

August 9, 2010

Eric Buermann, Chairman
Governing Board
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

Re: Adaptive Protocols for Lake Okeechobee Document

Dear Chair Buermann:

As you are aware, the Lake Okeechobee Adaptive Protocols Document (APD) has been under review and development for over one year. Through almost a dozen public workshops and meetings, the APD process has reached a point at which Governing Board direction is necessary. In this regard, please find attached Lee County's recommended edits to the APD.

While the South Florida Water Management District ("SFWMD") staff has done a commendable job at facilitating substantive discussions over the APD's goals, purpose, priorities, performance measures, and the like, further progress is at a standstill. At this juncture, a number of critical, threshold issues have arisen, and these issues require that the Governing Board serve its key function - as policy makers.

The issue, simply put, is whether the Caloosahatchee Estuary will be afforded a higher level of assurance and protection than it has historically received during those dry periods when freshwater releases are critical to maintain the Estuary's salinity envelope and prevent significant harm, including harm to threatened and endangered species and their habitats. Importantly, impacts to the Caloosahatchee Estuary are economic, not just ecological. Known for its 50 miles of white sand beaches to the Gulf of Mexico, Lee County tourism employs 1 out of every 5 people. We receive approximately 5 million visitors a year that generate approximately \$3 billion in economic impact. To be sure, protection of our precious natural and water resources is critical to Lee County and its residents, as well as to our tourism industry and is also crucial to the commercial and recreational fishing industry. A source of fresh water is also critical to Lee County Utilities and the Olga Water Treatment Plant. If salinity levels rise to high, health and safety issues for water consumers can be experienced. Add to these concerns the matter of providing a healthy habitat for Manatees and the Small Tooth Sawfish, both endangered species. While the economic impact of the tourism industry can be measured in dollars and cents, we also benefit from the quality of life to which a healthy ecosystem contributes.

Under the current state of affairs, there are times when the Caloosahatchee is subject to a 100% cutback – zero freshwater releases – before permitted water users are placed on any form of phased water restrictions. We have contended for the last several years that this is patently unacceptable from a legal and public policy standpoint. The Estuary should not be cut-off from Lake Okeechobee ("the Lake") unless and until water restrictions are imposed on permitted water users. And when restrictions are necessary, it should be implemented in a phased fashion as with permitted users.

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While the current Lake Okeechobee Regulation Schedule (LORS 2008) does provide the potential for more flexibility to deliver environmental water releases to downstream ecosystems, it is still woefully inadequate in limiting high level discharges and in explicitly directing for releases based on environmental demands. The flexibility built into the schedule must be managed by the USACE, and the SFWMD, to ensure that adequate fresh water is provided to the estuarine system when needed.

Lee County is advocating for operational regimes that will provide immense benefits and protection to the Estuary while resulting in relatively minimal implications to permitted water users within the Lake Okeechobee Service Area. The SFWMD's modeling simulations demonstrate this position and serve as a useful tool in providing Governing Board members with a clear understanding of the so-called "trade-offs".

We have encountered some objections in pursuing this objective. In fact, certain federal and state legal issues have been raised in an effort to block the Governing Board's consideration of what are, in effect, non-binding, and non-self executing, operational performance measures. Based upon our research and discussions, these issues are not true legal constraints, but rather self-imposed policy constraints.

Meeting the Estuary's water supply needs during the Spring of 2009 resulted in an impact of 1.02" to the Lake. Other water users reliance on the Lake is measured in feet, not inches. Equally important is the fact that once adopted, the APD will, by its own terms, not be self executing, or binding on the SFWMD. It will merely serve as guidance and provide performance measures and recommendations, nothing more, nothing less. In reality, recommendations to the Corps, by the SFWMD, will continue to be made on a case by case basis, and will continue to factor in actual and projected conditions.

The Governing Board has a unique opportunity to make a legacy public policy decision that can, and should, result in quantifiable, and immense, benefits to one of Florida's most precious natural resources – the Caloosahatchee Estuary. The Estuary is the backbone of Lee County's \$3 billion annual tourism economy. Unlike many of the other challenges facing the Governing Board, this decision does not require millions of dollars of funding, massive changes in infrastructure, or long-term implementation. The APD can, and should, provide policy guidance for enhanced consideration of downstream ecosystems such as the Caloosahatchee Estuary. Notably, as we believe the data will demonstrate, providing the Estuary with enhanced consideration will not have a meaningful implication on permitted users.

We appreciate your thoughtful consideration on these most important legacy public policy issues and the APD itself.

Sincerely,

Tammy Hall, Chair
Lee County Commission