



Florida Department of Agriculture and Consumer Services
CHARLES H. BRONSON, Commissioner
The Capitol • Tallahassee, FL 32399-0800

October 1, 2002

Mr. Stuart Appelbaum
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32232-0019

ATTN: CESAJ-DR-R

RE: Florida Department of Agriculture and Consumer Services Comments on Draft Programmatic Regulations

Dear Mr. Appelbaum:

I am pleased to submit comments from the Florida Department of Agriculture and Consumer Services on the Draft Programmatic Regulations for the Comprehensive Everglades Restoration Plan (CERP) as authorized by Congress in the Water Resources Development Act of 2000. While I understand the Draft Programmatic Regulations are the product of an extensive rulemaking process on the part of the U.S. Army Corps of Engineers, I am hopeful the document can be revised to ensure the following issues are adequately addressed when the regulations are finalized.

The regulations should reflect the balanced purposes of the Comprehensive Everglades Restoration Plan consistent with the Water Resources Development Act of 2000. The authorization for the Central and Southern Florida Project (C&SF) includes multiple project purposes such as flood protection, regional water supply, water supply for Everglades National Park, and preservation of fish and wildlife. The Water Resources Development Act of 2000 (WRDA) altered the authorization for the C&SF to allow for modifications and operational changes to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. Given the expanse of the C&SF system (running from south of Orlando to the Florida Keys through 16 counties) any change in the operation of the system stands to impact a large number of Florida citizens. Recognizing the potential impacts not only to the federal trust resources but also to the State of Florida, Congress mandated a full and equal partnership between the State and Federal government during both implementation of the CERP and, heretofore unprecedented, in the operation and maintenance costs of the C&SF after implementation is complete. The final programmatic regulations should reflect the multiple purposes of the CERP throughout the document.



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The Programmatic Regulations must monitor all authorized purposes of the project equally. It is clear from the language in WRDA that this remains a multi-purpose project. Therefore, any process established to monitor progress during implementation of the CERP should be the same for all authorized purposes of the project, both restoration and the other water-related needs of the region. Providing for two different monitoring tracks could be interpreted as one purpose having greater import than another.

The regulations should address process matters only. Recognizing the enormity of the task of restoring an entire ecosystem, the CERP includes a feature known as adaptive management. Adaptive management gives both the U.S. Army Corps of Engineers and the local sponsor of the project the ability to modify the CERP throughout the implementation process to incorporate technological advances, address unforeseen problems, and take advantage of opportunities for cost savings that may not have been identified as the plan was formulated. Including anything other than process and procedures in the regulations would lessen the flexibility the Corps and the local sponsor have as they implement adaptive management decision-making.

The regulations should not create delays for CERP implementation that would increase costs. Given the significance, cost and complexity of implementing CERP, the desire to create new accountability measures through the regulations is understandable. While well intentioned, these types of measures often result in the creation of layers of bureaucracy that will increase costs and produce delays. The regulations should not create new roles or responsibilities related to implementation but rather should preserve the decision-making authority of the Corps and the local sponsor in planning, designing and implementing CERP. The practical effect of concurrence on decisions by anyone other than the Corps and the local sponsor would be to ensure the project is never completed. The CERP mandates consultation with federal, state, tribal and local governments as well as affected stakeholders but in the end, the final decision must rest with one federal and one state entity.

The regulations must recognize and preserve the authority of the State, under Florida Water Law, to determine water reservations. Any preemption of state law is unacceptable. References to "applicable law" should be clear in the regulations; where "applicable law" is intended to mean "applicable state law," it should be stated as such. In addition, the pre-CERP baseline water availability should be determined by the U.S. Army Corps of Engineers and the South Florida Water Management District in consultation with other affected stakeholders. Providing for concurrence by any additional entity would not only violate the intent of WRDA but could be utilized as a first step in the preemption of our state laws.



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I appreciate the opportunity to submit these comments and look forward to working with both the Corps and the South Florida Water Management District in representing agricultural interests in the C&SF as we implement CERP. If you have any questions on these suggested revisions, please contact Ray Scott at (850) 414-7380.

Sincerely,



CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE



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