



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

October 1, 2002

Col. Greg May
District Engineer
U.S. Army Corps of Engineers
Jacksonville District
P.O. Box 4970
Jacksonville, FL 32232-0019

Dear Col May:

The Department of the Interior appreciates the tremendous effort the Jacksonville District has made to develop the proposed programmatic regulations to implement the Comprehensive Everglades Restoration Plan (Comprehensive Plan or Plan). We particularly appreciate the numerous opportunities you have afforded to the Department, the public, and all stakeholders, to participate in the development of the regulations. This work is unprecedented and the Department recognizes the significant leadership and contribution you have provided to this effort.

The Department believes the proposed programmatic regulations fully address the legal requirements of Section 601(h)(3)(C) of the Water Resources Development Act of 2000 (WRDA 2000). The proposed regulations maintain WRDA 2000's overarching objective of the Comprehensive Plan, which is the restoration, preservation and protection of the South Florida ecosystem, while also providing for other water related needs of the region. In combination with the binding assurances agreement between the United States and the State of Florida, which will result in the sufficient reservation of water for the restoration of the natural system, the programmatic regulations will ensure the achievement of the primary federal interest in this Plan, the protection and restoration of the Everglades.

We are especially pleased the proposed regulations recognize the enhanced role of the Department and its agencies in the Plan's implementation. As proposed, the Department's role is consistent with congressional intent to improve up-front planning and interagency coordination among the federal and state agencies that share responsibilities for the remaining Everglades natural system areas. The proposed role for the Department to concur on the six guidance memoranda and the pre-CERP baseline should enhance the federal-state partnership and long-term intergovernmental collaboration which is the key to achieving restoration success. We look forward to working with the Corps of Engineers and the South Florida Water Management District on the guidance memoranda and the pre-CERP baseline, as well as numerous other issues related to the Plan's implementation.

We would like to offer a few minor technical comments on the proposed regulation. The

technical comments are enclosed. Additionally, we would like you to consider the following comments to further improve the regulation:

RECOVER

The proposed regulation vests RECOVER with substantial duties. These include: (i) purely science driven, or assessment, tasks where Interior staff have significant expertise; (ii) engineering and planning and adaptive management responsibilities that are the function of the Corps and its non-federal sponsors; and (iii) some supporting tasks that combine both science and engineering.

Given its numerous duties concerning science and engineering, planning and design, we believe minor structural changes and clearer intent language for the “RECOVER” section would improve the manner in which science informs the decision-making process during the various assessment, evaluation and adaptive management activities during Plan implementation. Our proposal would retain RECOVER as an umbrella organization, but separate the scientific assessments from the engineering and planning responsibilities and deal more clearly with the different guidance required for each. Additionally, although we agree that RECOVER is not a decision-making body and that RECOVER recommendations may be modified by the implementing agencies, it is important for the RECOVER process to be transparent to the public.

Without these changes, we are concerned that the proposed approach consisting of scientists and engineers and planners would blur the function of independent scientific assessment with the policy role needed in plan reformulation. This could limit both independent scientific inquiry and the ability of science to serve as a foundation for future decision-making. We are concerned that Interior’s scientific expertise, with its focus on evaluating system-wide impacts on Interior lands and stewardship resources, would potentially be lost in an organizational structure combining scientific assessment and planning.

Existing legal source

“Existing legal source” is an undefined term found only in WRDA 2000 and not in Florida water law. Its definition is key to implementing the savings clause requirements protecting, among other things, water supply for Everglades National Park and for fish and wildlife. The South Florida Water Management District’s effort to develop a possible definition of existing legal source in its “white paper” on reservations is a good first start. We believe it would be appropriate to build on the efforts of the District and include a definition in the programmatic regulations.

For these reasons, we would like to work with you to develop an appropriate definition for an existing legal source. At a minimum, an appropriate definition should ensure protection for fish and wildlife and the sources of water upon which they depend. For example, fish and wildlife located in coastal estuaries or natural areas, including Biscayne Bay and A.R.M. Loxahatchee NWR, depend upon certain regulatory releases for a portion of their water supply. Although the Plan is designed to capture some of these releases, we need to recognize the benefits of this existing source and protect it until new sources of water of comparable supply and quality are

available. Additionally, the definition for an existing legal source must, at a minimum, protect the quantity of water to be delivered annually to Everglades National Park, as required under P.L. 91-282.

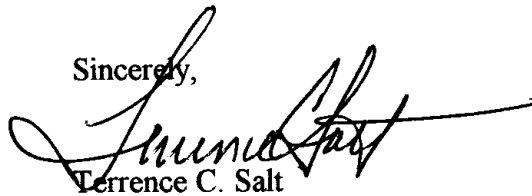
Interim goals agreement

The proposed regulations proscribe a process - and principles - by which RECOVER may develop and recommend interim goals for adoption by the Secretary of the Army, the Secretary of the Interior and the Governor as an interim goals agreement. We believe this process is fully consistent with the requirements of WRDA 2000.

We continue to believe that there is merit in incorporating the interim goals by reference into the programmatic regulations. This can be accomplished without sacrificing flexibility or creating unnecessary "hooks" for third party litigation.

The Department appreciates the opportunity to comment on the proposed programmatic regulations. If you have any questions, you may contact me at (305) 348-1665 or Don Jodrey at (202) 208-7957.

Sincerely,

A handwritten signature in black ink, appearing to read "Terrence C. Salt", with a long horizontal flourish extending to the right.

Terrence C. Salt
Senior Everglades Policy Advisor

Enclosure

Department of the Interior - Technical Comments

§385.3 - p. 37. We recommend minor changes to the definition of restoration to clarify that the level of restoration is one that can be continuously improved throughout the Plan's implementation through the process of adaptive management. The revised language would read as follows:

“Restoration for the purposes of this regulation means to bring about the sustainable level of recovery and protection to the South Florida ecosystem described conceptually in the Plan as approved by Congress in Section 601 of the Water Resources Development Act of 2000, with continuous improvement based upon principles of adaptive management and with such modifications as Congress may provide for in the future. This is accomplished by increasing water storage and water supply, improving water quality, and increasing the connectivity of the natural system so that the ecosystem once again exhibits and sustains essential physical and ecological characteristics that defined the pre-drainage South Florida ecosystem, including establishing more natural hydro patterns, including wet and dry season cycles, natural recession rates, surface water depth patterns, and, in coastal areas, salinity and mixing patterns for the natural system. These actions are a precursor to achieving anticipated ecological benefits, including improvements to native flora and fauna; restoring the presence of key species in historic habitats; and promoting patterns of plant communities that form a gradient from aquatic communities to uplands. ~~Restoration for the purpose of this regulation also incorporates a process of adaptive management to seek continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific or technical information, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan integrated into the implementation of the Plan.~~”

§385.14(e)(7) - p. 49. The reference to WRDA 2000 is incorrect. The correct reference is: 601(h)(4)(C)(ii).

§385.36(b)(1) - p. 59. We recommend clarifying the objectives of formulating and evaluating alternatives of specific project components to achieve system-wide goals and purposes of the Plan, including achievement of interim goals and targets for other water related needs. This language will focus agency planners to achieve results. The revised language for the first sentence of this section would read as follows:

“(1) In preparing a Project Implementation Report, the Corps of Engineers and the non-Federal sponsor shall formulate and evaluate alternatives to better define and refine project plan components to optimize the project's ~~contributions towards~~ ability to achieve the system-wide goals and purposes of the Plan, including achievement of interim goals and targets for other water related needs.”

§385.36(e) - p. 61. We recommend you revise portions of this section to more closely restate the purpose of the Fish and Wildlife Coordination Act, including the purposes of the planning aid

letters or planning aid reports describing issues and opportunities related to the conservation fish and wildlife resources. The revised language for this section would read as follows:

“(3) As appropriate, coordination shall include preparation of the following as shown in figure 2 in Appendix A:

(i) Planning Aid Letter that ~~describes the fish and wildlife resources in the project area and any recommendations to assist the planning process~~ describes issues and opportunities related to the conservation and enhancement of fish and wildlife resources;

~~(ii) Fish and Wildlife Issues and Recommendations on effect, concerns, and issues about alternative plans; and~~

(iii) draft and final Fish and Wildlife Coordination Act Reports that provide the formal views and recommendations of the ~~U.S. Fish and Wildlife Service Secretary of the Interior,~~ the National Marine Fisheries Service, and the Florida Fish and Wildlife Conservation Commission on alternative plans, which shall receive equal consideration in the planning process.”