

**SEFLUC
Regulatory Update
September 9, 2019**

Updates

• **USACE’s Development of New Lake Okeechobee 2022 Regulation Schedule**

- In January 2019, the U.S. Army Corps of Engineers (USACE) announced that a series of National Environmental Policy Act (NEPA) public scoping meetings would be held throughout February regarding the development of the new Lake Okeechobee Regulation Schedule (LORS), *see* <https://www.saj.usace.army.mil/Media/News-Releases/Article/1742909/corps-invites-public-to-provide-input-on-new-lake-okeechobee-system-operating-m/>. *Meeting dates are on SEFLUC calendar*
- In January 4, 2019 letter, Gov.-Elect DeSantis requested Pres. Trump to direct the U.S. Army Corps of Engineers commence public review of LORS to protect human health and safety, including “mitigating toxic water flows into the population of the Florida public, ensuring the necessary water quantity and quality for the greater Everglades region, and protecting the stability of the Herbert Hoover Dike.”
- On January 29, 2019 Gov. DeSantis announced that he supported reducing the lake level to about 10.5 feet, about 2 feet lower than the current 12.6 feet pre-wet season level currently implemented by the U.S. Army Corps of Engineers in the existing 2008 LORS **Project purposes** - flood control, water supply, recreation, navigation and environmental effects to fish and wildlife, cultural and recreational resources.
- Updated Lake Okeechobee System Operating Manual (LOSOM) and accompanying Environmental Impact Statement
- **Announced USACE Schedule:**

Public Scoping/Plan Formulation	Feb. – Sept. 2019
Public Workshops/Alternative Evaluation	Oct. 2019 – Sept. 2021
Prepare Draft LOSOM/EIS	Oct. 2021 – Jan. 2022
Public Comment on LOSOM/EIS	Feb – Mar. 2022
Prepare Final LOSOM/EIS	Apr. – May 2022
Final LOSOM/EIS	June 2022
Signed Record of Decision	September 2022

- **Held Public Scoping Meetings**

- Member utilities comments at public scoping meeting raise concerns about change in regulation schedule:
 - Need to provide safe, reliable water services to 6.5 million customers
 - CERP and WSE are foundation for current water use permits and SFMWD regulations
 - LORS08 was intended as interim measure and WSE regulation schedule was to be restored after dike repairs
 - Even more onerous regulatory schedule may jeopardize meeting permit and rule requirements, dependable water supply
 - Base condition for reevaluation should recognize reliance of existing programs on WSE, 1 in 10 level of protection for public supply
 - Any proposed changes should maintain current levels of public supply availability and reduce water shortage frequency, take into account cutbacks caused by LORS08
 - Lower lake levels could exacerbate salt water intrusion, change in scheduled should maintain necessary hydraulic head
 - Evaluation should incorporate climactic impact variability on regional system
- March 15, 2019 joint letter of concern submitted to USACE and SFWMD regarding current Lake operations
- Update on SEFLUC meeting with USACE on April 4, 2019
- April 22, 2019 SEFLUC submits comment letter regarding LOSOM scope.
- 8,000 LOSOM scope comments submitted to USACE
- June 18, 2019 - Rep. Mast introduced Prioritizing Revised Operations to Eliminate Cyanobacteria Toxins in Florida Act, (PROTECT Florida Act) which would add “public health” as criteria to be considered in Lake operations, including minimization of cyanobacteria and algal blooms
- Announced new USACE meetings regarding LOSOM
 - **Project Delivery Team Meetings:** First meeting held on August 20, 2019 in Clewiston, Florida. USACE explained that in September it would develop preliminary screening methods, tools, and metrics. Additional meetings scheduled for September 26 (web meeting) and October 24 (Dade County). The participants were initially asked to submit comments regarding the USACE’s presentation by September 3. However, because of Hurricane Dorian, this deadline was extended to September 11.
 - **Public Workshops: Sept. 16** at the Cape Vineyard Community Church, 923 SE 47th Terrace, Cape Coral, FL 33904. Time to be determined. **Sept. 17** at Indian River State College in Stuart, FL. Time to be determined.
- **US Sugar Lawsuit Against the USACE**
 - On August 1, 2019 U.S. Sugar filed a lawsuit in federal district court in the southern district of Florida. The lawsuit challenges the USACE’s ability to deviate from the LORS 2008 regulation schedule without first complying with NEPA and the Federal Administrative Procedures Act. The lawsuit is based on the USACE’s

past deviations in 2019. The lawsuit seeks to enjoin the USACE from taking similar action in the future

- **USACE's Proposed Deviation From LORS 2008**

- On August 6, 2019 the USACE posted notice on the Jacksonville District's web site of a proposed deviation to the LORS 2008 regulation schedule, along with a proposed Environmental Assessment (EA) and a recommended Finding of No Significant Impact (FONSI). The purpose of the deviation is to allow the USACE to suspend the current regulation schedule when harmful algal blooms (HABs) are present.
- The proposed deviation would allow the following:
 - When HABs are present, the USACE may make maximum releases of 2,000 cfs and 730 cfs to the Caloosahatchee River and the St. Lucie River at the time the LORS 2008 guidance suggests releases of 450 cfs and 200 cfs.
 - The USACE would have the ability to make maximum practicable releases south to the water conservation areas, when LORS 2008 guidance does not recommend releases.
 - This deviation will modify the current LORS 2008 until it is replaced by a new water control plan called LOSOM in 2022.
- If the USACE is allowed to implement this deviation, SEFLUC's members along the Lower East Coast would be adversely affected as follows:
 - Lake Okeechobee would be operating more frequently in the Water Shortage Band than is currently the case under LORS 2008, which will impact the availability of surface and groundwater.
 - The existing legal use guaranteed under WRDA 2000 would be significantly reduced.
 - It would establish a precedent of allowing the USACE to operate the Regional System for the purpose of controlling HABs, which is not a Congressionally approved purpose and would elevate that purpose above all other Congressionally approved purposes, including public and agricultural water supply.
 - It would supplant LORS 2008 as the base case for purposes of developing LOSAM.
- The deadline for comments was originally set for August 21, 2019. However, in response to numerous requests for additional time, the deadline was extended to September 5, 2019. Because of Hurricane Dorian, that deadline was extended an additional 15-days to September 20.
- SEFLUC has established a LORS Sub-Committee which is preparing a comment letter regarding the proposed deviation. A list of issues to be raised in the letter was approved by the Sub-Committee during a telephone conference call held on August 28. Ed de la Parte is currently preparing the initial draft comment letter.

- **DEP Contaminated Media Forum Meeting**
 - **September 12, 2019 Meeting** – 1 p.m. in Tallahassee or by webinar. <https://floridadep.gov/waste/district-business-support/content/contaminated-media-forum>
 - The purpose of this meeting is to present, review and discuss recent developments in the assessment and cleanup of perfluoroalkyl substances (PFAS), with particular focus on perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS):
 - Provisional cleanup target levels for PFOA and PFOS in soil and groundwater
 - Development of surface water screening levels
 - Division of Waste Management PFOA/PFAS investigation efforts
 - Unregulated Contaminants Monitoring Rule (UCMR)
 - Certified Fire Training Facilities
 - Select Drycleaning and State Cleanup Sites
 - Consideration of PFAS congeners other than PFOA and PFOS

- **DEP Central Florida Water Initiative Rulemaking**
 - 373.0465, Fla. Stat. requires DEP to adopt uniform rules for CFWI area, including a single definition of “harmful to the water resources” a single method for calculating per capita water use, a residential per capita goal for each CUP, and an annual conservation goal for each CUP
 - DEP, SFWMD, SJRWMD, SWFWMD, and FDACS held a rulemaking workshop on April 4, 2019 and released updated proposed rule language on the following subjects:
 - Saline Water Intrusion
 - Annual Conservation Goals
 - Public Supply Demands
 - CII and Mining Demands
 - ERP/CUP Consistency
 - Central Florida water suppliers submitted comments of concern regarding regulation of saline water intrusion, methods for evaluating conservation goals
 - DEP in the process of evaluating comments received

- **DEP Biosolids Rulemaking**
 - DEP has initiated rulemaking to address the Biosolids TAC recommended actions
 - Workshops held June 2019 – DEP is accepting comments through August 15, 2019. <https://floridadep.gov/water/domestic-wastewater/content/dep-chapter-62-640-fac-rulemaking-and-biosolids-technical-advisory>
 - Draft rule revisions incorporate TAC recommendations
 - Revised criteria for determining application rates
 - Nutrient Management Plan requirements
 - Monitoring requirements for WEP, soil, groundwater, surface water

- Limits on land application for high water table soils (15 cm depth)
 - Modified septage treatment provisions
- **DEP Triennial Water Quality Review**
 - DEP has initiated triennial review of state surface water quality standards as required by Federal Clean Water Act.
 - DEP kickoff workshop May 14, 2019 provided overview of changes under consideration
 - Ch. 62-4 – no planned changes
 - Ch. 62-302
 - Potential revisions to turbidity criterion for coral protection
 - Potential revision regarding EPA recommended Selenium criteria
 - Potential clarifications of numeric nutrient criteria implementation document
 - Potential revisions to impairment for DO due to natural conditions for SSAC
 - Adoption of maps showing Class II waters (shellfish propagation or harvesting)
 - Ch. 62-303 – Few changes anticipated
 - Ch. 62-304 – Streamlining and updating of TMDLs
 - Additional public workshops later this summer
 - Bring to Environmental Regulation Commission for adoption by end of calendar year
 - <https://floridadep.gov/dear/water-quality-standards/content/triennial-review-water-quality-standards>
- **EPA Requests Comments on Conduit Theory**
 - **February 19, 2019** – US Supreme Court agreed to review Maui’s Petition for Review as to whether CWA’s prohibition as to unpermitted discharges covers activities that cause pollutants to be conveyed through groundwater to waters of the United States. Oral arguments have been scheduled for November 6.
 - US EPA 2019 Interpretive Statement concluded that “releases of pollutants to groundwater are categorically excluded from the [CWA’s] permitting requirements because Congress explicitly left regulation of discharges to groundwater to the states and to EPA under other statutory authorities.”
- **Potable Reuse Commission Meeting**
 - **Most Recent Meeting – July 25, 2019 Conference Call**
 - Draft Potable Reuse Framework Report Under Consideration
 - **Next Meeting** – August 21, 2019 meeting postponed due to Hurricane Dorian. It will be rescheduled in late September
 - <http://prc.watereuseflorida.com/>

Continuing to Monitor/No Update

- **SFWMD EAA Storage Reservoir**
 - **November 9** – FWF legal challenge to prevent SFWMD from expediting and completing EAA storage reservoir
 - **November 8** – SFWMD approved land lease terminating agricultural operations on 560 acres in the EAA and gave the District control to begin site work to expedite EAA storage reservoir project

- **FAA Reauthorization & Disaster Program Reforms (HR 302)**
 - Exempts drones from restrictions to help facilitate post-catastrophic response operations, such as utility restoration
 - Disaster Recovery Reform Act
 - Within 180 days, guidance document for local governments and utilities on
 - (1) the need to prioritize assistance to hospitals, nursing homes, and other long-term care facilities to ensure that such health care facilities remain functioning or return to functioning as soon as practicable during power outages caused by natural hazards, including severe weather events;
 - (2) how hospitals, nursing homes and other long-term care facilities should adequately prepare for power outages during a major disaster or emergency, as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122); and
 - (3) how State, local, and Indian tribal governments, first responders, utility companies, hospitals, nursing homes, and other long-term care facilities should develop a strategy to coordinate emergency response plans, including the activation of emergency response plans, in anticipation of a major disaster, including severe weather events
 - Public Assistance Grant Program
 - 60 days after act, must conduct a review of assessment and eligibility process under the public assistance grant program with respect to assistance provided for damaged underground water infrastructure.

- **America's Water Infrastructure Act of 2018 – Signed into Law October 23, 2018**
 - Title I Water Resources Development
 - Expediting Lake O regulation review
 - Kissimmee River Restoration credit opportunity for work by non-Federal sponsor of project for ecosystem restoration
 - Title II Drinking Water Infrastructure

- Drinking Water section that includes some new funding opportunities for resiliency/sustainability (several modest appropriation but as an aggregate appear to be good news)
 - **Risk Assessments & Vulnerability Assessment Certifications tiered compliance dates and then every 5 years after.**
 - **Consumer Confidence Reports to biannual starting in 2020**
 - School drinking fountain replacement
 - Improved accuracy and availability of monitoring data
 - Asset Management Plan (encouragement not mandate)
 - Disadvantaged community and appears to be some affordability issues addressed
 - SRF, WIFIA funding
 - Source water protections
 - Monitoring for unregulated contaminants (small utilities- 3,300 to 10,000)
- **Amendment 1 Funding**
 - Judge Dodson canceled trial brought by environmental groups challenging the State's use of Amendment 1 money stating he was finding in favor of the plaintiffs and the use of Amendment 1 money by the Legislature did violate the Florida Constitution. Order is still pending and State will appeal.
- **EPA Toxicological Profile for Perfluoroalkyls**
 - Public Comment Closed August 20
 - The Tox Profile is accompanied by a fact sheet that utilities may find helpful in putting drinking water PFAS exposure in context for customers.
 - EPA is expected to release draft toxicity values for perfluoro-2-propoxypropanoic acid (GenX) - a replacement chemical for PFOA, and perfluorobutane sulfonate (PFBS) in August.
- **PFOA/PFAS Standards**
 - Currently, the EPA has a **non-enforceable** health advisory level of 70 parts per trillion for Perfluorooctanoic acid (PFOA) and Per- and polyfluoroalkyl substances (PFAS) combined.
 - The two compounds are the focus of several activities at EPA, including a national summit in Washington, D.C., in May. **The agency has committed itself to evaluating PFOA and PFAS for regulation in drinking water.**
- **EPA – Office of Inspector General Report**
 - November 15, 2018 – EPA Unable to Assess the Impact of Hundreds of Unregulated Pollutants in Land-Applied Biosolids on Human Health and

Environment (https://www.epa.gov/sites/production/files/2018-11/documents/_epaoig_20181115-19-p-0002.pdf)

- Land Application of biosolids is not adequately regulated to ensure

- **WOTUS**

- Proposed rule published 2/14/19, accepted comments through 4/15/19.
 - Proposed rule is significantly narrower than 2015 WOTUS Rule, more closely replicates case law with some exceptions
 - Abandons idea of significant nexus test
 - 1st category things that are WOTUS
 - 2nd category things that are not WOTUS
 - 3rd section definitions
 - Includes definition of what constitutes a cooling pond
 - Clarified what is considered prior converted crop land and abandonment.