



CERP SAVINGS CLAUSE

- Protects existing legal sources of water from elimination or transfer due to CERP implementation and protects levels of service for flood protection from reduction by CERP projects.
- LOSOM proposes changes to the lake regulation schedule due to rehabilitation of HHD, and is not driven by CERP implementation

CERP implementation is not only projects, it also includes operational changes. The word “projects” does not appear in the Savings Clause. WRDA 2000 and CERP are a lot more than building projects. CERP is a framework for proceeding in the future:

“the Plan is approved as a framework for modifications and operational changes to the Central and Southern Florida Project that are needed to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection.”

LORS08 changed the schedule temporarily because of rehabilitation of the HHD. LOSOM is supposed to develop a whole new schedule assuming a repaired HHD. CERP is the only authorized framework to develop a new schedule with the restoration goals they have enumerated for LOSOM. CERP components cannot vacillate between part of the Plan and not part of the Plan.

LOSOM WRDA 2018

Section 1106 of the Water Resource Development Act (WRDA) 2018:

“The Secretary shall expedite completion of the Lake Okeechobee regulation schedule to coincide with completion of the Herbert Hoover Dike project, and may include all relevant aspects of the Comprehensive Everglades Restoration Plan described in section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680)”.

When developing LOSOM they had to deal with the fact that there are at least two big CERP projects, C-43 and C-44, which may come online as LOSOM is approved. Neither has a final approved operating plan or a permit to operate. They also have the EAA reservoir and STA which may be online soon after. They are therefore developing a schedule that can be applied now and also include these CERP projects. This may be what they had in mind when they chose “may include”. CERP and the Lake Schedule and inextricably linked.



CERP LORS CHANGES



- Operational changes for Lake Okeechobee associated with storage construction components north of the lake and south of the lake resulting in drastically reduced regulatory releases to the Caloosahatchee and St. Lucie Estuaries (Component F)
- Operational changes for Lake Okeechobee associated with storage construction projects east and west of the lake resulting in improved environmental water supply for northern estuaries (Components C and E)

The Corps was very selective here. This language from the Yellow Book is not exhaustive. The first bullet is OK. The second bullet ignores the fact that one of the stated purposes of LOSOM is environmental water supply to the estuary. They created the base flow concept in LORS08, but they did not claim it was for the environment, but rather it was a way to lower the lake because of the HHD problems.

The A-2 STA (storage to the south) and the C-44 STA (storage to the east) will both be online in time for LOSOM. They are clearly CERP and they will both affect the way the Lake is managed.

CERP COMPONENTS

- Component F – Lake Okeechobee Regulation Schedule
 - Lake Okeechobee regulation schedule modified to take advantage of the additional storage facilities identified in the construction features
 - Two additional zones will be added to the schedule:
 - 1st zone trigger discharges to north of Lake Okeechobee reservoir and the EAA reservoir
 - 2nd zone trigger Lake Okeechobee ASR facilities to inject lake water

Component F is not an exhaustive list of changes to be made to lake operations and is not a free pass on the Savings Clause for LOSOM. This wording is very specific to how the CERP computer model dealt with the plan in 2000 for only a couple components. The EAA Reservoir Project is moving forward now and the Savings Clause must apply.

CERP COMPONENTS

Component E – Environmental Water Supply Deliveries to the Caloosahatchee Estuary

- Freshwater deliveries to Caloosahatchee Estuary to protect and restore more natural estuarine conditions
 - Already initiated by construction of C-43
 - CERP envisioned additional storage in the system north and south of the lake
- Development of operational rules for storage features in the C-43 Basin along with modifications to Lake Okeechobee operations

“Already initiated by construction of C-43” makes no sense. LORS08 started freshwater deliveries to the estuary to protect the HHD. If they want to do something similar for environmental reasons after the HHD is fixed they have to follow CERP. If they want to include a plan for when the C-43 is online, which they said they are doing, then that is CERP, and the Savings Clause must apply.

CERP COMPONENTS

Component C – Environmental Water Supply Deliveries to St. Lucie Estuary

- Freshwater deliveries to St. Lucie Estuary to protect and restore more natural estuarine conditions
- Development of operational rules for storage features in the C-23, C-24, C-25, C-44, Northfork and Southfork Basins along with modifications to Lake Okeechobee operations

The St. Lucie estuary has decided they don't want environmental deliveries but the C-44 project includes an STA that will be online for LOSOM and may affect some lake operations. If the STA is going to be a factor in how much or how little water they send from the lake to the estuary, then it is CERP and the Savings Clause must apply.

SUMMARY

- LOSOM does not include the changes to the Lake Okeechobee regulation schedule described in CERP Components F, C, and E
- CERP storage facilities north and south of lake do not exist and will not be in operation during LOSOM Increment 1 or 2
- LOSOM not proposing operational changes to CERP storage facilities in C-43 and C-44 basins
- CERP will eventually modify LOSOM to take advantage of additional storage facilities

This slide demonstrates that the Lake Schedule is subject to WRDA 2000. The Corps is attempting to delay the timing of the Savings Clause to a future schedule, not this version of LOSOM. It is not necessary to have these projects built in order to conduct a proper savings clause analysis using the 2000 baseline. The EAA Reservoir is being built now.

The third bullet is true, but LOSOM will be proposing operational changes for the Lake to meet some of the objectives of the C-43 and C-44 storage facilities.

SUMMARY

While improvement in estuary releases is expected in LOSOM, reductions in regulatory releases envisioned in CERP are not achievable due to current lack of adequate storage within the Lake Okeechobee watershed and the EAA

If HHD had not required rehab, the implementation of LORS 2008 as Interim Risk Reduction Measure would not have been needed, and LOSOM would not be needed at this time

- C43, C44 and A-2 STA coming online would not trigger the need for a new lake schedule

The Corps will be sending major volumes of water south which will reduce estuary flows. Improvement of estuary releases is a CERP objective authorized by WRDA 2000.

The second bullet makes our point that the 2000 baseline applies. If the HHD work was not necessary, there would be no LORS08 and the Lake would be operated under the WSE schedule, which is the 2000 baseline for the Savings Clause analysis.

These changes will clearly change Lake operations. This is CERP and why WRDA 2000 applies.

LOSOM CONCLUSIONS

- LOSOM is an intervening non-CERP activity, as defined in the CERP Programmatic Guidance Memoranda (DRAFT, 2007).
- LOSOM EIS will use LORS 2008 for operations in 'future without-project condition'.
- LOSOM will establish a baseline that will be used in future LOSOM updates.

1. The concept of "intervening non-CERP activities" exists only in a draft Guidance Memo developed in Jacksonville. The first version of the draft was developed through the multi-agency and public participation process outlined in WRDA 2000. The Lake Okeechobee schedule was NOT considered an "intervening non-CERP activity" when WRDA was passed, or when the original Guidance Memo was drafted. The Corps unilaterally slipped a reference to the Lake Okeechobee schedule into the draft Guidance Memo in 2007, which received no public input. It remains a draft today.
2. LORS08 is the interim schedule that was adopted to govern while the repairs to the HHD were underway. The Savings Clause requires the schedule in place when CERP was approved (Dec. 2000) to be the baseline for water supply decisions. By using the LORS 2008 baseline, the Corps has unilaterally changed the Savings Clause baseline for all CERP projects, not just the Lake. Example – EAA Reservoir.
3. The third bullet says the new LOSOM will be the baseline for future evaluations. This means the Savings Clause, as written in WRDA 2000, will never apply and the Corps is changing the Congressionally mandated baseline from 2000 to 2008.