

**ENVIRONMENTAL ASSESSMENT ON THE TEMPORARY EMERGENCY  
DEVIATION TO ALLEVIATE HIGH WATER LEVELS IN WATER CONSERVATION  
AREA 3 A (S-344 DEVIATION)**

**RESPONSE TO PUBLIC  
COMMENTS AND  
ADDITIONAL PERTINENT  
CORRESPONDENCE**

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DEPARTMENT OF THE ARMY  
JACKSONVILLE DISTRICT CORPS OF ENGINEERS  
701 San Marco Boulevard  
JACKSONVILLE, FLORIDA 32207-8175

REPLY TO  
ATTENTION OF

Planning and Policy Division  
Environmental Branch

JUN 02 2016

To Whom It May Concern:

Thank you for your comments on the Environmental Assessment (EA) for a temporary emergency deviation at Structure 344 (S-344) to alleviate high water levels in Water Conservation Area 3A (WCA 3A). The Corps initiated a temporary emergency deviation to the current operating constraint of 7.5 feet National Geodetic Vertical Datum (of 1929 NGVD) in the L-29 Canal for purposes of providing high water relief in WCA 3A on February 15, 2016. Due to the continued critical nature of elevated water levels in WCA 3A and in compliance with the existing request by the Governor to maximize water releases, a second emergency EA has been prepared to deviate from the current water control plan for S-344 on the L-28 Levee. This temporary emergency deviation would open S-344 immediately instead of waiting for July 15, 2016 which is the normal opening date in the approved water control plan. The opening would allow water to be released from WCA 3A into Big Cypress National Preserve and the L-28 Canal. The Finding of No Significant Impact was signed on April 14, 2016.

A copy of the responses to your comments are enclosed for your records. The enclosed table can also be found on the Corps Environmental planning website:

<http://www.saj.usace.army.mil/About/DivisionsOffices/Planning/EnvironmentalBranch/EnvironmentalDocuments.aspx>

Questions concerning the federal action can be submitted to Mrs. Melissa Nasuti by email at [melissa.a.nasuti@usace.army.mil](mailto:melissa.a.nasuti@usace.army.mil) or by telephone at 904-232-1368.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina Paduano/Ralph".

Gina Paduano/Ralph, Ph.D.  
Chief, Environmental Branch

Enclosure

**COMMENTS RECEIVED DURING THE 30 DAY PUBLIC REVIEW (APRIL 18, 2016 TO MAY 18, 2016) OF THE ENVIRONMENTAL ASSESSMENT ON THE TEMPORARY EMERGENCY DEVIATION TO ALLEVIATE HIGH WATER LEVELS IN WATER CONSERVATION AREA 3 A (S-344 DEVIATION)**

<b>Commenter</b>	<b>Comment</b>	<b>Response</b>
Florida Fish and Wildlife Conservation (FWC) - 1	<p>The FWC has fish and wildlife and land management responsibilities for Water Conservation Areas (WCAs) 2 and 3, which are managed as the Everglades and Francis S. Taylor Wildlife Management Area. As a result of record amounts of precipitation across south Florida in January 2016, water levels within WCA 3A have increased to levels that are detrimental to area wildlife such as federally and state-listed wading birds and small- to large-sized mammals. Negative effects to wildlife under high water conditions include poor foraging habitat, reduced breeding efforts, and stranding on tree islands and levees. Critical wildlife habitat such as tree island vegetation can also be negatively affected by extended high water conditions. The proposed emergency deviation will allow water to move out of WCA 3A and into Big Cypress National Preserve (BCNP), which should help reduce adverse impacts to tree islands and their associated wildlife in WCA 3A, as well as lessen the detrimental long-term effects that prolonged high water levels would have on the essential foraging and nesting habitats of snail kites, wood storks, and state-listed wading bird species such as tricolored and little blue herons. This action should also help water sheet flow into the eastern portions of the BCNP, of which the S-344 and associated earthen plugs were designed to provide.</p> <p>The FWC fully supports this next step in coordination and action to help relieve extreme high water conditions in WCA</p>	<p>Thank you for your comments. The S-344 structure was opened On May 19, 2016. Rehabilitation of the six plugs in the L-28 Borrow Canal, referenced in the Environmental Assessment (EA), has been constructed by the South Florida Water Management District.</p>

Commenter	Comment	Response
	<p>3A and to facilitate water movement from WCA 3A into BCNP.</p> <p>We appreciate that the U.S. Army Corps of Engineers (USACE) agrees to maintain open and cooperative communication with the U.S. Fish and Wildlife Service and the FWC during the emergency deviation.</p>	
<p>U.S. Environmental Protection Agency (EPA) -1</p>	<p>It is EPA’s understanding that the Finding of No Significant Impact (FONSI) was signed on April 14, 2016 and then released for public comment. In theory, the decision to make operational changes to S-344 has already been made. The EPA acknowledges the emergency nature of this action; however, it is unclear as to the purpose of releasing this EA since the decision has been made. Additionally, there was no discussion within the EA that explained the FONSI had been signed and that the decision for operational changes had been made. It is also EPA’s understanding that the USACE plans to respond to public comments and place those response to comments on the U.S. Army Corps of Engineers (USACE’s), Jacksonville District website.</p> <p><b>Recommendation:</b> The EPA recommends the USACE explain the procedural purpose of the EA on the USACE website. For future emergency National Environmental Policy Act (NEPA) actions, the EPA recommends the USACE better explain the rationale for making decisions prior to the release of the NEPA documents.</p>	<p>Please Reference Section 4.23.1 (NEPA of 1969) of the EA which acknowledges that the emergency NEPA will be amended or supplemented, as applicable, after implementation of the Federal Action to further document the environmental effects of the deviation and/or incorporate potential concerns resulting from the public comment period. The EA and FONSI were posted for a 30 day public review from April 18, 2016 to May 18, 2016. Comments received from the review are not substantive to warrant an amended document or the need for an Environmental Impact Statement.</p> <p>Please reference Section 1.3 (Project Need or Opportunity) for the rationale warranting the need for an emergency action. Due to the critical nature of elevated water levels in WCA 3A and in compliance with the existing request by the Governor of Florida to maximize water releases, a second emergency NEPA was prepared to evaluate the S-344 deviation.</p>

Commenter	Comment	Response
		Prior to drafting the emergency EAs related to the L-29 Canal and S-344 structure, the Corps referenced the Council on Environmental Quality's " <i>Memorandum for Heads of Federal Departments and Agencies</i> " dated May 12, 2010, for purposes of taking actions in response to emergencies and requirements under the NEPA. The Corps is in compliance with this guidance.
EPA-2	<p>The EPA appreciates the USACE early coordination regarding this emergency action; however, the EPA is concerned with these "emergency NEPA" actions. EPA acknowledges these unusual recent rain events and the USACE's response to these events; however, the USACE might consider conducting operational scenario planning in anticipation of these unusual rain events especially given the unpredictable nature weather due to climate change.</p> <p><b>Recommendation:</b> In anticipation of future climatic changes leading to unpredictable rain events, the EPA recommends the USACE consider conducting operational studies and consulting with the appropriate stakeholders (recreational groups, state/federal agencies and the tribes) to solicit concerns and feedback.</p>	Noted. Thank you for your comment.
EPA-3	On page 2-3, Section 1.3 Project Need or Opportunity, the EPA has concerns regarding this section: The USACE states, "The WCAs continue to be flooded in a manner that inundates tree islands and other wildlife habitat, and if sustained will negatively impact birds and mammals dependent on that habitat." However, the USACE does not cite US Fish and	The EA identifies a list of related environmental documents which are incorporated by reference. These documents ( <i>i.e.</i> the L-29 Canal Emergency EA and FONSI dated February 12, 2016 and Supplemental EA and FONSI dated March 2016)

Commenter	Comment	Response
	<p>Wildlife (USFWS) concerns or Florida Fish and Wildlife Commission (FFWC) or any other pertinent documentation that would substantiate this statement.</p> <p><b>Recommendation:</b> The EPA recommends the USACE better explain the negative impacts to wildlife and provide documentation and/or citation from credible sources (USFWS, FFWC, USACE biologist or academia) that substantiate these claims.</p>	<p>contain pertinent correspondence from agencies including the Florida Department of Environmental Protection (FDEP) and FWC documenting concerns with respect to high water levels within WCA 3A.</p>
EPA-4	<p>The USACE states (on page 2), “There is an immediate threat and impact to valuable natural resources that underpin local economies...” However, the subsequent EA does not discuss in depth the degree of economic distress that this will cause nor does the USACE provide any evidence to support this statement.</p> <p><b>Recommendation:</b> The EPA recommends the USACE provide examples and a better explanation as to how the local economy is impacted by unusually high water levels in WCA 3A.</p>	<p>Please refer to Section 4.17 (Recreation) for further information related to potential economic losses as a result of not implementing the Federal Action. The FWC has previously closed access to the WCAs within the project area leading to economic losses within the region and impacts on local businesses (airboat concessionaires etc.). The Miccosukee Indian Tribe of Florida have several businesses adjacent to Tamiami Trail west of S-333 including airboat concessionaires. Implementation of the Federal Action would alleviate potential impacts to economic losses by alleviating high water levels in WCA.</p>
EPA-5	<p>The USACE states (on page 3), “The U.S. Army Corps of Engineers (Corps), Jacksonville District, initiated a temporary emergency deviation to the current operating constraint of 7.5 feet National Geodetic Vertical Datum (of 1929 NGVD) in the L-29 Canal for purposes of providing high water relief in WCA 3A at the request of the Governor of Florida.”</p>	<p>The EA identifies a list of related environmental documents which are incorporated by reference. The L-29 Canal Emergency EA and FONSI dated February 12, 2016 contains the request by the Governor of Florida, dated February 11, 2016</p>

Commenter	Comment	Response
	<p>However, the USACE does not provide documentation of this request or provide a citation.</p> <p><b>Recommendation:</b> The EPA recommends the USACE provide documentation that the Governor of Florida requested additional releases from WCA 3A to provide high water relief to WCA 3A.</p>	<p>requesting that the USACE take immediate action to relieve the flooding of the Everglades WCAs. See Appendix B of that document. The referenced letters have also been attached to the end of this comment/response matrix as well.</p>
EPA-6	<p>The USACE (on page 3) states, “The temporary emergency deviation is expected to benefit natural resource within the WCA3A and BCNP.” However, the USACE doesn’t discuss benefits to Big Cypress National Park (BCNP).</p> <p><b>Recommendation:</b> The EPA recommends the USACE briefly discuss benefits to BCNP within this section.</p>	<p>Potential benefits to BCNP as a result of the Federal Action are discussed throughout the EA. Please reference Section 4.5 (Hydrology) and Figure 9 specifically, for a depiction of existing hydrologic issues within and adjacent to BCNP and the L-28 Levee. The primary impact of the Federal Action within BCNP will be to lengthen the hydroperiod in the area immediately south and west of the S-344 structure, aiding in the restoration of historic hydrologic conditions for the duration of the temporary emergency deviation.</p>
EPA-7	<p>On page 22, 3.12.1 Nutrients, the USACE states, "FDEP has recently established surface water quality numeric nutrient criteria for all Florida water bodies". The EPA thinks this statement should say "certain categories of water bodies". All is incorrect since they have no numeric nutrient criteria for canals in south Florida, such as the one that S-344 is in.</p> <p><b>Recommendation:</b> The EPA recommends the USACE update the EA and replace “all water bodies” with “certain categories of water bodies”.</p>	<p>Thank you for your comment. Comments received are editorial in nature and are being shared with the public. Comments received are editorial in nature and are being shared with the public in the form of this comment/response matrix.</p>
EPA-8	<p>On page 23, 3.12.1 Nutrients, the USACE states, "See below graph for background</p>	<p>Thank you for your comment. Figures 1 and 2 accurately</p>

Commenter	Comment	Response
	<p>information on total phosphorus concentrations for inflows into ENP which is downstream of the S-344".</p> <p><b>Recommendation:</b> The EPA recommends the USACE change to: "...for inflows into ENP which is over 9 miles downstream of the S-344" to more accurately reflect the current status.</p>	<p>depict the location of S-344 in relation to ENP and can be referenced by the reader for purposes of better understanding the project location and existing water management features. Comments received are editorial in nature and are being shared with the public in the form of this comment/response matrix.</p>
EPA-9	<p>The EPA recommends the following minor grammatical changes on page 41, 4.10 Water Quality:</p> <ul style="list-style-type: none"> <li>• The USACE states, "average TP value at S-344 for flow and none flow events over the past two years". The EPA recommends replacing "none flow events" with "no flow events."</li> <li>• The USACE states, "There are no expected water quality issues to result from the opening of this structure." The EPA recommends replacing with, "There are no water quality issues, or changes in water quality, expected to result from the opening of this structure."</li> </ul>	<p>Thank you for your comment. Comments received are editorial in nature and are being shared with the public. Comments received are editorial in nature and are being shared with the public in the form of this comment/response matrix.</p>
EPA-10	<p>On page 44, 4.17 Recreation, the USACE discusses impacts to recreation related to WCA 3A, but doesn't discuss potential impacts to recreation in BCNP. This action would elevate water levels in BCNP and could potentially impact recreation.</p> <p><b>Recommendation:</b> The EPA recommends the USACE discuss potential impacts to recreation in BCNP.</p>	<p>Significant impacts to recreation within BCNP are not anticipated as a result of the Federal Action.</p>
EPA-11	<p>On page 2, 1.3 Project Need or Opportunity, the USACE discussed the immediate threat of high water in WCA 3A and impacts associated with land under lease to both the Miccosukee Tribe and</p>	<p>Please reference Section 4.11 (Native Americans) on page 42 which recognizes that the Federal Action will help to alleviate high water levels and</p>

Commenter	Comment	Response
	<p>Seminole Tribe. However, there is no discussion of the impacts in the Native American section on page 41.</p> <p><b>Recommendation:</b> The EPA recommends the USACE discuss potential impacts of the high water within WCA 3A on the Miccosukee Tribe and Seminole Tribe particularly associated with the tree islands and their traditional uses within WCA 3A.</p>	<p>improve environmental conditions for many of the tree islands, plants, and animals that the Tribes rely on to practice traditional and commercial activities.</p>
<p>EPA-12</p>	<p>On page 41, 4.11 Native Americans, the USACE states:  <i>As part of this project, consultation has been initiated and is ongoing between the Corps and appropriate federally recognized tribes. Informal coordination through phone calls and emails with staff members of the Miccosukee and the Seminole Tribes was conducted March 23, 2016 for notification purposes and to solicit comments regarding the temporary emergency deviation and the potential effects of flood waters released from WCA 3A. Letters requesting consultation were sent to both the Miccosukee and Seminole Chairmen on April 11, 2016 (See Appendix C).</i></p> <p>On page 42, the USACE states that consultation is ongoing throughout the process. The EPA also notes that the action’s FONSI states, “The Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida’s Tribal Historic Preservation Office have not provided comments on the determination of no adverse effect; however, consultation and coordination is ongoing.” The EPA encourages consultation with the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida at all levels of decision-making. The EPA works closely with both Tribes on Everglades matters and is committed to</p>	<p>USACE received a letter dated April 14, 2016 from the Seminole Tribe of Florida Tribal Historic Preservation Office regarding the emergency deviation at S-344 and consultation pursuant to the Tribal Historic Preservation Office’s responsibilities under the Seminole Tribe of Florida’s Cultural Resources Ordinance C-01-2016 and Section 106 of the National Historic Preservation Act. The Seminole Tribe of Florida Tribal Historic Preservation Office has reviewed the documents that the USACE provided and has no objection to the temporary emergency deviation at this time. The Seminole Tribe of Florida Tribal Historic Preservation Office stated that they would like to continue to be consulted if there are any changes to the planned deviation or if any archaeological, historical, or burial resources are impacted. The referenced letters has been attached to the end of this comment/response matrix.</p>

Commenter	Comment	Response
	<p>working with other federal partners to prioritize the Tribes' water quality and water management concerns.</p> <p><b>Recommendation:</b> The EPA recommends the USACE continue to consult with the Miccosukee and Seminole Tribes and document any cultural resources effects determination in the Final EA. The EPA also recommends the USACE document any subsequent dialog between themselves and the Miccosukee Tribe and/or Seminole Tribe in the Final EA and reinforce their commitment to ongoing consultation with both Tribes within any subsequent FONSI.</p>	<p>The Corps commits to ongoing consultation with both the Miccosukee Tribe and Seminole Tribe as necessary.</p>
<p>Miccosukee Tribe -1</p>	<p>In a discussion with EPA and Tribal members the topic of mercury loading came in to play and should be added to the NEPA document that will be created for the S-344 and the plugs install as we are interested to know the mercury loading and the effect that the new water regime will have.</p>	<p>The flow increases expected at S-344 (gravity structure) are expected to be relatively minor (currently at 90 cubic feet per second as of May 31, 2016) when compared to overall inputs to the system. Methylation of mercury is influenced by nutrient levels dissolved organic carbon levels, sulfur concentrations and other factors. Operation of S-344 earlier in the season and for longer durations will shift some of the water within WCA3A water to Big Cypress and the western boundary of ENP. The source of this water would have been stacked in WCA3A as well as water that would have been routed through the S-12's/S-333. This minor rerouting of water is not expected to significantly or measurably change the methylation rate. This minor operational change is not expected to influence mercury</p>

<b>Commenter</b>	<b>Comment</b>	<b>Response</b>
		loading or bioaccumulation rates to this part of the system. Methylation factors in the Everglades are not completely understood but any operational regime which reduces dry out/re-wet periods could reduce mercury methylation production spikes. This operation change could potentially be a very small step in that direction by better distributing water throughout the system which can help reduce discharges to coastal areas.



May 12, 2016

## Florida Fish and Wildlife Conservation Commission

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*managing fish and wildlife resources for their long-term well-being and the benefit of people.*

### South Region

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MyFWC.com

Melissa Nasuti

U.S. Army Corps of Engineers, Jacksonville District  
701 San Marco Blvd.

Jacksonville, FL 32207-8175

[Melissa.A.Nasuti@usace.army.mil](mailto:Melissa.A.Nasuti@usace.army.mil)

**RE: Department of the Army, Jacksonville District Corps of Engineers – Environmental Assessment (EA), Temporary Emergency Deviation to Alleviate High Water Levels in Water Conservation Area 3A (S-344 Deviation), Broward, Collier, and Miami-Dade Counties, Florida**

Dear Ms. Nasuti:

The Florida Fish and Wildlife Conservation Commission (FWC) has reviewed the above-referenced environmental assessment and provides the following comments in accordance with FWC's authorities under Chapter 379, Florida Statutes; Chapter 68A-27, Florida Administrative Code; and Article IV, Section 9, Florida Constitution.

### Project Description

The highest rainfall on record has occurred within the South Florida Ecosystem during the month of January 2016 following already wet conditions in preceding months which has led to severe impacts to natural resources within the Everglades and Francis S. Taylor Wildlife Management Area, also known as Water Conservation Area (WCA) 2 and 3. As a result, the U.S. Army Corps of Engineers (USACE), Jacksonville District, initiated a temporary (90 day) emergency deviation from the approved Water Control Plan (WCP) for the purpose of alleviating high water conditions within south Florida ecosystem. Specifically, the emergency deviation relieves the current operating constraint of 7.5 feet National Geodetic Vertical Datum (of 1929 NGVD) in the L-29 Canal to 8.5 feet NGVD.

The USACE's most recent deviation from the WCP to alleviate high water conditions in WCA 3A is related to operations of the S-344 on the L-28 Levee. The original purpose of the S-344 and associated features along the L-28 Levee were to provide overland flow in eastern Big Cypress National Preserve (BCNP) south of the L-28 Tieback, provide protection from over drainage during the dry season in BCNP, and provide regulatory releases from WCA 3A. However, in the current WCP, the S-344 cannot be opened until July 15, 2016. This deviation would open the S-344 immediately to provide additional relief to inordinately high water levels in WCA 3A. The deviation would continue until July 15, 2016, when the WCP calls for the structure to be opened until November 1, 2016.

There are three alternatives proposed for this deviation: Alternative A, No Action Alternative; Alternative B, Temporary Emergency Deviation at S-344 and Plug Rehabilitation; and Alternative C, Temporary Emergency Deviation at S-344 Without

Plug Rehabilitation. Alternative B is the preferred alternative and the South Florida Water Management District has already begun a project to rehabilitate six earthen plugs in the southern portions of the L-28 Borrow Canal. The earthen plugs have eroded over the years and no longer function as they were designed. The deviation is expected to work through gravity discharges via the S-344 and aided by the earthen plugs which will provide improved sheet flow of water into the BCNP.

Once rehabilitated, the earthen plugs should be approximately 150 feet long with a crest elevation of 10 feet NGVD. The fill needed for the plug rehabilitation will come from portions of the L-28 Levee that are currently above the required elevation of 17 feet NGVD.

The operational strategy for Alternative B is described below:

1. Both gates opened about one to two feet when the first (northern most) plug is fully rehabilitated;
2. Both gates opened about two to four feet when the second plug is fully rehabilitated;
3. Both gates opened about three to six feet when the third plug is fully rehabilitated;
4. Both gates opened about three to six feet when the fourth plug is fully rehabilitated;
5. Both gates opened about three to six feet when the fifth plug is fully rehabilitated; and
6. Both gates opened about three to six feet when the sixth plug is fully rehabilitated.

Downstream monitoring will be conducted during the deviation and, if needed, adjustments to the operations briefly described above will be altered.

### **Comments and Recommendations**

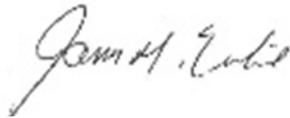
The FWC has fish and wildlife and land management responsibilities for WCAs 2 and 3, which are managed as the Everglades and Francis S. Taylor Wildlife Management Area. As a result of record amounts of precipitation across south Florida in January 2016, water levels within WCA 3A have increased to levels that are detrimental to area wildlife such as federally and state-listed wading birds and small- to large-sized mammals. Negative effects to wildlife under high water conditions include poor foraging habitat, reduced breeding efforts, and stranding on tree islands and levees. Critical wildlife habitat such as tree island vegetation can also be negatively affected by extended high water conditions. The proposed emergency deviation will allow water to move out of WCA 3A and into BCNP, which should help reduce adverse impacts to tree islands and their associated wildlife in WCA 3A, as well as lessen the detrimental long-term effects that prolonged high water levels would have on the essential foraging and nesting habitats of snail kites, wood storks, and state-listed wading bird species such as tricolored and little blue herons. This action should also help water sheet flow into the eastern portions of the BCNP, of which the S-344 and associated earthen plugs were designed to provide.

The FWC fully supports this next step in coordination and action to help relieve extreme high water conditions in WCA 3A and to facilitate water movement from WCA 3A into BCNP.

We appreciate that the USACE agrees to maintain open and cooperative communication with the U.S. Fish and Wildlife Service and the FWC during the emergency deviation.

We appreciate the opportunity to provide support for this emergency measure and we will continue to work with partnering agencies to ensure protection of Florida's fish and wildlife resources. If you need further assistance, please do not hesitate to contact Jane Chabre by phone at (850) 410-5367 or by email at [FWCConservationPlanningServices@myfwc.com](mailto:FWCConservationPlanningServices@myfwc.com). If you have specific technical questions regarding the content of this letter, please contact Mr. Michael Anderson in our West Palm Beach office at (561) 625-5122 or by email at [michael.anderson@myfwc.com](mailto:michael.anderson@myfwc.com).

Sincerely,

A handwritten signature in cursive script, appearing to read "James M. Erskine".

James M. Erskine, Everglades Coordinator  
Office of the Executive Director

jme/ss/ma  
ENV 1-5-2  
WCA-3A Emergency Deviation L-28 Levee and Canal\_30822\_051216

## Temporary Emergency Deviation to Alleviate High Water Levels

### In Water Conservation Area 3A (WCA 3A) (S-344 Deviation)

#### US Environmental Protection Agency (EPA) Comments

May ##, 2016

#### Overall:

- It is EPA's understanding that the Finding of No Significant Impact (FONSI) was signed on April 14, 2016 and then released for public comment. In theory, the decision to make operational changes to S-344 has already been made. The EPA acknowledges the emergency nature of this action; however, it is unclear as to the purpose of releasing this Environmental Assessment (EA) since the decision has been made. Additionally, there was no discussion within the EA that explained the FONSI had been signed and that the decision for operational changes had been made. It is also EPA's understanding that the USACE plans to respond to public comments and place those response to comments on the USACE's (Jacksonville District) website. **Recommendation:** The EPA recommends the USACE explain the procedural purpose of the EA on the USACE website. For future emergency NEPA actions, the EPA recommends the USACE better explain the rationale for making decisions prior to the release of the NEPA documents.
- The EPA appreciates the US Army Corps of Engineers (USACE) early coordination regarding this emergency action; however, the EPA is concerned with these "emergency NEPA" actions. EPA acknowledges these unusual recent rain events and the USACE's response to these events; however, the USACE might consider conducting operational scenario planning in anticipation of these unusual rain events especially given the unpredictable nature weather due to climate change. **Recommendation:** In anticipation of future climatic changes leading to unpredictable rain events, the EPA recommends the USACE consider conducting operational studies and consulting with the appropriate stakeholders (recreational groups, state/federal agencies and the tribes) to solicit concerns and feedback.

#### Purpose and Need Statement:

- On page 2-3, section 1.3 Project Need or Opportunity, the EPA has concerns regarding this section:
  - The USACE states, "The WCAs continue to be flooded in a manner that inundates tree islands and other wildlife habitat, and if sustained will negatively impact birds and mammals dependent on that habitat." However, the USACE does not cite US Fish and Wildlife (USFWS) concerns or Florida Fish and Wildlife Commission (FFWC) or any other pertinent documentation that would substantiate this statement. **Recommendation:** The EPA recommends the USACE better explain the negative impacts to wildlife and provide

documentation and/or citation from credible sources (USFWS, FFWC, USACE biologist or academia) that substantiate these claims.

- The USACE states (on page 2), “There is an immediate threat and impact to valuable natural resources that underpin local economies...”. However, the subsequent EA does not discuss in depth the degree of economic distress that this will cause nor does the USACE provide any evidence to support this statement. **Recommendation:** The EPA recommends the USACE provide examples and a better explanation as to how the local economy is impacted by unusually high water levels in WCA 3A.
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- The USACE (on page 3) states, “The temporary emergency deviation is expected to benefit natural resource within the WCA3A and BCNP.” However, the USACE doesn’t discuss benefits to Big Cypress National Park (BCNP). **Recommendation:** The EPA recommends the USACE briefly discuss benefits to BCNP within this section.

### **Water Quality:**

- On page 22, 3.12.1 Nutrients, the USACE states, "FDEP has recently established surface water quality numeric nutrient criteria for all Florida water bodies". The EPA thinks this statement should say "certain categories of water bodies". All is incorrect since they have no numeric nutrient criteria for canals in south Florida, such as the one that S-344 is in. **Recommendation:** The EPA recommends the USACE update the EA and replace “all water bodies” with “certain categories of water bodies”.
- On page 23, 3.12.1 Nutrients, the USACE states, "See below graph for background information on total phosphorus concentrations for inflows into ENP which is downstream of the S-344". **Recommendation:** The EPA recommends the USACE change to: "...for inflows into ENP which is over 9 miles downstream of the S-344” to more accurately reflect the current status.
- The EPA recommends the following minor grammatical changes on page 41, 4.10 Water Quality:
  - The USACE states, “average TP value at S-344 for flow and none flow events over the past two years”. The EPA recommends replacing “none flow events” with "no flow events."
  - The USACE states, “There are no expected water quality issues to result from the opening of this structure." The EPA recommends replacing with, “There are no

water quality issues, or changes in water quality, expected to result from the opening of this structure."

**Recreation:**

- On page 44, 4.17 Recreation, the USACE discusses impacts to recreation related to WCA 3A, but doesn't discuss potential impacts to recreation in BCNP. This action would elevate water levels in BCNP and could potentially impact recreation.

**Recommendation:** The EPA recommends the USACE discuss potential impacts to recreation in BCNP.

**Native American:**

- On page 2, 1.3 Project Need or Opportunity, the USACE discussed the immediate threat of high water in WCA 3A and impacts associated with land under lease to both the Miccosukee Tribe and Seminole Tribe. However, there is no discussion of the impacts in the Native American section on page 41. **Recommendation:** The EPA recommends the USACE discuss potential impacts of the high water within WCA 3A on the Miccosukee Tribe and Seminole Tribe particularly associated with the tree islands and their traditional uses within WCA 3A.

- On page 41, 4.11 Native Americans, the USACE states:

*As part of this project, consultation has been initiated and is ongoing between the Corps and appropriate federally recognized tribes. Informal coordination through phone calls and emails with staff members of the Miccosukee and the Seminole Tribes was conducted March 23, 2016 for notification purposes and to solicit comments regarding the temporary emergency deviation and the potential effects of flood waters released from WCA 3A. Letters requesting consultation were sent to both the Miccosukee and Seminole Chairmen on April 11, 2016 (See Appendix C).*

On page 42, the USACE states that consultation is ongoing throughout the process. The EPA also notes that the action's FONSI states, "The Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida's Tribal Historic Preservation Office have not provided comments on the determination of no adverse effect; however, consultation and coordination is ongoing." The EPA encourages consultation with the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida at all levels of decision-making. The EPA works closely with both Tribes on Everglades matters and is committed to working with other federal partners to prioritize the Tribes' water quality and water management concerns. **Recommendation:** The EPA recommends the USACE continue to consult with the Miccosukee and Seminole Tribes and document any cultural resources effects determination in the Final EA. The EPA also recommends the USACE document any subsequent dialog between themselves and the Miccosukee Tribe and/or Seminole Tribe in the Final EA and reinforce their commitment to ongoing consultation with both Tribes within any subsequent FONSI.

## Nasuti, Melissa A SAJ

---

**From:** Williams, Olice E SAJ  
**Sent:** Wednesday, May 25, 2016 11:39 AM  
**To:** Nasuti, Melissa A SAJ  
**Subject:** FW: S-344 will be opened today

Melissa,

Please see the below e-mail from the Miccosukee Tribe regarding mercury loading. Would it be possible to accommodate this request?

VR,

Olice Williams  
Water Management Section  
Multi Project Branch  
U.S. Army Corps of Engineers - Jacksonville District  
701 San Marco Blvd.  
P.O. Box 4970  
Jacksonville, Florida 32232-0019  
(904) 232-2160 - office  
(904) 613-8276 - mobile  
(904) 232-1772 - fax  
HYPERLINK <mailto:Olice.e.williams@usace.army.mil>

-----Original Message-----

From: Zavadzkas, Gintas [<mailto:GintasZ@miccosukeetribe.com>]  
Sent: Wednesday, May 25, 2016 11:04 AM  
To: Williams, Olice E SAJ <[Olice.E.Williams@usace.army.mil](mailto:Olice.E.Williams@usace.army.mil)>  
Subject: [EXTERNAL] RE: S-344 will be opened today

Olice

In a discussion with EPA and Tribal members the topic of mercury loading came in to play and should be added to the NEPA document that will be created for the S-334 and the plugs install as we are interested to know the mercury loading and the effect that the new water regime will have.

Thanks

Gintas Zavadzkas  
Fish and Wildlife Director  
Miccosukee Tribe  
305 223 8380 ext 2217

-----Original Message-----

From: Williams, Olice E SAJ [<mailto:Olice.E.Williams@usace.army.mil>]  
Sent: Thursday, May 19, 2016 3:35 PM

To: Nasuti, Melissa A SAJ <Melissa.A.Nasuti@usace.army.mil>; Moreno, Meredith A SAJ <Meredith.A.Moreno@usace.army.mil>; Crawford, Daniel E SAJ <Daniel.E.Crawford@usace.army.mil>; Ralph, Gina P SAJ <Gina.P.Ralph@usace.army.mil>  
Cc: DLL-CESAJ-MWD-OPS <DLL-CESAJ-MWD-OPS@usace.army.mil>; Zavadzkas, Gintas <GintasZ@miccosukeetribe.com>; 'Lori\_Miller@fws.gov' <Lori\_Miller@fws.gov>; 'Kotun, Kevin' <kevin\_kotun@nps.gov>; Kirkland, Sue Lynn <skirklan@sfwmd.gov>; Taplin, Kimberley A SAJ <Kimberley.A.Taplin@usace.army.mil>  
Subject: S-344 will be opened today

Team,

FYSA. S-344 will be fully opened today. All six L-28 plugs are functional. The USFWS has been notified and have no objections.

VR,

Olice Williams  
Water Management Section  
Multi Project Branch  
U.S. Army Corps of Engineers - Jacksonville District  
701 San Marco Blvd.  
P.O. Box 4970  
Jacksonville, Florida 32232-0019  
(904) 232-2160 - office  
(904) 613-8276 - mobile  
(904) 232-1772 - fax  
HYPERLINK <mailto:Olice.e.williams@usace.army.mil>

SEMINOLE TRIBE OF FLORIDA  
TRIBAL HISTORIC PRESERVATION OFFICE  
AHTAHTHIKI MUSEUM

TRIBAL HISTORIC  
PRESERVATION OFFICE  
SEMINOLE TRIBE OF FLORIDA  
AHTAHTHIKI MUSEUM  
30290 JOSIE BILLIE HWY  
PMB 1004  
CLEWISTON, FL 33440  
PHONE: (863) 883-6549  
FAX: (863) 883-1117



TRIBAL OFFICERS  
CHAIRMAN  
JAMES E. BILLIE  
VICE CHAIRMAN  
MITCHELL CYPRESS  
SECRETARY  
LACORNE SCOTT  
TREASURER  
DEBBIE ANN

April 14, 2016

Ms. Meredith A. Moreno, M.A., RPA, Archaeologist  
Planning Division, Environmental Branch  
USACE, Jacksonville District  
701 San Marco Blvd.  
Jacksonville, Florida 32207

Phone: 904-232-1577

Email: meredith.a.moreno@usace.army.mil

**Subject:** ERTF WSA 3A Emergency Deviation S-344 & L-28 Canal Plugs  
**THPO#:** 0029122

Dear Ms. Moreno:

Thank you for contacting the Seminole Tribe of Florida's Tribal Historic Preservation Office (STOF-THPO) regarding the Emergency Deviation S-344 & L-28 Canal Plugs undertaking. The STOF-THPO is consulting with the USACE pursuant to the THPO's responsibilities under the STOF Cultural Resources Ordinance C-01-2016 and Section 106 of the National Historic Preservation Act.

The STOF-THPO has reviewed the documents that the USACE has provided and has no objection to the emergency deviation at this time. The STOF-THPO would like to continue to be consulted if there are any changes to the planned deviation or if any archaeological, historical, or burial resources are impacted. Thank you and we look forward to working with you in the future.

Respectfully,

Bradley M. Mueller, M.A., Supervisor  
STOF-THPO-Compliance Review Section  
30290 Josie Billie Hwy, PMB 1004  
Clewiston, FL 33440  
Office: 863-983-6549 x12245  
Email: bradleymueller@semtribe.com



**RICK SCOTT**  
GOVERNOR

February 11, 2016

Secretary Jo-Ellen Darcy  
Assistant Secretary of the Army for Civil Works  
U.S. Department of the Army  
108 Army Pentagon  
Washington, D.C. 20310-0108

Dear Secretary Darcy:

This letter is to request that the U.S. Army Corps of Engineers take immediate action to relieve the flooding of the Everglades Water Conservation Areas and the releases of water from Lake Okeechobee to the Caloosahatchee and St. Lucie Estuaries.

Specifically, the Corps needs to raise the level of the L-29 canal to eight and one half feet so that substantial volumes of water can be moved from Water Conservation Area 3 to the Everglades National Park through Shark River Slough.

Moving water south out of the Water Conservation Areas will prevent the die off of wildlife whose habitat is currently flooded due to the heavy rainfall and also allow us to move more water from Lake Okeechobee south, relieving pressure from discharges to the Estuaries.

We have communicated with stakeholders along Tamiami Trail, the Fish and Wildlife Service, the Everglades National Park, the South Florida Water Management District, the Miccosukee Tribe, and many others. They are supportive of this action.

The wildlife in the Water Conservation Area cannot sustain prolonged flooding and the economies that rely on the estuaries need immediate relief.

I have instructed the Department of Environmental Protection and the South Florida Water Management District to devote all necessary resources to provide relief for this region. The State of Florida stands ready to address this situation. However, the U.S. Army Corps of Engineers is critical to this equation and your immediate action is essential.

Thank you for your prompt attention to this most pressing matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rick Scott".

Rick Scott  
Governor

cc: General C. David Turner  
Colonel Jason Kirk

**BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**In re:** **OGC Case Nos.: 00-0889**  
**EMERGENCY AUTHORIZATION** )  
**FOR TEMPORARY OPERATIONAL** )  
**CHANGES TO ADDRESS HIGH** )  
**WATER CONDITONS IN THE SOUTH FLORIDA REGION)**  
\_\_\_\_\_ )

**EMERGENCY FINAL ORDER**

Under Sections 120.569 and 373.119(2) of the Florida Statutes, the State of Florida Department of Environmental Protection (Department) enters this Emergency Final Order in response to the imminent or immediate threats to valuable natural resources and severe economic losses resulting from sustained high water levels in the South Florida region.

**FINDINGS OF FACT**

1. The highest rainfall on record has occurred within the South Florida Ecosystem during the month of January causing severe impacts to natural resources. All areas of South Florida are inundated with water restricting the ability to safely move water to mitigate the effects of flooding.

2. The Water Conservation Areas are flooding in a manner that inundates tree islands and other wildlife habitat, and if sustained will cause serious stress and loss of life particularly for birds and mammals dependent on that habitat including eliminating nesting opportunities that can inhibit recovery of imperiled bird species. Imperiled bird species include the Snail Kite, Limpkin, and Wood Stork to name a few. Tree Islands themselves can be lost. Because the Water Conservation Areas are flooded, water cannot be released from Lake

Okeechobee to the south. Due to Herbert Hoover Dike integrity concerns, large volumes of water are being released into the Caloosahatchee Estuary, St. Lucie Estuary, and Indian River Lagoon contributing to severe impacts to the ecology of their estuaries.

3. As a result, there are immediate threats and impacts to valuable natural resources that underpin local economies that surround the Everglades Protection Area, Lake Okeechobee, the Caloosahatchee Estuary, the St. Lucie Estuary, and Indian River Lagoon. Loss of natural resources directly affects fisheries and fishing, seafood harvesting, and ecotourism which leads to significant economic losses. Immediate action that addresses this condition is necessary.

4. Discharges to the estuaries are contributing to impacts to the natural resources of those estuarine ecosystems. Those estuaries provide fishing, boating, sightseeing, seafood harvesting, and other important tourist related economic benefits. In a recent resolution by the Martin County Commission, water-related economic benefits to Martin and St. Lucie County alone were estimated to total more than \$840 million annually, with an additional \$588 million in property value benefits.

5. Sustained flooding in the Water Conservation Areas presents an immediate threat to valuable natural resources. According to the Florida Fish and Wildlife Commission, there are 69 identified species of wildlife within the South Florida ecosystem, much of which depend on habitat in the Water Conservation Areas. Specifically, sustained flooding of natural habitat, especially tree islands, will seriously impact and reduce population levels of many of these species, particularly white-tailed deer, nesting birds and wading birds. These species support and encourage substantial outdoor recreational opportunities in this region. Loss of those species and associated recreation due to flooding will lead to significant economic losses and impacts on local businesses. Also, loss of the tree islands themselves will impact cultural resources, At the

South Florida Water Management District's Water Resources Advisory Committee meeting, specifically the Miccosukee Tribe's stated that losing tree islands impacts their ability to carry out its culturally important green corn ceremonies.

6. Immediate action is necessary to deviate from permitted water management practices in order to move significant volumes of flood water out of the Water Conservation Areas through Shark River Slough, and subsequently provide opportunities to move more water south out of Lake Okeechobee relieving pressure on the Caloosahatchee and St. Lucie Estuaries. Moving water south, through Shark River Slough, will also have the added ecological benefit of improving salinity conditions of Florida Bay.

7. The Department has issued permits to the Army Corps of Engineers (Corps) for the following projects: WCA 3 Decompartmentalization and Sheetflow Enhancement Physical Model Project (Permit No. 0304879), including the S-152 water control structure; Modified Water Deliveries to the Everglades National Park Project (Permit No. 0246512), including the S-355A and S-355B water control structures; Ninth Amended Emergency Final Order to Operate the S-332B, S-332C, S-332D Pump Stations and Appurtenant Structures (OGC Case Nos. 00-0889 and 99-2242).

8. The Department has issued permits to the South Florida Water Management District (District) for the following projects: C-111 Spreader Canal Project (Permit No. 0293559), including the S-199 and S-200 Pump Stations, and the S-18C water control structures; Non-Everglades Construction Project Discharge Structures Project (File No. 0237803), including the S-334 water control structure; S-197 Control Structure Project (File No. 0306639), including the S-197 water control structure.

9. Under the current emergency conditions, it is appropriate to temporarily modify operations of the projects and immediately employ any remedial means deemed necessary to redress the emergency.

10. The Corps shall continue water quality and hydrologic monitoring of the existing permitted Corps project features, to identify and evaluate water quality and hydrologic conditions. The monitoring work provides water quality data to evaluate compliance with state water quality standards and long-term phosphorus concentration limits contained within the Settlement Agreement to the Federal Everglades lawsuit (Case No. 88-1886), and hydrologic data necessary for the adaptive operation of the pump stations to meet the requirements of the Biological Opinion while minimizing impacts to the water supply and flood protection purposes of the C&SF project.

11. The District shall continue water quality and hydrologic monitoring of the existing permitted District project features, to identify and evaluate water quality and hydrologic conditions. The monitoring work provides water quality data to evaluate compliance with state water quality standards and long-term phosphorus concentration limits contained within the Settlement Agreement to the Federal Everglades lawsuit (Case No. 88-1886), and hydrologic data necessary for the adaptive operation of the pump stations to meet the requirements of the Biological Opinion while minimizing impacts to the water supply and flood protection purposes of the C&SF project.

12. Operational changes that will help mitigate the current emergency are set forth in the document entitled, "Protective Operational Criteria to Compensate for Sustained L-29 Stage of 8.5 feet NGVD," attached hereto as Exhibit A.

## CONCLUSIONS OF LAW

13. Sections 120.569 and 373.119 of the Florida Statutes gives the Department the authority to issue an Emergency Final Order if, as agency head, I find that an emergency exists requiring immediate action to protect the public health, safety, or welfare; the health of animals, fish or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural or other reasonable uses; and the order recites with particularity the facts underlying that conclusion.

14. Based on the above findings, I hereby conclude that temporary operations in accordance with the Protective Operational Criteria to Compensate for Sustained L-29 Stage of 8.5 feet NGVD are necessary to protect the public health, safety, and welfare; the health of animals, fish or aquatic life; and recreational, commercial, industrial, agricultural and other reasonable uses.

15. Suspension of certain permit conditions, statutes and rules, is required to prevent any hindrance or delay of necessary action in coping with the emergency.

### **THEREFORE, IT IS ORDERED:**

#### **16. Description of Authorized Project**

The Corps and the District are hereby authorized to make temporary operational changes in order to implement operation criteria to compensate for sustained L-29 Stages of about 8.5 feet NGVD as described in Exhibit A.

#### **17. General Conditions**

(a) The Corps and District shall implement the emergency operation activities as described in Exhibit A and in a manner that will minimize detrimental impacts (including

harmful flooding and degradation of water quality) to the environment, to the public, to adjacent properties, and to downstream receiving waters to the greatest extent practicable, pursuant to federal law and Sections 373.413 and 373.414 of the Florida Statutes. The Corps and District shall implement the emergency operation activities in a manner that will maximize beneficial impacts to the environment to the greatest extent practicable consistent with the hydrological and biological restoration goals of the Everglades Forever Act (Section 373.4592, F.S.) and the Florida Bay Restoration Act (Section 373.4593, F.S.). Should any adverse impacts occur from conducting the emergency activities, the Corps and District shall be liable for damages to the extent applicable under federal and state law.

(b) All activities authorized by this Emergency Final Order shall be performed using appropriate best management practices. For activities conducted in or discharging to wetlands or other surface waters, best management practices shall include properly installed and maintained erosion and turbidity control devices, to prevent erosion and shoaling and to control turbidity. These turbidity/erosion controls shall be installed prior to any clearing, excavation or placement of fill material and shall be maintained in an effective conditions at all locations until construction is completed, disturbed areas are stabilized, and turbidity levels have fallen to less than 29 NTUs above background for flows to Class III Waters and to background levels for flows to OFW. The Corps and the District shall be responsible for ensuring that erosion control devices/procedures are inspected/maintained during all phases of construction authorized by this Order. Additional activities, as described in the document entitled, "The Florida Development Manual - A Guide to Sound Land and Water Management" (revised February 1993), shall be conducted as needed to prevent degradation of adjacent wetlands and surface waters, to prevent violations of state water quality standards.

(d) If, for any reason, the Corps and/or the District does not comply with any condition or limitation specified in this Emergency Final Order, the Corps and/or the District shall immediately provide the Department's Office of Ecosystem Projects, Water Quality Standards and Special Projects Program, and Southeast District Office with a written report containing the following information: a description and cause of noncompliance; the period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue; and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance. Reports shall be provided to the above-referenced Department offices at the following addresses:

Florida Department of Environmental Protection  
Office of Ecosystem Projects  
3900 Commonwealth Boulevard, MS 45  
Tallahassee, Florida 32399-3000  
Telephone (850) 245-2228

(e) This Emergency Final Order conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of sovereignty land of Florida seaward of the mean high-water line, or, if established, the erosion control line, unless herein provided and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the Board of Trustees of the Internal Improvement Trust Fund.

(f) This Emergency Final Order does not convey to the Corps and/or the District or create in the Corps and/or the District any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property that is not owned or controlled by the Corps and/or the District. The issuance of this Emergency Final Order does not convey any vested rights or any exclusive privileges.

(g) The Corps and the District specifically agrees to allow authorized Department personnel access to the premises where the authorized activity is located or conducted for the purpose of ascertaining compliance with the terms of the Emergency Final Order; to have access to and copy any records that must be kept under conditions of the Emergency Final Order; to inspect the facility, equipment, practices, or operations regulated or required under this Emergency Final Order; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this Emergency Final Order.

(h) The Corps and the District are responsible for coordinating the emergency operations with stakeholders including the Department of Interior, the Florida Department of Agriculture and Consumer Services, the Florida Fish and Wildlife Conservation Commission (FWC), and the Miccosukee Tribe of Indians of Florida. Prior to commencement of the emergency operations, the District shall provide information to the Department that documents that this coordination has taken place and that there are no major objections.

(i) The Corps and the District shall coordinate with the U.S. Fish and Wildlife Service and the FWC to ensure that there will be no adverse impacts to endangered or threatened species as a result of the proposed operations.

## **18. Specific Conditions**

(a) Monitoring shall be in accordance with all applicable permits and monitoring plans on file with the Department. Monitoring results shall include salinity and ecological monitoring at the S-197 water control structure in accordance with the Appendix C – G-3273 Constraint Relaxation/S-356 Field Test and S-357N Operational Strategy Monitoring Plan. Seepage monitoring results shall include seepage monitoring along the C-111 Canal between the S-176 water control structure and the S-199 Pump Station. All reports and data generated as a

result of this monitoring shall be submitted to the Office of Ecosystem Projects (at the address listed above) upon receipt by the Corps and/or the District and within a timely manner.

(b) Exhibit A requires that the system be closely monitored to maximize intended benefit and avoid unintended consequences. Close coordination with the Department and stakeholders shall be maintained to address any potential water quality, flood protection, and environmental resource issues in a timely fashion. To this end, the Corps and the District will submit an Emergency Operations After Action Report as soon as practicable after cessation of all emergency operations to the addresses listed in General Condition 17(d) above. The report shall include details of operation activities, pumping dates and times, volume of water pumped, gauge readings, flow measurements, flow direction and other visual observations, seepage monitoring results, water quality monitoring results (including provisional data), and a comparison with previous years' data and results.

#### **19. Suspension of Statutes and Rules**

The following provisions of permits, statutes and rules are hereby suspended for the activities authorized by this Order for the duration of this Order:

(a) For those activities noted above, subject to the limitations, duration and other provisions of this Order, all requirements for permits, leases, consents of use or other authorizations under Chapters 253, 373, 376 and 403 of the Florida Statutes, and rules adopted thereunder.

(b) Notice requirements of sections 253.115, and 373.413 of the Florida Statutes and rules 18-21, 62-4, and 62-312 of the Florida Administrative Code; and,

(c) Application fee, lease fee, and easement fee requirements of sections 373.109 of the Florida Statutes and Rules 18-21, and 62-4 of the Florida Administrative Code.

**20. Other Authorizations Required**

Nothing in this Emergency Final Order shall eliminate the necessity for obtaining any other federal, state, water management district, or local permits or other authorizations that may be required.

**21. Adverse Off-Site Impacts**

(a) The Corps and the District shall ensure that adverse off-site water resource related impacts do not occur as a result of this Emergency Final Order and shall fully monitor conditions related to the activities authorized by this order.

(b) The correction of any erosion, shoaling, water quality, or flooding problems that result from the operation of the structures authorized by this order shall be the sole responsibility of the Corps and the District. In addition, the Corps and the District shall immediately resolve such problems to the Department's satisfaction.

(c) If any adverse water quality, water quantity, or other negative environmental impacts occur as a result of this Emergency Final Order, the Department reserves the right to immediately revoke or modify this authorization upon written notice.

**22. Immunity from Liability**

The Department's immunity from liability under Section 373.443 of the Florida Statutes for any damages that might result from the activities authorized by this Emergency Final Order shall not be diminished by the terms of this order or any activities taken pursuant to this order.

**23. Water Quality Certification**

The Department waives water quality certification for those activities authorized by this Emergency Final Order.

**24. Violation of Conditions of Emergency Final Order**

Failure to comply with the conditions set forth in this Emergency Final Order shall constitute a violation of a Department Final Order under chapters 373, 376, and 403 of the Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

**25. Expiration Date**

The Department finds that this state of emergency is expected to continue for up to 90 days. Therefore, this Emergency Final Order shall remain in effect until 90 days from effective date, unless rescinded, modified or extended by further order of the Department.

**26. Effective Date**

This Emergency Final Order shall be effective as of February 11, 2016.

**NOTICE OF RIGHTS**

Any person to whom this emergency order is directed may petition the Department for a hearing before the agency head in accordance with section 373.119 of the Florida Statutes.

Any party substantially affected by this order has the right to seek judicial review of it under Section 120.68 of the Florida Statutes, by filing a notice of appeal under Rule 9.110 and 9.190 of the Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED on this 11<sup>th</sup> day of February 2016 in Tallahassee, Florida.

STATE OF FLORIDA, DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
\_\_\_\_\_  
JONATHAN P. STEVERSON  
Secretary  
3900 Commonwealth Boulevard  
Tallahassee, FL 32399-3000

**FILING AND ACKNOWLEDGMENT**

FILED, on this date under Section 120.52 of the Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Lea Crandall                      2-11-16  
Clerk    Date

**CERTIFICATE OF SERVICE**

I, Lea Crandall, HEREBY CERTIFY that a true and correct copy of this Emergency Final Order was sent electronically to the following persons on this 11<sup>th</sup> day of February 2016:

# Resolution

## Florida Fish and Wildlife Conservation Commission

hereby declares on this day:

**WHEREAS**, the highest rainfall on record has occurred within the south Florida ecosystem during the month of January causing severe impacts to natural resources; and

**WHEREAS**, all areas of south Florida are inundated with water, restricting the ability to safely move water to mitigate the effects of flooding; and

**WHEREAS**, the Water Conservation Areas are flooding in a manner that inundates tree islands and other wildlife habitat and, if sustained, will cause serious stress and loss of life, particularly for birds and mammals dependent on that habitat, because the flooding eliminates nesting opportunities that can inhibit recovery of imperiled bird species, which include the snail kite, limpkin, and wood stork, to name a few. Tree Islands themselves can be lost; and

**WHEREAS**, because the Water Conservation Areas are flooded, water cannot be released from Lake Okeechobee to the south. Due to Herbert Hoover Dike integrity concerns, large volumes of water are being released into the Caloosahatchee Estuary, St. Lucie Estuary and Indian River Lagoon, contributing to severe impacts to the ecology of their estuaries; and

**WHEREAS**, as a result, there are immediate threats and impacts to valuable natural resources that underpin local economies that surround the Everglades Protection Area, Lake Okeechobee, the Caloosahatchee Estuary, the St. Lucie Estuary and Indian River Lagoon. Loss of natural resources directly affects fisheries and fishing, seafood harvesting and ecotourism, which leads to significant economic losses. Immediate action that addresses this condition is necessary; and

**WHEREAS**, discharges to the estuaries are contributing to impacts to the natural resources of those estuarine ecosystems. Those estuaries provide fishing, boating, sightseeing, seafood harvesting and other important tourist related economic benefits. Water-related economic benefits to Martin and St. Lucie counties alone are estimated to total more than \$840 million annually, with an additional \$588 million in property value benefits.

**WHEREAS**, sustained flooding in the Water Conservation Areas presents an immediate threat to valuable natural resources. There are 69 identified species of wildlife within the south Florida ecosystem, much of which depend on habitat in the Water Conservation Areas. Specifically, sustained flooding of natural habitats, especially tree islands, will seriously impact and reduce population levels of many of these species, particularly white-tailed deer, nesting birds and wading birds. These species support and encourage substantial outdoor recreational opportunities in this region. Loss of those species and associated recreation due to flooding will lead to significant economic losses and impacts on local businesses; and

**WHEREAS**, loss of the tree islands themselves will impact cultural resources, specifically the Miccosukee Tribe's ability to carry out its culturally important green corn ceremonies.



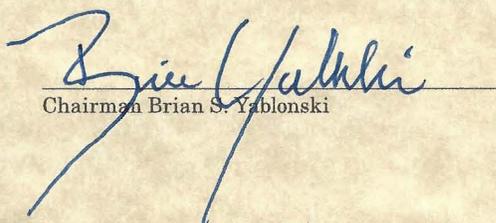
Florida Fish  
and Wildlife  
Conservation  
Commission

MyFWC.com

**NOW THEREFORE**, immediate action is necessary to deviate from permitted water management practices in order to move significant volumes of flood water out of the Water Conservation Areas, and subsequently provide opportunities to move more water south out of Lake Okeechobee relieving pressure on the Caloosahatchee and St. Lucie Estuaries. Moving water south, through Shark River Slough, will also have the added ecological benefit of improving salinity conditions of Florida Bay.

**DONE AND RESOLVED** in this duly constituted and assembled meeting in Tallahassee, Florida, this 11th day of February, 2016.

On behalf of the  
FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION

  
Chairman Brian S. Yablonski



Florida Fish  
and Wildlife  
Conservation  
Commission

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