



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

December 22, 2017

Mr. Ryan Fisher
Acting Assistant Secretary of the Army for Civil Works
Office of the Assistant Secretary of the Army
108 Army Pentagon
Washington, DC 20310-0108

Subject: Request for Technical Assistance on Development of a Post-Authorization Change Report for the Central Everglades Planning Project

Dear Mr. Fisher:

As I write this letter, the U.S. Army Corps of Engineers (USACE) continues to send damaging discharges from Lake Okeechobee to the Caloosahatchee and St. Lucie estuaries. Both our agencies know that an aggressive implementation of the Comprehensive Everglades Restoration Plan directly aids in addressing this unfortunate and frequent practice.

To that end, on May 9, 2017, Governor Scott signed Senate Bill 10 into state law directing the South Florida Water Management District (SFWMD) to work with the USACE to develop a Post-Authorization Change Report (PACR) for the Central Everglades Planning Project to build an Everglades Agricultural Area Reservoir that will work with other authorized projects to reduce the damaging discharge events significantly. This law directed SFWMD to work with the USACE to initiate the feasibility study on August 1, 2017 and deliver a PACR to Congress by October 31, 2018.

SFWMD initiated written communications with the USACE regarding development of the PACR in June 2017. After two months of option development and evaluation by the USACE, it became apparent the only option that would achieve the timelines set forth in Senate Bill 10 was for SFWMD to develop the PACR and to pay the USACE for technical assistance in its development in accordance with Federal authorizations.

Regrettably, it has been a very slow and disappointing experience trying to reach agreement with the USACE on the scope of work for SFWMD's requested technical assistance. SFWMD sent a letter to the ASA(CW) Office on October 12, 2017 requesting technical assistance and received a timely response from Doug Lamont, the Acting ASA(CW), stating the USACE understandably and fully supported SFWMD's effort to advance this important project to reduce damaging discharges. Since that encouraging

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letter there have been numerous roadblocks and course changes by the USACE that will certainly result in project delays.

Section 1126 of WRDA-2016 and the USACE's implementation guidance for this authorization both state if costs are paid by the Non-Federal Sponsor, the USACE can provide technical assistance "relating to any aspect of a feasibility study." However, the technical assistance the USACE will provide is so restrictive that it becomes virtually useless. This is not consistent with Mr. Lamont's letter of "full support." It is also not consistent with the in-depth support the USACE provides in its many other technical assistance programs.

SFWMD has worked diligently to engage the USACE early in our feasibility study so that the PACR development will proceed on a timely basis. While I understand this is a relatively new process for the USACE, our experience over the past several months has been very frustrating and not in keeping with the partnership we have forged over several decades.

The attached summary provides a chronology of communications to demonstrate the delays and changes in course we have experienced during this process with the USACE. I respectfully request your aid in making the success of this effort a priority. I personally invite you to attend one of the public meetings in Florida about this issue where I believe you would gain a better appreciation as to why this issue is so important to Floridians.

Sincerely,

A handwritten signature in black ink, appearing to read "Ernie Marks", with a long horizontal flourish extending to the right.

Ernie Marks
Executive Director

EM/rb
Attachment

CHRONOLOGY OF TECHNICAL ASSISTANT REQUEST

1. July 26, 2016: Secretary Jo-Ellen Darcy sent a letter to Congressman Patrick Murphy stating that the Army is prepared to initiate the EAA Reservoir PIR planning quickly, once a non-Federal Sponsor for the study is identified. (Enclosure A-1)
2. June 26, 2017: SFWMD sent a letter to COL Jason Kirk requesting that USACE Jacksonville District (SAJ) work with SFWMD to develop a Post-Authorization Change Report (PACR) for the Central Everglades Planning Project (CEPP) in accordance with the schedule and milestones defined in Florida Senate Bill 10.
3. July 24, 2017: COL Kirk responded to SFWMD's letter indicating that USACE Jacksonville District (SAJ) was evaluating options for providing the requested support; that SAJ would work with the USACE's Vertical Team to ensure the options were legally sufficient, policy compliant and implementable; and that SAJ would get back to SFWMD with a fully informed response by August 31, 2017.
4. July 26, 2017: SFWMD sent a letter to Eric Summa, Chief of the SAJ Planning and Policy Division, requesting how the SFWMD could help: a) support the USACE's efforts to participate in planning an EAA storage reservoir and meet the schedule outlined in SB-10; b) reduce the uncertainty of USACE approval if SFWMD takes a lead role in the PACR feasibility study under Section 203; and c) deliver a plan that can successfully navigate the federal administrative process and Congressional authorization process to allow a 50-50 cost-share on the construction of the recommended plan.
5. August 31, 2017: USACE-SAJ Commander COL Kirk sent a letter to SFWMD outlining five (5) optional courses of action for SFWMD to work with the USACE to plan and implement the EAA Reservoir outlined in SB-10, and recommended Course of Action #3 which was to use the USACE's existing authority to develop a Project Implementation Report (PIR) for the EAA reservoir, noting that the USACE currently did not have a budget to work on this PIR in FY2018 and that the USACE would need to identify a funding source.
6. September 27, 2017: SFWMD sent a letter to USACE SAJ Commander COL Kirk stating that SFWMD had funding to support the USACE's efforts on development of an expedited PACR in accordance with the USACE's Course of Action #1, or to pay the Corps for technical assistance in SFWMD's effort to develop a PACR under authority provided by Section 203 of WRDA-1986, as amended, as outlined in the USACE's Course of Action #4.
7. October 12, 2017: SFWMD Governing Board Chairman Dan O'Keefe sent a letter to Acting ASA (CW) Doug Lamont requesting technical assistance from the USACE on a Section 203 feasibility study to develop the CEPP PACR.
8. October 24, 2017: Doug Lamont, Acting ASA (CW) sent a letter to SFWMD stating that the ASA (CW) Office fully supported SFWMD efforts on the feasibility study and that his staff had been

directed to assist SFWMD with the preparation of a Memorandum of Agreement, and that General Holland, SAD Commander, has been delegated authority to sign the Section 203 Agreement.

9. October 24, 2017: SFWMD submitted a Draft Scope of Work for its requested technical assistance from the USACE.
10. November 9, 2017: USACE SAJ communicated to SFWMD that after review of SFWMD's Scope of Work, USACE SAJ and SAD had determined that they had authority to provide technical service requested for approximately 70% of the tasks, but that they did not believe they had authority to fulfill the remaining 30% of the requested tasks. In the interest of time, SAJ and SAD requested that SFWMD break its Scope of Work into two parts that could be covered under two separate Support Agreements. Support Agreement No. 1 would include those technical assistance tasks that SAJ and SAD believed that they had authority to provide without further coordination with Headquarters.
11. October 26, 2017: SFWMD sent a letter to Tim Murphy, SAJ Deputy District Engineer for Programs and Project Management Division, providing SFWMD's scope of work for USACE technical assistance under Support Agreement No. 1 of the Memorandum of Agreement. At USACE insistence, the Scope of Work was reduced to only include those tasks for which the USACE clearly understood to be within their authority. The important technical assistance tasks dealing with USACE Vertical Team coordination and review, government to government consultation, and Federal Register notifications were deferred to a future Support Agreement No. 2 pending USACE approval of such technical assistance. This SFWMD letter requested that USACE review each task, along with deliverables and schedule, and provide a USACE cost estimate for each task. This letter also requested that the USACE help us meet a target date of approximately mid-November for execution of the Memorandum of Agreement and Support Agreement No. 1.
12. November 29, 2017: SFWMD and USACE executed the Memorandum of Agreement for Technical Assistance Related to Development of a PACR for the Central Everglades Planning Project.
13. December 1, 2017: SFWMD sent a letter to SAJ Commander COL Jason Kirk submitting a signed version of the Support Agreement No. 1, with cost estimates and schedule, for approval and execution. SFWMD requested execution of Support Agreement No. 1 prior to its December 14 Governing Board meeting, as SFWMD was now getting pretty far along in its feasibility study and had not yet been able to engage the USACE for technical assistance.
14. December 6, 2017: At a Quarterly Executive Team conference call, COL Kirk reported that the Corps full vertical team, including the ASA (CW) Office, intended to work together to review each task in SFWMD's Scope of Work for Technical Assistance under Section 203, and determine which could be included in the final scope of work for a Support Agreement. It was at this time that USACE put Support Agreement No. 1 on hold, again delaying USACE's technical assistance

on SFWMD's ongoing feasibility study.

15. December 18, 2016: USACE-SAJ communicated via email and attachment the results of the "Full USACE Vertical Team" review of SFWMD's scope of work for requested technical assistance, which concluded that USACE could not even directly review and comment on SFWMD work products identified in Support Agreement No. 1. Rather, USACE technical assistance would be limited to merely an explanation of USACE policy and examples of compliant work products.