

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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Joint Administrative Procedures Committee,  
*Alternating Chair*

## SENATOR BEN ALBRITTON

26th District

August 2, 2021

Mr. Drew Bartlett  
South Florida Water Management  
3301 Gun Club Road  
West Palm Beach, Florida 33466

RE: Water Management District, South Florida Water Management District Existing Chapters 40E-2 and 40E-8 and Lake Okeechobee Regulation Schedule

Dear Mr. Bartlett:

We are aware of the upcoming U.S. Army Corps of Engineers (“Corps”) decision on a new Lake Okeechobee System Operating Manual (“LOSOM”), which will replace the Lake Okeechobee Regulation Schedule 2008 (“LORS08”), and the ongoing implementation of the Comprehensive Everglades Restoration Plan (“CERP”). There are several related Florida Statutes and South Florida Water Management District (“District”) rules that govern the District’s actions with regard to LOSOM and CERP. At this time, I have the following comments and requests:

1. Assurance of Water Supply for Permitted Water Users – Based on the LOSOM preliminary plan CC that has been made public by the Corps, LOSOM appears to adversely affect the water supply performance of millions of south Floridians, because it does not deliver the 1 in 10 level of water supply performance, as required in your District permits. Adding to this, Florida adopted a broad savings clause law in Section 373.1501(5)(d), Florida Statutes (“Fla. Stat.”), which requires that the State protect the quantity of water available to existing legal users from CERP projects, as well as operational changes to the Central and South Florida System (“C&SF System”). LOSOM qualifies as an operational change to the C&SF System that is subject to this requirement. Moreover, Section 373.1501(7), Fla. Stat., requires the District to make recommendations to the Corps when developing or implementing a regulation schedule that are consistent with District programs and plans.

- Does LOSOM comply with the District and State standard of a “1 in 10” level of performance, as authorized by District water use permits and required in Chapters 40E-2 and its implementation criteria, 40E-8, 40E-10 and 40E-22, Florida Administrative Code (“Fla. Admin. Code”)?

## REPLY TO:

- ☐ 150 North Central Avenue, Bartow, Florida 33830 (863) 534-0073
- ☐ 410 Taylor Street, Suite 106, Punta Gorda, Florida 33950 (941) 575-5717
- ☐ 314 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate’s Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

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- If not, what steps is the District taking, as required by these rules, to assure water users that their water use permits will not be interfered or diminished when LOSOM is implemented?
- If not, how is the District planning to comply with all requirements of Section 373.1501, Fla. Stat. when LOSOM is adopted? (*See also:* 373.1501, 373.470, 373.223, 373.709, 373.535 and 373.536, Fla. Stat.)

2. Lake Okeechobee Minimum Flow and Level (“MFL”) Return to Prevention Status - A review of LOSOM preliminary plan CC, indicates that the Corps preferred plan will result in violation of Florida’s Lake Okeechobee Minimum Flow and Level Rule, referred to as the Lake Okeechobee MFL. When LORS08 was adopted, the District amended its Lower East Coast Regional Water Supply Plan, Chapter 40E-8, Chapter 40E-2 and the Applicant’s Handbook for Water Use Permit Applications to address the interim (and emergency nature) of LORS08. These amendments were necessary as they recognized that LORS08 would result in *temporary* violations of the Lake Okeechobee MFL due to the lower lake levels in LORS08. The amendments implemented an MFL recovery strategy for the duration of LORS08, with the expectation that upon completion of the Dike repairs, a new Lake schedule, such as LOSOM, would return the Lake Okeechobee MFL to the desired prevention status. (*See e.g.:* SFWMD 2018 LEC Water Supply Plan Update Appendices at C-13; Rule 40E-8.421(2)(e), Fla. Admin. Code and Final Order No. SFWMD 2008–364 DAO WU at 19) The preliminary LOSOM plan CC, does not return the Lake Okeechobee MFL to prevention status, as required by District rule, even though the Dike will be repaired.

- Please advise how the District intends to comply with Section 373.0421, Fla. Stat., and Rules 40E-8.011, 40E-8.421 and 40E-8.431, F.A.C., which require the Lake to return to prevention status in LOSOM, or the District is required to timely provide off-setting water supplies?
- If the Lake Okeechobee MFL is to remain in recovery status due to LOSOM, please explain the District’s strategy, including amendment of the Lower East Coast Regional Water Supply Plan, to remedy what would be outstanding shortfalls in water supply available to meet current and future demands and avoid the adverse effects of competition? Also, does the District plan to amend the Lake Okeechobee MFL rule to insure consistency with the final LOSOM plan and reflect the District’s decision to maintain the Lake Okeechobee MFL in a recovery status rather than a return to prevention?

3. CERP Reservation Rules, Operating Manuals and Upcoming District Governing Board Determinations - CERP includes both infrastructure and operational changes. [*See e.g.:* ss. 373.470(2)(h), 373.1501(1)(g), Fla. Stat., and WRDA 2000 at s. 601(b)(1)(A).] LOSOM is a substantial operational change that includes CERP infrastructure, adding to Florida’s water budget. It appears that LOSOM is being designed by the Corps, with the support of the District, to incrementally accomplish CERP’s restoration benefits, by sending water south to benefit the Everglades, as well as diminishing harmful discharges to the coastal estuaries, all CERP

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objectives. If LOSOM is a step toward accomplishing these CERP's objectives, certain state and federal legal requirements apply to the District. The CERP operating manuals are considered by Joint Administrative Procedures Committee ("JAPC") to be part of the District's water supply program, defining amounts of "new" CERP water made available for natural systems, in coordination with reservation rules, and also water made available for other water related needs of the region. The operating manuals are agency statements of general applicability. (*See e.g.*: 373.470, 373.1501, 373.026, Rules 40E-8.021(5), 40E-8.421(1)(e) and (2)(d) and 40E-8.011, Fla. Admin. Code and WRDA 2000, etc.) State and federal laws and District rules authorize certification of water available from CERP projects for allocation.

- Please address how State and Federal CERP requirements, including reservation rules and operational determinations related to LOSOM will be made in compliance with Florida Statutes and District rules. In responding, please address how these requirements will be met in the following actions: LOSOM; the C-43 Reservoir operating manual and reservation rule; C-44 Reservoir and STA operating manual; Environmental Water Supply Deliveries operating manuals for the Caloosahatchee Estuary, the St. Lucie Estuary and Everglades and any other CERP infrastructure or operational component included in LOSOM.

4. Request for Documents that Represent Agency Statements - Each agency statement defined as a rule must be adopted by the rulemaking procedure set forth in Section 120.54, Fla. Stat. In accordance with Section 120.545(2), Fla. Stat., a request for documents is attached as Exhibit A. For each of these documents, please explain whether the document has been adopted by rule, and if not, why. In your response, please evaluate all applicable Florida Statutes and District rules, plans and programs. (Section 373.1501(7), Florida Statutes)

## **Exhibit A – Documents Requested**

Please forward a copy or electronic links to the following documents to JAPC for review:

- LOSOM's Objective and / or Goal Statements
- Governing Board LOSOM Policy Statement (April 2021)
- Governing Board Implementation Policy Considerations (July 2021)
- All performance measures, performance metrics, performance indicators, documentation sheets, and referenced materials used for CERP and / or LOSOM
- All modeling assumption tables used for LOSOM
- The District Governing Board Resolutions, Florida Department of Environmental Protection (FDEP) Final Orders and Integrated Environmental Impact Statements ("EIS") and Program Implementation Reports ("PIR") for the final projects:
  - C-43 Reservoir Project
  - C-44 Reservoir and Stormwater Treatment Area Project
  - Taylor Creek/ Nubbin Slough Storage and Stormwater Treatment ("STA") Project

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- Lake Okeechobee Watershed Restoration Project
- EAA Reservoir Project
- Central Everglades Planning Project
- All Draft or Final Operating Manuals for all CERP projects

Sincerely,

A handwritten signature in blue ink, appearing to read "Ben Albritton". The signature is fluid and cursive, with a large loop at the end.

Ben Albritton  
Senate District 26