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March 7, 2022

Natalie Kraft
Lead Scientist, Applied Sciences Bureau
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

Dear Ms. Kraft,

Subject: Palm Beach County Comments on Rulemaking to Protect Water Made Available by the Loxahatchee River Watershed Restoration Project

Palm Beach County (County) continues to support South Florida Water Management District (SFWMD or District) efforts to advance Comprehensive Everglades Restoration Projects (CERP) and the ongoing rulemaking to protect water made available by the Loxahatchee River Watershed Restoration Project (LRWRP). The County submits this comment letter following its participation in Rule Development Workshop #2, held virtually on February 22, 2022, and review of the revised Applicant's Handbook for Water Use Permit Applications (Applicant's Handbook), released February 22, 2022, and Draft Technical Document Supporting Rulemaking to Protect Water Made Available by the Loxahatchee River Watershed Restoration Project (Technical Document), dated February 22, 2022. While the County notes SFWMD revised the Applicant's Handbook and updated the Technical Document following the initial public comment period, many of the County's original observations, submitted in the County's February 7, 2022, comment letter, do not appear to have been addressed. The County reincorporates these observations and briefly summarizes them herein. The County also submits additional comments for SFWMD evaluation.

Below are the County's comments, suggestions, and questions regarding the revised Applicant's Handbook and Technical Document:

- 1) The County appreciates the District's incorporation of the proper and legal names for Loxahatchee Slough Natural Area, Hungryland Slough Natural Area, and Pine Glades Natural Area into the revised definition of North Palm Beach County/Loxahatchee River Watershed Waterbodies within Applicant's Handbook Section 1.1 (Definitions). While these changes are an improvement, Figure 3-2, which forms the basis of the proposed definition, includes inaccuracies and remains unclear. For example, the purple-shaded area in revised Figure 3-2 includes the County's Sweetbay Natural Area but this natural area is not identified. Attachment 3 to the County's February 7, 2022 comment letter provided a map of the North Palm Beach County/Loxahatchee River Watershed Waterbodies boundaries along with County's Natural Areas boundaries. The County suggests SFWMD further examine Attachment 3 to the County's February 7, 2022 comment letter and include additional refinements to Figure 3-2 in the Applicant's Handbook and Figures 1-3 and 5-1 in the Technical Document (see Attachment 1 for additional comments).
- 2) Critical terms within the revised Applicant's Handbook Section 3.2.1.E such as "integrated conveyance systems" and "primary canals" as well as "secondary and tertiary canals" are undefined. The County believes definitions for these, and other vague terms, should be included in the final rule. At a minimum, a list of the waterbodies, primary, secondary, and tertiary canals should be incorporated. The County notes the District's water reservation for the Upper and Lower Kissimmee Basin Areas has a combination of definitions and figures to assist applicants and existing users in understanding the water elevations and regulatory criteria. Additionally, figures within the Kissimmee reservation's appendix include clarifying language such as "unlabeled waterbodies in this figure are not included in this reservation/contributing waterbody group." If the District chooses to keep these terms undefined and solely rely on a figure, the County suggests that Figure 3-2 be revised to clearly identify the waterbodies, integrated conveyance systems, and canals that are subject to the final rule.
- 3) Revised Applicant's Handbook Section 3.2.1.G has undefined terms like the "C-18W Reservoir" and "groundwater buffer zone." A clear understanding of these terms and their application within the final rule is critically important to the regulated community because these terms form the foundation of the proposed rule's groundwater restrictions. Noted previously, solely relying on a map or figure for an understanding of these significant terms is vague and problematic, especially when the United States Army Corps of Engineers (USACE) LRWRP Final Integrated Project Implementation Report and Environmental Impact Statement includes not only a proposed project footprint but also identifies the five locations where water for the project needs to be protected. Overall, the County believes additional definitions and clearly identifiable figures will improve the final rule.
- 4) While the County appreciates the District addressing the groundwater drawdown inconsistency in the original Applicant's Handbook Section 3.2.1.G, inconsistencies between

the revised Applicant's Handbook Section 3.2.1.G and the Technical Document remain. A comparison of the documents is helpful – First, Applicant's Handbook Section 3.2.1.G.2 eliminated the "1 foot or more of drawdown" criterion. Discussed more below, under the revised section, an applicant must meet the criteria of Section 3.7 or the proposed drawdown cannot "intersect" with the defined "groundwater buffer zone." But the Technical Document includes a numeric drawdown of groundwater as a proposed regulatory criterion: "[a]ny existing legal user within the RAA seeking an increase in allocation will need to perform modeling to demonstrate the cone of depression from the increased withdrawal. If the *0.1-ft cone of depression* reaches one of the defined ... Waterbodies, the user will need to identify one of the sources in Subsection 3.2.1.E.5 to meet the difference between the base condition and the proposed increase." (Lines 1071 – 1073, Technical Document). The County recommends the District eliminate all potential inconsistencies between the Applicant's Handbook and Technical Document before finalizing these documents.

- 5) The County seeks a better understanding of how the proposed rule's restriction of consumptive uses will impact surface water and groundwater within the watershed. The County owns and manages over 30,700 acres in the Loxahatchee River watershed, is a consumptive use permittee, and is an integral partner in the joint state-federal effort to restore the Loxahatchee River and watershed. As such, the County has a vested interest in fully understanding the final rule's potential ramifications. The Technical Document is silent and fails to evaluate how the identified groundwater drawdown and groundwater bubble from the LRWRP Aquifer Storage and Recovery (ASR) wells may affect Hungryland Slough Natural Area and the Florida Fish and Wildlife Conservation Commission's J.W. Corbett Wildlife Management Area. District created figures, Technical Document Figure 5-4 and Figure 5-5, clearly show that the proposed ASR wells will impact groundwater levels in both natural areas. The County seeks reassurance that its significant investment, restoration, and maintenance efforts of County-owned Natural Areas will not suffer unintended consequences because of the final rule.
- 6) A better understanding of the availability of "available wet season" or excess water and how the final rule will co-exist with the rest of the Applicant's Handbook criteria is needed. Noted previously, the County is evaluating the feasibility implementing projects within the watershed to capture and store excess water that is currently being discharged undesirably to the Lake Worth Lagoon Estuary. The County is interested in evaluating the utility of these types of projects to determine if CERP-like water resources benefits can be achieved sooner than what would be achieved under CERP. While the proposed rules, as written, seemingly eliminate access to groundwater and the Floridan Aquifer System, the other criteria in the Applicant's Handbook allow a consumptive use applicant or permittee to seek a surface water allocation beyond the 2006 base condition in accordance with Section 3.2.1.E.5. There appear to be potential issues related to the use of Section 3.2.1.E.5.e by applicants. Under this

subsection, a consumptive use applicant may demonstrate that excess water is available, “provided the applicant demonstrates that such water is not required to achieve the restoration benefits to the Waterbodies pursuant to the *Comprehensive Everglades Restoration Plan*, North Palm Beach County Comprehensive Water Management Plan, and the Acceler8 program.” The subsection continues, “[w]ater available under these conditions *shall be limited* to the wet season discharges that are projected to persist following implementation of the *entire Comprehensive Everglades Restoration Plan*, North Palm Beach County Comprehensive Water Management Plan, and the Acceler8 program.” While this regulatory burden makes sense for a consumptive use applicant or permittee, the County needs to know if it would be forced to perform such an analysis to determine the availability of excess water for a potential storage project. Being obligated to comply with regulatory criteria to store excess water and eliminate harmful wet-season flows to the Lake Worth Lagoon Estuary would not only waste government resources and tax-payer dollars but may be an arbitrary application of District rules, especially because the County would not be required to apply for a consumptive use permit (in accordance with SFWMD’s current policies) if the County advances such storage projects. While the County raises this issue, other local governments who may evaluate achieving CERP benefits through local and private means now or in the future will also be facing this unknown.

- 7) The precedential nature and current ramifications of the proposed groundwater rules remain a concern. First, the County observed an inconsistency in Section 3.2.1.G that should be resolved. The subsection’s first two paragraphs and two proposed regulatory criteria present a framework in which a consumptive use applicant or permittee may seek and demonstrate reasonable assurances to receive a groundwater allocation. However, the subsection’s final sentence conflicts with the preceding paragraphs: “no additional allocations that increase withdrawal’s impacts beyond that of the previously permitted use as of [rule effective date] will be authorized.” The sentence not only essentially eliminates future groundwater allocations from the Floridan Aquifer System but also directly conflicts with the subsection’s regulatory criteria as well as Section 3.3.4 (“No Harm” Standards and Threshold), Section 3.3.5 (“Elimination or Reduction of Harm) and Section 3.3.6 (Mitigation of Harm). The County suggests the District eliminate Section 3.2.1.G’s final sentence and revise all inconsistencies within this subsection and the other criteria in the Applicant’s Handbook before finalization.
- 8) The County seeks a better understanding of the scope, application, and interplay between Applicant’s Handbook Section 3.2.1.G and 3.7.2.E. Under the proposed rule, an applicant may comply with the proposed groundwater restrictions by either meeting the requirements in Section 3.7 or by demonstrating that an allocation will not interfere with the “groundwater buffer zone” in Figure 3-4. The County commented on the issue of undefined terms and the District’s reliance on figures earlier in this letter, but it also recognizes the District’s attempt to narrow the application of proposed rule. While the proposed revisions to Section 3.2.1.G

attempt to narrow the proposed rule's application, no such revisions were included within Section 3.7. As written, Applicant's Handbook Section 3.7.2.E could apply District-wide and apply to consumptive users beyond the "groundwater buffer zone" in Figure 3-4 and outside of the Loxahatchee River watershed. ASR wells and Floridan Aquifer System uses exist beyond the "groundwater buffer zone" and defined watershed. The Technical Document, for example, identifies at least three ASR wells within 11 miles of the C-18W Reservoir site; all of these ASR wells are outside of the "groundwater buffer zone." Beyond the potential for District-wide application, the proposed criteria in Section 3.7.2.E. is vague. As written, interference with an existing ASR well can occur if a proposed use "transmits" ASR waters by "changing or accelerating" flow velocity or direction or "changes the concentration of dissolved solids." The County seeks to understand the technical basis for these proposed criteria. The Technical Document does not support this rule language, whether it applies to the "groundwater buffer zone", the defined watershed, or District-wide. For example, the phrase "total dissolved solids" is referenced exactly four times in the Technical Document (Lines 769, 771, 809, 1128, Technical Document). Three of the references are in larger discussions about other ASR wells and the fourth is a reiteration of the proposed rule language. Additional revisions to the Applicant's Handbook and Technical Document are appropriate, so the regulated community fully understands scope and application of the final rule's groundwater restrictions.

- 9) Based on recent correspondence from USACE to SFWMD regarding the Project Partnership Agreement (PPA; Attachment 2), SFWMD's proposed expedited rulemaking schedule may not be necessary and may result in less public engagement and stakeholder participation. To date, SFWMD staff intends to present a Notice of Proposed Rule and Rule Adoption at the April 14, 2022 Governing Board meeting. This presentation will occur after only two public workshops, one revised draft rule language, and two public comment periods. In comparison, SFWMD's rulemaking timeline for the Lower East Coast Regional Water Availability restricted allocation area included significant public engagement and rule revisions within a fairly short time; 13 months. The District began the original rulemaking effort in January 2006. In that timeframe the District conducted five public workshops, publicized four proposed rule drafts, and presented before the SFWMD Governing Board and Water Resources Advisory Committee multiple times, before staff sought authorization to publish a notice of proposed rule in February 2007. Beyond the significant public engagement during that rulemaking effort, the District engaged with stakeholders and revised the draft rule language multiple times after reviewing stakeholders' public comments. For example, the base condition water use criteria in Section 3.2.1.E.3.a-d were conceptualized and proposed by stakeholders and then drafted and subsequently finalized by the District. The County understands the District's obligations as local sponsor and District staff's representations that negotiating and executing a PPA is motivating the current rulemaking schedule. However, it would appear that recent correspondence from Col. James Booth may alleviate some of the pressure on the rulemaking

schedule because USACE's execution of a PPA is now "contingent upon the ability to reallocate [Fiscal Year 2022] funds to LRWRP" and dependent on language within the Fiscal Year 2022 Appropriations Bill. In addition, the fact that the District and USACE are currently negotiating a Pre-Partnership Credit Agreement should further alleviate the need for the SFWMD-proposed expedited rulemaking schedule. Therefore, due to these new considerations, the County suggests the District extend the current rulemaking schedule to include additional workshops and/or public engagement and further revise the Applicant's Handbook and Technical Document.

The County hopes the District will review these written comments and make appropriate revisions to the Applicant's Handbook and Technical Document. Public engagement and the quality of the final rule language should not be sacrificed by moving more quickly than necessary. Additionally, the County recognizes that some of the issues raised are unique to the County. The County requests a meeting with District staff to discuss the County's Natural Areas and the County's plans for future water storage projects in the next few weeks.

Sincerely,

A handwritten signature in black ink that reads "J. McBryan" with a horizontal line extending to the right.

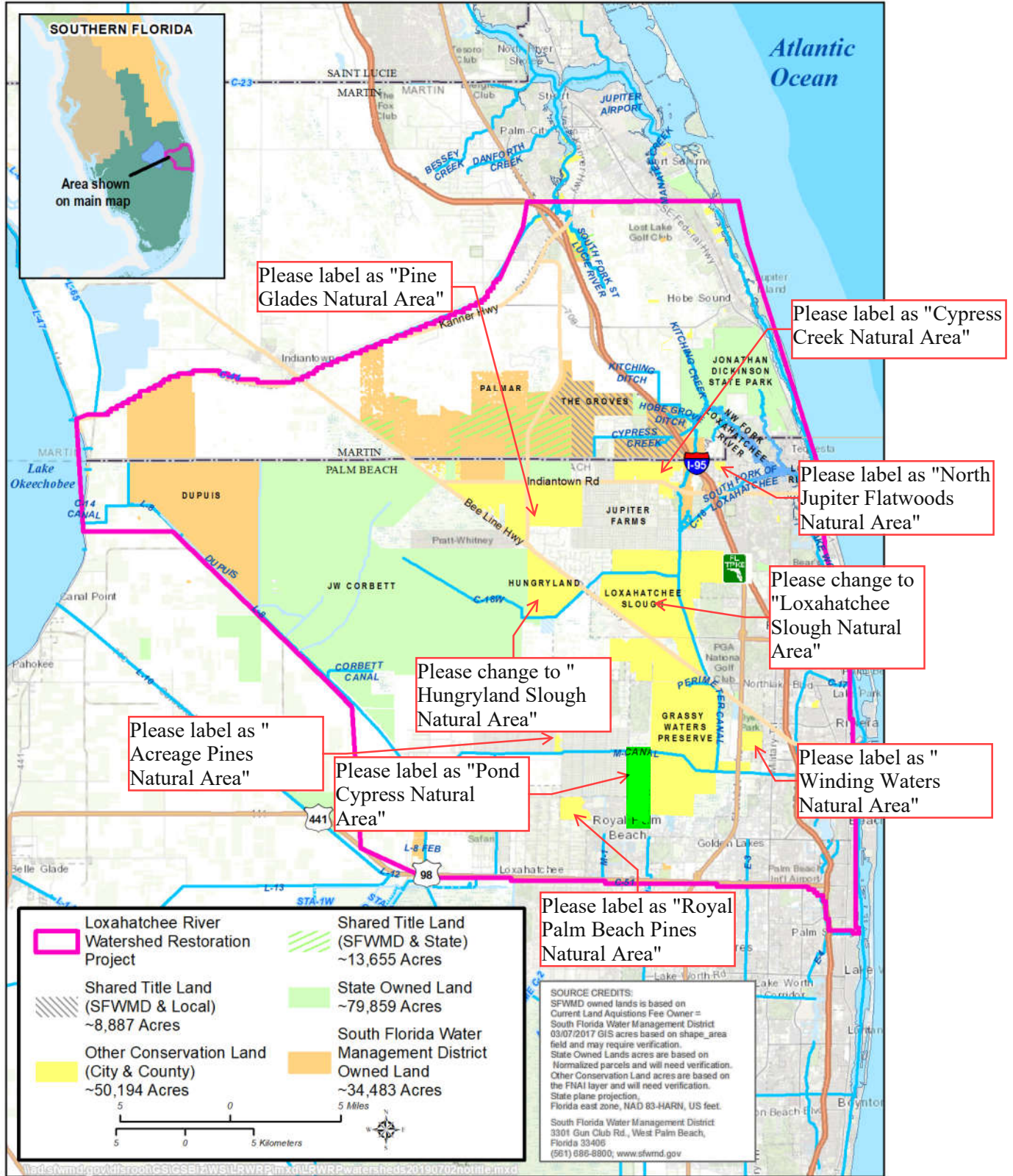
Jeremy McBryan, PE, CFM
County Water Resources Manager

Attachments (2)

cc: Lawrence Glenn, South Florida Water Management District
Sky Notestein, South Florida Water Management District
Jennifer Brown, South Florida Water Management District
Simon Sunderland, South Florida Water Management District
Jay Steinle, South Florida Water Management District
Patrick Rutter, Assistant County Administrator, Palm Beach County
Todd Bonlarron, Assistant County Administrator, Palm Beach County
Deborah Drum, Director, Environmental Resources Management, Palm Beach County
Michael W. Jones, Chief Assistant County Attorney
Scott A. Stone, Assistant County Attorney
Laura S. Olympio, Manson Bolves Donaldson Varn
Sheryl G. Wood, Manson Bolves Donaldson Varn

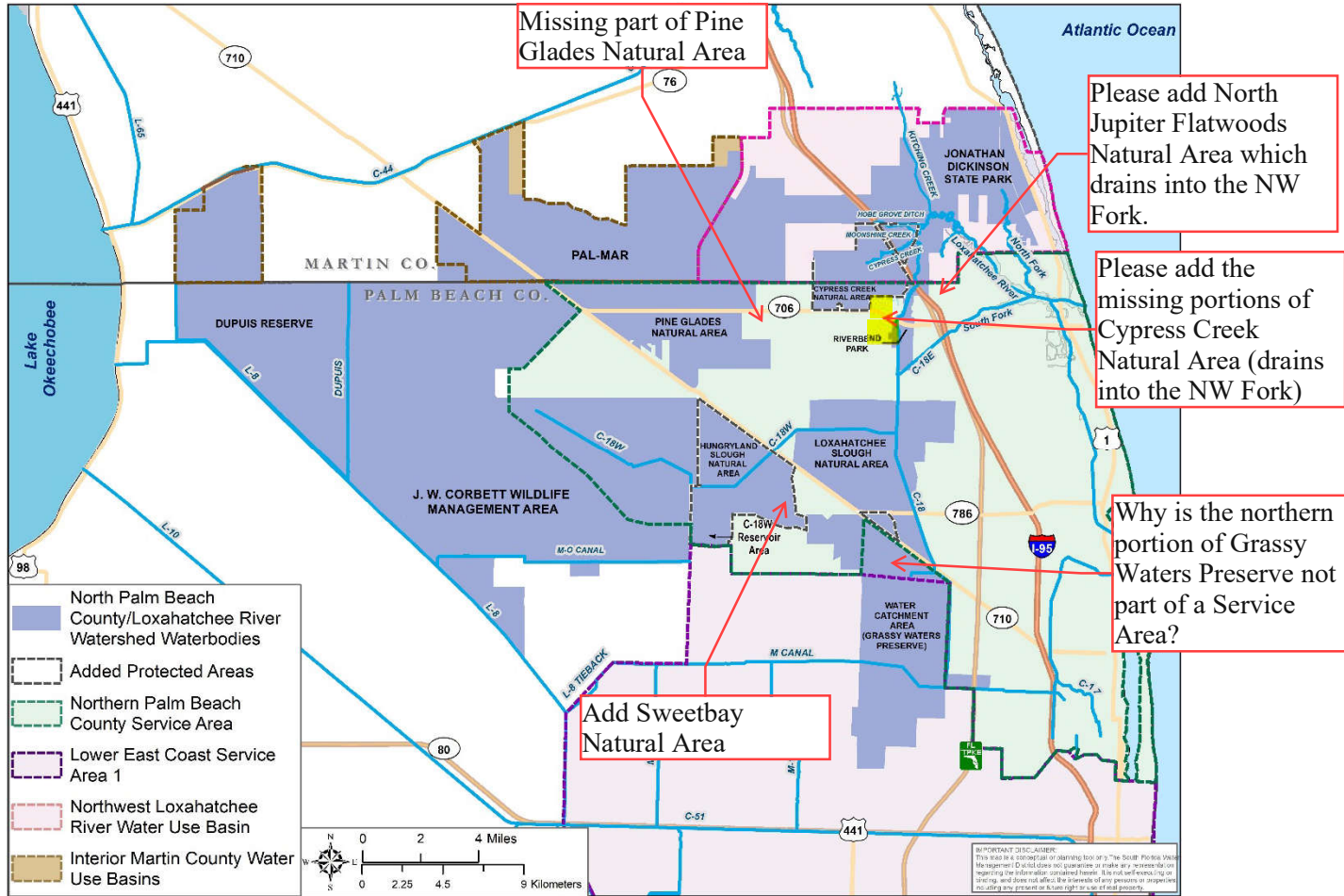
Attachment 1

Comments on Figures 1-3 and 5-1 of the Technical Document Supporting Rulemaking to Protect Water Made Available by the Loxahatchee River Watershed Restoration Project (dated February 2022)



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Figure 1-3. Project area for the Loxahatchee River Watershed Restoration Project (From: USACE 2020).



931
 932 Figure 5-1. The proposed, expanded restricted allocation area boundaries for the North Palm Beach
 933 County/Loxahatchee River Watershed Waterbodies under the Lower East Coast Regional
 934 Water Availability rule. Black dashed lines indicate new areas added to the existing restricted
 935 allocation area.

936 **5.2 Groundwater**

937 **5.2.1 Surficial Aquifer System**

938 Under the Lower East Coast Regional Water Availability RAA rule, **groundwater** withdrawals from the
 939 unconfined surficial aquifer system (SAS), including the Biscayne aquifer, are limited to the extent that
 940 they induce seepage from the North Palm Beach County/Loxahatchee River Watershed Waterbodies above
 941 an established base condition (maximum annual average use for a 5-year period ending on April 1, 2006).
 942 The current rule applies to the areas shown in **Figure 5-1**. The rule only allows allocations over the base
 943 condition water use if additional impacts to the Everglades and Loxahatchee River watershed waterbodies
 944 are avoided through alternative water supplies, offsets, or reduced or terminated base condition water uses.
 945 Wet season water can be allocated if the permit applicant demonstrates that the flows are not needed for
 946 CERP projects. The same base condition will apply to consumptive use permits within the expanded areas
 947 in this update to the Lower East Coast Regional Water Availability RAA rule (the areas shown with dashed
 948 outlines in **Figure 5-1**).

Should this say "surface water and groundwater withdrawals..." as specified in 1.52.B.1 of the handbook?

Attachment 2

Correspondence from Col. James Booth (USACE) to Drew Bartlett (SFWMD)
Regarding Loxahatchee River Watershed Restoration Project Partnership
Agreements



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
701 SAN MARCO BOULEVARD
JACKSONVILLE, FLORIDA 32207-8175

RECEIVED
FEB 28 2022
BY: *BM Kamak*

JAN 28 2021

Programs and Project Management Division
Ecosystem Branch

Mr. Drew Bartlett
Executive Director
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

Dear Mr. Bartlett:

Thank you for your October 13, 2021 letter expressing support for the development and execution of partnership agreements for the Loxahatchee River Watershed Restoration Project (LRWRP). The Jacksonville District U.S. Army Corps of Engineers (Corps) is proud of the partnership with the South Florida Water Management District (SFWMD) to implement the Comprehensive Everglades Restoration Plan (CERP).

Restoring freshwater flows into the Northwest Fork of the Loxahatchee River and increasing the system's hydrologic connectivity to benefit the local flora and fauna, is an important component of the CERP program and our common goal of successfully improving the seasonal timing and distribution of water to drained wetlands in the LRWRP watershed.

The Fiscal Year (FY) 22 President's budget does not include budget for LRWRP. The Execution of the Pre-Partnership Credit Agreement and Project Partnership Agreement (PPA) is contingent upon the ability to reallocate funds to LRWRP. Execution of the PPA will be dependent upon language contained in the FY 2022 Appropriations Bill regarding new start construction projects, as well as approval for a new investment decision. The Corps will do everything it can, within its authorities, to negotiate and execute a PPA, as soon as possible.

If you have any further questions regarding the process please feel free to contact me or Mr. Kyle Keer, Senior Project Manager, at (904) 232-1659 or email at Kyle.J.Keer@usace.army.mil.

Sincerely,

BOOTH.JAMES
.LAFAYETTE.1
186925935
James L. Booth
Colonel, U.S. Army
District Commander

Digitally signed by
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