



Protect. Educate. Inspire.

"Ding" Darling Wildlife Society - Friends of the Refuge

May You Live in Interesting Times

by Sarah Ashton and Jim Metzler, DDWS Advocacy Committee Co-Chairs

Whether correct or not, the phrase “May you live in interesting times” is often described as an [English translation of a Chinese curse](#). The obvious irony of the phrase is that most people enjoy life more in *uninteresting times* that are typically characterized by *tranquility*, than they do in *interesting times*, which are often characterized by turmoil.

These are definitely interesting times for water-related issues. This follows in part due to the political uncertainty at both the state and national level. This uncertainty includes which individuals on a going-forward basis will be controlling and/or influencing water-related issues and how much resource they will assign to these issues. This also follows because there are many critical water-related projects, such as the C-43 reservoir, which will have a significant impact on the J.N. “Ding” Darling National Wildlife Refuge, and are nearing completion.

This article will provide an update on some previously discussed water-related legal issues and projects, and it will also identify some others that we need to watch carefully.

Key Water-Related Legal Issues and Projects

Water Resources Development Act 2020 (WRDA 2020)

In [an article we published in August](#), we identified some of the reasons why WRDA 2020 was important to the Refuge. For example, the bill requires the Army Corps of Engineers to conduct research to determine the causes of harmful algal blooms (HABs) in Lake Okeechobee and implement measures to effectively detect, prevent, treat, and eliminate these blooms. The bill also requires the Army Corps to coordinate with several federal and state agencies relative to monitoring, forecasting, and notification of cyanobacteria levels in Lake O.

As we mentioned in the August article, the bill passed the U.S. House of Representatives in July. Unfortunately, it has yet to be passed by the U.S. Senate and signed into law. That could happen in the upcoming lame duck session. However, the political environment in Washington, D.C., puts that at risk.

Integrated Delivery Schedule (IDS)

[The Integrated Delivery Schedule \(IDS\)](#) is the timeline of Everglades' restoration projects that are cost-shared by the state and federal governments. The purpose of the IDS is to provide the sequencing strategy for planning, designing, and constructing projects based on ecosystem needs, benefits, costs, and available funding.

To put the scope and complexity of the IDS into perspective, one of the activities that is included in the IDS is the [Comprehensive Everglades Restoration Plan \(CERP\)](#). CERP is comprised of over 60 projects. It is the largest aquatic ecosystem restoration effort in the nation, spanning over 18,000 square miles, and is designed to improve the health of more than 2.4 million acres.

In September 2020, the Army Corps held a workshop to review and refine a working draft of IDS 2020. This article will not provide details on that workshop. However, for those interested in an understanding of the schedule and sequencing of Everglades restoration projects, a copy of that draft document can be found [here](#). For those who want an in-depth understanding of the overall process of refining the IDS, a recording of the September 2020 IDS workshop see [here](#).

Federal Support for Everglades Restoration Projects

Effective sequencing of water-related projects as done by the IDS is clearly critical. So is the funding of those projects.

In the last Federal budget, the administration included \$250 million for Everglades' restoration projects, which was a \$50 million increase over what was allocated in the previous federal budget. Again, given the nature of the political environment in Washington, D.C., it is uncertain how much money will be in the next Federal budget for Everglades' restoration projects.

Possible Move of 404 Permitting to the Florida Department of Environmental Protection (FDEP)

In August, the U.S. Environmental Protection Agency (EPA) received a request from the state of Florida to assume administration of a Clean Water Act (CWA) Section 404 program to regulate the discharge of dredged or fill material into waters within the jurisdiction of the state. In the 43 years since the CWA was amended to provide for state or tribal assumption, only two states have assumed administration of the CWA Section 404 program - Michigan and New Jersey. The state's assumption of the Section 404 program would mean that the FDEP and not the Army Corps would review potential projects to determine if they may dredge or fill wetlands throughout Florida. See [more](#).

Many people are opposed to the FDEP taking over 404 permitting. One such person is Bob Graham, former U.S. senator, Florida governor, and member of both houses of the Florida legislature. In a recent article titled "Halt wetlands permitting changes until public can comment in person," Graham argues that the coronavirus reduces the public's ability of to provide input into the decision-making process relative to possibly moving 404 permitting to the FDEP. According to Graham: "One of the biggest roadblocks to participatory democracy is the perception that everyday Americans cannot influence government policy, and that only the privileged and special interests can command the levers of power or change bureaucracies. By moving forward with the 404 Assumption process now, the department will thereby turn this perception into a reality." See [more](#).

Recent Environmental Rollbacks

During the last four years, the federal government has rolled back, or announced its intention to roll back, more than 100 environmental rules and regulations in a variety of areas including air pollution and emissions, toxic substances and safety, and water pollution.

One example of a rollback that impacts water quality is the rollback of the 2015 measure, known as the [Waters of the United States rule](#). An immediate effect of this rollback is that polluters will no longer need a permit to discharge potentially harmful substances into many streams and wetlands. See [more](#).

A more recent example is when, in mid-November, the administration announced it would begin the formal process of selling leases to oil companies to allow oil and gas drilling in the Arctic National Wildlife Refuge in Alaska. See [more](#).

Rights of Nature

The phrase “rights of nature” refers to a growing movement that recognizes that natural ecosystems – including trees, oceans, animals, and mountains – have rights just as human beings have rights. The goal of this movement is to balance what is good for human beings against what is good for other species, and what is good for the planet as a whole. See [more](#).

In the recent election, Orange County, Florida, has become the largest municipality in the United States to adopt a ‘rights of nature’ law. Voters overwhelmingly approved the measure, recognizing rights of Orange County rivers and streams, along with a right to clean water for the residents. With nearly 1.4 million people, it is the 30th largest county in the U.S., and the fifth largest in Florida. See [more](#).

It’s too early to say what impact, if any, this movement will have, but it is something to keep an eye on.

Florida’s Upcoming Legislative Session

Almost all the money that the Florida legislature allocates to water projects is for infrastructure to store and move water, not for projects that improve the quality of our water. In the last two legislative session, the legislature passed a single water-quality bill. That bill, which was passed in the last legislative session, is Senate Bill 712. One of the chief criticisms of the bill is that it continues the practice of leaving it up to farmers to enforce whether they are following best practices relative to minimizing nutrient runoff. See [more](#).

It is difficult to predict which water-related issues the Florida legislature will address in its upcoming session. This follows in part because, with the pandemic causing massive damage to businesses and tax revenues, [state economists have estimated](#) lawmakers will be working with a potential budget shortfall of about \$2.7 billion for the 2021-2022 fiscal year and \$1.9 billion for the following budget year. In addition, there are several new members of the Florida legislature and several members in different positions than they were in the last legislative session, and it is challenging to predict their priorities. Historically, one of the best ways to track the activities of the Florida legislature is via the SCCF (Sanibel-Captiva Conservation Foundation) legislative tracker. See [here](#).

EAA Stormwater Treatment Area

In [a previous article](#), we discussed the Everglades Agricultural Area (EAA) Storage Reservoir which will be built south of Lake Okeechobee. The purpose of the reservoir is to hold water from both Lake O and farm runoff in the wet season and release this water south in the dry season. To comply with federal law, the fresh water leaving the reservoir must be clean before it can flow through the Everglades and down to Everglades National Park.

One of the ways to clean dirty water is to let the water flow through a Stormwater Treatment Area (STA). STAs are constructed wetlands that remove and store nutrients through plant growth and the accumulation of dead plant material that is slowly converted to a layer of peat soil. See [more](#).

In early November, the South Florida Water Management District (SFWMD) unanimously approved fully funding an STA for the EAA reservoir. As a result of the agreement, the FDEP will transfer \$64 million to SFWMD. This will enable the SFWMD to complete, by 2023, the 6,500-acre STA that will clean the water stored in the EAA Reservoir and allow it to be moved south to the Everglades.

Sending Water South

As described above, a goal of Everglades Restoration is to move water south through the Everglades and down to Everglades National Park. As was also described above, moving water south requires the creation of additional storage such as the EAA reservoir and the creation of STAs to clean the water stored in those reservoirs. It also requires the creation of additional conveyance structure to facilitate the flow of water south.

In October, Gov. Ron DeSantis was joined by the FDEP, the SFWMD, and the Army Corps to celebrate the completion of what is referred to as the S-333 North (S-333N) structure. This structure sits about 35 miles west of Miami and significantly increases the amount of water that can be moved into Everglades National Park. See [more](#).

Multi-Use Corridors of Regional Economic Significance

In [a previous article](#) we discussed the Multi-Use Corridors of Regional Economic Significance (M-CORES) program. M-CORES authorizes the design and construction of three new tolled road corridors through rural Florida. Environmentalists are concerned that M-CORES will put at risk rural communities, vulnerable lands and waters, and wildlife. Their concern is both with the highways themselves as well as with the unmanaged growth they would generate.

[Nikki Fried](#), commissioner of the Florida Department of Agriculture and Consumer Services (FDACS), recently came out against the project saying that it would “put an unnecessary strain on the state's ability to fund urgent priorities” amid the pandemic. For more, see [here](#).

Summary

There is no doubt that when it comes to water-related issues that those of us in Southwest Florida live in interesting times. One of the drivers of these interesting times is that, as described above, some significant projects, such as the S-333 North structure, have recently been completed, while others, such as the STA for the EAA, are just getting started. Another driver of these interesting times is that there have been significant setbacks, such as the recent environmental rollbacks and the threat of setbacks, such as the potential implementation of M-CORES.

We will continue to keep you apprised of water-related issues that impact the Refuge and when appropriate, ask you to reach out to the appropriate government officials and make your voice heard.