



Reply To: swalker@llw-law.com

July 9, 2021

Mr. Drew Bartlett, Executive Director
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

Dear Mr. Bartlett:

I am writing to you concerning the Lake Okeechobee System Operating Manual planning study (LOSOM) and the South Florida Water Management District’s (District’s) obligations to the Seminole Tribe of Florida (Seminole Tribe) under the Water Rights Compact, Agreement Number C-4121, and the Agreement Between the South Florida Water Management District and the Seminole Tribe of Florida Providing for Water Quality, Water Supply, and Flood Control Plans for the Big Cypress Seminole Indian Reservation and the Brighton Seminole Indian Reservation, Implementing Sections V.C. and VI.D. of the Water Rights Compact (1996 Agreement). As the time draws near that the U.S. Army Corps of Engineers (USACE) will select a Tentatively Selected Plan (TSP) for LOSOM, the Seminole Tribe is concerned that the alternative favored by both the USACE and District will have serious consequences for not only the Tribe’s water rights entitlements on Big Cypress and Brighton, but also the whole of its water rights.

It appears that LOSOM Alternative CC is heavily favored to be selected as the TSP by the USACE, and several members of the District Governing Board have already announced that that is the plan they support. Under this alternative, modeling shows that Lake Okeechobee would drop to lower levels, more frequently and for longer periods of time than under the current schedule as well as under the previous Lake schedule, Water Supply/Environmental (WSE). As you know, this is a concern for the Tribe because at low lake levels it becomes difficult if not impossible to supply Brighton and Big Cypress Reservations with the surface water to which they are entitled under the Compact.

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Alternative CC also concerns the Seminole Tribe because it appears that it will not meet the Lake Okeechobee Minimum Flows and Levels (MFL) requirement, causing the District's Lake recovery strategy to remain in place indefinitely. As you are likely aware, the recovery strategy was put in place after the 2008 Lake Okeechobee Regulation Schedule (LORS 08) was implemented, dropping the Lake's average stage by around a foot and significantly impacting the Seminole Tribe's water rights. The practical consequence of this recovery strategy was that it prohibits additional allocations of Lake Okeechobee surface water for new or increases in existing consumptive use permits. Now, as the Seminole Tribe is attempting to plan for the future development of its Brighton and Big Cypress Reservations and despite the fact that the Lake Okeechobee allocation restrictions were never approved by the Seminole Tribe and adopted into the Criteria Manual (as is required under the Compact for such regulation to apply to the Seminole Tribe), the District insists that it cannot approve anything beyond minimal increases to Tribal water deliveries from lake Okeechobee because of these restrictions. The Seminole Tribe still maintains that the Lake Okeechobee allocation restrictions cannot apply to their water rights, but if the District insists that it cannot approve increased allocations for Brighton Reservation due to the restriction, the restriction effectively acts as a very real constraint on the future development potential of both Brighton and Big Cypress Reservations.

Under WSE, the Lake was not in danger of violating the MFL, and thus increased allocations were not restricted, so the economic prospects of Brighton and Big Cypress remained bright. When LORS 08 dropped the Lake, the Seminole Tribe had serious concerns about the impact it would have on its water rights. The USACE and the District assured the Tribe that the lower schedule was necessary to facilitate the Herbert Hoover Dike (HHD) repairs and that after the repairs were made, water supply performance on the Lake would be restored. Thus, the Seminole Tribe did not challenge LORS 08 and instead decided to wait for the dike repairs to be made to see whether its water rights would be restored. Nor did the Tribe seek to invoke the provisions of the 1996 Agreement requiring the District to mitigate for impacts on the Tribe's entitlement resulting from Lake schedule changes. The reasoning was the same, we were assured that the new schedule was temporary and water supply certainly would be restored once dike repairs were complete.

Now, as we rapidly approach the adoption of a new Lake schedule that will account for the HHD repairs, the Seminole Tribe must evaluate the potential impacts to its water supply from a pre-LORS 08 perspective. As mentioned above, the apparent pick for the TSP, Alternative CC, does not make the Seminole Tribe's water rights whole and it carries significant, serious implications for the futures of both Brighton and Big Cypress Reservations. The apparent deficits between the Tribe's pre-LORS 08 water rights and its prospective rights under Alternative CC are so significant that the Tribe is doubtful that the USACE process of "optimization" will make any meaningful impact on the deficit. This is especially true considering that it appears optimization

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will focus on making adjustments that are likely to hurt the marginal water supply performance gains achieved by Alternative CC, such as removing the beneficial use sub-band. Thus, the Seminole Tribe now seeks to begin the process to enforce its rights under the Compact, Agreement C-4121, and the 1996 Agreement to fully assess the extent and magnitude of the impact that LORS 08 and LOSOM will have on its rights under the Compact.

Under the 1996 Agreement, the District is required to complete the necessary studies to determine the potential effect of changes to Lake Okeechobee's regulation schedule on available surface water supplies for the Brighton and Big Cypress Reservations. *See* 1996 Agreement, Sections C(2)(d) and D(2)(b). These studies must be completed prior to final agency action on LOSOM. *See* 1996 Agreement, Sections C(3) and D(3). If changes to the Lake regulation schedule diminish the Seminole Tribe's ability to obtain surface water from Lake Okeechobee to fulfill its entitlements, the District must mitigate those impacts. *See* 1996 Agreement, Sections C(8) and D(4). As noted above, the Tribe elected not to require such actions from the District after LORS 08 because it agreed that the repairs to the HHD were necessary and because of the assurances it received from the USACE and the District that the impacts to its water rights would be temporary. Now that it appears those assurances will come up wanting, the Seminole Tribe must request that the District perform the necessary studies for the Tribe to fully assess the scope and magnitude of impacts to its water rights both that were caused by LORS 08 and that LOSOM will cause, particularly to Brighton and Big Cypress Reservations. Once the District has produced a thorough assessment, the Seminole Tribe and District can then discuss mitigation and how to move forward.

Regardless of the alternative the USACE chooses, the Seminole Tribe would like the District to perform the analysis required under the 1996 Agreement. We propose having a meeting to discuss this process including what information the Seminole Tribe needs for its assessment and any potential issues and concerns the District may have with it.

Sincerely



Stephen A. Walker