

MEMORANDUM

TO: Governing Board Members

FROM:  Kenneth G. Ammon, Deputy Executive Director, Everglades Restoration Resources

Chip Merriam, Deputy Executive Director, Water Resources

DATE: October 28, 2008

SUBJECT: Notice of Rulemaking for Water Reservations to Protect Natural System Waters from Consumptive Use for the Picayune Strand Restoration Project

Background: The South Florida Water Management District (District) and the U.S. Army Corps of Engineers (Corps) are implementing the Comprehensive Everglades Restoration Plan (CERP). The Picayune Strand Restoration Project is a CERP project which was authorized by the Water Resources Development Act of 2007. In order for the District and the Corps to enter into a Project Partnership Agreement (formerly known as a Project Cooperation Agreement) to construct this project, the District is required to use its reservation or allocation authority to protect the water made available by the project for the natural system as identified in the Project Implementation Report, in accordance with the Water Resources Development Act of 2000. The District has elected to use the authority found in Chapter 373.223(4), F.S., to reserve the water identified for the protection of fish and wildlife for Picayune Strand and the Fakahatchee Estuary. The District is proposing to create a new Florida Administrative Code, Chapter 40E-10 titled "Water Reservations" to contain the reservations for Picayune Strand and the Fakahatchee Estuary as well as future water reservations undertaken by the District such as those currently under development for the Kissimmee River and the Indian River Lagoon-South. This new chapter provides the affected community with an easily identified location for water reservations, which are a tool to protect natural system waters from consumptive use. It is anticipated that future rulemaking efforts will provide an organizational framework for all tools used to protect natural system waters from consumptive use.

How this helps meet the District's 10 Year Strategic Plan: The Strategic Plan states that one of the District's strategies is to complete Project Implementation Reports and continue moving forward with implementation of the CERP. The proposed rulemaking furthers this strategy by undertaking the necessary step of protecting water for the protection of fish and wildlife, and is a necessary step for entering into the Project Partnership Agreement with the Corps. Publication of this Notice of Rulemaking will

enable the Picayune Strand Restoration project to continue moving towards construction.

Funding Source: Ad valorem taxes for staff time and the completed peer review.

This Board item impacts what areas of the District, both resource areas and geography: Several resource areas will be impacted by this rulemaking. Water Resources' Water Use Division will implement the rule; Everglades Restoration Resources will be able to proceed with construction-related activities; and the Office of Counsel will assist in compliance with the new and revised rules. Consumptive water users within the Lower West Coast region of the District that seek permits for water reserved for the Picayune Strand and the Fakahatchee Estuary will be affected.

What concerns could this Board item raise? This is the first water reservation rule to be noticed for rulemaking by the District and will draw attention from the broader regulated community, since there are concerns that the compliance methodologies set forth in this proposed rule could be used as a model for other water reservations within the District. The regulated consumptive use community located in the vicinity of the Picayune Strand and Fakahatchee Estuary may have concerns, since the proposed rule places a limit on potentially available sources of water for consumptive use. Stakeholders may raise concerns that the proposed rule requires complex technical analysis in order to comply with the new regulatory criteria and may request to delay rulemaking to resolve this and other technical issues.

Why should the Governing Board approve this item? The Governing Board should approve the publication of the notice of rulemaking to reserve water identified for the protection of fish and wildlife for the Picayune Strand and Fakahatchee Estuary associated with the CERP Picayune Strand Restoration project. This will complete one more item necessary to meet the current Corps schedule for executing the Project Partnership Agreement allowing the CERP project to be constructed.

KGA/CM/bm