



Ms. Yvonne Haberer
U.S. Army Corps of Engineers
Jacksonville District, Planning Division
Environmental Branch
P.O. Box 4970
Jacksonville, Florida 32232-0019

Dear Ms. Haberer:

The PURRE Water Coalition (“PURRE”) submits these comments on the Revised Draft Supplemental Environmental Impact Statement for the Lake Okeechobee Regulation Schedule Study (“revised draft SEIS”). To conserve space, we generally incorporate by reference our comments on the draft SEIS and the comments submitted by other governmental and nongovernmental entities in the Caloosahatchee River and Estuary area, including Lee County and the City of Sanibel, on the revised draft and all previous drafts of the SEIS.

We are appreciative of the U.S. Army Corps of Engineers’ (“Corps”) expressed attempts to consider the impacts of releases from Lake Okeechobee on the Caloosahatchee River and Estuary. Thank you for your efforts. However, we still believe that the analysis in the revised draft SEIS lacks sufficient detail and continues to ignore or skim over many critical issues that we raised in our earlier comments. The Preferred Alternative identified in the revised draft SEIS represents only an incremental improvement over the current situation. While it provides some slight improvements over prior proposals, it still calls for harmful discharges to the Caloosahatchee River from the Lake.

COMMENTS

I. The Revised Draft SEIS Does Not Consider An Adequate Array Of Alternatives

A. The Proposed Plan is a Long-Term Plan

The revised draft SEIS states that the proposed plan is only temporary, until additional storage becomes available in planned CERP and Acceler8 projects. In reality, the plan chosen in this process will likely be in place for many years. Given that more than two years have already passed since this process to modify the current regulation schedule began, it is unrealistic for the Corps to state that Phase 3 of the water regulation schedule planning will follow the projected timeline. Historically, the Corps’ “interim” water management plans have tended to be of longer duration than expected, such as the operational plans intended to protect the Cape Sable Seaside Sparrow that began in 1999 and linger today. Because the affected communities may have to

live with the selected plan for years to come, it is essential that this process is effective at evaluating alternatives across all of the relevant performance measures.

B. The Revised Draft SEIS Continues to Apply an Imbalanced Set of Criteria for the Selection of Alternatives

The revised draft SEIS asserts that the Corps changed the 17.25 feet high lake constraint for Lake Okeechobee from a hard constraint into a performance measure. We appreciate the Corps taking seriously our concerns that an arbitrary constraint of 17.25 feet unnecessarily hindered development of alternatives that could result in less harmful discharges into the Caloosahatchee River and Estuary.

However, the revised draft continues to use the Stormwater Treatment Area (“STA”) 3/4 capacity limitation as a hard constraint, which necessarily means that Lake water cannot be sent to the Water Conservation Areas (“WCAs”) in any significant amount, especially during the wet season when high water levels are most likely to be a problem. This results in more Lake water being sent down the Caloosahatchee River into the Estuary. We continue to believe that the STA-3/4 constraint is a blatant double standard that places the interests of the WCAs over the interests of the Caloosahatchee Estuary and its surrounding communities. The Corps has yet to explain why it is willing to adopt a hard constraint based on water quality for the WCAs but not for the Caloosahatchee Estuary.

C. The Revised Draft SEIS does not Include any Alternative that Would Provide Significant Benefits to the Caloosahatchee River or Estuary

Every alternative considered in the revised draft SEIS will result in significant discharges of polluted Lake water into the Caloosahatchee River and Estuary. The Preferred Alternative still calls for extremely harmful discharges to the Caloosahatchee River and Estuary from the Lake. While it provides some improvement over prior proposals in numbers of mean monthly flows above 4500 cfs, the Preferred Alternative is anticipated to cause more than twice as many high flows of long duration (greater than five weeks) than the current WSE. Given the significant detrimental impact that releases from Lake Okeechobee have had on the Caloosahatchee River and Estuary, and the concern repeatedly expressed in the revised draft SEIS to limit such harmful impacts to the maximum extent possible, we still believe the Corps should evaluate at least one alternative that will result in significant benefits for the Caloosahatchee River and Estuary and their surrounding communities.

The Corps describes additional storage capacity that the South Florida Water Management District has proposed to locate on private and public lands. The Corps states that this is a state, not federal, project. As a result, it does not consider the addition of this storage in its analysis of proposed alternatives. The Corps should actively seek these storage opportunities, not hold them at a distance.

D. The No Action Alternative

We still disagree with the Corps’ decision to analyze the now-constructed temporary forward pumps in a separate National Environmental Policy Act (“NEPA”) process from the proposed regulation schedule. We believe that *prior to* installation of the temporary forward pumps and

adoption of a new regulation schedule, the cumulative impacts of the two actions should have been analyzed *together* in one NEPA process. However, now that the temporary forward pumps have been permitted and installed, we believe the SEIS needs to reflect that the pumps have been permitted and constructed. Right now, the revised draft inaccurately states that the temporary forward pumps are “anticipated to be permitted and installed by the SFWMD [the South Florida Water Management District] in 2007.”

E. There is No Analysis of the Effects of the Proposed Alternatives on the Socio-Economic Environment

Section 6 of the revised draft describes the socio-economic conditions in the affected region, but does not include any analysis of the effects of the proposed alternatives on the socio-economic environment. The purpose of Section 6 of the SEIS is to report on the effects of the alternatives, not to merely describe existing conditions. In particular, the damage to our estuary caused by the polluted Lake releases is causing significant long-term harm to our local communities, which should be addressed.

II. The Revised Draft SEIS Does Not Adequately Analyze the Environmental Impacts of Each Alternative

A. There are Still Flaws in the Hydrological Modeling Underlying the Revised Draft SEIS

The hydrological modeling underlying the revised draft SEIS is still flawed. The period of simulation for this SEIS, as for the prior draft, is 1965 – 2000. According to the SEIS, the 2001 – 2005 data were not available in time for the SFWMW modeling, although the Corps did use the 2001 – 2005 data in the Lake Okeechobee Operations Screening Model and found the Preferred Alternative E effective for managing high lake elevations under this set of conditions. While we are heartened that the Corps performed some modeling using the 2001 – 2005 data, the Corps states that the SFWMM is the “best available tool that can simulate the complexities of the water control system and operational rules of proposed regional-scale water management alternatives and provide adequate information for making water management decisions.” We continue to urge the Corps to coordinate with the SFWMD to obtain the 2001 – 2005 data and model the effects of the various alternatives using the SFWMM for this period.

The revised draft unsuccessfully attempts to address this concern by describing the use of “additional operational flexibility” to address circumstances that were not evaluated for the period of record (1965 to 2000). The SEIS states that this flexibility is to be used when the LORSS is “not effective at managing lake levels consistent with the intent of the Preferred Alternative.” The SEIS describes some scenarios during which this additional operational flexibility might be implemented, all of which involve conditions experienced in 2001 – 2005, further underscoring the importance of modeling the effects of the various alternatives under a period of record that includes these years. It goes without saying that the Corps must do a public NEPA analysis before implementing unanalyzed operational plans that cause harm to the Caloosahatchee Estuary.

The SEIS describes performance measures for the Caloosahatchee Estuary, but not for the Caloosahatchee River. In fact, the River is hardly discussed in the SEIS at all. Additionally, the only performance measure discussed on evaluating the environmental effects in the Estuary is salinity, which is not actually evaluated, as flow rate (in cubic feet per second, or cfs) is the only measure reported.

There are still other apparent flaws in the modeling. For example, the Corps assumed that 12-16% of Lake releases could be sent down the L-8 canal, when there are limitations on such discharges due to environmental in downstream receiving waters. The Corps assumed steady flows for the Estuary base flows, when the South Florida Water Management Model (“SFWWM”) may not be designed to model such flows. The SFWMM also cannot model discretionary actions which are undefined in the plan. We continue to believe there are other technical flaws with the modeling as well.

B. There is Virtually No Discussion of Water Quality Issues and Impacts

1. There is Insufficient Analysis of How Lake Releases Damage the Caloosahatchee River and Estuary

The Corps fails to acknowledge the severe water quality impacts from Lake discharges into the Caloosahatchee River and Estuary, even though these impacts have been well documented and include negative effects on salinity levels, light attenuation for submerged aquatic vegetation, and growth of harmful algal blooms.

We were disappointed to see that the Corps dismissed our concerns about water quality impacts in the Caloosahatchee River and Estuary by stating, in response to our comments on the previous draft, that, “[i]t is outside the scope of the regulation schedule study to model for water quality effects in the Caloosahatchee Estuary.” This distorts the purpose of the SEIS – to identify and analyze all impacts – direct, indirect, and cumulative. This necessarily includes impacts on the Caloosahatchee River and Estuary. We are surprised that the Corps would even assert that it need not analyze water quality impacts.

With regard to the brief analysis of the impacts of Lake releases on the Caloosahatchee River and Estuary contained in the revised draft, the numbers cited about water quality are slanted. The revised draft focuses on the fact that Lake Okeechobee releases are only one source of the nutrient loading coming into the Caloosahatchee River and Estuary. However, the year reported, 2000, was a drought year, and even in those conditions, Lake Okeechobee releases accounted for 31 percent of the total nutrient load into the Caloosahatchee Estuary. The use of data from a single year is misleading; the Corps should conduct a long-term analysis of nutrient loading. Furthermore, the Corps ignores the fact that Lake discharges are a point source that can be controlled, unlike the basin flows that account for the rest of the nutrient loads.

Instead of taking for granted that any release schedule will necessarily result in harms to the Caloosahatchee Estuary, as the revised draft SEIS does, the Corps needs to actually analyze the potential impacts of Lake releases. It is well-known that most problems in the Estuary are linked to these water quality issues.

2. There is No Analysis of the Different Water Quality Impacts in the Caloosahatchee River and Estuary of the Various Alternatives

Like the previous draft, the revised draft fails to analyze how the different alternatives affect water quality in the Caloosahatchee River and Estuary. The revised draft still fails to assess how the different alternatives will affect salinity, color/turbidity, and nutrient levels in the waters receiving Lake discharges. A comparative analysis would help everyone understand the choices being made.

3. There is Insufficient Analysis of the Effect of Different Alternatives on Blue-Green Algae, Red Tide, and Red Drift Algae

There is still virtually no discussion in the revised draft of what different alternatives will affect water quality issues such as harmful algal blooms, including blue-green algae, red tide, and red drift algae. We believe inclusion of such analysis is critical.

The revised draft SEIS is dismissive of any link between high nutrient levels in Lake releases and the occurrence of red tide and other harmful algal blooms in the Caloosahatchee Estuary. The SEIS makes the point that in the summer of 2006, blue green algal bloom activity was observed in the Estuary when virtually no water flowed from Lake Okeechobee to the Caloosahatchee River. Use of a single data point is not scientific evidence sufficient to disprove a link between Lake discharges and harmful algal blooms. This also puts on blinders to the cumulative effects of nutrient loading caused by Lake releases. Furthermore, even if no single controllable cause for these blooms has been identified, high nutrient inputs are likely a contributing factor, and the Corps should attempt to lessen the influence of high flow volumes into the Caloosahatchee River and Estuary.

4. There is No Discussion of Compliance with Water Quality Standards

We were disappointed to see that the revised draft still contains no discussion of whether the Caloosahatchee River and Estuary, and associated waters, are currently meeting Florida water quality standards. The revised draft fails to acknowledge the water quality impacts from Lake discharges into the Caloosahatchee River and Estuary, even though these impacts have been well documented.

C. There is No Discussion of Drinking Water Issues

We raised serious concerns regarding drinking water issues in our previous comments. We were therefore disappointed, and surprised, to see that the revised draft SEIS dismisses these concerns with a single sentence that declares, without any analysis, that none of the alternatives would adversely impact drinking water. The revised draft fails to acknowledge the link between nutrient-enriched Lake releases and outbreaks of blue-green algae in the Caloosahatchee River, which threaten a direct source of drinking water for Lee County residents and tourists. We cannot overstate how critical it is that the SEIS study this issue, and the effect that the different alternatives might have on the growth of blue-green algae in the Caloosahatchee.

D. The Discussion of Endangered Species Impacts is Completely Deficient

The revised draft SEIS's discussion of endangered species issues remains weak. It still focuses almost exclusively on endangered species issues in Lake Okeechobee, as opposed to the Caloosahatchee River and Estuary and other areas that are undeniably impacted by Lake releases. There is still virtually no discussion of how the different alternatives might affect listed species and marine mammals in the Caloosahatchee River and Estuary, in particular the West Indian manatee, the Florida smalltooth sawfish, and various species of sea turtles.

We appreciate the Corps' recognition in the revised draft SEIS of critical habitat for manatee in the Caloosahatchee Estuary. However, the conclusion that there will be no effect on the manatees or their critical habitat simply because the Preferred Alternative is "equal to or no better than the No Action Alternative in reducing the number of high flow releases from Lake Okeechobee" begs the question. The revised draft does not address what the impacts will actually be. It also fails to even acknowledge the threat that red tide poses to the manatees, despite the fact that numerous manatee deaths are caused by exposure to red tide each year, as reported by the Florida Fish and Wildlife Conservation Commission. There is also zero analysis of how the effects of Lake releases on seagrass, which are acknowledged in the revised draft, impact the manatees.

Similarly, the smalltooth sawfish analysis remains deficient. The SEIS is intended to act as the biological assessment for the smalltooth sawfish and Johnson's seagrass. Given the lack of information on the effects of the alternatives on smalltooth sawfish, we believe this SEIS does not do an adequate job of assessing the potential impacts to that species and prematurely concludes that the Preferred Alternative will have no adverse effect. More specifically, the section on effects on smalltooth sawfish states that "[s]ince minimal information is known at this time about salinity tolerance levels of smalltooth sawfish and how salinity levels affect this species, the Corps has determined that the proposed alternative regulation schedule would not likely adversely affect the sawfish." But this reasoning is circular – how can the Corps determine that adverse effects are unlikely in the absence of information about how the alternatives will affect a species? It is most likely that deviations from normal salinity levels will cause adverse effects until proven otherwise.

Sea turtles are not even mentioned in this draft. In response to our same comment on the previous draft, the Corps, in a conclusory fashion, responds, in Appendix H, that "sea turtles would not be affected by the preferred alternative plan of the LORS" without including any analysis (or even mention) of the impacts in the SEIS. The SEIS should, at a minimum, describe the occurrence of sea turtles in the study area and explain why they would not be affected by the alternatives under consideration.

E. There is Insufficient Discussion of Impacts on Important Federal Resources in the Caloosahatchee Area

The revised draft SEIS now mentions the presence of the five National Wildlife Refuges that depend upon the Caloosahatchee River for water, but fails to mention that these important national resources are showing signs of impaired ecosystems as a result of the polluted waters

released from Lake Okeechobee into the Caloosahatchee River. The revised draft SEIS also fails to analyze how the different alternatives may impact these Refuges.

F. There Is Insufficient Discussion of Cumulative Impacts

While we appreciate the fact that the revised draft SEIS contains a longer discussion of cumulative impacts than the previous draft, we believe that discussion is still insufficient. As we stated in our previous comments, we believe it is critical that the SEIS analyze the cumulative effect of the releases from Lake Okeechobee on the Caloosahatchee Estuary because additional heavy discharges may be the “tipping point” that causes irreversible damage to the Caloosahatchee Estuary.

Moreover, the cumulative effects analysis is forward-looking only, describing planned projects and studies that *may* improve water delivery. The discussion of planned projects does not explain what effects these projects will have on such performance measures as water quality and storage capacity. Nor does the analysis consider the effects of the high volume water releases of the past that have caused significant damage to the Caloosahatchee River and Estuary. The cumulative effects analysis must look at the effects of past actions, not just describe projects that have not yet been implemented.

III. The Revised Draft SEIS Does Not Demonstrate That the Corps Has Fully Complied With Applicable Legal Requirements

NEPA regulations require federal agencies to consolidate discussion of other statutory compliance issues in an EIS. The revised draft SEIS fails to adequately analyze such compliance, in most instances devoting only a single, short paragraph to the discussion of such compliance.

A. Endangered Species Act

As discussed above, the revised draft SEIS has a poor discussion of endangered species issues and, similarly, has a weak discussion on compliance with the Endangered Species Act (“ESA”). As was true of the previous draft, this draft does not make a clear case that the Corps is in compliance with the ESA, even in the section entitled “Compliance with Environmental Requirements.”

B. Clean Water Act

The Corps has again taken the position that it is not required to obtain a water quality certification from the state under Section 401 of the Clean Water Act (“CWA”) or a National Pollutant Discharge Elimination System (“NPDES”) permit under Section 402 of the CWA for the various water control structures related to Lake Okeechobee and the Caloosahatchee River. We continue to believe, as we stated in our comments on the previous draft, that the Corps needs both Section 401 water certification from the state and Section 402 permits for the water control structures related to Lake Okeechobee and the Caloosahatchee River.

C. State Permitting Requirements

As set forth in our comments on the previous draft, we believe the revised draft SEIS needs to indicate whether the Corps is in compliance with Florida permitting requirements. More specifically, we believe the SEIS needs to address whether the Corps needs “consumptive use” permits or Lake Okeechobee Protection Act, Fla. Stat. § 373.4595, permits as it is an owner and operator of key structures, or has ever applied or received any such permits. The revised draft remains silent on this issue.

IV. There Is No Discussion of Mitigation Measures

As was true of the previous draft, the revised draft contains no discussion of measures that could mitigate the adverse impacts of lake releases on the Caloosahatchee River and Estuary. The response (in Appendix H) to our comment on this very same flaw in the previous draft asserts that no discussion of mitigation is necessary because the Preferred Alternative improves conditions in the estuaries. While the Preferred Alternative may improve performance on *some* measures over the No Action Alternative, any of the alternatives evaluated would cause adverse effects during periods of high volume releases, and the Corps should consider ways it could mitigate these effects.

Thank you for giving us the opportunity to provide these comments.

Best regards,



Michael J. Valiquette; Chairman
PURRE Water Coalition