



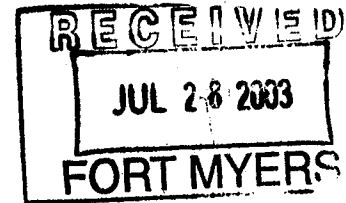
# Department of Environmental Protection

Jeb Bush  
Governor

Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

David B. Struhs  
Secretary

July 22, 2003



Michael R. Bauer, Ph. D., J.D.  
Chairman  
Southwest Florida Watershed Council  
P. O. Box 61063  
Ft. Myers, Florida 33906-1063

Dear Dr. Bauer:

Secretary Struhs asked me to respond to your June 19, 2003 letter regarding the establishment of reservations of water for the Caloosahatchee River. I plan to attend the Council's meeting on August 26, along with Rick Cantrell and staff of the South Florida Water Management District (District), so that we can discuss this issue fully. However, I wanted to provide you some thoughts for your consideration in advance of the meeting.

The establishment of minimum flows and levels (MFLs) (s. 373.042, F.S.) and reservations (s. 373.223(4), F.S.) are two mechanisms provided in the Water Resources Act to afford protection to natural systems from the impacts that might be associated with consumptive use withdrawals. As you are aware, the district adopted a minimum flow for the Caloosahatchee River in September 2001. Recently, the District produced a draft status report on their efforts to more comprehensively evaluate the effects of the proposed MFL on the estuary and the *Vallisneria americana* habitat (*Technical Documentation to Support Development of Minimum Flows and Levels for the Caloosahatchee River and Estuary*, January 2003).

We understand that the District is planning to establish a reservation for the Caloosahatchee estuary in accordance with the requirements of the Comprehensive Everglades Restoration Program (CERP). It is also our understanding that a "baseline" reservation will be utilized to reserve the existing water going to the river and that as restoration projects are completed the "new" water will be reserved and, in essence, be added to the baseline reservation. In effect, the baseline reservation will serve as a starting point for restoration, and will prevent additional water that is currently supporting the natural functions of the river from being allocated to users. We believe that the District's approach is reasonable. However, we also appreciate your concerns about the long time frames associated with the implementation of CERP. Therefore, I believe our next step should be to meet with the District to discuss your concerns, and to evaluate the possibility of other opportunities to enhance fresh water flows to the river.

Your letter also expressed concern that the river is not being considered as an "existing legal user". The District is correct in that regard. Under Florida water law, only water that can be

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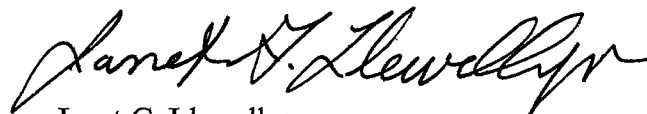
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permitted without causing harm to the water resources of the area is to be allocated to users. In other words, the water needed to sustain natural systems is supposed to be set aside "off the top", and does not require a permit to ensure that natural systems are protected. The legislature recognized that significant harm to water bodies may have occurred in the past due to structural changes and alterations, such as the construction of dams, or filling, ditching and draining in the watershed. The Districts are *not required* to consider or reverse this damage through the establishment of an MFL, but under most circumstances they *are required* to consider and reverse the significant harm inadvertently caused by water withdrawals.

Recognizing that some water bodies may currently be below the established MFL, the legislature provided that when a water body is below or is expected to fall below its established MFL, the district is to expeditiously implement a recovery or prevention strategy. A recovery strategy is to provide for the achievement of the MFL over time in order to avoid the economic hardship that would be caused by suddenly revoking previously issued water use permits. The statute also directs the District to strive to find water for both users and the natural system. In the case of the Caloosahatchee River, the District not only hopes to recover to the MFL, but to further restore the functions of the river by providing flows above the MFL and using reservations to ensure that these additional flows can not be allocated to users.

As you mention in your letter, the river is an important resource in the region, and I understand your concern about the making sure the river gets the right amount of water at the right time. I look forward to discussing the issue with you at the August 26 Council meeting.

Sincerely,



Janet G. Llewellyn  
Deputy Director  
Division of Water Resource Management

JGL/kpg

cc: Rick Cantrell, DEP South District  
Ken Ammon, SFWMD, WPB  
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