City of Stuart
City Commission

City of Stuart

121 SW FLAGLER AVENUE • STUART FLORIDA 34994

Phone: 772.288.5312
Fax: 772.288.5316

May 28, 2020

South Florida Water Management District Governing Board
3301 Gun Club Road
West Palm Beach, Florida 33406

Sent via email

Dear Governing Board Members,

We write to express our gratitude for your thoughtful discussion on the interpretation of the Water Resources Development Act (WRDA) "Savings Clause" which is also currently an issue of debate in Congress. The City of Stuart has confidence that you will not be persuaded by the campaign of misinformation and misrepresentations espoused by private actors in the agricultural industry and a handful of communities who seek to benefit from a lake regulation schedule that would undermine the very progress we have made these past two years. With this said, we hope by means of this letter to provide our response to some of the claims made during public comment at the Governing Board meeting on May 14th in order to more clearly outline the fatal flaw in interpreting the Savings Clause so broadly and unlawfully.

Claim 1: The Comprehensive Everglades Restoration Plan would not exist without the Savings Clause.

We do not dispute that one of the many goals of the 106th U.S. Congress in the 2000 WRDA bill was to provide a 'grandfathering' of protections for existing Lake Okeechobee water supply users (including the natural environment) in the planning and development of capital projects associated with CERP. However, it would be an arbitrary and capricious form of rulemaking for a state or federal agency to extend the Savings Clause protection retained for CERP project implementation to the mutually exclusive process of managing lake operations. Both LORS and LOSOM are part of a multifaceted operational framework and do not qualify as CERP projects. Although the Army Corps engineers its lake regulation schedule to be harmonious with CERP, it is important to distinguish its separate legal purview, which is not be subject to authorizing language in CERP.

Furthermore, the very assumption that the Savings Clause is a supreme doctrine over all other CERP priorities is a deeply flawed one. As stated in the U.S. Senate Committee Report dated July 27, 2000, "Endorsement of the Plan (CERP) as a restoration framework is not intended as an artificial constraint on innovation in its implementation. The committee does not expect rigid adherence to the Plan as it was submitted to Congress. This result would be inconsistent with the adaptive assessment principles in the Plan. Restoration of the Everglades is the goal, not adherence to the modeling on which the April 1999 Plan was based." The report also goes on to specify that "the committee expects that the agencies responsible for project implementation report formulation and Plan implementation will seek continuous improvement of the Plan based upon new information, improved modeling, new technology and changed circumstances."

The circumstances have very much changed over the destructive 20-year period following the adoption of this Plan. The Caloosahatchee and Saint Lucie Estuaries have both been catastrophically damaged from the strict adherence to priorities of water supply users over all others originally identified in the 2000 WRDA bill – which was never the intent of Congress. Meanwhile, the same bad-faith actors that persuaded elected officials and regulatory managers to prioritize the needs of existing water users over flood control and water quality for two decades, are now arguing in favor of a failed status quo. The City of Stuart supports a vision for adaptive management by balancing the needs and priorities of ALL stakeholders, which meets the goals and provisions of CERP, NEPA, and the Clean Waters Act. The prioritization of irrigation supply over environmental restoration and human health and safety has proven disastrous for man and marine life alike – and it must end.

Claim 2: Water supply should be guaranteed for users at existing rates in the spirit of the law.

The six guidance memorandum prescribed by WRDA and approved by all of the relevant federal, state, tribal, and local stakeholders states, "The Savings Clause has a very specific purpose: to protect existing legal sources of water from elimination or transfer until a new source of comparable quantity and quality is available and to protect levels of service for flood protection, existing and in accordance with applicable law, from reduction by CERP projects." The law is abundantly clear on the scope of the Savings Clause, which was designed to ensure that CERP projects would be neither designed nor authorized unless special considerations and protections for water supply users were included into each project plan. At no point does the clause guarantee lake levels at specific elevations throughout the year as an operational component to LORS or LOSOM.

The guidance document also acknowledges the impact of intervening non-CERP activities while stating, "The Savings Clause only applies to changes from the date of enactment of WRDA 2000 that result from "implementation of the Plan." CERP is comprised of many individual capital projects intended to improve the conveyance of water to users and the environment while managing the risk of flood. At no point was the Savings Clause intended to guarantee that water supply users would not be impacted by non-CERP activities. The guidance document clarifies this when it says, "The Savings Clause does not require CERP to make up for reductions in quantity of existing legal (water) sources or levels of service for flood protection caused by intervening non-CERP activities, but it does prohibit the Plan from further reductions."

It is important to remember that the Savings Clause exists nowhere else in federal law except for WRDA and should therefore be strictly applied to CERP projects only. Additionally, the protection of water supply within the CERP plan is directed by pre-CERP baseline conditions and not necessarily the water use as it exists today.

Claim 3: A higher lake elevation would allow for the conveyance of desperately needed water south.

The reality of the severe disparity of freshwater running south through the Everglades and the water retained in the lake has little to do with maintaining the lake at higher elevations throughout the year. As with any chemical reaction or balancing of competing priorities, there is always a limiting "agent" which prevents further desired actions or reactions. In the conveyance of water south, there are several factors including both static and dynamic variables which prevent more water volume from reaching desired areas such as the Everglades National Park and Florida Bay. It is misrepresentative of infrastructural and legal constraints to imply that a higher lake elevation would yield a higher conveyance of freshwater south. The water quality provisions set forth by the judicial system, and the protection of endangered species play as much a fundamental role as the physical limitations of existing infrastructure.

At no point in the three decades preceding the 2019 and 2020 adaptive lake management operational changes did the Everglades and Florida Bay receive anywhere near the amount of freshwater water needed through conveyance. It is evidenced that Florida Bay alone receives only about twenty-five percent of the freshwater it needs. While the absence of precipitation can have tremendous effect on the system, one of the primary limiting factors is phosphorous loading from agricultural runoff in canals that act as throughways for water conveyance to the south. And no amount of additional water in Lake Okeechobee can reconcile the legal requirements of phosphorous reduction in water conveyed south, as mandated by the courts.

Claim 4: The dry conditions caused by recent lake management have harmed the Everglades.

In order for this claim to be true and accurate, at a minimum, the following baseline assumptions would also have to be true: (1) the drought conditions only exist because of a low lake level, (2) water would be easily conveyed naturally or otherwise to areas most in need with a higher lake level, (3) the damage to the Everglades is measurable and directly caused by drought.

For the first assumption, we must consider how and why droughts occur. According to various climatology and meteorology sources, including the Florida Climate Center, the State of Florida experiences at least one severe (or worse) drought every decade. These droughts do not always impact the same region of the State, but they occur periodically and consist of meteorological, hydrological, agricultural, and socioeconomic factors. The current United States Drought Monitor recognizes southwest Florida as under a severe drought (D1 & D2), and it has been so throughout 2020. These conditions are attributed not to the elevation of Lake Okeechobee, but rather the precipitation disparity between the east and west coast of Florida within the past 6 months. So, the assumption that the severe drought conditions in southwest Florida exist due to low lake levels is categorically false.

The second assumption implies that irrespective of precipitation in southwest Florida, a higher lake level would allow for more freshwater conveyance further south. The problem is that drought conditions have been identified by climate experts much further to the southwest than Water Conservation Area 3, which was identified as the most impacted of the conservation areas. In addition, both Water Conservation Areas 1 and 2 are above their current regulation schedule – even with a lower precipitation year. Water Conservation Area 3 is also very close to its regulation schedule. It is clear from these facts that the assumption of a higher lake level would improve conveyance of water south is at best a myth, and at worst a distortion of truth.

The last assumption for the purposes of this response attempts to infer that over the past several weeks, the Everglades has experienced “devastating” damage to its ecology and ecosystem. We take special interest with this claim considering the several decades of catastrophic damages we have endured because of freshwater discharged to our estuary. If there were in fact a few weeks of environmental stress or damages to the Everglades consequential of the new adaptive lake management protocols adopted by the Army Corps in 2019, we urge that a weighted comparison be made to the disastrous impacts of one “lost summer” for the Saint Lucie Estuary. The City of Stuart is confident that the facts and science will illustrate which of the two has prevailed as the most damaging policy framework.

There exists substantially more evidence in history and within law that the Savings Clause was never intended to be applied supremely or broadly beyond the context of CERP project implementation, but it is for the aforementioned reasons we vehemently oppose any effort to alter the spirit and intent of

Congress in the 2000 Water Resources Development Act (WRDA) which explicitly applies the Savings Clause to CERP "projects"; LOSOM is not a CERP project.

Now is not the time to advocate for permanent policy changes that ignore decades of existing legal authority. By way of this letter we urge you to reject any effort to apply the Savings Clause to District operations as it pertains to lake operational management in concert with the U.S. Army Corps of Engineers, as this would both undermine and defeat the positive collaboration and results generated by all to date.

Keeping water supply at the forefront of every decision and thereby maintain lake elevations at higher levels year-round endangers the greatest number of persons, businesses, and ecologies while jeopardizing the very framework of compromise and consensus building, we started through the LOSOM process. We have come so far in such a short period of time in order to reform a system of representation of the public trust that previously inured to the benefit of the few. We urge the Governing Board to stay the course and to continue providing for a smarter, healthier, and better water management system for all.

Sincerely,

_____	_____
Mike Meier	Eula R. Clarke
Mayor	Vice Mayor
_____	_____
Merritt Matheson	Rebecca S. Bruner
Commissioner	Commissioner