

Summary Programmatic Regulations Southeast Utilities Council Meeting  
Broward County Office of Environmental Services, Pompano Beach, FL  
June 11, 1:30 p.m.–3:30 p.m.

Stu Appelbaum was invited to make a presentation on Programmatic Regulations at the Southeast Florida Utilities Council's June 11 monthly meeting.

Stu presented the PowerPoint presentation. 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 2001 Sec 601 (h)—Assurances Provisions.

Stu explained that there are no time limits for the agreement between the President and the Governor, but Congress cannot authorize any funds for construction without this agreement. The PIR will be the vehicle to quantify the amount of water reserved for the natural system. The PCA is the legal agreement between the SFWMD and the COE. We cannot execute a PCA unless the state has reserved the necessary water for the natural system. Each project has an operation and maintenance manual. All PIRs approved before the enactment of the Pro-Regs must be consistent with the regulations. The regulations must be reviewed a minimum of every 5 years.

The Corps Pro-Regs as a process that ensures the goals and objective of CERP are achieved. We must establish a process to incorporate new information into the plan and a process to measure progress towards meeting those goals.

The goals of the stakeholder meeting is to achieve consensus among the various groups and stakeholders. Final Pro-Regs must be published by December 2002. Stu reviewed the draft guiding principles. He states that our goal is to make this process in-line with the state process.

The key issues we have heard include questions about the agreement between the President and the Governor; the relationship between the Pro-Regs and the state's MFL process; the reservation of water vs. actual water availability; interim goals; PIRs completed before the Pro-Regs are enacted; and whether the NEPA process is triggered by Pro-Regs.

George Haughney asked if we have seen any proposed regulations that would be a concern to the utility industry.

Stu responded that we are at the first step of the process and the rule language will be more detailed. The SFWMD WRAC (Water Resources Advisory Committee) is very interested in more discussion. Stu has been asked to present the Programmatic Regulations side-by-side with the MFLs at the July 5 WRAC meeting so that everyone can understand the full picture.

Fred Rapach asked about water reservations: Are the state's definition and interpretation and the federal government's definition and interpretation the same thing?

Stu said that the federal government doesn't reserve water. Congress expressed interest is to be sure that enough water is available to implement CERP without interfering with the state's role in water allocation.

Fred Rapach asked who is the State's representative on Pro-Regs?

Stu said that Ernie Barnett from DEP and the SFWMD represent the State's interest.

Tony Hui asked Fred Rapach and Roy Reynolds to identify the utility's interest in Pro-Regs.

Roy Reynolds responded that a primary concern is reservation of water and the effect on available water supply if water is reserved for existing purposes and no new water is available to utilities. There is a real concern that all the new water will be reserved for the natural system until restoration is achieved at the expense of water supply issues. The second part of that concern is to make sure that new CERP projects don't preclude splitting new water with urban users. There is also a concern that 50% of restoration goals need to be achieved by 2010 and that could mean a lot less water for people. He has a real concern that we cannot achieve that goal and questions about the effect on all of South Florida.

Stu responded that there are two big issues that he has heard: 1) interim goals: do these get spelled out and if not, what ultimately are they; and 2) reservations vs. allocation. He has not heard that 100% of the natural system needs must be met first. CERP is a multi-objective project.

Roy Reynolds stated he is worried that this process will cause a competition for water that most utilities have never experienced. With the state issuing consumptive use permits and with MFLs, it would be good to know how much water is available, but we don't know this information. We are about to enter an unknown arena.

Stu responded that the goal of CERP is to avoid competition: the secret is to increase the water supply so we avoid competition among water users.

Fred Rapach repeated that the utilities don't want a competitive arena.

Stu said the question is whether there is going to be short-term pain. The answer is CERP working to enlarge the water pie.

George Haughney asked what did the legislature do to ASR and CERP?

Stu responded that CERP's focus is on the pilot projects, to get the tests going and see what we've got and the regional studies and that was not impacted by the legislative initiative. From a federal standpoint, there was no setback to CERP's work on ASRs. We have an EPA ruling that allows for the pilot projects.

Tony Hui asked why we are now focused on competition for water?

Stu responded that the drought makes the competition for water more apparent and with MFLs beginning to reserve water for the natural system, there is a concern that there could be some short-term pain until CERP comes on-line.

Peg McPherson offered a clarification on the ASR bill. She said that the version debated in Tallahassee will not be the same bill that comes up in the next session. She said no one had problems with the CERP pilot projects: the concept of testing the technology through pilot project made everyone comfortable.

Michelle Diffenderfer asked for clarification on concurrence. What happens if the Interior and the DEP give statements of non-concurrence? Legally, construction cannot proceed, but the Secretary of the Army can still promulgate regulations. Is it a consultative process? Is this Stu's view or will some other model be used?

Stu responded that the process will be very similar to the process used during the Restudy. It will be pretty intensive with lots of public input opportunities. At some point, we will seek formal comment from the state and we will continue the dialogue with stakeholders.

Michael Davis said that the Pro-Regs are important to the utilities because the federal government is investing \$4 billion in CERP and the Federal government usually doesn't get involved with paying for water supply projects—not since the 50s. We will be asking for appropriations every year, on the order of \$200 million, knowing that the federal interest is environmental restoration. But CERP is a win-win for the utilities; at very little additional cost we can come up with water for all users. The price of that federal participation is to make sure that environmental restoration is achieved. The big issue is not restoration vs. existing water supply; the big issues are sequencing and construction timing. The environmentalists fear the same things that the utilities fear; that the sequence of construction will favor utility interests.

Fred Rapach asked about interim goals and whether these must only apply to restoration objectives or will other goals be set?

Stu responded that the law says to restore, preserve and protect the Everglades while meeting other water needs.

Michael Davis said that the law requires that we establish goals for restoration, but we could include goals for water supply (utilities).

Fred Rapach asked whether the federal government will set water supply goals for the state?

Stu responded that it is not the intent of the federal government to do so.

Michael Davis said that we can meet the federal benefits without prescribing water allocations.

Abe Cooper questioned whether Pro-Regs establish goals or a process. SFWMD doesn't read WRDA to require goals, only a process. DOI and the environmentalists are debating this interpretation of WRDA. If Pro-Regs are too detailed, we may trigger NEPA.

Stu said that the question is reservation vs. availability and how to determine the interim goals.

Mary Ann Poole asked a legal process question. What is the process for consultation with the appropriate agencies? Will these entities help write the Pro-Regs or be involved in a more general update?

Stu responded that he is unsure of the process at this time, but it will be more than a request for review. He doesn't know if the agencies want to draft the regulations with us or would prefer a strawman to comment on. RECOVER will be heavily involved in the development of Pro-Regs.

Mary Ann Poole said that it depends on the agency.

Roy Reynolds wanted more discussion on the goals. How does the decision get made on whether the interim goals are more substantive or not?

Stu responded that this will play out over the next 3-4 months.

Roy Reynolds wanted to know when the July draft would be available.

Stu said probably towards the end of July.

Tony Hui asked what is the best way for SEFLUC to get involved in writing the Programmatic Regulations?

Stu said this group should invite us back in a couple of months. We're just starting this process.

Michelle Diffenderfer suggested that perhaps a small group from the stakeholders could work with the Corps to talk in more depth about substance and process, identify the issues and work through the issues as much as possible.

Stu said that the WRAC (Water Resources Advisory Committee) meeting in July is a good opportunity to identify the issues and lay out where the stakeholders are. The difference between process and procedures is a definitional thing; process can be pretty specific.