



**Everglades  
Law Center, Inc.**

*Defending Florida's Ecosystems and Communities*

November 2, 2020

Melissa A Nasuti  
U. S. Army Corps of Engineers  
Jacksonville Division  
P.O. Box 4970  
Jacksonville, FL 32232-0019  
Email: melisa.a.nasuti@usace.army.mil

Re: Everglades Emergency Deviation Comments

Dear Ms. Nasuti:

We are writing briefly in response to the U. S. Army Corps of Engineers (“Corps”) public notice, Finding of No Significant Impact (“FONSI”), and Environmental Assessment (“EA”) released late on Friday, October 30, asking for public comment by noon today, Monday, November 2, regarding the proposed emergency deviation from the Combined Operations Plan (“COP”) adopted on August 28, 2020. We are concerned both about the substance and the process of this emergency deviation; the process appears to violate the law.

First, we note that the very recently adopted COP anticipated high water levels in the late Fall in Water Conservation Area (“WCA”) 3A and set forth a detailed, stepwise set of interventions to be triggered by increasing water levels in WCA 3A. These interventions comprise its plan for the Extreme High Water Line (EHWL). A mere two months after that plan’s approval and adoption, the Corps (and other federal agencies) are redefining what should constitute a high water emergency and implementing a different set of interventions than those set out in the EHWL plan, triggered by lower water levels in WCA 3A. Redefining what constitutes a high water emergency two months after agreeing to a plan shaped over more than three years of interagency discussions calls into question whether an emergency exists.

Second, despite information showing that the proposed changes will not alleviate the now defined-down high water “emergency” in WCA 3A nor adequately address real issues about the effects of prolonged and unnatural high water levels on the plant and animal species that forage and breed in WCA 3A, the proposed emergency deviation focuses only on opening a small subset of structures on the southwestern end of WCA 3A, and avoids any “emergency deviation” proposals to address inflows into WCA 3A or outflows through the S-333 structure -- both of which are critical to addressing unnaturally high water levels in WCA 3A and western

Shark Slough. Although the EA states that "[m]aintaining the congressionally-authorized flood mitigation for the 8.5 SMA currently requires suspending S-333 releases from WCA 3A, which results in a reduction of approximately 1,350 cfs that would be released from WCA 3A," nothing in this emergency deviation seeks to address this critical block to moving Everglades flows through Northeast Shark River Slough, the historic Everglades flowway.

Third, the proposed emergency deviation allows for high water flows to continue into western Shark Slough until January 31, 2021. The supporting documentation contends that these prolonged high flows will not adversely affect the endangered Cape Sable seaside sparrow because its nesting season does not begin until March 1, and the area in western Shark Slough south of the gates that would be opened would thus have a month to dry to levels that would support nesting. This contention runs contrary to years of study and documentation by the federal agency charged with protecting the endangered species -- the Fish and Wildlife Service ("FWS") -- which has consistently indicated that an extended period before March 1 is needed both to ensure water levels are suitable for Cape Sable seaside sparrow's nesting and to support marl prairie vegetation crucial for the species' survival. The proposed emergency deviation EA, FONSI and supporting correspondence indicate that consultation with the FWS is ongoing; the FWS's Section 7 Handbook indicates that extensive additional after-the-fact analysis and consultation is also required. We emphasize the need for detailed monitoring and analysis of the impacts of the proposed emergency deviation, including flows out of all the opened structures and changes in water levels in the nesting habitat of the Cape Sable seaside sparrow's Subpopulation A to inform those analyses.

We appreciate your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Ansley Samson', with a long horizontal flourish extending to the right.

S. Ansley Samson  
General Counsel  
Everglades Law Center