

Reply To: West Palm Beach

August 25, 2020

Ms. Toni Edwards
Senior Scientist, Coastal Ecosystems Section
South Florida Water Management District
tedwards@sfwmd.gov

**Re: Seminole Tribe of Florida's Public Comments on the Revised Draft EAA
Reservoir Water Reservation Rule**

Dear Ms. Edwards:

On behalf of the Seminole Tribe of Florida (Seminole Tribe). The Seminole Tribe is a federally recognized tribe pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended. The Seminole Tribe's access to water is secured by the Water Rights Compact Among the Seminole Tribe of Florida, the State of Florida and the South Florida Water Management District (Water Rights Compact), which has been codified in both federal and Florida law. Seminole Indian Land Claims Act of 1987, Pub. L. No. 100-228 (1987); Ch. 87-292, Laws of Fla. (H.B. No. 1472). The Seminole Tribe's Brighton, Big Cypress, and Hollywood Reservations, as well as the Coconut Creek Trust Lands, all rely on the Central and Southern Florida Project for Flood Control and Other Purposes (C&SF Project) either directly or indirectly for water supply and flood protection. In addition, a great portion of the Seminole Tribe's history and culture is directly tied to the Everglades and the greater south Florida region. The Draft Water Reservation Rule (Draft Rule) for the Everglades Agricultural Area (EAA) Reservoir Project would reserve from allocation for consumptive uses substantial amounts of water from the C&SF System, which will impact water supply planning as well as day-to-day operational decisions that are critical to the Seminole Tribe's water resources. In addition, the water is being reserved to benefit the Everglades system, which potentially impacts the Seminole Tribe's historic and cultural resources. The Draft Rule does not apply to the Seminole Tribe under the Water Rights Compact unless the Seminole Tribe were to specifically incorporate it into the Criteria Manual. However, given that the Tribe's water supply depends upon the availability of the shared

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resource in the regional system, any action by the South Florida Water Management District (SFWMD) which would diminish the available supply would substantially affect the Seminole Tribe. Thus, the Draft Rule substantially affects the Seminole Tribe's interests

The Seminole Tribe appreciates the importance of how the EAA Reservoir Project factors in toward achieving the greater goal of Everglades restoration, and it understands the urgency that the SFWMD and many stakeholders feel in wanting to get the project built and operational. However, in its haste to complete this rulemaking, SFWMD cannot lose sight of its responsibilities to all water users who currently rely on the regional system, especially the Seminole Tribe, with whom SFWMD shares a unique relationship and responsibility. Given the number of assumptions SFWMD must necessarily make at this stage of Comprehensive Everglades Restoration Program (CERP) implementation and changing Lake Okeechobee regulation schedules, the Seminole Tribe urges SFWMD to proceed cautiously and conservatively when reserving water in such a complex system so far in advance of the time in which the water will become available for the natural system. At this time, it would be more prudent to reserve only what is minimally required to secure a project partnership agreement (PPA) with the U.S. Army Corps of Engineers (USACE). As explained in greater detail below, the Draft Rule takes an overly aggressive approach that subjects the Seminole Tribe's water rights to greater uncertainty, poses a greater risk of man-made drought, and potentially impacts its ability to develop its Brighton and Big Cypress Reservations. Furthermore, it significantly reduces the flexibility that the USACE and SFWMD have to manage and allocate water resources during the dry season. Thus, it is the Seminole Tribe's position that SFWMD amend the Draft Rule to cap the amount of water reserved at this time to only the amount necessary to secure the PPA, equal to 370,000 average-annual acre-feet.

Please accept these comments on behalf of the Seminole Tribe on the SFWMD Draft Rule for the EAA Reservoir.

- 1. The EAA Reservoir is a CERP project and SFWMD should limit the Water Reservation to the amount of additional water that the project will make available to the environment as identified in the EAA Reservoir Final Environmental Impact statement and Project Implementation Report, equal to 370,000 annual-average acre-feet of water.**

The SFWMD initiated this rule development to enable it to enter into a PPA with the USACE to begin construction on the EAA A-2 Reservoir, which is part of CERP. Prior to entering into such an agreement, Florida law requires SFWMD to allocate or reserve the additional water supply that the EAA Reservoir project is expected to make available to the natural system as identified in the EAA Reservoir Final Environmental Impact Statement and Project Implementation Report (FEIS/PIR). According to the EAA Reservoir FEIS/PIR, the original Central Everglades Planning Project (CEPP), authorized in 2014, would provide an additional 210,000 acre-feet of water on

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an average annual basis to the Everglades. The EAA Reservoir Project, which modified CEPP by adding to it the EAA A-2 Reservoir and stormwater treatment area, would direct an additional 160,000 acre-feet to the Everglades, for a total amount of additional water of 370,000 acre-feet on an average-annual basis. Thus, 370,000 acre-feet is the amount of water the SFWMD must reserve in order to enter into a PPA with the USACE to begin construction on the EAA Reservoir. The Draft Rule proposed by SFWMD, however, does not reserve a specific amount of water, it simply reserves all water flowing through three structures, the S-624, S-625, and S-626 structures. The Draft Rule places no upper bound on the amount of water that can flow through these structures, but it instead states that SFWMD modeling indicates that 825,000 average-annual acre-feet of water, over twice what is required to secure the project partnership agreement, could be conveyed through these structures and therefore reserved. The Draft Rule contains no standards or parameters to guide or restrain agency actions in operating the EAA Reservoir.

The lack of constraining or guiding parameters in the Draft Rule is problematic because the EAA Reservoir does not yet have an Operating Manual, nor will it have one for several years. SFWMD modeling that derived the 825,000 acre-feet figure was based on the Draft Operating Manual included in the EAA Reservoir FEIS/PIR and the 2008 Lake Okeechobee Regulation Schedule (LORS 08). Yet, by the time the EAA Reservoir becomes operational there will be a new Lake operating schedule in place and, as the EAA Reservoir FEIS/PIR and Draft Operating Manual acknowledge, the Draft Operating Manual for the EAA Reservoir will likely have changed over the course of the P&E phase of project implementation. Thus, SFWMD cannot reliably say that its modeling accurately represents the operating and environmental conditions that will be in place once the EAA Reservoir becomes operational. Thus, there is no rational relation to the Draft Rule and the amount of water needed to secure the PPA with the USACE, i.e., the additional water the EAA Reservoir FEIS/PIR states it will make available for the environment. To the extent that it would reserve 825,000 average-annual acre-feet of water for the natural system, it amounts to an enlargement, modification, or contravention of the CERP implementing laws and regulation upon which SFWMD derives its part of its authority for this rule development.

The lack of constraints in the Draft Rule is even more concerning when it is considered in the context of the current trend in the operation of Lake Okeechobee to send more water south during the dry season. In the proposed Planned Deviation to the 2008 Lake Okeechobee Regulation Schedule (LORS 08) (Planned Deviation), the USACE is attempting to justify lowering Lake Okeechobee and sending substantially more water south than LORS 08 currently allows in an attempt to address a water quality issue that has existed for decades. This proposed singular operational strategy concerns the Seminole Tribe because its Brighton and Big Cypress Reservations rely heavily on Lake Okeechobee for water deliveries, which are most needed during the dry season precisely when water is most scarce. The Planned Deviation threatens the water supplies of Brighton and Big Cypress Reservations because it would authorize the USACE

to discharge more water from the Lake when it is most needed by the Seminole Tribe. The USACE is also receiving pressure to incorporate this additional flexibility into the Lake Okeechobee System Operating Manual (LOSOM), which is currently under development. As currently proposed, the unconstrained Draft Rule would effectively remove the vast majority of the water sent south from the water supply pie, threatening the reliability of the Seminole Tribe's water supply and, consequently, its sovereignty.

Given these uncertainties, SFWMD should not take such an aggressive approach to this water reservation. SFWMD should amend the Draft Rule's language to place an upper annual limit of 370,000 acre-feet of water on the water reservation. This amount is what the law requires and authorizes the SFWMD to reserve in order to enter into the PPA with the USACE and proceed with construction of the EAA Reservoir. If later SFWMD determines that it needs to reserve more water due to changed conditions, it has the authority to review and amend the reservation every five years.

The Seminole Tribe offers the following proposed alternative language for subsection 40E-10.061(3)(a) of the Draft Rule, which substantially achieves the SFWMD's regulatory objective without overcommitting south Florida's limited water resources at this time:

- (a) All surface water released, via operation, from the EAA Reservoir that is directed to the Lower East Coast Everglades Waterbodies through Structures S-624, S-625, and S-626 (see Figure 3-6) up to 370,000 acre-feet, annually, is reserved from allocation.
2. **It is uncertain how SFWMD will distinguish water released through the EAA Reservoir that is reserved from allocation and water it mixes with downstream that is not reserved.**

The EAA Reservoir is not the last stop for reserved water discharged from the S-624, S-625, and S-626 structures before it enters the Everglades. It must first flow through numerous other structures along the way where it will mix with other water that is not reserved and upon which numerous stakeholders, including the Seminole Tribe's Big Cypress Reservation, its Hollywood Reservation, and the Coconut Creek Trust Lands, rely for their water supply. It is not clear how SFWMD plans to track or apportion this mixed water. This information becomes especially important during droughts when C&SF Project does not contain enough water to meet all the needs of the system and SFWMD must make operational decisions that determine who gets the limited available water.

Absent clear guidelines or standards for the operation of the EAA Reservoir, especially during dry periods, there exists the potential for severe, unaccounted-for impacts to the Seminole Tribe's water supply for the areas mentioned above. These uncertainties only underscore the

importance of taking a more conservative approach to this water reservation. While the Everglades may be able to receive an additional 825,000 acre-feet of water annually once CEPP and the EAA Reservoir are fully operational, the C&SF System will not have the ability to reliably send that water to the Everglades system for years to come, yet the potential impacts to water supply caused by the Draft Rule will occur immediately. Thus, constraining the amount of the reservation now is more prudent and provides greater flexibility in the system to accommodate uncertainty in operations, while still substantially accomplishing SFWMD's objectives.

3. SFWMD analysis on potential impacts to water supply caused by the Draft Rule is not reliable or sufficient.

The analysis included in the Technical Document for the Draft EAA Water Reservation Rule only analyzes potential impacts caused to existing legal users who withdraw surface water from the Miami and North New River Canals. Even the upstream analysis appears to have been limited to a smaller sub-basin of the Lake Okeechobee Service Area (LOSA) consisting of the area immediately south of Lake Okeechobee between the Miami and North New River Canals. The analysis relies almost completely on the fact that the current LOSA Restricted Allocation Area rules restrict new allocations or increases to conclude that the Draft Rule will not impact existing legal users. These LOSA Restricted Allocation Area rules do not apply to the Seminole Tribe and its water uses. The SFWMD's reliance on a restricted allocation rule to effectively cap water supply demand indefinitely and then, evidently, reserve all additional water in the system in the Draft Rule could cripple the Seminole Tribe's development potential for Brighton and Big Cypress Reservations unless other water reservations are secured for these Tribal Reservation lands. This comes at a time when the Seminole Tribe is working with SFWMD to amend its work plan to account for future growth potential on the Reservations and the attendant increases in surface water supply needs. This is yet another reason why SFWMD should not rush to reserve more water than is necessary so far in advance of the system's actual ability to deliver it. At the very least, SFWMD must provide better documentation as to how it plans to preserve the Seminole Tribe's water rights, which include both the Seminole Tribe's present and future surface water demands. If SFWMD does not, the consequences for Brighton and Big Cypress Reservations could be significant.

Moreover, the EAA Reservoir will not exist and operate in isolation and the potential effects this water reservation will have will not only be localized to the entities that rely on the Miami and North New River Canals for surface water deliveries. Its presence will affect operations in other parts of the C&SF Project system, most notably Lake Okeechobee. Potential secondary water supply effects are of particular concern to Brighton Reservation, because once water is sent south from Lake Okeechobee, it is no longer available to the Reservation to meet its water supply needs. The pressure on the USACE and SFWMD to send as much water south as possible from Lake Okeechobee, even when the Lake is in water supply operations during the dry season, combined with the existence of the EAA Reservoir creates considerable incentive to

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push even more water south. The Draft Rule is an unlimited water reservation that is premised on sending as much water through the EAA Reservoir as possible, which will create an even greater draw on water from Lake Okeechobee to the south, out of the reach of Brighton Reservation. This creates additional risk to Brighton's water supply that is not accounted for in the SFWMD's analysis of the Draft Rule.

Compounding the issue, the modeling performed by SFWMD was based on LORS 08 and it does not appear to have evaluated the potential impacts to Brighton's water supply that the 2020 Planned Deviation or something similar incorporated into LOSOM could have. SFWMD must perform a complete and thorough analysis of the Draft Rule's potential impacts to all users of Lake Okeechobee water, including the Seminole Tribe, in the context of a different Lake schedule that allows the USACE to send greater amounts of water south when the Lake is in water supply operations.

The lack of clear guidelines and standards in the Draft Rule or anywhere else on how operational decisions for the EAA Reservoir will be made is especially concerning during times of drought. For example, the Draft Operating Manual for the EAA Reservoir prohibits water supply discharges when the Reservoir stage is below 8 feet. One could easily imagine a situation during a dry period where there is a large demand on the C&SF Project from the Seminole Tribe, agriculture, municipalities, and the environment and water is being pumped through the EAA Reservoir as fast as it can, so it creates a sink for more water to be sent from Lake Okeechobee to meet the needs of the Everglades. At that point, the decisions made by the USACE and SFWMD are of critical importance, because if the EAA Reservoir is below 8 feet or does not otherwise meet the requirements for water supply discharges, all the water sent into the Reservoir will be lost for supply. The harms from mismanagement of water supply can have a long lag time before being manifested, and are not easy to evaluate in the moment. These decisions need to be guided by standards that are developed with a clear picture of the operational paradigm under which they will be made to best avoid making critical mistakes in the management of our water supply. That is why it is critical to take a conservative approach when creating a water reservation so far in advance of the time when it will be utilized and with so much uncertainty in the operations of an incredibly complex system.

In summary, given the number of assumptions SFWMD has had to make, the uncertainties that lie ahead in the implementation of CERP, and coupled with the speed with which this rule development is proceeding, SFWMD should take a cautious, conservative approach. As expressed above, the Seminole Tribe is very concerned that this rule would substantially commit SFWMD well beyond what is justifiably necessary to enter into a PPA with the USACE for the EAA Reservoir Project. Therefore, the Seminole Tribe respectfully requests that you scale this effort back to the minimum needed to meet the PPA requirements.

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Thank you for the opportunity to provide these comments, the Seminole Tribe would appreciate a detailed reply to the above at your convenience.

Sincerely,

Stephen A. Walker

SAW/kss

c. Jim Shore, Esquire – Seminole Tribe of Florida