

Advocacy and Review Procedures



Charlotte Harbor National Estuary Program Technical Report 03-1

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The Charlotte Harbor National Estuary Program is a partnership of citizens, elected officials, resource managers and commercial and recreational resource users working to improve the water quality and ecological integrity of the greater Charlotte Harbor watershed. A cooperative decision-making process is used within the program to address diverse resource management concerns in the 4,400 square mile study area. Many of these partners also financially support the Program, which, in turn, affords the Program opportunities to fund projects such as this. The entities that have financially supported the program include the following:

U.S. Environmental Protection Agency
Southwest Florida Water Management District
South Florida Water Management District
Florida Department of Environmental Protection
Florida Coastal Zone Management Program
Peace River/Manasota Regional Water Supply Authority
Polk, Sarasota, Manatee, Lee, Charlotte and Hardee Counties
Cities of Sanibel, Cape Coral, Fort Myers, Punta Gorda, Venice and Fort Myers Beach
and the Southwest Florida Regional Planning Council.

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Purpose and Introduction

Purpose

The purpose of this report is to outline major categories of local, state, and federal governmental actions for review, the procedures to develop and transmit Charlotte Harbor National Estuary Program (CHNEP) advocacy positions, and procedures to raise issues not within the major categories of action. The procedures contained within this report will provide for flexibility and cost-effectiveness. Advocacy activities should not consume CHNEP efforts at the expense of research, restoration, education, and legislative initiatives. Although the procedures are grounded in Federal Consistency Review requirements of NEPs, these procedures provide for all governmental actions.

Advocacy

The CHNEP demonstrated courage when it adopted its position of advocacy. On December 7, 2001, the CHNEP Policy Committee unanimously adopted the motion to “become a spokesman for the Harbor and the waterbodies in the natural system in the forums where decisions are being made and implementations are being undertaken.” Although special reference was made to Minimum Flows and Levels (MFL), Total Maximum Daily Loads (TMDL), the Comprehensive Everglades Restoration Plan (CERP) and its implications for the Caloosahatchee River, the overall goal was for “the CHNEP to assume the lead role in being the advocate for the Charlotte Harbor Ecosystem Complex and its watersheds.” The position further suggested that the Florida Department of Environmental Protection, the South Florida Water Management District, and the Southwest Florida Water Management District “look to the CHNEP for guidance in setting Goals for the CHNEP study area for their various programs currently underway.”

The CHNEP Policy Committee is made up of elected officials and agency heads of federal, state, regional, county, and city agencies. These are the very agencies that will be the likely recipients of CHNEP advocacy. The advocacy position represents a great commitment to partnership and trust between the CHNEP partners.

The aims of the CHNEP’s advocacy stance are:

- To implement the quantitative objectives and priority actions of the adopted *Comprehensive Conservation and Management Plan (CCMP)*,
- To provide policy-makers with a source of review and comment from an organization which represents the considered opinions of diverse interests, and
- To provide a voice for natural systems within the study area watersheds based on the best scientific information available.

Federal Consistency Review

On March 19, 1999, the CHNEP Policy Committee adopted the *Federal Consistency Report*. As presented to the Policy Committee, the report includes a primary strategy and secondary process.

“The primary strategy is to encourage early coordination and review of projects for consistency with the CCMP before they get to the clearing house stage. Then the second step is to incorporate the existing federal consistency review process. The other highlight of the report is a list of potential federal assistance programs and development projects that would have a relationship with our CCMP action plans.”

The primary strategy, stated in another way, encourages project managers to approach the CHNEP before their projects are submitted to the clearinghouse. Under this procedure, the burden is on the project manager.

The second step incorporates “existing” federal consistency review procedures that are conducted through CHNEP’s partners, most notably the Regional Planning Councils (RPCs). Under this procedure, the burden is primarily on the RPCs.

Finally, the report includes a list of potential federal assistance programs and development projects that would have a relationship with our CCMP action plans. This list reserves the right of the CHNEP to comment on over 100 categories of federal actions representing 1000’s of individual actions annually. CHNEP Conference members have tried to use this list to demonstrate the CHNEP obligation to comment on a particular federal action. However, the primary strategy and secondary process (early voluntary coordination and clearinghouse review by the RPCs) did not provide a mechanism to do so.

The CCMP, adopted March 2000, added to the Federal Consistency Review procedures by stating that the CHNEP “will identify the types of federal activities and programs it wishes to review, will receive specific proposals within these categories (from the RPCs).” After determining CCMP consistency, then comments would be sent to the Florida Coastal Management Program through the RPC.

In the two years since the adoption of the CCMP, specific categories of action were not identified. The RPCs receive between 50 and 100 state and water management district clearinghouse review requests per month. The state provides 30 days, and sometimes less, to conduct state clearinghouse reviews. The Policy Committee meets quarterly and a Conference cycle for all NEP committees to meet requires at least 5 weeks. Given the conference cycle time constraints and no specifically identified categories, no reviews have been made by the CHNEP using this mechanism. Furthermore, this mechanism cannot work without the CHNEP program office being granted specific authority to review and comment on clearinghouse projects.

The review also needs to be balanced with the research, restoration, education, and legislative initiatives that the program office must pursue to implement the CCMP. In other words, the cost-benefit of project review must be considered against the other obligations of the CCMP.

Major Category Development

Implementation Review and Workshop

A triennial implementation review report is a requirement of the U.S. Environmental Protection Agency (EPA). The CHNEP Policy Committee adopted the *2002 Implementation Review Report* on June 7, 2002. Federal Consistency Review was identified as one of the weaknesses of the program.

On June 18, 2002, the Citizens Advisory Committee (CAC) hosted a workshop with invitees from the Technical Advisory Committee (TAC). The workshop included 6 groups providing solutions and answers to 6 weaknesses identified in the 2002 Triennial Implementation Review Report. Federal Consistency Review was one of the identified weaknesses. The 33 workshop participants used an innovative public participation game technique to generate and prioritize solutions to six program weaknesses identified in the Triennial Implementation Review Report, including Federal Consistency Review.



Each participant identified the types of government actions that they felt NEP should comment on. They each wrote one action per card. The cards were collected, shuffled, and a portion redealt. Participants selected the best two or three ideas by drawing from the undealt cards in the center of the table and discarding. Each table selected government actions on which the NEP should comment by consensus.

Appendix A includes all of the actions by table with the priority. Priority 1 is the highest priority from the table. Priority 2 was chosen by at least one individual. Priority 3 was an idea that was generated but not selected by an individual. Sixteen individual actions were selected by at least one table. Three actions were selected by more than one table. In alphabetical order, the three actions include:

- Dredging and filling along specific waterways
- Land acquisition
- Legislation that restricts citizen participation on environmental issues.

Quantifiable Objectives

Because the actions that were selected by more than one table did not directly implement most of the CCMP quantifiable objectives, CHNEP staff drafted governmental action categories associated with the CCMP quantifiable objectives. They included:

- Minimum Flows and Levels (MFL) rules
- Projects which restore hydrology in sub-basins
- Changes in structures specified in HA-4
- Total Maximum Daily Load (TMDL) rules
- Projects which restore Lake Hancock
- Environmental land acquisition and other tools for FW-1
- Projects which restore at least one of the habitats listed in FW-2
- Rules which reduce propeller damage to seagrass beds
- Projects that remove invasive exotic species.

TAC Recommended Changes

The TAC recommended changes to the initial list and it was confirmed by the CAC for consideration by the NEP Conference. The draft list of review categories included:

- Dredging and filling along ~~specific~~ Federal waterways
- Land acquisition
- Legislation that restricts citizen participation on environmental issues.
- Minimum Flows and Levels (MFL) rules
- Projects which restore, maintain, and enhance hydrology in sub-basins
- Changes in structures specified in HA-4
- Total Maximum Daily Load (TMDL) rules
- Projects which ~~restore~~ improve water quality of Lake Hancock and the water exiting the lake
- Environmental land acquisition and other tools for FW-1
- Projects which restore, maintain, and enhance at least one of the habitats listed in FW-2
- Rules which reduce propeller damage to seagrass beds
- Projects that remove invasive exotic species.

When CHNEP staff presented the list to the TAC and CAC, they stated that “The purpose of the list is to allow the NEP program staff to automatically address these issues through the management conference and other approved procedures. Management Conference members may continue to ask for reviews of individual issues outlined in the Federal Consistency Review Report.”

Final Category Development

The workshop list and the quantitative objective list included one duplicate. In addition, the list was restructured to generalize a level of priority. Finally, the TAC recommended changing the name of specific governmental program such as TMDL and MFL to the more general category. The final list of major categories to review include:

- Environmental Land Acquisition and Conservation
- Water Quality rules
- Hydrology rules
- Changes in structures specified in HA-4
- Projects which improve water quality of Lake Hancock and the water exiting the lake
- Projects which significantly affect ~~restore, maintain, and enhance~~ at least one of the habitats listed in FW-2
- Projects which significantly affect ~~restore, maintain, and enhance~~ hydrology in sub-basins
- Rules which reduce propeller damage to seagrass beds
- Projects that remove invasive exotic species
- Legislation that restricts citizen participation on environmental issues.
- General permits affecting waterways.

General Procedures

General procedures provide guidance that will be applied to all categories of actions. These procedures have been developed based on past policies of the CHNEP, constraints within the CHNEP process, and resource constraints.

NEP Committee Structure and Authority

The CHNEP is composed of four committees and their subcommittees. The committees include the Citizens Advisory Committee (CAC), Technical Advisory Committee (TAC), Management Committee, and Policy Committee. The four committees are called the “NEP Conference.” Any member from any committee is called a “Conference member”. The period of time for an item to be reviewed by all four committees is known as the “Conference Cycle.” The time requirement for a conference cycle to occur is a minimum 45-day process. Four Conference Cycles are scheduled per year, so depending on the timing may require as much as 140 days. The four cycles are supplemented with additional TAC, CAC, and subcommittee meetings.

The CAC includes citizens and agency public outreach specialists. Although their specialty is public involvement and education, the CAC provides recommendations on all policy recommendations that are forwarded to the Policy Committee. The CAC provides recommendations on research, restoration, and policy development from a citizen perspective. The CAC has recommended items for Federal Consistency Review to the NEP Conference. They do not have the authority to send review letters on their own behalf but can recommend to the Conference. The CAC provides a point of entry for citizen-sourced review requests.

The TAC is composed of scientists, planners, and engineers from the public and private sectors. The TAC specialty is providing technical review recommendations, particularly for research, restoration, and policy development. Although the TAC recommends public involvement and education projects, review of predominately education projects, such as mini-grants, is not a function of the TAC. They do not have the authority to send review letters on their own behalf but can recommend to the Conference.

The Management Committee is composed of resource managers. They have traditionally provided critical review of budgets and expenditures, stating that they add pragmatism to the CHNEP process. The CAC and TAC provide recommendations to both the Management Committee and Policy Committee. The Management Committee makes recommendations to the Policy Committee. They do not have the authority to send review letters on their own behalf but can recommend to the Conference.

The Policy Committee is composed of elected officials and agency heads. **The Policy Committee has the final authority for all positions held by the CHNEP.** The Policy Committee places trust in the recommendations of the CAC, TAC, and Management Committee, typically endorsing recommendations. When committees provide varied recommendations, the Policy Committee typically makes a decision rather than returning the issue to the committees for resolution.

Timing

Rule development typically has a 45-day comment period from the date that it is advertised in Florida Administrative Weekly (FAW). FAW provides official notice for:

- 1) Notices of Development of Proposed Rules and Negotiated Rulemaking
- 2) Proposed Rules
- 3) Notices of Changes, Corrections and Withdrawals
- 4) Emergency Rules
- 5) Petitions and Dispositions Regarding Rule Variance or Waiver
- 5) Notices of Meetings, Workshops and Public Hearings
- 6) Notices of Petitions and Dispositions Regarding Declaratory Statements
- 7) Notice of Petitions and Dispositions Regarding the Validity of Rules
- 8) Notices of Petitions and Dispositions Regarding Non-rule Policy Challenges
- 9) Announcements and Objection Reports of the Joint Administrative Procedures Committee
- 10) Notices Regarding Bids, Proposals and Purchasing
- 11) Miscellaneous
- 12) Index of Rules Filed During Preceding Week
- 13) List of Rules Affected.

These announcements may be found at <http://faw.dos.state.fl.us/fawframes.html>.

Permits often provide for a 30-day comment period. At best, a full conference cycle requires 38 days. At worst, a full conference cycle would require 128 days. Therefore, a contingency process is required to adequately respond to review time constraints. NEP staff will take significant items through the full conference when time allows. If the timing provides for a Policy Committee letter but not earlier committees, the earlier committee recommendations may not be provided.

If timing for projects that would otherwise require Policy Committee approval does not accommodate Policy Committee review, a subcommittee of the four committee chairs, called the Executive Steering Committee, will review staff draft responses and state any objections. Without objection from any member of the Executive Steering Committee, the Director shall send such comment letter to the appropriate responsible organization. Staff will respond to items under the major categories and not to any individual item. Individual items require full Policy Committee action. When staff drafts responses, the input of the TAC or its subcommittees may be sought. A target of one week review time will be given to the Executive Steering Committee if time allows. When seven days review cannot be provided, the Director will consult with each member of the Executive Steering Committee or that member's designee prior to taking action. The Director will assure any specifically affected organization's Policy Committee member or their designee are consulted prior to issuance of any comment letter when full conference review is not possible. If the timing for the individually raised item does not fit within the constraints of the formal CHNEP process, it will not be considered.

The Policy Committee meets every 3 months (February, May, August, and November), on the third Friday of the month. Chart 1 shows the meeting timing relationships. CAC meets the third

Wednesday and TAC meets the fourth Wednesday of the months preceding the Policy Committee. The Management Committee meets on the first Friday of the month the Policy Committee meets. Meeting packets for each committee are mailed at least one week before the meeting occurs. Complete items including executive summaries, requested motion, background information and draft letter if applicable must be included in the packet. In addition the applicable agency should be notified by this time.

Chart 1: Time Line

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Week 1			Friday, Mgmt Committee			Friday, Mgmt Committee
Week 2	Tuesday, Preferred Submittal for month 3	<u>Tuesday Deadline Month 3,</u> Wednesday Submit for Month 6				
Week 3	Wednesday, CAC	Wednesday, CAC	Friday, Policy Committee	Wednesday, CAC	Wednesday, CAC	Friday, Policy Committee
Week 4	Wednesday, TAC	Wednesday, TAC		Wednesday, TAC	Wednesday, TAC	
Week 5 (Periodically)						

Interpretation

From time to time, a governmental action may have direct bearing on a major category of review. An example is the reservations debate for the Caloosahatchee. Without reservations, the previous CHNEP position of a minimum flow to avoid adverse impacts to the estuary may not be achieved. Therefore, entering the reservations advocacy on Hydrology principles is appropriate. It is under the CHNEP Director's authority to provide for interpretation on how closely related the issue is with major categories and the Policy Committee's past positions.

Federal, State, and Local Agencies

Although the EPA requires NEPs review for federal agency consistency, the CHNEP has chosen to "assume the lead role in being the advocate for the Charlotte Harbor Ecosystem Complex and its watersheds." Therefore, the CHNEP will provide comments on a variety of actions including those from local, state, and federal agencies.

Federal Consistency Review and Permits

According to the 1999 *Federal Consistency Review Report* and page 219 Volume I of the CCMP, the Southwest, Central and Tampa Bay Florida Regional Planning Councils will review and provide comments on individual permits and other State Clearinghouse items on behalf of the CHNEP. Each RPC receives notification of permits and other governmental actions through the State Clearinghouse. They respond with information as to whether the action is regionally significant or not and whether the action is consistent with the adopted Strategic Regional Policy Plan (SRPP) or not. Because the CCMP is referenced in the three SRPPs, RPC staffs identify if the action is consistent with the CCMP (as part of the SRPP).

If a conference member or other individual wishes for the CHNEP to review the item and it is not one of the major categories, then procedures for individual issues will be followed.

Transmittal and Reporting

Formal letters, public comments at hearings, e-mail, and telephone are all techniques to transmit CHNEP positions. Authorized signatories to official CHNEP letters include both Policy Committee co-chair and the CHNEP Director. One or both of the Co-chairs will provide the signature unless time or legal constraints do not allow it.

Copies of letters that are issued under these procedures will be provided to conference members through their packets. Activities such as public testimony will be reported as a component of the program office progress report, also a component of conference packets. Therefore, conference members will have the ability to discuss CCMP and CHNEP policy interpretation, particularly for issues that could not be taken through the complete conference cycle.

Responses received will also be placed in packets.

Specified Category Procedures

Environmental Land Acquisition and Conservation

Environmental land acquisition and conservation are positive activities and support CCMP Quantifiable Objective FW-1. Letters of support and testimony before land acquisition authorities are normal activities of the CHNEP staff in support of FW-1 and do not require separate review from the CHNEP conference.

Example. In the autumn of 2001, a series of public hearings were conducted regarding the expansion of the “Ding” Darling National Wildlife Refuge (NWR). The NWR staff notified the CHNEP staff of the meetings. Separate CHNEP staff attended two of the hearings and provided testimony that the expansion was consistent with the CCMP.

Water Quality Rules

Most water quality rules currently under consideration relate to Total Maximum Daily Loads (TMDL) rules. These rules in general include several components: the Impaired Waters Rule, the basin status reports, the verified list, the individual TMDL rules, and the individual implementation plans. No comments have been issued on the Impaired Waters Rule. On December 7, 2001, the Policy Committee recommended that FDEP make their TMDL study boundaries and work plan for the CHNEP coincident to the boundaries of the CHNEP and CHNEP participate in accomplishing this recommendation. In addition, CHNEP staff wrote a general letter regarding the Charlotte Harbor Basin Status Report.

Comments on any legislation, including the Impaired Waters Rule and the Clean Water Act Amendments, should be taken through the entire conference cycle. Basin Status Report and Verified List comments may be issued from CHNEP staff, especially after TAC discussion. Individual Implementation Plan comments may be issued from CHNEP staff after TAC and CAC review and discussion. Individual TMDL rules should be directed through the entire Management Conference as time allows. Ad hoc subcommittees will be developed for intense technical review of proposed TMDL rules.

Comments will be developed so that water quality of the NEP-area rivers, creeks, lakes, aquifers, and estuaries are protected.

Examples. CHNEP staff was instrumental in obtaining local input into the draft Myakka River TMDL rule. EPA presented an overview of their methods to the full TAC in June 2001 and utilized the NEP structure and contacts to inform local stakeholders of opportunities for input. On February 15, 2002, the Policy Committee gave the TAC the authority to provide comments on behalf of the CHNEP regarding the Myakka River TMDL, due in April and before their next meeting. The TAC established an ad hoc sub-committee to review the TMDL in detail. Members of the Citizens Advisory Committee, Myakka River Coordinating Council, ECOSWF and other non-profit organizations were invited to participate in the ad hoc subcommittee. The findings of this subcommittee were discussed at the April 2002 TAC meeting. A letter was drafted for TAC review via email, and the final letter was issued under the CHNEP Director’s signature. The letter was provided to the conference membership via committee packets.

CHNEP staff attended the July 25, 2002 public hearing on the Everglades West Coast Basin (including Estero Bay). CHNEP Conference members and staff attended the hearing, asked questions, and gave testimony. CHNEP staff took members comments and drafted a letter responding to the information. CHNEP staff also assisted and coordinated with the Estero Bay Agency on Bay Management to produce a similar letter. The final CHNEP letter was placed into the Policy Committee packets. (See Appendix B)

Hydrology rules

The current rule development for hydrology is minimum flows and levels (MFLs). The water management districts are responsible for MFLs. Currently, SWFWMD is addressing the Upper Peace by late 2002, middle Peace and upper Myakka River by 2003, lower Peace and Lake Hancock by 2004; and Cow Pen Slough and lower Myakka by 2005. MFLs are not planned to be established for tributaries by SWFWMD at this time. SWFWMD established a MFL for the Caloosahatchee in 2001 based upon salinity needs of tapegrass and has agreed to revisit the rule in September 2002. More natural flows to the Caloosahatchee estuary are expected through the Southwest Florida Feasibility Study projects. SWFWMD Lower East Coast Water Supply Plan now authorized environmental releases to the Caloosahatchee River. Also, SWFWMD is now considering developing MFLs for Estero Bay by 2006.

Comments on any rule should be taken through the entire conference cycle. General comments based upon the technical aspects of the research going into the rule may be issued from CHNEP staff, especially after TAC discussion. Individual Implementation and Recovery Plan comments may be issued from CHNEP staff after TAC and CAC review and discussion. Individual MFL rules should be directed through the entire Management Conference as time allows. Ad hoc subcommittees will be developed for intense technical review of proposed MFL rules.

Comments will be developed so that the natural hydrologic regime of the NEP-area rivers, creeks, lakes, aquifers, and estuaries are protected.

Examples. SWFWMD staff presented their draft Caloosahatchee River MFL rule to the TAC on October 25, 2000. The TAC requested that the CHNEP send a letter to the SWFWMD Governing Board commenting on the draft rule. Over the next several months, the MFL rule was significantly modified due to outside agencies' comments. During this time, CHNEP staff compiled concerns from member agencies, including U.S. FWS, City of Sanibel, FWC, and U.S.EPA, and the SWFWMD's Peer Review Panel and presented these as well as a draft letter incorporating the concerns to the Management and Policy Committees. This letter was approved and signed by Policy Committee Co-Chairs. (See Appendix B)

The SWFWMD is not currently considering setting MFLs for Shell, Joshua and Horse Creeks separately from the main stem of the Peace River as suggested by HA-1 of the CCMP. In early September 2002 CHNEP staff sent a letter to SWFWMD staff requesting them to establish MFLs for these tributaries by the timetable set down in the CCMP. (See Appendix B)

Changes in structures specified in HA-4

Structures in HA-4 include the Sanibel Causeway, the Myakka River weir below Upper Myakka Lake, the crossing on Myakka River below Lower Myakka Lake, Down's Dam on Myakka River, the causeway between Lover's Key State Recreation Area and Bonita Beach, the water control structure at the south end of Lake Hancock, the structure on Coral Creek, and the Gator Slough canal collector system in Lee and Charlotte Counties. The CHNEP may comment on agency budgets that program funds to remove or improve structures for a more natural hydrology, and project design (especially at public workshops).

Comments on any rule or large project should be taken through the entire conference cycle, unless comments entail general program support for the beneficial removal of these aforementioned structures. General comments based upon the technical aspects of the research going into the project may be issued from CHNEP staff, especially after TAC discussion. Ad hoc subcommittees will be developed for intense technical review of the proposed project as necessary.

Comments will be developed so that the natural hydrologic regime of the NEP-area rivers, creeks, lakes, aquifers, and estuaries are protected.

Other changes in structures will be taken up as an individual item and not under this category.

Examples. SFWMD is modeling the circulation patterns of lower Charlotte Harbor to determine if the causeway islands of the Sanibel Causeway have been detrimental to living resources. The model results will be incorporated into designs to modify the Causeway in upcoming years. The TAC has requested to review this model and provide comments to help strengthen its efficacy.

Projects that improve water quality of Lake Hancock and the water exiting the lake

WQ-5 of the CCMP charges the program and its partners with restoring and then maintaining Class III water quality standards within Lake Hancock and to improve water quality of the water exiting the lake to a Trophic State Index of "good" by 2010. In addition, WQ-6 requests that we meet or exceed designated water quality standards by 2015. The CHNEP may comment on agency budgets that program funds to improve the water quality of the water within and leaving the lake and project design (especially at public workshops.).

Comments on any large project should be taken through the entire conference cycle unless comments entail general program support for projects improving the water quality within or exiting the lake. General comments based upon the technical aspects of the research going into the project may be issued from CHNEP staff, especially after TAC discussion. Ad hoc subcommittees will be developed for intense technical review of the proposed project as necessary.

Comments will be developed so that the water quality of the NEP-area rivers, creeks, lakes, aquifers, and estuaries are protected.

Examples. The Surface Water Improvement and Management (SWIM) Section of SFWMD developed a Pollutant Load Reduction Goal (PLRG) for Charlotte Harbor that entails cleaning up

the water leaving Lake Hancock by establishing wetlands in the Saddle Creek system. This multi-year project is hoped to offset increases in nitrogen due to development over the next 10 to 20 years and will at least help “hold the line” on nitrogen into Charlotte Harbor from the Peace River watershed. SWIM staff presented their research and findings calling for such a project to the SWIM Advisory Board and the full Management Conference in 2000 and 2001. The Management conference recommended support of this project, and a supporting letter to the District Governing Board was issued under the Director’s signature in April 2002.

CHNEP staff has participated in the Lake Hancock Advisory Committee and Technical Advisory Committee, and previously the program was very instrumental in obtaining support for lake improvement from the Florida legislature.

Projects that significantly affect at least one of the habitats listed in FW-2

The habitats listed in FW-2 include submerged aquatic vegetation, intertidal un-vegetated bottoms, mangrove, saltwater marsh, oyster bars, and freshwater wetlands and those uplands vital to the ecological function of the NEP study area. The CHNEP may comment on agency budgets that program funds to restore, maintain and enhance one of these habitats, project design (especially at public workshops), and relevant rules.

Specific techniques of habitat conservation, such as invasive exotic species removal, back filling of agricultural and mosquito drainage ditches, and removal of spoil piles, are positive activities and support CCMP Quantifiable Objective FW-2. Letters of support and testimony before funding authorities are normal activities of the CHNEP staff in support of FW-2 and do not require separate review from the CHNEP conference. Evolving techniques, such as seagrass restoration by the injection of nutrients or seagrass plugs into boat propeller scars, should receive a review by the TAC before CHNEP staff provide support letters.

Comments on any rule or large project should be taken through the entire conference cycle unless comments entail general program support for the restoration, maintenance or enhancement of one of these aforementioned habitats. General comments based upon the technical aspects of the research going into the rule or project may be issued from CHNEP staff, especially after TAC discussion. Ad hoc subcommittees will be developed for intense technical review of the proposed project as necessary.

Comments will be developed so that the natural quality and variability of the habitats listed within the NEP-area are protected.

Examples. Florida Gulf Coast University staff is undertaking an oyster restoration project within the Caloosahatchee estuary and is requesting funding from outside entities to expand the on-going project to encompass a larger area in which oysters would naturally inhabit. A letter supporting the funding of this project to the National Fish and Wildlife Foundation was issued under the Director’s signature in July 2002. (See Appendix B)

Projects that significantly affect hydrology in sub-basins

HA-3 tasks the program and its partners to restore, enhance, and improve where practical historic subbasin boundaries and natural hydrology for basins within the Charlotte Harbor NEP study area, with special attention to Outstanding Florida Waters, Class I waterbodies, and tributaries to Estero Bay by the year 2020. In addition, the objective implies that new structures that negatively impact natural hydrologic conditions may be discouraged. The focus of this quantifiable objective is hydrologic projects, typically with governmental funding.

The CHNEP may comment on agency budgets that program funds to restore, maintain, or enhance hydrology, project design (especially at public workshops), and relevant rules.

Specific techniques of hydrologic restoration, such as back filling of agricultural and mosquito drainage ditches, removal of spoil piles, construction of sloughs, widening/making shallower artificial canals, making artificial canals more serpentine are all positive activities and support CCMP Quantifiable Objective HA-3. Letters of support and testimony before funding authorities are normal activities of the CHNEP staff in support of HA-3 and do not require separate review from the CHNEP conference. Evolving techniques, such as construction of reservoirs to improve timing of water flows, should receive a review by the TAC before CHNEP staff provides support letters.

Comments on any rule or large project should be taken through the entire conference cycle unless comments entail general program support for the restoration, maintenance or enhancement of hydrology in sub-basins. General comments based upon the technical aspects of the research going into the rule or project may be issued from CHNEP staff, especially after TAC discussion. Ad hoc subcommittees will be developed for intense technical review of the proposed project as necessary. Comments will be developed so that the natural quality of flow-ways within the NEP-area is protected.

Examples. To date, the CHNEP has not provided comments on any project that restores hydrology.

Rules which reduce propeller damage to seagrass beds

From time to time, State of Florida agencies entertain rules that may reduce propeller damage to seagrass beds. A recent example is the 9-12-2002 rule adoption by the Florida Fish and Wildlife Conservation Commission. Rule 68C-22.015, Charlotte County (and Part of DeSoto County) Zones, provided for low speeds zones in Lemon Bay (except for the Intracoastal Waterway and the marked channel at stump Pass at 25 mph) and idle speeds in the Southeast Entrance and the mid-bay area of Turtle Bay. The slower speeds protect manatees but also seagrasses from prop scars.

The full Management Conference will consider action on rules that result may in protection of seagrasses.

Examples. To date, the CHNEP has not provided comments on any rule that protect seagrasses.

Projects that remove invasive exotic species

Comments on any rule should be taken through the entire conference cycle, unless comments entail general program support for the beneficial removal of exotics. General comments based upon the technical aspects of the research going into the project may be issued from CHNEP staff, especially after TAC and CAC discussion. Comments will be developed so that the native plant communities of the NEP-area rivers, creeks, lakes, estuaries, and watersheds are protected.

At the same time this set of procedures is being considered for adoption, expanding removal of invasive exotic vegetation to include removal of nuisance exotic animals is being considered. In the event that the CCMP is amended to include removal of nuisance exotic animals, similar review strategies will apply. For example, letters of support to remove the Nile monitor lizard from Cape Coral or develop research on the level of invasion by the green mussel may be issued from CHNEP staff, especially after TAC and CAC discussion.

Examples. The CHNEP staff has written letters in support of exotic removal funding. One example is the Frannie's Preserve Invasive Species Control project on Sanibel Island that sought funding from the National Fish and Wildlife Foundation.

Legislation that restricts citizen participation on environmental issues

One of the core values of the CHNEP is the importance of citizen participation in environmental policy development. It is unlikely that the CHNEP office will be aware of such local, state, or federal legislation without the assistance of citizens. When such legislation is brought to the attention of the CHNEP office, the legislation will be reviewed by the entire management conference for comments and recommendations.

Examples. One example that is currently being developed through the management conference is statutory exemptions for maintenance dredging. Statutory exemptions provide for no public review of proposed dredging, regardless of how long ago the original dredging took place.

General Permits affecting Federal waterways

General permits that regulate dredging and filling along Federal waterways require review through the entire management conference. General comments based upon the technical aspects of the research going into the permit may be issued from CHNEP staff, especially after TAC and CAC discussion. When consensus cannot be obtained at TAC and CAC, the entire management conference should review and provide comments to the Policy Committee for a final position.

Examples. To date, the CHNEP has not provided comments on any general permit affecting waterways.

A Note about Priority Actions

When opportunities to implement priority actions occur, the Director may take the opportunity on behalf of the CHNEP. For example, the Director may work with DACS to implement an area-wide program for both the bacteriological testing of water, as well as regular tissue analysis for potential health related pollutants, pursuant to WQ-A.

Federal Actions that the NEP will Review for Consistency with the CCMP	
Environmental Land Acquisition	
Budget	Proposed Federal Programs to fund environmental land acquisition
Projects	Proposed Federal land acquisition projects within the CHNEP area
Water Quality Rules	
Legislation	Clean Water Act amendments
Hydrology Rules	
Legislation	Water Resources Development Act
Legislation	National Environmental Policy Act amendments
Change in Structures Specified in HA-4	
Budget	Federal funding opportunities to change structures specified in HA-4
Lake Hancock Water Quality Projects	
Budget	Federal funding opportunities to improve Lake Hancock water quality
Projects	Proposed Federal projects addressing Lake Hancock water quality
Projects that Implement FW-2	
Legislation	Wetland Jurisdiction and Assessment Methods under the Clean Water Act
Budget	Federal funding opportunities to restore habitats listed in FW-2
Projects	Proposed Federal projects restoring habitats listed in FW-2
Projects that significantly affect Hydrology	
Budget	Federal funding opportunities restoring hydrology
Projects	Federal-aid road and National Highway System projects
Projects	Comprehensive Everglades Restoration Plan projects
Rules to Reduce Propeller Damage to Seagrass Beds	
Legislation	National Marine Sanctuaries Act
Projects that Reduce Exotic Species	
Budget	Federal funding opportunities to eliminate exotic species
Legislation that Restricts Participation on Environmental Issues	
	None identified
General Permits affecting Waterways	
Projects	Intracoastal Waterway Dredging Projects
Permit	State Programmatic General Permit

Procedures for Individual Issues

Placing an Item on the Agenda

There are five ways in which an individual issue may be considered by the CHNEP that has not been addressed earlier in this document. They are:

1. A conference member requests it for consideration by CAC and TAC at the beginning of a conference cycle at least 2 weeks before the CAC or TAC meeting, whichever is first.
2. An individual who is not a conference member obtains a conference member sponsor to request it according to the protocols under item 1.
3. An individual who is not a conference member raises the issue under Public Comments at any of the four committee meetings and the committee requests it for the next conference cycle.
4. A conference member raises the issue under Members Comments and the committee requests it for the next conference cycle.
5. A policy member raises it and the Policy Committee acts on it at the same meeting.

If both the CAC and TAC recommend against an individually raised item, it will not move on to the Management and Policy Committees for consideration. If CHNEP staff determines that the packet is not complete, then the item will not be scheduled for CAC and TAC consideration. Sufficient information needs to be provided and available for the packet.

Types of Individual Issue Requests

Although any issue may be raised, the CHNEP prefers to address over-arching issues rather than individual permits. These over-arching issues may include general permits, rules, and agency procedures.

The Policy Committee has been very active in advocating benefits for the Greater Charlotte Harbor Watershed ecosystems. They have recommended SWIM designation for Lower Charlotte Harbor, including Pine Island Sound, Matlacha Pass, Caloosahatchee Estuary, and Estero Bay from the South Florida Water Management District. They requested Outstanding Florida Water designation for Horse Creek from the Florida Department of Environmental Protection. They requested an area-wide Environmental Impact Statement for the Peace River Basin and Myakka River Basin from the Environmental Protection Agency and the Army Corps of Engineers.

The Policy Committee did not take a position on the dredging of Pirate Harbor, approved under the maintenance dredging exemption but challenged under an administrative hearing. As a result of the discussion, the Policy Committee requested that TAC consider the statutory exemption for maintenance dredging and return recommendations. The Policy Committee members expressed concerns about having both sides of the debate available, not intervening in a neighborhood feud, commenting at a time and place where the comment can have value, having sufficient information, and providing a facilitator role. They also saw the value of the individual permit issue to point to the larger problem at hand and to act on that.

Types of individual Federal actions that may be considered include Environmental Impact Statements.

Committee Member Requests

The committee member who requests an item at least two weeks prior to the meeting must provide an executive summary of the item and the action that they wish taken. The summary must also identify the clear link to the CCMP and its implementation. Often the request will be a letter finding a particular governmental action “inconsistent with the CCMP.” This is particularly relevant when the action is a Federal one. CHNEP staff is available to provide assistance to draft the material for the packet.

Individual Citizen Requests

The citizen who requests an item are asked to provide an executive summary, the action they wish taken, and any backup that is available. The CHNEP staff will provide help in drafting the material for the packet. The staff role is to assist the citizen or group with the process and preparing the packet. It is important to remember that they are not advocating your position when they assist you. The table on the following page provides a summary of the steps that a citizen should take to request an item for Charlotte Harbor NEP action.

Open Debate

The CHNEP staff will attempt to obtain the opinions of the agency to which the request will be made in advance of the committee meetings. If the requester wishes to obtain a position on a permit, the permit applicant will be notified prior to the meeting so that they may submit written information and be available at the meeting. In addition, the agency to which the permit is applied will also be contacted for information. If committee members wish to hear a presentation from either side, both sides will be asked to present with a 2-minute rebuttal for each.

Earlier Commitments

The requester of the item must have taken action to address their concern beyond the CHNEP. This includes exhibiting their own commitments. Agencies should have taken similar steps such as writing a similar letter. Individual citizens may demonstrate the earlier commitment by contacting other agencies, having a citizen group to which they are a member perform a similar action to what is requested, or even legal action.

Policy Committee

Only the Policy Committee may authorize a formal CHNEP position for an item raised individually. Alternatively, the Executive Steering Committee composed of Committee Co-Chairs may grant the Director the authority to draft a letter if time frames are not conducive. If the timing for the individually raised item does not fit within the constraints of the formal CHNEP process, it will not be considered.

Citizen Guide to Request an Item for Charlotte Harbor NEP Action

1	Contact the Charlotte Harbor NEP office at 239-995-1777, extension 235 or 240. Be able to explain what you want the Charlotte Harbor NEP to do, why you want NEP involvement, and necessary timing/deadlines. The NEP staff will let you know when the next cycle of committee meetings are and what you need to do. They will let you know past actions from the committees and the proper approach to advocate your position.
2	Demonstrate that you have taken your own actions to support your position. This may include contacting other agencies, having a citizen group to which you are a member write their own letters, or even legal action.
3	Attend one of the committee meetings and raise your issue under public comments for consideration at the next cycle of the four committee meetings. You may also obtain a conference member sponsor to request that the item be placed on the agenda for the next Citizen Advisory Committee or Technical Advisory Committee meeting. Obtaining a sponsor reduces the amount of time that will be necessary for the NEP to take action.
4	Understand that all four Charlotte Harbor NEP committees (Citizen Advisory, Technical Advisory, Management, and Policy) must consider the action you propose before action is taken. Either the Citizen or Technical Committee must recommend in favor of the position before the item can advance to Management and Policy Committees. The Policy Committee has the final word whether the action will be taken or not.
5	Assist the Charlotte Harbor NEP staff to draft the necessary packet information to the best of your ability. The packet will include an executive summary, a motion for consideration, and backup information. Your assistance may include providing a draft executive summary, backup information, and requested motion. Complete information is important, both in support and not in support of your position. The best available science concerning your issue will be included.
6	Assist the Charlotte Harbor NEP staff to identify known opponents to your position. Known opponents and their organizations should know about the item and be able to contribute to the packet. They will be informed of past actions from the committees and the proper approach to advocate their position.
7	You are not required to attend any of the committee meetings. In addition, your only opportunity to speak to your item may be under public comments on agenda items. However, we recommend that you attend and be prepared to speak to the issue and answer questions.

Guide for a Complete Packet For Individually Raised Items

1	Executive Summary
2	Requested Motion
3	Background Information
4	Location Map
5	Photographs
6	Appropriate Correspondence
7	Notification of Permit Applicant and Permitting Agency

Conclusion

The CHNEP is committed to protection of estuaries and watersheds in its study area. CHNEP strategies include research, restoration, education, and legislation. CHNEP partners, including governmental agencies and citizen groups, accomplish most of these actions.

Written comments and public testimony are methods that the CHNEP may employ to implement the adopted Comprehensive Conservation and Management Plan. To that end, these procedures have been developed so that CHNEP conference members may have a general agreement and common understanding regarding the types of comments that are made and what level of review they will undergo.

Within this document, we have stopped just short from stating that we will never consider adopting a position on individual permits. From time to time, consideration of individual permits may point to larger issues that are legislative in nature. To date, the CHNEP has not adopted a position on an individual permit but retains the right to do so.

Appendix A- Workshop Results

Prior-ity	Table	Short Name	Idea
1	3	Ag Run-off	Agricultural water runoff that affects the natural water balance
1	2	Biodiversity	Loss of biodiversity
1	2	Boating issues	Promote intelligent boat use eg seagrass protection, shoreline erosion, manatee protection, oil gas spills, trash, 2 v 4 cyl, space for fishermen/small boat awareness
1	2	Dredge & Fill	Dredge and fill projects- existing and proposed
1	4	Dredge & Fill	Dredging and filling along specific waterways that will impact water quality, quantity, and restrict habitat
1	3	EIS	Recommending area-wide EIS on phosphate mining permits
1	1	Growth	Large DRIs such as Babcock and Taylor, dredging of marinas, Powerboat racing
1	4	Lake Hancock	Support efforts of stat and County to restore headwaters (Lake Hancock) of the Peace River
1	2	Land Acq	Take a stand on the purchase of environmentally sensitive lands
1	4	Land Acq	Going after remaining environmentally sensitive land in the watershed and tap into county, state preservation funds
1	5	Land Acq	Develop and support Florida Forever, FCT and other land acquisition programs
1	6	Land Use	Land use in the NEP area including undeveloped land, sales, and swap
1	1	Legislation	Legislation that restricts citizen participation on environmental issues
1	3	Legislation	Legislation that restricts citizen participation on environmental issues
1	2	MFLs	Minimum flows and levels and quantities of rivers within CHNEP
1	1	Mining	Phosphate mining and restoration proposals
1	5	Rules	Rules that threaten the watershed
1	3	Sludge	Land application of sludge classifications and regulations
1	4	TMDLs	Development of rules for high priority waterbodies and then work to achieve them
1	5	WQ	Factors which influence water quality
2	5	CCMP	Threats to water quality, hydrology and habitat in the watershed
2	5	Cooperation	Increase cooperation between Counties, Cities and state for environmental protection
2	4	Education	More effort to educate the public, ie school organizations
2	4	Growth	Development on specific habitats that contain listed species within the NEP study area
2	2	Growth	Support controlled growth
2	5	Growth	Control of growth around Charlotte Harbor
2	4	Land Use	Rezoning that will negatively impact prime habitat
2	2	Legislation	Wastewater reuse legislation
2	5	Legislation	Legislation on the use of tax money in Charlotte Harbor region
2	5	Legislation	New legislation affecting the CCMP
2	3	MFLs	Comment on challenge to minimum flows and levels, especially when trying to delay implementation
2	5	MFLs	Minimum flows and levels
2	2	Permits	Examine and improve fast track permit issues

2	3	Permits	Fish and wildlife loss
2	3	Permits	Comment on major commercial development that threaten water and wildlife
		Species	
2	5	listings	Listed species listings
2	4	TMDLs	Support a realistic and meaningful timetable for development and implementation of TMDLs
2	3	TMDLs	Advocate legislation regarding TMDLs in CHNEP study area to ensure continued progress of WQ-1
			Best use of water conservation of water quality of water. Prioritize use of water eg ag, mining, recreational uses, development
2	4	WQ	requirements, new technologies
			Water quality initiatives that address quality, quantity, and reuse issues. Promote the education of citizens of the entire basin on
2	4	WQ	the necessity to conserve and protect this water resource (NEP)
3	6	CCMP	Issues that do not support the CCMP
3	2	CERP	Army Corps of Engineers CERP projects
3	5	COE Permits	USACOE Permits
3	5	Comp Plans	Comprehensive Plans in CHNEP Boundaries- Get CCMP in Plans
3	5	CZM	Coastal Zone Consistency on federally funded projects
3	4	Deep wells	Discourage deep well waste water
3	4	Demand	Transfer of demand to surface sources
3	2	Dredge & Fill	Permits for dredging and spoil placement, changes in development needs (ie channels for big boats)
3	4	DRIs	DRIs- get involved with review process- maybe not staff but form a subcommittee with staff oversight
3	2	DRIs	Large Developments of Regional Impacts
3	2	EFH	Essential fish habitat (especially in areas slated for development as priority)
3	4	Fishermen	Control of commercial fishermen
3	4	Growth	Better control of developers
3	2	Growth	Developments encroaching on buffer habitat (is Coral Creel) with respect to habitat, water quality, and use
3	5	Growth	Development!! Waterfront, high density, etc.
3	2	Impact fees	Promote adequate impact fees for new development to be used for watershed protection projects/public information/research
3	4	Lake Hancock	Lake Hancock
3	4	Land Acq	Try to save more undeveloped areas
3	2	Land Acq	Support purchase of environmentally sensitive lands
3	4	Land Mgmt	Land management
3	2	Land Use	Upland development and land use changes affecting CHNEP area
3	2	Land Use	Take a stand on Babcock Ranch
3	2	Lawns	Take a stand on water and chemical use on lawns and golf courses
3	5	LDRs	Proposals to weaken development codes in the watershed
3	3	Legislation	Proposed legislation that would threaten the CCMP
3	5	Legislation	Promote water laws to increase supply
3	5	Legislation	Dredge and fill laws not weakened

3	5	Media	Inaccurate representations on major issues in the media
3	4	MFLs	Impacts that will effect minimum flows and levels- that will limit water flow into the rivers and tribs
3	4	MFLs	Non-harm flows to estuaries
3	4	MFLs	MFL for aquifers
3	2	MFLs	Quantity and timing of water releases into the Caloosahatchee
3	2	MFLs	Help SFWMD maintain freshwater flows in the Caloosahatchee that represent seasonal water flow rates
3	2	MFLs	Caloosashatchee River and the locks
3	2	Mining	Public forums to present issues and facts on mining operations
3	2	Mining	Take a stand that supports responsible phosphate mining
3	6	Mining	Phosphate mining permits
3	4	NEP	Promote continued federal funding of all NEPs and shared local funding (and support) if the NEPs workplan. The counties of this basin, in support of their citizens, need to contribute the resources that are necessary to promote the CCMP
3	4	Legislation	
3	3	Peace River	Threats to the upper and middle Peace River water quality and quantity
3	2	Permits	Modifications of permits that affect endangered and threatened species (habitat, water quality, user conflicts)
3	6	Permits	Marina permit in interceptor lagoon south gulf cove
3	3	Permits	Local and federal permits
3	5	Planning	Planning efforts by government agencies within the watershed
3	4	Productivity	Relating WQ to desirable productivity
3	6	Recycling	Make recycling profitable for CHNEP Counties
3	2	Research	Fund independent research for impact of proposed development/marinas, suggesting alternatives
3	2	Stormwater	Stormwater runoff systems promotion
		Team	
3	5	Permitting	Participate and encourage team permitting
3	4	Techniques	Quantity and quality techniques
3	3	TMDLs	TMDLs
3	3	TMDLs	Specific criteria for the major waterbodies within the Charlotte Harbor watershed to improve the quality of water
3	6	Wastewater	DEP defining who has and should take authority for regulation of sewage water from structures and vessels in the water
3	5	Water Supply	Methods to supply water in future to region
3	2	Water Use	Take a stand on the use of non-renewable water resources- help to stop excess water use
3	6	Water Use	Examine water use issues
3	6	Water Use	Limit water use in areas that harm the watershed
3	4	WQ	Regional impacts to water quality

Appendix B- Sample Letters

Verified List Review—TMDL

July 31, 2002

Mr. Daryll Joyner, Program Administrator
Florida Department of Environmental Protection
Bureau of Watershed Management
2600 Blair Stone Road, Mail Station 3510
Tallahassee, Florida 32399-2400
Daryll.joyner@dep.state.fl.us

Re: Draft Verified List of Impaired Waters for the Everglades West Coast Basin

Dear Mr. Joyner:

First of all, I want to thank you and your agency for conducting your July 25, 2002 Total Maximum Daily Load (TMDL) Program public meeting in Fort Myers. Judging from the “standing-room only” attendance, TMDLs are important in southwest Florida and Fort Myers was a good location for the public meeting. Rick Cantrell, Eric Livingston, Jan Mandrup-Poulsen, and Pat Fricano provided well-spoken presentations that were accessible to the public. The technical discussion was descriptive and assumed a level of public intelligence that was refreshing. Attendees understood that DEP staff wanted review of and comments on the draft verified list of impaired waters for Group 1 and would be responsive.

Estero Bay and its tributaries are within the Charlotte Harbor National Estuary Program (CHNEP) jurisdiction. The CHNEP’s *Comprehensive Conservation and Management Plan* (CCMP) includes objectives and actions related to the establishment of TMDLs, including coordinating locations and analytes for TMDLs within the CHNEP. Comments within this letter serve to assist in implementing these CCMP provisions.

1. Analysis of the water quality data for the TMDL verified list should be grouped according to the 4 distinct geomorphologic features identified by Jim Beever in his public comments at the meeting. The attached map identifies these regions. I recommend that future analysis of TMDLs group stations according to geomorphic areas for larger bay systems. This may be particularly relevant to Charlotte Harbor within Group 2.
2. Many of our partners have identified Chlorophyll a and fecal coliform exceed standards in the tributaries to Estero Bay. Please verify the chlorophyll a and fecal coliform calculations for Hendry Creek, Estero Bay Drainage, Spring Creek, Estero River, and the Imperial River watersheds.
3. The meeting confirmed that the difference between the definitions for “Stream” and “Estuary” is based on a salinity of 1500 mg/l at the surface. I understand that the state standard is 0.5 parts per thousand (500 mg/l). Could you explain the difference between the TMDL definition and state standard in more detail? As you know, the definition is significant in that it triggers different standards.
4. The attached map shows the fixed stations that we have in our current GIS coverage. This type of graphic information is useful for staff and the public to consider the distribution of water quality data collection and which stations were used. Does FDEP maintain GIS coverages for station locations that are in STORET? If not, I recommend that FDEP prepare this information for Group 2 review. If so, how may I obtain the coverage? In addition, please provide me the list of Estero Bay Planning Unit stations and period of record for each that were used to develop the verified list by water body.

Thank you for the opportunity to comment on the draft Verified List of Impaired Waters for the Everglades West Coast Basin. Please contact me at 239-995-1777 or at lbeever@swfrpc.org if you have any questions or wish additional information regarding my comments and requests.

Sincerely,

Lisa B. Beever, PhD, AICP
Director, Charlotte Harbor National Estuary Program

Rule Review—MFL/Reservations

August 23, 2002

Ms. Janet G. Llewellyn, Deputy Director
Division of Water Resource Management
Florida Department of Environmental Protection
2600 Blair Stone Road, Mail Station 46
Tallahassee, FL 32399-2400

RE: Amendments to the Water Resource Implementation Rule

Dear Ms. Llewellyn:

The Charlotte Harbor National Estuary Program (CHNEP) is a partnership of citizens, elected officials, government officials, resource managers, and resource users working to improve the water quality and ecological integrity of the greater Charlotte Harbor watershed. Our study area extends from Polk County south to Collier County and includes Lemon Bay, Charlotte Harbor, Estero Bay, and their watersheds, a 4,400 square mile area.

The CHNEP endorses the July 8 draft language to amend Rule 62-40, particularly the new section on reservations. This draft rule language was advertised in Florida Administrative Weekly on July 19, 2002.

Should you have any questions, please feel free to contact me at 239-995-1777.

Sincerely,

Lisa B. Beever, PhD
Director
Charlotte Harbor National Estuary Program

cc: CHNEP Management Conference

Report Review—MFL/Reservations

August 23, 2002

The Honorable Trudi Williams, Chairman
South Florida Water Management District
3301 Gun Club Road, Mail Stop 4420
West Palm Beach, Florida 33416

RE: Draft SFWMD white paper on Reservations of Water for the Environment

Dear Chairman Williams:

The Charlotte Harbor National Estuary Program (CHNEP) is a partnership of citizens, elected officials, government officials, resource managers, and resource users working to improve the water quality and ecological integrity of the greater Charlotte Harbor watershed. Our study area extends from Polk County south to Collier County and includes Lemon Bay, Charlotte Harbor, Estero Bay, and their watersheds, a 4400 square mile area.

The CHNEP reviewed the draft white paper entitled entitled “Reservations of Water for the Environment and Assurances for Existing Legal Sources Consistent with Federal and State Law.” **We request that the white paper be modified to include the Caloosahatchee estuary and Estero Bay as legal source user basins for environmental purposes.** Prior to December 2000, the CHNEP published several reports documenting the dependence of fish and wildlife resources on freshwater flows to the Caloosahatchee estuary and Estero Bay. Many of the sources of this information are from the excellent scientific work of the South Florida Water Management District. We expect that Figure 3 and its associated table on page 16 would be amended for the final paper to include Caloosahatchee estuary and Estero Bay. Following adoption of the white paper, we also request that a statutory or pre-CERP reservation be developed for the Caloosahatchee estuary and for Estero Bay.

Should you have any questions, please feel free to contact our director, Lisa B. Beaver at 239-995-1777 or me at 239-332-6975.

Sincerely,

Richard W. Cantrell
Co-Chairman, Policy Committee
Charlotte Harbor National Estuary Program

cc: SFWMD Governing Board members and Executive Director
CHNEP Management Conference

Rule Review—Caloosahatchee River MFL

February 9, 2001

Mr. Frank Finch
Executive Director
South Florida Water Management District
P.O. Box 24680
West Palm Beach, Florida 33416-4680
Re: Caloosahatchee River Minimum Flows and Level Rule Establishment

Dear Mr. Finch;

This letter is to provide comment on the proposed Caloosahatchee River Minimum Flows and Level Rule. The Charlotte Harbor National Estuary Program management conference has found that the proposed rule is inconsistent with the Charlotte Harbor Final Comprehensive Conservation and Management Plan.

The Charlotte Harbor NEP is a partnership program formed to help determine the actions necessary to protect and preserve the Charlotte Harbor estuary, recognized as an estuary of national significance. The Caloosahatchee River is a key component of the Charlotte Harbor estuary. Since 1996, the Charlotte Harbor NEP has developed and completed a Comprehensive Conservation and Management Plan (CCMP) for the estuary. This plan was developed utilizing four committees of citizens, scientists, resource managers, and policy makers. The South Florida Water Management District was a crucial partner in developing the plan.

This plan has been accepted and signed by the 7 counties, including Lee and Charlotte Counties; 10 cities, including Fort Myers and Cape Coral; and 8 government agencies, including the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, the Florida Department of Environmental Protection, Florida Department of Community Affairs, the Southwest Florida Water Management District and the South Florida Water Management District. Now that these entities have approved this management plan, the plan is being implemented. A part of this implementation is determining the consistency of proposed actions in the Charlotte Harbor watershed with the CCMP.

As required by Florida Statute 373.042, the South Florida Water Management District is currently developing Minimum Flows and Levels for the Caloosahatchee River. This statute states "...the minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area." This effort by the District addresses two Quantifiable Objectives of the CCMP:

- **HA-2:** Identify, establish, and maintain a more natural seasonal variation (annual hydrograph) in freshwater flows by the year 2010 for...the Caloosahatchee River..."
- **FW-2:** Meet the stated objectives for the target extent, location, and quality of the following habitats in the Charlotte Harbor NEP study area: a) native submerged aquatic vegetation should be maintained and restored at a total extent and quality no less than caused by natural variation..."

Rule Review—Caloosahatchee River MFL

The Charlotte Harbor NEP management conference has reviewed the current MFL rule and finds it *inconsistent* with the Charlotte Harbor CCMP. The management conference recommends the following changes to help ensure consistency with the plan:

1. Flows for the months of April, May and June should be addressed;
2. The time frame necessary to attain "significant harm" should be shortened from "3 consecutive years" to "1 year";
3. Research and monitoring should be conducted to assure significant impacts do not occur to important estuarine resources;
4. Research and monitoring should be conducted to predict and document causes of failure to maintain minimum flows and thereby identify necessary actions to correct deficiencies; and
5. A protective maximum flow and water level should be identified to assure significant adverse impacts do not occur to significant estuarine resources for use during operation of the water management system.

We believe that the inclusion of the recommended changes would allow consistency with the Charlotte Harbor Comprehensive Conservation and Management Plan and would provide significantly increased protection for the resources of this nationally significant estuary. More detail regarding the recommended changes may be found in the attachment.

We appreciate the opportunity to provide comments regarding the consistency of the proposed minimum flow rule with the Charlotte Harbor CCMP. If you have any questions, please contact Mr. Robert Rudolph, Director for the Charlotte Harbor National Estuary Program at (941) 995-1777.

Sincerely,

Richard Cantrell
Co-Chairman, Policy Committee
Charlotte Harbor National Estuary Program
RC & TW/CAC/cac

Tom Welborn
Co-Chairman, Policy Committee

cc: South Florida Water Management District Governing Board Members
Deputy Executive Director, Water Resources Management
Director, Ft Myers Service Center

Enclosure

Rule Review—Caloosahatchee River MFL

I. Background

A. Charlotte Harbor NEP's CCMP states:

"**HA-2:** Identify, establish, and maintain a more natural seasonal variation (annual hydrograph) in freshwater flows by the year 2010 for...the Caloosahatchee River..."

"**FW-2:** Meet the stated objectives for the target extent, location, and quality of the following habitats in the Charlotte Harbor NEP study area:

a) native submerged aquatic vegetation should be maintained and restored at a total extent and quality no less than caused by natural variation..."

B. Florida Statutes 373.042 requires:

"(1) Within each section, or the water management district as a whole, the department or the governing board shall establish the following:

(a) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

(b) Minimum water level...

...The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and levels may be calculated to reflect seasonal variations. The department and governing board shall also consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and levels..."

This language allows each Water Management District to then develop its own definition for "significant harm."

II. SFWMD definitions:

A. **Harm**—Temporary loss of resource functions, as defined for consumptive use permitting, that take 1-2 years of average rainfall conditions to recover—*Phase I and II water restrictions*

Significant harm—temporary loss of water resource functions which result from a change in surface or ground water hydrology that take more than 2 years to recover—*Phase III water restrictions*

Serious harm—Permanent or irreversible damage to the water resource

B. Specifically “Water flows shall not be reduced to less than 300 cfs through the S-79 structure on average over 30 days during the months of November through March, for three consecutive years. An equivalent minimum flow through the S-79 structure is 400 cfs on an average over 30 days during the months of December through March, or 550 cfs on an average over 30 days during the months of December through February, for three consecutive years.”

C. Under SFWMD's program, *Phase I and II water shortages* are designed to prevent harm, such as localized but recoverable damage to wetlands or short-

Rule Review—Caloosahatchee River MFL

term inability to maintain water levels needed for restoration. Actions may include reducing water use through conservation techniques and minor use restrictions, such as car washing and lawn watering. *Phase III and IV shortages* require cutbacks that are associated with some level of economic impact to the users, such as agricultural irrigation restriction. (SFWMD, 2000, pgs. 4-6).

III. Description of the Caloosahatchee River Basin

A. In the late 1800's Hamilton Disston excavated a canal to connect Lake Okeechobee to the Caloosahatchee River and Gulf of Mexico to improve transportation and lower the lake for development. In 1918 three major locks were constructed along the canal to improve navigation, and in the 1920's the river channel was enlarged to a 6-foot depth and 90-foot width (SFWMD, 2000).

B. To accommodate navigation, flood control and land reclamation needs, the freshwater portion of the river was reconfigured into a canal, known as C-43, and numerous canals were constructed along the banks in support of agricultural communities located along the river. Three lock-and-dam structures (S-77 at Moore Haven, S-78 or Ortona Locks and S-79 also known as W.P. Franklin Lock and Dam) were added to control flow and stage height (SFWMD, 2000).

C. The final downstream structure (S-79) marks the beginning of the Caloosahatchee Estuary while simultaneously regulating freshwater discharge into the estuary and maintaining specified water levels and acting as an impediment to saltwater intrusion upstream (SFWMD, 2000).

D. The construction of S-79 truncated the estuary by blocking the natural gradient of freshwater/saltwater that historically extended upstream during the dry season. It is currently common to observe waters immediately downstream of S-79 to be nearly one-third the salt content of the Gulf of Mexico while those immediately upstream of the structure are fresh (SFWMD, 2000).

E. These hydrological alterations of the watershed have dramatically changed the natural quantity, quality, timing and distribution of flows to the Caloosahatchee estuary with limited regard to maintaining the biological integrity of the ecosystem (SFWMD, 2000).

F. Irrigation for agriculture is the most important water use the East Basin and is controlled by an extensive network of canals that recharge the water table during the dry season and drain floodwaters during the wet season. Agricultural demands from surface water sources within the basin was estimated to be about 230,000 acre-feet per year (200 MGD) in 1995 and is expected to increase to 320,000 acre-feet (285 MGD) by 2020 (SFWMD, 2000, p.21).

G. The Caloosahatchee River receives water from Lake Okeechobee for flood control and water supply, and regulatory discharges from the lake to lower lake-stage for flood protection is 37% of total surface water discharge from Lake Okeechobee. Water is

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also released to flush algal blooms and lower chloride levels near the water supply intake structures during dry years. (SFWMD, 2000 p. 16) Public water supply needs from surface water sources within the basin was estimated to be about 13,000 acre-feet per year (12 MGD) in 1995 and is expected to increase to 18,000 acre-feet (16 MGD) by 2020. (SFWMD, 2000, p.28)

IV. SFWMD MFL Development Methodology

A. Using Valued Ecosystem Component Approach (VEC) developed by U.S. EPA with *Vallisneria americana* (commonly known as tape grass or wild celery) as species of concern to establish a minimum flow regime at S-79 that will protect the system from significant harm.

1) assumes that the environmental conditions suitable for VEC will also be suitable for other desirable species **AND** that enhancement of VEC will lead to enhancement of other species.

2) based on knowledge of *Vallisneria* beds that are located in fresh-brackish water portion of inner estuary; these beds are sensitive to increased salinity values that result from reduced volumes of freshwater during low rainfall periods.

--Using these same methods, *Thalassia* and/or *Halodule* beds could be used to determine maximum flows because these grass beds are impacted by low salinity values due to high freshwater flow. These grass beds are located at seaward/outer end of estuary.

B. Literature review was conducted to review existing information on individual species or communities that could be used as indicators or targets, the approaches used by other agencies in MFL establishment and the validity of the VEC approach. An additional review was conducted to identify key species that utilize *Vallisneria* beds, their life histories and tolerances to low salinity levels (SFWMD, 2000).

C. Why Submerged Aquatic Vegetation? SAV beds serve a number of ecological functions: habitat; provide a refuge from predation-especially in larval and juvenile stages of many marine and estuarine species; form basis for plant-based and detritus-based food webs; reduction in wave and current energies; and the removal of nutrients and sediment from water column-allowing greater water clarity (SFWMD, 2000).

D. Development of a Flow/Salinity Model using measured flow from S-79 and salinity at the Ft Myers Marina (22 km upstream of Shell Point) for the period of January 1992 to November 1999. This model allows an empirical relationship between salinity at a given location in the estuary as a function of flow (SFWMD, 2000).

E. Field and lab Research of *Vallisneria americana* relating changes in blade length, blade density and shoot density to salinity at various locations in the estuary.

1) *Past literature studies (Day et al. 1989, Twilley and Barko 1990) have indicated Vallisneria growth declines steadily with increasing salinity until it ceases about 8-9ppt, but it can tolerate/survive salinity up to 11-13 ppt (Chamberlain and Doering, 1998)*

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2) Chamberlain and Doering (1998) found that density declines when salinity exceeds 10 ppt.

3) “Employing the Bierman model, it appears that at least a 300 cfs mean monthly discharge from S-79 is required to maintain *Vallisneria* in the system...Discharges that approach 400-500 cfs will provide salinity conditions of <10 ppt within the portion of the estuary that support most of the total *Vallisneria* coverage. To provide salinity conducive for *Vallisneria* throughout its entire 18 km range will require mean monthly discharges of approximately 800 cfs.” (Chamberlain and Doering, 1998)

4) In lab tests, the District has found that during short duration intrusions of high salinity (1-11 days), *Vallisneria* growth was retarded but no significant mortality. A 70-day exposure to 18 ppt caused an 80 percent loss of shoots, but if these shoots were then exposed to favorable salinity (3 ppt) for another month, viable plants still remained. This 70-day intrusion is near the limit of what might be tolerated without a net population reduction in winter. It would take the remaining plants 90 days of growth at good salinity levels to reach pre-intrusion abundance. (SFWMD, 2000)

E. Chamberlain et al (1995) concluded that the majority of estuarine species within the upstream estuary are most productive and dependent on *Vallisneria* grass beds during the late dry season (SFWMD, 2000). Therefore, maintaining *Vallisneria* shoot density during this time is a key issue for protecting this community from significant harm. In addition, manatees have been observed feeding in these grass beds during winter months; it may serve as an important feeding location close to a warm water refuge (FP&L plant). Florida Fish and Wildlife Conservation Commission gives number of manatees using this area as 300-400 animals (Hartman, 2000).

V. Issues of Concern

A. Period for maintaining low flow criteria—time period in rule denotes November/December through February/March; the driest months of the year (April, May and June) are not included. The seasonal rains often do not commence until late May or June. With the number of spawning species that rely on the grass beds during this period (see page 57 of SFWMD technical document or table at end of this synopsis), it is important that the grass beds remain healthy during this time.

B. “Three consecutive years”

1) *question of “shared adversity”*—Chapter 40E-21 F.A.C. requires adequate sharing of adversity between water users and the resource. With the MFL rule language, the estuary can undergo water shortages for 2-3 years before the economic concerns upstream are then influenced by water use restrictions. Does this constitute “shared adversity?”

2) *Does the rule offer enough protection for the resource?*—
Theoretically low flow criteria can exist that do not meet the 300/400/550 cfs for

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2 years then a third year with 300 cfs on a 30-day average could reset the cycle to start again. Is 3 years *in a row* too many? Does this mimic the natural hydrological cycle? What about the organisms that depend on the Vallisneria beds? Would this low flow affect them as well?

C. *Florida Fish and Wildlife Conservation Commission* recommends die-backs of Vallisneria beds to last no more than one year and a return frequency no more often than that which would occur under the long-term drought cycle for the region (Hartman, 2000). They also are asking for the District to consider including months of the wet season under the definition of "significant harm" and the 30-day average needs to be revisited. This 30-day average would allow large, damaging pulses of water followed by an equally damaging cessation of flow (Hartman, 2001).

D. *U.S. EPA concerns:*

-No data on long-term vigor of the rhizome under repeated elevated salinities, nor on historical distribution of grass beds or historical stem densities in the Caloosahatchee estuary.

-More research needed to support MFL position that the river needs 3 consecutive years of low flows before jeopardizing the ecological stability of the Vallisneria-based food web in the river

-concern over the large manatee population that uses area in winter; SFWMD model of flow regime predicts that tape grass density would be reduced from over 100 stems/square meter to near 0 stems/square meter in 17 winter-spring dry seasons out of a 31-year scenario. Die-backs of this degree, duration and frequency would critically affect the mortality rate of this manatee population, a federally listed endangered species with a low reproductive potential.

-While some die-backs would occur to natural climatic variation in the Caloosahatchee basin, their degree and duration, and particularly their frequency, are not very likely mimicked satisfactorily by this MFL. The technical documentation therefore inadequately supports the proposed definition...

E. *Fish and Wildlife Service concerns (J.N. "Ding" Darling NWR):*

-Change the language to "water flows shall not be reduced to less than 300 cfs **per day** across the S-79 structure during the months of **April, May and June**, 400 cfs **per day** during the months of **January, February and March**, or 550 cfs **per day** during the months of **November and December**, for *one* year" pending further research that demonstrates otherwise

-the minimum flow should gradually decrease in volume from wet season peak flows greater than 550 cfs starting in November and gradually decrease in volume down to 300 cfs by the end of June; a **daily average** would mimic a more natural water regime

-April, May and June need to be incorporated into rule because several species of organisms in the river would suffer if there were extended periods during these months without flow. "For example, spotted seatrout would utilize Vallisneria during these months as a nursery area, and this is the time for peak recruitment of postlarval pink

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shrimp." Also adult and juvenile blue carbs may suffer from declines in Vallisneria coverage and density during April, May and early June.

-in no way is FWS validating 300-550 cfs flow; they are at this time, deferring to District scientists to calculate best flow based on historic records and best available science

-maximum flow levels need to be established for the river in either this rule or another rule immediately ensuing

-address threatened and endangered species, such as the West Indian manatee, and critical habitat needs (see Manatee Recovery Plan and South Florida Multi-Species Recovery Plan and FP&L projects)

-inadequate monitoring of Vallisneria shoot density, water quality and other flora and fauna of Caloosahatchee River

-flora needs with regards to flows and salinity regimes needs to be included in technical documentation

-other indicator species should be included as VECs

-implementation of rule is not addressed sufficiently

-water quality issues are not addressed by document

-need to address steps to take to prevent *Serious Harm*

F. *City of Sanibel's concerns:*

-shared adversity question

-3 consecutive years

G. **Peer Review Panel:**

--"failure to include any consideration of **possible impacts on the lower estuary** (e.g. San Carlos Bay, Pine Island Sound, Matlacha Pass, **and the lower Caloosahatchee River** (downstream of the Vallisneria zone)) would make the plan not rise to the level of best available science..."(p. 9)

--"Severe ecological and water quality problems can be expected to occur if there is **no flow during April, May and June.**" (p.9) "...April, May and even June...are the times of the lowest flow, highest biological activity, and greatest utilization of SAV by important juvenile fishes and crustaceans. The exclusion of those months from minimum flow is NOT based on best available information." (p.17, emphasis in document) Give example of pink shrimp that have peak recruitment in spring and early summer; decline in Vallisneria during these times would be "extremely serious." (ibid)

--*there is no quantitative data that demonstrates tape grass can withstand high salinity for weeks with regard to the ultimate effects on tape grass dynamics. The period not covered under the proposed rule could be 9 to 12 weeks, depending on the annual rainy season onset*

--questions as to **whether rule addresses possible water quality issues** that may arise during MFL conditions

--questions whether salinity/flow model developed by SFWMD accounts for following factors: 1) downstream boundary (i.e. salinity levels and tidal conditions at the mouth); 2) wind stress on the water surface; 3) dynamic characteristics of the system response to flow changes; 4) water withdrawal and release below S-79; 5) volume of the water column and duration of the flow changes. (p. 12)

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--**SFWMD is using steady-state, regression salinity/flow model that limits predictive capabilities**

--**strongly requests SFWMD to use Bierman (1993) model** to simulate salinity levels in the CE; dynamic model that is more robust, is time-variable and accounts for lag time of freshwater inflow on salinity levels (p. 12); **this would increase the Vallisneria salinity needs estimates of 300 cfs to 400-500 cfs** (p. 18 and Chamberlain and Doering, 1998);

--thus **question use of 300 cfs** as the best estimate of minimum flow (p. 18) "... the present accepted and prudent philosophy in resource management is one of precaution and erring on the side of least damage. Setting minimum flows at the very lowest levels ever estimated by any method is inconsistent with the precautionary approach." (p.27)

--questions whether **other environmental factors and/or processes affect Vallisneria growth besides salinity**, such as light penetration changes due to chlorophyll and turbidity—needs further research (p. 15)

--the **"3 consecutive years"** is based in part on the assumption that many of the important estuarine species that rely on Vallisneria beds are short-lived and *recruitment limited*; Florida Fish and Wildlife Commission's opinion is that these species are *habitat limited* instead and their life span is not relevant; therefore, the species' populations would suffer lower populations if tape grass was reduced for even one year (p. 16)

--**harm** that occurs due to lack of minimum flow **in a single year** to important species, such as spotted seatrout, blue crab, and red drum, **through the loss of species abundance would persist** throughout the life of that species **and take multiple years for recovery** (through reproduction). This, therefore, would then meet the significant harm standard the SFWMD is proposing. (p.17)

--use of a suite of indicators versus single VEC approach

--needs more research into the use of Vallisneria beds by organisms and the effects of salinity changes on those organisms (p.19)

--recovery or prevention strategy is vague and unclear (p. 27)

H. Table demonstrating that many important organisms rely on the upper estuary during late Spring:

Table 10. Fish and Crustaceans that may Benefit from Low Salinity and Utilization of Vallisneria Habitat within the Caloosahatchee Estuary during the Spring				
Species	Relative Abundance	Spawning	Relative Utilization	Life Span
<i>Important Forage for Game Fish</i>				
Pink Shrimp	abundant as juveniles	Apr-Sep	high	2 yrs
Grass Shrimp	highly abundant (eggs, larvae, juveniles, adults)	Feb-Oct	high	1 yr
Blue Crab	highly abundant juveniles; abundant adults	Apr-May; Sept-Oct	high	3-4 yrs
Yellowfin menhaden	common as juveniles	Feb-Mar	high	5-12 yrs

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Bay anchovy	highly abundant all life stages	Feb-Mar; Jun-Aug	high	1-2 yrs
Gulf killifish	common all life stages	Nov-May	high	3 yrs
Silversides	highly abundant all life stages	Mar-May; Oct-Nov	high	1-2 yrs
Pinfish	highly abundant as juveniles; common as adults	Oct-Feb	high	?
Striped Mullet	highly abundant as juveniles	Dec-Feb	high	7-8 yrs
Game Fish				
Tarpon	abundant as juveniles	Mar-Apr	medium	15 yrs
Snook	abundant as juveniles; common as larvae	Jun-Jul	low	5-7 yrs
Silver perch	abundant larvae and juveniles	Mar-Apr; Aug-Sep	medium	6 yrs
Sand seatrout	abundant as juveniles	Mar-May; Aug-Sep	high	3 yrs
Sea trout	common as juveniles and larvae	Apr-Jun; Aug-Sep	low	15 yrs
Black drum	common as juveniles and larvae	Jan-Apr	high	58 yrs
Red drum	common as larvae; abundant as juveniles	Sep-Oct	high	over 37 yrs

* Excerpted from SFWMD, 2000

VI. Options for Consideration:

1. Flows for the months of April, May and June should be addressed;
2. The time frame necessary to attain "significant harm" should be shortened from "3 consecutive years" to "1 year";
3. Research and monitoring should be included as part of the rule to assure significant impacts do not occur to important estuarine resources (tape grass, manatees, etc.)
4. Research and monitoring should be included as part of the rule to predict and document causes of failure to maintain minimum flows and thereby identify necessary actions to correct deficiencies; and
5. A protective maximum flow and water level should be identified to assure significant adverse impacts do not occur to significant estuarine resources for use during operation of the water management system.

VII. References

Chamberlain, R.H. and P.H. Doering, 1998. *Preliminary Estimate of Optimum Freshwater Inflow to the Caloosahatchee Estuary: A Resource-Based Approach.*

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Hinds, Louis to South Florida Water Management District, February 5, 2001. Official Correspondence. United States Fish and Wildlife Service, J.N. "Ding" Darling National Wildlife Refuge, Florida.

Kalla, Peter I., PhD, 2000. Review of Proposed Minimum Flows and Levels for the Caloosahatchee River, United States Environmental Protection Agency, Atlanta GA.

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Peer Review Panel, November 3, 2000. Draft Final Review Report Caloosahatchee Minimum Flow, SFWMD.

SFWMD, 2000. *Technical Documentation to Support Development of Minimum Flows and Levels for the Caloosahatchee River and Estuary*. South Florida Water Management District, West Palm Beach, FL.

Schedule Review—MFLs

B. Terry Johnson
Planning Department
Southwest Florida Water Management District
2379 Broad Street
Brooksville, FL 34604-6899

September 6, 2002

RE: Priority Schedule for Minimum Flows and Levels (MFLs)

Dear Mr. Johnson:

The Charlotte Harbor NEP is a partnership program, created by Section 320 of the Clean Water Act, to protect and preserve the Charlotte Harbor estuary, recognized as an estuary of national significance. Since 1996, the Charlotte Harbor NEP has developed and completed a Comprehensive Conservation and Management Plan (CCMP) for the estuary and its watershed. This plan was developed utilizing four committees of citizens, industry, scientists, resource managers and policy makers. Our partnership includes, among others, Hardee, DeSoto, Polk and Charlotte Counties; U.S. Army Corps of Engineers; U.S. Fish and Wildlife Service; the Florida Department of Environmental Protection; the Florida Fish and Wildlife Conservation Commission and both the Southwest and the South Florida Water Management Districts. The management plan was approved by the Management Conference in February 2000 and received its final approval by the United States Environmental Protection Agency in June 2001.

Within the CCMP are 15 Quantifiable Objectives that address the issues of water quality degradation, fish and wildlife habitat loss and hydrologic alterations. Quantifiable Objective HA-1, developed in part, with the cooperation and endorsement of SWFWMD representatives tasks the NEP to:

Establish values for seasonal minimum flows and levels beginning with the Myakka River at State Road 72 and for Big Slough; the Peace River at Bartow, Zolfo Springs, and Arcadia; and for the tributaries Horse Creek, Joshua Creek, Shell Creek, and the lower Peace River/ upper estuary by the year 2005. Achieve these minimum seasonal flows by the year 2020.

The Program is pleased to note that your proposed schedule will meet the timeframe in this goal for the main stems of the Peace and Myakka Rivers and includes waterbodies not specifically mentioned in this goal such as Cow Pen Slough and Lake Hancock. However, we would also like to see that the tributaries Horse, Joshua and Shell Creeks be considered for minimum flows and levels development by 2005 as well. The Program feels that appropriate flow levels should be apportioned separately to each of these tributaries to afford greater protection rather than in combination with the main stem of the Peace River as is currently proposed by the District's schedule.

We greatly appreciate the opportunity to provide comments regarding the priority schedule for minimum flows and levels. If you have any questions, please contact either myself or Catherine Corbett at the program office at (239) 995-1777.

Sincerely,

Lisa B. Beever, PhD, AICP, Director
LBB/CAC/cac

Support Letter—Land Acquisition

November 2, 2001

Mr. Mark Glisson
Staff Director
Acquisition and Restoration Council
3900 Commonwealth Boulevard, M.S. 140
Tallahassee, FL 32399-3000

RE: Support for Estero Bay Project

Dear Mr. Glisson,

The Charlotte Harbor National Estuary Program (CHNEP) strongly supports the Estero Bay Project and requests to have the project ranked on the “A” list of the Florida Forever Program. As you may be aware, Estero Bay and its watershed are vital to the Charlotte Harbor estuary, designated an “estuary of national significance” under the federal Clean Water Act and one of only 28 estuaries to receive this designation in the United States. Estero Bay and its watershed are also classified as Outstanding Florida Waters, an Aquatic and State Buffer Preserve, and an integral part of one of the most productive estuaries in the State of Florida. The land being considered for acquisition will help protect critical upland, shoreline and tidal marsh resources along the Charlotte Harbor estuary and help balance the rapid growth that the southwest Florida area is currently experiencing.

As you may know, the Charlotte Harbor National Estuary Program is a partnership of citizens, elected officials, resource managers, and commercial and recreational users working to improve the water quality and ecological integrity of the greater Charlotte Harbor watershed. Through our Comprehensive Conservation and Management Plan (CCMP), CHNEP has identified the issue of *Fish and Wildlife Habitat Loss* as a priority problem for the greater watershed area, including the Estero Bay watershed. To help address this problem, we have established a number of objectives/goals, including:

Quantifiable Objective FW-1 which tasks the CHNEP to “achieve a 25% increase in conservation, preservation, and stewardship lands within the boundaries of the Charlotte Harbor NEP study area by 2018”;

Quantifiable Objective FW-2(c) which tasks the CHNEP to “manage natural mangrove habitats to their historic extent (1980) to enhance and improve their ecological functions...”;

Quantifiable Objective FW-2 (d) which tasks CHNEP to “restore and maintain saltwater marsh habitats where feasible...and prevent loss or conversion of existing salt marsh habitats”; and

Support Letter—Land Acquisition

Quantifiable Objective FW-2 (g) which requires us to “protect, enhance, and restore native upland communities vital to the ecological function of the Charlotte Harbor NEP study area.”

The approximately 3,600 acres under the Florida Forever Program’s consideration of the Estero Bay Project consists of essential fresh and saltwater marshes, sand scrub, tropical hardwoods and cabbage palm hammock. These lands provide invaluable habitat for many listed species, such as the beautiful pawpaw, Florida black bear, and Southern bald eagle. Acquisition of this land would constitute a vital habitat link along the Estero Bay Aquatic Preserve and prevent future habitat loss through over-development in the CHNEP watershed. It is consistent with the CHNEP objectives listed above as well as our CCMP goals that address water quality degradation and hydrologic alterations.

Finally, it should be recognized that the Department of Environmental Protection-Estero Bay Aquatic and State Buffer Preserve has been a significant partner in the development and implementation of the Charlotte Harbor NEP’s management plan. They have long demonstrated a commitment to land acquisition for conservation purposes, for dedicating substantial resources toward the proper management of conservation lands, and for educating the public on the natural resources on those lands.

Please give the Estero Bay Project your most serious consideration for funding. We sincerely hope that you will support our mutual efforts to preserve this vital piece of southwest Florida habitat by making this acquisition a priority for both the region and the State of Florida.

Sincerely,

Robert “Rudy” Rudolph
Director
RR/CAC

cc: Heather Stafford, Estero Bay SB&AP

Support Letter—Land Acquisition

July 3, 2002

Mr. Joe DeVivo
Shell Marine Habitat Program
National Fish and Wildlife Foundation
1875 Century Boulevard, Suite 200
Atlanta, GA 30345

Dear Mr. DeVivo;

The Charlotte Harbor National Estuary Program (CHNEP) supports the Florida Gulf Coast University's project "Community-based Restoration of Oyster Reefs in Charlotte Harbor - Everglades Watershed: Collaboration of Secondary and Post-secondary Education" for Shell Marine Habitat Program funding. Indeed, the NEP is a partner in this project. The Charlotte Harbor estuary, which includes the tidal Caloosahatchee River and Estero Bay, has been designated an "estuary of national significance" under the federal Clean Water Act—one of only 28 in the nation. The Caloosahatchee River is one of three major tributaries into Charlotte Harbor, and Estero Bay is an integral component of the Charlotte Harbor ecosystem. Charlotte Harbor is also designated as Outstanding Florida Waters and State Aquatic Preserves, encompasses an important National Wildlife Refuge system, and is one of the most productive estuaries in the State of Florida. The project being considered for support will help protect critical habitat and improve water quality within the Charlotte Harbor estuary. In addition, this project will complement other on-going projects, such as the Comprehensive Everglades Restoration Plan and Southwest Florida Feasibility Study.

Through the Charlotte Harbor National Estuary Program, the issues of *Fish and Wildlife Habitat Loss* and *Water Quality Degradation* have been identified as priority problems for this region in our Comprehensive Conservation and Management Plan (CCMP). The Florida Gulf Coast University project will help address the following Quantifiable Objectives of the CCMP:

- **FW-2:** Meet the stated objectives for the target extent, location, and quality of the following habitats in the Charlotte Harbor NEP study area...
 - f) restore, manage, and improve the habitat quality of oyster bars in the Charlotte Harbor NEP area based on the existing historic data...
- **FW-B/P:** Enhance fish and wildlife habitat along shorelines including canals, lakes, riverine systems, & artificial waterbodies;
- **FW-I/T:** Develop programs to improve public awareness of habitat and wildlife issues;
- **FW-R:** Promote development and enhancement of plans and programs to improve fish and shellfish resources; and
- **FW-V:** Identify the potential living oyster bars for restoration within the estuarine waters of the Charlotte Harbor NEP study area. Identify the potential (recent and historic) dead oyster bar areas for restoration. Associate oyster enhancement with water quality, improved hydrology, and reassessed recreational harvest levels.

Support Letter—Land Acquisition

The project under consideration is consistent with the NEP objectives listed above as well as our CCMP goals that address water quality degradation issues.

Finally, the Florida Gulf Coast University has been a significant partner in the development and implementation of our Comprehensive Conservation Management Plan. The University has long demonstrated a standing commitment to oyster habitat restoration, for dedicating substantial resources towards innovative research and better understanding of the region's natural resources and for educating the public on related issues.

Please award their application so that they may protect and preserve this vital piece of southwest Florida. We greatly appreciate your consideration.

Sincerely,

Lisa B. Beever, PhD, AICP
Director
LBB/CAC/cac

Support Letter—Exotic Removal

April 17, 2001

Mr. Brian Ocepek
Project Officer
National Fish and Wildlife Foundation
Inter-Mountain Regional Office
Rocky Mountain Arsenal
Building 111, Box 19
Commerce City, Colorado 80022

Re: Frannie's Preserve Invasive Species Control project (#00-192-010)

Dear Mr. Ocepek;

In February 2000, the Charlotte Harbor National Estuary Program approved funding the Frannie's Preserve Invasive Species Control project with our Restoration Partners Grant Fund. Every year, the Charlotte Harbor NEP chooses to fund a number of restoration projects that demonstrate innovation and long-term applicability to help fulfill the goals of our Comprehensive Conservation and Management Plan.

The 167-acre Frannie's Preserve on Sanibel Island serves as an important coastal strand, maritime hammock habitat and buffer along the Sanibel River. Like much of southwest Florida, the hydrology and function of the area has been changed considerably by invasive, exotic species. Many of the major goals of the Charlotte Harbor NEP pertain to restoring altered hydrologic regimes to natural conditions when possible and removing invasive, exotic species from both public and privately owned lands within our watershed.

To that end, in mid August 2000 the Sanibel-Captiva Conservation Foundation received \$15,000 of the contracted \$20,000 for equipment and equipment operator for the mechanical removal of Brazilian pepper and Australian pine trees from the Preserve. The Charlotte Harbor NEP grant cycle works on a reimbursement basis, and we are currently awaiting the final \$5,000 invoice and report from the Sanibel-Captiva Conservation Foundation.

If you have any questions or need further information, please do not hesitate to contact me at the program office at (941) 995-1777 or email: ccorbett@swfrpc.org.

Sincerely,

Catherine Corbett
Environmental Projects Manager

C: Brad Smith, Sanibel-Captiva Conservation Foundation

Support Letter—Lake Hancock

April 15, 2002

E. D. "Sonny" Vergara, Executive Director
Southwest Florida Water Management District
2379 Broad Street
Brooksville, FL 34604-6899

Dear Mr. Vergara:

Late last year, David A. Tomasko, Ph.D., Senior Environmental Scientist, Surface Water Improvement and Management (SWIM) Section of the Southwest Florida Water Management District, provided the Charlotte Harbor National Estuary Program (CHNEP) management conference with several outstanding presentations of the Pollutant Load Reduction Goal (PLRG) recommendations for Charlotte Harbor. He provided an overview of water quality in Charlotte Harbor as well as the Peace and Myakka Rivers. The PLRG recommendation, which had received support from our management conference, is to treat the water leaving Lake Hancock. This will assist greatly in protecting the water quality of Charlotte Harbor.

This letter is to document our support of the conclusions reached regarding the Pollutant Load Reduction Goals and land acquisition initiatives. Our *Comprehensive Conservation and Management Plan* (CCMP), adopted March 2000, includes:

- Quantifiable Objective WQ-5: Restore and maintain Lake Hancock to Class III water quality standards (or better) and improve the Trophic State Index (TSI) value for the water exiting the lake from “poor” to “good” by the year 2010 and
- Priority Action WQ-H: Install and maintain filtration marshes at appropriate locations around Lake Hancock.

This letter further states to the SWFWMD Governing Board the CHNEP’s full support of your efforts to improve the water quality leaving Lake Hancock.

Sincerely,

Lisa B. Beever, PhD, AICP
Director

cc: David A. Tomasko, Ph.D., Senior Environmental Scientist, SWIM, SWFWMD
SWFWMD Governing Board
CAC members

