

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY,  
THE STATE OF FLORIDA  
AND  
THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
FOR  
RESOLVING DISPUTES  
UNDER THE  
COMPREHENSIVE EVERGLADES RESTORATION PLAN

**THIS AGREEMENT** is entered into this 9<sup>th</sup> day of September, 2002, by and among the Department of the Army (hereinafter the "Army"), represented by the Assistant Secretary of the Army (Civil Works), the Director of Civil Works of the U.S. Army Corps of Engineers, the Division Engineer of the South Atlantic Division of the U.S. Army Corps of Engineers, and the District Engineer of the Jacksonville District, U.S. Army Corps of Engineers, and the State of Florida (hereinafter the "State"), represented by its Governor, the Secretary of the Department of Environmental Protection, and the South Florida Water Management District represented by the Chair of its Governing Board and by its Executive Director, hereinafter collectively referred to as the "parties."

WHEREAS, the Water Resources Development Act of 2000 (P.L. 106-541), Title VI, Comprehensive Everglades Restoration, Section 601(i) *Dispute Resolution*, provides that the Secretary of the Army and the Governor shall, within 180 days from the date of enactment of this Act, develop an agreement for resolving disputes between the U.S. Army Corps of Engineers (hereinafter "USACE") and the State associated with the implementation of the Comprehensive Everglades Restoration Plan (hereinafter the "Plan"), including establishing in this Agreement:

(A) a preference for the resolution of disputes between the Jacksonville District of USACE and the South Florida Water Management District;

(B) a mechanism for the Jacksonville District of USACE or the South Florida Water Management District to initiate the dispute resolution process for unresolved issues;

(C) the establishment of appropriate timeframes and intermediate steps for elevation of disputes to the Governor and the Secretary; and

(D) a mechanism for final resolution of disputes, within 180 days from the date that the dispute resolution process is initiated under subparagraph (B).

WHEREAS, the Water Resources Development Act of 2000 (P.L. 106-541), Title VI, Comprehensive Everglades Restoration, Section 601(i)(2) further provides that the Secretary shall not approve a project implementation report under this section until the Agreement established under this subsection has been executed;

NOW, THEREFORE, the parties agree as follows:

#### DISPUTE RESOLUTION

The parties shall cooperate in good faith in resolving disputes between the USACE and the South Florida Water Management District or the State associated with the implementation of the Plan contained in the Final Integrated Feasibility Report and Programmatic Environmental Impact Statement, dated April 1, 1999, as modified by Title VI of the Water Resources Development Act of 2000 (P.L. 106-541).

1. The parties agree to attempt to resolve disputes at the lowest organizational level before seeking to elevate a dispute.
2. If a dispute arises between the South Florida Water Management District and the USACE, the dispute shall be resolved in accordance with the dispute resolution procedures of any applicable Project Cooperation Agreement, or other agreement between the South Florida Water Management District and the USACE. If no other Agreement applies, the provisions of this Agreement apply. Any disagreement between the parties associated with implementation of the Plan that cannot be resolved by the CERP Program Managers for the USACE and the South Florida Water Management District, or their designees, shall be considered a dispute. If one party considers resolution of an issue significant enough to invoke these dispute resolution procedures, then a dispute exists.
3. Any disputed matter shall be elevated to the District Engineer for the Jacksonville District (District Engineer) and the Executive Director of the South Florida Water Management District (Executive Director), or their designees. The CERP Program

Manager and the South Florida Water District designees elevating the dispute will provide to the District Engineer and the Executive Director a jointly signed memorandum identifying the issues originally in dispute, any issues that have already been resolved, and issues remaining to be resolved, with an explanation of why the parties have not yet been able to resolve them. The District Engineer and the Executive Director shall have 21 days to resolve the dispute, *except that* the Executive Director has the option of consulting with the Governing Board of the South Florida Water Management District (Governing Board). In that case an additional 30 days are allowed to resolve the dispute before referral to the next level.

4. If the District Engineer and the Executive Director are unable to resolve the dispute within the time period(s) set forth in Paragraph 3, above, the District Engineer and the Executive Director shall elevate the dispute to the Division Engineer for the South Atlantic Division of the USACE (Division Engineer), or a designee, and the Chair of the Governing Board of the South Florida Water Management District (Chair). The District Engineer and the Executive Director will provide to the Division Engineer and the Chair a joint memorandum identifying the issues originally in dispute, any issues that have already been resolved, and issues remaining to be resolved, with an explanation of why the parties have not yet been able to resolve them. The Division Engineer and the Chair shall have 21 days to resolve the dispute, *except that* the Chair has the option of consulting with the Governing Board. In that case an additional 30 days are allowed to resolve the dispute before referral to the next level.

5. If the Division Engineer and the Chair are unable to resolve the dispute within the time period(s) set forth in Paragraph 4, above, the Division Engineer and the Chair shall elevate the dispute to the Director of Civil Works of the USACE (Director) and the Secretary of the Florida Department of Environmental Protection (Secretary), or their designees. The Division Engineer and the Chair will provide to the Director and the Secretary a joint memorandum identifying the issues originally in dispute, any issues that have already been resolved, and issues remaining to be resolved, with an explanation of why the parties have not yet been able to resolve them. The Director and the Secretary shall have 21 days to resolve the dispute.

6. If the Director and the Secretary are unable to resolve the dispute within the time period set forth in Paragraph 5, above, the Director and the Secretary shall elevate the dispute to the Secretary of the Army and the Governor of the State of Florida, or their designees, for their discussion and final decision. The Director and the Secretary will provide to the Secretary of the Army and the Governor of the State of Florida a joint memorandum identifying the issues originally in dispute, any issues that have already been resolved, and issues remaining to be resolved, with an explanation of why the parties have not yet been able to resolve them. Pursuant to 10 USC § 3016, the Assistant Secretary of the Army (Civil Works), is the designated representative of the Secretary of the Army for resolving disputes under this Agreement.

7. Mediation is a non-binding dispute resolution process designed to assist the disputing parties to resolve the dispute. In mediation, the parties mutually select a neutral and impartial third party to facilitate the negotiations. The parties can agree to participate in mediation at any step on the dispute resolution ladder described in paragraphs 3-6. When the parties at any level agree to a mediation, an additional 30 days is allowed to resolve the dispute at that level. The federal party shall be responsible for 50% and the state party shall be responsible for 50% of the mediation costs as such costs are incurred.

8. Where a political sub-division of the State of Florida, other than the South Florida Water Management District, serves as the non-Federal interest with respect to a portion of the Plan, the parties may mutually elect to apply the procedures set forth in this Agreement to the resolution of any disputes not otherwise governed by another agreement. In applying the procedures set forth in paragraphs three through six of this Agreement to any such dispute, the non-Federal interest shall substitute equivalent administrative levels within its organization for those specified in those paragraphs.

9. When a dispute is resolved at any stage in the proceedings described in this Agreement, the parties shall memorialize the resolution in writing. The parties further pledge not to raise the issue again at a later time.

10. Where a dispute is not resolved to the satisfaction of a party or parties to the dispute, but such party or parties elect not to elevate the dispute as provided for in this Agreement, the parties pledge not to raise the issue again at a later time.

11. Nothing in this Agreement shall alter or amend any existing Federal or State law, nor shall it negate the responsibility of any party to the Agreement to comply with any applicable Federal or state law, regulation or procedure or any applicable regulation or procedure of the South Florida Water Management District, or of any other Water Management District of the State of Florida. Nothing in this Agreement delegates authority to make a decision to an individual, organizational level, or branch of government if a law or regulation gives the authority to make that kind of decision to another individual, organizational level, or branch of government. Nothing in this Agreement shall be construed to require binding arbitration or any other form of binding alternate dispute resolution.

12. Nothing in this Agreement is intended to apply to the resolution of any disputes between either the Army, or the State or any of its political sub-divisions, and any federally recognized Indian Tribes with respect to any activities under the Plan.

13. This Agreement may only be amended in writing, by mutual agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is last signed.

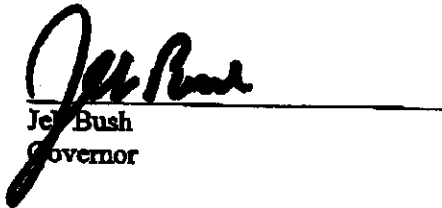
Department of the Army



Les Brownlee  
Assistant Secretary of the Army (Civil Works) (Acting)

September 9, 2002  
Date

State of Florida



Jeb Bush  
Governor

8-20-02  
Date

South Florida Water Management District



Trudi Williams  
Chair, Governing Board

14 August 2002  
Date