

COMMENTS ON THE INITIAL DRAFT OF THE CERP PROGRAMMATIC REGULATIONS DATED DECEMBER 2001

FEBRUARY 14, 2002

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PART 385 -- PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES  
COMPREHENSIVE PLAN

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Authority: Section 601, Public Law 106-541, 114 Stat. 2680; 10 U.S.C. 3013(g)(3); 33 U.S.C. I and  
701; and 5 U.S.C. 301.

PURPOSE AND SCOPE

385.1 Purpose of the Programmatic Regulations.

The purpose of the programmatic regulations is to establish the processes and procedures needed to implement the Comprehensive Everglades Restoration Plan 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.

385.2 Applicability of the Programmatic Regulations.

(a) This regulation applies to all components, projects separable elements and program level activities conducted for implementation of the Comprehensive Everglades Restoration Plan.

(b) Nothing in this regulation shall be interpreted to amend, alter, diminish, or otherwise affect any existing legal water rights of the United States, 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, interim goals, water control plans, operating plans, models, analytical tools, Master Implementation Sequencing Plans, Project Management Plans, Design Document Reports, Operating Manuals, Project Implementation Reports, Project Cooperation Agreements, Comprehensive Plan Modification Reports, and other documents created under these regulations or the 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)~~ (c) Nothing in these regulations are is intended to, or shall be interpreted to, prescribe the

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process for reservation or allocation of water or for regional water management under Florida law. Nor are these regulations intended to, nor shall they be interpreted to, prescribe any other process of Florida water law.

385.3 Definitions.

The following terms are defined for the purposes of Part 385:

~~Adaptive assessment means the use of empirical data and modeling efforts to evaluate the predicted effects of proposed alternative courses of action, process for understanding and reducing uncertainties related to the responses of the south Florida ecosystem to the Plan. Adaptive assessment includes research, monitoring, and assessment.~~

**RG ALTERNATIVE:**

**Adaptive assessment means the use of empirical data and modeling efforts to evaluate the predicted and actual effects of proposed alternative courses of action and the identification of corrective actions necessary to meet project goals. process for understanding and reducing uncertainties related to the responses of the south Florida ecosystem to the Plan. Adaptive assessment includes research, monitoring, and assessment.**

Adaptive implementation means refining the scheduling and design of CERP projects based on the results of the adaptive assessment process.

Adaptive management means using new scientific and technical information to make decisions to change the plan to improve performance.

Adaptive strategy means a systematic plan of action that incorporates new information as necessary to refine the CERP and operations of the C&SF project in South Florida to ensure the success for the CERP and the restoration of the Everglades, including adaptive assessment, adaptive implementation and adaptive management.

Assessment means the evaluation of current conditions in the Everglades based on empirical data from the system-wide Monitoring and Assessment Plan or other relevant sources.

Central and Southern Florida (C&SF) Project means the project for Central and Southern Florida authorized under the heading "CENTRAL AND SOUTHERN FLORIDA in section 203 of the Flood Control Act of 1948 (62 Stat. 1176) and any modification authorized by any other provision of law, including section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680).

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Comprehensive Everglades Restoration Plan (CERP) means the plan contained in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement", dated April 1, 1999 as modified by section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680) or any subsequent modification authorized in law.

**RG ALTERNATIVE/ NEW LANGUAGE**

**Component includes, but is not limited to, storage reservoirs, aquifer storage and recovery facilities, stormwater treatment areas, water reuse facilities, canals, pumps, and seepage management facilities. (See definition of Awater made available@.)**

Concurrence means the role of the Secretary of the Interior and the Governor of Florida with regard to either the programmatic regulations as specified in section 601 (h)(3) of the Water Resources Development Act of 2000 (114 Stat. 2688), or actions pursuant to the programmatic regulations and utilizing a process consistent with the process set forth in section 601(h)(3) of the Water Resources Development Act of 2000 (114 Stat. 2688 ).

Consultation means holding meetings, briefings, telephone conversations and other outreach activities with Federal, State tribal and local agencies and governments to provide information or an exchange of views.

Coordination means the formal exchange of information and views, by letter, report meeting or other prescribed means, between the Corps of Engineers and another agency. Coordination activities are required by and in accordance with purposes and procedures established by Federal policy (public law executive order, agency regulation, memorandum of agreement, and other documents that memorialize policy of the Corps of Engineers.

Current evaluation condition means the conditions predicted (forecast) in the south Florida ecosystem that are modeled to include all of the Project Implementation Reports approved (i.e. Division Engineer=s public notice issued). This condition establishes an evaluation baseline for estimating how much water an individual project makes available.

Design Agreement means the agreement between the Corps of Engineers and a non-Federal sponsor concerning cost sharing for activities related to planning, engineering, design, and other activities needed to implement the Plan.

Design Documentation Report means the document that describes the results of investigations, analyses, and calculations made during the detailed design phase that provides the technical basis for the plans and

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specifications.

District Engineer means the District Engineer of the Corps of Engineers Jacksonville District.

Division Engineer means the Division Engineer of the Corps of Engineers, South Atlantic Division.

Drought Contingency Plan means a plan contained within the Operating Manuals that describes procedures for dealing with drought situations that affect management decisions for operating the projects.

Environmental and economic equity means the fair treatment of all persons regardless of race, color, creed, or national origin, including environmental justice, and the provision of economic opportunities for small business concerns controlled by socially and economically disadvantaged individuals, including individuals with limited English proficiency in the implementation of the Plan.

Environmental justice means identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of a Federal agency's programs, policies, and activities on minority and low-income populations as required by Executive Order 12898.

Evaluation means the process whereby the performance of plans and designs relative to desired objectives is forecast through predictive modeling.

Future without Plan condition means the conditions predicted (forecast) in the south Florida ecosystem through modeling for the year 2050 without implementation of any of the projects of the Plan.

Governor means the Governor of the State of Florida.

Improved or new flood protection benefits mean an increased or new level of service for flood protection that is identified as a goal or objective of a specific PIR and is consistent with applicable law, and which is specifically analyzed and identified in the PIR, by RECOVER and all other CERP processes as a benefit of project implementation, but still subject to change if new information shows that such benefits are no longer consistent with the goals and purposes of the Plan, including restoration goals, or other laws.

Independent scientific review means the process to ensure that scientists who appropriate bodies that are independent of the Corps of Engineers, the South Florida Water Management District, or all other non-Federal sponsors, and all other federal and non-federal participating agencies review and validate the scientific and technical processes and information developed for the Plan.

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Independent Technical Review Team means the team established by the Corps of Engineers and the non-Federal sponsor, to ensure quality control of documents and products produced by the Project Delivery Team through periodic technical reviews.

Indicator means an element or component of the natural or human systems that is expected to be influenced by the Plan, and has been selected to be monitored and measured as representative of a class of system responses.

Interim goal means ~~objectives~~ a prediction of the level for progress that is made at one or more specific time intervals throughout and as a result of ~~for comparatively short-term achievements during the implementation of the Plan~~ to evaluate restoration success, to ensure the restoration of the natural system. Interim goals provide a means of tracking restoration performance prior to achievement of ultimate ecosystem restoration goals, as well as a basis for reporting on the progress made at specified intervals of time towards the restoration of the south Florida ecosystem ~~implementation of the Plan,~~ for improving implementation of and making changes to the Plan, and for periodically evaluating the accuracy of predictions of system responses to the effects of the Plan.

**RG ALTERNATIVE:**

**Interim goal** means ~~objectives~~ **for the level for progress that is made at one or more specific time intervals throughout and as a result of** ~~for comparatively short-term achievements during the implementation of the Plan~~ **to evaluate restoration success, and to ensure the restoration of the natural system.** Interim goals provide a **standard for restoration performance prior to achievement of ultimate ecosystem restoration goals, and a** basis for reporting on the progress made at specified intervals of time towards the **restoration of the south Florida ecosystem** ~~implementation of the Plan,~~ **for improving implementation of and making changes to the Plan,** and for periodically evaluating the accuracy of predictions of system responses to the effects of the Plan.

Levels of service for flood protection that are in existence on the date of enactment of this Act means the water level, flow, or other hydrologic conditions at which damages from such hydrologic conditions would have been expected to occur in a specific community, region, or part of the natural system, based upon the pre-CERP baseline and operations shown to be consistent with authorizations of the C&SF Project and other applicable laws. For the human system, this is generally expressed as a given hydrologic exceedance frequency existing under the pre-CERP baseline.

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Level of service for flood protection means the water level or flow 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.

Monitoring means the systematic process of collecting data related to particular natural and human systems at specified locations and times.

Natural system ~~includes, but is not limited to~~ means all land and water managed by the Federal government or the State within the South Florida ecosystem and includes water conservation areas; sovereign submerged land ([including Lake Okeechobee](#)); Everglades National Park; Biscayne National Park; Big Cypress National Preserve; other Federal or State (including a political subdivision of a State) land that is designated and managed for conservation purposes; and any tribal land that is designated and managed for conservation purposes, as approved by the tribe. [The natural system also includes lands privately held and managed for conservation purposes \(e.g., Corkscrew Swamp Sanctuary, Audubon=s Lake Okeechobee Sanctuaries, etc.\).](#)

New water means water that is made available by a project, [including operations](#), -of the Plan.

Non-Federal sponsor means a legally constituted public body that has full authority and capability to perform the terms of the Project Cooperation Agreement and the ability to pay damages, if necessary, in the event of failure to perform, pursuant to Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b).

Operating Manuals means the set of documents for projects and the entire system used to guide the operation of the projects of the Plan. Operating Manuals include the System Operating Manual and Project Operating Manuals. Operating Manuals may include water control plans, regulation schedules, and operating criteria for project and/or system regulations as well as additional provisions to collect, analyze, and disseminate basic data in order to operate projects to ensure that the goals and purposes of the Plan are achieved.

Outreach means activities undertaken to involve or inform the public about the Plan and activities associated with implementation of the Plan.

Performance measure means an indicator and its target.

Pilot Project Technical Data Report means the report that documents the findings and conclusions from the implementation and testing phases of a pilot project.

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Plan means the Comprehensive Everglades Restoration Plan contained in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999, as modified by section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680), or any subsequent modification authorized in law.

Plans and Specifications means the information required to bid and construct the project detailed in the Project Implementation Report and documented in the Design Documentation Report.

Pre-CERP baseline means the conditions in the south Florida ecosystem that existed ~~on~~ prior to 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 using the 36 year period of record and determined through modeling and includes such things as land use, population, water demand, and operations of the Central and Southern Florida Project that are in accordance with all authorizations for the Central and Southern Florida Project and all other applicable laws, including federal and state environmental laws. ~~The pre-CERP baseline may change as the models are revised or additional data is incorporated into the models.~~

Program-level activities means activities or tasks that support more than one project or that affect the entire implementation program for the Plan.

Project means a component or group of components of the Plan that are implemented together to provide functional benefits towards achieving the goals and purposes of the Plan.

Project Cooperation Agreement (PCA) means the legal agreement between the Department of the Army and a non-Federal sponsor that is executed prior to project construction. The Project Cooperation Agreement describes the financial, legal, and other responsibilities for construction, operation, maintenance, repair, rehabilitation, and replacement of a project.

Project Delivery Team means the inter-agency, interdisciplinary group led by the Corps of Engineers and the non-Federal sponsor that develops the products necessary to implement projects or program-level activities.

Project Implementation Report (PIR) means the report prepared by the Corps of Engineers and the non-Federal sponsor pursuant to section 601 (h)(4)(A) of the Water Resources Development Act of 2000 (114 Stat. 2689) and described in Section 10.3 of the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement", dated April 1, 1999. The Project Implementation Report is a new type of document containing additional project formulation and evaluation as well as more detailed engineering and design. The Project Implementation Report bridges the gap between the conceptual level of detail contained in the "Final Integrated Feasibility Report and Programmatic Environmental Impact

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Statement" and the detailed design necessary to proceed to construction.

Project-level activity means an activity or task that supports implementation of a project.

Project Operating Manual means the manual that describes the operating criteria for a project or group of projects of the Plan. The Project Operating Manual is considered a supplement to the System Operating Manual and presents more detailed information on the operation of a specific project or group of projects.

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 Plan, such as plan formulation and evaluation, adaptive assessment, modeling, quantification of water to be reserved or allocated for the natural system, and similar tasks.

**RG ALTERNATIVE**

**Protocol means a method or methods, the discretion of the Corps of Engineers and the South Florida Water Management District, and specific tasks is appropriate for performing a task necessary to implement the Plan, such as plan formulation and evaluation, adaptive assessment, modeling, quantification of water to be reserved or allocated for the natural system, and similar tasks.**

Public means any individuals, organizations, or unit of government that might be affected by or interested in the implementation of the Plan. The public includes Federal, regional, State, and local government entities and officials, public and private organizations, Native American (Indian) tribes, and individuals.

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 the provisions of Chapter 373.232 223 (4) of the Florida Statutes, or other applicable state law, to legally reserve water from allocation for consumptive use for the protection of fish and wildlife.

Restoration means the level of recovery and protection to the South Florida ecosystem that ensures that it once again achieves and sustains those essential physical and ecological characteristics that defined the pre-drainage, greater Everglades basin. For the physical Everglades, these defining characteristics include recovery of natural patterns of hydrological connectivity and marsh flow, and spatially correct patterns in the depth and duration of surface and ground water, which are consistent with seasonal and multi-year patterns of rainfall. For the living Everglades, restoration means recovery of native plant community composition and distribution patterns that are consistent with historical patterns of topography, soil types, fire, water and soil

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chemistry, salinity and hydrology. For fauna, restoration means recovery of the patterns of production, abundance, distribution, seasonal movements and diversity of animals that are consistent with the dynamics of flooding, drying and flow that characterized the historical freshwater and estuarine landscapes in South Florida. Restoration also means increasing to the maximize extent possible the spatial extent of hydrologically restored wetlands in South Florida, including recovery of the pre-drainage proportions and locations of the major landscape features.

Restoration Coordination and Verification (RECOVER) means the interagency, interdisciplinary group, scientific and technical team established by the Corps of Engineers and the South Florida Water Management District, to ensure that a system-wide perspective is maintained, ensure the highest quality scientific and technical information is applied throughout the implementation process, and ~~to~~ assess, evaluate, and integrate the projects of the Plan with the overall goal of ensuring that the system-wide goals and purposes of the Plan are achieved.

Secretary means the Secretary of the Army, unless indicated otherwise. The Secretary of the Army acts through the Assistant Secretary of the Army (Civil Works) with respect to the Army's civil works program pursuant to 10 U.S.C. 3016.

South Florida ecosystem means the area consisting of the land and water within the boundary of the South Florida Water Management District in effect on July 1, 1999 and includes the Everglades, Lake Okeechobee, Big Cypress, Florida Bay and the Florida Keys, and the contiguous near-shore coastal water of South Florida.

South Florida Water Management District (SFWMD) means the public body constituted by the State of Florida pursuant to Chapter 373.069 of the Florida Statutes.

State means the State of Florida.

Special Project Implementation Report means a report prepared by the Corps of Engineers and the non-Federal sponsor to provide information on a project necessary to fulfill the requirements of Section 601(h)(4)(A) of the Water Resources Development Act of 2000 (114 Stat. 2689).

System Operating Manual means the system-wide Operating Manual ~~for the Plan~~ that provides an integrated framework for operating all of the projects of the Plan and the C&SF Project.

Target means a measure of change by the indicator that is expected ~~or~~ and desired during and following the implementation of the ~~Comprehensive Everglades Restoration Plan~~.

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Technical review means the process that confirms the proper selection and application of established criteria, regulations, laws, codes, principles, and professional procedures to ensure a quality product. Technical review also confirms the constructability and effectiveness of the product and the utilization of clearly justified and valid assumptions and methodologies.

Temporary and enhanced flood protection benefits means increased or new levels of service for flood protection that are the product of the phased construction, monitoring, assessment, the phased implementation of CERP, or of any other temporary or interim condition.

Water control plan means a plan that describes operating criteria for a project or group of projects.

Water made available means the water generated pursuant to from the implementation of the components of the Plan and operation of the C&SF Project. These components include storage reservoirs, aquifer storage and recovery facilities, stormwater treatment areas, water reuse facilities, canals, pumps, and seepage management.

**RG ALTERNATIVE**

**Water made available means the water generated pursuant to ~~from~~ the implementation of the components of the Plan and operation of the C&SF Project. These components include storage reservoirs, aquifer storage and recovery facilities, stormwater treatment are as, water reuse facilities, canals, pumps, and seepage management.**

Water Shortage Plan means the plan developed by the South Florida Water Management District to protect the water resources of the South Florida Water Management District from harm; to assure equitable distribution of available water resources among all water users, including the environment, during times of shortage, consistent with the goals of minimizing adverse ecological, economic, social and health related impacts; to provide advance knowledge of the means by which water apportionments and reductions will be made during times of shortage, and to promote greater security for water use permittees.

With Plan condition means the conditions predicted (forecast) in the south Florida ecosystem through modeling with the Plan in place. As revisions to the Plan are approved the "With Plan condition" will also change.

385.4 Goals and Purposes of the Comprehensive Everglades Restoration Plan

The overarching objective of the Comprehensive Everglades Restoration Plan is the restoration, preservation, and protection of the south Florida ecosystem while providing for other water-related needs of

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the region, including water supply and flood protection. The goal of the Corps of Engineers, in cooperation with non-Federal sponsors, is to implement the Plan to ensure the protection of water quality in, the reduction of the loss of fresh water from, the improvement of the environment of the South Florida ecosystem and to achieve and maintain the benefits to the natural system and human environment described in the Plan, and required pursuant to section 601 of the Water Resources Development Act of 2000 (114 Stat.2680), for as long as the project is authorized.

385.5 Implementation Principles.

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;

RG ALTERNATIVE:

(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.; To the extent that funding, technical or other constraints preclude the provision of all environmental and other water-related needs of the region, the needs of the natural system shall be given priority.

(b) integrate projects and program level activities to achieve the system-wide goals and purposes of the Plan;

(c) operate projects in such a manner that maximizes the system-wide benefits of Restoration, preservation, and protection of the south Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection;

RG ALTERNATIVE:

(c) operate projects in such a manner that maximizes the system-wide benefits of restoration, preservation, and protection of the south Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection; Where there is any conflict between operating projects for the benefit of the natural system and operating projects to provide for other

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water-related needs of the region, the needs of the natural system shall be given priority.

(d) use the principles of adaptive assessment to assess the Plan's success in achieving its goals and purposes and for revising the Plan when necessary to ensure that the goals and purposes of the Plan are achieved; and

RG ALTERNATIVE:

(d) use the principles of adaptive assessment and management to assess the Plan's success in achieving its goals and purposes and for revising the Plan when necessary to ensure that the goals and purposes of the Plan are achieved; and

(e) establish interim goals in order to provide a means by which the success of the Plan in achieving its goals and purposes may be evaluated throughout the implementation process. ensure the protection of the natural system consistent with the goals and purposes of the Plan, including the establishment of interim goals to provide a means by which the restoration success of the Plan may be evaluated throughout the implementation process.

RG ALTERNATIVE:

~~(e) establish interim goals in order to provide a means by which the success of the Plan in achieving its goals and purposes may be evaluated throughout the implementation process.~~ ensure the protection of the natural system consistent with the goals and purposes of the Plan, including the establishment of interim goals to provide a means by which the restoration success of the Plan may be evaluated, and ensured through modifications, throughout the implementation process.

385.6 Concurrence Statements.

[This is a placeholder. As required by section 601(h)(3)(B) of the Water Resources Development Act of 2000 (114 Stat. 2688), the final rule will reference the statements of concurrence or non-concurrence by the Secretary of the Interior and the Governor of Florida on the proposed rule.]

385.7 Limitation on Applicability of Programmatic Regulations.

In accordance with section 601(h)(3)(c)(ii) of the Water Resources Development Act of 2000 (114 Stat. 2689), these regulations expressly prohibit any requirement for concurrence by the Secretary of the Interior or the Governor on Project Implementation Reports, Project Cooperation Agreements, Operating Manuals for individual projects undertaken in the Plan, and any other documents relating to the development, implementation, and management of individual features of the Plan, unless such concurrence is provided for in other Federal or State laws.

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385.8 Development and Adoption of Protocols.

(a) 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~~ with the concurrence of ~~consultation with~~ the Department of the Interior and the State of Florida, and in consultation with the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the Department of Commerce, 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.

(b) Protocols shall be consistent with these programmatic regulations, applicable law, and achieving the goals and purposes of the Plan.

(c) The public shall be given notice and opportunity to comment on protocols prior to their adoption or revision and adopted protocols shall be made available to the public.

(d) Any protocol specifically referenced in these programmatic regulations and developed pursuant thereto shall be incorporated into these regulations during the next review and revision pursuant to ' 385.9.

(e) Any protocol specifically referenced in these programmatic regulations and developed pursuant thereto shall be adopted under this subsection no later than six months after the final regulations' publication date in the Federal Register or June 30, 2003, whichever is sooner.

385.9 Review of Programmatic Regulations.

(a) The Secretary shall review and revise pursuant to (b) the programmatic regulations 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.

(b) 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.

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(c) Within 180 days from the end of the public comment period on the proposed revisions to the programmatic regulations, or such shorter period that the Secretary of the Interior and Governor may agree to, the Secretary of the Interior and the Governor may provide the Secretary with a written statement of concurrence or nonoccurrence with the proposed revised programmatic regulations. ~~revisions~~. A failure to provide a written statement of concurrence or nonoccurrence within such time frame shall be deemed as meeting the concurrency requirements of paragraph (b) of this section. A copy of any concurrency or nonoccurrence statements shall be made a part of the administrative record and referenced in the final revised programmatic regulations. Any nonconcurrency statement shall specifically detail the reason or reasons for the nonconcurrency.

CERP IMPLEMENTATION PROCESSES

385.10 Implementation Process.

(a) Major Steps in the Project Development Process. Due to the size and complexity of the Plan, implementation will be divided into smaller implementable projects. Generally, the Corps of Engineers and the non-Federal sponsor intend to follow the implementation process for projects shown below and in figure 1 in Appendix A:

(1) Project Management Plan. The purpose of the Project Management Plan is to establish the project's scope, schedule, costs, funding requirements, and technical performance requirements, including the various functional areas performance and quality criteria that shall be used to produce and deliver the products that comprise the project.

(2) Project Implementation Report. The Project Implementation Report provides plan formulation and evaluation, engineering and design, economic benefits and estimated costs, and environmental information to bridge the gap between the conceptual design included in the Plan and the detailed design necessary to ready a project for construction.

(3) Design Documentation Report. The Design Documentation Report describes the results of investigations, analyses and calculations made during the detailed design phase and provides the technical basis for the plans and specifications.

(4) Plans and Specifications. Plans and Specifications contain information required to bid and construct the projects detailed in the Project Implementation Report and documented in the Design Documentation Report.

(5) Real Estate Acquisition. The non- Federal sponsor is primarily responsible for acquisition of lands ~~acquires the lands~~, easements, and rights-of-way needed for the project.

(6) Construction. This phase is the actual construction of a project's components.

(7) Operation and Monitoring. After the project has been constructed, it is operated in accordance with the Operating Manuals. Monitoring is also conducted to determine the effectiveness of the project and to provide information that will be used in adaptive assessment.

(b) Pilot Projects.

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(1) The Plan includes pilot projects to address uncertainties associated with certain components such as aquifer storage and recovery, in-ground reservoir technology, seepage management, and wastewater reuse. The purpose of the pilot projects is to determine the feasibility, as well as optimum design of a facility prior to embarking upon full-scale implementation of the feature.

(2) In consultation with the Department of the Interior, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, the ~~The~~ Corps of Engineers and the non-Federal sponsor shall ~~may~~ develop processes and procedures as necessary to implement pilot projects. These processes and procedures shall be consistent with these programmatic regulations and applicable law.

(3) Upon completion of operational testing and monitoring, and in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, the Corps of Engineers and the non-Federal sponsor shall prepare a draft Pilot Project Technical Data Report, documenting the findings and conclusions from the implementation and testing of the pilot project.

(4) The draft Pilot Project Technical Data Report shall be reviewed by RECOVER. As part of its review, RECOVER shall solicit input and recommendations from the independent scientific review panel constituted pursuant to section 601(j) of the Water Resources Development Act of 2000 (114 Stat. 2691). RECOVER shall publish an evaluation report prior to issuance of a final Pilot Project Technical Data Report, which shall contain a response to the RECOVER evaluation report.

(5) The Corps of Engineers and the non-Federal sponsor shall prepare and make public a Final Pilot Project Technical Data Report.

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

(a) Actions Normally requiring an Environmental Impact Statement (EIS) under ' 230.6 of this Chapter. Actions normally requiring an EIS are:

- 1 Comprehensive Plan Modification Report;
- 2 Project Implementation Reports;
- 3 Proposed revisions to sequences of projects substantially deviating from the Plan for reasons other than Congressional authorization or approval by the Secretary, funding, engineering, contract administration or other administrative or technical reasons;
- 4 System Operating Manual and significant changes thereto;
- 5 Project Operating Manual and significant changes thereto;
- 6 Proposed major changes in operation and/or maintenance of completed -projects;
- 7 Changes in projects that increase size substantially or add additional purposes beyond the plan recommended in the Project Implementation Report.

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- 8 Project Cooperation Agreements;
- 9 Master Implementation Sequencing Plan and changes thereto;
- 10 Interim Goals or changes to Interim Goals;
- 11 Changes to water reservations;
- 12 Any protocol specifically referenced in these regulations and which may, individually or cumulatively, have a significant impact on the quality of the environment;
- 13 Any action taken pursuant to these regulations which may, individually or cumulatively, have a significant impact on the quality of the environment.

(b) The District Engineer may consider the use of an environmental assessment (EA) on the types of actions described in paragraph (a) of this section if early studies and coordination show that a particular action, considered individually and cumulatively, is not likely to have a significant impact on the quality of the human environment.

~~(c) Actions normally requiring an EA. In addition to the actions listed in ' 230.7 of this chapter, actions normally requiring an EA, but not an EIS, are:~~

- ~~1 \_\_\_\_\_ Modifications to Project Operating Manuals for projects or groups of projects, not expected to be a major change in operation and/or maintenance; and~~
- ~~2 \_\_\_\_\_ Changes in the System Operating Manual.~~

(d) Categorical Exclusions: In addition to the activities listed in ' 230.9 of this chapter actions listed below when considered individually and cumulatively do not have significant effects on the quality of the human environment and are categorically excluded from NEP A documentation. However the District Engineer should be alert for ~~extraordinary~~ circumstances that may dictate the need to prepare an EA or an EIS.

- (1) Design Documentation Reports;
- (2) ~~Interim Goals or Changes to Interim Goals;~~
- (3) ~~Master Implementation Sequencing Plan;~~
- Project Cooperation Agreements;
- (4) Project Management Plans;
- (5) Plans and specifications for projects; and
- (6) ~~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;~~
- (7) Minor technical changes to the System Operating Manual or Project Operating Manuals, not significant enough to warrant notice and opportunity for public comment under section 601 (h)(4)(B)(ii) of the Water Resources Development Act of 2000

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(114 Stat. 2690); and

~~(8) 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; methods of determining levels of flood protection; and similar protocols or methods.~~

(e) Even though an EA or EIS is not indicated for a Federal action because of a "categorical exclusion", that fact does not exempt the action from compliance with any other Federal law, such as compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, Clean Air Act, and any other applicable law.

385.12 Consistency with Requirements of the State of Florida. The State of Florida has established procedures, requirements, and approvals that are needed before the State or the South Florida Water Management District can participate as the non-Federal sponsor for Comprehensive Everglades Restoration Plan projects. To the extent practical, Project Implementation Reports shall include such 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.

385.13 Design Agreements.

(a) The Corps of Engineers shall execute a design agreement with each non-Federal sponsor prior to initiation of design activities with that non-Federal sponsor.

(b) Any protocols, procedures, policies, or documents developed by the Corps of Engineers or the non-Federal sponsor pursuant to a design agreement shall be consistent with these programmatic regulations.

385.14 Project Delivery Team.

(a) Implementation of the projects of the Plan shall be the responsibility of the Corps of Engineers and the non-Federal sponsor as the implementing agencies for specific projects or programs.

(b) The Corps of Engineers and the non-Federal sponsor shall, to the extent practical, assign individual project managers to be responsible for the successful implementation of projects, and to ensure that projects are planned, designed and constructed consistent with the design agreement, Project Management Plan, and achievement of the goals and purposes of the Plan.

(c) The Corps of Engineers and the non-Federal sponsor shall form a Project Delivery Team to develop the products necessary to implement the project.

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(d) Project Delivery Teams shall be interdisciplinary in composition. Additionally, the Corps of Engineers and South Florida Water Management District or other non-Federal sponsor shall request that the Department of the Interior, the Florida Department of Environmental Protection, [the Department of Commerce](#), the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies participate on the Project Delivery Team. In general, agency participation on the Project Delivery Team shall be the financial responsibility of the participating governmental entity. However, the Corps of Engineers shall provide funding for the U.S. Fish and Wildlife Service's preparation of Coordination Act Reports, as required by applicable law, regulation, or agency procedures.

(e) Should [technical or scientific](#) issues arise within the Project Delivery Team that the team is unable to resolve, the project managers shall [request the assistance of the RECOVER. If issues still cannot be resolved, they may be elevated](#) ~~elevate the issues~~ to the appropriate management at the Corps of Engineers and the non-Federal sponsor consistent with the provisions of the design agreement.

[\(f\) Project Delivery Team 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. Public comment shall be taken at such meetings, and the public shall be able to review draft documents before they are finalized.](#)

385.15 Consultation and Coordination.

(a) As appropriate [and as is otherwise consistent with these programmatic regulations](#), the Corps of Engineers and the South Florida Water Management District or other non-Federal sponsor shall consult with the Department of the Interior, the Florida Department of Environmental Protection, [the US Department of Commerce](#), 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 coordinate implementation activities and the preparation of documents with other Federal, State and local agencies to fulfill the requirement 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.

(c) 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.

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' 385.16 Public Outreach

(a) Goals.

(1) The goal of public outreach is to open and maintain channels of communication with the public in order to: provide information about proposed activities to the public; make the public's desires, needs, and concerns known to decision-makers; provide for consultation with the public before decisions are reached; and consider the public's views in reaching decisions.

(2) In carrying out implementation activities for the Plan, the Corps of Engineers and the non-Federal sponsor shall undertake outreach activities to:

(i) ~~increase~~ ensure general public awareness for the Plan;

(ii) involve interested groups, agencies, tribes and other interested communities in the decision-making process and to incorporate public values into decisions;

(iii) better serve minority communities, persons with limited English proficiency, and socially and economically disadvantaged individuals;

(iv) ensure involvement of traditionally underserved communities, especially those that may be affected by the Plan;

(v) improve the substantive quality of decisions as a result of public participation; and

(vi) reduce conflict among interested and affected parties by building agreement on solutions to emerging issues.

(b) General Requirements.

(1) The Corps of Engineers and the South Florida Water Management District shall provide a transparent, publicly accessible process through which scientific and technical information is requested, used, and translated into policy decisions. The Corps and the District shall hold meetings 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. Public comment shall be taken at such meetings, and the public shall be able to review draft documents before they are finalized.

~~(1)(2)~~ The Corps of Engineers and the non-Federal sponsor shall, ~~as appropriate,~~ develop and conduct outreach activities for each project or program-level activity ~~in order to~~ that shall provide information to the public and ~~to~~ also provide opportunities for involvement by the public.

~~(2)(3)~~ ~~As appropriate,~~ Project Management Plans shall include information concerning outreach activities to be undertaken during the implementation of the project or activity.

~~(3)(4)~~ ~~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. Public comment shall be taken at such meetings, and the public shall be able to review draft documents before they are finalized.

(c) Outreach ~~to~~ in Conjunction with Socially and Economically Disadvantaged Communities.

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(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.

~~(1)(2)~~ (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.

~~(2)(3)~~ (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.

~~(3)(4)~~ (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.

385.17 Environmental and Economic Equity.

(a) Goals. 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 consistent with state and federal law, including to:

(i) promote economic equity throughout the implementation of the Plan through maximum utilization of socially and economically disadvantaged small business concerns and individuals in the performance of prime contract and subcontract awards;

(ii) provide relevant, timely, valid, and reliable socio-economic and environmental justice baseline data for system- wide and project-specific assessments;

(iii) institute environmental justice assessment procedures, according to NEPA guidelines, for all project planning and decision- making;

(iv) provide overall guidance, support, and coordination to project level activities on matters pertaining to socio-economic characteristics, assessments and issues relating to socio-economics and environmental justice;

(v) incorporate and utilize appropriate models, improved methods, and research in the subjects of demography, economics, land use, water use, water conservation, environmental Justice, public involvement, and community-based planning to enhance decision making system- wide and at the project level; and

(vi) evaluate and assess socio-economic parameters of the Plan through development of indicators and performance measures, periodic monitoring of with/without project condition, and the institution and utilization of quantitative and qualitative feedback mechanisms.

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(b) General Requirements.

(1) 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.

(2) As required by applicable laws and policies, the Corps of Engineers and the non-Federal sponsor shall consider and evaluate environmental justice issues and concerns in the implementation of projects.

(3) The District Engineer shall ensure that small business concerns owned and controlled by socially and economically disadvantaged individuals are provided opportunities to participate under section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

385.18 Restoration Coordination and Verification (RECOVER).

(a) The Corps of Engineers and the South Florida Water Management District shall establish and lead, with the Department of Interior, a scientific and technical interagency, interdisciplinary technical and scientific team known as Restoration Coordination and Verification (RECOVER). RECOVER will 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 scientific and technical advice and recommendations to decision-makers.

(b) The Corps of Engineers and the South Florida Water Management District shall request that ~~the Department of the Interior,~~ the Florida Department of Environmental Protection, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies participate on RECOVER. In general, agency participation on RECOVER shall be the financial responsibility of the participating governmental entity.

(c) The Corps of Engineers, ~~and the~~ the South Florida Water Management District, and the Department of the Interior shall establish and jointly chair a RECOVER Leadership Group that shall be responsible coordinating and managing the activities of RECOVER. The Corps of Engineers, ~~and the~~ South Florida Water Management District, and the Department of the Interior shall determine the structure and functions of the RECOVER Leadership Group, but membership shall include the ~~Department of the Interior,~~ ~~the~~ Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, and the Seminole Tribe of Indians, and may include other Federal, State ~~or~~ and local government agencies.

(d) The Corps of Engineers, ~~and the~~ South Florida Water Management District, and the Department of the Interior may create sub-teams or other entities necessary to carry out the responsibilities of RECOVER.

(e) 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 providing for other water-related needs of the region;

(2) conduct evaluations of alternative plans developed during the Project Implementation Report phase from a system- wide perspective in order to evaluate predicted performance of the Plan;

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(3) conduct adaptive assessment activities, including the system-wide monitoring program to assess the actual performance of the Plan;

(4) develop refinements and improvements in the design or operation of of the Plan during all phases of implementation;

(5) develop and refine system-wide models and tools;

(6) conduct activities associated with preparation of Comprehensive Plan Modification Reports;

(7) conduct activities associated with the preparation of Pilot Project Technical Reports;

(8) conduct activities associated with the preparation of Operating Manuals;

(9) develop recommendations for interim restoration goals in accordance with ' 385.32 to provide a means by which the restoration success of the Plan may be evaluated throughout the implementation process, ~~and~~ assessing progress towards achieving these interim goals, and assisting with adaptive management to better ensure achievement of such interim goals;

(10) cooperate with the independent scientific review panel constituted pursuant to section 601(j) of the Water Resources Development Act of 2000 (114 Stat. 2691 );

(11) evaluate new information and science that could have an effect on the Plan; and

(12) prepare information for use in the periodic reports to Congress prepared pursuant to section 601(1) of the Water Resources Development Act of 2000(114 Stat. 2692).

(13) issue an annual report card to the public on the annual progress being made by the Plan in reaching the targets set for certain key indicators and toward restoration goals.

(f) Any documents, reports, or recommendations prepared by RECOVER shall not be self-executing, but shall be considered 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 U.S. Environmental Protection Agency, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies. These documents, reports, and recommendations will be based on an integration and interpretation of the most current scientific and technical information available, and will represent the collective opinions of the interagency, interdisciplinary teams of RECOVER.

(g) At its discretion, RECOVER may develop protocols as necessary, in accordance with ' 385.8, to assist in carrying out its responsibilities.

(h) RECOVER shall assist Project Delivery Teams to insure that ~~in relating system-wide goals and objectives to project design and performance~~ is fully linked to the system-wide goals and objectives of the Plan, and to incorporate, as appropriate, information developed for Project Implementation Reports into the Plan.

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(i) In carrying out its responsibilities, RECOVER shall consider projects that are not part of the Plan, but could affect the ability of the Plan to achieve its goals and purposes.

(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.

' 385.19 Quality Control

(a) The Corps of Engineers and the non-Federal sponsor shall prepare a quality control plan for each product/project to describe the procedures used to ensure compliance with technical and policy requirements during implementation. The quality control plan shall be part of the Project Management Plan.

(b) During development of the Project Management Plan for each project, the Corps of Engineers and the non-Federal sponsor shall establish an Independent Technical Review Team to conduct reviews to ensure that products are consistent with established criteria, guidance, procedures, and policy. To the extent practical, the members of the Independent Technical Review Team shall be independent of the Project Delivery Team and the project being reviewed, and should be knowledgeable of design criteria established for the Plan.

(c) Independent technical review is intended to be a continuous process throughout project implementation. Project managers shall coordinate accomplishment of technical reviews. The Independent Technical Review Team shall document its actions and recommendations and provide reports to the Project Delivery Team at designated points during the implementation process.

' 385.20 Independent Scientific Review.

(a) The Corps of Engineers and the South Florida Water Management District 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), including by responding to requests for information concerning the implementation of the Plan and these programmatic regulations reasonably calculated by the panel to be necessary for the conduct of its activities.

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~~(a)~~(b) Project Delivery Teams 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) and shall consider and respond to recommendations made by such panel.

~~(b)~~(c) 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 or their review of the Plan's progress toward achieving the natural system restoration goals of the Plan, and preparation of the biennial report to Congress by the panel. RECOVER shall consider recommendations made by such panel.

~~(e)~~(d) Notwithstanding the provisions of Section 601 (j) of the Water Resources Development Act of 2000 (114 Stat. 2691), the Corps of Engineers, the State, or the non-Federal sponsor may establish other independent scientific review panels or peer reviews as necessary to provide assistance with implementation activities.

385.21 Dispute Resolution

(a) Disputes with the non-Federal sponsor concerning a Project Cooperation Agreement shall be resolved under the specific procedures of the Project Cooperation Agreement.

(b) Disputes with the non-Federal sponsor concerning design activities shall be resolved under the specific procedures of the design agreement.

(c) All other unresolved issues with the non-Federal sponsor and disputes with the State associated with the implementation of the Plan shall be resolved according to the terms of the Dispute Resolution Agreement developed by the Secretary and the Governor under section 601(i) of the Water Resources Development Act of 2000 (114 Stat. 2691).

' 385.22 Project Management Plan

(a) General Requirements.

(1) The Corps of Engineers and the non-Federal sponsor, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the US Department of Commerce, 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.

(2) The Project Management Plan shall define the activities, and where appropriate, the subordinate tasks, as well as the assignment of responsibility for Completing products such as Project Implementation Reports, Pilot Project Design Reports, Design Documentation Reports, plans

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and specifications, real estate acquisition, construction contracts and construction, and any activities necessary to support the Delivery of the projects.

(3) The Project Management Plan shall include a quality control plan as described in ' 385.19.

(4) The Project Management Plan shall include appropriate activities for RECOVER to evaluate alternative plans from a system- wide perspective during the development of the Project Implementation Report.

(b) Project Management Plan Guidelines. In developing a Project Management Plan, the Corps of Engineers and the non- Federal sponsor shall:

(1) provide opportunities for public review and involvement;

(2) provide, to the extent practical]. budget and schedule information for the project; and

(3) develop and maintain a level of detail commensurate with the current phase of the project (e.g., high level of detail on the activities associated with the completion of a Project Implementation Report with less detail for activities associated with subsequent detailed design and construction phases).

(c) Changes to Project Management Plans. The Corps of Engineers and the non-Federal sponsor, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, [the U.S. Environmental Protection Agency, US Department of Commerce](#), 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.

385.23 Project Implementation Reports.

(a) General Requirements.

(1) 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 U.S. Environmental Protection Agency, the US Department of Commerce, the](#) Miccosukee Tribe of Indians of Florida, the Seminole Tribe 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).

(2) The Project Implementation Report shall:

(i) be consistent with the Plan and the programmatic regulations;

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(ii) comply with all applicable Federal and State laws, including the National Environmental Policy Act, the Endangered Species Act~ the Fish and Wildlife Coordination Act~ the National Historic Preservation Act, the Clean Water Act, the Clean Air Act, and any other applicable law;

(iii) contain sufficient information for proceeding to final design of the project, such as: additional plan formulation and evaluation, engineering and design, economics, environmental analyses, flood damage assessment, real estate analyses and the preparation of supplemental National Environmental Policy Act documents;

(iv) comply with applicable water quality standards and applicable water quality permitting requirements as provided for in section 601(b)(2)(A)(ii) of the Water Resources Development Act of 2000 (114 stat.2681);

(v) identify the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system;

(vi) identify the amount of water to be reserved or allocated for the natural system under State law;

(vii) identify how the component will contribute to achievement of interim restoration goals set forth in and developed pursuant to 385.32;

(viii) identify any temporary flood protection benefits or enhancements that might be produced by the project;

(ix) include an analysis of the expected duration of the temporary flood protection benefits or enhancements and of when they will be expected to change or no longer exist as the result of project development, operation, monitoring, assessment, or additional CERP implementation.

(x) be based on the best available science;

(xi) include an analysis concerning the cost-effectiveness and engineering feasibility of the project;

(xii) include an analysis, prepared by RECOVER as described in paragraph (c)(2) of this section, of the project's effect on achieving the system-wide goals and purposes of the Plan and recommendations, if necessary, concerning modifications to the Plan to ensure that the goals and purposes of the Plan are achieved;

(xiii) include a response, as appropriate, to the RECOVER analysis; and

(xiv) 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.

(3) The Corps of Engineers and the non-Federal sponsor shall develop the Project Implementation Report generally in accordance with the process shown in figure 2 in Appendix A.

(4) The Corps of Engineers and the South Florida Water Management District shall develop and adopt a protocol in accordance with ' 385.8 that describes the major tasks that are generally needed to prepare a Project Implementation Report.

(b) Plan Formulation and Evaluation

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(1) To the extent appropriate or required by law, the Corps of Engineers and the non-Federal sponsor shall formulate and evaluate alternative plans (a) 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, including interim restoration goals set forth in and developed pursuant to 385.32, (b) to comply with applicable law, including the National Environmental Policy Act.

(i) The Corps of Engineers and the South Florida Water Management District shall develop and adopt a protocol in accordance with ' 385.8 that describes the procedures to be used to formulate and evaluate alternative plans and to evaluate their cost effectiveness, and to otherwise comply with applicable law.

(ii) Project Implementation Reports approved before the date of promulgation of these programmatic regulations or the adoption of a protocol may use whatever method that, in the District Engineer's discretion and in cooperation with the non-Federal sponsor, is deemed appropriate and is consistent with applicable law.

(2) The Project Implementation Report shall include the results of the plan formulation and evaluation activities and the cost effectiveness analyses conducted for the Project Implementation Report.

(c) RECOVER System-Wide Performance Evaluation of Alternative Plans.

(1) RECOVER shall evaluate the system-wide performance of alternative plans developed by the Project Delivery Team for the Project Implementation Report, as described in the Project Management Plan. RECOVER shall:

(i) develop a protocol 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;

(ii) develop appropriate system-wide performance measures and targets for evaluating alternative plans; and

(iii) evaluate alternative plans from a system-wide perspective based on analysis of performance relative to the system-wide performance measures and targets developed by the RECOVER team, and relative to interim restoration goals set forth in and developed pursuant to 385.32.

(2) RECOVER shall prepare a report for the Project Delivery Team describing the results of the evaluations of alternative plans from a system-wide perspective, including, as appropriate, recommendations and suggestions for improving the performance of the alternative plans.

**RG ALTERNATIVE:**

**(2) RECOVER shall prepare a report for the Project Delivery Team describing the results of the evaluations of alternative plans from a system-wide perspective, including, as appropriate, recommendations and suggestions for improving the performance of the alternative plans, which shall include identification of an ecologically preferred alternative@.**

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(d) National Environmental Policy Act Documentation

(1) The Corps of Engineers and the non-Federal sponsor shall prepare appropriate NEPA documentation for inclusion in the Project Implementation Report. The NEPA documentation for the Project Implementation Report shall consider the Programmatic Environmental Impact Statement included in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999.

(2) The NEPA documentation shall be integrated into the Project Implementation Report whenever possible and otherwise be completed concurrent with the Project Implementation Report.

(3) Other agencies, as appropriate or required by law, shall be invited to be cooperating agencies in the preparation of the NEPA documentation.

(e) Fish and Wildlife Coordination Act Requirements.

(1) The Corps of Engineers and the non-Federal sponsor shall coordinate 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.

(2) To the extent consistent with existing law, regulations, guidance, and agreements, Coordination may include preparation of the following:

(i) Planning Aid Letter that describes the fish and wildlife resources in the project area and any recommendations to assist the planning process;

(ii) Fish and Wildlife Issues and Recommendations on effects, concerns, and issues about alternative plans; and

(iii) Coordination Act Report that provides the formal views of the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Florida Fish and Wildlife Conservation Commission on alternative plans.

(f) Project Implementation Report Review and Approval Process.

(1) The Corps of Engineers and the non-Federal sponsor shall provide opportunities for review of the draft Project Implementation Report and NEPA document by the public, in accordance with applicable law.

(2) Upon approval of the Project Implementation Report by the Division Engineer and the non-Federal sponsor, the Division Engineer shall issue a public notice announcing completion of the Project Implementation Report based upon (i) his/her endorsement of the findings and recommendations of the District Engineer and the non-Federal sponsor, and (ii) his/her assessment that the report is in accord with current policy. The notice shall indicate that the report has been submitted for Washington level review.

(3) Headquarters, US Army Corps of Engineers shall coordinate the Washington level review in accordance with applicable policies and regulations of the Corps of Engineers. Headquarters, US Army Corps of Engineers shall administer the 30- day state and agency review of the Project Implementation Report as required by law.

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(4) After completion of the policy review, the Chief of Engineers shall transmit the Chief of Engineer's Report to the Assistant Secretary of the Army for Civil Works for review,

(5) For projects authorized by section 601 (b)(2) (C) or section 601 (c) of the Water Resources Development Act of 2000 (114 Stat. 2682 and 2683), the Assistant Secretary of the Army for Civil Works shall review and approve the Project Implementation Report prior to implementation of the project. For all other projects, the Assistant Secretary of the Army for Civil Works shall transmit the Project Implementation Report to Congress for authorization.

(6) As appropriate, the Project Implementation Report may be used by the non- Federal sponsor as the basis for obtaining approval under applicable Florida law.

(g) Content of Project Implementation Reports. The Corps of Engineers and the South Florida Water Management District shall develop and adopt a protocol in accordance with ' 385.8 that describes the format and content to be generally used in the preparation of a Project Implementation Report.

385.24 Project Cooperation Agreements.

(a) General. Prior to initiating construction or implementation of a project, the Corps of Engineers shall execute a Project Cooperation Agreement with the non-Federal sponsor in accordance with applicable law. The draft PCAs shall be available for public review before they are finalized and public comment shall be taken.

(b) Verification of Water Reservations.

(1) The Corps of Engineers and the South Florida Water Management District shall develop and adopt a protocol in accordance with 385.8 that defines verification, including how its adequacy will be determined and how it will be executed, and describes how verification of water reservations will be conducted for inclusion in the Project Cooperation Agreement;

(2) Prior to execution of the Project Cooperation Agreement, the District Engineer, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, shall verify that the South Florida Water Management District or the Florida Department of Environmental Protection has, pursuant to State law, reserved or allocated the total amount of water required for the natural system, as described in the Project Implementation Report for that project. This verification shall be included in the Project Cooperation Agreement.

(c) Assuring Water Reservations Remain in Effect- 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 ~~changed diminished~~ unless the Corps of Engineers expressly agrees to such change and after public notice and comment.

(d) Savings Clause Provisions. The Project Cooperation Agreement shall include a provision that the Corps of Engineers or the non-Federal sponsor shall not:

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(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 to be lost as a result of implementation of the Plan; or

(2) to the extent consistent with the goals and purposes of the Plan and except as otherwise allowed by applicable law, reduce significantly legally authorized 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 shown to be in accordance with applicable law and authorizing legislation.

(e) Provisions to Clarify Temporary Flood Protection Benefits

The Project Cooperation Agreement shall include a provision requiring that the District and the Corps notify all landowners, local governments or other entities which may receive temporary flood protection benefits or enhancements; and that said notification shall include an explanation of the temporary nature of these benefits and shall include an estimated timeframe for when these benefits will no longer be expected to exist.

385.25 Operating Manuals.

(a) General Provisions

(1) The Corps of Engineers and the South Florida Water Management District or other non-Federal sponsor, in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the US Department of Commerce, 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.

(2) Operating Manuals for the Plan shall consist of a System Operating Manual and Project Operating Manuals. In general, the System Operating Manual shall provide a system-wide operating plan for the operation of the projects of the Plan and other C&SF project features, ~~and t~~ The Project Operating Manuals shall provide the details necessary for integrating the operation of the individual projects with the system operation described in the System Operating Manual.

(3) The Corps of Engineers and the South Florida Water Management District shall develop and adopt a protocol in accordance with ' 385.8 that describes the content of Operating Manuals, including specifically (i) how Operating Manuals will be shown to be consistent with the water reservation or allocation for the natural system and the savings clause provisions described in the Project Implementation Report and the Project Cooperation Agreement, and (ii) how Water Shortage Plans and Drought Contingency Plans will be shown to be consistent with the Operating Manuals, and the water reservation or allocation for the natural system described in the Project Implementation Report, and (iii) how Operating Manuals will be shown to be consistent with 385.36.

(4) The public shall be given notice and opportunity to comment on adoption of Operating Manuals, and any significant modification to the Operating Manuals prior to their adoption or revision.

(5) ~~If appropriate~~, NEPA documentation shall be prepared for Operating Manuals.

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(6) The Division Engineer and the non-Federal sponsor shall approve Operating Manuals prior to their adoption or revision.

(7) Operating Manuals shall be consistent with the water reservation or allocation for the natural system and the savings clause provisions described in the Project Implementation Report and the Project Cooperation Agreement and the provisions of ' 385.30(d) and ' 385.31.

(8) Operating Manuals shall be consistent with the identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system.

(9) As appropriate, the South Florida Water Management District Water Shortage Plan shall be incorporated into the Operating Manuals as a part of the Drought Contingency Plan. The Water Shortage Plan and Drought Contingency Plan shall be consistent with the water reservation or allocation for the natural system and identification of appropriate quantity, timing, and distribution of water for the natural system described in the Project Implementation Report and the Project Cooperation Agreement, authorizing legislation for the Central and Southern Florida, and all applicable laws.

~~(10)~~ Operating Manuals shall reflect the operational criteria used in the identification of water to be reserved or allocated for the natural system and the savings clause provisions as described in the Project Implementation Report or Project Cooperation Agreement.

(11) Operating Manuals shall reflect the operational criteria used in the identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system.

~~(10) Operating Manuals may allow adjustments during the year when substantial departures from expected rainfall and runoff occur, or are necessary based on the results obtained from the adaptive assessment program.~~

~~(12)~~ As appropriate, RECOVER shall conduct activities associated with the preparation of Operating Manuals as described in ' 385.18.

(b) System Operating Manual

(1) The Corps of Engineers and the South Florida Water Management District, with the concurrence of the Department of the Interior and the State of Florida, and in consultation with ~~the Department of the Interior,~~ the Florida Department of ~ Environmental Protection, the U.S. Environmental Protection Agency, the US Department of Commerce 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 and other C&SF project features to ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan are achieved.

(2) The System Operating Manual shall initially be based on the existing Central and Southern Florida Project features, authorizations, and applicable laws, and shall be initially adopted by June 30, 2003.

(3) Prior to any operational changes that have system-wide effects, and prior to the completion of new projects that have system-wide effects, the System Operating Manual shall be revised. ~~The System~~

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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 to the completion of new projects that have system-wide effects.

(4) Any revisions to the Comprehensive Plan that would require changes to the System Operating Manual shall be noted in the next Comprehensive Plan Modification Report described in ' 385.28.

(c) Project Operating Manuals.

(1) In consultation with the Department of the Interior, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, the ~~The~~ Corps of Engineers and the non-federal sponsor shall develop a Project Operating Manual for each project of the Plan that is implemented.

(2) Project Operating Manuals shall be considered as supplements to the System Operating Manual and present aspects of the projects not common to the system as a whole.

(3) Each Project Implementation Report shall, as appropriate, include a draft Project Operating Manual including a water control plan as an appendix to the Project Implementation Report. The water control plan must be consistent with the Project Operating Manual. Following public notice and comment, and in consultation with the Department of the Interior, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, the water control plan contained in the Project Implementation Report shall be revised, if necessary for the construction phase and the monitoring and testing phase of the Project.

(4) The final Project Operating Manual shall be completed before completion of the operational testing and monitoring phase of the project. The final Project Operating Manual shall consider the plan developed in the PIR and information collected during the initial testing and monitoring phase.

-INCORPORATING NEW INFORMATION INTO THE PLAN

385.26 Master Implementation Sequencing Plan

(a) The Corps of Engineers and the South Florida Water Management District, with the concurrence of ~~in consultation with~~ the Department of the Interior and the State of Florida, and in consultation with ~~the~~ Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the US Department of Commerce, 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 scientific, funding, ~~funding,~~ technical, funding, contracting and other information available.

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(1) Projects shall be sequenced and scheduled 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, engineering, and other constraints.

**RG ALTERNATIVE:**

**(1) Projects shall be sequenced and scheduled 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, engineering, and other constraints. Sequencing and scheduling shall prioritize projects designed to meet the needs of the natural system.**

(2) ~~When not otherwise required by applicable law, in the discretion of the District Engineer, the public shall~~ may be given notice and opportunity to comment on the Master Implementation Sequencing Plan.

(3) The Corps of Engineers and the South Florida Water Management District, in cooperation with other non- federal sponsors, shall initially base the sequence and scheduling of projects of the Plan on the July 2001 sequence and schedule developed by the Corps of Engineers and the South Florida Water Management District.

(b) 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 U.S. Environmental Protection Agency, the US Department of Commerce, 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.

(1) With the concurrence of the Department of Interior and the State of Florida, the ~~The~~ Master Implementation Sequencing Plan may be revised as ~~necessary~~ required, and consistent with the goals and purposes of the plan, to incorporate new information such as:

- (a) updated schedules from approved Project Management Plans,
- (b) the results of pilot projects and other Studies,
- (c) updated funding information,
- (d) revisions to the Plan,
- (e) Congressional or other authorization or direction, or
- (f) information resulting from the adaptive assessment program including achievement of long-term and interim restoration performance goals.

(2) As appropriate, proposed revisions to the Master Implementation Sequencing Plan shall be evaluated by RECOVER for effects on plan performance.

(3) Revisions to the Master Implementation Sequencing Plan shall be accompanied by a report detailing the reasons for individual changes, and effects on plan performance.

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~~(4—When not otherwise required by applicable law, in the discretion of the District Engineer, th~~The public shall ~~may~~ be given notice and opportunity to comment on the Master Implementation Sequencing Plan and revisions thereto.

385.27 Adaptive Assessment, Management, and -Implementation Program Strategy

(a) Adaptive Strategy Generally - The Corps of Engineers and the South Florida Water Management District, with the concurrence of the Department of the Interior and the State of Florida, and in consultation with the ~~Department of the Interior, the~~ Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, shall establish an adaptive strategy of assessment, management, and implementation ~~assessment program~~ to evaluate system responses to implementation of the Plan, to determine whether or not they match expectations, including the achievement of long-term and interim restoration performance goals, and to determine if the Plan should be modified in order to achieve the goals and purposes of the Plan to ensure the restoration of the Everglades.

385.27(b) Adaptive Assessment.

(a) RECOVER shall design and implement the adaptive assessment program, ~~conduct adaptive assessment activities~~ and shall develop a protocol in accordance with ' 385.8 that describes the procedures to be used to conduct adaptive assessment.

(b)(e) RECOVER shall develop and implement a system-wide monitoring plan that is generally developed from a series of ecological conceptual models. The monitoring plan will be ~~that are~~ designed to measure status and trends of selected ecological, biological and hydrological indicators (performance measures), establish base- line variability, and address uncertainties through cause-effect research.

(c)(d) RECOVER shall use the information collected and analyzed through the system-wide monitoring program as a basis for conducting adaptive assessment tasks, which may include, but are not limited to, the following:

- (1) determining if measured responses are undesirable or are falling short of achieving interim or final restoration goals;
- (2) determining if corrective actions to improve performance should be considered;
- (3) identifying options for corrective actions for the performance measures to respond as desired; and
- (4) preparing reports on the adaptive assessment program.

(e) Whenever it is deemed necessary, but not any less often than every three years, RECOVER shall prepare an adaptive assessment report that presents an assessment of whether the goals and purposes of the Plan are being achieved, including whether interim goals are being achieved or are

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likely to be achieved. If through adaptive assessment RECOVER finds that undesirable responses are occurring, the adaptive assessment report shall provide recommendations for improving the performance of the Plan. Such recommendations may include, but are not limited to:

- (1) modifying current operations of the Plan;
- (2) modifying the design or operational plan for a component CERP project not yet implementedPlan;
- (3) modifying the sequence or schedule for implementation of the Plan;
- (4) adding new components to the Plan, or deleting a component not yet constructed,
- (5) removing or modifying a component already in place, or
- (6) a combination of these.

(f) The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall consider the adaptive assessment report prepared by RECOVER in determining if changes to the Plan, the operation of the projects of the Plan, or the sequence or schedule of the projects of the Plan are necessary to ensure that the goals and purposes of the Plan are achieved, as described in the adaptive management process, ' 385.28.

385.28 Adaptive Management - Revisions to the Comprehensive Everglades Restoration Plan, including Operations

(a) Comprehensive Plan Modification Report

(1) 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, with the concurrence of in consultation the Department of the Interior and State of Florida, and in consultation with the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the US Department of Commerce, 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.

(2) The Corps of Engineers and the South Florida Water Management District shall prepare the Comprehensive Plan Modification Report using a process that is consistent with the provisions of ' 385.15 and ' 385.16.

(3) The Comprehensive Plan Modification Report shall:

(i) be initiated ~~at the discretion of the Corps of Engineers and the South Florida Water Management District~~ based on consideration of

- a. the recommendations of RECOVER,
- b. requests from the Department of Interior or the State of Florida; or
- c. other appropriate information;

(ii) comply with all applicable Federal and State laws, including the National Environmental Policy Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, the Clean Air Act, and any other applicable law;

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(iii) contain information such as: plan formulation and evaluation, engineering and design, economics, environmental analyses, flood damage assessment, and real estate analyses;

(iv) include, as appropriate, revisions to the System Operating Manual described in ' 385.25;

(v) contain appropriate NEPA documentation to supplement the Programmatic Environmental Impact Statement included in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999; and

(vi) include coordination with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Florida Fish and Wildlife Coordination Commission, and other appropriate agencies in the preparation of the Comprehensive Plan Modification Report, as required by applicable law.

(b) Review and Approval of Comprehensive Plan Modification Report

(1) The Corps of Engineers and the South Florida Water Management District shall provide a transparent, publicly accessible process through which scientific information, including Adaptive Assessment Reports, is used and translated into policy decisions. ~~opportunities for review of the draft Comprehensive Plan Modification Report and NEPA document by the public, as required by applicable law. The Corps and the District shall hold meetings 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. Public comment shall be taken at such meetings, and draft documents, including the draft Comprehensive Plan Modification Report and NEPA compliance document, shall be made available to the public for review and comment before they are finalized.~~

(2) Upon approval of the Comprehensive Plan Modification Report by the Division Engineer and the non-Federal sponsor, the Division Engineer shall issue a public notice announcing completion of the Comprehensive Plan Modification Report based upon (i) his/her endorsement of the findings and recommendations of the District Engineer and the non-Federal sponsor, and (ii) his/her assessment that the report is in accord with current policy. The notice shall indicate that the report has been submitted for Washington level review.

(3) Headquarters, US Army Corps of Engineers shall coordinate the Washington level review in accordance with applicable policies and regulations of the Corps of Engineers. Headquarters, US Army Corps of Engineers shall administer the 30-day state and agency review of the Comprehensive Plan Modification Report as required by law.

(4) After completion of the policy review, The Chief of Engineers shall transmit the Chief of Engineer's Report to the Assistant Secretary of the Army for Civil Works for review.

(5) Upon approval, the Assistant Secretary of the Army for Civil Works shall transmit the Comprehensive Plan Modification Report to Congress.

(6) As appropriate, the non-Federal sponsor may use the Comprehensive Plan Modification Report as the basis for obtaining approval under applicable Florida law.

385.29 Revisions to Models and Analytical Tools.

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(a) 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 rely on best available science, including for ~~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. Such selection of models and analytical tools shall be with the concurrence of the ~~To the extent practical or as otherwise provided by law, this shall be done in consultation with the~~ Department of the Interior and the State of Florida, and in consultation with, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies.

(b) The Corps of Engineers, the South Florida Water Management District, and other ~~non-Federal sponsors~~ agencies, may periodically revise models and analytical tools or develop new ones as needed, in consultation with RECOVER and using the best available science. Whenever models and analytical tools are significantly revised or new ones developed, the Corps of Engineers and the South Florida Water Management District, with the concurrence of the ~~in consultation with the~~ Department of the Interior and the State of Florida, and in consultation with, the Florida Department of Environmental Protection, ~~the~~ the U.S. Environmental Protection Agency, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, in consultation with RECOVER, 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.

ENSURING PROTECTION OF THE NATURAL SYSTEM CONSISTENT WITH THE GOALS AND PURPOSES OF THE PLAN

385.30 Achievement of Project Benefits.

(a) Development of Pre-CERP Baseline. The Corps of Engineers and the South Florida Water Management District, ~~in consultation with~~ with the agreement of the Department of the Interior and the State of Florida, and in consultation with, the Florida Department of Environmental Protection, the U.S. Environmental Protection Agency, 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 by the existing Central and Southern Florida Project ~~prior to~~ ~~on~~ the date of enactment of section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680).

(b) Pre-CERP Baseline Water Availability-. ~~To the extent practical,~~ ~~Each~~ Project Implementation Report shall determine ~~consider~~ whether the pre-CERP baseline quantity of water available for the natural system is still available for the natural system. If not and in combination with other existing actions to ensure compliance with the savings clause provisions and with the agreement signed pursuant to

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section 601(h)(2) of the Water Resources Development act of 2000 (114 Stat. 2680), the Project Implementation Report shall ensure restoration of ~~consider~~ the loss of pre-CERP baseline water availability (i) in the identification of ~~identifying~~ the quantity, timing, and distribution of water to be made available for the natural system by a project component; and/or (ii) by providing for. ~~The Project Implementation Report may also consider~~ other remedial actions, including, but not limited to: whether additional quantity, timing, and distribution of water should be made available by subsequent projects; whether to recommend preparation of a Comprehensive Plan Modification Report as described in ' 385.28; or whether to recommend that the State of Florida and its agencies re-examine the reservation or allocation of water needed under State law in order to meet the needs of the natural system.

(c) Identification of Water to be Reserved or Allocated for the Natural System in the Project Implementation Report

(1) Each Project Implementation Report shall identify the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system and shall identify the amount of water to be reserved or allocated for the natural system.

(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 the natural system and identifies the amount of water to be reserved or allocated for the natural system.

(i) Project Implementation Reports approved before the date of promulgation of these programmatic regulations or the adoption of the protocol may use a whatever method that is reasonable and consistent with the Plan. ~~, 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 need for protection of existing uses transferred to new sources; the need to maintain existing levels of flood protection; contingencies for drought protection; and the need to identify the additional quantity, timing, and distribution of water made available by a new 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 is based upon best available science. ~~, 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 and provide the basis for

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determining whether the actual long-term performance of a project component will meet the quantity, timing, or distribution of water anticipated to be made available by the Project Implementation Report.

(d) Variations from Predicted Availability of Water. If, after re-examination of the actual performance of a project component, 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 U.S. Environmental Protection Agency, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, judge that the actual long-term performance of a project component will not meet the quantity, timing, or distribution of water anticipated to be made available by the Project Implementation Report, then:

(1) the Corps of Engineers and the South Florida Water Management District shall determine if revisions to the Plan are necessary. If so, then the Corps of Engineers and the South Florida Water Management District shall prepare a Comprehensive Plan Modification Report in accordance with ' 385.28; and

(2) 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. In the absence of specific purposes for a project component in the Congressional authorization, then the operation of a project component generally shall be based on providing water in accordance with the following priorities:

(i) pre-CERP baseline levels (comparable quantity and quality of water as that available on the date of enactment of the Act) for uses transferred from an existing legal source of water to the new source made available by that project,

~~(ii) new~~ (ii) water for restoration of the natural system, in addition to the pre-CERP baseline, and

(iii) ~~new~~ water for other uses of water, in addition to the pre-CERP baseline.

385.31 Compliance with Savings Clause Provisions.

(a) Elimination or Transfer of Existing Legal Sources of Water. Project Implementation Reports shall include analyses to determine if existing legal sources of water are to be transferred as a result of project implementation. If implementation of the project shall cause a transfer of existing legal sources of water, then the Project Implementation Report shall include an implementation plan that ensures that such transfer shall not occur until after the project is constructed and operating as intended, except to the extent the transfer involves water to be made available above pre-CERP baseline levels.

(b) Existing Level of Service for Flood Protection

(1) The level of service for flood protection that is in existence on the date of enactment of section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680) and in accordance with applicable law shall be determined. To the degree extent practical consistent with authorizing legislation for

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the C&SF Project and other laws applicable to the C&SF Project, the pre-CERP baseline shall be used in determining the existing level of service for flood protection.

(2) The plan recommended in the Project Implementation Report shall be evaluated to determine if the level of service for flood protection that is in existence on the date of enactment of section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680) and in accordance with applicable law will be reduced by implementation of the recommended plan. If so, then the recommended plan shall be modified as necessary to ensure, as practicable, that significant adverse effects on the existing level of service are mitigated or eliminated to the extent consistent with applicable law, authorizations of the C&SF Project, and the goals and purposes of the Plan.

~~(3) In developing alternative plans for evaluation during the preparation of the Project Implementation Report, the Corps of Engineers and the non-Federal sponsor may 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).~~

385.32 Interim Goals.

(a) Interim goals shall set forth in detail the quantity, quality, timing and distribution of water required to meet long-term restoration goals, in addition to biologic and ecologic goals, based on best available science, as set forth in 385.33 (b) and (c). They also shall set forth the anticipated progress toward meeting those goals defined both in terms of project period and project component(s) contribution, defined in terms of CERP project components. Pursuant to 385.339h), these goals may be modified, based on best available science, through adaptive assessment and implementation by adaptive management.

(b) Initial goals and dates for achievement. [For example, in conceptual terms:

(1) 960,000 acre-feet of water, in addition to the pre-CERP baseline and assumptions of without project conditions, available to the natural system by 2020.

(2) 50% hydrological restoration by 2010, including 480,000 acre-feet of water, in addition to the pre-CERP baseline and assumptions of without project conditions, available to the natural system by 2010.

(3) Modeling snapshot of hydrologic performance predicted by A yellow book@ or refinements thereto, through time for key indicator regions (Central Everglades, Estuaries, Lake Okeechobee, Everglades National Park).]

(c) Additional Interim Goals - General

(1) The Department of the Army, the Department of the Interior, and the South Florida Water Management District, in consultation with the U.S. Environmental Protection Agency, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, shall establish additional interim goals to ensure the restoration and protection of the natural system consistent with the goals and purposes of the Plan, facilitate interagency planning and provide a means by

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which the restoration success of the Plan may be evaluated throughout the implementation and restoration process.

(2) Interim goals shall:

(i) be expressed in terms of measurable restoration standards, including terms of hydrologic and ecologic performance values, that may be associated with predicted for specific points during the implementation of the Plan and are consistent with the goals and purposes of the Plan; and

(ii) reflect expected system- wide and regional ~~ecological~~-responses that adequately reflect the biological, ~~are associated with the enhancement~~ of hydrologic and ecologic goals and purposes contained in the Plan, as developed by the Project Implementation Reports, including ~~increasing~~ the quantity of water needed for the restoration of the natural system, improving the timing ~~,~~ and distribution of water dedicated and managed for the restoration of the natural system, increasing the total spatial extent of natural areas, improving habitat and its functional quality, and improving native plants and animal species abundance and diversity,

~~(iii) include measurable standards concerning other water related goals and purposes of the Plan, including increasing water supplies for urban, agricultural, industrial and other users and maintaining flood protection;~~

~~(iv) provide mechanisms and information to facilitate interagency planning and assessment for reporting implementation progress, including such accomplishments as completion of Project Implementation Reports, real estate acquisition, completion of pilot project construction, completion of project construction at specific points during the implementation of the Plan, and performance of completed Plan features;~~

~~(v) provide incremental and sustained benefits to the natural system, agricultural and urban water supply, and incidental improvements in flood protection throughout the construction phase of the Plan; and~~

~~(vi) ensure achievement of benefits to the natural system , and all other users, in progression, until the final achievement of the goals and purposes of the Plan can be measured and reported.~~

(3) The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall sequence and schedule projects to achieve ultimate restoration goals, as well as the interim goals, to the maximum extent practical, given funding, technical, or other constraints.

~~(b)~~(d) Development of Additional Interim Goals.

(1) Additional interim goals, in addition to those set forth in (b), shall be established no later than 2003.

(2) RECOVER shall develop recommendations on the additional interim goals using a scientifically based collaborative process.

~~(3)~~ RECOVER shall:

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- (i) develop criteria for interim goals that use science and information which, in its discretion, it determines to be the best available and is consistent with the goals and purposes of the Plan;
- (ii) develop a draft list of indicators for the interim goals in accordance with the criteria;
- (iii) give the public notice and opportunity to comment on the draft list of indicators;
- (iv) develop the final list of indicators after considering public comment on the draft list;
- (v) develop draft interim targets for each of the indicators;
- (vi) develop the process and schedule for developing interim targets for those indicators where additional information is needed in order to develop draft interim targets;
- (vii) prepare draft recommendations on interim goals, including any revisions to initial interim goals, that provide detailed documentation on each of the interim targets and the process and schedule for developing interim targets for those indicators that require additional information;
- (viii) give the public notice and opportunity to comment on the draft recommendations; and
- (ix) prepare final recommendations on interim goals after considering public comment on the draft recommendations.

~~(e)~~(e) Interim Goals Agreement. Upon receipt of a final report and set of recommendations from RECOVER, the 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 setting forth a suite of an initial suite of interim goals, including any revisions to the initial 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.

(1) The 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.

(2) After consideration of comments, the Department of the Army, the Department of the Interior, and the South Florida Water Management District shall sign the agreement, incorporating any suggestions are consistent with the goals and purposes of the Plan. , which in their judgment, are appropriate.

(3) The Secretary of Army shall publish notice in the Federal Register after the agreement is signed.

(4) The agreement shall be incorporated into the programmatic regulations at the next revision pursuant to 385.9.

~~(d)~~(f) Use of Interim Goals. .

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(1) The Department of the Army, the Department of the Interior and the South Florida Water Management District shall use interim goals to ensure protection of the natural system consistent with the goals and purposes of the ~~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 Department of the Army, the Department of the Interior, and the South Florida Water Management District on progress towards meeting the interim goals.

(2) RECOVER shall use information on progress towards meeting interim restoration goals, in addition to other information from system-wide monitoring and research, to conduct adaptive assessment activities to assess the overall restoration performance of the plan.

(3) In implementing the Plan, the Corps of Engineers and the South Florida Water Management District and other ~~agencies non-Federal sponsors~~ shall consider the reports prepared by RECOVER to determine if:

- (i) revisions to the Plan are needed;
- (ii) revisions to the operation of the Plan are needed; or
- (iii) revisions to the Master Implementation Sequencing Plan are needed.

~~(e)(g)~~ Reporting on Interim Goals. Interim goals shall be used in the periodic reports to Congress as required by section 601(1) of the Water Resources Development Act of 2000 (114 Stat. 2692). The discussion on interim goals in the periodic reports shall include:

- (1) discussion of the performance expected to be achieved since the last periodic report to Congress;
- (2) discussion of the actual performance of the Plan during this period along with a discussion of the measures taken to achieve the interim goals;
- (3) if performance did not meet the interim goals, a discussion of the reasons for such shortfall;
- (4) recommendations for improving performance; and
- (5) the interim goals to be achieved in the next five years~ reflecting the work to be accomplished during the next five years, along with a discussion of measures to be undertaken to achieve those interim goals.

~~(f)~~(h) Revising Interim Goals.

(1) Whenever the Corps of Engineers, the US Department of Interior, and the South Florida Water Management District deem it necessary, but not any less often than the period for completion of the review of the programmatic regulations under 385.9 and to be completed concurrent with each such review, ~~every five years~~, the Corps of Engineers and the South Florida Water Management District shall have RECOVER review the interim goals to determine 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

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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 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.

385.34 Process Milestones.

The Department of the Army and the South Florida Water Management District, in consultation with the Department of the Interior, the U.S. Environmental Protection Agency, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, may provide mechanisms and information to facilitate interagency planning and assessment for reporting implementation progress, including such accomplishments as completion of Project Implementation Reports, real estate acquisition, completion of pilot project construction, completion of project construction at specific points during the implementation of the Plan, and performance of completed Plan features.

385.35 Monitoring Progress on Water Supply and Flood Protection Benefits of the Plan

The Department of the Army and the South Florida Water Management District, with the concurrence of the Department of the Interior and the State of Florida, and in consultation with the U.S. Environmental Protection Agency, the US Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, may develop measurable standards concerning other water-related goals and purposes of the Plan, including increasing water supplies for urban, agricultural, industrial and other users and maintaining flood protection, provided that such standards are consistent with the interim and long-term restoration goals, 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).

385.36 Temporary and Enhanced Flood Protection Benefits.

(a) Temporary Flood Protection Benefits: General-Nothing in this regulation shall vest a right or expectation to temporary flood protection benefits or enhancements.

(1) The Corps and the non-Federal sponsor shall not consider the maintenance of temporary flood protection benefits or enhancements in the development of operational plans, implementation schedules, PIRs or any other documents.

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(b) Improved and New Flood Protection Benefits: In developing alternative plans for evaluation during the preparation of the Project Implementation Report, the Corps of Engineers and the non-Federal sponsor may 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 are consistent with interim and final ecosystem restoration goals and purposes of the Plan, including interim and final restoration goals, and with the water supply 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).