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October 27, 2006

Cecile Piverotto
Senior Attorney
Office of Council
South Florida Water Management District
Sent via email: cpiverot@sfwmd.gov

Re: Draft Regional Water Availability Rule Development

Dear Ms. Piverotto:

Audubon of Florida commends the South Florida Water Management District (District) for drafting a regional rule to protect water for the environment, specifically the Everglades and the Loxahatchee River Watershed ecosystems. The draft Regional Water Availability Rule shifts municipalities away from continued reliance on the natural system as a water source to meet future demands. Please accept our comments regarding the draft Regional Water Availability Rule.

Pertaining to Section 1.8, Definitions in the Basis of Review for Water Use Permit Applications within the South Florida Water Management District, we request the Model Lands and Southern Glades Basins be incorporated into the definition of the Everglades waterbodies. As this rule aims to separate municipal service areas from environmental water bodies, we find it appropriate to extend the boundaries of the Everglades waterbodies to incorporate these significant wetlands.

Federal, State, local, and private land acquisition efforts have secured almost 80,000 acres within the Model Lands and Southern Glades Basins for restoration and preservation. The Model Lands and Southern Glades basins are recognized as part of the Greater Everglades ecosystem, and are essential headwaters to both Florida and Biscayne bays. Large portions of these basins are included in the C-111 Spreader Canal and the Biscayne Bay Coastal Wetlands projects of the Comprehensive Everglades Restoration Plan (CERP). The Miami-Dade County Environmentally Endangered Lands program has extensive acquisition and management efforts within both basins. Failure to include the Model Lands and Southern Glades Basins may inadvertently allow additional municipal withdrawals that are counter to Federal, State, and local restoration and preservation efforts.

Pertaining to Subsection E (2) of Section 3.2.1, Restricted Allocation Area of the Basis of Review for Water Use Permit Applications within the South Florida Water Management District, we request the "base condition water use" be calculated from December 2000, the date the United States Congress authorized the CERP in the Water Resources Development

Act (WRDA) of 2000. Section 601 (h) (5)(A) on the Saving Clause of the WRDA of 2000 states:

Until a new source of water supply of comparable quantity and quality as that available on the date of enactment of this Act is available to replace the water to be lost as a result of implementation of the Plan, the secretary and the non-federal sponsor shall not eliminate or transfer existing legal sources of water, including those for (i) an agricultural or urban water supply; (ii) allocation or entitlement to the Seminole Indian Tribe of Florida...; (iii) the Miccosukee Tribe of Indians of Florida; (iv) water supply for Everglades National Park; or water supply for fish and wildlife.

On January 2002, the Governor Jeb Bush agreed to comply with the provisions in the WRDA 2000 upon his signature of the President and Governor's agreement (Agreement) to implement the CERP. In the Agreement, the State agreed to:

manage its water resource allocation process to ensure that water made available by each project in the Comprehensive Everglades Restoration Plan will not be permitted for a consumptive use or otherwise made unavailable for the restoration of the natural system, consistent with the PIR and the provisions of the Water Resources Development Act of 2000.

The intent of the above sections of the WRDA 2000 and Agreement was to protect water needed for the restoration of the Greater Everglades ecosystem. The protection of water supplies for restoration of the Everglades natural system is recognized as a legitimate and essential component of water allocation pursuant to Part II of Chapter 373, Florida Statutes.

With consumptive use demands within the Lower East Coast and Northern Palm Beach County Service Areas increasing every year, the baseline water for the Greater Everglades ecosystem likely has declined since the enactment of WRDA 2000. This undermines the State's efforts at achieving the benefits of the CERP. It is within the State's interest and within the State's authority to identify any difference between the 2000 and 2006 baseline in water for the environment. If there has been a reduction in water for the environment or conversely an increase in allocation of water from the natural system to the service areas, the State has the opportunity and the authority to return the water to the Everglades.

The Regional Water Availability Rule represents the State's commitment to the full restoration of the Greater Everglades ecosystem. The rule provides an opportunity to ensure the baseline of water needed for the environment is protected from additional consumptive use permits. It is within the State's interest as the local sponsor of the CERP to ensure the baseline of water for the environment is protected and available for the implementation of the CERP. The Regional Water Availability Rule is an opportunity to achieve the intent of the WRDA 2000 and the Agreement.

As the Regional Water Availability rulemaking continues, additional comments will be forthcoming. We also look forward to working with the District on reservations of water for the environment. Reservations of existing baseline water for the environment coupled with

reservations of water created by CERP projects are essential to the full restoration of the Greater Everglades ecosystem.

Thank you for this opportunity to share our recommendations.

Sincerely,

/s/

Jamie L. Furgang
Senior Everglades Policy Associate
Audubon of Florida

CC: Scott Burns, Deputy Director, Water Supply Department, sburns@sfwmd.gov