

Watershed Council

Southwest Florida Watershed Council, Inc.
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August 5, 2010

Janet Llewellyn, Director Division of Water Resources Management
Florida Department of Environmental Protection
2600 Blair Stone Road M.S. 3500
Tallahassee, Florida 32399

Re: Water Reservation for the Caloosahatchee Estuary

Dear Ms. Llewellyn:

The South Florida Water Management District (SFWMD) is proposing a revision of the document, which is entitled Adaptive Protocols for Lake Okeechobee Operations. The document provides guidance to the SFWMD Governing Board to help identify volumes of water that can be released from Lake Okeechobee to improve ecosystem benefits and other lake management objectives, without affecting permitted users. The proposed revision is in light of the continued degradation of the Caloosahatchee Estuary, as evidenced by the numerous exceedances of the established MFL since 2001. Multiple, consecutive years of exceedances (2007-2009) of the MFL constitute "significant harm" as defined by the MFL rule (F.S. 373.246). Many of us participating in the process find that the outcome of the Adaptive Protocols revision will do little to aid the recovery of the Caloosahatchee Estuary, and represents another attempt by the SFWMD to sidestep the fundamental problem of over-allocating water to consumptive users.

The Southwest Florida Watershed Council contacted Secretary Struhs about this matter in 2003 (letter attached) regarding the need for a "reservation." You responded on behalf of Secretary Struhs (letter attached). In your letter of July 22, 2003, more than 7 years ago, you indicated that the FDEP would implement a "baseline reservation" for the Caloosahatchee Estuary while new water from planned storage projects would be added to the baseline reservation.

Here is an excerpt from your letter dated July 22, 2003:

It is 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 other users.

The SFWMD and FDEP have had numerous opportunities to address the problem of over-allocation of water to consumptive users. However, to date this action has not yet occurred. The opportunity to correct this problem with the recent SFWMD, long-term consumptive use permit review, assessment and renewal process (Lake Okeechobee Water Availability Rule, 2008 and ongoing) in the Lake Okeechobee Service Area was to address this problem, but appears to have only allocated additional water to consumptive users. This action is not consistent with the dire need and statutory requirement to recover the Caloosahatchee Estuary and is contrary to Florida water law. The renewal of these consumptive use permits in the Lake Okeechobee Service Area appears to be in violation of the public interest test for their renewal as described in the "Basis of

Review" rule (Chapter 40E-2, 40E-20 F.A.C. and F.S. 373.223), which requires these permits to be in the public interest and must cause no harm to the resource.

Additional action by the SFMWD and U.S. Army Corps of Engineers has further exacerbated recovery efforts by back-flowing water from the Caloosahatchee River into Lake Okeechobee. Back flows have occurred during the dry season when the estuary is in greatest need, and at times has caused an exceedance of the MFL. This type of management is contrary to the restoration that you mentioned in your letter. Federal and State responsibility for protecting water resources in Florida are consistent "on paper," but at times are poorly implemented if not completely ignored. The Caloosahatchee MFL is a prime example and was largely ignored by FDEP, SFWMD, and U.S. Army Corps of Engineers during the 2008 revision of the Lake Okeechobee Regulation Schedule.

In your letter, you further stated that:

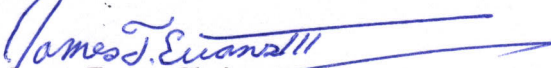
Under Florida water law, only water that can be permitted without causing harm to the water resources of the area is to be allocated to users. In other words, the water needed to sustain natural systems is supposed to be set aside "off the top", and does not require a permit to ensure that natural systems are protected.

We agree with you that public water should be reserved for the public resource "a priori". This approach has obviously not been implemented, as "significant harm" has occurred to the Caloosahatchee Estuary throughout nearly a decade of degradation since the MFL was adopted. As you may also be aware, the C-43 Reservoir project has once again failed to receive funding support from Congress through the Water Resources Development Act. As a result, it may be decades, if not longer, before the project is completed; which even if completed would only supply approximately half the water needed to sustain the estuary and meet the provisions of the MFL rule.

We respectfully request that the FDEP provide written guidance to the SFWMD requesting a statutory water reservation for the Caloosahatchee Estuary. This reservation should incorporate existing water within Lake Okeechobee. Under most circumstances, it would only represent several inches of lake water. We feel that this approach is consistent with Florida water law as you have indicated previously.

We appreciate any assistance that you can provide regarding this issue.

Sincerely,


James Evans, Chairman
Southwest Florida Watershed Council

C.c.: Honorable Charlie Crist
Secretary Michael Sole

The mission of the Southwest Florida Watershed Council is to protect, conserve, manage and/or restore the land and water resources of the Caloosahatchee and Big Cypress Watersheds. Through increased awareness, participation and cooperation among all stakeholders in consensus building, planning and decision making, we are working to meet the economic, natural and cultural needs for this and succeeding generations.