

Summary Programmatic Regulations Agricultural Interests Workshop
SFWMD Field Operations Center, West Palm Beach, FL
June 20, 9:30 a.m. – 12:00 noon

Attendees:

Susan Brown, U.S. Sugar
Barbara Miedema, Sugar Cane Growers Cooperative
S. Edward Dickey, Dawson & Associates
Mary Ann Gosa, FL Farm Bureau
Agnes McLean, SFWMD
Mary Ann Poole, Florida Fish & Wildlife Commission
Betty Grizzle, U.S. Fish & Wildlife Service
Brenda Mills, SFWMD
Linda McCarthy, FDACS
Michelle Diffenderfer, Lewis, Longman & Walker
Danna Ackerman-White, Lake Worth Drainage District
Beth Carlson, Lewis, Longman & Walker
Malcolm Wade, U.S. Sugar Corporation
Pete Rosendahl, Florida Crystals
Michael Davis, Dept. of the Interior
John Brady, USACE
Tom Teets, SFWMD
Ken Keck, Florida Citrus Mutual
Tom van Lent, Dept. of the Interior
Irene Kennedy Quincey, Pavese Law Firm
Tom MacVicar, MFL, Inc.
Jerry Krenz, SFWMD
Rick Roth, Roth Farms/Florida Rice Council
Mike Magley, USACE

Stu Appelbaum opened the meeting. Four handouts were distributed: a copy of Stu's powerpoint presentation on Pro-Regs; a 15 May 2001 Draft on Programmatic Regulations Guiding Principles; the Process for Developing Programmatic Regulations; and WRDA 2000 Sec 601 (h)—Assurances Provisions.

The powerpoint presentation was shown. It was pointed out that there is no timeline for the agreement between the President and the Governor, but Congress cannot appropriate monies for construction without the agreement. We need to identify the water needed to restore the natural system by 11 December 2002. The tribal compact between the Seminoles and the SFWMD grant the tribe specific water rights.

Malcolm Wade asked when would not having a signed agreement interfere with the CERP schedule?

Stu said that we need it by 2004 for appropriations for construction of the first ten authorized projects. The Pilot Projects are exempt and any Programmatic Planning activities are exempt—the agreement only impacts construction dollars. While there is no date certain, conversations at the Asst. Secretary level expect us to adhere to the current timeline. We expect to publish in the Federal Register on May 5, 2002.

Ed Dickey asked what constitutes a draft? Will the draft be based on public comments and if so, doesn't that affect the timeline? It seems that there would be some other draft responding to public comment.

Tom MacVicar suggested that there would a six month period where the public would not have a clue on what is going on and there is no government responsibility to inform the public. This diverges from the open process that brought us to this point.

Michael Davis said that there will be an internal Executive Branch review by OMB. The Army won't send out a document that the Dept. of the Interior cannot concur with.

Irene Quincy asked that we discuss the limitations and applicability of the Pro-Regs.

Stu responded that we cannot write the regulations such that concurrency is required before you can write an operating manual. We need a process to ensure that there is water to restore the natural system.

Michael Davis said that the fear was DOI would have a concurrency role in the PIRs and the Secretary of the Army did not want that. The limitations language was added to make sure that neither the Governor nor Interior could hold a project hostage.

Tom MacVicar suggested that the Pro-Regs could force Interior to raise Endangered Species Act concerns under the PIR process and preclude Interior from raising these issues at a later date.

Stu responded that the Programmatic Regulations cannot trump a federal law.

Phil Parsons suggested that this would be consistent with state law; you must answer all questions up front.

Betty Grizzle said that the Fish and Wildlife Service will sit in on PIR development and will voice any concerns up-front.

Barbara Miedema asked about permitability on the state side. Is there a state counterpart participating in the PIR process?

Stu responded yes.

Mary Ann Poole said the answer is yes, but there is limited staff dedicated to this effort—only 3 people. She added that the PIR must go through the state's Chapter 373 process before it can be permitted.

Stu said that the timeline for the development of the Programmatic Regulations needs to be amended: add June 28 Public Meeting in West Palm Beach. There will be a draft outline in July.

Stu said he wanted to focus the discussion on Process, Roles, Responsibilities, Content and any other issues the group wants to raise.

Phil Parson said that development of the Pro-Regs should be guided by 3 simple principles: Process, Process and Process. We need to discuss the interim goals.

Ed Dickey said that he envisions a detailed process. CERP is unique in the Corps process. The legislation that governs the Corps requires a cost-effective project. The law has many specific provisions that projects must meet. The challenge is how to formulate/quantify cost effective-optimal components of an evolving plan. He expects the Pro-Regs to deal with this analytical process to ensure each component has a semblance of cost effectiveness and optimality. The most productive projects should be done first in order to demonstrate success and get political support.

Michael Davis asked Dr. Dickey to explain more on this concept.

Ed Dickey said that we need to ensure through this process that the most productive projects are built first, identify whether we got the benefits we expected, quantify those benefits and report our progress as a partial success. This will ensure that we not only achieve our goal in the most cost-effective way. Since we don't know the targets we are striving for, we may not need to build all the components of CERP, so we should build the most cost-effective components first. Secondly, the scale of each project is a concern. There are many ways to provide water for the Everglades. How can we scale, for example, the ASR wells, the number of wells, and the heights of the reservoirs? Optimality says that you must make sure that the contribution of each project to a given output is equal to the cost of the project. If this is not true, then it is not an optimal design. We will need lots of cost information that has not been developed to date. The Pro-Regs should acknowledge the uniqueness of the analytical challenges and the nature of the project. The Executive Branch signing off on components rather than the system itself is unheard of.

Stu asked for a discussion of procedures and asked the group to provide guidance to the Programmatic Regulations team.

Michelle Diffenderfer said that through her experience with the MFL process, she advocates characterizing projects two ways: restoration and water making projects. This type of reporting could be part of the Pro-Regs and we could see measurable goals.

Pete Rosandahl said that on the process, assurances are needed throughout the system. What feedback loop is there that a thorough job is being done and that the government is not cutting corners?

Stu responded that the Pro-Regs offer a roadmap and guidance to implement CERP. Stakeholders can take action if you feel the government is not implementing the program correctly.

Michael Davis added that this is not enforcement issue. The law says that the PIRs shall be consistent with the Programmatic Regulations.

Pete Rosandahl said that this whole Pro-Regs discussion is about the federal side of the equation. Is there a parallel effort on the state side?

Tom MacVicar said that there is a DEP approval process. The state and the federal government are working on the same plans. The parallel effort is that the state DEP must approve the PIRs.

Stu said that the state process provides for Chapter 120 rights.

Phil Parsons said that state legal requirements are not inconsistent with Programmatic Regulations. This should be addressed and raised with the MFL process. Pro-Regs offer the opportunity to be consistent with both sets of mandates.

Phil Parsons said that state law requires that you prove that you have chosen the most cost-effective alternative. This may not be a federal requirement, but it is a state requirement. The adaptive assessment will be handled through RECOVER and we must have a framework to answer these questions. We have 156 performance measures in RECOVER and not one addresses cost effectiveness of CERP. RECOVER's performance measures are a wish list for restoration. Only 2 of the 156 performance measures come close to addressing cost effectiveness. The Programmatic Regulations offer a chance to make sure that CERP looks at all the water needs and all the right performance measures.

Stu responded that the Pro-Regs will deal with a number of RECOVER processes. If there are specific performance measures that you want, you need to get with RECOVER.

Phil Parsons said that Pro-Regs should specify which performance measures need to be addressed.

Stu responded that the Programmatic Regulations provide a framework.

Phil Parson said that he had a question for the Water Resources Advisory Council (WRAC). What budget framework will be used to track the projects?

Malcolm Wade said we need to track actual monies spent vs. budgeted monies. A good example of this is the ECP under Joe Schweigart's leadership. \$400 million needs to be accounted for each year. The Pro-Regs should have some sort of fiscal control.

Stu responded that there are people working on program controls and fiscal controls.

Barbara Miedema said that the optimization of the various components should be spelled out in the Pro-Regs as well as the budgeting component so that each PIR has a standard procedure to be used for each of the components.

Beth Carlson, looking at the WRDA Pro-Regs language, in the first paragraph on PIRs and PCAs, it would not be inconsistent with this language to insert parameters on scheduling of the projects to make sure that all the CERP goals are met.

Tom MacVicar expressed confusion on where does CERP start and where does it stop? It covers 68 components but also includes assurances, sharing new information, Pro-Regs—but there is a lot of activity going on where he doesn't know if it's outside of CERP or inside of CERP. For example, are the refinements to the C-111 Project outside or inside of CERP? Activities like dropping the water in Lake Okeechobee—there are NEPA consequences and the Corps is silent on the impact on water users. Maybe the Pro-Regs need a preamble that they only deal with the 68 CERP projects? We don't feel protected by assurance language if you're going to dump water out of Lake Okeechobee and it is outside of this process.

Stu responded that CERP cannot operate in a vacuum. We recognize Mod Water, Kissimmee restoration and the C-111 projects as having an impact on the system.

Michael Davis said that operational components are to be implemented as a part of CERP.

Tom MacVicar responded that this must be addressed in the Pro-Regs. The regulations offer a chance to clarify these issues so that the 68 components won't operate in a vacuum.

Stu responded that CERP was designed look at system-wide operations.

Michelle Diffenderfer asked about rulemaking and reservations. She explained that the way the MFL process dealt with the reality of a political board making water resource decisions was to limit the board's authority to implement a modified operation schedule. It must be certified as consistent with MFLs and LEC guidelines. She suggested that this is good model for CERP.

Agnes McLean said that the operation planning team had its first meeting last week. They are looking at the Mississippi River as a model. There was a full two-year NEPA process. The goal is to develop one manual to allow for the development of an annual operating plan each year.

Phil Parsons asked if RECOVER has economic needs on its radar screen?

Agnes McLean said that we have water supply performance measures for Lake Okeechobee and the LEC. RECOVER is a technical body, not a policy body.

Michael Davis agrees RECOVER is really dealing with restoration of the natural system and what you're looking for is a mechanism to deal with the rest of the water needs.

Barbara Miedema added that optimizations must be addressed.

Brenda Mills said that we will revise the performance measures as needed. We had some discussion on looking at system-wide cost effectiveness and how we optimize the performance of the CERP components.

Mary Ann Poole shared her concerns within the RET about water supply, but there are limitations on how much detail can be achieved using the current model; it's such a broad model. There is a model performance team meeting on July 9 to discuss the model.

Michael Davis asked for suggestions on performance measures both for the long-term and the interim.

Phil Parsons said that the Pro-Regs must include the performance measures.

Michael Davis said the RECOVER process is on-going, but the Pro-Regs gives a venue for affecting the process and changing the process.

Ed Dickey :1) Missouri River operating manual is a fine effort and was developed using a good process. The RECOVER process focuses on outputs. It is complex to trying to establish performance measures for environmental restoration, but an equal amount of detail must be paid to the supply side and the cost side of the equation. We don't see a desire to understand the cost effectiveness. There's a problem of selecting the projects and the scale of the projects.

Michelle Diffenderfer said that the report card is lacking this too. There are two items proposed for the report card that speak to water supply and the rest addresses environmental restoration.

Beth Carlson asked are you talking about providing specific guidelines to RECOVER?

Michelle Diffenderfer replied yes, these would be marching orders.

Stu said that RECOVER has been tasked with putting these protocols together to feed into the Pro-Regs. We are open to comment.

Barbara Miedema asked what are the issues on interim performance measures.

Stu responded that the environmentalists want more than process—either codify goals in the Pro-Regs or set some broad standards in the Pro-Regs and RECOVER will set the goals. The state says the law asks for a process for formulating the interim goals and that Pro-Regs should spell out that process.

Mary Ann Poole said that the MFL process experience showed that it helps to be specific on the difference between broad standards and process because the two sides may be closer than you think on a common definition.

Stu responded that the WRAC discussion at the July meeting will begin consideration of this; part of this is definitional. The debate is between process vs. substance. Maybe substance will turn out to be procedures.

Mary Ann Poole asked where the Master MPMP fits into the Programmatic Regulations.

Stu responded the MPMP is a management plan between the SFWMD and the Corps, but there may be some elements of the Pro-Regs that might be inserted into the MPMP to give it teeth.

Michael Davis offered an observation on the interim goals. It is important to have measurable goals as the ultimate success of the CERP is the ability to measure the ecological performance and the water supply elements—to determine whether we can deliver this 1.2 billion gallons of water to users. We can't afford to wait 10-15 years to document ecological and hydrological changes in the system. Congress wants deliveries to the natural system and we need to report in a substantive way on our progress. We have to show early successes. Pro-Regs cannot be a quantity of water, but there must be interim goals for other water-related needs for the rest of the system as well as goals for the natural system.

Phil Parsons asked for an example of an interim goal, if it's not water.

Michael Davis responded that implementation milestones will probably be the interim goals. Are we constructing the right projects in the right sequence on schedule? We can't have improvement without construction.

Barbara Miedema asked how do we do this without PIRs?

Michael Davis responded that the we need to look conceptually at where we will be in 10 years and evaluate what critical components must be in the ground to demonstrate ecological and hydrological improvements.

Tom MacVicar said that if you can't identify this today, how can you put it in the Pro-Regs?

Ed Dickey said that there are so many uncertainties. The interim goals must address Congress' desire to know what will we achieved. Interim goals could be the accumulation of several PIRs. We need to analyze what we expect the contribution to be to the system and quantify the progress to meeting this goal. We need to demonstrate progress in meeting the environmental and economic output of CERP.

Michael Davis said that the process is an evolution. The Pro-Regs are re-examined every 5 years and the goal will be revised every five years until RECOVER has more information and we get something closer to real goals. We need discipline and to accept the responsibility to select some targets.

Ed Dickey said that discipline is needed now in formulating the projects to be optimal and cost effective. These are requirements of the law that govern Corps projects.

Michael Davis observed that the lack of human resources is a problem. He then asked if the PIR teams are on the right track now?

Stu said that there has planning guidance notebook developed for CERP.

Michael Davis said that there will be one pending the Pro-Regs.

Phil Parsons restated that we want discipline to answer the uncertainties—we need an analysis to make sure that we build the things that must be built and avoid building components that do not need to be built. For example, the WPAs—there is tremendous pressure to get that done. He is fearful that the Pro-Regs and the interim goals will increase the pressure to address the 245,000 acre feet and the seepage issues. He wants to make sure the pieces fit and that the plan will work and would not like to see hasty analysis of important issues.

Michael Davis agreed that we need balance.

Pete Rosendahl repeated that there will be pressure to measure how progress continues, not on just the first 10 projects, but on all 68 components.

Michael Davis said that CERP is a conceptual level plan. Congress authorized the plan and embraced the goals of restoration of the natural system and other water-related needs. We need to ask ourselves at the periodic intervals, like the 10-year mark, where we will be in meeting those goals.

Barbara Miedema said that Congress authorized the Plan understanding the conceptual nature of the plan. Now we need to go back and do a feasibility study tied to the PIR process with specific goals, in particular, address how we will enlarge the water supply.

Betty Grizzle said that the PMP guidance documents need to include the Pro-Regs.

Tom MacVicar said that it is hard to set interim goals if the funding is not assured. Setting the process to set interim goals and setting interim goals for performance measures are very different things. He'd like to see the process spelled out to the PMP teams: demonstrate cost effectiveness of each project and look at other alternatives and optimization must be addressed i.e. whether the project is scaled appropriately. It is hard to answer these questions and the method to do that must be memorialized in the Pro-Regs. This cannot be done today; there must be feedback between the construction side and the performance side.

Malcolm Wade asked what is the basis of the implementation team scheduling. RECOVER seems to be asking the implementation team what they are doing and it really should be the other way around. There needs to be a greater emphasis on cost effectiveness and economics.

Tom MacVicar said to look at Chapter 10 of CERP. We need to refine the information that exists on land availability at the time; the technology—all the pilots must be done first; and we need to standardize the PIRs and the SOWs.

Malcolm Wade said that if we knew the answers on cost effectiveness, in all likelihood, the schedule would change totally.

Tom MacVicar said that it is not just state law that dictates cost effectiveness, but cost effectiveness is one of the goals of CERP.

Stu said that there are some constraints on the sequencing of the project and what must be done first, as well as money constraints. New information can influence the process. We need to balance the economics, the environment and the cost effectiveness. The PIR is the vehicle for this.

Mary Ann Poole said that we need to examine effectiveness among components. For example decompartmentalization seems to out of sequence.

Tom MacVicar said that the sequencing order has already been reviewed. He'd like to see the complete list of 68 projects analyzed as to which one's give the biggest bang for the buck. The schedule might be totally reshuffled due to limitations.

Stu responded that cost effectiveness was factored into the analysis and there were many political pressures to deal with. A good example is sequencing decompartmentalization first; can't do that—you have to build water storage capacity in the northern part of the system first.

Tom MacVicar said the criteria have nothing to do with project effectiveness, for example on land acquisition. We all know how we got in the present mess: through haste, inadequate review and wrong motivations. We need to show the world that we can re-examine and not do the bad projects we have done in the past.

Phil Parson said that no one believes that the project sequencing will have any positive impact on the urban water users and if we are unwilling to revisit the sequencing, the urban users will outbid the natural system for water. For example, the Lake Belt will come on line in 20-30 years.

Michelle Diffenderfer talked about the MFL process and that no one's permit get renewed for more than the water they are authorized to use now unless you can identify an alternative water source. For example, if a utility can implement desalinization, perhaps that would make that utility less likely to support CERP as their needs are taken care of.

Stu said that we are hearing just the opposite from the environmental community; they think that CERP is building water supply projects.

Beth Carlson said that we need to put everyone in the room and hear all the concerns.

Tom MacVicar said that the analysis needs to include the base conditions and the without project conditions.

Stu said that the analytical framework needs to be in the Pro-Regs; establish a process.