



# **Water Reservation for the Caloosahatchee River (C-43) West Basin Storage Reservoir**

## **Governing Board Meeting – May 15, 2014**

**Don Medellin**

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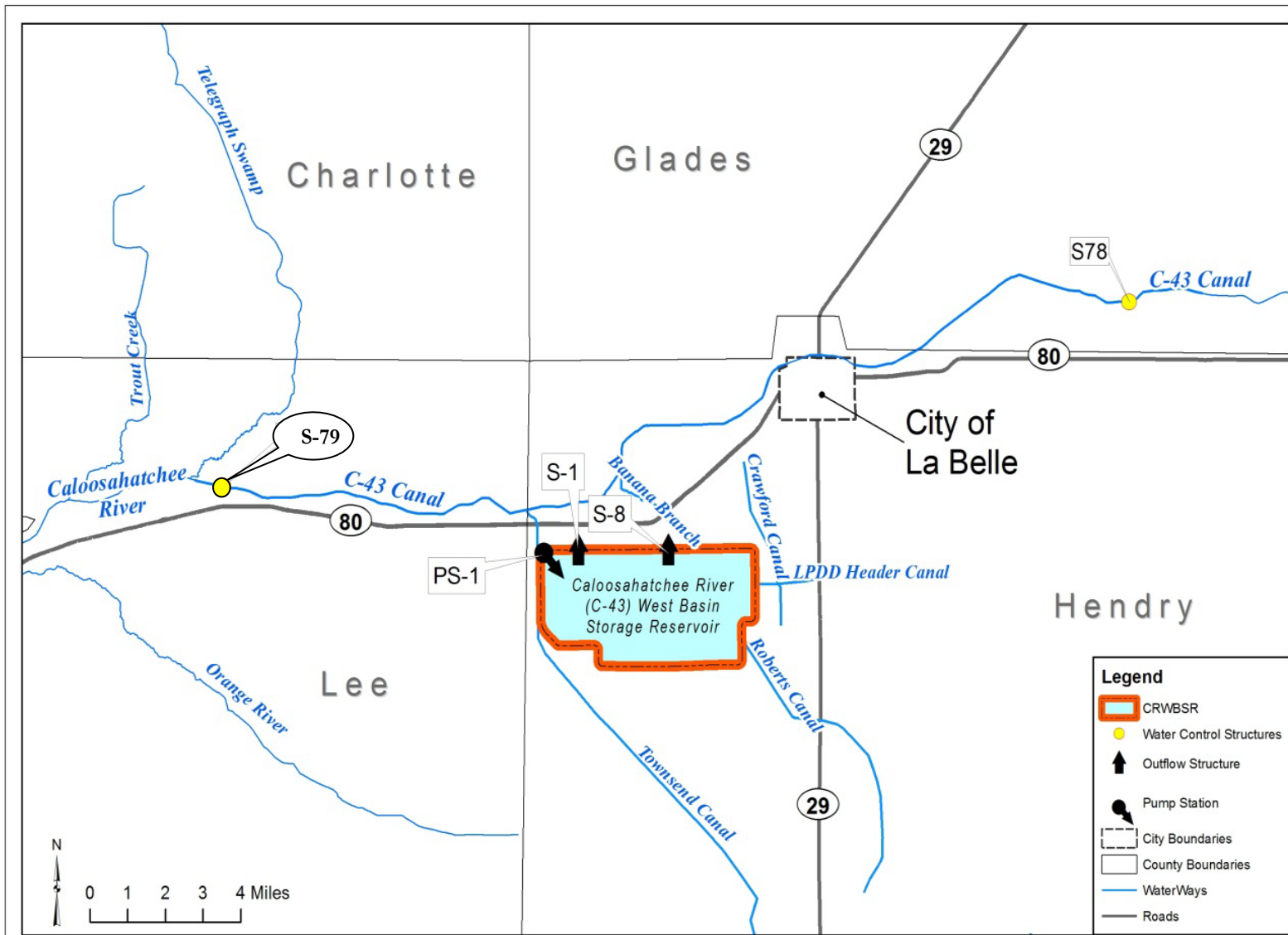
Office of Counsel

# C-43 Project Background

- Improve the quantity and timing of flows to the Caloosahatchee Estuary
- Reservoir has 170,000 acre-feet of storage
- Chief's Report & Record of Decision – May 2011
- Awaiting Congressional Authorization



# Protected Water Body



## Components of the Water Reservation Rules

- Reserves all surface water contained within & released from the C-43 Reservoir
- Reserved water will be available for fish & wildlife when the Board makes a formal determination that the C-43 Reservoir is operational
- Reservation may be revised if there is a change in conditions or new information
- Existing legal users were determined not contrary to the public interest
- Implementation criteria for CUP review



# Rulemaking History

- **February WRAC Meeting**
- **Governing Board authorized publication of the Notice of Proposed Rule at its February meeting**
- **Notice of Proposed Rule published on February 26, 2014**
- **Comments received**



# Rule Challenge

- Rule challenge filed by Conservancy of Southwest Florida
- Proposed paragraph 40E-10.041(3)(d):  
“Pursuant to subsection 373.223(4), F.S., presently existing legal uses for the duration of a permit existing on RULE ADOPTION DATE are not contrary to the public interest.”
- Motions for Summary Final Order filed



# Rule Challenge

- **Administrative Law Judge issued Final Order**
  - **Proposed paragraph held invalid**
  - **“Existing legal uses are presumed not contrary to the public interest unless and until the District determines otherwise.”**
  - **“District can make a ‘not contrary’ determination, but the determination cannot be made prospectively for the duration of the permit....”**



# Proposed Changes to Published Text

- Delete the proposed paragraph 40E-10.041(3)(d) that was challenged
- Other Changes:
  - Cross-reference
  - Change a term requested by the Joint Administrative Procedures Committee
- Publish Notice of Change to incorporate these changes





## Recommended Action

**Adopt amendments to Rules 40E-2.091, 40E-10.021, 40E-10.031, and 40E-10.041, F.A.C., and the “Applicant’s Handbook for Water Use Permit Applications within the South Florida Water Management District,” to establish a water reservation and criteria for the CERP Caloosahatchee River (C-43) West Basin Storage Reservoir incorporating the proposed changes recommended by District staff.**





**Questions?**



# Thank You CRWBSR Project Team

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