

Dear Governing Board members,

At the December 2011 Governing Board meeting under the agenda item “Water Supply Protection Rules for Biscayne Bay and the Caloosahatchee River” (#32), we anticipate discussion regarding how to move forward with rules to protect water for the environment for Biscayne Bay and the Caloosahatchee Estuary.

The undersigned groups request a meaningful commitment that the South Florida Water Management District (SFWMD) will pursue rulemaking to protect Biscayne Bay and the Caloosahatchee Estuary’s water resources beyond the scope of protections to solely reserve water for the Biscayne Bay Coastal Wetlands Phase 1 and C-43 Reservoir Comprehensive Everglades Restoration Plan (CERP) projects. Biscayne Bay suffers from extreme hypersaline conditions that are caused by a lack of freshwater. The Caloosahatchee estuary is severely impacted by the lack of proximate storage and water quality treatment, which leaves it at the mercy of Lake Okeechobee flood control and water supply decisions. We ask the SFWMD Governing Board to pass a resolution that commits funds in the 2012-13—2014-15 budgets to complete rulemaking to protect Biscayne Bay and the Caloosahatchee Estuary within three years. We understand the urgency for CERP projects to have the protections to gain the Federal cost share funds.<sup>1</sup> For this reason, a phased approach to rulemaking may be appropriate.

The SFWMD has a long stated goal to protect water for the Caloosahatchee Estuary and Biscayne Bay beyond the scope of their respective CERP projects. The 2000 Lower East Coast Regional Water Supply Plan stated that the Caloosahatchee Estuary water reservation “will be established for the purpose of providing freshwater inflows to prevent harm” with final rule adoption by 2000.<sup>2</sup> Likewise, the plan stated that the Biscayne Bay reservation “will be adopted for the purpose of protecting fish and wildlife through providing freshwater inflows to prevent harm” by 2004.<sup>3</sup> These deadlines for final rule adoption have long passed but the SFWMD’s commitment to protecting these water resources remains critical.<sup>4</sup> Without these rules, Biscayne Bay and Caloosahatchee Estuary will continue to suffer the consequences of delay.

The urgency to pursue rulemaking is compounded by the recent amendments to the Florida Administrative Procedure Act, 120.541. The statute states that “If a proposed rule

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<sup>1</sup> Florida law provides that “Prior to executing a project cooperation agreement with the Corps for the construction of a project component, the district, in cooperation with the Corps, shall complete a project implementation report to address the project component's economic and environmental benefits, engineering feasibility, and other factors provided in [s. 373.1501](#) sufficient to allow the district to obtain approval under [s. 373.026](#). Each project implementation report shall also identify the increase in water supplies resulting from the project component. The additional water supply shall be allocated or reserved by the district under this chapter.” Section 377.470 (3)(c), Fla. Statutes.

<sup>2</sup> SFWMD Lower East Coast Regional Water Supply Plan, 2000, pg 223.

<sup>3</sup> SFWMD Lower East Coast Regional Water Supply Plan, 2000, pg 223-224

<sup>4</sup> The Lower East Coast Regional Water Supply Plan 2005 Update distinguishes between an “initial reservation” and a “project reservation”, explaining that development of initial reservations focuses on determining the volume, duration and timing of existing flows required to protect fish and wildlife resources” whereas a project reservation “will be used in the implementation of CERP related projects. Lower East Coast Water Supply Plan Update 2005-06, pg 49.

will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).” Florida Statutes, 120.541(b).

We understand it is likely that rules to protect water for Biscayne Bay and the Caloosahatchee Estuary will have to go through this legislative review at some point. We believe the longer the SFWMD waits to complete rulemaking, the more difficult it may become to complete the legislative ratification. The SFWMD continues to issue consumptive use permits to new users within its 16 county region. As more users may rely on these water bodies for consumptive uses, the potential impacts on small businesses could increase, making it potentially more difficult to ratify.<sup>5</sup> Therefore, it is important to finalize rulemaking as soon as possible to advance timely ratification.

We look forward to engaging in further discussions throughout the rulemaking process to determine the precise scope of rule protections for Biscayne Bay and the Caloosahatchee Estuary’s water resources. The potential scope of the Caloosahatchee Estuary water reservation could include but not be limited to new water created from dispersed water management projects in the Caloosahatchee Basin and Northern Everglades, retired consumptive use permits, and other flows necessary to sustain the viability of this delicate estuary.<sup>6</sup> The scope of protections for Biscayne Bay’s water resources could include but not be limited to the full amounts of water identified in the BBCW Draft Project Implementation Report, groundwater protections within the watershed, and other flows necessary to sustain health of Biscayne Bay.<sup>7</sup>

The undersigned groups thank you and SFWMD staff for taking time to address protections for our treasured natural resources. We look forward to working with SFWMD and other interested stakeholders through the rulemaking process in a collaborative approach, and are willing to help supply scientific documents and other guidance where available.

Sincerely,

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<sup>5</sup> Several of the undersigned organizations have urged that the economic evaluation takes into account the benefits of preserving these natural systems for the economy, such as from tourism, fishing, and recreation.

<sup>6</sup> The LEC Regional Water Supply plan explained that “Optimal salinity profiles and corresponding quantities of freshwater inflows, particularly during the dry season, have been identified in technical publications and integrated into the LEC regional model targets (for the Caloosahatchee Estuary).” LEC Regional Water Supply Plan 2000, pg. 223.

<sup>7</sup> According to a 2008 study from the United States Department of Interior, “It was determined that approximately 960,000 acre-feet/year of freshwater flows would be required to meet the salinity targets described above in the 10,000 acre area of seagrass habitat. In the absence of adequate circulation models to provide greater detail, an analysis of seasonal targets was done at a basic level: about 37 K acre-ft per month is needed during the dry season, and 149 K acre-ft per month in the wet season... It is, however, apparent that the stable estuarine conditions desired in Biscayne Bay are not achieved by current freshwater inflows, both because the total volume is too little and because the timing and distribution are too unnatural.” *Estimates of Flows to Meet Salinity Targets for Western Biscayne National Park*, U.S. Department of the Interior, Resource Evaluation Report, June 2008, pg. 1.