



May xx, 2020

The Honorable Peter Defazio
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
2167 Rayburn House Office Building
Washington, DC 20515

The Honorable Sam Graves
Ranking Member
Committee on Transportation & Infrastructure
U.S. House of Representatives
2167 Rayburn House Office Building
Washington, DC 20515

The Honorable Grace Napolitano
Chair
House T&I Subcommittee on Water Resources
and Environment
2167 Rayburn House Office Building
Washington, DC 20515

The Honorable Bruce Westerman
Ranking Member
House T&I Subcommittee on Water Resources
and Environment
2167 Rayburn House Office Building
Washington, DC 20515

Colonel Andrew Kelly
US Army Corps of Engineers
4070 Boulevard Center Drive
Jacksonville, Florida 32207

Sent via Email to: Andrew.d.kelly@usace.army.mil

Dear Colonel Kelly,

The undersigned local governments fully support the implementation of the Comprehensive Everglades Restoration Plan ("CERP") and the development of effective Lake Okeechobee operations ("Lake operations") that do not continue to damage coastal estuaries, Lake Okeechobee and the Greater Everglades ecosystem. Our local economies are dependent on a healthy environment to drive our tourism based economies and quality of life. Our communities have been fully engaged in the development, implementation and authorization of CERP projects and we have actively participated in separate, but related, efforts to modify Lake operations.

Recently, there have been efforts to extend the "Savings Clause" in Water Resources Development Act ("WRDA") 2000 to the ongoing development of the Lake Okeechobee System Operating Manual ("LOSOM") being conducted pursuant WRDA 2018 and other federal law including the

National Environmental Policy Act (“NEPA”). The stakeholders advancing this extension are implicitly advocating for a prior Lake operation schedule, known as Water Supply and Environment (“WSE”), and the larger water storage capacity / supply benefits it mandates. We vehemently oppose this effort for the basic principle that the Savings Clause applies to CERP “projects”; LOSOM is not a CERP project.

The Savings Clause itself was included in WRDA 2000 as *a protective mechanism* for “assurances” to prohibit an elimination or transfer of water due to CERP *project* implementation “until a new source of water supply of comparable quantity and quality as that available on the date of enactment of this Act is available to replace the water to be lost as a result of implementation of the Plan”. The Savings Clause was not crafted as *guarantee* for a certain quantity of water out of Lake Okeechobee (a source) from that point forward in perpetuity. The stakeholders advancing the extension of Savings Clause applicability are not simply relying on the protective aspect of the clause. Instead, they appear to be using the clause as a tool to extend federal protections for all Lake operations for their water supply benefit, thereby disregarding state water law.

Through multiple congressional authorizations since 2000, the Savings Clause has never been extended to apply to Lake operations, contrary to the arguments advancing the broad application of the Savings Clause. We find no authority within WRDA 2000 or its implementing regulations that extend the Savings Clause and the larger Lake storage capacity offered under WSE to all future regulation schedules. Since clearly WSE was the existing Regulation Schedule at the time of WRDA 2000, Congress could have expressly extended that application of the Savings Clause to WSE in this manner. Had Congress written that language into WRDA 2000, it would have made the WSE the only Lake schedule that could ever exist unless and until a comparable capacity of water sources was developed through subsequent CERP “projects.”

Congress has recognized that there would likely be modified Lake schedules in the future to include subsequent CERP projects that are authorized, but this is distinct from the Savings Clause that applies to CERP projects. CERP and its implementing regulations distinguish between CERP as a “Plan” and CERP “projects”. Revisions to Lake operations are not identified as separate CERP projects. Modifications of the schedule are not necessarily needed to implement individual CERP projects, but new schedules are necessary for the operation of the overall CERP Plan once additional components of the CERP Plan are completed and other needs for Central and Southern Florida (“C&SF”) purposes, such as flood control and enhancement of fish and wildlife.

Simply put, the result of such a proposed broad extension of the Savings Clause of WRDA 2000 to Lake operations would be to solidify in perpetuity a Lake Okeechobee operational regime that disregards the purpose of the current NEPA process. There have been significant changes in Florida since WSE was implemented in 2000. Among those changes are increases to the scientific body of the knowledge has grown considerably in regards to operation of the system’s infrastructure to address water quality and water quantity and the resulting environmentally devastating impact on the Florida ecosystem from prior and current Lake operations. A schedule in place at the time of WRDA 2000, a scientific blunt instrument by today’s standards with a predisposition to water supply and irrigation over ecosystem health, is not the base condition for

all Lake operations. Such an interpretation ignores other applicable Federal Law that applies, such as the Clean Water Act (“CWA”) and NEPA, when either a CERP or non-CERP project, or as in this case, a new Lake operation schedule is developed.

The bottom line is that our communities want to see CERP projects implemented, where storage north, south, east and west of Lake Okeechobee will provide water at the right quantity, quality, timing and distribution. Our communities also want a healthier Lake schedule through the LOSOM process as contemplated by WRDA 2018, and currently subject to a NEPA process, which should ensure that any future Lake schedule is not inconsistent with the goals and purposes of CERP.

CERP as a “Plan” is about ecosystem restoration and that includes the ecosystem as whole. The “projects” to achieve the CERP Plan require the application of the Savings Clause on a project by project basis. The Lake operation schedules are neither CERP projects nor were they ever intended to be subject to the application of the Savings Clause. Now is not the time for permanent policy changes that have immense environmental, and thus, economic impacts, ignoring decades of existing legal authority for implementation of CERP projects and new C&SF Lake operations.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

HAROLD E. JENKINS II, CHAIRMAN