



February 13, 2002

Mr. Stu Appelbaum
U.S. Army Corps of Engineers
ATTN: CESAJ-PD-R
P.O. Box 4970
Jacksonville, FL 32232-0019

Subject: Initial Draft Programmatic Regulations for the Comprehensive Everglades Restoration Plan

Dear Mr. Appelbaum:

Thank you for the opportunity to comment on the Initial Draft Programmatic Regulations for the Comprehensive Everglades Restoration Plan (CERP). Broward County recognizes the importance of these regulations in guiding the Army Corps of Engineers and the entire restoration team during the implementation of CERP. We commend your attempt to address the complex and competing needs of various water users within the south Florida ecosystem. However, we are deeply concerned that the regulations, as proposed, do not provide the necessary balance between providing the appropriate quantity, timing and distribution of water for the natural areas and addressing the needs of other users consistent with the provisions of the Savings Clause in the Water Resources Development Act of 2000 (WRDA 2000). We believe that maintaining the balanced approach that was instrumental in the successful development and acceptance of the CERP by the diverse stakeholder groups is absolutely vital to an acceptance of the Programmatic Regulations and the continued success of the CERP.

Our comments are intended to balance the needs of all water users within the ecosystem, consistent with the concepts prescribed by WRDA 2000 and developed during the Restudy. To that end, our general comments are followed by specific recommendations for language amendments which reflect these balanced concepts. Thank you again for the opportunity to provide these comments. We look forward to the incorporation of our concerns into the draft regulation and our continued participation in the CERP process. Should you have any questions, please don't hesitate to contact Roy Reynolds at (954) 831-0767 or David Lee at (954) 519-1271.

Sincerely,

Anthony M. Hui, P.E., Director
Office of Environmental Services

Steven Somerville, Director
Department of Planning and Environmental Protection

cc: Henry Dean, SFWMD

**BROWARD COUNTY COMMENTS ON THE
INITIAL DRAFT PROGRAMMATIC REGULATIONS FOR THE
COMPREHENSIVE EVERGLADES RESTORATION PLAN**

GENERAL COMMENTS

The programmatic regulations must only establish process. We agree with the Corps of Engineer's position to focus the programmatic regulations on process rather than including detailed protocols and procedures in federal regulation. Inclusion of detailed protocols in the regulations would require initiation of a formal rulemaking process for minor revisions, considerably slowing and hampering the adaptability of the Comprehensive Everglades Restoration Plan (CERP) implementation process.

Interim goals do not belong in the programmatic regulations. We agree with the Corps of Engineer's position to exclude interim goals from the regulations and to establish the Restoration Coordination and Verification (RECOVER) team as the appropriate forum to develop those goals. This position is clearly consistent with Section 601(h)(3)(C)(i)(III) of the Water Resources Development Act of 2000 (WRDA 2000) which clearly specifies that the programmatic regulations will establish a process for the creation of interim goals. However, the Department of Interior's concurrence in the establishment of interim goals should be deleted in accordance with Section 601(h)(3)(C)(ii) of WRDA 2000 which expressly prohibits the concurrence of the Secretary of the Interior and the Governor with respect to any document relating to the development, implementation and management of individual features of CERP.

The programmatic regulations must ensure that all the goals and objectives of CERP are achieved. The overarching purpose of CERP is to restore the south Florida ecosystem, while providing for other water-related needs of the region, including water supply and flood protection. The Initial Draft Regulation does a good job of guaranteeing restoration of the natural system but in many cases it does not adequately address the other water-related needs of the region. For example, Section 385.23(a)(2)(v) of the Initial Draft Regulation requires Project Implementation Reports to identify the appropriate quantity, timing and distribution of water dedicated and managed for the natural system without a corresponding provision requiring identification of the quantity, timing and distribution of project water for other users. We have proposed language in our specific comments that would ensure that the needs of other users are considered and addressed during the restoration process.

The Savings Clause in WRDA 2000 applies to existing legal sources of water and not permitted uses. Three issues concerning the Savings Clause are of critical concern to Broward County. Section 601(h)(5)(A) of WRDA 2000 states that until a new *source* of water supply of comparable quantity and quality as that available on December 11, 2000 *is available* to replace the water to be lost as a result of implementation of the Plan, the Secretary and the non-Federal sponsor shall not eliminate or transfer existing legal *sources* of water including those for an agricultural or urban water supply, allocation or entitlement to the Seminole Indian Tribe of Florida under Section (7) of the Seminole Indian Land Claims Settlement Act of 1987, the Miccosukee Tribe of Indians of Florida, water supply for Everglades National Park, or water

supply for fish and wildlife. Section 10.2.9 of CERP specifically recognizes that urban water supply includes prevention of saltwater intrusion, maintenance of canal stages and protection of non-Everglades wetlands, in addition to consumptive uses of water.

The Initial Draft Regulation is not fully consistent with these standards. Language throughout the regulation repeatedly refers to the transfer of “uses” and “users” rather than the transfer of “existing legal sources”. WRDA 2000 specifically addresses the transfer of “existing legal sources” and incorrect references to uses must be changed to ensure consistency with WRDA 2000. Second, the Initial Draft Regulation does not recognize that the water available on or before December 11, 2000 includes all water in the regional system except that which is restricted by law. As such, no quantity of water that is available from sources as of December 11, 2000 can be transferred or eliminated without first providing an alternative source of equal quality and quantity. Finally, the Initial Draft Regulation does not define “urban water supply.” We have proposed a definition that incorporates all urban water needs including, but not limited to, water for abatement of saltwater intrusion, maintenance of wetlands in urban areas and recharge of the Biscayne aquifer in the definition. The regulations should recognize the critical concept that the amount of water provided to the urban area by the regional system is not limited to “permitted” amounts.

Reservations must remain flexible and be left to the exclusive jurisdiction of the State of Florida. The Initial Draft Regulation allows the U.S. Army Corps of Engineers to intrude into the role of the State with respect to reservations. For example, Section 385.24(c) of the Initial Draft Regulation requires that Project Cooperation Agreements contain a provision requiring that the reservations made pursuant to State law remain in effect for as long as CERP is authorized and not diminished unless the U.S. Army Corps of Engineers agrees to the change. This provision infringes on the State’s authority under Chapter 373.223(4), Florida Statutes, hurts all stakeholders by reducing the ability to make changes in the event a project does not meet expectations after construction and operation and imposes restrictions that are not otherwise specified by WRDA 2000. Similarly, Section 385.30(d)(2), which prioritizes the allocation of project water, constitutes a de facto Federal reservation and should be removed from the Initial Draft Regulation. We have proposed language in our specific comments clarifying the State’s exclusive authority with respect to reservations.

Variations in project water availability must be shared equitably. As stated previously, the multiple goals of CERP include restoration of the natural system while providing for other water related needs of the region. The purpose of the programmatic regulations is to ensure that these goals are met. As such, any variations between the amount of water expected and the amount of water produced by projects as they are implemented during the restoration process should be balanced equitably between the natural system and other water needs. We have proposed language that will restore the balance envisioned in WRDA 2000.

Adaptive assessment must be comprehensive. The Initial Draft regulations delegate responsibility for performing many aspects of the adaptive assessment program to RECOVER. At present, RECOVER’s efforts are focused on the ecological system west of the levees with

little consideration given to the effects of CERP on the urban areas. To successfully achieve system-wide assessment, RECOVER's focus must be redirected toward a more comprehensive view of the system which includes all water users, including urban water supply.

Final Operating Manuals must be based on actual project performance. Broward County believes that the final reservation of new water for the natural system and the quantity of water to meet the other water related needs of the region can only be determined after the actual quantity of water produced by the project is identified through testing and operation. Since the final Operating Manual should specify the reservation, it should be completed after the operation and monitoring phases, not before as stated in Section 385.25(c)(4) of the Initial Draft regulation.

SPECIFIC RECOMMENDATIONS FOR LANGUAGE AMENDMENTS

Supplementary Information

Page 6, Lines 23-34: This section is the first of several that cite Senate Report 106-362 that was a report describing and explaining the Senate bill that was much different than the final WRDA 2000 bill that passed Congress. This report should not be relied upon for interpreting the language of WRDA 2000 and references to it should be deleted from the supplementary information.

Page 6, Lines 39-42: The processes and requirements of the regulations should ensure that the rights and responsibilities of the South Florida Water Management District are respected and met with equal weight as that afforded to Federal rights and responsibilities.

Page 8, Lines 25-30: We concur that implementation should include a system-wide focus and that each project component should be assessed to determine its contribution to the overall Plan. However, system-wide focus should not preclude the analysis and assessment of the stand-alone benefits of the Plan. These benefits should be determined without reference to or dependence on later project components.

Page 9, Lines 38-40: Please delete the following: ~~“The proposed rule also establishes that the Project Cooperation Agreements include a provision that the reservation or allocation remain in effect and not be diminished, unless the Secretary of the Army agrees, for as long as the Plan is authorized. This provision is intended to protect the Federal interest and investment in the Plan and the need to ensure that the goals and purposes of the Plan are achieved.”~~ Under WRDA 2000, the establishment and maintenance of reservations for the protection of the natural system is left to the sound discretion of the State of Florida. Section 601(h)(4) of WRDA 2000 only requires that the Project Implementation Report identify the amount of water to be reserved or allocated for the natural system and that the reservation be in place prior to execution of the Project Cooperation Agreement. WRDA 2000 does not authorize the Federal government to limit the State control of reservations once they are set. The rule provision described in the deleted language allows the U.S. Army Corps of Engineers to improperly intrude into the role of the State of Florida with respect to reservations. Therefore, the language must be deleted.

Page 9, Line 44 to Page 10, Line 2: Change as follows to ensure consistency with the Savings Clause of WRDA 2000: *“The proposed rule provides that the Project Cooperation Agreement include a provision that prohibits the Corps of Engineers or the non-Federal sponsor from eliminating or transferring existing legal sources of water until a new source of comparable quantity and quality is available. This provision implements the Savings Clause provisions of section 601 of the Water Resources Development Act of 2000, stating that until a new source of water supply of comparable quantity and quality as that available on the date of enactment of WRDA 2000 is available to replace the water to be lost as a result of implementation of the Plan, the Secretary and the non-Federal sponsor shall not eliminate or transfer existing legal sources of water, including those for and agricultural or urban water supply; allocation or entitlement to the Seminole Indian Tribe of Florida under section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e); the Miccosukee Tribe of Indians of Florida; water supply for Everglades National Park; or water supply for fish and wildlife.”*

Page 10, Line 2-5: Change as follows to ensure consistency with the Savings Clause of WRDA 2000: *“It is designed to prevent harm to existing legal sources of water including those for agricultural or urban water supply, the Miccosukee or Seminole Tribes, water supply for Everglades National Park, and water supply for fish and wildlife replace water which is lost from any source due to Plan implementation with water of equal quantity and quality as that available on December 11, 2000 prior to eliminating or transferring that source.”*

Page 10, Lines 5-7: Change as follows to ensure consistency with the Savings Clause of WRDA 2000: *“Also in compliance with the Savings Clause provisions, the proposed rule provides that the Project Cooperation Agreement include a provision that existing ~~levels of flood protection~~ levels of service for flood protection in existence on December 11, 2000 and in accordance with applicable law not be reduced.”*

Page 10, Lines 20-26: The final reservation of water should only be determined after project testing and operation and should be included in the final Project Operating Manual. Therefore, the final Project Operating Manual should be completed after the operational testing and monitoring phase, not before. Change to read as follows: *“The final Project Operating Manual will be prepared ~~before~~ after completion of the operational testing and monitoring phase.”*

Page 11, Lines 25-26: Please change as follows to recognize that adaptive assessment is required to address uncertain technologies such as those subject to pilot studies, as well as uncertainties concerning the response of the natural system to CERP: *“The flexibility offered by the adaptive assessment program is crucial for dealing with the uncertain technology and the uncertainties of the ecological responses that will occur as the plan is implemented.”*

Page 12, Lines 28-31: We strongly agree that establishing a fixed allocation as an interim goal in the programmatic regulations is not appropriate. Water reserved for the natural system may be more or less than the recommended 80% and will be more accurately determined through the adaptive assessment process.

Page 12, Lines 24-28: Please change as follows to require Project Implementation Reports to identify the quantity of water to be made available for other water-related needs of the region, as well as the quantity of water to be reserved or allocated for the natural system. Additionally, please change to reflect that CERP will be continually evaluated through adaptive assessment not only with respect to the needs of the natural system and water to be allocated under the Savings Clause, but also with respect to other water-related needs of the region. Both of these changes are required under Section 601(h)(3)(C) of WRDA 2000, which mandates that programmatic regulations establish a process that ensures the goals and objectives of CERP are achieved. According to Section 601(h)(3)(A) of WRDA 2000 the goals and objectives of CERP are two-fold – restoration of the South Florida Ecosystem, while providing for other water-related needs of the region, including water supply and flood protection. The existing language does not ensure the achievement of these goals and objectives because it fails to mention the need to meet other water-related needs of the region. *“Although those percentages as an initial estimate for the purpose of developing the Plan, the regulations anticipate that each Project Implementation Report will evaluate and identify water to be reserved for the natural system and made available for other water related needs of the region, and that the Plan itself will be continually evaluated through adaptive assessment. The needs of the natural system ~~and the water required to be allocated under the Savings Clause~~ and the requirements of other water related needs of the region may be a greater or less percentage than the initial Plan estimate.”*

Page 12, Lines 40-44: It is essential that the pre-CERP baseline include existing legal sources of water. According to the Section 601(h)(5)(A) of WRDA 2000, the U.S. Army Corps of Engineers and the Non-Federal Sponsor are prohibited from eliminating or transferring existing legal sources of water, until new sources of water of comparable quantity and quality are available. The Savings Clause makes it clear that existing legal sources of water are part of the current condition for the Pre-CERP Baseline. Please change as follows: *“The baseline establishes existing deliveries of water by the Central and Southern Florida Project and includes existing legal sources of water.”*

Page 12, Lines 44-46: Please change as follows to require consideration of the loss of the Pre-CERP Baseline water availability in identifying the quantity, timing and distribution of water to be made available for other water-related needs of the region, as well as for the natural system. The current language only requires consideration of the loss of the Pre-CERP Baseline water availability in identifying the quantity, timing and distribution of water to be made available for the natural system. Referring to the restoration of the natural system without also referring to the provision of water for other water-related needs of the region is not consistent with the objectives of CERP. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish a process that ensures all objectives of CERP are achieved. *“The proposed rule provides that each Project Implementation Report consider the loss of pre-CERP baseline water availability in identifying the quantity, timing and distribution of water to be made available for the natural system and other water related needs of the region by a project component.”*

Page 13, Line 6: Please change as follows to require identification of the quantity of water made available for other water-related needs of the region, as well as identifying the quantity of water

to be reserved for the natural system. Referring to the restoration of the natural system without referring to the provision of water for other water-related needs of the region is not consistent with the objectives of CERP. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish a process that ensures all objectives of CERP are achieved. “...the needs of the natural system and the requirements of other water related needs of the region, including water supply and flood protection.”

Page 13, Lines 13-16: Please change as follows to include other users: “ *The proposed rule provides that a protocol be developed to provide a uniform system-wide procedure for quantifying water made available by projects and for identifying the water to be reserved for the natural system and allocated for other uses.*”

Page 13, Lines 26-31: Establishing operational priorities will determine the allocation of water which conflicts with state law and pre-empts state authority. Also, the phrase “uses transferred” is inconsistent with the Savings Clause. Therefore, please delete the following: “~~*In the absence of specific purposes for a project component in the Congressional authorization, then the operation of a project component generally should be based on providing water in accordance with the following priorities: the first operational priority will be uses transferred from existing legal sources of water, then “new water” for restoration of the natural system, and then “new water” for other uses of water.*~~”

Page 13, Lines 34-36: Please change as follows to ensure consistency with the Savings Clause of WRDA 2000: “*Many agencies, groups, and the public were concerned about the effects of implementation on existing legal sources of water and on existing levels of service for flood protection.*”

Page 13, Line 36-Page 14, Line 2: References to the Senate report should be deleted for reasons previously stated and because it is inconsistent with both WRDA 2000 and the goals and purposes of the Plan.

Page 14, Lines 6-10: Change as follows to ensure consistency with the Savings Clause of WRDA 2000: “*The proposed rule provides that the Project Implementation Report include analyses to determine if the project will cause such a transfer. If the project will cause a transfer, then the Project Implementation report will include an implementation plan that ensures that such transfer will not take place until after the project is constructed and operating as intended after the project is constructed, operates as intended and provides the intended volume and quality of water to that which is being transferred.*”

Page 14, Lines 15-19: Please change as follows: “*If the existing level of service would be adversely affected, then the proposed rule provides that the recommended Plan be modified to mitigate or eliminate the adverse effect ensure that the level of service for flood protection is not less than that provided as of the date of enactment of WRDA 2000. The proposed rule also allows for the evaluation of increased levels of flood protection, provided that it is consistent with the goals and purposes of the Plan and is practical.*”

Page 14, Lines 32-38: Please delete this reference to the Senate report for reasons previously stated.

Page 15, Lines 4-7: We agree that RECOVER is the appropriate forum for developing interim goals.

Page 15, Lines 35-37: Change as follows to require that Special Implementation Reports address the identification of water for other water-related needs of the region, including water supply and flood protection, as well as the identification of water for the natural system. The existing language only requires that the Special Implementation Reports identify water to be reserved for the natural system. This is inconsistent with the objectives of CERP, which are to restore the natural system, while meeting the other water-related needs of the region, including water supply and flood protection. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish a process that ensures all objectives of CERP are achieved. The existing language only attempts to meet one of the goals. *"The Special Project Implementation Reports will address water quantification and identification of water to be reserved for the natural system and for other water related needs of the region, including urban water supply and flood protection using the protocols developed pursuant to these programmatic regulations."*

Page 15, Line 40-Page 16, Line 2: Please change as follows to acknowledge that concurrence or non-concurrence by the Governor of the State of Florida and the Department of the Interior may result in changes to the programmatic regulations. According to Section 601(h)(3)(A) of WRDA 2000, the programmatic regulations may only take effect with the concurrence of the Governor and the Secretary of the Interior. Consequently, it is possible they may decline to concur with one or more provision of the programmatic regulations. This will result in the non-adoption of those provisions. That possibility must be accounted for in the preamble to the programmatic regulations. *"The final rule will include a reference to the concurrence or non-concurrence statements of the Secretary of the Interior and the Governor of Florida on the proposed rule and the changes made to the rule to bring it into compliance with those statements."*

Page 17, Lines 10-26: As written, the regulations conflict with State law and pre-empt the State's authority to allocate water through the establishment of operational priorities. As such, these regulations have a substantial and direct effect on the State.

Title Section

Page 21, Lines 35-36: Please change the title as follows: *"~~ENSURING PROTECTION OF THE NATURAL SYSTEM~~ WATER AVAILABILITY CONSISTENT WITH THE GOALS AND PURPOSES OF THE PLAN."* The current title is not consistent with to objectives of CERP because it omits any mention of the need to provide for other water-related needs of the region, including water supply and flood protection. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish a process that ensures that all objectives of CERP are achieved.

Section 385.1 Purpose of the Programmatic Regulations

Page 22, Lines 4-9: Please change as follows to make the purpose of the programmatic regulations more consistent with Section 601(h)(3)(C) of WRDA 2000, which states in part, “Programmatic regulations promulgated under this paragraph shall establish a process... for the development of project implementation reports, project cooperation agreements and operating manuals that ensure that the goals and objectives of the Plan are achieved....” The existing language strays in several key points from the express provisions of WRDA 2000. Additionally, the language about using the interim goals to define the relationship between the Federal and state partners has no counterpart in WRDA 2000. “The purpose of the programmatic regulations is to establish ~~a the processes and procedures needed to~~ for implementing the Comprehensive Everglades Restoration Plan ~~that and to ensure that~~ the goals and purposes of the Plan are achieved. ~~The programmatic regulations also define the relationship and responsibilities of the Federal and State partners charged with implementing the Plan as well as relationships and responsibilities of other agencies and governments and the public.”~~

Section 385.2 Applicability of the Programmatic Regulations

Page 22, Lines 12-38: Please change as follows to recognize that the programmatic regulations are not intended to interpret, amend, alter, diminish or otherwise affect the existing legal water rights of persons holding permits or common law water rights from the State of Florida in addition to the existing legal water rights held by the United States, the State of Florida, the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida. According to Section 601(h)(3)(C) of WRDA 2000, programmatic regulations are only authorized for the purpose of establishing a process covering three enumerated items; none of which deal with water rights. If the programmatic regulations were to substantively affect the water rights of persons holding permits or common law water rights from the State of Florida, they would constitute substantive and not process oriented rules.

(a) ~~These~~ ~~this~~ ~~regulations~~ ~~applies~~ ~~to~~ ~~all~~ ~~components~~, ~~P~~projects, ~~separable~~ ~~elements~~, and ~~P~~program ~~L~~level ~~A~~activities ~~conducted~~ ~~to~~ ~~for~~ ~~implementation~~ ~~of~~ ~~the~~ ~~Comprehensive~~ ~~Everglades~~ ~~Restoration~~ ~~Plan~~.

(b) ~~Nothing~~ ~~in~~ ~~these~~ ~~this~~ ~~regulations~~ ~~shall~~ ~~be~~ ~~interpreted~~ ~~to~~ ~~amend~~, ~~alter~~, ~~diminish~~, ~~or~~ ~~otherwise~~ ~~affect~~ ~~any~~ ~~existing~~ ~~legal~~ ~~water~~ ~~rights~~ ~~of~~ ~~the~~ ~~United~~ ~~States~~, ~~the~~ ~~State~~ ~~of~~ ~~Florida~~, ~~persons~~ ~~holding~~ ~~permits~~ ~~or~~ ~~common~~ ~~law~~ ~~water~~ ~~rights~~ ~~from~~ ~~the~~ ~~State~~ ~~of~~ ~~Florida~~, ~~the~~ ~~Miccosukee~~ ~~Tribe~~ ~~of~~ ~~Indians~~ ~~of~~ ~~Florida~~, ~~or~~ ~~the~~ ~~Seminole~~ ~~Tribe~~ ~~of~~ ~~Florida~~, ~~including~~ ~~the~~ ~~compact~~ ~~among~~ ~~the~~ ~~Seminole~~ ~~Tribe~~ ~~of~~ ~~Florida~~, ~~the~~ ~~State~~, ~~and~~ ~~the~~ ~~South~~ ~~Florida~~ ~~Water~~ ~~Management~~ ~~District~~, ~~defining~~ ~~the~~ ~~scope~~ ~~and~~ ~~use~~ ~~of~~ ~~water~~ ~~rights~~ ~~of~~ ~~the~~ ~~Seminole~~ ~~Tribe~~ ~~of~~ ~~Florida~~, ~~as~~ ~~codified~~ ~~by~~ ~~section~~ ~~7~~ ~~of~~ ~~the~~ ~~Seminole~~ ~~Indian~~ ~~Land~~ ~~Claims~~ ~~Settlement~~ ~~Act~~ ~~of~~ ~~1987~~ ~~(25~~ ~~U.S.C.~~ ~~1772e)~~.

(c) ~~Protocols~~, ~~I~~nterim ~~G~~goals, ~~water~~ ~~control~~ ~~plans~~, ~~operating~~ ~~plans~~, ~~models~~, ~~analytical~~ ~~tools~~, ~~Pilot~~ ~~Project~~ ~~Technical~~ ~~Data~~ ~~Report~~, ~~Master~~ ~~Implementation~~ ~~Sequencing~~ ~~Plans~~, ~~Project~~ ~~Management~~ ~~Plans~~, ~~Design~~ ~~Documentation~~ ~~Reports~~, ~~Design~~ ~~Agreements~~, ~~Operating~~ ~~Manuals~~, ~~Project~~ ~~Implementation~~ ~~Reports~~, ~~Special~~ ~~Project~~ ~~Implementation~~ ~~Reports~~, ~~Project~~ ~~Cooperation~~

Agreements, Comprehensive Plan Modification Reports, and other documents created under these regulations or the Comprehensive Everglades Restoration Plan, are intended to be used as planning, measurement, assessment, reporting, and/or management tools. They are not designed to be, nor shall they be construed to be, standards, schedules, or requirements enforceable by third parties, or otherwise restricting the discretion of the Secretary, the District Engineer, the State, or the non-Federal sponsor, in carrying out their responsibilities under the Plan.

(d) Nothing in these regulations are intended to, or shall be interpreted to, reserve or allocate water or to, prescribe the process for reserving~~ation~~ or allocating~~ion~~ of water or for ~~regional~~ water management under Federal or Florida law. Nor are these regulations intended to, nor shall they be interpreted to, prescribe any ~~other~~ process of Florida ~~water~~ law.

Section 385.3 Definitions

Page 22, Line 44: Please clarify the difference between “adaptive assessment” and “adaptive management”.

Page 23, Lines 2-4: The term “system wide” is used throughout the document, yet no definition is provided. Please define the term to include all water users and areas within the south Florida ecosystem.

Page 23, Line 16: Please define “Comprehensive Plan Modification Report”.

Page 23, Lines 17-19: Please change as follows to more closely track the concurrence language used in Sections 601(h)(3)(A) and (B) of WRDA 2000. “*Concurrence means the issuance or non-issuance of a written statement of concurrence or non-concurrence by the Secretary of the Interior and the Governor, not later than 180 days from the end of the public comment period on these ~~role of the Secretary of the Interior and the Governor of Florida with regard to programmatic~~ regulations, as specified in section 601(h)(3) of the Water Resources Development Act of 2000 (114 Stat. 2688).*”

Page 23, Lines 21-23: To change as follows to more closely track the consultation language used in Section 601(h)(3)(A) of WRDA 2000 and to ensure that the same level of participation is applied to all stakeholders except where other laws require more: “*Consultation means holding meetings, briefings, telephone conversations, and other outreach activities with the Department of Interior, the Florida Department of Environmental Protection, the Florida Department of Agriculture and Consumer Services, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida and other Federal, State, ~~tribal~~, and local agencies and governments to provide information or an exchange of views, including, but not limited to, those held with respect to these regulations.*”

Page 23, Lines 25-30: Please change as follows for clarification: “*Coordination means the formal exchange of information and views, by letter, report, meeting or other prescribed means, between the Corps of Engineers, the Non-Federal Sponsor and Federal, State, tribal and local*

agencies and governments, including but not limited to, the exchange of information and views regarding the development of Project Implementation Reports and another agency. Coordination activities are required by and in accordance with purposes and procedure established by Federal policy (public law, executive order, agency regulation, memorandum of agreement, and other documents that memorialize policy of the Corps of Engineers). Coordination between the Corps of Engineers, the Non-Federal Sponsor, the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida shall be in accordance with Executive Order 13084 "Consultation and Coordination with Indian Tribal Governments" and other applicable policies."

Page 23, Line 31: Please add a definition for "cooperation."

Page 23, Lines 32-35: This term and others related to modeling, water budgets and baselines, including the term pre-CERP baseline are confusing. As we understand it, the definition of "current evaluation condition" establishes a cumulative baseline for evaluating the amount of water made available by each project. As each new reservation is added to the baseline, the baseline flows to the natural system will incrementally increase. Therefore, to ensure that urban demands continue to be met, the baseline must also include a cumulative accounting of increasing urban demands through 2050. Without this adjustment, future urban supplies will be limited to 2000 flows while demands continue to grow. Also, the programmatic regulations must address what happens if the incremental sliding baseline indicates a shortfall for urban areas. The definition of "current evaluation condition" must either be revised to reflect urban demands or be stricken from the text as it does appear in body of the document.

Page 24, Lines 5-7: The Drought Contingency Plan, if needed at all, should conform to the South Florida Water Management District's Water Shortage Plan required under State law.

Page 24, Line 22: Please add a definition for "Existing Legal Sources of Water" as follows: "Existing Legal Source of Water means a Legal Source of Water located within the south Florida ecosystem that was in existence on December 11, 2000, the date of enactment of Section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680)."

Page 24, Lines 38-40: "Please add a definition for "human system" as follows: "Human System means all land and water not managed by the Federal Government or the State within the South Florida Ecosystem."

Page 25, Line 1: Please add a definition for "Legal Sources of Water" as follows: "Legal Sources of Water means a source of water which is available for agricultural or urban water supply, allocation or entitlement to the Seminole Indian Tribe of Florida and the Miccosukee Tribe of Indians of Florida, water supply for Everglades National Park or water supply for fish and wildlife, except that which is otherwise restricted by law."

Page 25, Lines 2-4: Please change as follows: "Level of service for flood protection means the water level or flow duration and frequency, which the C&SF Project and other water management systems in the South Florida Ecosystem are designed to provide in order to prevent

~~*flooding of the related surface water basins at which flood damages would be expected to begin to occur in a specific community or region. This is often expressed as a given hydrologic exceedence frequency.*~~

Page 25, Line 5: Please add a definition for “Master Implementation Sequencing Plan.”

Page 25, Line 16: Please clarify the definition of “new water” regarding the designation of existing water shifted to a new location, making it new for the location but not new by definition.

Page 26, Lines 1-6: Please clarify the definition of “pre-CERP baseline” to include the existing legal sources and levels of service for flood protection. According to Section 601(h)(5) of WRDA 2000, they are both considered part of the existing condition for the Central and Southern Florida Project. Also, the pre-CERP baseline should remain constant unless information from modeling or other hydrologic data indicates that the original baseline was incorrect. Please change as follows: *“Pre-CERP baseline means the conditions in the south Florida ecosystem that existed on or before December 11, 2000, the date of enactment of Section 601 of the Water Resources Development Act of 2000 (114 Stat 2680), accounting for natural variations and including existing legal sources of water and levels of service for flood protection. The pre-CERP baseline may be described through modeling which and includes such things as land use, population, water demand, existing legal sources of water, levels of service for flood protection and operations of the Central and Southern Florida Project. The pre-CERP baseline may change as the models are revised or additional data is incorporated into the models if information from modeling or other hydrologic data is refined to improve accuracy.*”

Page 26, Line 37: Please add a definition for “Project Management Plan.”

Page 26, Line 43 through Page 27, Line 2: Please clarify the definition of “protocol” as follows: *“Protocol means a method or methods, which in the discretion of the Corps of Engineers and the South Florida Water Management District, is appropriate for performing a task necessary to implement the Comprehensive Everglades Restoration Plan, such as plan formulation and evaluation, adaptive assessment, modeling, quantification of water to be reserved for the natural system or allocated for other water-related needs of the region the natural system, and similar tasks.*” Therefore, the phrase, “in the discretion of the Corps of Engineers and the South Florida Water Management District” was deleted because it conflicts with WRDA 2000. Section 601(h)(3)(C) of WRDA 2000 requires the programmatic regulations to establish a process. A procedure that leaves substantive decisions to the “discretion” of the U.S. Army Corps of Engineers and the South Florida Water Management District does not describe any discernable process that can be used to measure those decisions against the three principles listed in Section 601(h)(3)(C) of WRDA 2000. Also, Language was added requiring quantification of water for other water-related needs of the region, as well as the natural system to ensure consistency with the objectives of CERP, which is to restore the natural system, while meeting the other water-related needs of the region, including water supply and flood protection. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish

a process that ensures that all objectives of CERP are achieved. The existing language only attempts to meet one of the goals.

Page 27, Lines 9-14: Please change as follows: *“~~Reservation of water for the natural system means the actions taken by the South Florida Water Management District, the Florida Department of Environmental Protection, or any other state agency or water management district which may be authorized by Florida law, pursuant to provisions of Chapter 373.232 of the Florida Statutes, or other applicable state law, to legally reserve water, from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety; provided, however, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest. Such reservations shall be subject to periodic review and revision in light of changed conditions~~ from allocation for consumptive use, for the protection of fish and wildlife.”*

Page 27, Line 25: Please include the following definition for “Source of Water”: *“Source of Water means lakes, streams, surface water impoundments, groundwater in confined and unconfined aquifers and any other surface or groundwater in whatever form, except that which is restricted by law.”*

Page 28, Line 6: Please include the following definition of “Urban Water Supply”: *“Urban Water Supply means the use or reliance upon legal sources of water for non-agricultural consumptive use, prevention of saline water intrusion, maintenance of canal stages, protection of Urban Wetlands and other urban water needs.”*

Page 28, Line 6: Please include the following definition of “Urban Wetlands”: *“Urban Wetlands means wetlands and other surface waters located within the South Florida Ecosystem, but outside the water conservation areas, the Everglades National Park, Biscayne National Park and Big Cypress National Preserve.”*

Page 28, Lines 10-13: Please change as follows to clarify that Water Made Available only includes water that was not available under the C&SF Project on the date of enactment of WRDA 2000 and does include water currently available somewhere in the system. *“Water made available means the water generated from the implementation of the components of the Comprehensive Everglades Restoration Plan, which is not currently available under the C&SF Project, as it existed on the date of enactment of the Water Resources Development Act of 2000 (114 Stat.2680). These components include storage reservoirs, aquifer storage and recovery facilities, stormwater treatment areas, water reuse facilities, and seepage management.”*

Section 385.5 Implementation Principles

Page 28, Lines 39-44: Neither WRDA 2000 nor CERP suggests projects should be sequenced or scheduled solely for the purpose of accelerating system wide restoration, preservation and restoration benefits. According to Section 601(h)(3)(C) of WRDA 2000, the purpose of the

programmatic regulations is to ensure all the objectives of CERP are achieved. The overarching objective of CERP is the restoration of the natural system, while providing for other water-related needs of the region, including water supply and flood protection. Under WRDA 2000, the objective of restoring the natural system is not elevated over the objective of providing for other water-related needs. Therefore, projects can only be sequenced and scheduled to achieve the objectives of CERP in a balanced approach. Please change as follows: *“The Corps of Engineers and the South Florida Water Management District, in cooperation with other non-Federal sponsors, shall: ~~(a) sequence and schedule projects to accelerate system wide restoration, preservation, and protection benefits while providing for other water related needs of the region, including water supply and flood protection, to the extent practical given funding, technical, and other constraints.~~*

“(a~~b~~) integrate projects and program level activities to achieve the system-wide goals and purposes of the Comprehensive Everglades Restoration Plan, including restoration, water supply and flood control, with an Implementation Schedule and sequence that provides the greatest water supply enhancement and other benefits at the earliest time and in the most cost-effective manner;

(b) for each Project component provide an incremental cost and benefit analysis to demonstrate that the implementation sequence of components will provide the greatest contribution to water supply enhancement and other system-wide benefits with available funding at the time of implementation compared to other alternatives;

Section 385.8 Development and Adoption of Protocols

Page 29, lines 32-39: A procedure that leaves substantive decisions to the “discretion” of the U.S. Army Corps of Engineers and the South Florida Water Management District does not describe any discernable process that can be used to measure those decisions against the three principles listed in Section 601(h)(3)(C) of WRDA 2000. Please change as follows to ensure consistency with WRDA 2000: *“~~Whenever, in the discretion of the Corps of Engineers and the South Florida Water Management District~~ it is appropriate, or as otherwise required by these regulations, the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, may develop and adopt protocols that describe in more detail the procedures to be followed in conducting activities necessary to implement the Plan.”*

Page 29, Lines 44-46: Please clarify specific timeframes for public notification.

Section 385.9 Review of Programmatic Regulations

Page 30, Lines 3-8: Please change as follows: *“The Secretary shall review the programmatic regulations, whenever necessary to attain the goals and purposes of the Plan, but not any less often than every five years from their date of promulgation. ~~In addition, the Secretary may~~*

~~review the programmatic regulations whenever the Secretary believes that such review is necessary to attain the goals and purposes of the Plan. The Secretary shall place appropriate notice in the Federal Register upon initiating review of the programmatic regulations.~~

Page 30, Lines 10-15: Please change as follows to reflect the clarified definition of coordination and consultation as previously proposed the definition section: *“Upon completing the review of the programmatic regulations, the Secretary shall promulgate any revisions to the programmatic regulations after notice and opportunity for public comment, with ~~the~~ concurrence of the Governor and the Secretary of the Interior, and in consultation. ~~with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other Federal, State, and local agencies.~~”*

Page 30, Lines 23-26: The proposed regulation states that a copy of any concurrency or nonconcurrency statement shall be made a part of the administrative record, that it will be referenced in the final revised programmatic regulations and that any non-concurrency statement shall detail the reasons for the nonconcurrency. Please clarify whether concurrence or non-concurrency will be determined after any revisions are made to the regulations after the public comment period. Also, if the Governor provides a statement of non-concurrence, will the regulations be revised? Will they be adopted? What is the procedure to address issues of non-concurrence?

Section 385.11 Incorporation of NEPA and Related Considerations into the Implementation Process

Page 32, Lines 17-20: Please clarify the term “may consider”. Also, please clarify what determines “significant impact on the quality of the human environment” when determining the use of an environmental assessment versus an environmental impact statement? If water availability is diminished to the point where local expenditures are necessary to provide alternative water supplies or undue water shortages occur, is that considered a significant impact?

Page 32, Line 28 to Page 29, Line 4: What is the basis for determining categorical exclusions for NEPA documentation? Also, please change item nine (9) as follows to ensure consistency with Savings Clause terminology: *“Development, adoption, or revision of protocols or methods such as adaptive assessment; modeling; monitoring; plan formulation and evaluation; quantification of water needed for the natural system or protection of existing ~~uses~~ sources; methods of determining levels of service for flood protection; and similar protocols or methods.”*

Page 33, Line 11: Please and delete “Interim Goals or Changes to Interim Goals” from the list of categorical exclusions insert the following language: *“At such time as interim goals are developed, the Corps of Engineers shall make a determination where the interim goal should be added to the subsection a, b, c, or d, above.”* The current language categorically excludes interim goals and changes to interim goals from the requirements of NEPA, because when considered individually and cumulatively they do not have a significant effect on the quality of the human

environment. According to Section 601(h)(3)(C)(III) of WRDA 2000, interim goals will provide a means by which the restoration success of CERP may be evaluated through the implementation process. Since the implementation process is estimated to last more than 30 years, it is obvious the interim goals could have a significant impact on the course of CERP. It is unreasonable for the U.S. Army Corps of Engineers to conclusively presume at this early stage that the interim goals will not have any significant effect on the quality of the human environment. Therefore, interim goals must be identified as actions normally requiring an EIS depending on the significance of their impact on the natural or human systems.

Page 33, Lines 39-42: Please delete Project Operating Manuals from the list of categorical exclusions and add them to the list of actions requiring and EIS. . Section 385.3 defines a “Project Operating Manual” as a describing the operating criteria for a project or groups of project and is considered a supplement to the System Operating Manual. Since the System Operating Manual requires an EIS pursuant to Section 385.11(a)(4), it is only logical to believe that changes or supplements to the System Operating Manual, like Project Operating Manuals, also require EIS. ~~“(7) Project Operating Manuals for projects or groups of projects that are consistent with the water reservation or allocation for the natural system described in the Project Implementation Report and the Project Cooperation Agreement for the project or group of projects;~~

Page 33, Lines 1-4: Please change “existing uses” to “existing legal sources of water” to ensure consistency the Savings Clause in Section 601(h)(5)(A) of WRDA 2000. “Development, adoption, or revision of protocols or methods such as adaptive assessment; modeling; monitoring; plan formulation and evaluation quantification of water needed for the natural system or other water related needs of the region or protection of existing legal sources of water ~~existing uses~~; methods of determining levels of flood protection; and similar protocols or methods.”

Section 385.12 Consistency with Requirements of the State of Florida

Page 33, Lines 15-18: Change as follows: ~~“To the extent practical, Project Implementation Reports shall include information and analyses as are necessary to facilitate review and approval of projects by the non-Federal sponsor and the State pursuant to the requirements of Florida law. Congressional authorization shall not be sought prior to approval of Project components under State law.”~~ This language was added prohibiting the U.S. Army Corps of Engineers from seeking Congressional authorization of a Project Implementation Report prior to the South Florida Water Management District receiving approval of the project component under state law. CERP has been characterized as a partnership between the Federal government and the State of Florida. In a true partnership all the partners are on equal footing. Giving the U.S. Army Corps of Engineers the authority to seek Congressional authorization of a Project Implementation Report before the South Florida Water Management District obtains State authorization or despite the District’s inability to obtain state authorization is not reflective of a true partnership arrangement. Therefore, new language was needed to require both State and

Federal approval of the Project Implementation Report before either party is permitted to move forward with the project.

Section 385.15 Consultation and Coordination

Page 34, Lines 13-30: Please change as follows to reflect the clarified definition of coordination and consultation as previously proposed the definition section:

“(a) As appropriate, the Corps of Engineers and the South Florida Water Management District or other non-Federal sponsor shall engage in consultation ~~with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies~~ as part of the implementation process for the Plan. The time for, and extent of, consultation shall be appropriate for, and limited by, the activity involved.

(b) The Corps of Engineers and the non-Federal sponsor shall engage in coordinateion in order implementation activities and the preparation of documents with other Federal, State and local agencies to fulfill the requirements of Federal and State legislation such as the Fish and Wildlife Coordination Act; the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the National Historic Preservation Act, and the Endangered Species Act.

~~(b)The Corps of Engineers and the non Federal sponsor shall coordinate Plan implementation activities with the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida in accordance with Executive Order 13084 "Consultation and Coordination with Indian Tribal Governments" and other applicable policies.”~~

Section 385.16 Public Outreach

Page 35, Lines 13-19: Please change as follows:

“(2) ~~As appropriate,~~ Project Management Plans shall include information concerning outreach activities to be undertaken during the implementation of the project or activity.

(3) ~~As appropriate,~~ Project Delivery Team meetings and RECOVER meetings shall be open to attendance by the public. The public shall be notified in advance of these meetings through e-mail, posting on a web site, or other appropriate means”.

Page 35, Lines 22-36: Please change as follows:

“(1) The Corps of Engineers and the non-Federal sponsor shall, ~~as appropriate,~~ develop and conduct public outreach activities to ensure that socially and economically disadvantaged individuals, including individuals with limited English proficiency, are provided opportunities to review and comment during implementation of the Plan.

(2) ~~As appropriate,~~ Project Management Plans shall include information concerning outreach activities to socially and economically disadvantaged communities, including individuals of limited English proficiency to be undertaken during the implementation of the project or activity.

(3) ~~To the extent appropriate, the~~ Corps of Engineers and the non-Federal sponsor shall make project and program information available in languages other than English for individuals of limited English proficiency.

(4) ~~To the extent appropriate, the~~ Corps of Engineers and the non-Federal sponsor shall provide translators or similar services at public meetings where a significant number of participants are expected to have limited English proficiency.”

Section 385.17 Environmental and Economic Equity

Page 35, Lines 39-42: Please change as follows: “In carrying out implementation activities for the Plan, the Corps of Engineers and the non-Federal sponsor shall, ~~to the extent the District Engineer deems appropriate, or as otherwise as provided by applicable law,~~ undertake environmental and economic equity activities to:...”

Page 36, Lines 19-21: Change as follows: “~~As appropriate,~~ Project Management Plans shall include information concerning environmental and economic equity activities to be undertaken during the implementation of the project or activity.”

Section 385.18 Restoration Coordination and Verification (RECOVER)

Page 36, Lines 33-36: Change as follows to substitute the U.S. Army Corps of Engineers, the South Florida Water Management District and other Non-Federal Sponsors for the term “decision makers.” Under the existing language, it is unclear to whom RECOVER provides advice and recommendations. “RECOVER ~~will~~ shall organize and apply scientific and technical information in ways that, in its judgment, are most effective in supporting the achievement of the system-wide goals and purposes of the Plan. RECOVER shall provide advice and recommendations to ~~decision makers~~ the Corps of Engineers, the South Florida Water Management District and other non-Federal sponsors.”

Page 37, Lines 1-6: Change as follows to ensure local government participation in the RECOVER Leadership Group. Section 601(h)(3)(C) of WRDA 2000 requires the programmatic regulations to establish a process. A procedure that leaves the decision of which other Federal, State or local government agencies, if any, to include in RECOVER to the discretion of the U.S. Army Corps of Engineers and the South Florida Water Management District does not describe any discernable process that can be used to measure their decision against the three principles listed in Section 601(h)(3) of WRDA 2000. Therefore, the deleted language conflicts with WRDA 2000. “The Corps of Engineers and the South Florida Water Management District shall determine the structure and functions of the RECOVER Leadership Group, but membership shall include the Department of Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Indians, and ~~may include~~ other Federal, State, or local government agencies.”

Page 37, Lines 12-15: Change as follows to ensure consistency with the overarching purpose of CERP: “*RECOVER shall, as appropriate, (1) develop performance measures and targets for evaluating and assessing the Plan in achieving its system-wide goals and purposes, which include restoration of the ~~natural system, as well as~~ south Florida ecosystem while providing for other water-related needs of the region including water supply and flood protection.*”

Page 37, Lines 41-45: Please change as follows to add the phrase “including Performance Measures, Targets and Evaluation of alternative plans” because these tasks are specifically assigned to RECOVER by other sections of the programmatic regulations. Also, the word “developed” was added so that the sentence now refers to documents prepared “or developed” by RECOVER because this term is used elsewhere in programmatic regulations with respect to RECOVER. Finally, the phrase “may be approved by” was added to clarify that RECOVER is not an independent entity and eventually its work must be approved or accepted by its sponsors, the U.S. Army Corps of Engineers and the South Florida Water Management District. “*Any documents, reports, or recommendations, including performance measures, targets and evaluation of alternative plans prepared or developed by RECOVER shall not be self-executing ~~but~~ and, shall be considered and may be approved by the Corps of Engineers and the South Florida Water Management District, in consultation ~~with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies.~~*” Also, please clarify the term “shall be considered” as it applies to the reports, documents and recommendations prepared by RECOVER.

Page 38, Lines 1-2: Section 601(h)(3)(C) WRDA 2000 requires the programmatic regulations to establish a process. A procedure that leaves the decision as to whether protocols will be developed or recommended to RECOVER’s sole discretion does not describe any discernable process that can be used to measure its decision against the three principles listed in Section 601(h)(3) of WRDA 2000. Please change as follows: “*~~At its discretion, RECOVER may recommend develop~~ protocols for approval by the Corps of Engineers and the South Florida Water Management District, as necessary, in accordance with §385.8, to assist in carrying out its responsibilities.*”

Page 38, Lines 12-17: Please change as follows: “(j) ~~As appropriate,~~ RECOVER shall provide opportunities for public comment at its meetings and for review of its draft documents by the public before they are finalized. (k) ~~As appropriate,~~ RECOVER shall consider seeking independent scientific review or other similar assistance in carrying out its responsibilities, including review of documents developed by RECOVER.”

Section 385.20 Independent Scientific Review

Page 38, Line 44- Page 39, Line 4: Please change as follows to recognize that the independent scientific review panel may inquire as to the assessment of ecological indicators and other measures of progress towards meeting the other water-related needs of the region. The current language indicates that the panel may only inquire as to the assessment of ecological indicators

and other measures of progress towards achieving restoration of the natural system. Referring to the restoration of the natural system without also referring to the provision of water for other water-related needs of the region is not consistent with the objectives of CERP. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish a process that ensures that all objectives of CERP are achieved. "RECOVER shall cooperate with the independent scientific review panel constituted pursuant to Section 601(j) of the Water Resources Development Act of 2000 (114 Stat. 2691) on activities conducted by the panel including assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system and meeting the other water-related needs of the region or their review of the Plan's progress toward achieving the natural system restoration goals of the Plan and meeting the other water-related needs of the region, and preparation of the biennial report to Congress by the panel. RECOVER shall consider recommendations made by such panel."

Section 385.22 Project Management Plans

Page 39, Lines 26-30: Please change as follows to reflect the clarified definition of "consultation" previously proposed in the definition section: "*The Corps of Engineers and the non-Federal sponsor, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and other Federal, State, and local agencies, shall develop and approve a Project Management Plan prior to initiating activities on a project.*"

Page 39, Line 45: Please specify when, where and how the "opportunities" for public review and involvement will be provided.

Page 40, Lines 1-2: Please change as follows: "*provide, to the extent practical, budget and schedule information for the project; and*"

Page 40, Lines 8-15: Please change as follows to reflect the clarified definition of "consultation" previously proposed in the definition section: "*The Corps of Engineers and the non-Federal sponsor, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and other Federal, State, and local agencies, shall revise the Project Management Plan after completion of key major project development products to reflect the changes in the project's scope or to reflect additional or better understanding of the project's development resulting from the completion of a decision document or design/acquisition document.*"

Section 385.23 Project Implementation Reports

Page 40, Lines 19-26: Please change as follows to reflect the clarified definition of "consultation" previously proposed in the definition section: "*Prior to implementation of a project, the Corps of Engineers and the non-Federal sponsor, and, to the extent practical or as required by law, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of*

Florida, and other Federal, State, and local agencies shall complete a Project Implementation Report addressing the project component's economic and environmental benefits, engineering feasibility, and other factors required by section 601(h)(4)(A) of the Water Resources Development Act of 2000 (114 Stat. 2689)."

Page 40, Line 40-43: Please insert the following to require the identification of the appropriate quantity, timing and distribution of water required for other water-related needs of the region, including water supply and flood protection in each Project Implementation Report. The current language only requires identification of the appropriate quantity, timing and distribution of water dedicated and managed for the natural system. Requiring the Project Implementation report to identify the quantity, timing and distribution of water dedicated and managed for the natural system without also requiring the identification of the quantity, timing and distribution of water for other water-related needs of the region is not consistent with the objectives of CERP. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish a process that ensures that all objectives of CERP are achieved. "(v) identify the appropriate quantity, timing and distribution of water dedicated and managed for the natural system; (vi) identify the appropriate quantity, timing, and distribution of water required for other water related needs of the region, including water supply and flood protection (vii) identify the amount of water to be reserved or allocated for the natural system under state law;

Page 41, Lines 5-7: Change as follows: *"include information, ~~as applicable~~, necessary for the non-Federal sponsor to address the requirements of appropriate sections of the Florida Statutes, and other applicable planning and reporting sections of Florida law."*

Page 41, Lines 16-20: Change as follows: *"~~To the extent appropriate, the~~ Corps of Engineers and the non-Federal sponsor shall formulate and evaluate ~~d~~ternative plans to better define, refine, and/or optimize components and/or to investigate more cost-effective ways to achieve the same or greater benefits while maximizing the project's contribution towards the system-wide goals and purposes of the Plan."*

Page 41, Lines 37-49: Please change as follows: *"(i) recommend develop a protocol for approval by the Corps of Engineers and the South Florida Water Management District in accordance with §385.8 that describes the procedures to be used for the evaluation of alternative plans from a system-wide perspective by RECOVER;"*

Page 42, Lines 11-12: Please change as follows: *"The NEPA documentation shall be integrated into the Project Implementation Report ~~whenever possible~~."* Section 601(h)(3)(C) of WRDA 2000 requires the programmatic regulations to establish a process. A procedure that leaves the decision of whether to integrate NEPA documentation in the Project Implementation Report to the discretion of the U.S. Army Corps of Engineers based on what it believes is possible does not describe any discernable process that can be used to measure its decision against the three principles listed in Section 601(h)(3) of WRDA 2000.

Page 42, Lines 17-20: Please change as follows to reflect the clarified definition of “consultation” previously proposed in the definition section: *“The Corps of Engineers and the non-Federal sponsor shall engage in coordination ~~with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Florida Fish and Wildlife Conservation Commission, and other appropriate agencies~~ in the preparation of a Project Implementation Report, as required by applicable law.”*

Page 42, Line 33: Please identify the applicable law.

Page 43, Line 15: Please change as follows: *“The Corps of Engineers and the South Florida Water management District shall develop and adopt a protocol in accordance with section 385.8 that describes the format ~~and content~~ to be generally used in the preparation of a Project Implementation Report.”* Section 601(h)(3)(C) of WRDA 2000 requires the programmatic regulations to establish a process. A procedure that allows the U.S. Army Corps of Engineers and the South Florida Water Management District to dictate the content of Project Implementation Reports by protocol and then gives them the discretion to only “generally” follow their protocols does not describe any discernable process that can be measured against the three principles listed in Section 601(h)(3) of WRDA 2000. Therefore, the deleted language conflicts with WRDA 2000.

Section 385.24 Project Cooperation Agreements

Page 43, Line 28: Please insert the following to ensure appropriate allocations of water are made for all users: *“(c) Verification that other water needs will be satisfied. Prior to execution of the Project Cooperation Agreement, the District Engineer shall verify that the South Florida Water Management District or the Florida Department of Environmental Protection has made available for allocation the total amount of water required for other water related needs of the region, including water supply and flood protection, as described in the Project Implementation Report for that project.*”

Page 43, Lines 29-33: The requirement for Project Cooperation Agreements to include a provision that reservations or allocations remain in effect and not be diminished for the life of the Plan is in conflict with Section 373.223(4) of the Florida Statutes, infringes on the State’s authority, hurts all stakeholders by reducing the ability to make changes in the event a project does not meet expectations after construction and operation, and imposes restrictions that are not otherwise specified by WRDA. This language should be changed as follows to provide the ability to adjust reservations based on actual project performance: *“The Project Cooperation Agreement shall include a provision that the reservation or allocation of water for the natural system made pursuant to State law shall ~~remain in effect for as long as the Plan is authorized and shall not be diminished unless the Corps of Engineers expressly agrees to such change~~” be adjustable.”*

Page 43, Lines 35-43: Please change as follows to ensure consistency with language of the Savings Clause in WRDA 2000: *“The Project Cooperation Agreement shall include a provision*

~~that the Corps of Engineers or the non-Federal sponsor shall not: (1) eliminate or transfer existing legal sources of water until a new source of comparable quantity and quality as that available on the date of enactment of the Water Resources Development Act of 2000 (114 Stat. 2680) is available to replace the water lost as a result of implementation of the Plan; or (2) reduce levels of service for flood protection that are in existence on the date of enactment of the Water Resources Development Act of 2000 (114 Stat. 2680) and are in accordance with applicable law until a new source of water supply of comparable quantity and quality as that available on the date of enactment of the Water Resources Development Act of 2000 (114 Stat. 2680) is available to replace the water to be lost as a result of implementation of the Plan, the Secretary and the non-Federal sponsor shall not eliminate or transfer existing legal sources of water, including those for and agricultural or urban water supply; allocation or entitlement to the Seminole Indian Tribe of Florida under section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e); the Miccosukee Tribe of Indians of Florida; water supply for Everglades National Park; or water supply for fish and wildlife. The Project Cooperation Agreement shall also include a provision that implementation of the Plan shall not reduce levels of service for flood protection that are (i) in existence on the date of enactment of the Water Resources Development Act of 2000 (114 Stat. 2680); and (ii) in accordance with applicable law.~~

Section 385.25 Operating Manuals

Page 44, Lines 1-6: Please change as follows to reflect the clarified definition of “consultation” previously proposed in the definition section: ~~“The Corps of Engineers and the South Florida Water Management District or other non-Federal sponsors, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, shall develop Operating Manuals to ensure that the goals and purposes of the Plan are achieved.”~~

Page 44, Line 17: Please define “significant modification”.

Page 44, Line 31: Please change as follows to require Operating Manuals to be consistent with the water identified for other water-related needs of the region, including water supply and flood protection. The current language only requires Operating Manuals to be consistent with the water reservation or allocation for the natural system. Requiring the Operating Manuals to be consistent with the reservation or allocation for the natural system without also requiring them to be consistent with the water identified for other water-related needs of the region, including water supply and flood protection is not in accordance with the objectives of CERP. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish a process that ensures that all objectives of CERP are achieved. “Operating manuals shall be consistent with the water reservation or allocation for the natural system, the water allocation for other water-related needs of the region, including water supply and flood protection and the savings clause provisions described in the Project Implementation report and the Project Cooperation Agreement and the provisions of sections 385.30(d) and 385.31.”

Page 44, Lines 26-30: Please change as follows: *“~~As appropriate, the South Florida Water Management District Shortage Plan shall be incorporated into the Operating Manuals, as part of the Drought Contingency Plan. The Water Shortage Plan and the Drought Contingency Plan shall be consistent with the water reservation or allocation for the natural system described in the Project Implementation Report and the Project Cooperation Agreement.~~”* Drought Contingency Plans, if mandated, should conform to the South Florida Water Management District’s Water Shortage Plan, which is required under State law.

Page 44, Lines 31-34: Please change as follows to require Operating Manuals to reflect the operational criteria used in identification of water for other water-related needs of the region, including water supply and flood protection. The current language only requires Operating Manuals to reflect the operational criteria used in identification of water to be reserved or allocated for the natural system. Requiring the Operating Manuals to reflect the operational criteria used in identification of water to be reserved or allocated for the natural system without also requiring them to reflect the operational criteria used in identification of water for other water-related needs of the region, including water supply and flood protection is not in accordance with the objectives of CERP. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish a process that ensures that all objectives of CERP are achieved. *“Operating Manuals shall reflect the operational criteria used in the identification of water to be reserved or allocated for the natural system, the water allocation for other water related needs of the region, including water supply and flood protection and the savings clause provisions described in the Project Implementation Report or Project Cooperation Agreement.”*

Page 44, Line 35: Please clarify the type of adjustments which may be made to the operating manuals.

Page 44, Line 42 through Page 45, Line 2: Please change as follows: *“~~The Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, to the extent practical, shall develop a System Operating Manual that provides a system-wide operating plan for the operation of projects to ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan are achieved.~~”*

Page 45, Lines 5-8: Change as follows to reflect that operating manuals should be based on actual system and/or project performance: *“~~The System Operating Manual shall be revised whenever, in the discretion of the Corps of Engineers and the non-Federal sponsor, operational changes are made that have system-wide effects or prior~~ after to the completion of new projects that have system-wide effects.”*

Page 45, Lines 24-25: Change as follows to reflect that operating manuals should be based on actual system and/or project performance: *“~~The final Project Operating Manual shall be completed before~~ after completion of the operational testing and monitoring phase of the project.”*

Section 385.26 Master Implementation Sequencing Plan

Page 46, Lines 4-9: Please change as follows to reflect the clarified definition of “consultation” previously proposed in the definition section: *“The Corps of Engineers and the South Florida Water Management District, in consultation ~~with the Department of the Interior, the Florida Department of Environmental Protection, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and other Federal, State, and local agencies,~~ shall develop a Master Implementation Sequencing Plan that includes the schedule and sequencing of projects based on the best finding, technical, contracting and other information available.”*

Page 46, Lines 12-13: Please change as follows: *“...needs of the region, including water supply and flood protection,~~to the extent practical given funding, engineering, and other constraints.~~”*

Page 46, Line 14-16: Please change as follows: *“When not otherwise required by applicable law,~~in the discretion of the District Engineer,~~ the public may be given notice and opportunity to comment on the Master Implementation Sequencing Plan.*

Page 46, Lines 22-26: Please change as follows to reflect the clarified definition of “consultation” previously proposed in the definition section: *“The Corps of Engineers and the South Florida Water Management District, in consultation ~~with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies,~~ shall annually review the Master Implementation Sequencing Plan.”*

Page 46, Lines 33-35: Please change as follows: *“When not otherwise required by applicable law,~~in the discretion of the District Engineer,~~ the public may be given notice and opportunity to comment on the Master Implementation Sequencing Plan.”*

Section 385.27 Adaptive Assessment Program

Page 46, Lines 38-45: Please change to include the consideration of effects on all users during the adaptive assessment program and to reflect the clarified definition of “consultation” previously proposed in the definition section: *“The Corps of Engineers and the South Florida Water Management District, in consultation ~~with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State and local agencies,~~ shall establish an adaptive assessment program to evaluate ~~system~~ responses of all users within the ecosystem to implementation of the Plan, to determine whether or not they match expectations, including the achievement of interim goals, and to determine if the Plan should be modified in order to achieve the goals and purposes of the Plan.”*

Page 47, Lines 5-8: RECOVER is charged with developing and implementing a system-wide monitoring plan using ecological conceptual models. Will the proposed models assess performance measures, establish base-line variability and address uncertainties for users other

than the natural system? If not, additional modeling must be used to assess system-wide impacts, including urban water supply.

Page 47, Line 21: Please clarify who will deem it necessary for RECOVER to prepare an adaptive assessment report.

Section 385.28 Revisions to the Comprehensive Everglades Restoration Plan

Page 47, Lines 40-45: Please change as follows to reflect the clarified definition of “consultation” previously proposed in the definition section: *“Whenever necessary to attain the goals and purposes of the Plan or to improve performance of the Plan, the Corps of Engineers and the South Florida Water Management District, in consultation ~~with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies,~~ shall prepare a Comprehensive Plan Modification Report.”*

Page 48, Line 28: Please clarify how when and where opportunities will be provided for the public to review the draft Comprehensive Plan Modification Report and NEPA documentation.

Section 385.29 Revisions to Models and Analytical Tools

Page 49, Lines 6-14: Please change as follows to reflect the clarified definition of “consultation” previously proposed in the definition section: *“In carrying out their responsibilities for implementing the Comprehensive Everglades Restoration Plan and these regulations, the Corps of Engineers and the non-Federal sponsor shall utilize the models and analytical tools that they believe, ~~in their discretion,~~ are most appropriate for conducting analyses for the planning, design, construction, operation, and assessment of projects. To the extent practical or as otherwise provided by law, this shall be done in consultation ~~with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies.~~”*

Page 49, Lines 16-25: Please change as follows to include other users and reflect the clarified definition of “consultation” previously proposed in the definition section: *“The Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors, may periodically revise models and analytical tools or develop new ones as needed. Whenever models and analytical tools are significantly revised or new ones developed, the Corps of Engineers and the South Florida Water Management District, in consultation ~~with the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies,~~ shall reanalyze the pre-CERP baseline condition using the revised models and analytical tools so as to provide a similar basis for analyzing the performance of alternative plans, and the identification of water to be reserved or allocated for the natural system and the identification of water for other water-related needs of the region, including water supply and flood protection”*

Section 385.30 Achievement of Project Benefits

Page 50, Lines 1-2: Please change the title to read “*ENSURING PROTECTION OF THE NATURAL SYSTEM WATER AVAILABILITY CONSISTENT WITH THE GOALS AND PURPOSES OF THE PLAN.*” The current title is not consistent with the objectives of CERP because it omits any mention of the need to provide for other water-related needs of the region, including water supply and flood protection. According to Section 601(h)(3)(C) of WRDA 2000, the programmatic regulations must establish a process that ensures that all objectives of CERP are achieved.

Page 50, Lines 5-12: Change as follows to ensure the pre-CERP baseline includes all users and uses and to reflect the clarified definition of “consultation” previously proposed in the definition section: “*The Corps of Engineers and the South Florida Water Management District in consultation with ~~the Department of the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies,~~ shall develop the pre-CERP baseline to determine the quantity, timing and distribution of water made available to all users by the existing Central and Southern Florida Project on the date of enactment of section 601 of the Water Resources Development Act of 2000 (114 Stat.2680).*”

Page 50, Lines 14-25: Change as follows to include all water related needs of the region are considered: “*~~To the extent practical,~~ each Project Implementation Report shall consider whether the pre-CERP baseline quantity of water available for the natural system and whether the pre-CERP baseline quantity of water available for other water related needs of the region, including water supply and flood protection is still available. for the natural system. If not, the Project Implementation Report shall consider the loss of pre-CERP baseline water availability in identifying the quantity, timing, and distribution of water to be made available for ~~the natural system~~ or water to be made available for other water related needs of the region including water supply and flood protection by a project component.”*

Page 50, Lines 42-46: Please change as follows to ensure consistency with the Savings Clause of WRDA 2000 and the goals of CERP. The phrase, “existing legal sources of water” is substituted for the phrase, “uses transferred to new sources” to ensure consistency with the Savings Clause in Section 601(h)(5)(A) of WRDA 2000. The phrase, “Levels of Service for Flood Protection” was substituted for the phrase, “levels of flood protection” to better track the Savings Clause in Section 601(h)(5)(B) of WRDA 2000. Finally, language is suggested to require the U.S. Army Corps of Engineers and the South Florida Water Management District to take into account the goal of providing water for other water-related needs of the region in the protocol to be developed regarding the preparation of Project Implementation Reports. The current language only requires them to take into account the objective of restoration of the natural system. Requiring the U.S. Army Corps of Engineers and the South Florida Water Management District the objective of restoration of the natural system, without also requiring them to take into account the objective of providing water for other water-related needs of the region in the protocol to be developed regarding the preparation of Project Implementation Reports is not in accordance with the objectives of CERP. According to Section 601(h)(3)(C) of WRDA 2000, the

programmatic regulations must establish a process that ensures that all objectives of CERP are achieved. *“The protocol shall take into account the natural fluctuation of water made available in any given year; the objective of restoration of the natural system; the goal of providing for the other water-related needs of the region; the need for protection of existing ~~uses transferred to new sources~~ legal sources of water; the need to maintain existing levels of service for flood protection; contingencies for drought protection; and the need to identify the additional quantity, timing, and distribution of new water made available by a new project component while maintaining a system-wide perspective on the amount of water made available by the Plan.”*

Page 51, Line 11: Please insert the following to ensure identification and accounting of water for other users within the ecosystem:

“(d) Identification of Water Allocated for Other Water-Related needs of the Region

(1) Each Project Implementation Report shall identify the appropriate quantity, timing and distribution of water dedicated and managed for other water-related needs of the region, including water supply and flood protection.

(2) The Corps of Engineers and the South Florida Water Management District shall develop and adopt a Protocol in accordance with §385.8 for preparing Project Implementation Reports that identifies the appropriate quantity, timing and distribution of water dedicated and managed for other water-related needs of the region, including water supply and flood protection and identifies the amount of water to be allocated for other water-related needs of the region.

(i) Project Implementation Reports approved before the date of promulgation of these programmatic regulations or the adoption of the protocol may use whatever method that, in the District Engineer’s discretion, and in cooperation with the South Florida Water Management District and the State of Florida, is deemed appropriate.

(ii) The Protocol shall take into account the natural fluctuation of water made available in any given year, the objective of restoration of the natural system; the goal of providing for the other water-related needs of the region; the need for protection of existing legal sources of water; the need for maintaining existing levels of service for flood protection; contingencies for drought protection; and the need to identify the additional quantity, timing and distribution of new water made available by a project component while maintaining a system-wide perspective on the amount of water made available by the Plan.

(iii) The Protocol may express the quantity, timing and distribution of water in stage duration curves; exceedance frequency curves; quantities available in average, wet, and dry years; or any other method which, in the District Engineer’s discretion, and in cooperation with the South Florida Water Management District and the State of Florida is deemed appropriate.

(iv) The Protocol shall provide for re-examination of actual performance after a project component has been in operation for an appropriate period of time.”

Page 51, Lines 23-29: Establishing operational priorities will determine the allocation of water which conflicts with State law and pre-empts state authority. The deleted language constitutes a

de facto Federal reservation and limits the State of Florida's discretion with respect to the reservations adopted under State law. We recommend removal of this provision from the federal regulation. "in the interim during preparation of this Project Implementation Report, operation of the project shall be consistent with the purposes of the project Component as authorized by Congress and approved under State law. ~~In the absence of specific purposes for a project component in the Congressional authorization, then the operation of a project component generally should be based on providing water in accordance with the following priorities: the first operational priority will be uses transferred from existing legal sources of water, then, "new water" for restoration of the natural system, and then "new water" for other uses of water.~~"

Section 385.31 Compliance with Savings Clause Provisions

Page 51, Lines 32-37: Change as follows to ensure consistency with the Savings Clause of WRDA 2000: "*Project Implementation Reports shall include analyses to determine if existing legal sources of water are to be eliminated or transferred as a result of project implementation. If implementation of the project shall cause ~~a~~ the elimination or transfer of existing legal sources of water, then the Project Implementation report shall include an implementation plan that ensures that such elimination or transfer shall not occur until after the project is constructed and operating as intended and is providing a new source of water supply of comparable quantity and quality of water to the source of water supply that is being eliminated or transferred."*

Page 51, Lines 43-44: Please clarify how the pre-CERP baseline will be used in determining existing levels of service for flood protection.

Page 52, Lines 3-5: Please change as follows: "*If so, then the recommended plan shall be modified as necessary to ensure that ~~adverse effects on the existing level of service are mitigated or eliminated~~ the level of service for flood protection is not less than that provided as of the date of enactment of WRDA 2000.*"

Page 52, Lines 6-12: Please change as follows: "*In developing alternative plans for evaluation during the preparation of the Project Implementation Report, The Corps of Engineers and the non-Federal sponsor may shall consider opportunities to provide greater levels of service or to provide flood protection in locations where there is currently no flood protection, provided that greater levels of service or the provision of flood protection is consistent with the goals and purposes of the Plan and the provisions of section 601(f)(2)(B) of the Water Resources Development Act of 2000 (114 Stat. 2686).*"

Section 385.32 Interim Goals

Page 52, Lines 16-21: Please change as follows to ensure consistency with the goals of CERP and to reflect the clarified definition of "consultation" previously proposed in the definition section: "*The Corps of Engineers and the South Florida Water Management District Department of the Army, the Department of the Interior, and the South Florida Water Management District, in consultation ~~with the Micoosukee Tribe of Indians of Florida, the~~*

Seminole Tribe of Florida, and other Federal, State, and local agencies, shall establish interim goals to facilitate interagency planning and provide a means by which the restoration success of the Plan may be evaluated throughout the implementation process.”

Page 52, Lines 34-36: Please change as follows to ensure consistency with WRDA 2000: “include ~~measurable standards~~ performance standards for meeting ~~concerning~~ other water-related needs of the region ~~goals and purposes of the Plan,~~ including water supply and increasing water supplies for urban, agricultural, industrial and other users and maintaining improving and maintaining flood protection;

Page 53, Lines 1-3: Please change as follows: “ensure achievement of benefits to the natural system, and all other water needs ~~users, in progression,~~ until final achievement of the goals and purposes of the Plan can be measured and reported.

Page 53, Lines 33-39: Please change as follows to ensure balance when reviewing RECOVER work products. “*Upon receipt of a final report and set of recommendations from RECOVER, the Corps of Engineers and Department of the Army, the Department of the Interior and the South Florida Water Management District shall consider the final report and set of recommendations from RECOVER and develop a proposed agreement set forth an initial suite of interim goals with dates for achievement of the interim goals and the method of measuring and evaluating the progress toward achievement of the interim goals.”*

Page 53, Line 40-42: Please change as follows to reflect the clarified definition of “consultation” previously proposed in the definition section: “*The Corps of Engineers and the South Florida Water Management District ~~Department of the Army~~ shall consult ~~with the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State and local agencies,~~ and shall provide an opportunity for public notice and comment.”*

Page 53, Lines 43-45: Please change as follows to ensure balance: “*After consideration of comments, the Corps of Engineers ~~Department of the Army, the Department of the Interior,~~ and the South Florida Water Management District shall sign the agreement, incorporating any suggestions, which in their judgment, are appropriate.”*

Page 54, Lines 5-11: Please change as follows to ensure balance: “*The Corps of Engineers ~~Department of the Army, the Department of the Interior,~~ and the South Florida Water Management District shall use interim goals to measure performance of the Plan in achieving its goals and purposes. To facilitate the use of interim goals for this purpose, RECOVER shall assess progress towards meeting the interim goals and shall periodically prepare progress reports to the Corps of Engineers ~~Department of the Army, the Department of the Interior,~~ and the South Florida Water Management District on progress towards meeting the interim goals.”*

Page 54, Line 36 through Page 55 Line 2: Please change as follows:

“(1) Whenever the Corps of Engineers and the South Florida Water Management District deem it necessary, but not any less often than every five years, they ~~Corps of Engineers and the South~~

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~~Florida Water Management District shall have RECOVER review the interim goals to determine whether if it should recommend to the Department of the Army, the Department of the Interior and the South Florida Water Management District, that the interim goals incorporated into the agreement required under paragraph (c) of this section should be revised due to changed conditions or new information or analyses.~~

(2) If the Corps of Engineers ~~Department of the Army, the Department of the Interior,~~ and the South Florida Water Management District agree, then RECOVER shall utilize the process described in paragraphs (a) and (b) of this section to prepare new recommendations to assist them in revising the interim goals and adopting the revised goals in a revised agreement.”