

December 13, 2007

U.S. Army Corps of Engineers
Jacksonville District
Attention: Stu Appelbaum
P.O. Box 4970
Jacksonville, FL 32232-0019

Re: Comments of the Florida Sugar Cane League, Inc
On Proposed CERP Guidance Memoranda,
October 19, 2007

Dear Mr. Appelbaum:

I am writing on behalf of the grower and processor members of the Florida Sugar Cane League, Inc. who are engaged in water dependent agricultural operations in the Everglades Agricultural Area, South of Lake Okeechobee, an area receiving agricultural irrigation supplies and flood protection from the Central & Southern Florida Project. The Florida Sugar Cane League has been an active participant in all aspects of the development and Congressional authorization of the Comprehensive Everglades Restoration Plan in WRDA of 2000 and in later agency action in the implementation of that Plan. As always, we are grateful for this and earlier opportunities to comment on the CERP Guidance Memoranda.

We have been provided a copy of Comments by the Sugar Cane Growers Cooperative of Florida on the proposed CERP Guidance Memoranda and concur with those Comments and ask that their comments be incorporated in as part of the Comments of the Florida Sugar Cane League, Inc. They have provided compelling arguments and analysis supporting their recommendation that the proposed Guidance Memoranda not be made final.

There is a clear need to revise the Programmatic Regulations in 2008 and complying with the requirements of Sections 2033 and 2034 of WRDA 2007 will require changes in the Proposed Guidance Memoranda. We concur with the Sugar Cane Growers Cooperative that it makes more sense to revise the Programmatic Regulations and avoid final action on the Proposed Guidance Memoranda. These Memoranda will

become unnecessary when the Corps addresses all issues in the new Programmatic Regulations.

The Florida Sugar Cane League, Inc. also participated in drafting the earlier Comments of a broad cross section of agricultural interests dated June 6, 2005, Comments directed to an earlier draft of the Guidance Memoranda but which continue to address issues presented by the July 2007 Final Draft. Among the general comments by the agricultural coalition that are still applicable were the following:

- Both the Federal and State statutes authorizing CERP include balanced purposes that are also reflected in the definition of “Goals and Purposes of the Plan” in the Programmatic Regulations: “the restoration, preservation and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood control.” [s. 385.3] The Guidance Memoranda reflect a policy direction that environmental needs have priority and must be met first and only then will economic needs be met to the extent water is available.
- The process to quantify various amounts of water for the purpose of reservation or allocation can only work with the artificial world created by the large-scale computer models developed for the CERP. The output cannot be directly transferred for use outside the model domain in the ways contemplated by the Guidance Memos.

If the Corps of Engineers chooses to take final action to promulgate the Guidance Memoranda, we believe that Guidance Memorandum #3 should be substantially revised with regard to “Intervening Non-Cerp Activities”. As stated in this Guidance Memorandum:

- The Savings Clause does not require CERP to make up for reductions in quantity and quality of existing legal sources of water or levels of service for flood protection caused by intervening non-CERP activities, but it does prohibit CERP projects from further reductions.

We believe this Guidance is inconsistent with the balanced “Goals and Purposes of the Plan” referred to above. This Guidance limits the Savings Clause protection only as it applies to existing sources of water serving economic needs and levels of service for flood protection, but extends the Savings Clause protection for water supply for Everglades National Park or for fish or wildlife in the event supplies for those uses have been reduced by intervening non-CERP activities. The pre-CERP baseline should be protected and restored for all uses, whether or not there has been an “intervening non-Cerp activity, consistent with the balanced “Goals and Purposes of the Plan, and we propose that this Guidance be revised accordingly.

We believe also that revising this Guidance as we propose is authorized and more consistent with the provisions of sub-sec. 601(b)(1)(B) “ INTEGRATION – In carrying out the Plan, the Secretary shall integrate the activities described in subparagraph (A) with ongoing Federal and State projects and activities in accordance with section 528(c)

of the Water Resources Development Act of 1996 (110 Stat.3769).” Without this revision to the Guidance, we believe the Corps and the State will make changes to the structures and operations of the C&S Florida Project outside of CERP in order to avoid the Savings Clause protection.

This is only one example of the priority and protection given to water for the natural system without affording similar protections for other water uses. Providing more balanced protection will ensure the continuing support for CERP among all interest groups.

With regard to our earlier general comment above that it is not possible to translate computer model outputs of water to be reserved for the natural system we are further concerned by the provisions required by Attachment 4-C for the “Project Assurances” section of each PIR. This requires that the “non-Federal sponsor” alone, not the Corps of Engineers, ensure that the “quantity, quality, timing and distribution of existing water..available to the natural system...will remain available for so long as the Project remains authorized.” This becomes the burden of the non-Federal sponsor alone, even though the Corps of Engineers will often control whether this burden can be met. Current proposals by the Corps for the Lake Okeechobee Regulation Schedule illustrate the Federal control of conditions that will determine compliance with this non-Federal burden.

In summary, we do not believe that the proposed Guidance Memoranda will provide a workable, balanced process for management of water through the Central and Southern Florida Project.

We thank you again for this opportunity to make additional comments.

Sincerely,

Philip S. Parsons
For the Florida Sugar Cane League, Inc.