



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
701 San Marco Boulevard
JACKSONVILLE, FLORIDA 32207-8175

CESAJ-OD-MW

27 JUN 2017

MEMORANDUM FOR Commander, U.S. Army Corps of Engineers, South Atlantic Division (CESAD-RBT), 60 Forsyth Street, Room 10M15, Atlanta, GA 30303

SUBJECT: Request for Approval of a Planned Temporary Deviation to Reduce Water Levels in the Water Conservation Area 3A (WCA-3A)

1. The Water Conservation Areas (WCA) are currently experiencing very high water levels due to early wet season storms that produced an area wide average rainfall of over 18 inches from 1 to 23 June 2017. These water levels have reached record highs for this time of the year. WCA-3A, in particular, is the highest it has ever been in the month of June which is the start of the wet season. With the operational limitations currently in place, releases at the southern boundary of WCA-3A through structures S-12A, S-12B, S-343A, S-343B, S-344, S-152, S-332D, and S-197 are not possible without some additional operational flexibilities. Therefore, the Jacksonville District (Corps) requests approval of a temporary deviation from the 2012 Water Control Plan and the Modified Water Delivery (MWD) Increment 1.1 and 1.2 Operational Strategy in accordance with the US Fish and Wildlife Service (USFWS) authorization. This deviation would remain in effect until the WCA-3A 3-station gage average falls below Zone A of the Regulation Schedule.

2. Due to the urgency of the Corps' requested operational changes, an expedited Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) has been prepared to assess any environmental impacts associated with this action. The EA and accompanying FONSI, provided with this letter in Enclosure 1, has found there are no significant adverse effects anticipated with the Corps' request for temporary deviation. Lowering the water levels will reduce potential damage due to prolonged inundation to tree island habitat which is essential to the ecological landscape within the WCAs. Furthermore, lowering the water levels will aid in averting any potential impacts to public health, safety, welfare and property in the South Florida region. The Corps completed this EA in accordance with ER 200-2-2 to address the federal action of the planned temporary deviation to the water control plan. The signed FONSI will circulate for public review. The Corps may generate a supplemental EA as necessary to discuss and disclose any additional effects to the human environment that may not have been addressed within this EA.

CESAJ-OD-MW

SUBJECT: Request for Approval of a Planned Temporary Deviation to Reduce Water Levels in the Water Conservation Area 3A (WCA-3A)

3. An Operational Strategy, including a detailed recommendation with accompanying analysis for each of the operational changes, is included with this letter in Appendix A in the EA (Enclosure 1).

4. The Operational Strategy was developed in close coordination with key stakeholder agencies such as the US Fish and Wildlife Service (USFWS), Florida Wildlife Conservation Commission (FWCC), Miccosukee Tribe of Indians, Seminole Tribe of Florida, Florida Department of Environmental Protection (FDEP), the Everglades National Park (ENP) and the South Florida Water Management District (SFWMD). Comments and input from these agencies were invaluable in ensuring the best operational plan was developed. Correspondence with these agencies is included with this letter in Appendix B in the EA (Enclosure 1).

5. Included with this memorandum is an Emergency Final Order issued from the FDEP providing their concurrence and authorization supporting the Corps' request for deviation, USFWS letter of concurrence, and two deviation requests from SFWMD for structures S-343A, S-343B, S-344, and S-197 (Enclosure 2).

6. Currently, the Jacksonville District is choosing not to pursue raising the level of L-29 above its maximum canal stage of 7.5 ft, NGVD in order to prevent delay or damages to the C-111 South Dade Contract 8 and 8A construction projects while maintaining the authorized flood mitigation for the 8.5 Square Mile Area (SMA).

7. Point of contact is Mr. Lan Do, Water Management Section at (904) 232-3677.

2 Encls



JASON A. KIRK, P.E.
Colonel, EN
Commanding

ENCLOSURE 1

ENCLOSURE 2

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY MEASURES DUE TO
HIGH WATER CONDITIONS
IN SOUTH FLORIDA REGION**

OGC No.: 17-0867

EMERGENCY FINAL ORDER

Under Sections 120.569(2)(n), 252.46, 373.119(2), and 373.439, Florida Statutes, and upon consideration of the following findings of fact, the State of Florida Department of Environmental Protection (Department) enters this Emergency Final Order (Order), including the Findings of Fact and Conclusions of Law, in response to high rainfall and flooding in the South Florida Region, specifically the Everglades Protection Area, that threatens certain stormwater management systems, works and impoundments and also poses an imminent or immediate danger to valuable natural resources, the public health, safety or welfare.

FINDINGS OF FACT

1. High rainfall events have occurred across the South Florida Region during the month of June 2017 causing high water conditions and flooding in the Everglades Protection Area, especially in Water Conservation Area 3A.
2. These massive rainfall events and flooding have resulted in water levels in Water Conservation Area 3A rising by more than 2 feet, to 11.02 feet. High water levels inundate tree islands and other wildlife habitats, and if sustained, will cause stress and loss of life particularly for birds and mammals. On June 13, 2017, the Florida Fish and Wildlife Conservation Commission (FWC) issued Order No. EO 17-24 establishing special regulations regarding wildlife in the

Everglades Protection Area. This also poses an immediate threat and impact to valuable natural resources that underpin local economies that surround the Everglades Protection Area. Loss of natural resources will lead to losses in outdoor recreation opportunities, as well as ecotourism and related economic benefits.

3. The Department finds that the rainfall and high-water event described above has created a state of emergency threatening valuable natural resources, as well as, the public health, safety, welfare, and property in the South Florida Region. As a result of the emergency, immediate action is necessary to cope with the emergency situation.

4. The Department has issued permits to the South Florida Water Management District (District) for the following projects: Lake Okeechobee Protection Permit (Permit No. 0174552-011) for the operation and control of 35 water control structures discharging into or from Lake Okeechobee; C-111 Spreader Canal Project (Permit No. 0293559), including the S-199 and S-200 Pump Stations, and the S-737 and S-18C water control structures; Non-Everglades Construction Project Discharge Structures Project (Permit No. 0237803), including the S-344 and S-343 water control structures; S-197 Control Structure Project (Permit No. 0306639), including the S-197 water control structure.

5. The Department has issued permits to the U.S. Army Corps of Engineers (Corps) for the following projects: WCA 3 Decompartmentalization and Sheetflow Enhancement Physical Model Project (Permit No. 0304879), including the S-152 water control structure; Modified Water Deliveries to the Everglades National Park Project (Permit No. 0246512), including the S-355A and S-355B water control structures; Ninth Amended Emergency Final Order to Operate the S-332B, S-332C, S-332D Pump Stations and Appurtenant Structures (OGC Case Nos. 00-0889 and 99-2242).

6. Immediate action is necessary to deviate from permitted water management practices in order to move significant volumes of flood water out of the Water Conservation Areas.

7. Under the current emergency conditions, it is appropriate to temporarily modify operations of the projects and immediately employ any remedial means deemed necessary to redress the emergency.

8. The Corps shall continue water quality and hydrologic monitoring of the existing permitted Corps project features, to identify and evaluate water quality and hydrologic Conditions. The monitoring work provides water quality data associated with state water quality standards and the long-term phosphorus concentration limits contained within the Settlement Agreement to the Federal Everglades lawsuit (Case No. 88-1886), and hydrologic data necessary for the adaptive operation of the pump stations to evaluate the effects on wildlife, water supply and flood protection in the C&SF project.

9. The District shall continue water quality and hydrologic monitoring of the existing permitted District project features, to identify and evaluate water quality and hydrologic conditions. The monitoring work provides water quality data associated with state water quality standards and the long-term phosphorus concentration limits contained within the Settlement Agreement to the Federal Everglades lawsuit (Case No. 88-1886), and hydrologic data necessary for the adaptive operation of the pump stations to evaluate the effects on wildlife, water supply and flood protection in the C&SF project.

CONCLUSIONS OF LAW

10. Based on the findings of fact above, it is hereby concluded that the emergency caused by the high rainfall events and flooding pose an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

11. Under Sections 120.569(2)(n), 252.46, 373.119(2), and 373.439, Florida Statutes, the Secretary of the Department, or designee, is authorized to issue this Emergency Final Order.

12. Suspension of statutes and rules as noted within this order is required so as to not prevent, hinder, or delay necessary action that the Department, South Florida Water Management District or the Corps may need to take in coping with the emergency.

THEREFORE, IT IS ORDERED:

13. Based upon the above Findings of Fact and Conclusions of Law, and pursuant to the above cited laws, I hereby order that:

- A. The Corps and the District are hereby authorized to make temporary operational changes in order to minimize detrimental impacts (including harmful flooding and degradation of water quality) to the environment, to the public, to adjacent properties, and to downstream receiving water to the greatest extent practicable.
- B. Permits described in the Findings of Facts are temporarily modified to authorize relief from the operations permit conditions. All other permit conditions shall remain in full force and effect.
- C. The District and Corps are authorized to conduct construction activities necessary to alleviate the emergency conditions. Prior to, or concurrent with, commencing construction activities the District or the Corps shall contact the Office of Ecosystem Projects. Within 30 days of completion of construction, the District or the Corps

shall apply to the Office of Ecosystem Projects for the necessary authorizations. for the necessary authorizations.

D. General Conditions

- a. The Corps and District shall implement the emergency operation activities in a manner that will minimize detrimental impacts (including harmful flooding and degradation of water quality) to the environment, to the public, to adjacent properties, and to downstream receiving waters to the greatest extent practicable, pursuant to federal law and Sections 373.413 and 373.414, Florida Statutes. The Corps and District shall implement the emergency operation activities in a manner that will maximize beneficial impacts to the environment to the greatest extent practicable consistent with the hydrological and biological restoration goals of the Everglades Forever Act (Section 373.4592, Florida Statutes) and the Florida Bay Restoration Act (Section 373.4593, Florida Statutes). Should any adverse impacts occur from conducting the emergency activities, the Corps and District shall be liable for damages to the extent applicable under federal and state law, respectively.
- b. All activities authorized by this Emergency Final Order shall be performed using appropriate best management practices. For activities conducted in or discharging to wetlands or other surface waters, best management practices shall include properly installed and maintained erosion and turbidity control devices, to prevent erosion and shoaling and to control turbidity. These turbidity/erosion controls shall be installed prior to any clearing, excavation or placement of fill material and shall be maintained in an effective condition at all locations until

construction is completed, and disturbed areas are stabilized. The Corps and the District shall be responsible for ensuring that erosion control devices/procedures are inspected/maintained during all phases of construction authorized by this Order. Additional activities, as described in the document entitled, "The Florida Development Manual - A Guide to Sound Land and Water Management" (revised February 1993), shall be conducted as needed to prevent degradation of adjacent wetlands and surface waters, to prevent violations of state water quality standards.

- c. If, for any reason, the Corps and/or the District does not comply with any condition or limitation specified in this Emergency Final Order, the Corps and/or the District shall immediately provide the Department's Office of Ecosystem Projects and Southeast District Office with a written report containing the following information: a description and cause of noncompliance; the period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue; and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance. Reports shall be provided to the above-referenced Department offices at the following addresses:

Florida Department of Environmental Protection
Office of Ecosystem Projects
3900 Commonwealth Boulevard, MS 45
Tallahassee, Florida 32399-3000
Telephone (850) 245-2228

- d. This Emergency Final Order does not authorize any entrance upon or activities on property that is not owned or controlled by the Corps and/or the District.
- e. The Corps and the District specifically agree to allow authorized Department personnel access to the premises where the authorized activity is located or conducted for the purpose of ascertaining compliance with the terms of the Emergency Final Order; to have access to and copy any records that must be kept under conditions of the Emergency Final Order; to inspect the facility, equipment, practices, or operations regulated or required under this Emergency Final Order; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this Emergency Final Order.
- f. The Corps and the District are responsible for coordinating the emergency operations with stakeholders including the Department of Interior, the Florida Department of Agriculture and Consumer Services, FWC, and the Miccosukee Tribe of Indians of Florida. Prior to commencement of the emergency operations, the District shall provide information to the Department that documents that this coordination has taken place and that there are no major objections.
- g. The Corps and the District shall coordinate with the U.S. Fish and Wildlife Service and FWC to ensure that there will be no adverse impacts to endangered or threatened species as a result of the proposed operations.

E. **Specific Conditions**

- a. Monitoring shall be in accordance with all applicable permits and monitoring plans on file with the Department. Monitoring results shall include salinity and ecological monitoring at the S-197 water control structure in accordance with the Appendix C - G-3273 Constraint Relaxation/S-356 Field Test and S-357N Operational Strategy Monitoring Plan. Seepage monitoring results shall include seepage monitoring along the C-111 Canal between the S-176 water control structure and the S-199 Pump Station. All reports and data generated as a result of this monitoring shall be submitted to the Office of Ecosystem Projects (at the address listed above) upon receipt by the Corps and/or the District and within a timely manner.
- b. Activities shall be closely monitored to maximize intended benefit and avoid unintended consequences. Close coordination with the Department and stakeholders shall be maintained to address any potential water quality, flood protection, and environmental resource issues in a timely fashion. To this end, the Corps and the District will submit an Emergency Operations After Action Report as soon as practicable after cessation of all emergency operations to the addresses listed above. The report shall include details of operation activities, pumping dates and times, volume of water pumped, gauge readings, flow measurements, flow direction and other visual observations, seepage monitoring results, water quality monitoring results (including provisional data), and a comparison with previous years' data and results.

F. Suspension of Statutes and Rules

The following provisions of permits, statutes and rules are hereby suspended for the activities authorized by this Order for the duration of this Order:

- a. For those activities noted above, subject to the limitations, duration and other provisions of this Order, all requirements for permits, leases, consents of use or other authorizations under Chapters 253, 373, 376 and 403, Florida Statutes, and rules adopted thereunder.
- b. Notice requirements of Sections 253.115, and 373.413, Florida Statutes, and rules 18-21, 62-4, and 62-312 of the Florida Administrative Code; and,
- c. Application fee, lease fee, and easement fee requirements of Sections 373.109, Florida Statutes, and Rules 18-21, and 62-4 of the Florida Administrative Code.

14. Nothing in this Emergency Final Order shall eliminate the necessity for obtaining any other federal, state, water management district, or local permits or other authorizations that may be required.

15. **Adverse Off-Site Impacts**

- a. The Corps and the District shall ensure that adverse off-site water resource related impacts do not occur as a result of this Emergency Final Order and shall fully monitor conditions related to the activities authorized by this order.
- b. The correction of any erosion, shoaling, water quality, or flooding problems that result from the operation of the structures authorized by this order shall be the sole responsibility of the Corps and the District. In addition, the Corps and the District shall immediately resolve such problems to the Department' s satisfaction.

c. If any adverse water quality, water quantity, or other negative environmental impacts occur as a result of this Emergency Final Order, the Department reserves the right to immediately revoke or modify this authorization upon written notice.

16. The Department's immunity from liability under Section 373.443, Florida Statutes, for any damages that might result from the activities authorized by this Emergency Final Order shall not be diminished by the terms of this order or any activities taken pursuant to this order.

17. The Department waives water quality certification for those activities authorized by this Emergency Final Order.

18. Failure to comply with the conditions set forth in this Emergency Final Order shall constitute a violation of a Department Final Order under Chapters 373, 376, and 403, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

19. This Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department, or designee, and shall expire on November 30, 2017, unless rescinded, modified or extended by further order of the Department.

NOTICE OF RIGHTS

Any person to whom this emergency order is directed may petition the Department for a hearing in accordance with Section 373.119, Florida Statutes.

Pursuant to Section 120.569(2)(n), F.S., any party adversely affected by this Order has the right to seek an injunction of this Order in circuit court or judicial review of it under Section 120.68, F.S. Judicial review must be sought by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a

copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this Order is filed with the Clerk of the Department.

DONE AND ORDERED on this 23 day of June 2017, in Tallahassee, Florida.

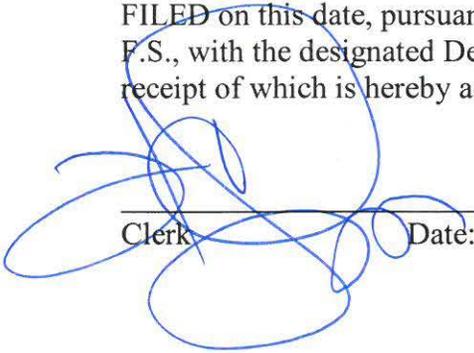
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



for Noah Valenstein, Secretary

3900 Commonwealth Blvd.
Tallahassee, Florida 32399-3000

FILED on this date, pursuant to § 120.52,
F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.



Clerk

Date:

06/23/2017



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

June 22, 2017

Colonel Jason A. Kirk
District Commander, Jacksonville District
U.S. Army Corps of Engineers
CESAJ-DE
701 San Marco Boulevard
Jacksonville, FL 32207-8175

**Subject: Deviation to use S-344 and S-343 A&B until July 15, 2017 with
Rehabilitated L-28 Plugs**

Dear Colonel Kirk:

The South Florida Water Management District (SFWMD) is requesting the use of S-344 and S-343 A&B to provide additional high water relief to WCA-3A. This deviation request to operate the S-344 and S-343 A&B will expire on July 15, 2017. The SFWMD plans to meet regularly (e.g., weekly) with US Fish and Wildlife Service to communicate operations and discuss the system response.

Background information and the operation details for the use of S-344 and S-343 A&B are provided in the attached operational strategy.

Please contact me at 561-682-2679 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "John P. Mitnik".

John P. Mitnik, P.E.
Chief District Engineer
Operations, Engineering, and Construction

JPM/bm
Attachment

Cc: Drew Bartlett, FDEP

S-344 and S-343 A&B OPERATION STRATEGY

NORMAL USE AND PROPOSED USE OF S-344 and S-343 A&B

S-344 and S-343 A&B are normally closed. The normal operational criteria for S-344 and S-343 A&B are to open them when the available capacity of S-333, S-12D, S-12C, S-12B, and S-12A is insufficient to provide the discharges prescribed by WCA 3A's Rainfall Plan. The combined discharges through S-343A, S-343B, and S344 are reduced as required to maintain the Loop Road 1 gauge (LOOP1) below 8.5 feet NGVD29 (closed when LOOP1 above 8.5 feet NGVD 29 under normal conditions). The proposed criteria ensure full operational flexibility to partially or completely open S-344 and S-343 A&B until July 15, 2017.

OPERATIONAL CRITERIA:

The SFWMD, as the operator of S-344 and S-343 A&B, has full flexibility in opening S-344 and S-343 A&B to provide high water relief to WCA-3A. Rehabilitation of the plugs downstream of S-344 and S-343 A&B was completed in 2016.

STRUCTURE CLOSINGS:

Closing of the gates on S-344 and S-343 A&B will begin when one or more following conditions are met:

1. The Loop Road gauge 1 (LOOP1) exceeds 8.5 feet NGVD 29.
2. If there is a meaningful reversal in the water level recession at identified sparrow target location(s) not induced by rainfall in the area.
3. Regular coordination for ongoing operations results in a request to adjust operations.

There are ten bridges or culverts through Tamiami Trail (State Road 41) from where Loop Road connects to Tamiami Trail to about 4 miles west along Tamiami Trail. There are approximately six bridges or culverts through Loop Road from where Loop Road connects to Tamiami Trail extending 4 miles west. These bridges and culverts allow some of the flow discharged from S-344 to flow south into the region that contains CSSS Sub-Population A. Flow and stage at the following locations along Tamiami Trail (SR41) will be monitored to provide representative information on the flow south and provide early indication of undesirable flow south towards the Cape Sable Seaside Sparrow Sub-Population A.

- The bridge allowing flow through Tamiami Trail which is located about 0.6 miles along Tamiami Trail northwest of S343A.
- The culvert/bridge allowing flow through Tamiami Trail which is near/across from S-343A.
- The bridge allowing flow through Tamiami Trail which is located about 0.6 miles along Tamiami Trail southeast of S343A.

The sites will be monitored at least weekly. S-343A tailwater will be used to indicate stage changes. The SFWMD will meet regularly (e.g., weekly) with FWS to communicate operations and discuss the system response. It is expected that conditions will change over the duration of this deviation and that FWS will adaptively evolve the criteria. The SFWMD will respond to operation direction from the FWS or USACE within 72 hours.



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

June 23, 2017

Colonel Jason A. Kirk
District Commander, Jacksonville District
U.S. Army Corps of Engineers
CESAJ-DE
701 San Marco Boulevard
Jacksonville, FL 32207-8175

**Subject: Deviation to use S-200 and S-199 Pump Stations and G-737
Structure until June 30, 2017**

Dear Colonel Kirk:

The South Florida Water Management District (SFWMD) is requesting the use of S-200 and S-199 Pump Stations and the G-737 Structure to manage water levels in the C-111 Canal to support high water relief efforts for WCA-3A. This deviation request will expire on June 30, 2017, at which time the features will operate in accordance with the permit conditions. The SFWMD plans to meet regularly (e.g., weekly) with US Fish and Wildlife Service to communicate operations and discuss the system response until the deviation has ceased.

Please contact me at 561-682-2679 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "John P. Mitnik".

John P. Mitnik, P.E.
Chief District Engineer

JPM/bm



United States Department of the Interior



FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960

June 27, 2017

Jason A. Kirk, P.E.
Colonel, US Army
U.S. Army Corps of Engineers
701 San Marco Boulevard
Jacksonville, Florida 32207-8175

Dear Colonel Kirk:

The U.S. Fish and Wildlife Service (Service) has reviewed the U.S. Army Corps of Engineers' (Corps), Jacksonville District, request for emergency consultation and the associated deviations in letters dated June 22, 2017; June 26, 2017; and e-mail dated June 26, 2017. Additionally, we reviewed the South Florida Water Management District's (District) request dated June 22, 2017, and the State of Florida's Emergency Order dated June 23, 2017. We also acknowledge the two telephone conversations you and I have had in the past 24 hours wherein you explained the Corps now considers this high water emergency as a risk to human health and safety.

Our recommendation to the Corps is to proceed with all the emergency deviations and actions described in these letters; however, we request you minimize, as much as practical, flows going through the S-12A and S-12B structures. Critically endangered Cape Sable seaside sparrows (CSSS) are actively nesting immediately downstream of these structures and allowing those nests to succeed will help this species recover.

The Corps determined that the proposed emergency actions may affect, but are not likely to adversely affect the Everglade snail kite, wood stork, and CSSS. The Service concurs with the Corps' determination for the Everglade snail kite and wood stork. However, since there is documented nesting occurring within CSSS subpopulation A, and increased water levels within the habitat are likely to adversely affect nesting birds, nestlings, and eggs, the Service is not able to concur with the "not likely to adversely affect" determination for CSSS. However, we have determined these actions will not result in jeopardy to the CSSS because their population appears to have increased slightly this year and the minimum target of 90 dry nesting days has been met in all subpopulations this year.

We recognize the need for the Corps and other agencies to take immediate action, and in keeping with our emergency consultation policy, we will complete formal consultation after the fact. In the meantime, if you have any questions regarding this project, please contact Donald Progulske at 772-469-4299 or by e-mail at Donald_Progulske@fws.gov.

Sincerely,

A handwritten signature in blue ink that reads "Larry Williams". The signature is written in a cursive style with a large, prominent "L" and "W".

Larry Williams,
State Supervisor, Ecological Services