

Lake Okeechobee and the Seminole Tribe of Florida



LLW

LEWIS
LONGMAN
WALKER

Seminole Tribe of Florida



Seminole Tribe of Florida

- Federally recognized by Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476)
- Recognized by the State of Florida under Chapter 285 of the Florida Statutes



Seminole Tribe of Florida

- In 1953, the United States Congress passed legislation terminating federal tribal programs
- The Seminole Tribe successfully argued against termination but immediately moved forward with:
 - Tribal Constitution
 - Obtained self-governance through a tribal council
 - Created the Seminole Tribe of Florida, Inc. to oversee the tribal businesses.



Marcellus Osceola, Jr.
Chairman



Mitchell Cypress
Vice Chairman



Mariann Billie
Big Cypress
Councilwoman



Larry Howard
Brighton Councilman



Chris Osceola
Hollywood
Councilman



Seminole Tribe of Florida

- Seminole Tribe has 7 Reservations that are home to approximately 3,600 tribal members
- 90,700+ acres



Land and Water Disputes

- 1980s disputes:
 - The extent and nature of Seminole water rights and their relationship to neighboring water users
 - Land claims
- Jurisdictions involved:
 - Seminole Tribe inherent jurisdiction over water and environment on the reservations and trust lands;
 - State jurisdiction over state waters and environmental matters in the state; and
 - Federal government jurisdiction over waters of the U.S. and other federal environmental matters.



The Signing of the Compact

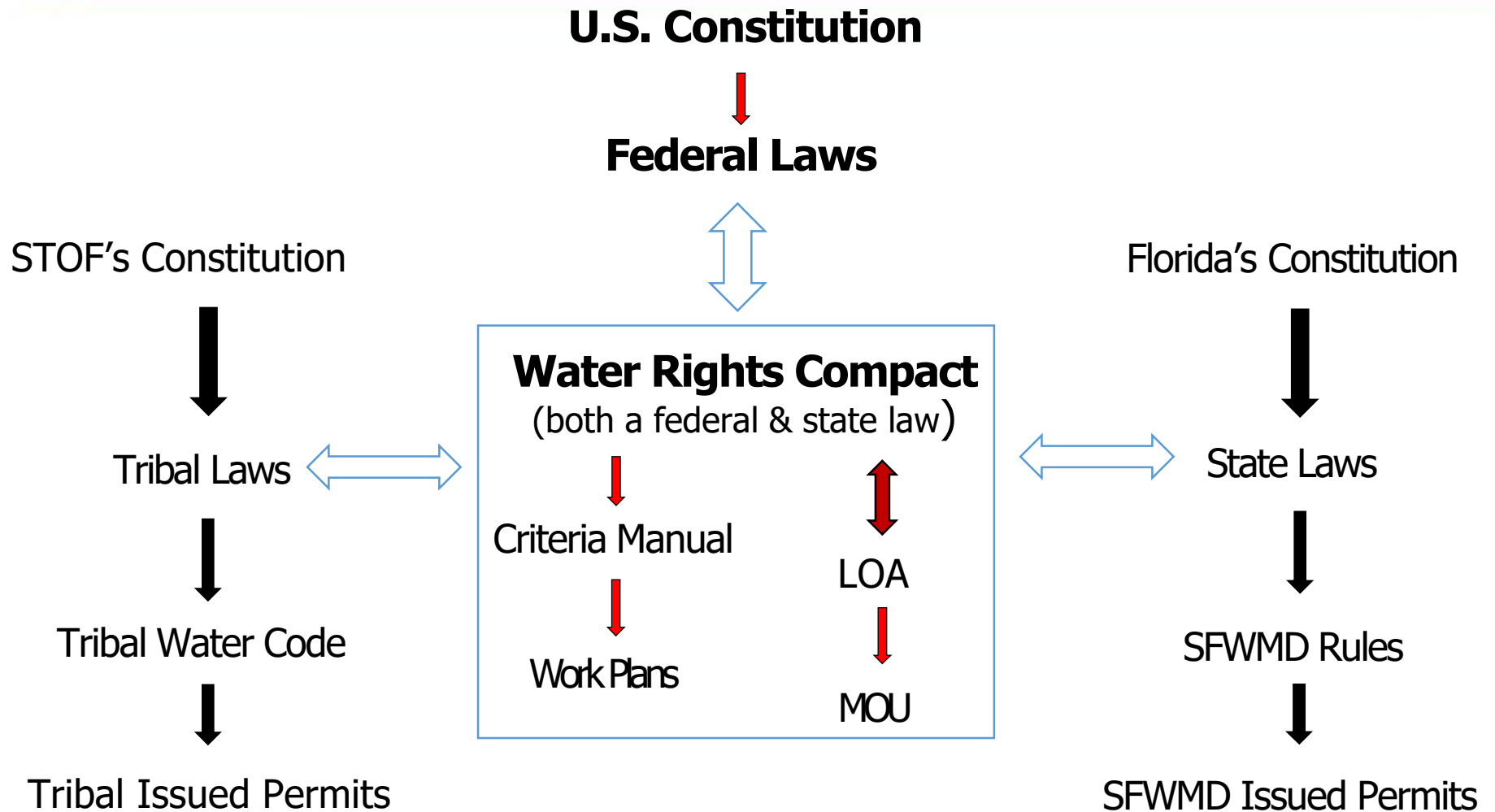


The Water Rights Compact

- 2nd tribal water rights settlement in the country - only water rights settlement east of the Mississippi.
- The Water Rights Compact, signed in 1987, has the full force and effect of federal and state law.
- It defines the rights and obligations of the Seminole Tribe pertaining to the water and the environment, approved concurrent with settlement of the Tribe's pending land claims.
- No litigation between the Tribe and the District since the Compact's ratification



The Water Rights Compact



Federal Trust Responsibility

- Borne out of Founding Father's Recognition in Constitution that Indian Tribes were separate, distinct entities different than states, were more akin to a foreign nation, and that only Congress can interact with the Indians.
- Once a patriarchal ward/guardian dynamic, the relationship between the Federal Government and Tribes has evolved into Federal support and encouragement of Tribal self-determination and prosperity.
- Executive Order 13,175 was issued by President Bill Clinton in November 2000 to "establish regular and meaningful consultation and collaboration" between the federal government and Tribes.
- The order recognized the special relationship between the Federal government and Tribes while requiring agencies to respect and protect tribal sovereignty.



Federal Trust Responsibility

- Agencies, as part of their missions, must therefore consider implications upon Tribal Governments.
- President Obama issued memorandums mandating Federal agencies develop detailed plans to comply with Executive order 13,175 established the White House Council on Native American Affairs.
- President Biden has reaffirmed President Obama's 2009 Memorandum and has reinvigorated the WHCNAA after it had not met regularly since 2016.
- In 2021 Deb Haaland was confirmed as the first Native American Cabinet Secretary in U.S. History.



Federal Trust Responsibility

- The Supreme Court has recognized “the distinctive obligation of trust incumbent upon the Government” in its dealings with Native American Tribes. *E.g. Seminole Nation v. U.S.*, 316 U.S. 286 (1942)
- The Federal government “has charged itself with moral obligations of the highest responsibility and trust” in carrying out its obligations to Tribes. *Id.*
- “The [Navajo] Nation, in pointing to its reserved water rights, has identified specific treaty, statutory, and regulatory provisions that impose fiduciary obligations on Federal Appellees” *Navajo Nation v. U.S. DOI*, 996 F.3d 623 (9th Cir 2021)

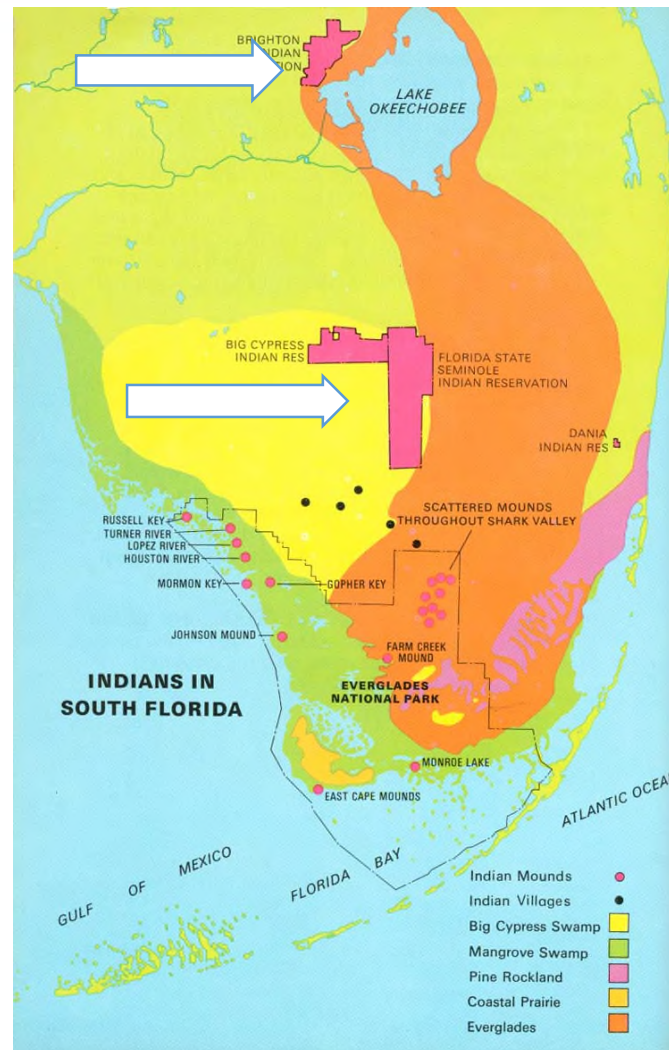


Compact – Goals and Implementation

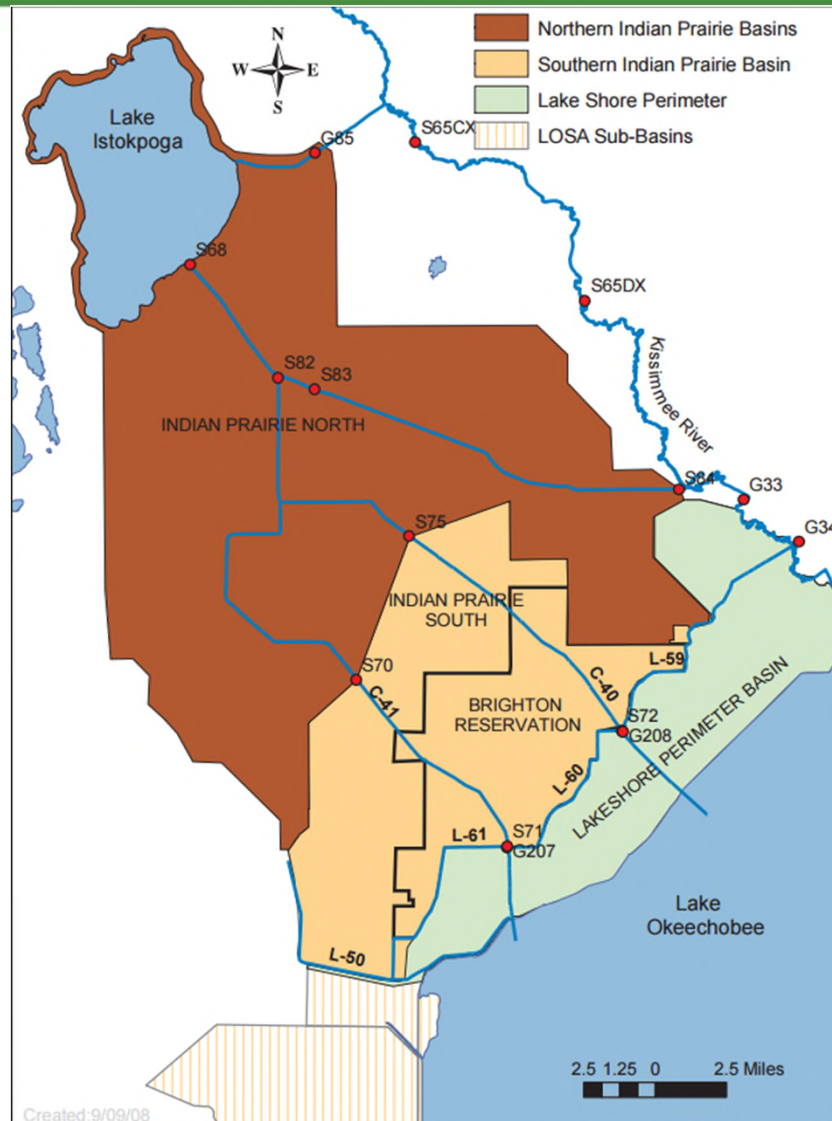
- Preserved Seminole sovereignty
- Protected the Seminole's development rights
- Assured the District that the Tribe's management of water would be consistent with the State system
- Water rights entitlements established for the Big Cypress and Brighton Reservations – proportionate share of the available Basin's surface water while allowing the SFWMD to accommodate the pre-existing permitted water uses in these basins
- Tribal water rights are perfected through the Compact Work Plans.



Brighton and Big Cypress Reservation Locations



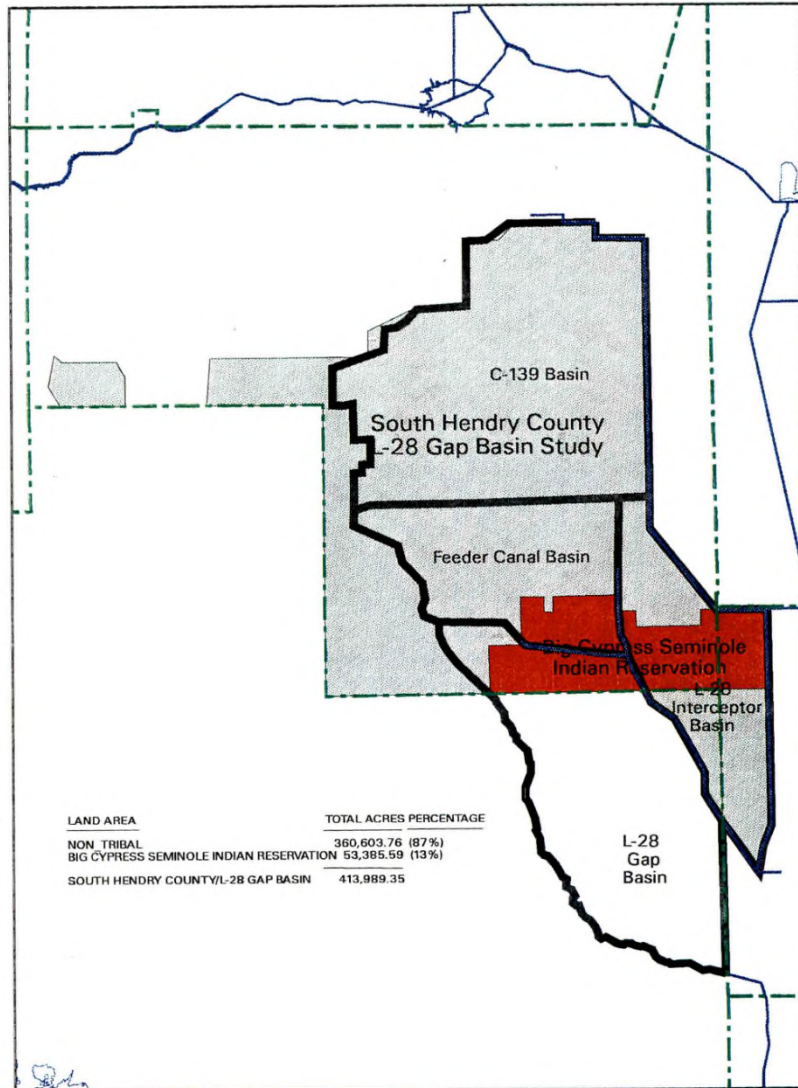
Surface Water Rights Entitlements, Brighton Reservation



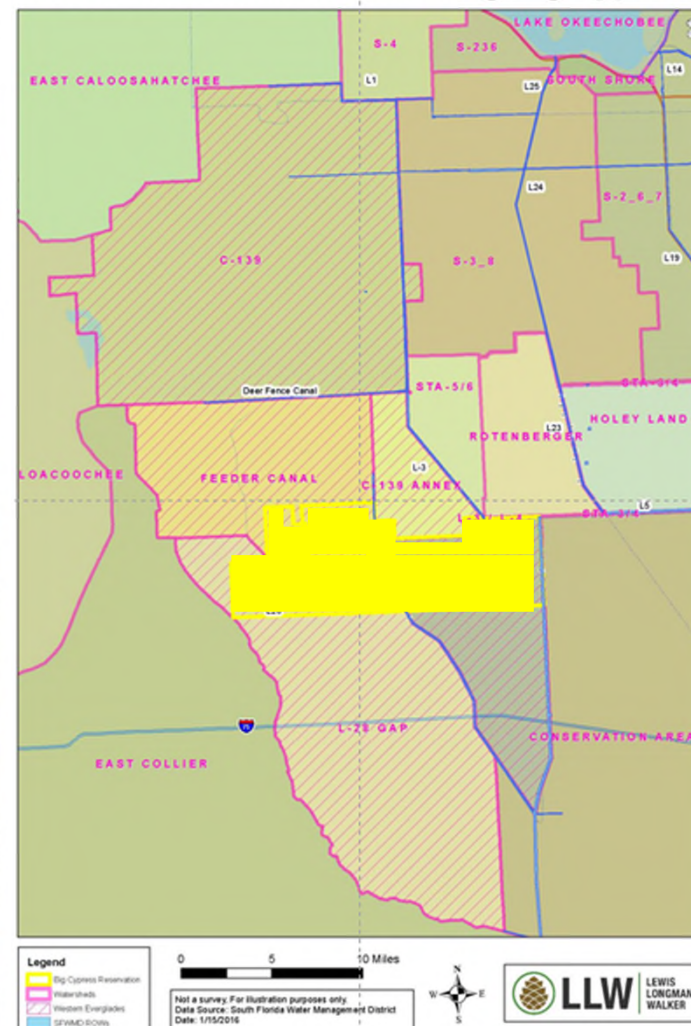
http://www.sfwmd.gov/portal/page/portal/common/pdf/splash/water_shortage_map_indian_prairie.pdf



Surface Water Rights Entitlements, Big Cypress Reservation



Watershed Basins Surrounding Big Cypress



STOF Water Rights and Entitlements

- Compact includes water entitlements for Brighton and Big Cypress Reservations.
- Entitlements are a subset of Tribal water rights established under the Compact that **represent minimum amounts** of water to which the Seminole Tribe is entitled on those reservations.
- Work Plan process is how water rights are perfected.
- STOF must submit Work Plan to District before commencing any work covered by the Compact.
- Work Plans seek District concurrence, but approval not required for STOF to proceed with work. Preserves sovereignty, but encourages cooperation.



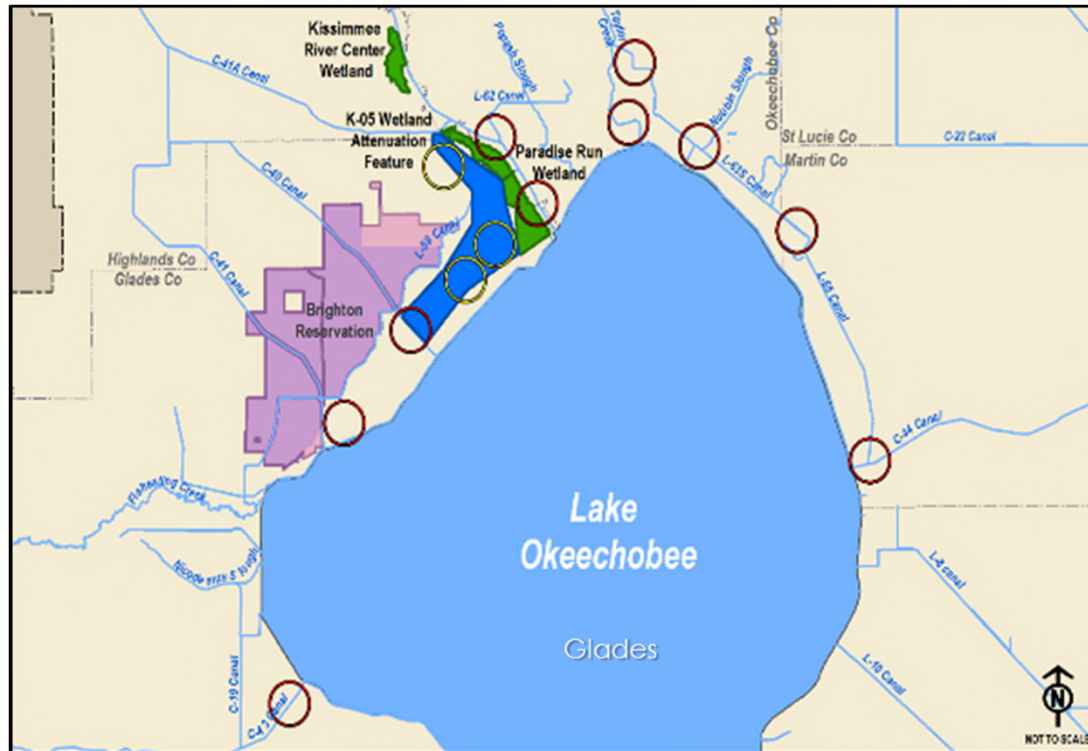
Lake Okeechobee-related issues

- Lake Okeechobee Watershed Restoration Project (LOWRP)
- Lake Okeechobee System Operating Manual (LOSOM)
- BMAP, Dispersed Water Management Projects (DWMs), and other water storage projects
- Everglades Agricultural Area (EAA) Reservoir



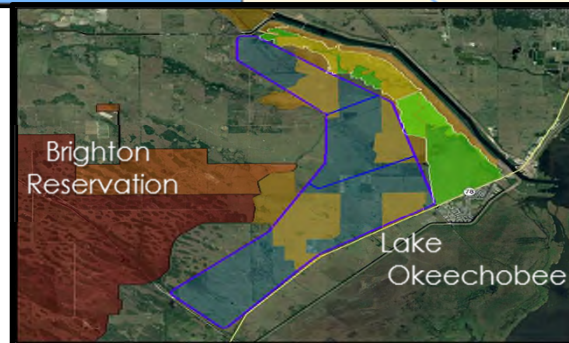
Lake Okeechobee Watershed Restoration Project (LOWRP)

Proposed Tentatively Selected Plan Alternative 1BW Wetland Attenuation Feature

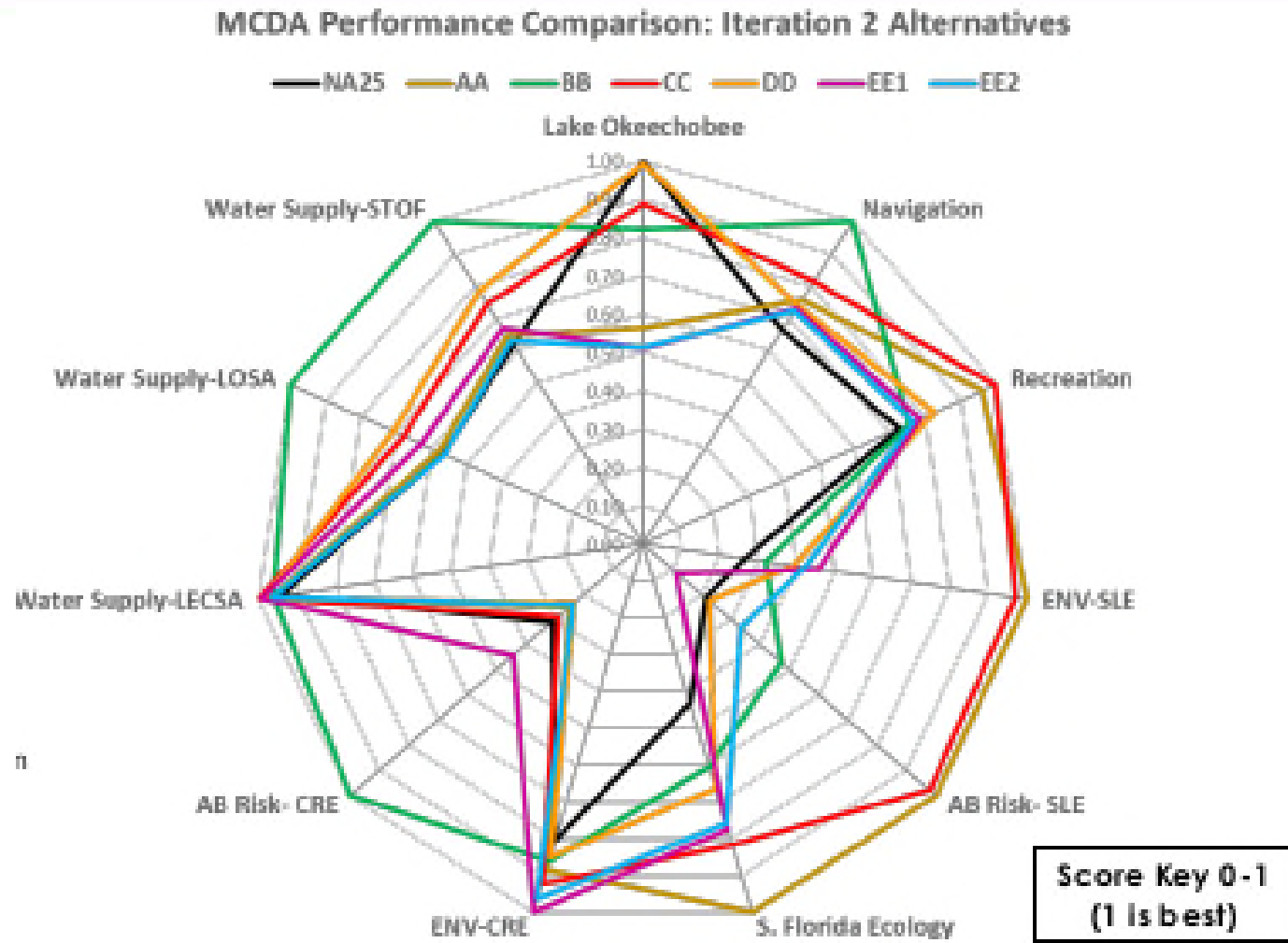


- Shallow Storage
- Wetland Restoration
- Tribal Trust Lands
- Tribal Owned Lands
- ASR (Aquifer, Storage, & Recovery) Well Cluster
- Wetland Attenuation ASR Well Cluster

Current
Footprint



Lake Okeechobee System Operating Manual

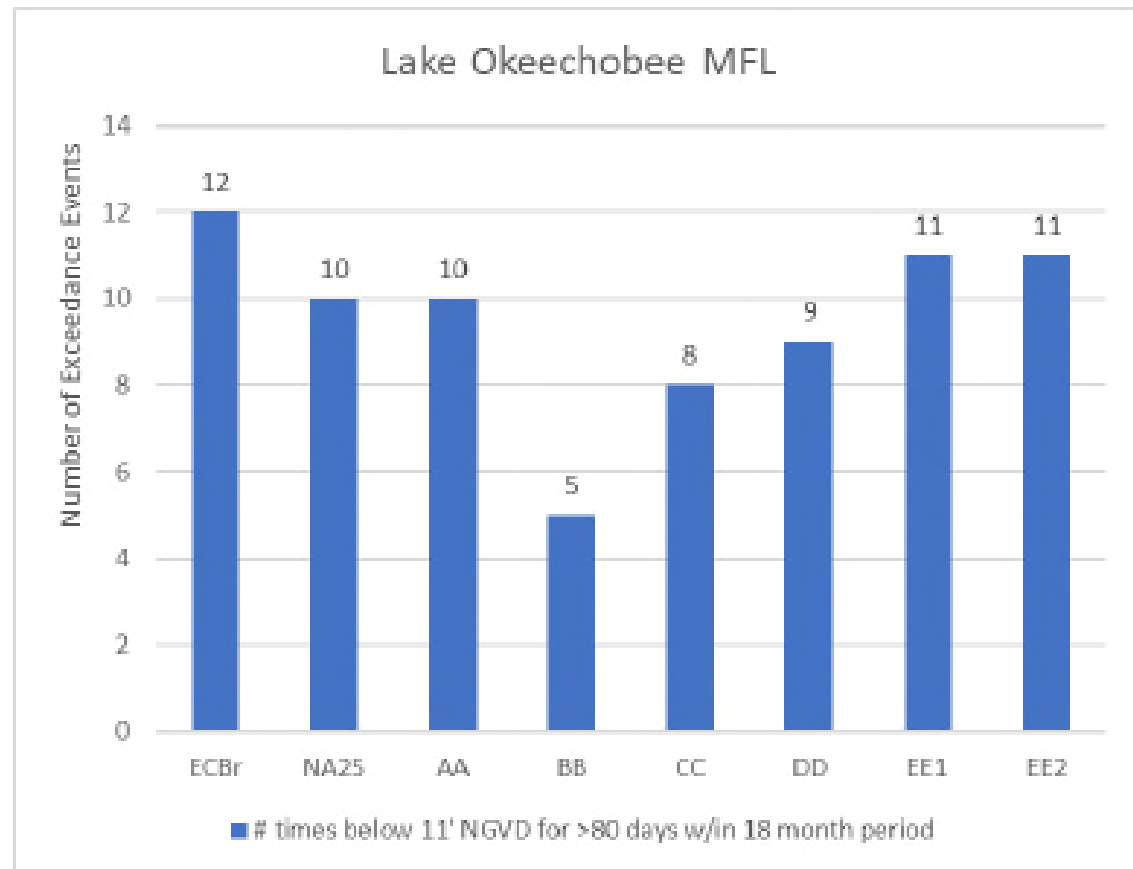


Lake Okeechobee System Operating Manual

Lake O MFL

Run	# times below 11' NGVD for >80 days w/in 18 month period	Avg Duration of Events	Avg Stage
ECBr	12	207	10.26
NA25	10	210	10.14
AA	10	220	10.29
BB	5	281	10.39
CC	8	228	10.20
DD	9	217	10.26
EE1	11	204	10.31
EE2	11	198	10.30

Run	Exceedance*	Violation**
ECBr	12	8
NA25	10	6
AA	10	6
BB	5	1
CC	8	4
DD	9	5
EE1	11	8
EE2	11	7



* An Exceedance occurs when Lake O water levels are below 11' NGVD for more than 80 consecutive or non-consecutive days in an 18-month period.

** A Violation occurs when an Exceedance occurs more than once every six years.

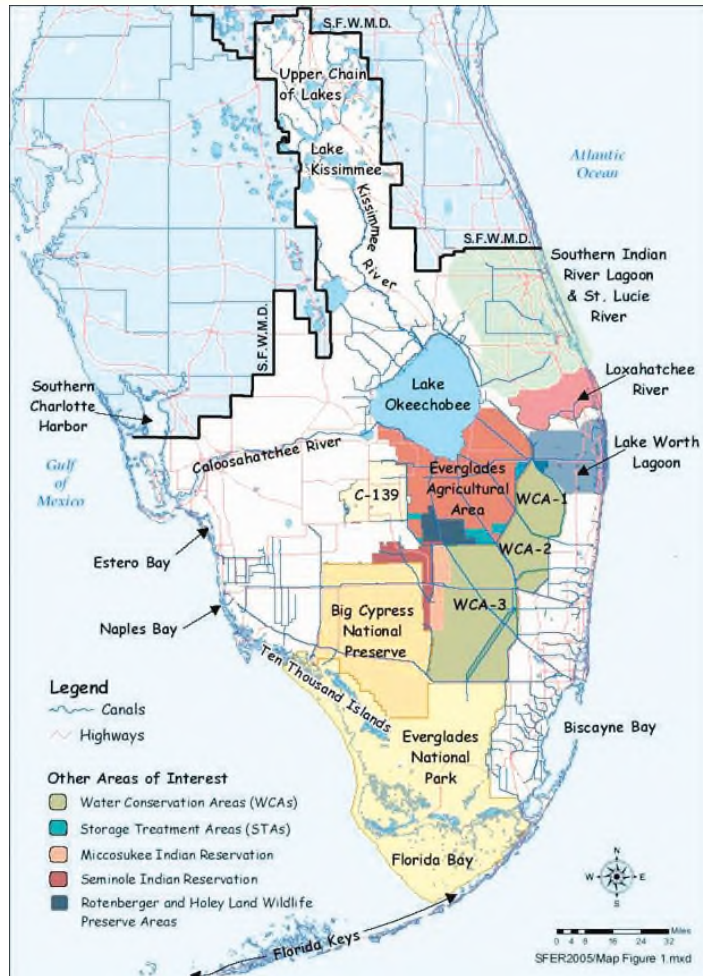
LOSOM Tribal Considerations



- Tribal water rights – primary concern, fundamental to Tribal sovereignty
 - No new infrastructure will be authorized by LOSOM
- Historic and Cultural Resources
- Lake health and ecology
- Everglades health and ecology
- Coastal Estuaries – don't want to push problems/issues with system onto neighbors, want holistic solutions



Basin Management Action Plans & Dispersed Water Management Projects



- Storage projects change timing and quantity of flows to Lake Okeechobee
- Seminole Tribe's water rights
- Water shortage impacts
- Species dispersal impacts
- No cumulative impact analysis has been done
- Historic and Cultural Resource impacts



Everglades Agricultural Area (EAA) Reservoir Project

- Joint Everglades restoration project between SFWMD and the Army Corps of Engineers, the SFWMD has begun construction on the Stormwater Treatment Area and reached an agreement for the Corps to begin construction of the Reservoir.
- Tribal historic/cultural resource concerns: Cane Field Site
- Potential Water Rights Impacts: EAA reservoir may “pull” water from Lake O, removing that water from available supply to Brighton in droughts.

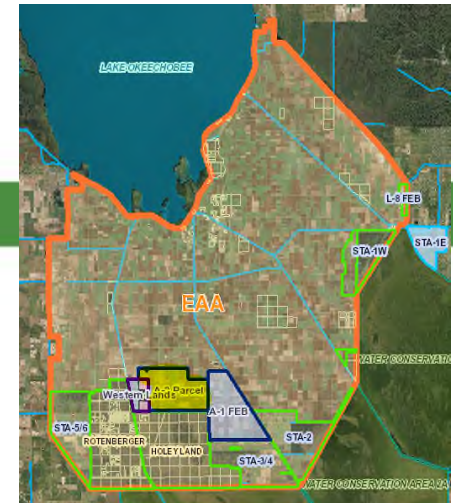


Figure ES-1. SFWMD Section 203 Preferred Alternative

Summary

HOMELAND SECURITY



"Fighting Terrorism Since 1492"

- Federal Agencies active in Florida have a multitude of projects, many of which could impact important Tribal resources and sovereignty.
- Maintaining Seminole Tribe's sovereign interests, land, and culture is incredibly resource intensive.
- Disconnects on the requirements of the Federal Trust Responsibility can create additional hurdles for Seminole Tribe.



Thank you!



Stephen Walker, shareholder
561-346-6439
swalker@llw-law.com

