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March 17, 2009

Mr. Eric Buermann
Chairman, SFWMD Governing Board
SFWMD
3301 Gun Club Rd, MSC 2122
West Palm Beach, FL 33406

Dear Mr. Buermann:

I write to you on behalf of Lee County ("the County") concerning the decision made at the South Florida Water Management District ("SFWMD") Governing Board meeting, on March 12, 2009, to cease the beneficial base flow discharges from Lake Okeechobee to the Caloosahatchee River and Estuary. Our concerns are the sufficiency of the information upon which the decision was based and the process under which it was made. Simply stated, a decision involving profound implications was made without the requisite underlying science and policy implications being fully vetted.

The context of the discussion was within the "Water Conditions Report" and "Ecological Conditions Report" Workshop agenda items. During this discussion, the Governing Board was provided information regarding the water and ecological conditions across the area within the SFWMD including Lake Okeechobee. As a result of the information presented during those agenda items, the SFWMD staff has reported to the U.S. Army Corps of Engineers ("Corps") that the Governing Board "reached a consensus to recommend to the Corps of Engineers to discontinue discharges to the Caloosahatchee River".

Public input on these decisions is crucial for the Governing Board to have an accurate picture of the consequences stemming from them. The ecological, technical, economical and legal implications of this "consensus recommendation" are significant. For the reasons set forth below, we believe the SFWMD discussed this issue without weighing the relative benefits, impacts, and trade-offs involved with the decision, nor did the SFWMD provide any opportunity for meaningful input on discontinuing these vital discharges.

Public Process in Reaching Discharge Decision

The "Water Conditions Report" and "Ecological Conditions Report" are standard items on the monthly Governing Board Workshop Agenda. As you are aware, these standard discussions take on a heightened importance when weather conditions deviate from the norm. While we understand that the Governing Board will typically discuss, and react to, the information in those Reports, we do not believe important decisions, such as whether or not to continue environmental releases to the Caloosahatchee River and Estuary, should be made in the context of these routine discussions. The public should be notified of the potential decisions stemming from these discussions as was the case in the last drought.

Typically when the SFWMD has made these decisions during times of low Lake Okeechobee water levels, the SFWMD has debated the merits of the trade-offs that must occur across different parts of the natural system. From what we can see, we do not believe that this debate occurred on March 12, 2009. We believe that only after the Governing Board receives information regarding the water conditions in the Everglades & Water Conservation Areas, stormwater treatment areas, Estuaries on both coasts, Lake Okeechobee and water supply risks (not just to the Lower East Coast, but also water supply impacts to Lee County), can a meaningful discussion take place regarding these critical regional water management decisions.

Because there was no separate agenda item indicating that this was an item for action or that the Governing Board was holding a public hearing on any action stemming from these Reports, important stakeholders were not informed that an actual decision was taking place. Additionally, stakeholders were not afforded an opportunity for meaningful public comment on this decision. At a minimum, the SFWMD has a responsibility to reach out to all affected stakeholders, such as the County, when these types of decisions are being made.

Only while the SFWMD Governing Board discussion was occurring did a person in attendance at the meeting alert us to that fact so that we could at least provide a quick email request to continue the base flows. As a result of the above, the County was placed in the untenable position of having to express its concerns while the meeting was taking place. Of course, the County's input was without the benefit of any review of the supporting information provided to the Governing Board.

Caloosahatchee River and Estuary

The Caloosahatchee watershed comprises over 4,200 square miles and is the centerpiece of a nearly \$2.4 billion a year tourism industry employing over 44,500 people. Harm to the health of the River and Estuary has a direct and significant impact on that economy. The harm that occurs to the Caloosahatchee River and Estuary includes significant increases in salinities and a heightened risk of algal blooms. Not only does this harm impact the overall health of the Estuary, but these conditions limit the County's ability to withdraw its permitted water supply allocation from the Caloosahatchee River.

While we all recognize the difficulty of managing a system as complex as that in South Florida, the Caloosahatchee River and Estuary have been on the receiving end of several key decisions that have caused it significant harm over the last several years. It has literally been a "feast or famine" situation for the Caloosahatchee. After receiving several high discharge events in 2004 and 2005, the Corps undertook a multi-year effort to revise the Lake Okeechobee Regulation Schedule ("LORS") to achieve more balanced approach to Lake level management.

Lake Okeechobee Regulation Schedule and Discharge Decisions

The Governing Board should have been made aware of certain key aspects of LORS that factor into this decision. The LORS achieves more equity for water bodies receiving Lake Okeechobee discharges such as reducing damaging high water discharge events to the Caloosahatchee. Another key aspect of the new LORS is the ability of the Corps to react to conditions in an expedited manner. This is the first year of implementation for the new Schedule. Representatives from Lee County have participated with other local governments, State and Federal agencies, as well as other interested parties to review conditions and make recommendations to the Corps on Lake Okeechobee operations. In fact a meeting with the Corps occurred on the same day that the Governing Board met in Clewiston. During the meeting with the Corps, an estuarine scientist from the District reported on the success of the environmental pulse releases and the ramifications on the estuary if those releases were to be ceased. In our estimation a similar presentation by SFWMD staff to the Governing Board on estuarine conditions would have been appropriate.

The LORS manages the Lake at a healthier, and lower, level and a consequence of that lower schedule is the potential for more events when the Caloosahatchee is not receiving enough water to meet its established Minimum Flow and Level ("MFL"). In order to combat that effect, the LORS allows for "base flow releases" to be made to the Caloosahatchee when the Lake is in the "Operational Band" at an elevation between 9.7 to 17.25'. Starting October 12, 2008, the Caloosahatchee began receiving the base flows and in December of 2008 those base flows were increased to 650 cfs at the S-79 structure. This base flow is pivotal to enable the recovery of the health of seagrasses and oysters and several listed species lost by the previous damage caused by extreme low and high flows. Base flows are also necessary to protect the County's ability to withdraw and supply water from the Caloosahatchee River at the Olga Water Treatment Plant.

The Corps, and other affected agencies such as the SFWMD, U.S. Fish and Wildlife Service and the Department of Environmental Protection, are currently meeting on a weekly basis to formulate real-time decisions for managing the Lake. Up for discussion at the last inter-agency meeting was the continuation of the base flow releases to the Caloosahatchee. The SFWMD staff reported in that meeting that they were going to seek "policy guidance" from the Governing Board on March 12th regarding the continuation of that base flow. Staff seeking "policy guidance", and then recommending immediate termination of the base flows, are two dramatically different actions.

As of March 16, 2009, the Lake level was 12.42' still within the range of making a base flow release to the Caloosahatchee. For comparison purposes, at this time last year, the Lake level was 10.18' and the year prior it was 10.93'. We are approaching the remainder of the dry season and elevations of 12.42' at this time of the year are common and well within the average for this time of the year. There is a minimal probability (less than 10% chance) of approaching the point at which the Lake will be in Water Shortage Management by June 1st. See attached graphic "Lake Okeechobee Water Level History & Projection". Therefore, a move to discontinue the needed base flows to the Caloosahatchee is essentially managing the Lake in anticipation of the absolute worst case scenario. The more likely range of anticipated conditions places the Lake at an elevation of anywhere from 10.5-13.0' by June 1st, again within the range of making a base flow release to the Caloosahatchee.

Information to Form Basis of SFWMD's "Consensus Recommendation"

As stated above, the County believes that the SFWMD was provided minimal information upon which to discuss discontinuing the Caloosahatchee discharges. Only one power point slide referencing the Caloosahatchee was presented to the Governing Board during the Ecological Conditions Report and it stated:

- Corps has been pulse-releasing 650 cfs
 - o Maintaining MFL
 - o Last pulse ended Saturday
- Equals 39,000 ac-ft/month
 - o 0.10 feet from Lake Okeechobee
 - o 0.30 feet to maintain for rest of dry season
- Stop – MFL exceedances
- Continue – May be difficult to maintain for 4 months

This presentation is woefully deficient in terms of providing enough information to the Governing Board to make an informed decision regarding the value of the Caloosahatchee base flow discharges. There was no information provided by the estuarine scientists regarding the success of the base flows discharges to date or the damage that would occur from stopping them. There was no information provided regarding the water supply implications for the County's Olga Water Treatment Plant.

As indicated on the power point slide, the only implication of stopping the pulse releases was described as "MFL exceedances" which is a legal trigger and doesn't reflect the full array of ecological impacts from the decision. Additionally, the beginning of the wet season is June 1st, so it is difficult for us to understand why the Governing Board was told that environmental releases may be "difficult to maintain for 4 months" when in reality the timeframe for continuing environmental releases is less than 3 months. Finally, there was no discussion about the points I have outlined above regarding how the environmental release decisions are arrived at in the context of the LORS. The County firmly believes that the SFWMD has not had a full debate of the impact of discontinuing the pulse releases to the Caloosahatchee.

Caloosahatchee Minimum Flows and Levels

The established MFL for the Caloosahatchee River is a minimum monthly flow of 300 cfs to maintain sufficient salinities at S-79 in order to prevent a MFL exceedance. Rule 40E-8.221(3), F.A.C. An exceedance occurs during a 365 day period when:

- (a) A 30-day average salinity concentration exceeds 10 parts per thousand at the Ft. Myers salinity station (measured at 20% of the total river depth from the water surface at a location of latitude 263907.260, longitude 815209.296; or

- (b) A single, daily average salinity exceeds a concentration of 20 parts per thousand at the Ft. Myers salinity station. Exceedance of either paragraph (1) or (b), for two consecutive years is a violation of the MFL.

Obviously, ceasing the 650 cfs pulse releases will cause an MFL exceedance. This is the point at which significant harm will be occurring to the Caloosahatchee. The legal and practical effect of establishing this significant harm standard is that it is a target to avoid. The decision to cease the base flows to the Caloosahatchee must include a discussion of whether, and to what extent, this decision contravenes the legal and scientific underpinnings of the adopted Caloosahatchee MFL. The County believes that discontinuing the Caloosahatchee releases, and thus triggering the MFL exceedance, is completely unnecessary given the fact that (1) the quantity of water will be small in terms of the overall water budget for Lake Okeechobee (0.1-0.3'), (2) the duration will be short (less than 3 months) and (3) the LORS provides for base flows to be made when the Lake is at 12.42' at this time of the year.

The SFWMD has an affirmative obligation to adequately inform the public of critical decision-making and allow for meaningful public input. The County supports the concept of "shared adversity", however, shared adversity cannot be applied unless, and until, all of the trade-offs involved with the decision are publicly vetted and understood. Then, and only then, can shared adversity be properly applied. We request that you immediately schedule an expedited and special public hearing on this issue, with a full presentation of the underlying environmental, scientific and policy implications. In order for the Governing Board to make a full and informed decision this approach is absolutely necessary. Due to the immediate and far reaching implications of this decision, time is of the essence. The County is ready to productively assist in that decision-making process in any way that we can. Please contact me for any additional information you may need.

Sincerely



Ray Judah, Chairman
Lee County Board of County Commissioners

Lake Okeechobee Water Level History & Projection

