

Summary Programmatic Regulations Local Government Workshop
Palm Beach County South County Civic Center, Delray Beach, FL
May 17, 2001 1:30 p.m.-3:30 p.m.

Attendees:

Roy Reynolds, Broward County Water Management Division
Doug MacLaughlin, SFWMD
Tom Teets, SFWMD
Brenda Mills, SFWMD
Isaac Hoyos, Palm Beach County
April Gromnicki, Audubon of Florida
Sue Alspach, Miami-Dade DERM
Ken Todd, Palm Beach County Administration
Jerry Krenz, SFWMD
Kim Lippman, Lewis, Longman & Walker
Bertha Goldenberg, Miami-Dade Water and Sewer Department
Fred Rapach, Palm Beach County Water Utilities
Jim Threewits, Okeechobee County Deputy County Administrator
Bill Dobson, Miami-Dade Water and Sewer Department
Michael Davis, Dept. of the Interior
Mary Ann Poole, Florida Fish and Wildlife Conservation Commission
John Brady, USACE
Mike Magley, USACE, South Atlantic Division, Atlanta
Gary Hardesty, USACE, Headquarters, Washington
Stu Appelbaum, USACE
Nanciann Regalado, USACE
Theresa Woody, USACE

Stu Appelbaum opened the meeting. He explained that there was a meeting in the morning with agency representatives and this meeting this afternoon is for government representatives. He said his intent is to combine groups in future meetings.

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

The powerpoint presentation was shown. Section 601 (h) was reviewed. The agreement between the President and the Governor was discussed. Stu said that while it is not time specific as far as a date/deadline, Congress expects this agreement in time for future appropriations. The Programmatic Regulations must be published in two years: December 11, 2000-December 11, 2002.

The PIR will quantify the amount of water needed for the natural system. The PCA can't be executed until the federal government knows that reservations have been made and made under state law.

The operating manual must be consistent with the reservation of water. The Savings Clause was discussed. Existing water users must not be harmed and that nothing in the implementation of CERP is used to diminish flood protection and we must maintain existing tribal water compacts, especially with the Seminole Tribe.

The Programmatic Regulations Development Process was discussed. The Corps does not have an Assistant Secretary of the Army for Civil Works right now. This is a political appointee. Concurrence must be sought from DEP, SFWMD and DOI. The Corps will consult with other agencies.

Fred Rapach asked the difference between concurrence and consultation. Stu responded that after the draft comment period closes, the 180-day clock starts. During this 180-day period, there is either concurrence or non-concurrence between the Governor and the Secretary of the Interior. The bottom line is that the Programmatic Regulations are designed to ensure that the goals and objective of the Plan are achieved.

Stu explained that the federal regulatory development process is long, just like at the state level. These series of meetings are designed so that when we get to the draft regulations, we will have worked out the issues in an inter-agency, interdisciplinary way. He reviewed the schedule of meetings and said he would add a June milestone—briefing the SFWMD Water Resources Advisory Committee.

There was discussion of the Draft Guidance Principles. Stu stated that these meetings are the start of an inclusive process so that there are no surprises. He clarified that the Programmatic Regulations are not used to set quantities of water; the PIR does that. The Programmatic Regulations are designed to figure out the process and provide for review and update of that process every 5 years.

Fred Rapach asked about the pause between the approval of the Programmatic Regulations and the approval of PIRs. What about PIRs completed before the approval?

Stu responded that these PIRs would be subject to a grandfather clause. The PIR can be approved prior to the Programmatic Regulations but we must certify that the PIR is consistent with the Plan. It is projected that the WPA and IRL Feasibility studies and some OPEs like Southern Golden Gate Estates are the ones that will be completed before December 2002.

Fred Rapach asked about the 5 years review. If projects go through under existing rules, what set of criteria will be used?

Fred Rapach cited a specific example i.e. reservation of water. If this is set under one set of guidelines, and then we go back and review every 5 years, he just might want to wait this out.

Michael Davis stated that the 5-year review is for tweaking and reviewing the purpose. It is not intended to open this back up for promulgating new rules. Equity is always factored into Army regulations.

Gary Hardesty said that most PIRs would be completed in 5 years. A rule can be revisited at any time. The review is not to create any new hardship; it is an attempt to address adaptive assessment and will be consistent with the state's and district's rulemaking procedures.

Stu said that we have heard concerns about consistency with state rulemaking procedures regarding Minimum Flows and Levels. There is a state process that addresses water reservations. Ultimately, the Secretary of the Army is in charge of promulgating the regulation but it would be foolish of the federal government to promulgate a regulation when the state cannot concur.

Michael Davis said that the goal is to be consistent with state regulations and integrate these regulations into the state process.

Fred Rapach said that the real concern is that this effort be coordinated with the state.

Roy Reynolds said that some have said that the reservation process and regional availability process should stop until the Programmatic Regulations are done.

John Brady said that the state cannot stop Minimum Flows and Levels.

Roy Reynolds said that Minimum Flows and Levels are a close to a done deal. The next step is reservations and regional availability. Some are concerned that this cannot continue without Programmatic Regulations.

Michael Davis said that this must be done in concert. He also said that the PIR addresses and identifies water reservations.

Fred Rapach responded that Programmatic Regulations must be consistent with the state process.

Michael Davis asked whether it is through the state process that the legal reservations of the amount of water per feature in the PIR are made. We don't want to wind up where the water has been reserved away and we can't deliver.

Fred Rapach responded that the legal agreement must be signed by the President and the Governor. No PCA can be approved prior to reservations made according to the Programmatic Regulations.

Michael Davis asked for an example.

Fred Rapach responded that if we write the Programmatic Regulations so that they direct the state process, that's a concern. Take regional water availability as an example: the state has to look at the whole package and identify the water available. What if a project needed 60,000 gallons? You might set the reservation at whatever water is available at the time of project design and once the project is complete, what if there is not enough water at that time?

Roy Reynolds cited another example: If after construction, there is new water, say ASRs return 80% rather than 70%, share the wealth with the urban water consumer.

Fred Rapach said that Minimum Flows and Levels discussed a lot of this. They are looking to the Programmatic Regulations to solve these issues.

Michael Davis said that these are big policy issues. Did Minimum Flows and Levels solve this?

Fred Rapach said No; they punted to this group.

Fred Rapach then asked about the agreement between the President and the Governor. How does that work?

Stu responded that the state takes the first cut because we need to address state concerns. It is unusual for the Governor to sign a document to be sent up to D.C. for review and signature. We still haven't figured out the mechanics.

Fred Rapach said that some of us "old soldiers" have relied on balance. Some are concerned that now that the Corps and the SFWMD have signed the MPMP, the attitude is now "thanks a lot, we'll take it from here." He'll be looking for balance; this will keep the process together. When that is not perceived, there will be major issues.

Michael Davis responded that the reason DOI and the federal government are involved is to ensure restoration, but that doesn't mean that other water related benefits to the region are unimportant. We don't want to create tension; Programmatic Regulations will help us deliver both.

Roy Reynolds said that what we are hearing is that the federal interest comes first and will be met before there are any other benefits realized by any other user and we don't see that in WRDA. The first benefits will go to the natural system after construction and new water for human needs will be available after the natural system received 100% of its needs. We need someone to tell us whether this is true or not.

Michael Davis responded that at the end of the day, balance will be achieved but we cannot say that for each feature.

Roy Reynolds said that we need the answer pretty soon. We have been giving water to the natural system now. Our needs are growing. Now due to this, we might not get an increase in water supply until 20 years from now—after everything is built. We need more than makeup water, will there be new water to meet the needs? We're not hearing anyone argue this.

Michael Davis responded that the sequence has not changed. The PIR process must address what's saved water and what's new water. The projects must act together and be multi-purpose. We need to offset losses.

Fred Rapach asked whether the Programmatic Regulations can address the Savings clause?

Michael Davis responded that we can. Stu added this can be done through sequencing.

Michael Davis said that we can address this through the goals and principles. We hear the opposite from the Environmentalists; they say this is all about water supply. The sequencing of projects i.e. reservoirs first make it water supply.

Sue Alspach said that she heard that the PIR will define the quantity of water, but it is not at this level that we will know. We won't know until the project is built and operating.

Isaac Hoyos said from day one, the term "shared adversity" has been tossed around. If all the water goes to the environment and urban needs are on the back end and you go strictly for reservation, then we've been sold a bill of goods.

Stu asked if anyone had any comment or questions on the process.

Tom Teets said that the SFWMD Water Resources Advisory Committee will want to engage on this issue.

Stu then asked anyone had a question on Roles.

Fred Rapach asked Stu to expand on this: will we all participate in reviewing and writing the Programmatic Regulations?

Stu said that a draft strawman will come back to you for review and to put some meat on the bones. Then it will come back to you again. There will be lots of work done up front so that when we get to March 02, there will be no surprises.

Fred Rapach asked would we hold separate or joint stakeholders meetings?

Stu explained that the initial stakeholder meetings were organized separately. Future public meetings will be combined.

Roy Reynolds asked whether there be something produced between the first series of meetings and the public meetings?

Stu responded that the public meetings will use the same information and will be conducted in the same way.

Jim Threewitz asked what will be provided ahead of time?

Stu said that participants will receive an annotated outline. We don't quite know what it's going to look like right now.

Fred Rapach asked about the establishment of interim goals. Will this be done at a later time or will it be part of the Programmatic Regulations?

Stu said we have heard concerns as to whether the Programmatic Regulations should be just a process or should it address interim goals?

Fred Rapach said that the interim goals are his concern: that the goals are not inclusive of the whole plan, but only of the natural system.

Roy Reynolds asked about the September meetings. We should agree to have all sides together at that point.

Fred Rapach suggested using the web-site to review comments.

Stu responded that yes, we will use the evergladesplan.org site for the Programmatic Regulations.

Fred Rapach was surprised that there was a federal initiative to develop a federal rule that will affect the Corps and SFWMD. He asked that this be put into perspective.

Michael Davis said it is important for the utilities to think about the interim goals. DOI thinks there is some substance here and Congress needs to be convinced.

Questions have been raised as to what are the interim goals. Can the Programmatic Regulations be used for other purposes? There are two different opinions; should the Programmatic Regulations be process or substance?

Fred Rapach responded that he thought it was a process. How did WRDA expand this?

Michael Davis replied that he wrote the first draft mostly as process with the expectation of these goals called restoration standards. There are long-term ecological goals out there in the future after constructions and we expect goals through RECOVER. Congress can't wait that long to determine that we are meeting to goals. He said look at the Senate report "should establish interim goals that are quantifiable and measurable. He said we can identify non-restoration goals and quantify those goals.

Isaac Hoyos said that interim goals for all stakeholders would be good. For example, today's drought, interim goals could have addressed this. We have no water being captured today and several years from now, water will be captured.

Fred Rapach asked if we start establishing interim measures for water supply in the federal regulations and is it appropriate for federal regulations to deal with state water supply interim goals?

Michael Davis responded that it could be; we have an authorized plan with a water supply component.

Doug Mac Laughlin said that John Fumero says the regulations should establish process only.

Roy Reynolds asked what section of the Senate Report was Michael Davis referring to?

Michael Davis responded that page 23 on his print out has the section discussing the Programmatic Regulations.

Mary Ann Poole asked what is the next step for the Corps, the SFWMD, DOI and DEP?

Stu responded that there will be stakeholders and public meetings. He will work on creating a strawman for July.

Sue Alspach had a process question: What is the announcement process?

Stu said that if we need to add names to our list, let Nanciann Regalado know. Nanciann Regalado said we will let you know via e-mail about future meetings.