

# Watershed Council

Southwest Florida Watershed Council, Inc.  
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June 29, 2011

Col. Alfred A. Pantano, Jr., District Commander  
U.S. Army Corps of Engineers  
Jacksonville District  
701 San Marco Boulevard  
Jacksonville, FL 32207-0019

Re: Lake Okeechobee Regulation Schedule

Dear Colonel Pantano,

I am writing on behalf of the consensus position of the Southwest Florida Watershed Council (SWFWC) in regard to the Lake Okeechobee Regulation Schedule (LORS). The SWFWC has been a frequent advocate of achieving minimum flows for the Caloosahatchee estuary (a Priority Water Body since 1999) and associated biotic components.

We are aware of the responsibilities that the Army Corps of Engineers (ACOE) and the South Florida Water Management District have in regard to operating flows from Lake Okeechobee during periods of low lake levels normally associated with the dry season. The recent revision to the *Adaptive Protocols for the Operation of Lake Okeechobee* did very little to alleviate the low flow problems in the Caloosahatchee and was not supported by many of the participants involved in the revision. We are also aware of the interim nature of LORS 2008 that was intended to be replaced by 2010 or when certain system operational goals had been achieved. We understand that some or all of those operational goals have not been achieved. However, the Record of Decision on LORS 2008 indicated that the ACOE would consider "new" information in the context of revising the LORS: *"The Corps will conduct appropriate National Environmental Policy Act (NEPA) analysis as it responds to new information and to support any future schedules, schedule deviations or modifications."*

We suggest that "new" information is available regarding impacts of LORS 2008 on the Caloosahatchee estuary with regard to the Biological Opinions from USFWS and NMFS on smalltooth sawfish and West Indian manatee that took place in 2005 and 2006. Recent research by Florida Gulf Coast University and other research institutions have provided new information (post-2008) on biota and their related ecology and functions in the Caloosahatchee Estuary that should

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be considered with regard to current management decisions. New information on the duration and severity of impacts to the Caloosahatchee estuary, which are largely a result of management decisions by the ACOE and SFWMD since 2008, is also available. In the past three years conditions have been predominantly dry resulting in lake levels being in the Beneficial Use zone a majority of the time. Unfortunately, the EIS did not model releases from the Beneficial Use zone, which has created confusion and controversy over releases from this zone when flows are most needed to sustain fish and wildlife in both Lake Okechobee and the Caloosahatchee estuary.

Despite additional operational flexibility provide in LORS 2008, compared to the previous regulation schedule (WSE), resource protection of fish and wildlife has not and is not being achieved. Fish and wildlife protection is one of the fundamental authorities and requirements of LORS 2008 as stated in the Water Control Plan and associated EIS. Two federally listed species including the smalltooth sawfish and West Indian manatee are particularly at risk. The Caloosahatchee estuary has been designated "critical habitat" for both species. The recovery plan for smalltooth sawfish specifically lists management decisions by the SFWMD as a threat to recovery. Over 600 acres of submerged aquatic vegetation (SAV), an important local forage source for overwintering manatees, has been essentially eliminated by excessively high salinity levels in the upper Caloosahatchee estuary as a result of ACOE and SFWMD management decisions related to LORS 2008. SAV populations have not recovered since 2001 when the Caloosahatchee Minimum Flows and Level Rule (MFL) was adopted or since LORS 2008 was implemented.

Furthermore, the "harm" associated with impacts to the Caloosahatchee estuary from inadequate dry season flows, as defined by the MFL rule (Rule 40E-8.221 F.A.C.) and associated statutory definition of harm (Florida Water Resources Act, Chapter 373 F.S.), has been "significant", largely stemming from the duration and severity of low flow impacts since LORS 2008 was implemented. Two consecutive years of MFL exceedances constitutes a violation of the MFL rule and triggers the "significant harm" condition. Unfortunately, there have been four consecutive years of MFL exceedances (2007-2011) and a reasonable case can now be made that "serious harm", which is also defined by State statute, has occurred; nevertheless, flows have not been provided to the Caloosahatchee estuary, even when water was available, furthering the serious harm and permanent loss of tapegrass habitat.

We understand that there are competing uses and demands supported by current State policy; however, the adversity from inadequate water supply has not been shared equitably between consumptive uses despite the requirement of Chapter 40E-21 F.A.C. for sharing adversity. Florida's failure to protect fish and wildlife has been compounded by the ACOE not meeting their obligation to protect fish and wildlife associated with the Caloosahatchee estuary through LORS 2008, especially with regard to the previously mentioned federally listed endangered species and associated critical habitat.

State and Federal plans developed over many years for reserving or creating "new water" to protect the resource are continually delayed (e.g., litigation by third parties) or are inadequate and to date

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represent nothing more than plans that may or may not be implemented at some future date. This failure to provide minimal resource requirements for dry season flows creates even more reliance on Lake Okeechobee and the associated regulation schedule. The Recovery Plan currently supported by the SFWMD is predicated on building a CERP reservoir (C-43) that will not likely meet the MFL criteria and is expensive (estimated to be over \$500 million). Even if the funds were immediately appropriated by Congress for this project, it would be many years before it came on line. Attempts to establish a reservation for existing water within the system have failed and the reservation of water associated with the C-43 reservoir is essentially contingent on completion of the project and only incorporates "new" water stored. Other storage plans presented by the SFWMD are unlikely to provide relief in the foreseeable future for a variety of reasons.

The detrimental lack of flow that the Caloosahatchee estuary consistently experiences, as well as the harmful excessive flow the estuary receives in the wet season, are both related to the design deficiencies of the Central and Southern Florida (C&SF) Project. The impacts of C&SF Project design shortfalls are heightened by the reality that the system is operated principally for flood control and water supply for special interests with only minor consideration given to the downstream receiving water impacts or the environment.

As such, we feel that LORS 2008, as is currently being implemented, is unacceptable considering the "significant harm" that has resulted. Furthermore, the ecological and economic impacts on fisheries and the local economy, as well as the ongoing threat to two federally listed species, warrant a review of LORS 2008 as it relates to low-flow impacts to the estuary. Therefore, we request that the Corps initiate the process of opening LORS for revision and incorporate modeling efforts in the Beneficial Use zone of the Lake Okeechobee release schedule.

We appreciate your consideration and await your assessment of our request sir.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Rawl', with a stylized flourish at the end.

Greg F. Rawl, P.G., Chairman  
Southwest Florida Watershed Council

Cc: Melissa L. Meeker, SFWMD Exec. Dir.

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