



Southeast Florida Utility Council

July 28th, 2020

VIA EMAIL

tedwards@sfwmd.gov

Toni Edwards
Senior Scientist
Applied Sciences Bureau/Coastal Ecosystems Section
South Florida Water Management District
3301 Gun Club Road
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**RE: Southeast Florida Utility Council
EAA Reservoir Reservation Rulemaking Comments**

Dear Ms. Edwards,

The Southeast Florida Utility Council (SEFLUC) respectfully submits the following comments in response to the South Florida Water Management District's (SFWMD) ongoing rulemaking efforts for the adoption of water reservations for the Everglades Agricultural Area (EAA) Reservoir. SEFLUC represents potable water providers throughout South Florida serving over six million people. SEFLUC's mission is to provide a communications, networking, and support structure to allow member utilities to continue to provide superior quality water supply and wastewater management services to their customers in a cost-effective manner.

SEFLUC's members directly or indirectly rely upon water managed in the Central and Southern Florida Project (C&SF Project) to provide safe, reliable, and environmentally sustainable drinking water throughout South Florida. SEFLUC supports projects like the EAA Reservoir project and other Comprehensive Everglades Restoration Plan (CERP) projects that are intended to achieve Everglades restoration while maintaining flood control and water supply for existing legal users. In response to SFWMD's current draft rule language and draft technical documentation for the EAA Reservoir water reservation, we offer the following comments.

The draft rule would reserve "all surface water released, via operation, from the EAA Reservoir that is directed to the Lower Ease Coast Everglades Waterbodies through Structures S-624, S-625, and S 626..." It is difficult, if not impossible, for stakeholders to evaluate the practical effect of this proposed reservation. First, the reservation language itself does not provide a specific quantity of water that is reserved. Second, there is significant uncertainty, given the lack of information regarding the operation schedule for the EAA Reservoir itself. Compounding this issue is uncertainty regarding the future operation of Lake Okeechobee. As you know, Lake Okeechobee is currently operating under the LORS 2008 operating schedule. LORS 2008 itself was intended to be an interim operating schedule to facilitate necessary repairs to the Herbert Hoover Dike. The U.S. Army Corps of Engineers (Corps) is currently developing a revised Lake Okeechobee operating schedule, LOSOM, which would not take effect until 2022 or later. The new operating schedule that will result from the LOSOM development process will almost certainly

have significant implications for the way the EAA Reservoir itself may be operated. Given these layers of unknowns, we are concerned that adopting the reservation as currently proposed could have unintended or unanticipated consequences by the time the EAA Reservoir is actually operational. We would request that SFWMD address these concerns, and additionally address how any adopted reservation will be reevaluated or revised after these unknown operational concerns are addressed.

It is also critical to address the provisions of Sections 373.1501(5)(d) and 373.223(4), Florida Statutes requiring all existing legal uses of water in the public interest be protected, and that the implementation of the EAA Reservoir reservation honors the Savings Clause of the Water Resources Development Act (WRDA) of 2000 (§ 601(h)(5)(A)), which provides that an existing legal source of water supply may not be eliminated until a sufficient replacement source is available. Though we understand that a Savings Clause analysis was previously performed by the Corps in association with the prior Post Authorization Change Report and Environmental Impact Statement prepared regarding the EAA Reservoir, given the uncertainty regarding future operation of the C&SF Project and the requirements of the Savings Clause, it is important that any analysis of potential impact to existing legal users be done in a manner which is based on the existing legal use baseline established in WRDA 2000 and consider the most up to date information regarding potential impacts on water supply. Indeed Section 373.1501(5)(d), Florida Statutes, the Florida law counterpart to the WRDA 2000 Savings Clause, specifically requires that SFWMD must "provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components so as to adversely impact existing legal users..." This analysis should be based on water available to existing legal users at the time of WRDA 2000, not subsequent modifications to Lake Okeechobee operations. We would request that SFWMD address these concerns prior to adoption of any reservation.

Finally, Section 373.223(4), Florida Statutes provides that reservations are subject to period review and revision in light of changed conditions. Given the layers of uncertainties that exist and likelihood for changed conditions regarding the ultimate operation of the EAA Reservoir and the C&SF Project as a whole, we request that the reservation rule explicitly provide that SFWMD will reevaluate and readopt the reservation after revised operation schedules for Lake Okeechobee and the EAA Reservoir have been established.

Thank you for your consideration of these comments, and we look forward to working with you on this important regulatory issue.

Sincerely,



Todd Hiteshew
Chair, Southeast Florida Utility Council