

United States Senate

WASHINGTON, DC 20510

September 27, 2002

United States Army Corps of Engineers
Attn: CESAJ-DR-R
PO Box 4970
Jacksonville, FL 32232-0019

To Whom It May Concern:

The Programmatic Regulations are the blueprint for building and operating the Comprehensive Everglades Restoration Plan (CERP) projects. As such, their overall importance to the success of Everglades restoration cannot be underestimated. We write to express our support for key provisions in the Programmatic Regulations and to outline some issues of remaining concern.

We appreciate the improvements the Corps has made to the regulations over the past few months, and we encourage to Corps to maintain the following provisions in the final draft.

Independent Scientific Review - Peer review by an independent scientific panel is a cornerstone in the authorization of CERP. We are pleased that the regulations recognize the importance of establishing this panel, and we encourage the Corps to consider the role that scientific review can play in dispute resolution as the panel is established. We further encourage the Corps to establish this group in an expeditious manner, either by using existing review panels or by establishing a new independent panel, in order to provide Congress with its first biennial report at the end of this calendar year.

Public Outreach - We commend the Corps on their outstanding effort to include stakeholders and affected communities in the process for drafting the Programmatic Regulations. Furthermore, we are supportive of the provision of the regulations pertaining to continued public outreach and education, including outreach to socially and economically disadvantaged communities.

The draft regulations issued in July represent an improvement over the initial draft of December 2001. However, we believe that there are some outstanding issues that should be further considered before the regulations are made final.

Project Assurances and Water Reservations - The undisputed goal of CERP is provide the right water at the right time in order to restore the Everglades ecosystem. Toward that end, the Senate Committee on Environment and Public Works included in a section in its report that reflects the Corps' initial goal of providing an 80 percent/20 percent split of water benefits to ensure that the bulk of the water generated by CERP projects reaches the Everglades.

We understand that some stakeholders are concerned about writing these numbers into the regulations since they represent only a rough estimate and are not reflective of known water quantities. We appreciate the importance of ensuring flexibility for future project management, but we disagree with dismissing the 80 percent/20 percent split outright. The amounts of water generated and needed by the natural system may change as additional CERP projects are constructed, but the 80 percent/20 percent split should continue to be used as a planning goal.

In addition, the draft regulations state that changes to a water reservation will require a change to the PCA. The original draft called for a return to Congress for authorization. We are aware that there may be a need for water reservations to be fluid over time. However, this was not part of the debate in 2000. Congress authorizes these water projects using a PIR as the project description. The PIR includes a quantification of water to be developed that is then used by the state to issue a water reservation. That reservation is then an element of the contract between the federal government and the state for that project. Any change to the water reservation would indicate a change in the amount of water to be developed by the project or to be dedicated to the natural system. We believe that Congress has a responsibility to ensure that any changes to the water reservations are either de minimus or consistent with the purposes of the Plan. The final regulations should include a differentiation between changes in reservations that require a change to the PCA and those that require a return for Congressional authorization.

There is a large section in the programmatic regulations on operating manuals. The section calls for the development of a system operating manual and project operating manuals. There is a provision allowing for adjustments to operating manuals during the year based on departures from expected rainfall or adaptive management without any specified consultation roles. It is imperative that the final rule include a clear definition of the word "adjustment", a clear description of what circumstances would trigger an adjustment, a clear description of what level of adjustment triggers public involvement in the adjustment, and a clear description of who could call for an adjustment.

Interim Goals - CERP is a long-term initiative containing numerous component projects. In order to ensure that the goal of restoration is met it is critical to have a map that charts the way. The regulations as currently drafted contain a process for establishing interim goals, by which to measure the progress and success of CERP over the life of the project. We understand that the interim goals will not be ready to include in the regulations before they are finalized, but we urge the Corps to include these goals when they are established rather than relegating them to guidance documents. In addition, although the statute does not call for the establishment of goals for "other water-related needs" we understand why they are included in the Corps' draft. If they remain in the final regulations, we believe that they absolutely must be accompanied by a description of how decisions will be made when these goals are in conflict with the interim goals called for in the statute.

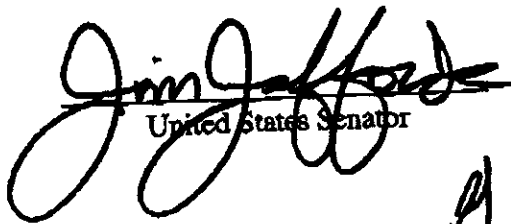
Role of the Department of the Interior - When the Senate Committee on Environment and Public Works authorized CERP it intended for the Department of the Interior, as the steward the federal lands, to have a full and meaningful role in the restoration process. We recognize that Interior has been given a stronger role in the most current draft regulations. However, we are concerned that the role for Interior (described as concurrence) may be relegated to consultation if the other project partners are allowed to dismiss Interior's comments without incorporating them in meaningful way. We urge the Corps to carve out a role for Interior that is fair and equitable to all of the project partners.

We are encouraged by the Corps' commitment to drafting strong and comprehensive Programmatic Regulations. We are confident that when final revisions and improvements are made, the regulations will provide all of the stakeholders in Everglades restoration with a clear blueprint for successfully implementing CERP.

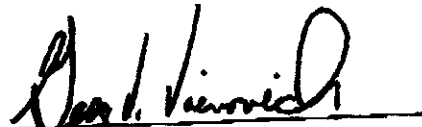
Sincerely,


United States Senator


United States Senator


United States Senator


United States Senator


United States Senator

cc: Secretary Gale Norton
Assistant Secretary R.L. Brownlee
Governor Jeb Bush
Colonel James G. May
Secretary David Struhs
Ms. Ann Klee
Mr. Henry Dean