

**SEFLUC
Regulatory Update
May 11, 2020**

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
- 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 saltwater 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
- April 22, 2019 SEFLUC submits comment letter regarding LOSOM scope.
- 8,000 LOSOM scope comments submitted to USACE
- **Project Delivery Team Meetings:** Recent meeting held April 30, 2020.
- **Savings Clause Issue** - USACE has announced that it does not believe the WRDA 2000/CERP “savings clause” applies in the LOSOM process
 - SEFLUC submitted a comment letter to USACE on January 30, 2020, with copies to SFWMD, objecting to failure to apply savings clause in the LOSOM process.
 - WRDA 2000 and CERP adopted with clear understanding that existing legal water uses would be protected, and SFWMD would implement existing water supply planning and regulation
 - Savings clause applies to any project implementing CERP, which LOSOM will do
 - Florida law also protects existing water users, and SFWMD is tasked with protecting these guarantees
- **December 2019 University of Florida Water Institute Report regarding LOSOM**
 - Concludes LOSOM 2022 can only result in incremental changes in the operation of the C&SF System as long as the ACOE adheres to the current philosophy of balancing water supply, flood control and environmental protection.
 - Concludes that the only way that LOSOM 2022 can substantively change the operation of the C&SF System would be to change current philosophy of balancing the various uses of the system so that one or more uses would be emphasized to the detriment of other uses.

- **USACE's Proposed Deviation from LORS 2008**
 - On August 6, 2019 the USACE posted notice on the Jacksonville District's web site of proposed changes to the LORS 2008 regulation schedule. 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 LOSOM.
 - The USACE has posted on its web site an expedited EA and a proposed FONSI authorizing this proposed deviation. The USACE extended the deadline for the public to provide public comment regarding these two documents to September 20, 2019 due to Hurricane Dorian. The use of an EA and FONSI rather than an EIS to establish a regulation schedule for Lake Okeechobee is unprecedented.
 - SEFLUC prepared and submitted a letter objecting to the proposed deviation, explaining the issues with the proposed deviation, and recommending that a full EIS be completed to evaluate the full impact of any proposed deviation.
 - Comment letters have been submitted by FDEP, Lake Worth Drainage District, Martin County, SFWMD, Florida Cattleman's Association, Audubon of Florida, the Palm Beach County Economic Council, Florida Inland Navigation District, the Nature Conservancy, Palm Beach County, Florida Crystals, the Lake Okeechobee Anglers, FDACS, Seminole Tribe of Florida, U.S. Sugar and the City of West Palm Beach. Copies are available upon request.

- The ACOE is still contemplating the comments submitted by interested parties has not taken any responsive action at this time.
- **DEP Emergency Order Due to Effects of COVID-19 - OGC NO. 20-0239**
 - April 1, 2020 DEP Emergency Order gives 30 day extension of time for compliance with various deadlines for monitoring, reporting, applying for permits.
 - Expires May 8, but may be extended.
- **U.S. Supreme Court: County of Maui, Hawaii v. Hawaii Wildlife Fund - Groundwater Regulation Under Clean Water Act**
 - On April 23, 2020, the U.S. Supreme Court issued its opinion in *County of Maui, Hawaii v. Hawaii Wildlife Fund, et. al.* The closely watched case addresses the scope of the Clean Water Act (CWA), and whether and to what extent the CWA require a permit for pollutants discharged from a point source which are then conveyed to navigable waters through a nonpoint source, such as groundwater. In a 6-3 decision, the Court held that the CWA does require such pollutant discharges to groundwater to obtain a permit, when the discharge “is the functional equivalent of a direct discharge from the point source into navigable waters.”
 - Court says time and distance are most important factors in evaluating if groundwater discharge is a functional equivalent of a direct discharge, but whether CWA applies will be a case by case determination at this point.
- **New SB 712 Rulemaking Requirements**
 - By December 31, 2020, DEP to initiate rule revisions based on recommendations of Potable Reuse Commission implementation framework report. Must address contaminants of emerging concern and meet drinking water and other water quality standards.
 - By January 1, 2021, DEP and WMDs initiate rulemaking to update stormwater design and operations regulations, including updates to ERP Applicant’s Handbook. Must consider low impact design BMPs, measures for net improvement performance.
 - By January 1, 2022, DEP shall complete rulemaking relating to location of OSTD systems and enhanced nutrient reducing designs, impaired or degraded water, domestic wastewater and drinking water infrastructure, potable water sources, stormwater infrastructure, TAC recommendations.
 - DEP shall adopt rules for biosolids management consistent with law. Must be ratified by legislature.
 - DEP shall adopt rules to reasonably limit, reduce, and eliminate domestic wastewater collection and transmission system pipe leakages and inflow and infiltration.
 - DEP shall adopt rules to require public utilities to file annual reports and other data regarding costs and expenditures on pollution mitigation and prevention,

including SSO, pipe leakages, inflow and infiltration. DEP shall adopt rules regarding inflow and infiltration studies and leakage surveys.

- **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.
- **February 20, 2020**, EPA issued preliminary determination that it is proposing to regulate PFOA and PFOS under the SDWA. EPA proposes to establish MCLs for PFOS and PFOA in drinking water, proposes to place restrictions on imported goods with PFAS. Identifies six contaminants that are proposed not to be regulated: 1,1-dichloroethane, acetochlor, methyl bromide (bromomethane), metolachlor, nitrobenzene, and RDX.
 - 60 day comment period began March 10, 2020 - Docket ID No. EPA-HQ-OW-2019-0583.

- **DEP Biosolids Rulemaking**

- DEP 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
- Notice of Proposed Rule published 10/29/19 and statement of estimated regulatory costs prepared and lower cost regulatory alternatives have been submitted and are being reviewed by DEP. Rule will require ratification by the legislature based on estimated adverse economic impact.
- **DEP has withdrawn proposed rule and has initiated new rule development for biosolids regulation, consistent with requirements of SB 712.**

- **U.S. EPA Lead and Copper Rule Revision**

- EPA published proposed revisions to the Lead and Copper Rule (LCR) on November 13.
 - Significant changes to existing LCR Rule including:
 - Maintains lead action level at 15 ppb but creates trigger level of 10 ppb that trigger additional planning, monitoring, and treatment requirements
 - Required actions depend on size of community water system, status of use of Corrosion Control Treatment, and existence of Lead Service Lines (LSL)
 - Prioritizes sampling of sites served by LSLs

- All water systems with LSLs required to prepare plan for an LSL replacement program if lead trigger or action level is exceeded, including notification of consumers
 - All water systems must conduct targeted sampling and education at schools and childcare facilities they serve
 - When an individual sample exceeds 15 ppb, water systems are required to “find and fix” the sites, provide information to consumers, evaluate cause of elevated lead level
 - Additional reporting requirements to and from primacy agency
- SEFLUC comments submitted. Numerous comments submitted nationwide.
- **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.
 - 1st District Court of Appeal held that trial court erred in interpretation of the amendment, and reversed the final judgment, remanding to the trial court to consider additional claims.
 - Fla. Supreme is considering whether to accept jurisdiction.

Continuing to Monitor/No Update

- **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.
 - 1/23/2020 EPA and USACE finalized Navigable Waters Protection Rule to define “Waters of the United States”:
 - The territorial seas and traditional navigable waters
 - Perennial and intermittent tributaries
 - Certain lakes, ponds and impoundments
 - Wetlands adjacent to jurisdictional waters
 - NOT WOTUS: features that only contain water in direct response to rainfall; groundwater; many ditches, including farm and roadside ditches; prior converted cropland; farm and stock watering ponds; and waste treatment systems.

- **Potable Reuse Commission**
 - Final Potable Reuse Commission Report available
 - <http://prc.watereuseflorida.com/>

- **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
 - CFWI workshops held regarding water supply planning

- **FDEP Evaluation of Human Health-Based Water Quality Criteria**
 - FDEP to collect data on how much and what types of fish and shellfish Floridians eat. The information will be used to determine current long-term fish consumption patterns for adult (18 years of age and older) Floridians, which will be used to revise Florida’s human health-based water quality criteria (HHC) listed in Rule 62-302.530, Florida Administrative Code (F.A.C.).
 - Comments on report requested by October 31, 2019
 - <https://floridadep.gov/dear/water-quality-standards/content/fish-consumption-survey-project>

- **Draft USACE RECOVER Lake Okeechobee Stage Envelope Performance Measure**
 - Based on assessment for improving CERP’s ability to restore ecosystem while providing for region’s other water-related needs.
 - Last updated in 2007 including a range of 12.5 to 15.5 feet.
 - Proposes to modify to 12 to 15 feet state target.
 - USACE accepting second round comment through May 28, followed by review by RECOVER committee for final approval.

- **DEP Contaminated Media Forum Meeting**
 - **September 12, 2019 Meeting** – <https://floridadep.gov/waste/district-business-support/content/contaminated-media-forum>
 - The meeting presented 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 Dry cleaning and State Cleanup Sites
 - Consideration of PFAS congeners other than PFOA and PFOS

- **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
 - Four public workshops held between November 4-November 7, 2019
 - Draft Rule Revisions Available on website
 - <https://floridadep.gov/dear/water-quality-standards/content/triennial-review-water-quality-standards>