, not diminish the legally existing uses and applications of water.

Thank you for the opportunity to participate in this ongoing process.

Sincerely,

A handwritten signature in blue ink, appearing to read 'TBS', with a horizontal line drawn through the middle of the letters.

Tommy B. Strowd, P.E.
Executive Director & District Engineer
LAKE WORTH DRAINAGE DISTRICT

c: Chauncey Goss, Board Chairman, SFWMD
SFWMD Governing Board Members
Drew Bartlett, Executive Director, SFWMD

TBS/sgw