Division: Water Resources Division, Applies Sciences Bureau

Rule Number: Rules 40E-10.021, 40E-10.031, 40E10.061, and 40E-2.091, F.A.C., and the “Applicant’s Handbook for Water Use Permit Applications within the South Florida Water Management District”

Rule Description: Prospective Water Reservation for the Everglades Agricultural Area Reservoir

Contact Person: Don Medellin

**Please remember to analyze the impact of the rule, NOT the statute, when completing this form.**

**BACKGROUND**

The Comprehensive Everglades Restoration Plan (CERP) is the framework to restore the Greater Everglades Ecosystem. As part of CERP, the Everglades Agricultural Area (EAA) Reservoir Project was authorized by Water Resources Development Act (WRDA) 2018 as a multi-purpose reservoir. It is designed to increase water storage and treatment capacity to accommodate additional flows south to the Central Everglades (Water Conservation Area 3 and Everglades National Park). Once constructed, the EAA Reservoir will have a storage capacity of 240,000 acre-feet (ac-ft). The EAA Reservoir will store regulatory releases from Lake Okeechobee and EAA basin runoff, thereby substantially decreasing the frequency and intensity of harmful discharges to the northern estuaries (St. Lucie and Caloosahatchee Estuaries). Based on model simulations, the EAA Reservoir Project will increase average annual flows of 370,000 ac-ft above the existing flows to the Central Everglades, benefiting fish and wildlife. It will also enhance regional water supplies for existing legal users, which will increase the water available to meet environmental needs.

Section 601 of WRDA 2000 (Public Law 106-541) requires the State to protect water made available for the natural system by CERP projects from allocation to consumptive uses. Legal protection of the water is required before the District and the U.S. Army Corps of Engineers (USACE) can execute a Project Partnership Agreement (PPA) to cost-share the construction of CERP project features. However, neither WRDA 2000 nor USACE regulations governing CERP dictate the mechanism by which such protection shall occur. To do so would violate the States’ rights and the 10th Amendment of the U.S. Constitution. The District intends to fulfil its WRDA obligations by adopting rules prospectively reserving the water released from the CERP EAA Reservoir Project to the Central Everglades through three specific structures (S-624, S-625, and S-626). This rulemaking effort is consistent with Governor DeSantis’ Executive Order 19-12, instructing the District to advance key Everglades Restoration projects.

**CENTRAL EVERGLADES PLANNING PROJECT: NEW WATER RESERVATION**

The original Central Everglades Planning Project (CEPP) was the first incremental step in increasing average annual flows to the Central Everglades. It provided approximately 210,000 ac-ft on an average annual basis to the Central Everglades, which is approximately two-thirds of the CERP performance goal. Plan formulation for the EAA Reservoir sought to deliver the remaining one third of new water essential to restoration by screening different storage features consistent with CERP. The EAA Reservoir and associated project features increase flows to the Central Everglades by approximately 370,000 ac-ft, exceeding the CERP goal of 300,000 ac-ft.

Another goal of CERP is to reduce by approximately 80% damaging freshwater discharges to the northern estuaries. In combination with the previously authorized projects, CEPP provides a 55% flow reduction in damaging discharges and a 63% reduction in the number of mean monthly high-flow discharge events. CEPP helps restore the resiliency of the northern estuaries by reducing the number, duration, and frequency of harmful discharges from Lake Okeechobee. The supplemental storage and treatment provided by the EAA Reservoir and associated project features will reduce the number of discharges by an additional 40% for the Caloosahatchee River Estuary and 55% for the St. Lucie Estuary, in addition to the benefits provided by CEPP.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to reduce personal income?  Yes X No

2. Is the rule likely to reduce total non-farm employment?  Yes X No

3. Is the rule likely to reduce private housing starts?  Yes X No

4. Is the rule likely to reduce visitors to Florida?  Yes X No

5. Is the rule likely to reduce wages or salaries?  Yes X No

6. Is the rule likely to reduce property income?  Yes X No

Explanation:

Subsection 40E-10.061(3), Florida Administrative Code (F.A.C.), protects all surface water flowing out of the EAA Reservoir through Structures S-624, S-625, and S-626 toward the Central Everglades. The EAA Reservoir is not yet constructed. Therefore, the proposed rules operate as a prospective reservation. The proposed rules clearly state that water is not available until the Governing Board takes future action to determine the EAA Reservoir is operational.

The District’s water reservations rules (Ch. 40E-10, F.A.C.) are integrated with its consumptive use permitting (CUP) program (Ch. 40E-2, F.A.C.) through Rule 40E-10.031, F.A.C. This rule requires CUP applicants to demonstrate that they do not withdraw reserved water by complying with the District’s “Applicant’s Handbook for Water Use Permit Applications within the South Florida Water Management District” (Applicant’s Handbook). The new criteria proposed in Section 3.11.6 of the Applicant’s Handbook states that renewals of existing permits and applications received before the conditions identified in Subparagraphs 40E-10.061(3)(b)&(c), F.A.C., and which otherwise satisfy the requirements of Chapter 40E-2, F.A.C. do not withdraw reserved water. Any applications that come into the District between the effective date of the proposed rule and when the Governing Board deems the EAA Reservoir operational do not have to perform any additional analysis to comply with the proposed rule.

The District’s analysis in its 2018 Lower East Coast (LEC) Regional Water Supply Plan Update which covers the region depicted in Figure 1, determined that the total irrigated acres in the area are projected to remain relatively stable, falling approximately 5% by 2040. This is primarily due to the loss of agricultural land in coastal Palm Beach and Miami-Dade counties and to the planned construction of the EAA Reservoir. The EAA Reservoir and project features will remove 18,571 acres of sugarcane out of agricultural production within the Lake Okeechobee Service Area (LOSA). LOSA is subject to existing restricted allocation area rules (LOSA Rule) that limit CUP allocations from surface water beyond their base condition water use. Much of the Lower East Coast (Palm Beach, Broward, and Miami-Dade counties), is also subject to another existing rule known as the Lower East Coast Regional Water Availability Rule (LEC Rule). The LEC Rule prohibits net increases in the volume or changes in timing, on a monthly basis, of direct surface water or indirect groundwater withdrawals over permitted base conditions uses , as of April 1, 2006. In both areas, increases in allocation must come from sources detailed in their respective rules. Both rules are listed in Section 3.2.1. of the Applicant’s Handbook. For these reasons, the District determined there would be no adverse impacts to economic growth, private-sector job creation or employment, or private-sector investment. An assessment of the EAA Reservoir Statement of Estimated Regulatory Costs is incorporated by reference as Exhibit 1.

Map

Description automatically generated

Figure 1. Lower East Coast Planning Area (green area).

If any of these questions are answered “Yes,” presume that there is a likely an adverse impact in excess of $1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule?

1. Is the rule likely to raise the price of goods or services provided by Florida business?

Yes X No

2. Is the rule likely to add regulation that is not present in other states or markets?

Yes X No

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?

Yes X No

4. Is the rule likely to cause Florida businesses to reduce workforces?

Yes X No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?

Yes X No

6. Is the rule likely to make illegal any product or service that is currently legal?

Yes X No

Explanation:

As explained above in Section A, the proposed amendments to Chapter 40E-10, F.A.C., do not impose requirements on existing consumptive use permittees or future CUP applicants. The proposed amendments to Section 3.11.6 of the Applicant’s Handbook, incorporated by reference in Rule 40E-2.091, F.A.C., were designed to ensure applicants, including any applicants renewing their CUPs, would meet the conditions of permit issuance as it relates to the proposed reservation, during the time between the proposed rule becoming effective and the Governing Board deeming the EAA Reservoir operational.

If any of these questions are answered “Yes,” presume that there is a likely adverse impact in excess of $1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of $1 million in the aggregate within 5 years after the implementation of this rule?

1. Current one-time costs Zero

2. New one-time costs Zero

3. Subtract 1 from 2 Zero

4. Current recurring costs Zero

5. New recurring costs Zero

6. Subtract 4 from 5 Zero

7. Number of times costs will recur in 5 years Zero

8. Multiply 6 times 7 Zero

9. Add 3 to 8 Zero

If 9. is greater than $1 million, there is likely an increase of regulatory costs in excess of $1 million, and the rule must be submitted to the legislature for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule.*(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).*

No individuals or entities will be required to comply with the proposed rule because of its prospective nature as described above. Furthermore, when the EAA Reservoir is operational, all reserved water will be discharged directly to protected basins and would be protected by existing regulations.

Stakeholders who submitted LCRAs expressed concerns that the earlier version of the rule published on October 16, 2020 would affect individuals and entities within LOSA and the LEC. The revised rule has addressed these concerns, but an analysis of the recent trends in surface water permitting in these areas was still completed.

After adoption of the LOSA Rule in 2008, the District embarked on a major effort to renew and update consumptive use permits within the region. The overwhelming majority of the CUPs were issued with 20-year durations with expiration dates between 2028 or 2029, at the earliest. From 2015 – 2020, the District received 81 applications for in surface water sources subject to the LOSA Rule. Based on the previous 5 years, the District expects to receive about 16 applications per year until the rule is revised. However, as mentioned above, none of the LOSA applicants will be required to perform any additional analysis as a result of the proposed rules.

From 2015 – 2020, the District received 365 permit applications within the LEC. Of the 365 applications received, none of the applicants sought increases in direct surface water or indirect groundwater allocation without also identifying acceptable sources to meet those increased withdrawals. Based on the previous 5 years, the District expects to receive about 73 applications per year until the rule is revised. As previously discussed, none of the LEC applicants will be required to perform any additional analysis because of the proposed rules.

### A general description of the types of individuals likely to be affected by the rule.

### 

Within the EAA water use sub-basin, the land use is primarily agriculture. The LEC has a mixed land use, including agriculture and public water supply. As stated above, this is a prospective reservation for a reservoir that has not been constructed. The permitting criteria encompassed in the proposed rule was designed to provide applicants with the assurance that no additional analysis will be needed to meet the conditions for permit issuance. As a prospective reservation, the District will need to revise this reservation, with separate Ch. 120, F.S., rights, in the future and with future Governing Board action.

## E. Good faith estimates (costs):

### Cost to the department of implementing the proposed rule:

## None. If any costs arise as a result of the prospective reservation, the District intends to implement the proposed amendments within its current workload and with existing staff.

### Minimal. *(Provide a brief explanation).*

### Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

### Cost to any other state and local government entities of implementing the proposed rule:

### None. This proposed amendments will only affect the District.

### Minimal. *(Provide a brief explanation).*

### Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

### Cost to the department of enforcing the proposed rule:

### None. These proposed amendments do not impose additional regulatory requirements or penalties that must be enforced by the District.

### Minimal. *(Provide a brief explanation).*

### Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

### None. These proposed amendments will only affect the District.

### Minimal. *(Provide a brief explanation).*

### Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

## F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. (Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).

### None. These proposed amendments will only affect the District.

### Minimal. *(Provide a brief explanation).*

### Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

# G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. *(Includes:*

# *Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*

# *The type of small businesses that would be subject to the rule;*

# *The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*

# *The likely per-firm regulatory cost increase, if any).*

A small business is defined in Section 288.703, F.S., as “…an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.”

A small county is defined in Section 120.52(19), F.S., as “any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.” A small city is defined in Section 120.52(18), F.S., as “any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.”

# The estimated number of small businesses that would be subject to the rule: None

# 1-99 100-499 500-999

# 1,000-4,999 More than 5,000

# Unknown, please explain:

Analysis of the impact on small business:

The District does not track the status of permit applicants in terms of their employment size or net worth. Based on the U.S. Census data, the District normally assumes that 99% of the applicants are small businesses. However, as discussed above, the proposed rules would have no negative impact on small businesses.

There is no small county or small city that will be impacted by this proposed rule.

Estimates from the Bureau of Economic and Business Research indicate that there are two counties and 44 cities within this area are below the thresholds in Section 120.52, F.S. Based on the applications received from 2015 – 2020, only 79 applications were submitted by cities or counties. Of these, only one was filed by small cities as defined in Section 120.52, F.S., As discussed above, the proposed amendments would have no negative impacts on CUP applicants, including small local governments.

A small county or small city will be impacted. Analysis:

Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

See responses to Section I, below.

# H. Any additional information that the agency determines may be useful.

### None.

Additional.

The water reserved by the proposed rule will benefit the fish and wildlife within the Central Everglades. The EAA Reservoir captures runoff from the EAA sub-basin as well as regulatory discharges from Lake Okeechobee. The increase in average annual flows to the Central Everglades of approximately 370,000 ac-ft. is essential to Everglades restoration and achieves the CERP goal for freshwater deliveries to the Everglades. The EAA Reservoir also shifts the timing of deliveries, favoring flows during the dry season (November through May). The EAA Reservoir and associated A-2 Stormwater Treatment Area (STA) are integrated with the existing A1 Flow Equalization Basin, STA-2, and STA-3/4 to meet federal project objectives. Under current conditions, the STAs have little to no flow during the dry season, which can result in stagnant conditions. The timing shift in water deliveries provided by the storage in the EAA Reservoir results in higher average monthly inflows during dry season months compared to current conditions.

Additional flow will have the following ecological benefits to the Central Everglades:

* Additional water flowing into northern Water Conservation Area-3A (WCA-3A) and Everglades National Park (ENP) will help improve and/or restore vegetative communities and habitat for fish and wildlife.
* Additional flow will improve natural processes critical for development of peat soils and tree islands, which are essential features of the Everglades ridge and slough landscape.
* In northwestern WCA-3A, additional flows will improve slough vegetation depths, reducing the time that water ponding depth in the sloughs falls below zero (i.e., fewer dryouts).
* In northwestern WCA-3A, additional flow will provide longer durations (hydroperiods) when the CERP target ponding depths are achieved, which improves slough vegetation suitability.
* In northeastern WCA-3A, additional flow will improve slough vegetation by increasing the duration of beneficial water ponding depths.
* Overland flows will increase under Tamiami Trail and into the northern portions of ENP.
* Additional freshwater overland flow will be provided to central Shark River Slough (SRS) and Taylor Slough and will improve the timing, distribution, and continuity of sheetflow across the Everglades ridge and slough landscape. The benefits of overland flow to central SRS are a continuation of the flows under Tamiami Trail.

In addition to the benefits provided to the Central Everglades, the EAA Reservoir will reduce damaging freshwater discharges to the northern estuaries. In combination with the previously authorized projects, the CEPP Project, including the EAA Reservoir, reduces the damaging discharges by 55% and the number of mean monthly highflow discharge events by 63% for the northern estuaries. This helps restore the resiliency of the northern estuaries by reducing the number, duration, and frequency of harmful discharges from Lake Okeechobee.

The environmental benefits EAA Reservoir and its proposed reservation rule outlined above will result in substantial economic benefits for the local and regional economy. A study published in 2014 in the journal Ecological Economics assessed the potential economic value of the ecosystem services of the CEPP, of which the EAA Reservoir is a principle component. The potential future benefits of CEPP were estimated to be approximately $1.8 billion. This estimate was only for a subset of the total array of ecosystem services that will be provided by the EAA Reservoir, its proposed rule, and CEPP. The total economic value to society is likely much greater than the $1.8 billion identified in the study.

# I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

See attachment “A”. Attachments A through E have been combined into one .pdf document with bookmarks for all proposals for lower cost regulatory alternatives received by the District.

Several stakeholders submitted a “no rule” alternative. Instead, they suggested relying on the Restricted Allocation Area Rules Applicant’s Handbook Sections 3.2.1.E (LEC Rule) and 3.2.1.F (LOSA Rule), respectively.

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

The LOSA Rule is the regulatory component of the Lake Okeechobee minimum flow and minimum water level recovery strategy. District rules and orders envision improved water supply and ecological performance when the Lake Okeechobee Regulation Schedule is revised after completion of the Herbert Hoover Dike Rehabilitation Project. In fact, improved water supply performance and improved ecological performance are two of the goals of the Corps-led update to the Lake Okeechobee System Operating Manual (LOSOM) that is presently underway. If the revised regulation schedule returns Lake Okeechobee to a prevention waterbody and the level of certainty for water supply is restored to permitted users from the Lake, District rules and orders require the District to engage in rulemaking to amend the recovery strategy and implementing regulatory strategies. Given the present uncertainty in the outcome of LOSOM, reliance on the LOSA Rule is insufficient to provide the Corps with the project assurances necessary to execute a PPA to cost-share the design and construction of the EAA Reservoir.

The boundaries where the LEC Rule applies is adopted by rule. The EAA Reservoir falls outside the boundaries of the LEC Rule. Given that the EAA Reservoir falls outside the boundaries where the LEC Rule is applicable, reliance on the LEC rule is not appropriate.

See attachment “B”. Included in Attachment A

Various agricultural stakeholders suggested revising Subsection 40E-10.601(3)(c) to remove any volumetric reference to the amount of water being reserved or flowing through Structure S-628. Their proposal included language that the reservation must be revised and readopted 1 year before the EAA Reservoir is determined to be operational by the District’s Governing Board and that such reservation is based on a project/system operating manual that restores the water supply level of certainty that existed prior to Corps’ adoption of the 2008 Lake Okeechobee Regulation Schedule. Their proposal also included a sunset provision, unless the District reinitiated rulemaking. Finally, they suggested deletion of the language proposed in Rule 40E-10.031, F.A.C., and the Applicant’s Handbook.

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

The District worked with several agricultural and municipal stakeholders to revise the proposed rule. Based on discussion with the stakeholders, it was clear that some confusion remained about the analysis that was performed to calculate the 825,000 acre-feet so references to volumes calculated in paragraphs (3)(b) and (3)(d) of the proposed rules were eliminated.

The requirement to complete rulemaking 1 year before the EAA Reservoir is deemed operational was itself arbitrary. Additionally, such a deadline would be hard to estimate and would likely lead to the exclusion of valuable information during the testing phase of the EAA Reservoir. Instead, the District and stakeholders worked together to identify a different timeframe for the initiation of rulemaking to revise the prospective reservation. The District modified the proposal to initiate rulemaking to revise the prospective reservation once a Project/System Operating Manual was developed for the EAA Reservoir. The District also included a sentence confirming that the revised rule will be adopted prior to the EAA Reservoir is deemed operational.

The District declined to include a sunset provision because it would not provide the Corps with the project assurances needed to execute a PPA and such a provision is inconsistent with Executive Order 19-12. Given the uncertainty in the LOSOM effort, the District could not make representations about the existing legal user’s level of certainty. Finally, the District rejected the proposal to delete the amendments to Rule 40E-10.031, F.A.C., and the Applicant’s Handbook as such proposals would have led to a vague and ambiguous rule. Instead, the District and stakeholders developed additional language for inclusion in the Applicant’s Handbook that reflects the Legislative intent of CERP projects.

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment “C”. Included in Attachment A

Several municipalities submitted an alternative that revised Subsection 40E-10.061(3)(c), F.A.C., to require readoption of the reservation and Applicant’s Handbook, Section 3.11.6 at least 1 year before the EAA Reservoir is deemed operational by the District’s Governing Board. They also suggested a sunset provision, with the effectiveness of the reservation only being extended for 100 days if a challenge to the revised reservation was filed. They also sought inclusion of additional language to prevent any interpretation that would diminish available water for existing legal users or the level of service for flood protection.

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

See the response to the LCRA described in “B.”

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment “D”. Included in Attachment A

The municipalities also suggested revisions to Subsection 40E-10.061(3)(c), F.A.C., to describe the volume of water being reserved as volume probability curves.

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

The District rejected this alternative as inconsistent with the directive set forth in Section 120.54, Florida Statutes. In adopting rules, agencies should avoid unnecessarily long or complicated constructions and the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions. Volume probability curves are technical and specialized statistical language that would need additional explanation to meet the vague and unambiguous standard. The submitters themselves recognized their proposed language needed further explanation and included a volumetric conversion of the probability curve in their proposal. The additional explanation regarding the volume probability curves made the proposal unnecessarily long and complicated.

See attachment “E”. Included in Attachment A

Municipalities submitted an alternative to revise the Applicant’s Handbook, Section 3.11.6, which is incorporated by reference in Rule 40E-2.091, F.A.C. to include criteria for existing legal users similar to language proposed by the District in the Kissimmee River and Chain of Lakes Water Reservation rulemaking effort.

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

During the rulemaking effort, multiple stakeholders commented regarding the uncertainty that LOSOM would have on the operation of Lake Okeechobee. The District has always maintained that a revised Lake Okeechobee Regulation Schedule that incorporates the EAA Reservoir is necessary in order to realize the full benefits of the EAA Reservoir. The details of that regulation schedule are not presently known and cannot be determined at this time due to the ongoing Corps’ effort to update LOSOM. The District believes including the provisions requested by the submitted stakeholders without the benefit of technical and scientific reports analyzing the impacts by and to permitted users by the EAA Reservoir would make the rule arbitrary and capricious.

# # #