

**SEFLUC  
Regulatory Update  
February 11, 2019**

**Updates**

- **Development of new Lake Okeechobee Regulation Schedule**

- In January 2019, the U.S. Army Corps of Engineers announced that a series of National Environmental Policy Act 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:**

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

- Modification of LORS to reduce lake levels would reduce available water in regional system, create potential for additional water shortages.

- **EPA Requests Comments on Conduit Theory**
  - **January 3, 2019 - Solicitor General advised in brief that review is** warranted to resolve a circuit conflict on the question whether the CWA’s prohibition on the unpermitted discharge of pollutants covers activities that cause pollutants to be conveyed through groundwater to waters of the United States
    - **View Brief:** [https://www.supremecourt.gov/DocketPDF/18/18-260/78169/20190103142520040\\_18-260%20%2018-268%20Cnty%20of%20Maui.pdf](https://www.supremecourt.gov/DocketPDF/18/18-260/78169/20190103142520040_18-260%20%2018-268%20Cnty%20of%20Maui.pdf)
  - December 3, 2018 – Supreme Court order inviting solicitor general to file briefs expressing views of the United States as to whether CWA applies under groundwater conduit theory by January 4.
  - August 30, 2018 - Maui case appealed to US Supreme Court
    - Awaiting whether certiorari is granted
  
- **Palm Beach County Inspector General 2019 Audit Plan**
  - **No response from IG Letter – Discuss any Follow-up**
  - **December 5 – Letter Sent to IG Office**
    - Letter to IG office raising concerns regarding statements in 2018 Audit Report against Town of Mangonia Park and 2019 Audit Plan seeking to audit “multiple utilities” cross-connection programs for regulatory compliance with SDWA as exceeding delegated authority and infringing on County Health Department’s enforcement of cross-connection rules
  
- **FDEP Clarification of Rule 62-550.822 Disinfection Byproducts (DBP) Requirements: TTHM and HAA5**
  - December 17- PRR placed on hold while negotiating revised memo with DEP – coordinating with FSAWWAUC
  - December 4 - Public Records Request to DEP for communications relating to 21 day rule, technical supporting documents, guidance manual, and alternative treatment options.
  
- **WOTUS**
  - January 10 – Public Webcast (may be rescheduled due to shutdown)
  - Early December 2018 – Announcement by acting EPA Administrator of draft rule. Proposed for publication early 2019, but in light of government shut down has not yet been published in Federal Register. Once published, public comment open for 60 days (will likely be extended). Upon end of public comment, will be come effective immediately even if challenged and will remain effective unless injunction issued by the courts.
    - Proposed rule is significantly narrower than 2015 WOTUS Rule, more closely replicates case law with some exceptions
      - Abandons idea of significant nexus test

- 1<sup>st</sup> category things that are WOTUS
  - 2<sup>nd</sup> category things that are not WOTUS
  - 3<sup>rd</sup> section definitions
    - Includes definition of what constitutes a cooling pond
  - Clarified what is considered prior converted crop land and abandonment.
- **Biosolids TAC**
  - **January 23, 2019** – Final TAC meeting held
  - **TAC Recommendations:**
    - Modify current permitting rules to establish site specific rates of application, evaluate water extraction rate to inform appropriate application rate, establish low, medium, and high-risk site criteria to guide application practices and monitoring
    - Increase inspection rates for land application
    - Biosolid and nutrient management research on run-off
    - Promote pilot projects
  - **Information at:** <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> -
- **Potable Reuse Commission Meeting**
  - **NEXT MEETING – February 15, 2019** – TOHO Water Authority
  - **Presentation to Simpson’s Senate Committee on 2/15/19**
  - **January 18, 2019** – PRC meeting – discussed legislative strategy, finalizing regulatory recommendations
  - <http://prc.watereuseflorida.com/>
- **State Assumption of CWA 404 Permit Program**
  - **January 3, 2019** – No movement during leadership transition, expect DEP and State to support movement once transitions are finalized / shutdown ends.
  - Trump administration supports delegation of program to all states.
  - FDEP and EPA agreed on MOA identifying each agencies responsibility if Florida assumes 404 Permit Program

**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. This will have significant impact on portions of DEP's and the FWC's budgets.
- **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/\\_epaig\\_20181115-19-p-0002.pdf](https://www.epa.gov/sites/production/files/2018-11/documents/_epaig_20181115-19-p-0002.pdf))
    - Land Application of biosolids is not adequately regulated to ensure