

August 27, 2020

VIA E-MAIL ONLY: TEDWARDS@SFWMD.GOV AND DMEDELLI@SFWMD.GOV

Mr. Don Medellin
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

and

Ms. Toni Edwards
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

RE: U.S. Sugar's Comments on the South Florida Water Management District's August 5, 2020 Draft Rule regarding the Everglades Agricultural Area Reservoir Water Reservation

Dear Mr. Medellin and Ms. Edwards:

This firm represents United States Sugar Corporation ("U.S. Sugar"), an interested stakeholder in the Comprehensive Everglades Restoration Plan ("CERP"), as well as the interrelated management of Lake Okeechobee ("Lake"). The Everglades Agricultural Area Reservoir Project ("EAA Reservoir Project") is of key import to U.S. Sugar since its operation will directly influence our client's farmlands and water supply sources. This letter adds to our prior comments; moreover, U.S. Sugar joins in with comments submitted by Florida Crystals Corporation and other water users expressing related interests.

Support for the EAA Reservoir Project and Reservation. U.S. Sugar supports the EAA Reservoir Project and its implementation, including adoption of its related water reservation rule. We submit these comments on the South Florida Water Management District's ("SFWMD") updated draft rules, dated August 5, 2020. Prior to submitting this letter, we advised members of SFWMD staff to expect these comments. With the accelerated timeframe and the uniqueness of this prospective reservation rule process, we list some of the items that we think can improve the final rule when it is ready for adoption.

Timing of Reservoir Construction and Rule Schedule. SFWMD staff has stated that the rule development schedule was geared toward enabling execution of the EAA Reservoir Project's Project Partnership Agreement in May 2021, with Corps EAA Reservoir construction beginning in the fall of 2021. However, the Corps' May 2020 EAA Reservoir Project Final Environmental Impact Statement ("EIS") indicates: "3(e) Water quality compliance – Further clarification has been made that this project will not be cost-shared until restoration strategies is complete and meeting state standards." (at 3-17) We are not sure how to reconcile the need to sign a PPA next spring with this language. Please clarify this situation.

Restoration of the MFL and water supply. SFWMD's Technical Document to support the reservation is predicated on the current Lake Okeechobee regulation schedule, LORS08, which will not be in place when the reservoir is completed. SFWMD expressed concerns about LORS08 at the time of its adoption and received Corps' assurances LORS08 would be a temporary regulation schedule, lasting 3 years, and restoration of state water rights and the lake's minimum level performance would occur as soon as possible, even as Herbert Hoover Dike (HHD) repairs were incrementally accomplished. While the Savings Clause has become a controversial topic during discussions of the LOSOM, all agencies have confirmed that it applies when CERP projects are brought on line and must be accomplished in accord with state and federal laws. The EAA reservoir clearly is covered by this which means the analysis to reserve water for fish and wildlife should underscore the prospective nature of the current analysis and anticipated update, including acknowledging the volume necessary for the Savings Clause commitment.

Completion of the HHD. The repaired HHD provides the District and Corps with the opportunity to operate the lake to recover storage, the lake MFL and water supply in the immediate future. These infrastructure additions are capable of recovering performance immediately upon LOSOM implementation in 2022, well before EAA Reservoir Project construction completion. It seems to us that SFWMD should consider how to address both the lake minimum level violation and existing legal user status in relation to Florida laws and EAA Reservoir Project commitments.

The PPA with the Corps. When the EAA Reservoir Project was authorized, FDEP's Final Order stated that: "The Corps and the District will undertake updated project assurances and savings clause analyses for the implementation phases that are selected to be included in a Project Partnership Agreement (PPA) or amendment thereto prior to entering into the PPA or PPA amendment." Since the EAA Reservoir Project is being selected for inclusion in a PPA, it appears the need for an updated analysis is upon us and an opportunity to set definitive parameters for recovered MFL and water supply performance, per Florida law, exists.

State Legal Requirements. By virtue of adopting a state reservation rule per section 373.223, F.S., certain conclusions are made, most especially that existing legal uses have been protected. Simply because this reservation rule is prospective does not eliminate the need to demonstrate satisfaction of the statutory requirement. In fact, many CERP laws and FDEP Final Orders, based on SFWMD Resolutions, for the EAA Reservoir Project as well as the overarching Central Everglades Planning Project have similar, continuing requirements. These all reflect the Legislature's stated intent – that the water management districts are responsible for assuring sustainable water supplies for all present and projected uses in amounts sufficient to avoid the adverse effects of competition, and that environmental restoration and/or MFL solutions, are to occur via new projects, not by taking water from existing water users. To expedite project implementation SFWMD should make sure the prospective reservation rule assures compliance with these legal requirements. Such a position will also minimize risk of adverse economic impacts and set operation of south Florida's water management system toward assuring sustainable water availability for people and the environment, particularly as we face sea level rise. Not only is diminishment of existing legal user water rights prohibited, but release of CERP project funding is predicated on compliance with state law. The additional time made available by the Corps' EAA Reservoir Project scheduling provides SFWMD with the time to clarify the reservation rule assurance of future water availability for the EAA Reservoir Project.

The Prospective Nature of the Proposed Rule. The EAA Reservoir Reservation rule must take special care to fully explain the prospective nature of the rule, the CERP infrastructure status and the firm commitment to fulfilling the above legal requirements. The EAA Reservoir Project is designed to store and, thereby, create "new" water for its authorized purposes which include providing water to both the environment and water users. During EAA Reservoir construction, the Corps will develop a post-LOSOM lake regulation schedule, to integrate this new infrastructure into the C&SF Project's operation.

Again, we are supportive of the EAA Reservoir Project and Reservation rule. We are confident solutions exist for the above topics such that SFWMD can accomplish rule adoption in a manner that fulfills all aspects of the CERP program.

Thank you for the opportunity to comment.

Sincerely,



Elizabeth D. Ross

cc: Client