

## **8. WATER QUALITY**

- f. Discussion regarding the Conservancy of Southwest Florida's Lake Okeechobee service area (LOSA) rule challenge against the South Florida Water Management District (SFWMD)

# Caloosahatchee Legal Campaign – Phase I

**PURPOSE:** to compel the quantity and quality of water needed for protecting the health of the Caloosahatchee River and Estuary.

**STRATEGY:** to utilize advocacy and lobbying, as well as legal actions to compel compliance with existing regulations that support consumptive uses should be balanced natural system needs.

## LAKE OKEECHOBEE SERVICE AREA (LOSA) RULE CHALLENGE

- The Caloosahatchee River and Estuary depend on minimum releases from Lake Okeechobee in dry times, as well as not being inundated with excessive releases during wet times.
- The LOSA rule regulates water use permit applications as part of the South Florida Water Management District's Basis of Review, governing water stored in Lake Okeechobee.



- Challenge is based on several factors including that it contradicts other pre-existing laws mandating that minimum flows of water (MFL) be provided from Lake Okeechobee to the Caloosahatchee River and Estuary, and that water use permits be contingent on reasonable-beneficial use, not interfere with other existing legal uses, and be in public's interest as outlined in Florida Statute.
- The LOSA rule essentially grandfathers all existing permits, and even allocates water to unpermitted users – while ignoring legal requirements to provide the water that is unassigned, terminated, or made available from reduced allocations during permit renewals to the River and Estuary.
- The Conservancy is challenging the LOSA rule as contravening the specific provision of law being implemented, failing to establish adequate standards for agency decisions, vesting unbridled discretion in the agency, and being arbitrary and capricious in permitting unknown magnitudes of previously unpermitted water withdrawals.
- If the rule were overturned, then all the permits issued in accordance with it could be deemed illegal and therefore, reopened. This could allow adjustments to be made to free up enough water to reduce the amount of Caloosahatchee MFL violations.

## **PETITION FOR AN UPDATED CALOOSAHATCHEE MINIMUM FLOW AND LEVEL (MFL)**

- In September of 2001, a MFL was set to prevent significant ecological harm to the Caloosahatchee River and Estuary caused by lack of adequate freshwater flow. MFLs assume a 30% loss of resource (such as seagrasses) before they come into effect.
- State regulations dictate that MFLs be based on the best available information and periodically reviewed, at least every five years. Moreover, with regards specifically to the Caloosahatchee MFL, state regulations say it should be reviewed in September 2002 and amended, as necessary based on best available information.
- A peer review of initial Caloosahatchee MFL identified significant problems with it, including the lack of consideration of harm to the lower Caloosahatchee Estuary.
- In 2007, an agency study concluded that the MFL for the Caloosahatchee is inadequate to prevent significant harm.
- Nine years later, the MFL has not been amended to address issues raised in peer review, nor to include significant new data available with regard to the flows necessary to prevent significant harm.
- The Conservancy in petitioning for an updated MFL, is seeking the SFWMD to amend the present MFL based on best available data to a level appropriate for sufficiently preventing significant harm to the Caloosahatchee River and Estuary.