

EPA-R4 Comments on 12/01 draft
Comprehensive Everglades Restoration Plan, Programmatic Regulations

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Background: The goal of CERP is to restore, preserve and protect the South Florida Ecosystem through modifications and operational changes to the Central and Southern Florida Project. One of the primary means identified in CERP to restore the Everglades is found in the Specific Authorizations, Section 601(b)(2)(A)(ii)(II); “include such features as the Secretary [of Army] determines are necessary to ensure that all ground water and surface water discharges from any project feature authorized by this subsection will meet applicable water quality standards and applicable water quality permitting requirements.”

Under Section 601(h)(3), **Programmatic Regulations**, within 2 years of enactment of CERP, the Secretary of Army shall promulgate programmatic regulations to ensure that the goals and purposes of the CERP are achieved. Under Section 601(b), the goals and objectives are generally stated to restore, preserve and protect the South Florida ecosystem while providing for the other water related needs of the region including water supply and flood protection. This includes the protection of water quality within the ecosystem and in carrying out the activities of the CERP, the Secretary [of Army] shall include all features necessary such that all discharges from any project features meets all applicable water quality standards and all water quality standard permitting requirements.

Restoring and protecting water quality in the Everglades is an important requirement of CERP that EPA believes should be given more focus in the preamble and proposed regulations. Thus the general focus of EPA’s comments relate to identifying appropriate edits where water quality should be included. This includes establishing water quality base line information that will enable the agencies to insure that water quality is being protected. EPA is also recommending that it be listed, along with Interior and the COE, in many places in the document to clarify EPA’s consultation role.

General Comments:

- Page 11-12, N, Ensuring Project Benefits - This preamble discussion identifies some of the items required to be in the Project Implementation Reports identified in Section 601(h)(4)(A)(iii), but does not discuss water quality. Although the Programmatic Regulations (PR) include the Section 601(h)(4)(A)(iii) language in Section 385.23, Project Implementation Reports, EPA believes it is important to identify and discuss all eight provisions in the preamble. This would include the requirement that the PIR must identify the amount of water that is to be reserved or allocated for the natural system necessary to implement subclauses (IV), (the quantity, timing and distribution dedicated to the natural system), and (VI), (to comply with applicable water quality standards and applicable water quality permitting requirements which ties back to Section 601(b)(2)(A)(ii)).

- Page 22, Section 385.3, Definitions - Definitions should be added for “Water Quality” and “Water

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Quality Permitting Requirements.” For water quality, the reference should be to applicable water quality standards. Applicable water quality permitting requirements should also be defined.

· Page 29, Section 385.8, Development and Adoption of Protocols - Allows for the development of “protocols” as needed to outline in more detail the procedures to be followed in conducting the activities necessary to implement the CERP. The protocols are to be consistent with the Programmatic Regulations and development should involve public notice and comment. This provision is cross referenced in the regulations in 7 primary sections: 1) major tasks of the PIRs (Page 41, §385.2(a)(4)); 2) formulation and evaluation of alternative plans (Page 41, §385.23(b)(1)); 3) RECOVER procedures for evaluation of alternative plans/system wide perspective (Page 41, §385.23(c)(1)(i)); 4) format and content of PIRs (Page 43, §385.23(g)); 5) content of operating manuals (Page 44 §385.23(a)(3)); 6) adaptive assessment procedures (Page 47, §385.27(b)); and 7) water reservations (Page 50, §385.30). Since water quality is an integral part of the CERP, either an additional protocol should be added to describe how water quality will be addressed during CERP implementation, or water quality should be included as a major emphasis of the protocols related to PIRs, Plan Formulation, RECOVER evaluations, Adaptive Assessment and Water Reservations. EPA should also be specifically mentioned in the list of agencies consulted during the development and adoption of protocols.

· In addition to mentioning EPA specifically in Section 385.8, EPA should also be named in the following provisions for consultation: §385.15(a) and (b); §385.22 (a)(1); §385.23(a)(1); §385.23(d)(3) - NEPA; §385.27(a), §385.28(a)(1); §385.28(a)(3)(vi), §385.29 (a) and (b); §385.30(a); §385.32(a); and §385.32(c)(1).

· Include in Section 385.11(a)(6), Incorporation of NEPA, Page 32, Line 15 - “. . . substantially, *significantly deviate from the purposes of the plan, . . .*”

· In Section 385.18(c), EPA should be specifically included as a member of the RECOVER Leadership Group, reflecting our existing membership.

· Add to Section 385.23(a), PIRs, Page 40, Line 32 - “. . . Clean Water Act, *the Safe Drinking Water Act, . . .*”

Water Quality: Water quality should be specifically mentioned in the following locations (additions in italics):

· Page 11, Line 1 - “. . . flood protection *and the protection of water quality within the ecosystem in carrying out the activities of the CERP.*”

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- Page 13, line 2 - “. . . additional quantity, timing, and distribution of water *or additional water quality features* should be made available . . .” [Capturing the intent of Section 601(h)(3), to ensure that all discharges from any project feature meets all applicable water quality standards and all water quality standard permitting requirements].
- Page 13, Line 35 - “. . . effects of implementation on existing legal sources, existing levels of flood protection *and existing water quality* . . .”
- Page 28, Line 30 - “. . . including water supply and flood protection. *This includes the protection of water quality within the ecosystem and in carrying out the activities of the CERP, the Secretary shall include all features necessary such that all discharges from any project features meets all applicable water quality standards and all water quality standard permitting requirements.*” [To capture the intent of Section 601(h)(3)].
- Page 28, Line 44 - “. . . technical, and other constraints, *including the protection of water quality within the ecosystem; . . .*”
- Page 29, Line 6 - “. . . including water supply and flood protection, *and protection of water quality within the ecosystem; . . .*”
- Page 31, Line 14 - “. . . engineering and design, *assurances and supporting information that the implemented project will comply with applicable water quality standards and applicable water quality permitting requirements, economic . . .*”
- Page 37, Line 20 - “. . . including the system wide monitoring program to assess the actual performance of the Plan *and ensure applicable water quality standards are being met; . . .*”
- Page 39, Line 1 - “. . . in restoring the ecology of the natural system *and protection of water quality within the ecosystem . . .*”
- Page 43, Line 27 - “. . . natural system, *including the quantity of water necessary to comply with applicable water quality standards and applicable water quality permitting requirements . . .*”
- Page 43, Line 31 - “. . . natural system, *including the quantity of water necessary to comply with applicable water quality standards and applicable water quality permitting requirements . . .*”

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- Page 46, Line 13- “. . . and other constraints. *This includes the protection of water quality within the ecosystem and including all features necessary such that all discharges from any project features meets all applicable water quality standards and all water quality standard permitting requirements.*”
- Page 48, Line 13 - “. . . environmental analysis, *water quality data*, . . .”
- Page 50, Line 31 - “. . . allocated for the natural system *and to comply with applicable water quality standards and applicable water quality permitting requirements.*”
- Page 51, Line 16 - “. . . available by the Project Implementation Report, *or comply with applicable water quality standards and applicable water quality permitting requirements*, then: . . .”
- Page 52, Line 31 - “. . . restoration of the natural system *and to comply with applicable water quality standards and applicable water quality permitting requirements*, . . .”

Baseline Issues - As noted above, EPA is concerned that the pre-CERP baseline analysis include adequate water quality information to ensure that the CERP include such features as necessary to ensure that all ground water and surface water discharges from any project features meets all applicable water quality standards and all water quality standard permitting requirements. (Suggested additions are in italics).

- Page 9, line 10 - “. . . National Environmental Policy Act Documents. *The project implementation report shall include documentation of baseline water quality conditions, and an analysis of how this project feature will achieve compliance with all applicable water quality standards and applicable water quality permitting requirements.* . . .”
- Page 26 , Line 4- “. . . water demand, *existing water quality*. . .”
- Page 50, Line 12 - “section 601 of the Water Resources Development Act of 2000 (114, Stat. 2680) *and document existing water quality.*”