

February 15, 2002

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

Sent by e-mail and US Postal Service on February 15, 2002

Re: Comments of the Florida Sugar Cane League, Inc.
on Draft Programmatic Regulations for CERP

Dear Stu:

I am writing on behalf of the Florida Sugar Cane League, Inc and its grower and processor members to submit comments on the Draft Programmatic Regulations governing the Comprehensive Everglades Restoration Plan as provided in the Water Resources Development Act of 2000.

From both public comments and written comments we have been provided, we find our response to the Draft Programmatic Regulations to be generally the same as that of the South Florida Water Management District and very close to the responses from the Southeast Utility Group and its members. The Governing Board of the District approved the general principles recommended to them by John Fumero, General Counsel, and we gave our support to these principles during the Board's Workshop this week.

We believe there is common ground between the South Florida Water Management District and water users on a number of issues regarding the Draft Programmatic Regulations. There is general agreement that:

The Programmatic Regulations should establish a process for CERP and not substantive criteria

The Regulations should further all of the goals and objectives of CERP in a balanced way.

The Regulations should be consistent with State Law and not impose limitations or restrictions on the reservations and allocations by the SFWMD under State law.

The Regulations should provide that uncertainty and risk in the availability of water from new project components will be shared equitably between environmental and economic interests.

The Regulations should not include but provide for Interim Goals and separate protocols.

We and other agricultural interests have emphasized the need for changes and additions to the Proposed Regulations that relate to CERP implementation and project component sequencing. The CERP process in the Regulations should ensure that implementation and sequencing is based upon a water budget and financial budget that together show that the Plan will provide the most new water and other benefits at the earliest stage of implementation and in the most cost effective manner. We acknowledge that this will require additional policy guidance that can then be reflected in the process established by the Regulations.

Our recommendations for changes to the Proposed Regulations are shown in the attached revisions.

We are grateful to you for this and all other opportunities you have provided for our input on these Regulations.

Respectfully Submitted,

Philip S. Parsons for the
Florida Sugar Cane League, Inc.

Comprehensive Everglades Restoration Plan

Programmatic Regulations

Initial Draft – December 2001

Introduction

These programmatic regulations, once promulgated, will become part of the Code of Federal Regulations (CFR). The CFR is the foundation of the Federal Register publication system. It is an annual codification of the rules of the Federal agencies. The basic structure of the CFR consists of a hierarchy of designated CFR units. These units are Titles (broad area subject), Chapter (rules of a single issuing agency), Part (unified body of rules concerning a single function or specific subject), and Section (short presentation of one regulatory function).

The Corps of Engineers has decided to place the programmatic regulations in the CFR under Title 33 – Navigation and Navigable Waters, Chapter II – Corps of Engineers, Department of the Army, in a new part, Part 385, entitled “Programmatic Regulations for the Comprehensive Everglades Restoration Plan.”

This initial draft is being circulated to the public for discussion purposes. This initial draft is expected to be revised following coordination with agencies, groups, and the public. The Department of the Army and the Office of Management and Budget will also review the draft programmatic regulations before they are published in the Federal Register as a proposed rule.

This initial draft of the programmatic regulations uses the format required for placement of a proposed rule in the Federal Register in accordance with the Federal Register Document Drafting Handbook (October 1998 Revision) except for the addition of line numbers to the text and not being double-spaced.

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Billing Code # 3710-92

DEPARTMENT OF DEFENSE
Department of the Army, Corps of Engineers
33 CFR Part 385
RIN 0710-AA49
Programmatic Regulations for the Comprehensive Everglades Restoration Plan

AGENCY: Army Corps of Engineers, DOD.

ACTION: Proposed Rule.

SUMMARY: The Army Corps of Engineers proposes to establish programmatic regulations for the Comprehensive Everglades Restoration Plan. Congress approved the Comprehensive Everglades Restoration Plan in section 601 of the Water Resources Development Act of 2000 (114 Stat. 2680), which was enacted on December 11, 2000. The Act also requires the Secretary of the Army to promulgate programmatic regulations within two years to ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan are achieved. We have developed this proposed rule in response to that statutory requirement. The proposed rule establishes processes and procedures that will guide the Army Corps of Engineers and its partners in the implementation of the Comprehensive Everglades Restoration Plan.

DATES: We will accept comments until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: If you wish to comment on, this proposed rule, you may submit your comments by any one of several methods:

1. You may submit written comments to U.S. Army Corps of Engineers, ATTN: CESAJ-PD-R, P.O. Box 4970, Jacksonville, FL 32232-0019.

2. You may send comments by electronic mail (e-mail) to: proregs@usace.army.mil. See the Public Comments Solicited section below for file formats and other information about electronic filing.

3. You may also submit comments through the Internet by completing a comment form on the programmatic regulations web page at: <http://www.evergladesplan.org/pm/program/progr-segs/comment-fnn.shtml/>.

FOR FURTHER INFORMATION CONTACT: Stu Appelbaum, Corps of Engineers, Jacksonville District, at the above address, phone (904) 232-1877; fax (904) 232-1888. You may also access the programmatic regulations web page at: <http://www.evergladesplan.org/pm/program/progr-yegs/index.shtml/>.

SUPPLEMENTARY INFORMATION:

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I. Background

The purpose of these programmatic regulations is to establish a process: for the development of Project Implementation Reports, Project Cooperation Agreements, and Operating Manuals that ensure that the goals and the objectives of the Comprehensive Everglades Restoration Plan are achieved; to ensure that new information resulting from changes or unforeseen circumstances, new scientific or technical information or information that is developed through the principles of adaptive management contained in the Plan, or future authorized changes to the Plan are integrated into the implementation of the Plan; and to 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.

The south Florida ecosystem is a nationally and internationally unique and important natural resource. It is also a resource in peril, having been severely impacted by human activities -for over a hundred years. The Central & Southern Florida Project extends from south of Orlando to the Florida Keys and is composed of a regional network of canals, levees, storage areas, and water control structures. First authorized by Congress in 1948, the project serves multiple purposes. The authorized purposes of the project include flood control, regional water supply for agricultural and urban areas, prevention of salt water intrusion, water supply to Everglades National Park, preservation of fish and wildlife, recreation, and navigation. For over 50 years, the Central & Southern Florida Project has performed its authorized functions well. However, the project also has had unintended adverse effects on the unique natural environment that constitutes the Everglades and south Florida ecosystem. In 1992, the Army Corps of Engineers was directed to develop a comprehensive plan to restore and preserve south Florida's natural ecosystem, while enhancing water supplies and maintaining flood protection. The resulting plan, which was submitted to Congress on July 1, 1999, is called the Comprehensive Everglades Restoration Plan. The overarching goal of the Comprehensive Everglades Restoration Plan (the Plan) is the restoration, preservation and protection of the south Florida ecosystem while providing for other water-related needs of the region such as flood protection and water supply. The Plan contains 68 major components that involve creation of approximately 217,000 acres of reservoirs and wetland-based water treatment areas, wastewater reuse plants, seepage management, and removal of levees and canals in natural areas. These components vastly increase storage and water supply for the natural system, as well as for urban and agricultural needs, while maintaining existing Central and Southern Florida Project purposes. The Comprehensive Everglades Restoration Plan will restore more natural flows of water, including sheet flow; improve water quality; and establish more natural hydroperiods in the south Florida ecosystem. Improvements to native flora and fauna, including threatened and endangered species, are expected to occur as a result of the restoration of hydrologic conditions.

Section 601 of Public Law 106-541, the Water Resources Development Act of 2000 (114 Stat. 2680) approved the Comprehensive Everglades Restoration Plan as a framework for

1 modifications to the Central and Southern Florida Project. Section 601 also authorized
2 four pilot projects and ten initial projects of the Comprehensive Everglades Restoration
3 Plan and contains other provisions associated with implementation of the Comprehensive
4 Everglades Restoration Plan.

5
6 Section 601(h)(3) of the Water Resources Development Act of 2000 (114 Stat. 2688)
7 requires that the Secretary of the Army, after notice and opportunity for public comment,
8 and with the concurrence of the Governor of Florida and the Secretary of the Interior, and
9 consultation with the Seminole Tribe of Indians of Florida, the Miccosukee Tribe of
10 Indians of Florida, the Administrator of the Environmental Protection Agency, the
11 Secretary of Commerce, and other Federal, State, and local agencies, promulgate
12 programmatic regulations to ensure that the goals and purposes of the Plan are achieved.
13 This proposed rule is in response to the requirements of the Water Resources
14 Development Act of 2000.

15 16 II. Process for Developing the Proposed Rule

17
18 We developed the proposed rule through an open and inclusive process that involved
19 numerous meetings, briefings, and discussions with other Federal, State, and local
20 agencies; the Miccosukee and Seminole Tribes; agricultural, environmental, urban
21 utilities, recreational, and urban interest groups; and the public. Briefings on the
22 programmatic regulations were provided to the Governing Board of the South Florida
23 Water Management District and its Water Resources Advisory Commission and the
24 South Florida Ecosystem Restoration Working Group. In addition, programmatic
25 regulations web pages were developed and posted on the Comprehensive Everglades
26 Restoration Plan web site (www.evergladesplan.org). The web site was used to post
27 information about the programmatic regulations and to provide a place for individuals
28 and organizations to submit comments electronically during the development of the
29 programmatic regulations. The process we used to develop the programmatic regulations
30 was designed to identify the major concerns of the agencies and the various groups and to
31 find middle ground to the greatest extent possible prior to publishing the proposed rule
32 and soliciting formal public comment.

33
34 We held an initial round of meetings with agencies, agricultural, environmental, urban
35 utilities, recreational, and urban interest groups, and the public in May and June 2001.
36 The purpose of these meetings was to discuss the process that would be used to develop
37 the programmatic regulations and to solicit comments on the major issues and concerns
38 that should be addressed in developing the regulations.

39
40 Following the initial round of meetings, we developed a draft outline of the programmatic
41 regulations. We then held a second round of meetings in September and October 2001
42 with agencies, agricultural, environmental, urban utilities, recreational, and urban interest
43 groups, and the public to solicit comments on the draft outline.

44
45 After the second round of meetings were held, we developed an initial draft of the
46 programmatic regulations and distributed this initial draft to the public in December

1 2001. We then held numerous discussions and meetings with agencies, governments, and
2 agricultural, environmental, urban utilities, recreational, and urban interest groups, to
3 discuss the initial draft.

4
5 Finally, we developed the proposed rule after considering all the information received at
6 the meetings that were held as well as written comments that were received.

7 8 III. Major Issues Addressed in Developing the Programmatic Regulations

9 10 A. General

11 As described in the previous section, we held numerous meetings with agencies,
12 governments, agricultural, environmental, urban utilities, recreational, and urban interest
13 groups, and the public. They raised a number of issues and concerns that were considered
14 in the development of the proposed rule.

15 16 B. Partnership with the State of Florida

17 Implementation of the Comprehensive Everglades Restoration Plan requires a partnership
18 between the Federal and State governments. The South Florida Water Management
19 District will be the non-Federal sponsor for many of the projects of the Plan. The State of
20 Florida has established a funding mechanism, the Save Our Everglades Trust Fund, to
21 fund the State's share of implementation of the Plan. Section 601 of the Water Resources
22 Development Act of 2000 recognizes and encourages this partnership and the proposed
23 rule is consistent with this intent. ~~The report of the Senate Committee on Environment
24 and Public Works on the Water Resources Development Act of 2000 (Senate Report No.
25 106-362) describes this partnership: "Subsection (h) does more than provide the
26 necessary assurances. It also defines the relation among the various Federal, State and
27 local governmental entities charged with Plan implementation responsibilities. The
28 subsection places procedural and substantive requirements on both the Federal
29 Government and the State of Florida. Most importantly, subsection (h), strikes a careful
30 balance between the Federal interest in ensuring that predicted Plan benefits, including
31 benefits to Federal lands, are attained, and the State's interest in: ensuring that State-
32 owned or managed lands also receive predicted Plan benefits; and preserving its
33 traditional sovereignty over the reservation and allocation of water within the State's
34 boundaries."~~

35
36 The proposed rule provides a framework for the implementation of the Comprehensive
37 Everglades Restoration Plan by defining the processes and procedures needed to
38 accomplish the necessary planning, design, construction, and operation of the projects of
39 the Plan. The processes and requirements included in the proposed rule were also
40 developed to ensure that compliment, but not interfere with the rights and responsibilities
41 of the South Florida Water Management District, the State of Florida, or other non-
42 Federal sponsors in implementing the Plan be respected and accorded the same dignity
43 afforded Federal rights and responsibilities. The proposed rule also recognizes that the
44 non- Federal sponsor for some projects will be governmental entities other than the South
45 Florida Water Management District.

1 C. Consultation

2 Successful implementation of the Comprehensive Everglades Restoration Plan require
3 not just the involvement of the implementing agencies, but extensive involvement by
4 other Federal, State, and local agencies and the tribes. Although implementation of the
5 Plan is the responsibility of the Corps of Engineers and the non-Federal sponsor, the
6 proposed rule provides that the implementing agencies consult with the Department of
7 the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe
8 of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local
9 agencies as part of the implementation process. The consultation provisions ensure that
10 these agencies and governments are integrally involved with the Corps of Engineers and
11 the non-Federal sponsor in implementing the Plan.
12

13 D. Amount of Detail in the Proposed Rule

14 Many agencies, agricultural, environmental, urban utilities, recreational, and urban
15 interest groups, and the public were concerned about the amount of detail in the
16 regulations. Some believed that the programmatic regulations should be very detailed,
17 specific, and prescriptive. Others believed that the programmatic regulations should only
18 define the "rules of engagement" between the Corps of Engineers and its non-Federal
19 project sponsors. In addition, some were concerned that these Federal regulations not
20 infringe on the sovereignty of the State of Florida or interfere with the State's right to
21 allocate its water resources. Others were concerned that the programmatic regulations
22 ensure that the Federal interest and investment in restoration, preservation, and protection
23 of the south Florida ecosystem, including Federal properties such as national parks and
24 wildlife refuges be protected. The proposed rule attempts to balance these differing
25 concerns and interests. The proposed rule includes a number of processes that are
26 necessary to guide the implementation process. We recognize that more detailed
27 protocols and procedures are needed as well to assist implementation. We believe that,
28 because for the most part the protocols and procedures will be very detailed and
29 technical, they should not be included in the programmatic regulations. Additionally, if
30 protocols and procedures were included in the programmatic regulations, any revision to
31 them would require us to initiate a formal rulemaking process even for minor revisions.
32 However, given the importance of protocols and procedures and the impact that they will
33 have on implementation, we believe that the public should have the opportunity to review
34 and comment on the protocols and procedures before they are adopted. The proposed rule
35 provides that opportunities for public comment be provided before any protocols and
36 procedures are adopted. The proposed rule also provides for the adoption development of
37 certain protocols by the Corps of Engineers and the South Florida Water Management
38 District and provides guidance for their development.
39

40 E. Implementation Principles

41 Section 601 of the Water Resources Development Act of 2000 states that the overarching
42 objective of the Comprehensive Everglades Restoration Plan is the restoration,
43 preservation, and protection of the south Florida ecosystem while providing for other
44 water-related needs of the region, including water supply and flood protection. Some
45 agencies, agricultural, environmental, urban utilities, recreational, and urban interest
46 groups, and the public were concerned about having a set of goals to guide

1 implementation of the Plan. They rely on the report of the Senate Committee on
2 Environment and Public Works on the Water Resources Development Act of 2000
3 (Senate Report No. 106-362) which states, "Further, the committee expects that the
4 implementing agencies will make every effort to accelerate the delivery of Plan benefits
5 to the natural system to the extent practicable. ~~It is estimated that 3 to 5 acres of land in~~
6 ~~the South Florida ecosystem are lost per day under current conditions. Time is of the~~
7 ~~essence in this restoration effort."~~ Others are of the opinion that Senate Committee
8 Report 106-362 carries no legislative weight since the chamber that adopted the bill did
9 not concur with the report and the bill discussed in Senate Committee Report 106-362
10 differs in several critical areas from the final version adopted by the United States Senate.
11 Thus, as a matter of law, any references to the report are not appropriate for the final bill
12 that passed.

13
14 The proposed rule establishes a number of implementation principles, ~~such as sequencing~~
15 ~~and scheduling projects to accelerate system wide restoration, preservation, and~~
16 ~~protection benefits that are intended to~~ which should guide the implementation process
17 consistent with the overarching objective of the Plan.

18 19 F. Restoration Coordination and Verification (RECOVER)

20 Some agencies, agricultural, environmental, urban utilities, recreational, and urban
21 interest groups, and the public were concerned about integration of the individual projects
22 that comprise the Plan to ensure that the goals and purposes of the Plan are achieved.
23 They were concerned that there be a system-wide focus during implementation and that
24 there be a way to ensure that the best scientific information on restoration is used. Some
25 agencies, agricultural, environmental, urban utilities, recreational, and urban interest
26 groups, and the public were concerned that there be a focus on achieving the other water-
27 related benefits of the Plan, in addition to the restoration benefits. The proposed rule
28 provides that the Corps of Engineers and the South Florida Water Management District
29 establish the Restoration Coordination and Verification (RECOVER) team, a team that is
30 functioning already. RECOVER is an interdisciplinary, interagency team that will ensure
31 that a system-wide perspective is maintained throughout the implementation process.
32 Specifically, RECOVER will be responsible for developing system-wide performance
33 measures for restoration as well as other water-related needs, evaluating projects from a
34 system-wide perspective in the preparation of Project Implementation Reports,
35 conducting adaptive assessment activities, developing and evaluating proposed revisions
36 to the Plan, and developing recommendations for interim goals. The proposed rule
37 formalizes many of the activities already underway by RECOVER. Additionally, under
38 the proposed rule, any document prepared by RECOVER is not self-executing and must
39 be approved by the Corps of Engineers and the South Florida Water Management District
40 prior to reliance on the results and findings contained therein.

41 42 G. Independent Scientific Review

43 Some agencies, agricultural, environmental, urban utilities, recreational, and urban
44 interest groups, and the public were concerned that the implementation process needs to
45 include independent scientific review. Section 601(j) of the Water Resources
46 Development Act of 2000 requires the establishment of an independent scientific review

1 panel. The proposed rule does not establish the panel, but it does include provisions for
2 cooperating with the panel and considering the advice and recommendations made by the
3 panel.
4

5 H. Project Implementation Reports

6 Section 601 of the Water Resources Development Act of 2000 establishes a new type of
7 reporting document called a Project Implementation Report to bridge the gap between the
8 conceptual level of detail in the Comprehensive Everglades Restoration Plan and the
9 detail needed for project design. The proposed regulations require that the Project
10 Implementation Report provide all the information and analysis required under both
11 Federal and State law. Agencies, agricultural, environmental, urban utilities, recreational,
12 and urban interest groups, and the public were concerned that a clearly defined process
13 was needed for the development of Project Implementation Reports, and in particular the
14 formulation and evaluation of projects. ~~The report of the Senate Committee on~~
15 ~~Environment and Public Works on the Water Resources Development Act of 2000~~
16 ~~(Senate Report No. 106-362) defines Project Implementation Reports: "The project~~
17 ~~implementation report is a new type of reporting document, similar to a General~~
18 ~~Reevaluation Report in that it will contain additional project formulation and evaluation.~~
19 ~~The project implementation report also will contain General Design Memorandum level~~
20 ~~of detail, or higher, for engineering and design. Some of the tasks associated with the~~
21 ~~preparation of the project implementation report will include: surveys and mapping;~~
22 ~~geotechnical analyses; flood damage assessment; real estate analyses; and preparation of~~
23 ~~supplemental National Environmental Policy Act documents. The project implementation~~
24 ~~reports will bridge the gap between the programmatic level design contained in the Plan~~
25 ~~and the detailed design necessary to proceed to construction. Furthermore, each project~~
26 ~~implementation report will be accompanied by a project Management Plan, which will~~
27 ~~detail schedules, funding requirements, and resource needs for final design, and~~
28 ~~construction of the project."~~
29

30 The proposed rule provides guidance for the development of Project Implementation
31 Reports. The proposed rule provides for development and adoption of a protocol that
32 describes the major tasks to develop a Project Implementation Report and a protocol that
33 provides an outline for the content of the Project Implementation Report. The proposed
34 rule also provides for development and adoption of a protocol for the formulation and
35 evaluation of projects.
36

37 I. Project Cooperation Agreements

38 The Project Cooperation Agreement is the legal agreement between the Department of
39 the Army and the non-Federal sponsor that must be executed before a project can be
40 constructed. Section 601 (h) of the Water Resources Development Act of 2000 requires
41 that the agreement not be executed until the State has reserved or allocated water for the
42 natural system as described in the Project Implementation Report. A number of agencies,
43 agricultural, environmental, urban utilities, recreational, and urban interest groups, and,
44 the public were concerned about how to make sure that the reservation or allocation is
45 made in accordance with the Project Implementation Report. The proposed rule provides
46 that the District Engineer verify that this reservation or allocation has been made by the
47 State as identified in the Project Implementation Report. This will provide the assurances

1 that Congress intended without infringing on the State's right to reserve or allocate water
2 under State law.

3
4 ~~The proposed rule also establishes that the Project Cooperation Agreement include a~~
5 ~~provision that the reservation or allocation remain in effect and not be diminished, unless~~
6 ~~the Secretary of the Army agrees, for as long as the Plan is authorized. This provision is~~
7 ~~intended to protect the Federal interest and investment in the Plan and the need to ensure~~
8 ~~that the goals and purposes of the Plan are achieved.~~

9
10 The proposed rule provides that the Project Cooperation Agreement include a provision
11 that prohibits the Corps of Engineers or the non-Federal sponsor from eliminating or
12 transferring existing legal sources of water until a new source of comparable quantity and
13 quality is available. This provision implements the Savings Clause provisions of section
14 601 of the Water Resources Development Act of 2000. It is designed to prevent harm to
15 existing legal sources of water including those for agricultural or urban water supply, the
16 Miccosukee or Seminole Tribes, water supply for Everglades National Park, and water
17 supply for fish and wildlife. Also in compliance with the Savings Clause provisions, the
18 proposed rule provides that the Project Cooperation Agreement include a provision that
19 existing levels of flood protection service for flood protection not be reduced.

20 21 J. Operating Manuals

22 Operating Manuals provide rules and procedures on how to operate the completed
23 projects. To achieve the goals and purposes of the Plan, individual projects must be
24 operated as part of a system. Operating manuals encompass both individual projects and
25 the entire system. Agencies, agricultural, environmental, urban utilities, recreational, and
26 urban interest groups, and the public were concerned with ensuring that operating
27 manuals be consistent with the goals and purposes of the Plan. The proposed rule
28 establishes the development of two different types of Operating Manuals. A System
29 Operating Manual will be developed to provide a system-wide water control plan that
30 ensures that the operation of individual projects is linked together into a system-wide
31 framework.

32
33 A Project Operating Manual will be developed for each project. The draft Project
34 Operating Manual will be incorporated into the Project Implementation Report. This
35 connects operation of the project to the expected benefits of the project recommended in
36 the Project Implementation Report. The Project Operating Manual should be consistent
37 with the System Operating Manual. The final Project Operating Manual will be prepared
38 after ~~before~~ completion of the operational testing and monitoring phase.

39 40 K. Sequencing and Scheduling of Projects

41 The Plan consists of 68 components that will be implemented as approximately 45
42 separate projects, including pilot projects. The "Final Integrated Feasibility Report and
43 Programmatic Environmental Impact Statement" dated April 1, 1999, included a
44 sequence and schedule for the Plan. In July 2001, the Corps of Engineers and the South
45 Florida Water Management District updated the sequence and schedule to include
46 updated information and requirements from Congress and the Florida legislature.

1 Agencies, agricultural, environmental, urban utilities, recreational, and urban interest
2 groups, and the public were concerned about how projects would be sequenced and
3 scheduled. Some were concerned that the sequencing and schedule ensure that restoration
4 benefits occur early in the implementation process. Others were concerned that other
5 benefits of the Plan would be postponed until very late in the implementation process.
6 The proposed rule establishes a process for developing a Master Implementation
7 Sequencing Plan. The Master Implementation Sequencing Plan will include the schedule
8 and sequencing of projects based on the best funding, technical, contracting, and other
9 information available.

10
11 The proposed rule provides that projects will be sequenced and scheduled to accelerate
12 system-wide restoration, preservation, and protection benefits while providing for the
13 other water-related needs of the region, including water supply and flood protection.
14 However, funding, technical, and other constraints could affect the sequence and
15 schedule of projects.

16
17 The proposed rule provides that the Master Implementation Sequencing Plan be revised
18 as necessary to incorporate new information such as updated schedules from approved
19 Project Management Plans, the results of pilot projects and other studies, updated funding
20 information, revisions to the Plan, Congressional or other authorization and direction, or
21 information from the adaptive assessment program. It may also be necessary to revise the
22 Master Implementation Sequencing Plan to better achieve the interim goals.

23 24 L. Adaptive Assessment Program

25 One of the key aspects of implementation of the Plan is adaptive assessment. Adaptive
26 assessment provides the flexibility needed to modify the plan based on new information.
27 ~~The report of the Senate Committee on Environment and Public Works on the Water~~
28 ~~Resources Development Act of 2000 (Senate Report No. 106-362) describes the intent of~~
29 ~~the adaptive assessment program: "The committee does not expect R~~igid adherence to
30 the Plan as it was submitted to Congress is not required. This result would be inconsistent
31 with the adaptive assessment principles in the Plan. ~~Restoration of the Everglades is the~~
32 ~~goal, not adherence to the modeling on which the April, 1999 Plan was based. Instead,~~
33 ~~the committee expects that T~~he agencies responsible for project implementation report
34 formulation and Plan implementation will, under the proposed rule, seek continuous
35 improvement of the Plan based upon new information, improved modeling, new
36 technology and changed circumstances."

37
38 The flexibility offered by the adaptive assessment program is crucial for dealing with
39 uncertain technology and the uncertainties of the ecological responses that will occur as
40 the Plan is implemented. The Proposed rule establishes an adaptive assessment program
41 to guide implementation. RECOVER will be responsible for carrying out adaptive
42 assessment tasks and for developing necessary procedures to guide adaptive assessment.
43 If undesirable responses are detected, RECOVER will prepare a report with
44 recommendations for correcting the problem. These recommendations could include
45 changes to operations, changes to the Plan, changes to the implementation sequencing or
46 scheduling, or some combination of these.

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M. Revisions to the Comprehensive Everglades Restoration Plan

We anticipate that the Plan will need to be revised periodically to reflect new information or to improve performance based on the results of adaptive assessment. The proposed rule provides that a Comprehensive Plan Modification Report be prepared whenever significant revisions to the Plan are necessary to ensure that the goals and purposes of the Plan are achieved. Therefore, the Comprehensive Plan Modification Report will be an update or supplement to the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated April 1, 1999. After the Comprehensive Plan Modification Report is reviewed and approved by the local sponsor and the Assistant Secretary of the Army for Civil Works, it will be transmitted to Congress for approval.

N. Ensuring Achievement of Project Benefits

Section 601(f) of the Water Resources Development Act of 2000 (114 Stat. 2686) requires the preparation and approval of Project Implementation Reports prior to implementation of Comprehensive Everglades Restoration Plan projects. The Act specifies a number of items required to be in a Project Implementation Report, including identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system, and the identification of the amount of water to be reserved or allocated for the natural system. The reservation or allocation of water for the natural system will be implemented under State law. The Secretary of the Army cannot execute a Project Cooperation Agreement for the project until the reservation or allocation is made under State law. "State law" includes reservations, or allocations of water made by Florida's Water Management Districts under authority of state law.

Some groups expressed a view that the Plan required that water be reserved for the natural system on an 80%-20% basis. These groups rely on the report of the Senate Committee on Environment and Public Works on the Water Resources Development Act of 2000 (Senate Report No. 106-362) that states, "The Plan contains a general outline of the quantities of water to be produced by each project. According to the Army Corps, 80 percent of the water generated by the Plan is needed for the natural system in order to attain restoration goals, and 20 percent of the water generated for use in the human environment.... Subject to future authorizations by Congress, the committee fully expects that the water necessary for restoration, *currently estimated* at 80 percent of the water generated by the Plan, will be reserved or allocated for the benefit of the natural system" (Emphasis added). The ability of the Senate Committee Report to provide the intent of Congress with respect to the Water Resources Development Act of 2000 is questionable. However, in any case, the ~~Although those~~ percentages cited in the report were only appropriate as an initial estimate for the purpose of developing the Plan; ~~The~~ regulations anticipate that each Project Implementation Report will evaluate and identify water to be reserved for the natural system and made available for other water-related needs of the region, and that the Plan itself will be continually evaluated through adaptive assessment. The needs of ~~the natural system and~~ the water required to be allocated under the Savings Clause, the needs of the natural system and the requirements of other water-related needs of the region may be a greater or less percentage than the initial Plan estimate. Therefore, these regulations do not require that water for each project be strictly allocated on an 80%

1 - 20% basis. For the same reasons, it is not appropriate to establish a fixed allocation of
2 water as an interim goal.

3
4 Agencies, agricultural, environmental, urban utilities, recreational, and urban interest
5 groups, and the public expressed a number of concerns about the identification of water
6 to be reserved or allocated for the natural system. These concerns were mostly focused on
7 how the identification of water to be reserved or allocated for the natural system, which is
8 a requirement of the Project Implementation Report, would be coordinated with the
9 actual reservation or allocation process which is conducted under State law.

10
11 Central to ensuring achievement of the benefits of the Plan is the development of the pre-
12 CERP baseline. This baseline represents the conditions in the region on the date of
13 enactment of the Water Resources Development Act of 2000 (December 11, 2000). The
14 baseline establishes existing deliveries of water by the Central and Southern Florida
15 Project and includes existing legal sources of water. The proposed rule provides that each
16 Project Implementation Report consider the loss of pre-CERP baseline water availability
17 in identifying the quantity, timing, and distribution of water to be made available for the
18 natural system and for other water-related needs of the region by a project component.
19 The proposed rule also requires that each Project Implementation Report include
20 incremental Water Budget and cost-benefit analyses that demonstrates the greatest
21 benefits will be provided at the earliest time with available funding.

22
23 The PIR may also consider other remedial actions, including, but not limited to: whether
24 additional quantity, timing, and distribution of water should be made available by
25 subsequent projects; whether to recommend preparation of a Comprehensive Plan
26 Modification Report; or whether to recommend that the State of Florida and its agencies
27 re-examine the reservation or allocation of water needed under State law in order to meet
28 the needs of the natural system and the requirements of other water-related needs of the
29 region, including water supply and flood protection.

30
31 The Comprehensive Everglades Restoration Plan was developed as an integrated set of
32 components or projects that are intended to work together to successfully achieve the
33 goals and purposes of the Plan. Although individual projects increase the amount of water
34 available, the effect of an individual project extends far beyond the location of the
35 project. Accordingly, it is important that the identification of water to be reserved for the
36 natural system and the quantity of water made available for other water-related needs of
37 the region take into account the synergistic and regional effect of projects. The proposed
38 rule provides that a protocol be developed to provide a uniform system-wide procedure
39 for quantifying water made available by projects and for identifying the water to be
40 reserved for the natural system and the quantity of water made available for other water-
41 related needs of the region. The proposed rule also provides direction for the
42 development of the protocol.

43
44 Some agencies, agricultural, environmental, urban utilities, recreational, and urban
45 interest groups, and the public were concerned about potential variations from the
46 predicted availability of water once projects are actually implemented and operated. The

1 proposed rule provides that development of a Comprehensive Plan Modification Report
2 be undertaken to determine the need for revisions to the Plan. The proposed rule also
3 provides that in the interim during preparation of the Project Implementation Report,
4 operation of the project should be consistent with the purposes of the project component
5 as authorized by Congress. ~~In the absence of specific purposes for a project component~~
6 ~~the Congressional authorization, then the operation of a project component generally~~
7 ~~should be based on providing water in accordance with the following priorities: the first~~
8 ~~operational priority will be uses transferred from existing legal sources of water, then~~
9 ~~"new water", for restoration of the natural system, and then "new water", for other uses of~~
10 ~~water.~~

11 O. Savings Clause Provisions

12 Many agencies, groups, and the public were concerned about the effects of
13 implementation on existing legal sources of water and on existing levels ~~service for of~~
14 flood protection. ~~The report of the Senate Committee on Environment and Public Works~~
15 ~~on the Water Resources Development Act of 2000 (Senate Report No. 106-362)~~
16 ~~describes the intent of the savings clause provisions: "Elimination of existing sources of~~
17 ~~water supply is barred until new sources of comparable quantity and quality of water are~~
18 ~~available; existing authorized levels of flood protection are maintained; and the water~~
19 ~~compact among the Seminole Tribe of Florida, the State, and the South Florida Water~~
20 ~~Management District is specifically preserved. With respect to flood control, the~~
21 ~~committee intends that implementation of the Plan will not result in significant adverse~~
22 ~~impact to any person with an existing, legally recognized right to a level of protection~~
23 ~~against flooding. The committee does not intend that, consistent with benefits included in~~
24 ~~the Plan, this bill create any new rights to a level of protection against flooding that is not~~
25 ~~currently recognized under applicable Federal or State law."~~

26
27
28 The savings clause provisions of section 601(h)(5)(A) of the Water Resources
29 Development Act of 2000 (114 Stat. 2690) are intended to provide protection to existing
30 legal sources of water. The proposed rule provides that the Project Implementation
31 Report include analyses to determine if the project will cause such an elimination or
32 transfer. If the project will cause an elimination or transfer, then the Project
33 Implementation report will include an implementation plan that ensures that such
34 elimination or transfer will not take place until after the project is constructed and
35 operating as intended and is providing a new source of water supply of comparable
36 quantity and quality to the source of water supply that is being eliminated or transferred.

37
38 In accordance with the provisions of section 601(h)(5)(B) of the Water Resources
39 Development Act of 2000 (114 Stat. 2690), the proposed rule also provides that the
40 Project Implementation Report include analyses of the existing level of service for flood
41 protection. If the existing level of service would be adversely affected, then the proposed
42 rule provides that the recommended plan be modified to mitigate or eliminate the adverse
43 effect. ~~The proposed rule also allows for the evaluation of increased levels of flood~~
44 ~~protection, provided that it is consistent with the goals and purposes of the Plan and is~~
45 ~~practical~~

1 P. Interim Goals

2 Section 601 (h)(3)(c)(i)(III) of the Water Resources Development Act of 2000 (114 Stat.
3 2689) requires that interim goals be established to provide a means by which the
4 restoration success of the Plan may be evaluated throughout the restoration process.
5 Progress towards meeting the interim goals is to be reported to Congress as part of the
6 periodic reports required by the Act. While there was widespread agreement among
7 agencies, agricultural, environmental, urban utilities, recreational, and urban interest
8 groups, and the public that interim goals should be established to ensure that the, goals
9 and purposes of the Plan are achieved, there were different views about whether these
10 interim goals should be a part of the programmatic regulations. Some believed that the
11 interim goals needed to be a part of the programmatic regulations to ensure that the goals
12 would be met. Their basis for this was the report of the Senate Committee on
13 Environment and Public Works on the Water Resources Development Act of 2000
14 (Report 106-362) which states, "In developing the programmatic regulations, the Federal
15 and State partners should establish interim goals-expressed in terms of restoration
16 standards-to provide a means by which the restoration success of the Plan may be
17 evaluated throughout the implementation process. The restoration standards should be
18 quantitative and measurable at specific points in the Plan implementation," They also
19 believed that goals had to be incorporated into the regulations to enable the public to take
20 part in the process of establishing the goals Others were concerned that the statute
21 specifically required the regulations to set up the *process* for establishing interim goals
22 rather than the goals themselves. They are also of the opinion that Senate Committee
23 Report 106-362 carries no legislative weight since the chamber that adopted the bill did
24 not concur with the report and the bill discussed in the report differs in several critical
25 areas from the final version adopted by the United States Senate. Some were concerned
26 that placing the interim goals in the programmatic regulations would make goals
27 cumbersome to adopt and amend. Some were concerned that incorporating the goals
28 themselves into the regulations would suggest that goals were meant to set standards or
29 schedules enforceable in court rather than planning targets, and assessment and reporting
30 tools.

31
32 The proposed rule attempts to balance these competing views, while making it clear that
33 interim goals are not intended to be standards or schedules enforceable in court. The
34 proposed rule establishes the process for developing the interim goals. Development of
35 the technical basis for interim goals will be carried out by the interagency Restoration
36 Coordination and Verification (RECOVER) team and includes a number of opportunities
37 for public and agency comment. Interim goals will be memorialized through an
38 agreement signed by the Corps of Engineers and the South Florida Water Management
39 District~~Department of the Army, the Department of the Interior, and the State of Florida.~~
40 The periodic reports to Congress that are required by section 60 1 (1) of the Water
41 Resources Development Act of 2000 will include information on progress towards
42 meeting the interim goals. The proposed rule also provides a process for revising the
43 interim goals when necessary.

44
45 IV. Project Implementation Reports Approved Pursuant to Schedule and
46 Transition Rule

1 Section 601(h)(3)(D) of the Water Resources Development Act of 2000 (114 Stat. 2689)
2 provides a schedule and transition rule for Project Implementation Reports approved
3 before the date of promulgation of the programmatic regulations. The requirement for
4 Project Implementation Reports approved pursuant to the schedule and transition rule is
5 that they be consistent with the Plan. A number of Project Implementation Reports are
6 currently underway, but no Project Implementation Reports have been approved to date.
7

8 The Project Implementation Report for the Southern Golden Gates Estates project in
9 Collier County is currently scheduled to be completed prior to promulgation of the final
10 rule. If the final Project Implementation Report on Southern Golden Gates Estates is
11 approved before the date of promulgation of the final rule, then the preamble to the final
12 rule will contain a statement concerning the consistency of that Project Implementation
13 Report with the programmatic regulations.
14

15 The Water Preserve Areas and Indian River Lagoon feasibility studies, which include a
16 number of Comprehensive Everglades Restoration Plan components, have been
17 underway for some time and are nearing completion. We anticipate that the final
18 feasibility reports will be submitted to Congress later this year. Following promulgation
19 of the final rule, we anticipate preparing Special Project Implementation Reports and
20 submitting them to Congress. The Special Project Implementation Reports will address
21 water quantification and identification of water to be reserved for the natural system and
22 for other water-related needs of the region, including water supply and flood protection,
23 using the protocols developed pursuant to these programmatic regulations.
24

25 V. Concurrence Requirements

26 Section 601(h)(3)(B) of the Water Resources Development Act of 2000 (114 Stat. 2688)
27 requires that the Secretary of the Interior and the Governor provide the Secretary with a
28 written statement of concurrence or nonconcurrence on the proposed programmatic
29 regulations within 180 days from the end of the public comment period. We maintained
30 close coordination with the Department of the Interior and the State of Florida throughout
31 the process for developing the proposed rule. The final rule will include a reference to the
32 concurrence or non-concurrence statements of the Secretary of the Interior and the
33 Governor of Florida on the proposed rule and any changes made to the rule to bring it
34 compliance with those statements.
35

36 VI. Organization of the Proposed Rule

37 We have organized the proposed rule under four major headings. The first heading
38 provides the purpose and scope of the rule, definitions needed for the rule, and other
39 information required by Section 601(h)(3)(C) of the Water Resources Development Act
40 of 2000 (114 Stat. 2688). The remaining headings were designed to be consistent with the
41 content required by Section 601(h)(3)(C). These headings are: Comprehensive
42 Everglades Restoration Plan Implementation Processes; Incorporating New Information
43 into the Plan; and Ensuring Protection of the Natural System Consistent with the Goals
44 and Purposes of the Plan.
45

46 VII. Public Comments Solicited

1 We solicit comments or suggestions from the public, other concerned governmental
2 agencies, or any other interested party concerning this proposed rule.

3
4 If you wish to comment on this proposed rule, you may submit your comments and
5 materials by any one of several methods (see ADDRESSES section). If submitting
6 comments by electronic format, please submit them in ASCII file format or Word file
7 format and avoid the use of special characters and any form of encryption. Please include
8 your name and return e-mail address in your e-mail message. Please note that the e-mail
9 address will be closed out at the termination of the public comment period.

10 11 VIII. Administrative Requirements

12 13 A. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

14 This rule does not impose any information collection requirements for which OMB
15 approval under the Paperwork Reduction Act is required. Thus, this action is not subject
16 to the Paperwork Reduction Act.

17 18 B. Executive Order 12866

19 Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine
20 whether the regulatory action is "significant" and therefore subject to review by the
21 Office of Management and Budget (OMB) and the requirements of the Executive Order.
22 The Order defines "significant regulatory action" as one that is likely to result in a rule
23 that may:

24 (1) Have an annual effect on the economy of \$ 100 million or more, or adversely
25 affect in a material way the economy, a sector of the economy, productivity, competition,
26 jobs, the environment, public health or safety, or State, local, or Tribal governments or
27 communities;

28 (2) Create a serious inconsistency or otherwise interfere with an action taken or
29 planned by another agency;

30 (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan
31 programs or the rights and obligations of recipients thereof; or

32 (4) Raise novel legal or policy issues arising out of legal mandates, the President's
33 priorities, or the principles set forth in the Executive Order.

34
35 Pursuant to the terms of Executive Order 12866, it has been tentatively determined that
36 this rule is a "significant regulatory action" in light of the provisions of paragraph (4)
37 above. As such, this action will be submitted to OMB for review. Changes made in
38 response to OMB suggestions or recommendations will be documented in the public
39 record.

40 41 C. Executive Order 13132

42 Executive Order 13132, entitled "Federalism" (64 FR43255, August 10, 1999), requires
43 us to develop an accountable process to ensure "meaningful and timely input by State and
44 local officials in the development of regulatory policies that have federalism
45 implications." "Policies that have federalism implications" is defined in the Executive
46 Order to include regulations that have "substantial direct effects on the States, on the

1 relationship between the national government and the States, or on the distribution of
2 power and responsibilities among the various levels of government." This rule does not
3 have significant federalism implications. The proposed rule defines the relationships
4 between the Federal and State partners in implementing the Comprehensive Everglades
5 Restoration Plan. The proposed rule is limited to implementation of the Comprehensive
6 Everglades Restoration Plan and, therefore, has little incremental impact on State and
7 local governments and their activities. It will not have substantial direct effects on the
8 States, on the relationship between the national government and the States, or on the
9 distribution of power and responsibilities among the various levels of government, as
10 specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this
11 rule.

12 13 D. Regulatory Flexibility Act

14 The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq., as amended by the: Small
15 Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) generally requires an
16 agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-
17 comment rulemaking requirements under the Administrative Procedure Act or any other
18 Statute unless the agency certifies that the rule will not have a significant economic
19 impact on a substantial number of small entities. Small entities include small businesses,
20 small organizations and small governmental jurisdictions. For purposes of assessing the
21 impacts of the proposed rule on small entities, a small entity is defined as: (1) A small
22 business based on SBA size standards; (2) a small governmental jurisdiction that is a
23 government of a city, county, town, school district, or special district with a population of
24 less than 50,000; and (3) a small organization that is any not-for-profit enterprise which
25 is independently owned and operated and is not dominant in its field. After considering
26 the economic impacts of the proposed rule on small entities, we certify that this action
27 will not have a significant economic impact on a substantial number of small entities. The
28 proposed rule only establishes processes and governmental relationships that will be
29 used for implementation of the Comprehensive Everglades Restoration Plan.

30 31 E. Unfunded Mandates Reform Act

32 In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

33 (a) This rule, as proposed, will not "significantly or uniquely" affect small
34 governments. A Small Government Agency Plan is not required. Small governments will
35 only be affected to the extent that they agree to act as non-Federal sponsor for
36 implementation of projects for the Comprehensive Everglades Restoration Plan. The
37 proposed rule does not establish new or different requirements for non-Federal sponsors
38 for implementation of projects for the Comprehensive Everglades Restoration Plan.

39
40 (b) This rule, as proposed, will not produce a Federal mandate of \$ 100 million or
41 greater in any year, that is, it is not a "significant regulatory action" under the Unfunded
42 Mandates Reform Act. The proposed rule defines processes and relationships between the
43 Federal and State partners in implementing the Comprehensive Everglades Restoration
44 Plan. The proposed rule does not affect the cost sharing requirements for non-Federal
45 sponsors in implementing the Plan and therefore, imposes no new obligations on State or
46 local governments.

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F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs us to use Voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, we did-not consider the use of any voluntary consensus standards.

G. Executive Order 13045

Executive Order 13045, entitled Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Was initiated after April 21, 1997, or for which a notice of proposed rulemaking was published after April 21, 1998; (2) is determined to be "economically significant" as defined under Executive Order 12866, and (3) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets all three criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that we considered. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. The proposed rule establishes processes for the implementation of the Comprehensive Everglades Restoration Plan and defines the relationships between the Federal and State partners for implementation. Furthermore, it does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13084

Under Executive Order 13084, we may not issue a regulation that is not required by statute, if it significantly or uniquely affects the communities of Indian Tribal governments and imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the Tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." The proposed rule is required by section 601(h)(3) of the Water Resources Development Act of 2000 (114 Stat. 2688). Additionally, the proposed rule does not significantly or uniquely affect

1 the communities of Indian Tribal governments, nor does it impose significant compliance
2 costs on them. The proposed rule establishes processes for the implementation of the
3 Comprehensive Everglades Restoration Plan and defines the relationships between the
4 implementing entities. Accordingly, the requirements of section 3(b) of Executive Order
5 13084 do not apply to this rule.

6
7 I. Executive Order 12630

8 In accordance with Executive Order 12630 entitled "Governmental Actions and
9 Interference with Constitutionally Protected Property Rights", the proposed rule will not
10 effect a taking of private property or otherwise have taking implications. A takings
11 implication assessment is not required. The proposed rule establishes processes to be
12 used in implementing the Comprehensive Everglades Restoration Plan.

13
14 J. Civil Justice Reform

15 In accordance with Executive Order 12988, we have determined that the proposed rule
16 does not unduly burden the judicial system and meets the requirements of sections 3(a)
17 and 3(b)(2) of the Order. The proposed rule establishes processes to be used in
18 implementing the Comprehensive Everglades Restoration Plan and defines the
19 relationships between the governmental entities that will implement the Plan.

20
21 K. Executive Order 13211

22 On May 18, 2001, the President issued an Executive Order (EO 13211) that applies to
23 regulations that significantly affect energy supply, distribution, and use. Executive Order
24 13211 requires agencies to prepare Statements of Energy Effects when undertaking
25 certain actions. Because this proposed rule is not expected to significantly affect energy
26 supplies, distribution, or use, this action is not a significant energy action and no
27 Statement of Energy Effects is required.

28
29 L. Environmental Documentation

30 We have determined that this proposed rule does not constitute a major Federal action
31 significantly affecting the quality of the human environment. Therefore, environmental
32 documentation under the National Environmental Policy Act (NEPA) is not required for
33 this proposed rule. The Corps of Engineers has prepared appropriate environmental
34 documentation, including a Programmatic Environmental Impact Statement, for the
35 Comprehensive Everglades Restoration Plan. Moreover, this proposed regulation
36 establishes requirements for the preparation of appropriate environmental documentation
37 as part of the implementation process.

38
39 We have identified actions in this regulation which generally require preparation of a
40 NEPA document (either an Environmental Impact Statement or an environmental
41 assessment), or which are categorically excluded from NEPA. Our intent is to reduce
42 controversy over whether NEPA is required for individual actions by taking a systematic
43 look at the kinds of actions needed to implement the Plan, and to apply the principles of
44 §230 of this chapter to Comprehensive Everglades Restoration Plan activities. Certain
45 individual actions, such as development, adoption or revision of methods or protocols,
46 are listed as categorically excluded. We have determined that development, adoption, or

1 revision of a method or protocol itself would not require NEPA, and that use of the
2 method or protocol could be analyzed under NEPA, if appropriate, in a decision
3 document such as a Project Implementation Report.

4
5 List of Subjects in 33 CFR Part 385

6
7 Environmental protection, Flood control, Intergovernmental relations, Natural resources,
8 Water resources, Water supply.

9
10 Dated: xx ____, 2002

11
12
13 Mike Parker,
14 Assistant Secretary of the Army (Civil Works), Department of the Army

15
16 For the reasons set forth in the preamble, the Army Corps of Engineers proposes to add
17 33 CFR Part 385 as follows:

18
19 Add Part 385 to read as follows:

20
21 **PART 385 -- PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE**
22 **EVERGLADES COMPREHENSIVE PLAN**

23
24 **PURPOSE AND SCOPE**

25
26 **Sec.**

27 385.1 Purpose of the Programmatic Regulations.

28 385.2 Applicability of the Programmatic Regulations.

29 385.3 Definitions.

30 385.4 Goals and Purposes of the Comprehensive Everglades Restoration Plan.

31 385.5 Implementation Principles.

32 385.6 Concurrency Statements.

33 385.7 Limitation on Applicability of Programmatic Regulations.

34 385.8 Development and Adoption of Protocols.

35 385.9 Review of Programmatic Regulations.

36
37 **CERP IMPLEMENTATION PROCESSES**

38
39 **Sec.**

40 85.10 Implementation Process.

41 385.11 Incorporation of NEPA and Related Considerations into the Implementation
42 Process.

43 385.12 Consistency with Requirements of the State of Florida.

44 385.13 Design Agreements.

45 385.14 Project Delivery Team.

46 385.15 Consultation and Coordination.

- 1 385.16 Public Outreach.
- 2 385.17 Environmental and Economic Equity.
- 3 385.18 Restoration Coordination and Verification (RECOVER).
- 4 385.19 Quality Control.
- 5 385.20 Independent Scientific Review.
- 6 385.21 Dispute Resolution.
- 7 385.22 Project Management Plans.
- 8 385.23 Project Implementation Reports.
- 9 385.24 Project Cooperation Agreements.
- 10 385.25 Operating Manuals.

11 2

12 INCORPORATING NEW INFORMATION INTO THE PLAN

13

14 Sec.

- 15 385.26 Master Implementation Sequencing Plan.
- 16 385.27 Adaptive Assessment Program.
- 17 385.28 Revisions to the Comprehensive Everglades Restoration Plan.
- 18 385.29 Revisions to Models and Analytical Tools.

19

20 ENSURING ~~WATER AVAILABILITY PROTECTION OF THE NATURAL~~ 21 ~~SYSTEM~~ CONSISTENT WITH THE GOALS AND PURPOSES OF THE 22 PLAN

23

24 Sec.

- 25 385.30 Achievement of Project Benefits.
- 26 385.31 Compliance with Savings Clause Provisions.
- 27 385.32 Interim Goals.

28

29 Appendix A - Illustrations to Part 385

30

31 Authority: Section 601, Public Law 106-541, 114 Stat. 2680; 10 U.S.C.
32 3013(g)(3); 33 U.S.C. I and 701; and 5 U.S.C. 301.

33

34

PURPOSE AND SCOPE

35

36 §385.1 Purpose of the Programmatic Regulations

37 The purpose of the programmatic regulations is to establish ~~a the processes and~~
38 ~~procedures needed to~~ for implement ing the Comprehensive Everglades Restoration Plan
39 that and to ensure ~~that~~ the goals and purposes of the Plan are achieved. ~~The~~
40 ~~programmatic regulations also define the relationship and responsibilities of the Federal~~
41 ~~and State partners charged with implementing the Plan as well as relationships and~~
42 ~~responsibilities of other agencies and governments and the public.~~

43

44 §385.2 Applicability of the Programmatic Regulations.

1 (a) ~~These This~~ regulations apply~~ies~~ to all components, ~~P~~projects, separable
2 elements, and ~~P~~program ~~L~~level ~~A~~activities conducted ~~to for~~ implementation ~~of~~ the
3 Comprehensive Everglades Restoration Plan.

4
5 (b) Nothing in ~~these this~~ regulations shall be interpreted to amend, alter, diminish,
6 or otherwise affect any existing legal water rights of the United States, the State of
7 Florida, ~~persons holding permits or common law water rights from the State of Florida,~~
8 the Miccosukee Tribe of Indians of Florida, or the Seminole Tribe of Florida, including
9 the compact among the Seminole Tribe of Florida, the State, and the South Florida Water
10 Management District, defining the scope and use of water rights of the Seminole Tribe of
11 Florida, as codified by section 7 of the Seminole Indian Land Claims Settlement Act of
12 1987 (25 U.S.C. 1772e).

13
14 (c) Protocols, ~~I~~interim ~~G~~goals, water control plans, operating plans, models,
15 analytical tools, Pilot Project Technical Data Report, Master Implementation Sequencing
16 Plans, Project Management Plans, Design Document~~ation~~ Reports, Design Agreements,
17 Operating Manuals, Project Implementation Reports, Special Project Implementation
18 Reports, Project Cooperation Agreements, Comprehensive Plan Modification Reports,
19 and other documents created under these regulations or the Comprehensive Everglades
20 Restoration Plan, are intended to be used as planning, measurement, assessment,
21 reporting, and/or management tools. They are not designed to be, nor shall they be
22 construed to be, standards, schedules, or requirements enforceable by third parties, or
23 otherwise restricting the discretion of the Secretary, the District Engineer, the State, or
24 the ~~N~~on-Federal ~~S~~ponsor, in carrying out their responsibilities under the
25 Comprehensive Everglades Restoration Plan.

26
27 (d) Nothing in these regulations are intended to, or shall be interpreted to, Reserve
28 or allocate water or to, prescribe the process for Reserv~~ing~~ation or allocat~~ing~~ion ~~of~~ water
29 or for ~~regional~~ water management under Federal or Florida law. Nor are these regulations
30 intended to, nor shall they be interpreted to, prescribe any ~~other~~ process of Florida ~~water~~
31 law.

32
33
34 §385.3 Definitions.

35 The following terms are defined for the purposes of Part 385, unless the context of their
36 use indicates otherwise:

37
38 Adaptive Aassessment means the process for understanding and reducing uncertainties
39 related to the responses of the ~~S~~south Florida ~~E~~cosystem to the Comprehensive
40 Everglades Restoration Plan. Adaptive Aassessment includes monitoring and assessment.

41
42 Agricultural Water Supply means the use or reliance upon Sources of Water for
43 agricultural consumptive use, (non-Urban Water Supply), prevention of saline water
44 intrusion, maintenance of canal stages, protection of Agricultural Wetlands and other
45 urban water needs.

1 Assessment means the process whereby the actual performance of implemented Projects
2 are measured and interpreted based on information obtained from System-wide
3 Monitoring.

4
5 Central and Southern Florida (C&SF) Project means the project for Central and Southern
6 Florida authorized under the heading "CENTRAL AND SOUTHERN FLORIDA" in
7 section 203 of the Flood Control Act of 1948 (62 Stat. 1176) and any modification
8 authorized by any other provision of law.

9
10 Comprehensive Everglades Restoration Plan (CERP) means the plan contained in the
11 "Final Integrated Feasibility Report and Programmatic Environmental Impact
12 Statement," dated April 1, 1999, as modified by section 601 of the Water Resources
13 Development Act of 2000 (114 Stat. 2680), or any subsequent modification authorized in
14 law.

15
16 Comprehensive Plan Modification Reports means *[Need Definition]*

17
18 Concurrence means the issuance or non-issuance of a written statement of concurrence or
19 nonconcurrence by the Secretary of the Interior and the Governor, not later than 180 days
20 from the end of the public comment period on these ~~role of the Secretary of the Interior~~
21 and the Governor of Florida with regard to programmatic regulations, as specified in
22 section 601(h)(3) of the Water Resources Development Act of 2000 (114 Stat. 2688).

23
24 Consultation means holding meetings, briefings, telephone conversations, and other
25 outreach activities with the Department of Interior, the Florida Department of
26 Environmental Protection, the Florida Department of Agriculture and Consumer
27 Services, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida and
28 other Federal, State, ~~tribal~~, and local agencies and governments to provide information or
29 an exchange of views, including, but not limited to, those held with respect to these
30 regulations.

31
32 Coordination means the formal exchange of information and views, by letter, report,
33 meeting or other prescribed means, between the Corps of Engineers, the Non-Federal
34 Sponsor and Federal, State, tribal and local agencies and governments, including but not
35 limited to, the exchange of information and views regarding the development of Project
36 Implementation Reports and another agency. Coordination activities are required by and
37 in accordance with purposes and procedure established by Federal policy (public law,
38 executive order, agency regulation, memorandum of agreement, and other documents that
39 memorialize policy of the Corps of Engineers). Coordination between the Corps of
40 Engineers, the Non-Federal Sponsor, the Miccosukee Tribe of Indians of Florida and the
41 Seminole Tribe of Florida shall be in accordance with Executive Order 13084
42 "Consultation and Coordination with Indian Tribal Governments" and other applicable
43 policies.

44
45 Current evaluation condition means the conditions predicted (forecast) in the south
46 Florida ecosystem that are modeled to include all of the Project Implementation Reports

1 ~~approved (i.e. Division Engineer's public notice issued). This condition establishes an~~
2 ~~evaluation baseline for estimating how much water an individual project makes available.~~

3
4 Design Agreement means the agreement between the Corps of Engineers and a Non-
5 Federal Sponsor concerning cost sharing for activities related to planning, engineering,
6 design, and other activities needed to implement the Comprehensive Everglades
7 Restoration Plan.

8
9 Design Documentation Report means the document that describes the results of
10 investigations, analyses, and calculations made during the detailed design phase that
11 provides the technical basis for the Plans and Specifications.

12
13 District Engineer means the District Engineer of the Corps of Engineers, Jacksonville
14 District.

15
16 Division Engineer means the Division Engineer of the Corps of Engineers, South Atlantic
17 Division.

18
19 ~~Drought Contingency Plan means a plan contained within the Operating Manuals that~~
20 ~~describes procedures for dealing with drought situations that affect management~~
21 ~~decisions for operating the projects.~~

22
23 Environmental and Economic Equity means the fair treatment of all persons regardless
24 of race, color, creed, or national origin, including Environmental Justice, and the
25 provision of economic opportunities for small business concerns controlled by socially
26 and economically disadvantaged individuals, including individuals with limited English
27 proficiency in the implementation of the Comprehensive Everglades Restoration Plan.

28
29 Environmental Justice means identifying and addressing, as appropriate,
30 disproportionately high and adverse human health or environmental effects of a Federal
31 agency's programs, policies, and activities on minority and low-income populations as
32 required by Executive Order 12898.

33
34 Evaluation means the process whereby the performance of plans and designs relative to
35 desired objectives is forecast through predictive modeling.

36
37 Existing Legal Source of Water means a Legal Source of Water located within the South
38 Florida Ecosystem that was in existence on or before December 11, 2000, the date of
39 enactment of section 601 of the Water Resources Development Act of 2000 (114 Stat.
40 2680), accounting for natural variations.

41
42 ~~Future without Plan condition means the conditions predicted (forecast) in the south~~
43 ~~Florida ecosystem through modeling for the year 2050 without implementation of any of~~
44 ~~the projects of the Plan.~~

45
46 Governor means the Governor of the State of Florida.

1
2 Human System means all land and water for human use being Agricultural Water Supply
3 and Urban Water Supply within the South Florida Ecosystem.

4
5 Independent Scientific Review means the process to ensure that appropriate bodies that
6 are independent of the Corps of Engineers, the South Florida Water Management District,
7 or other Non-Federal Sponsors review and validate the scientific and technical
8 processes and information developed for the Comprehensive Everglades Restoration
9 Plan.

10
11 Independent Technical Review Team means the team established by the Corps of
12 Engineers and the Non-Federal Sponsor, to ensure quality control of documents and
13 products produced by the Project Delivery Team through periodic Technical Reviews.

14
15 Indicator means an element or component of the Natural or Human Systems that is
16 expected to be influenced by the Comprehensive Everglades Restoration Plan, and has
17 been selected to be measured as representative of a class of system responses.

18
19 Interim Goal means objectives for comparatively short-term achievements during the
20 implementation of the Comprehensive Everglades Restoration Plan. Interim Goals
21 provide a basis for reporting on the progress made at specified intervals of time towards
22 the implementation of the Comprehensive Everglades Restoration Plan, and for
23 periodically evaluating the accuracy of predictions of system responses to the effects of
24 the Plan.

25
26 Legal Sources of Water means a Source of Water, which the State of Florida allows to be
27 used or is relied upon for Agricultural or Urban Water Supply, allocation or entitlement
28 to the Seminole Indian Tribe of Florida and the Miccosukee Tribe of Indians of Florida,
29 water supply for Everglades National Park or water supply for fish and wildlife.

30
31 Level of Service for Flood Protection means the water level or flow duration and
32 frequency, which the C&SF Project and other water management systems in the South
33 Florida Ecosystem are designed to provide in order to prevent flooding of the related
34 surface water basins at which flood damages would be expected to begin to occur in a
35 specific community or region. This is often expressed as a given hydrologic exceedence
36 frequency.

37
38 Master Implementation Sequencing Plan means [Needs Definition]

39
40 Monitoring means the systematic process of collecting data related to the particular
41 Natural and Human Systems at specified locations and times.

42
43 Natural System means all land and water managed by the Federal government or the
44 State within the South Florida Ecosystem and includes water conservation areas;
45 sovereign submerged land; Everglades National Park; Biscayne National Park; Big
46 Cypress National Preserve; other Federal or State (including a political subdivision of a

1 State) land that is designated and managed for conservation purposes; and any tribal land
2 that is designated and managed for conservation purposes, as approved by the tribe.

3
4 New water means water generated from the implementation of the components of the
5 Comprehensive Everglades Restoration Plan, which is not currently available within the
6 C&SF Project, as it existed on the date of enactment of the Water Resources
7 Development Act of 2000 (114 Stat. 2680). These components include water resource
8 facilities and water currently lost to tide~~that is made available by a project of the Plan.~~

9
10 Non-Federal Sponsor means a legally constituted public body that has full authority and
11 capability to perform the terms of the Project Cooperation Agreement and the ability to
12 pay damages, if necessary, in the event of failure to perform, pursuant to Section 221 of
13 the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b).

14
15 Operating Manuals means the set of documents for Pprojects and the entire Ssystem used
16 to guide the operation of the Pprojects of the Comprehensive Everglades Restoration
17 Plan. Operating Manuals include the System Operating Manual and Project Operating
18 Manuals. Operating Manuals may include Wwater Control Pplans, regulation schedules,
19 and operating criteria for Pproject and/or Ssystem regulations as well as additional
20 provisions to collect, analyze, and disseminate basic data in order to operate Pprojects to
21 ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan are
22 achieved.

23
24 Outreach means activities undertaken to involve or inform the public about the
25 Comprehensive Everglades Restoration Plan and activities associated with
26 implementation of the Plan.

27
28 Performance Measure means an Indicator and its Target.

29
30 Pilot Project Technical Data Report means the report that documents the findings and
31 conclusions from the implementation and testing phases of a pilot project.

32
33 ~~Plan means the Comprehensive Everglades Restoration Plan contained in the "Final~~
34 ~~Integrated Feasibility Report and Programmatic Environmental Impact Statement" dated~~
35 ~~April 1, 1999, as modified by section 601 of the Water Resources Development Act of~~
36 ~~2000 (114 Stat. 2680), or any subsequent modification authorized in law.~~

37
38 Plans and Specifications means the information required to bid and construct the Pproject
39 detailed in the Project Implementation Report and documented in the Design
40 Documentation Report.

41
42 Pre-CERP Baseline means the conditions in the South Florida Ecosystem that existed
43 on or before December 11, 2000, the date of enactment of section 601 of the Water
44 Resources Development Act of 2000 (114 Stat. 2680), accounting for natural variations
45 and including Existing Legal Sources of Water and Water and Levels of Service for
46 Flood Protection. The Pre-CERP Baseline may be described through modeling, which

1 ~~and~~ includes such things as land use, population, water demand, and operations of the
2 Central and Southern Florida Project. The modeling of the Ppre-CERP Bbaseline may be
3 refined to more accurately describe the conditions of the South Florida Ecosystem change
4 as the models are revised or additional data is incorporated into the models.

5
6 Program-Llevel Aactivities means activities or tasks that support more than one Pproject
7 or that affect the entire implementation program for the Comprehensive Everglades
8 Restoration Plan.

9
10 Project means a component or group of components of the Comprehensive Everglades
11 Restoration Plan that are implemented together to provide functional benefits towards
12 achieving the goals and purposes of the Plan.

13
14 Project Cooperation Agreement (PCA) means the legal agreement between the
15 Department of the Army and a Nnon-Federal Ssponsor that is executed prior to Pproject
16 construction. The Project Cooperation Agreement describes the financial, legal, and other
17 responsibilities for construction, operation, maintenance, repair, rehabilitation, and
18 replacement of a Pproject.

19
20 Project Delivery Team means the inter-agency, interdisciplinary group led by the Corps
21 of Engineers and the Nnon-Federal Ssponsor that develops the products necessary to
22 implement Pprojects or Pprogram-Llevel Aactivities.

23
24 Project Implementation Report (PIR) means the report prepared by the Corps of
25 Engineers and the Nnon-Federal Ssponsor pursuant to section 601(h)(4)(A) of the Water
26 Resources Development Act of 2000 (114 Stat. 2689) and described in Section 10.3.1 of
27 the "Final Integrated Feasibility Report and Programmatic Environmental Impact
28 Statement", dated April 1, 1999. The Project Implementation. Report is a new type of
29 document containing additional Pproject formulation and Eevaluation as well as more
30 detailed engineering and design. The Project Implementation Report bridges the gap
31 between the conceptual level of detail contained in the "Final Integrated Feasibility
32 Report and Programmatic Environmental Impact Statement" and the detailed design
33 necessary to proceed to construction.

34
35 Project-Llevel Aactivity means an activity or task that supports implementation of a
36 Pproject.

37
38 Project Management Plan means a document which establishes the Project's scope,
39 requirements and technical performance requirements, including various functions and
40 quality criteria that will be used to produce and deliver the products that compromise the
41 Project.

42
43 Project Operating Manual means the manual that describes the operating criteria for a
44 Pproject or group of Pprojects of the Plan. The Project Operating Manual is considered a
45 supplement to the System Operating Manual and presents more detailed information on
46 the operation of a specific Pproject or group of Pprojects.

1
2 Protocol means a method or methods, which ~~in the discretion of the Corps of Engineers~~
3 ~~and the South Florida Water Management District,~~ is appropriate for performing a task
4 necessary to implement the Comprehensive Everglades Restoration Plan, such as plan
5 formulation and Evaluation, Aadaptive Aassessment, modeling, quantification of water
6 to be Reserved for the Natural System or allocated for other water-related needs of the
7 region~~the natural system~~, and similar tasks.

8
9 Public means any individuals, organizations, or unit of government that might be affected
10 by or interested in the implementation of the Comprehensive Everglades Restoration
11 Plan. The Public includes Federal, regional, State, and local government entities and
12 officials, public and private organizations, Native American (Indian) tribes, and
13 individuals.

14
15 Reservation or Reserved of water for the natural system ~~means a regulation adopted the~~
16 ~~actions taken~~ by the South Florida Water Management District, the Florida Department
17 of Environmental Protection, or any other state agency or water management district
18 which may be authorized by Florida law, pursuant to Section 373.223(4), the provisions
19 ~~of Chapter 373.232 of the~~ Florida Statutes, or other applicable state law, to legally
20 reserve from use by permit applicants, water in such locations and quantities, and for
21 such seasons of the year, as in its judgment may be required for the protection of fish and
22 wildlife or the public health and safety; provided, however, all presently existing legal
23 uses of water shall be protected so long as such use is not contrary to the public interest.
24 Such reservations shall be subject to periodic review and revision in light of changed
25 conditions~~water from allocation for consumptive use for the protection of fish and~~
26 wildlife.

27
28 Restoration Coordination and Verification (RECOVER) means the interagency,
29 interdisciplinary group, established by the Corps of Engineers and the South Florida
30 Water Management District, to assess, evaluate, and integrate the Projects of the
31 Comprehensive Everglades Restoration Plan with the overall goal of ensuring that the
32 System-wide goals and purposes of the Plan are achieved.

33
34 Secretary means the Secretary of the Army, unless indicated otherwise. The Secretary of
35 the Army acts through the Assistant Secretary of the Army (Civil Works) with respect to
36 the Army's civil works program pursuant to 10 U.S.C. 3016.

37
38 Source of Water means lakes, streams, surface water impoundments, groundwater in
39 confined and unconfined aquifers and any other surface or groundwater in whatever
40 form, which may be used or relied upon for Agricultural or Urban Water Supply,
41 allocation or entitlement to the Seminole Indian Tribe of Florida and the Miccosukee
42 Tribe of Indians of Florida, water supply for Everglades National Park or water supply
43 for fish and wildlife.

44
45 South Florida Ecosystem means the area consisting of the land and water within the
46 boundary of the South Florida Water Management District in effect on July 1, 1999 and

1 includes the Everglades, the Florida Keys, and the contiguous near-shore coastal water of
2 South Florida.

3
4 South Florida Water Management District (SFWMD) means the public body constituted
5 by the State of Florida pursuant to Chapter 373.069 of the Florida Statutes.

6
7 State means the State of Florida.

8
9 Special Project Implementation Report means a report prepared by the Corps of
10 Engineers and the Non-Federal Sponsor to provide information on a Project necessary
11 to fulfill the requirements of Section 601(h)(4)(A) of the Water Resources Development
12 Act of 2000 (114 Stat. 2689).

13
14 System means the Central and Southern Florida Project.

15
16 System-wide means pertaining to the Central and Southern Florida Project, as a whole.

17
18 System Operating Manual means the System-wide Operating Manual for the
19 Comprehensive Everglades Restoration Plan that provides an integrated framework for
20 operating all of the Projects of the Plan.

21
22 Target means a measure of change by the Indicator that is expected or desired during and
23 following the implementation of the Comprehensive Everglades Restoration Plan.

24
25 Technical Review means the process that confirms the proper selection and application
26 of established criteria, regulations, laws, codes, principles, and professional procedures to
27 ensure a quality product. Technical Review also confirms the constructability and
28 effectiveness of the product and the utilization of clearly justified and valid assumptions
29 and methodologies.

30
31 Urban Water Supply means the use or reliance upon Sources of Water for non-
32 agricultural consumptive use, prevention of saline water intrusion, maintenance of canal
33 stages, protection of Urban Wetlands and other urban water needs.

34
35 Urban Wetlands means wetlands and other surface waters located within the South
36 Florida Ecosystem, but outside the water conservation areas, the Everglades National
37 Park, Biscayne National Park and Big Cypress National Preserve.

38
39 Water Budget means an account of all water inflows, outflows and changes in storage for
40 time.

41
42 Water Control Plan means a plan that describes operating criteria for a Project or
43 group of Projects.

44
45 Water made available means the water generated from the implementation of the
46 components of the Plan. These components include storage reservoirs, aquifer storage

1 ~~and recovery facilities, stormwater treatment areas, water reuse facilities, and seepage~~
2 ~~management.~~

3
4 Water Shortage Plan means the plan developed by the South Florida Water Management
5 District to address a situation within all or part of the District when insufficient water is
6 available to meet the present and anticipated needs of the users, or when conditions are
7 such as to require temporary reduction in total use within a particular area to protect the
8 water resources from serious harm. The Water Shortage Plan is intended ~~protect the water~~
9 resources of the South Florida Water Management District from harm; to assure equitable
10 distribution of available water resources among all water users during times of shortage,
11 consistent with the goals of minimizing adverse economic, social and health related
12 impacts; to provide advance knowledge of the means by which water apportionments and
13 reductions will be made during times of shortage, and to promote greater security for
14 water use permittees and other legal users.

15
16 ~~With Plan condition means the conditions predicted (forecast) in the south Florida~~
17 ~~ecosystem through modeling with the Plan in place. As revisions to the Plan are approved~~
18 ~~the "With Plan condition" will also change.~~

19
20 §385.4 Goals and Purposes of the Comprehensive Everglades Restoration Plan The
21 overarching objective of the Comprehensive Everglades Restoration Plan is the
22 restoration, preservation, and protection of the South Florida Ecosystem while
23 providing for other water-related needs of the region, including water supply and flood
24 protection. The goal of the ~~Comprehensive Everglades Restoration Plan is Corps of~~
25 ~~Engineers, in cooperation with non-Federal sponsors, is to implement the Plan~~ to ensure
26 the protection of water quality in, the reduction of the loss of fresh water from, the
27 improvement of the environment of the South Florida Ecosystem and to achieve and
28 maintain the benefits to the Natural System and Human System environment
29 described in the Plan, and required pursuant to section 601 of the Water Resources
30 Development Act of 2000 (114 Stat.2680), for as long as the Project is authorized.

31
32 §385.5 Implementation Principles.

33 The Corps of Engineers and the South Florida Water Management District, in
34 cooperation with other Non-Federal Ssponsors, shall:

35 ~~— (a) sequence and schedule Projects to accelerate system wide restoration,~~
36 ~~preservation, and protection benefits while providing for other water related needs of the~~
37 ~~region, including water supply and flood protection, to the extent practical given funding,~~
38 ~~technical, and other constraints;~~

39
40 (ab) integrate Projects and Program Level Aactivities to achieve the System-
41 wide goals and purposes of the Comprehensive Everglades Restoration Plan, including
42 restoration, water supply and flood control, with an Implementation Schedule and
43 sequence based upon a Water Budget and Financial Budget that provides the greatest
44 water supply enhancement and other benefits at the earliest time and in the most cost-
45 effective manner;

1 (b) for each Project component provide incremental water budget and cost and
2 benefit analyses to demonstrate that the implementation sequence of components will
3 provide the greatest contribution to water supply enhancement and other System-wide
4 benefits with available funding at the time of implementation compared to other
5 alternatives;

6
7 (c) operate Pprojects in such a manner that maximizes the Ssystem-wide benefits
8 of restoration, preservation, and protection of the Ssouth Florida Eecosystem while
9 providing for other water-related needs of the region, including water supply and flood
10 protection;

11
12 (d) use the principles of Aadaptive Aassessment to assess the Comprehensive
13 Everglades Restoration Plan's success in achieving its goals and purposes and for revising
14 the Plan when necessary to ensure that the goals and purposes of the Plan are achieved;
15 and

16
17 (e) establish Iinterim Ggoals in order to provide a means by which the success of
18 the Comprehensive Everglades Restoration Plan in achieving its goals and purposes may
19 be evaluated throughout the implementation process.

20
21 §385.6 Concurrency Statements.

22 [This is a placeholder. As required by section 601(h)(3)(B) of the Water Resources
23 Development Act of 2000 (114 Stat. 2688), the final rule will reference the statements of
24 concurrence or non- concurrence by the Secretary of the Interior and the Governor of
25 Florida on the proposed rule and the changes made to the rule bring it conformance with
26 those statements.]

27
28 §385.7 Limitation on Applicability of Programmatic Regulations.

29 In accordance with section 601(h)(3)(c)(ii) of the Water Resources Development Act of
30 2000 (114 Stat. 2689), these regulations expressly prohibit any requirement for
31 ~~Ce~~oncurrence ~~by the Secretary of the Interior or the Governor~~ on Project Implementation
32 Reports, Project Cooperation Agreements, Operating Manuals for individual Pprojects
33 undertaken in the Comprehensive Everglades Restoration Plan, and any other documents
34 relating to the development, implementation, and management of individual features of
35 the Plan, unless, such ~~Ce~~oncurrence is provided for in other Federal or State laws.

36
37 §385.8 Development and Adoption of Protocols.

38 (a) Whenever, ~~in the discretion of the Corps of Engineers and the South Florida~~
39 ~~Water Management District~~ it is appropriate, or as otherwise required by these
40 regulations, the Corps of Engineers and the South Florida Water Management District, in
41 ~~Ce~~onsultation ~~with the Department of the Interior, the Florida Department of~~
42 ~~Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole~~
43 ~~Tribe of Florida, and other Federal, State, and local agencies,~~ may develop and adopt
44 Pprotocols that describe in more detail the procedures to be followed in conducting
45 activities necessary to implement the Comprehensive Everglades Restoration Plan.

46

1 (b) Protocols shall be consistent with these programmatic regulations, applicable
2 law, and achieving the goals and purposes of the Comprehensive Everglades Restoration
3 Plan.

4
5 (c) The Public shall be given notice and opportunity to comment on Protocols
6 prior to their adoption or revision and adopted Protocols shall be made available to the
7 Public.

8
9 §385.9 Review of Programmatic Regulations.

10 (a) The Secretary shall review the programmatic regulations, whenever necessary
11 to attain the goals and purposes of the Comprehensive Everglades Restoration Plan, but
12 not any less often than every five years from their date of promulgation. In addition, the
13 Secretary may review the programmatic regulations whenever the Secretary believes that
14 such review is necessary to attain the goals and purposes of the Plan. The Secretary shall
15 place appropriate notice in the Federal Register upon initiating review of the
16 programmatic regulations.

17
18 (b) Upon completing the review of the programmatic regulations, the Secretary
19 shall promulgate any revisions to the programmatic regulations after notice and
20 opportunity for Public comment, with the Concurrence of the Governor and the
21 Secretary of the Interior, and in Consultation with the Seminole Tribe of Florida, the
22 Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental
23 Protection Agency, the Secretary of Commerce, and other Federal, State, and local
24 agencies.

25
26 (c) Within 180 days from the end of the public comment period on the proposed
27 revisions to the programmatic regulations, or such shorter period that the Secretary of the
28 Interior and Governor may agree to, the Secretary of the Interior and the Governor may
29 provide the Secretary with a written statement of concurrence or nonconcurrence with the
30 proposed revisions. A failure to provide a written statement of concurrence or
31 nonconcurrence within such time frame shall be deemed as meeting the concurrency
32 requirements of paragraph (b) of this section. A copy of any concurrency or
33 nonconcurrency statements shall be made a part of the administrative record and
34 referenced in the final revised programmatic regulations. Any nonconcurrency statement
35 shall specifically detail the reason or reasons for the nonconcurrence.

1 CERP IMPLEMENTATION PROCESSES

2
3 §385.10 Implementation Process.

4 (a) Major Steps in the Project Development Process. Due to the size and
5 complexity of the Comprehensive Everglades Restoration Plan, implementation will be
6 divided into smaller implementable Pprojects. Generally, the Corps of Engineers and the
7 Non-Federal Sponsor intend to follow the implementation process for Pprojects shown
8 below and in Figure I in Appendix A:

9 (1) Project Management Plan. The purpose of the Project Management
10 Plan is to establish the Pproject's scope, schedule, costs, funding requirements, and
11 technical performance requirements, including the various functional areas performance
12 and quality criteria that shall be used to produce and deliver the products that comprise
13 the Pproject, including incremental Water Budget and cost-benefit analyses that
14 demonstrates the greatest benefits will be provided at the earliest time with available
15 funding.

16 (2) Project Implementation Report The Project Implementation Report
17 provides plan formulation and Evaluation, engineering and design, economic benefits
18 and estimated costs, and environmental information to bridge the gap between the
19 conceptual design included in the Comprehensive Everglades Restoration Plan and the
20 detailed design necessary to ready a Pproject for construction.

21 (3) Design Documentation Report. The Design Documentation Report
22 describes the results of investigations, analyses and calculations made during the detailed
23 design phase and provides the technical basis for the Pplans and Sspecifications.

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

27 (5) Real Estate Acquisition. The Non-Federal Sponsor acquires the
28 lands, easements, and rights-of-way needed for the Pproject.

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

31 (7) Operation and Monitoring. After the Pproject has been constructed, it
32 is operated in accordance with the Operating Manuals. Monitoring is also conducted to
33 determine the effectiveness of the Pproject and to provide information that will be used in
34 Aadaptive Aassessment.

35
36 (b) Pilot Projects.

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

43 (2) The Corps of Engineers and the Non-Federal Sponsor may ~~develop~~
44 ~~adopt Protocols with~~ processes and procedures as necessary to implement pilot projects.
45 These ~~Protocols processes and procedures~~ shall be consistent with these programmatic
46 regulations and applicable law.

1 (3) Upon completion of operational testing and ~~M~~monitoring, the Corps of
2 Engineers and the ~~N~~on-Federal ~~S~~sponsor shall prepare a Pilot Project Technical Data
3 Report, documenting the findings and conclusions from the implementation and testing of
4 the pilot project.

5
6 §385.11 Incorporation of NEPA and Related Considerations into the Implementation
7 Process.

8 (a) Actions Normally requiring an Environmental Impact Statement (EIS) under
9 §230.6 of this Chapter. Actions normally requiring an EIS are:

- 10 (1) Interim Goals or changes to Interim Goals, depending on the
11 significance of their impact on the Natural or Human Systems;
12 (2) Comprehensive Plan Modification Report;
13 (3) Project Implementation Reports;
14 (4) Proposed revisions to sequences of Pprojects substantially deviating
15 from the Comprehensive Everglades Restoration Plan for reasons other than
16 Congressional authorization or approval by the Secretary, funding, engineering, contract
17 administration or other administrative or technical reasons;
18 (5) System Operating Manual or changes to System Operating Manual;
19 (6) Proposed major changes in operation and/or maintenance of
20 completed Pprojects; and
21 (7) Changes in Pprojects the at increase size substantially or add
22 additional purposes beyond the Comprehensive Everglades Restoration Pplan
23 recommended in the Project Implementation Report; and
24 (8) Project Operating Manuals.

25
26 (b) The District Engineer may consider the use of an environmental assessment
27 (EA) on the types of actions described in paragraph (a) of this section if early studies and
28 coordination show that a particular action is not likely to have a significant impact on the
29 quality of the human environment.

30
31 (c) Actions normally requiring an EA. In addition to the actions listed in §230.7 of
32 this chapter, actions normally requiring an EA, but not an EIS, are:

- 33 (1) Modifications to Project Operating Manuals for Pprojects or groups of
34 Pprojects, not expected to be a major change in operation and/or maintenance; ~~and~~
35 (2) Changes in the System Operating Manual, not expected to be a major
36 change in operation and/or maintenance; and.
37 (3) Interim Goals or changes to Interim Goals, depending on the
38 significance of their impact on the Natural or Human Systems.

39
40 (d) Categorical Exclusions. In addition to the activities listed in §230.9 of this
41 chapter, actions listed below when considered individually and cumulatively do not have
42 significant effects on the quality of the human environment and are categorically
43 excluded from NEPA documentation. However, the District Engineer should be alert for
44 extraordinary circumstances that may dictate the need to prepare an EA or an EIS.

- 45 (1) Design Documentation Reports;

- 1 (2) Interim Goals or Changes to Interim Goals, depending on the
2 significance of their impact on the Natural or Human Systems;
- 3 (3) Master Implementation Sequencing Plan;
- 4 (4) Project Cooperation Agreements;
- 5 (5) Project Management Plans;
- 6 (6) Plans and Sspecifications for Pprojects;
- 7 (7) ~~Project Operating Manuals for projects or groups of projects that are~~
8 ~~consistent with the water reservation or allocation for the natural system described in the~~
9 ~~Project Implementation Report and the Project Cooperation Agreement for the project or~~
10 ~~group of projects~~;
- 11 ~~(8) Minor technical changes to the System Operating Manual or Project~~
12 ~~Operating Manuals, not significant enough to warrant notice and opportunity for Ppublic~~
13 ~~comment under section 601(h)(4)(B)(ii) of the Water Resources Development Act of~~
14 ~~42000 (114 Stat. 2690); and~~
- 15 (9) Development, adoption, or revision of Pprotocols or methods such as
16 Aadaptive Aassessment; modeling; Mmonitoring; plan formulation and Evaluation
17 quantification of water needed for the Nnatural System or other water related needs of
18 the region or protection of Existing Legal Sources of Water~~existing uses~~; methods of
19 determining levels of flood protection; and similar Pprotocols or methods.

20

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

26

27 §385.12 Consistency with Requirements of the State of Florida. The State of Florida has
28 established procedures, requirements, and approvals that are needed before the State or
29 the South Florida Water Management District can participate as the Non-Federal
30 Sponsor for Comprehensive Everglades Restoration Plan Pprojects. ~~To the extent~~
31 ~~practical,~~ Project Implementation Reports shall include such information and analyses as
32 are necessary to facilitate review and approval of Pprojects by the Non-Federal
33 Sponsor and the State pursuant to the requirements of Florida law. Congressional
34 authorization shall not be sought prior to approval of Project components under State law.

35

36 §385.13 Design Agreements.

37 (a) The Corps of Engineers shall execute a Design Agreement with each Non-
38 Federal Sponsor prior to initiation of design activities with that Non-Federal Sponsor.

39

40 (b) Any Pprotocols, procedures, policies, or documents developed by the Corps of
41 Engineers or the Non-Federal Sponsor pursuant to a Design Agreement shall be
42 consistent with these programmatic regulations.

43

44 §385.14 Project Delivery Team

1 (a) Implementation of the Projects of the Comprehensive Everglades Restoration
2 Plan shall be the responsibility of the Corps of Engineers and the Non-Federal Sponsor
3 as the implementing agencies for specific Projects or programs.
4

5 (b) The Corps of Engineers and the Non-Federal Sponsor shall, ~~to the extent~~
6 practical assign individual project managers to be responsible for the successful
7 implementation of Projects, and to ensure that Projects are planned, designed and
8 constructed consistent with the Design Agreement, Project Management Plan, and
9 achievement of the goals and purposes of the Comprehensive Everglades Restoration
10 Plan.
11

12 (c) The Corps of Engineers and the Non-Federal Sponsor shall form a Project
13 Delivery Team to develop the products necessary to implement the Project.
14

15 (d) Project Delivery Teams shall be interdisciplinary in composition.
16 Additionally, the Corps of Engineers and South Florida Water Management District or
17 other Non-Federal Sponsor shall request that the Department of the Interior, the Florida
18 Department of Environmental Protection, the Miccosukee Tribe of Indians of Florida, the
19 Seminole Tribe of Florida, and other Federal, State, and local agencies participate on the
20 Project Delivery Team. In general, agency participation on the Project Delivery Team
21 shall be the financial responsibility of the participating governmental entity. However,
22 the Corps of Engineers shall provide funding for the U.S. Fish and Wildlife Service's
23 preparation of Coordination Act Reports, as required by applicable law, regulation, or
24 agency procedures.
25

26 (e) Should issues arise within the Project Delivery Team that the team is unable to
27 resolve, the project managers shall elevate the issues to the appropriate management at
28 the Corps of Engineers and the Non-Federal Sponsor consistent with the provisions of
29 the Design Agreement.
30

31 §385.15 Consultation and Coordination.

32 (a) As appropriate, the Corps of Engineers and the South Florida Water
33 Management District or other Non-Federal Sponsor shall engage in Consultation ~~with~~
34 ~~the Department of the Interior, the Florida Department of Environmental Protection, the~~
35 ~~Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal,~~
36 ~~State, and local agencies~~ as part of the implementation process for the Comprehensive
37 Everglades Restoration Plan. The time for, and extent of, Consultation shall be
38 appropriate for, and limited by, the activity involved.
39

40 (b) The Corps of Engineers and the Non-Federal Sponsor shall engage in
41 Coordinate ~~ion in order implementation activities and the preparation of documents with~~
42 ~~other Federal, State and local agencies~~ to fulfill the requirements of Federal and State
43 legislation such as the Fish and Wildlife Coordination Act; the National Environmental
44 Policy Act, the Clean Air Act, the Clean Water Act, the National Historic Preservation
45 Act, and the Endangered Species Act.
46

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

5
6 §385.16 Public Outreach

7 (a) Goals.

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

13 (2) In carrying out implementation activities for the Comprehensive
14 Everglades Restoration Plan, the Corps of Engineers and the ~~N~~non-Federal ~~S~~ponsor
15 shall undertake ~~O~~ outreach activities to:

16 (i) increase general ~~P~~public awareness for the Comprehensive
17 Everglades Restoration Plan;

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

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

23 (iv) involve traditionally underserved communities, especially
24 those that may be affected by the Comprehensive Everglades Restoration Plan;

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

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

29
30 (b) General Requirements.

31 (1) The Corps of Engineers and the ~~N~~non-Federal ~~S~~ponsor shall, ~~as~~
32 ~~appropriate,~~ develop and conduct ~~O~~ outreach activities for each ~~P~~project or ~~P~~program-
33 ~~L~~level ~~A~~activity in order to provide information to the ~~P~~public and to also provide
34 opportunities for involvement by the ~~P~~public.

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

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

42
43 (c) Outreach to Socially and Economically Disadvantaged Communities.

44 (1) The Corps of Engineers and the ~~N~~non-Federal ~~S~~ponsor shall, ~~as~~
45 ~~appropriate,~~ develop and conduct ~~public-O~~ outreach activities to ensure that socially and
46 economically disadvantaged individuals, including individuals with limited English

1 proficiency, are provided opportunities to review and comment during implementation of
2 the Comprehensive Everglades Restoration Plan.

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

7 (3) ~~To the extent appropriate,~~ The Corps of Engineers and the Non-
8 Federal Sponsor shall make Project and program information available in languages
9 other than English for individuals of limited English proficiency.

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

13 14 §385.17 Environmental and Economic Equity

15 (a) Goals. In carrying out implementation activities for the Comprehensive
16 Everglades Restoration Plan, the Corps of Engineers and the Non-Federal Sponsor
17 shall, ~~to the extent the District Engineer deems appropriate, or as otherwise as provided~~
18 ~~by applicable law,~~ undertake Environmental and Economic Equity activities to:

19 ~~_____~~ (1i) promote economic equity throughout the implementation of
20 the Comprehensive Everglades Restoration Plan through maximum utilization of socially
21 and economically disadvantaged small business concerns and individuals in the
22 performance of prime contract and subcontract awards;

23 ~~_____~~ (2ii) provide relevant, timely, valid, and reliable socio-economic
24 and Environmental Justice baseline data for system-wide and project-specific
25 Assessments;

26 ~~_____~~ (3iii) institute Environmental Justice assessment procedures,
27 according to NEPA guidelines, for all Project planning and decision-making;

28 ~~_____~~ (4iv) provide overall guidance, support, and coordination to
29 Project Level Activities on matters pertaining to socio-economic characteristics,
30 Assessments and issues relating to socio-economics and Environmental Justice;

31 ~~_____~~ (5v) incorporate and utilize appropriate models, improved
32 methods, and research in the subjects of demography, economics, land use, water use,
33 water conservation, Environmental Justice, Public involvement, and community-based
34 planning to enhance decision making system-wide and at the Project level; and

35 ~~_____~~ (6vi) evaluate and assess socio-economic parameters of the
36 Comprehensive Everglades Restoration Plan through development of Indicators and
37 Performance Measures, periodic Monitoring of with/without Project condition, and
38 the institution and utilization of quantitative and qualitative feedback mechanisms.

39 40 (b) General Requirements.

41 (1) As appropriate, Project Management Plans shall include information
42 concerning Environmental and Economic Equity activities to be undertaken during the
43 implementation of the Project or activity.

44 (2) As required by applicable laws and policies, the Corps of Engineers'
45 and the Non-Federal Sponsor shall consider and evaluate Environmental Justice
46 issues and concerns in the implementation of Projects.

1 (3) The District Engineer shall ensure that small business concerns owned
2 and controlled by socially and economically disadvantaged individuals are provided
3 opportunities to participate under section 15(g) of the Small Business Act (15 U.S.C.
4 644(g)).

5
6 §385.18 Restoration Coordination and Verification (RECOVER).

7 (a) The Corps of Engineers and the South Florida Water Management District
8 shall establish and lead ~~an interagency, interdisciplinary technical and scientific team~~
9 ~~known as Restoration Coordination and Verification~~ (RECOVER). RECOVER will
10 organize and apply scientific and technical information in ways that, in its judgment, are
11 most effective in supporting the achievement of the ~~S~~system-wide goals and purposes of
12 the Comprehensive Everglades Restoration Plan. RECOVER shall provide advice and
13 recommendations to the Corps of Engineers, the South Florida Water Management
14 District and other Non-Federal Sponsors~~decision-makers~~.

15
16 (b) The Corps of Engineers and the South Florida Water Management District
17 shall ~~invite request that~~ the Department of the Interior, the Florida Department of
18 Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole
19 Tribe of Florida, and other Federal, State, and local agencies to participate on
20 RECOVER. In general, agency participation on RECOVER shall be the financial
21 responsibility of the participating governmental entity.

22
23 (c) The Corps of Engineers and the South Florida Water Management District
24 shall establish and jointly chair a RECOVER Leadership Group that shall be responsible
25 for coordinating and managing the activities of RECOVER. The Corps of Engineers and
26 the South Florida Water Management District shall determine the structure and functions
27 of the RECOVER Leadership Group, but membership shall include the Department of
28 the Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe
29 of Indians of Florida, the Seminole Tribe of Indians, and ~~may include~~ other Federal,
30 State, or local government agencies.

31
32 (d) The Corps of Engineers and the South Florida Water Management District
33 may create sub-teams or other entities necessary to carry out the responsibilities of
34 RECOVER.

35
36 (e) RECOVER shall, as appropriate,:

37 (1) develop ~~P~~performance Mmeasures and Ttargets for evaluating and
38 assessing the Comprehensive Everglades Restoration Plan in achieving its ~~S~~system-wide
39 goals and purposes, which include restoration of the South Florida Ecosystem, while
40 ~~natural system, as well as~~ providing for other water-related needs of the region, including
41 water supply and flood protection;

42 (2) conduct Evaluations of alternative plans developed during the Project
43 Implementation Report phase from a ~~S~~system-wide perspective in order to evaluate
44 predicted performance of the Comprehensive Everglades Restoration Plan;

1 (3) conduct Aadaptive Aassessment activities, including the Ssystem-wide
2 Monitoring program to assess the actual performance of the Comprehensive Everglades
3 Restoration Plan;

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

6 (5) develop and refine System-wide models and tools;

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

9 (7) conduct activities associated with the preparation of Operating
10 Manuals

11 (8) develop recommendations for Interim Goals in accordance with
12 §385.32 to provide a means by which the restoration success of the Comprehensive
13 Everglades Restoration Plan may be evaluated throughout the implementation process,
14 and assessing progress towards achieving these Interim Goals;

15 (9) cooperate with the Independent Scientific Review panel constituted
16 pursuant to section 601(j) of the Water Resources Development Act of 2000 (114 Stat.
17 2691);

18 (10) evaluate new information and science that could have an effect on the
19 Comprehensive Everglades Restoration Plan; and

20 (11) prepare information for use in the periodic reports to Congress
21 prepared pursuant to section 601(l) of the Water Resources Development Act of 2000
22 (114 Stat. 2692).

23
24 (f) Any documents, reports, or recommendations, including Performance
25 Measures, Targets and Evaluation of alternative plans prepared or developed by
26 RECOVER shall not be self-executing, but shall be considered by approved by the Corps
27 of Engineers and the South Florida Water Management District, in Consultation ~~with the~~
28 ~~Department of the Interior, the Florida Department of Environmental Protection, the~~
29 ~~Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal,~~
30 ~~State, and local agencies.~~

31
32 (g) ~~At its discretion,~~ RECOVER may recommend develop Protocols for
33 approval by the Corps of Engineers and the South Florida Water Management District, as
34 necessary, in accordance with §385.8, to assist in carrying out its responsibilities.

35
36 (h) RECOVER shall assist Project Delivery Teams in relating System-wide goals
37 and objectives to Project design and performance and to incorporate, as appropriate,
38 information developed for Project Implementation Reports into the Comprehensive
39 Everglades Restoration Plan.

40
41 (i) In carrying out its responsibilities, RECOVER shall consider Projects that are
42 not part of the Comprehensive Everglades Restoration Plan, but could affect the ability of
43 the Plan to achieve its goals and purposes.

1 (j) ~~As appropriate~~, RECOVER shall provide opportunities for Public comment at
2 its meetings and for review of its draft documents by the Public before they are
3 finalized.

4
5 (k) ~~As appropriate~~, RECOVER shall consider seeking Independent Scientific
6 Review or other similar assistance in carrying out its responsibilities, including review
7 of documents developed by RECOVER.

8
9 §385.19 Quality Control

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

14
15 (b) During development of the Project Management Plan for each Project, the
16 Corps of Engineers and the Non-Federal Sponsor shall establish an Independent
17 Technical Review Team to conduct reviews to ensure that products are consistent with
18 established criteria, guidance, procedures, and policy. To the extent practical the
19 members of the Independent Technical Review Team shall be independent of the Project
20 Delivery Team and the Project being reviewed, and should be knowledgeable of design
21 criteria established for the Comprehensive Everglades Restoration Plan.

22
23 (c) Independent Technical Review is intended to be a continuous process
24 throughout Project implementation. Project managers shall coordinate accomplishment
25 of Technical Reviews. The Independent Technical Review Team shall document its
26 actions and recommendations and provide reports to the Project Delivery Team at
27 designated points during the implementation process.

28
29 §385.20 Independent Scientific Review.

30 (a) Project Delivery Teams shall cooperate with the Independent Scientific
31 Review panel constituted pursuant to Section 601(j) of the Water Resources
32 Development Act of 2000 (114 Stat. 2691) and shall consider recommendations made by
33 such panel.

34
35 (b) RECOVER shall cooperate with the Independent Scientific Review panel
36 constituted pursuant to Section 601(j) of the Water Resources Development Act of 2000
37 (114 Stat. 2691) on activities conducted by the panel including Aassessment of ecological
38 Indicators and other measures of progress in restoring the ecology of the Natural
39 System and meeting the other water-related needs of the region or their review of the
40 Comprehensive Everglades Restoration Plan's progress toward achieving the Natural
41 System restoration goals of the Plan and meeting the other water-related needs of the
42 region, and preparation of the biennial report to Congress by the panel. RECOVER shall
43 consider recommendations made by such panel.

44
45 (c) Notwithstanding the provisions of Section 601(j) of the Water Resources
46 Development Act of 2000 (114 Stat. 2691), the Corps of Engineers, the State, or the

1 ~~N~~on-Federal ~~S~~ponsor may establish other ~~I~~ndependent ~~S~~cientific ~~R~~eview panels or
2 peer review as necessary to provide assistance with implementation activities.

3
4 §385.21 Dispute Resolution

5 (a) Disputes with the ~~N~~on-Federal ~~S~~ponsor concerning a Project Cooperation
6 Agreement shall be resolved under the specific procedures of the Project Cooperation
7 Agreement.

8
9 (b) Disputes with the ~~N~~on-Federal ~~S~~ponsor concerning design activities shall be
10 resolved under the specific procedures of the ~~D~~esign ~~A~~greement.

11
12 (c) All other unresolved issues with the ~~N~~on-Federal ~~S~~ponsor and disputes with
13 the State associated with the implementation of the Comprehensive Everglades
14 Restoration Plan shall be resolved according to the terms of the Dispute Resolution
15 Agreement developed by the Secretary and the Governor under section 601(i) of the
16 Water Resources Development Act of 2000 (114 Stat. 2691).

17
18 §385.22 Project Management Plans.

19 (a) General Requirements.

20 (1) The Corps of Engineers and the ~~N~~on-Federal ~~S~~ponsor, in
21 ~~C~~onsultation with the ~~D~~epartment of the Interior, the Florida Department of
22 ~~E~~nvironmental Protection, the Seminole Tribe of Florida, the Miccosukee Tribe of
23 ~~I~~ndians of Florida, and other Federal, State, and local agencies, shall develop and approve
24 a Project Management Plan prior to initiating activities on a ~~P~~project.

25 (2) The Project Management Plan shall define the activities, and where
26 appropriate, the subordinate tasks, as well as the assignment of responsibility for
27 completing products such as Project Implementation Reports, Pilot Project Design
28 Reports, Design Documentation Reports, ~~P~~plans and ~~S~~specifications, real estate
29 acquisition, construction contracts and construction, and any activities necessary to
30 support the delivery of the ~~P~~projects.

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

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

36 (5) The Project Management Plan shall include incremental Water Budget
37 and cost benefit analyses that demonstrate the implementation sequence of components
38 will provide the greatest contribution to water supply enhancement and other System-
39 wide benefits with available funding at the time of implementation compared to other
40 alternatives.

41
42 (b) Project Management Plan Guidelines. In developing a Project Management
43 Plan, the Corps of Engineers and the ~~N~~on-Federal ~~S~~ponsor shall:

44 (1) provide opportunities for ~~P~~ublic review and involvement;

45 (2) provide, to the extent practical, budget and schedule information for
46 the ~~P~~project; and

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

5
6 (c) Changes to Project Management Plans. The Corps of Engineers and the Nnon-
7 Federal Ssponsor, in Consultation with the Department of the Interior, the Florida
8 Department of Environmental Protection, the Seminole Tribe of Florida, the Miccosukee
9 Tribe of Indians of Florida, and other Federal, State, and local agencies, shall revise the
10 Project Management Plan after completion of key major Pproject development products
11 to reflect the changes in the Pproject's scope or to reflect additional or better
12 understanding of the Pproject's development resulting from the completion of a decision
13 document or design/acquisition document.

14
15 §385.23 Project Implementation Reports.

16 (a) General Requirements.

17 (1) Prior to ~~seeking authorization implementation~~ of a Pproject, the Corps
18 of Engineers and the Nnon-Federal Ssponsor, and, ~~to the extent practical or as required~~
19 ~~by law,~~ in Consultation with the Department of the Interior, the Florida Department of
20 Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole
21 Tribe of Florida, and other Federal, State, and local agencies, shall complete a Project
22 Implementation Report addressing the Pproject component's economic and
23 environmental benefits, engineering feasibility, and other factors required by section
24 601(h)(4)(A) of the Water Resources Development Act of 2000 (114 Stat. 2689) and
25 Section 373.1501, Florida Statutes.

26 (2) The Project Implementation Report shall:

27 (i) be consistent with the Comprehensive Everglades Restoration
28 Plan and the programmatic regulations;

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

33 (iii) contain sufficient information for proceeding to final design of
34 the Pproject, such as: additional plan formulation and Evaluation, engineering and
35 design, economics, environmental analyses, flood damage Aassessment, real estate
36 analyses and the preparation of supplemental National Environmental Policy Act
37 documents;

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

41 (v) identify the appropriate quantity, timing, and distribution of
42 water dedicated and managed for the Natural Ssystem;

43 identify the appropriate quantity, timing and distribution of
44 water required for other water-related needs of the region, including water supply and
45 flood protection;

1 (vii) identify the amount of water to be Reserved or allocated
2 for the Natural System under State law;

3 (viii) be based on the best available science;

4 (ix) include an analysis concerning the cost and benefits, cost-
5 effectiveness and engineering feasibility of the Project;

6 (x) include an analysis, prepared by RECOVER as described in
7 paragraph (c)(2) of this section, of the Project's effect on achieving the System-wide
8 goals and purposes of the Comprehensive Everglades Restoration Plan and
9 recommendations, if necessary, concerning modifications to the Plan to ensure that the
10 goals and purposes of the Plan are achieved; ~~and~~

11 (xi) include information, as applicable, necessary for the Non-
12 Federal Sponsor to comply with ~~address~~ the requirements of appropriate sections of the
13 Florida Statutes, and other applicable planning and reporting sections of Florida law; ~~and~~;

14 ~~(xii) include a draft Project Operating Manual.~~

15 (xiii) include incremental Water Budget and cost benefit analyses
16 that demonstrate the implementation sequence of components will provide the greatest
17 contribution to water supply enhancement and other System-wide benefits with available
18 funding at the time of implementation compared to other alternatives.

19 (3) The Corps of Engineers and the Non-Federal Sponsor shall develop
20 the Project Implementation Report generally in accordance with the process shown in
21 Figure 2 in Appendix A.

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

25 ~~(5) The Corps of Engineers and the Non-Federal Sponsor shall not prepare~~
26 ~~or submit a Project Implementation Report for a Project that includes Project features or~~
27 ~~components that are the subject of a Pilot Project or other incomplete study.~~

28
29 (b) Plan Formulation and Evaluation

30 (1) ~~To the extent appropriate,~~ The Corps of Engineers and the Non-
31 Federal Sponsor shall formulate and evaluate alternative plans to better define, refine,
32 and/or optimize components and/or to investigate more cost-effective ways to achieve the
33 same or greater benefits while maximizing the Project's contribution towards the
34 System-wide goals and purposes of the Comprehensive Everglades Restoration Plan.

35 (i) The Corps of Engineers and the South Florida Water
36 Management District shall develop and adopt a Protocol in accordance with §385.8 that
37 describes the procedures to be used to formulate and evaluate alternative plans and to
38 evaluate their cost effectiveness.

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

43 (2) The Project Implementation Report shall include the results of the plan
44 formulation and Evaluation activities and the cost effectiveness analyses conducted for
45 the Project Implementation Report

46

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

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

5 (i) recommend develop a Protocol for approval by the Corps of
6 Engineers and the South Florida Water Management District in accordance with §385.8
7 that describes the procedures to be used for the Evaluation of alternative plans from a
8 system-wide perspective by RECOVER;

9 (ii) develop appropriate System-wide Performance Measures
10 and Targets for evaluating alternative plans; and

11 (iii) evaluate alternative plans from a System-wide perspective
12 based on analysis of performance relative to the System-wide Performance Measures
13 and Targets developed by the RECOVER team.

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

18
19 (d) National Environmental Policy Act Documentation

20 (1) The Corps of Engineers and the Non-Federal Sponsor shall prepare
21 appropriate NEPA documentation for inclusion in the Project Implementation Report.
22 The NEPA documentation for the Project Implementation Report shall consider the
23 Programmatic Environmental Impact Statement included in the "Final Integrated
24 Feasibility Report and Programmatic Environmental Impact Statement" dated April 1,
25 1999.

26 (2) The NEPA documentation shall be integrated into the Project
27 Implementation Report ~~whenever possible~~.

28 (3) Other agencies, as appropriate, shall be invited to be cooperating
29 agencies in the preparation of the NEPA documentation.

30
31 (e) Fish and Wildlife Coordination Act Requirements.

32 (1) The Corps of Engineers and the Non-Federal Sponsor shall engage in
33 Coordination with the U.S. Fish and Wildlife Service, the National Marine Fisheries
34 Service, the Florida Fish and Wildlife Conservation Commission, and other appropriate
35 agencies in the preparation of a Project Implementation Report, as required by applicable
36 law.

37 (2) Coordination may include preparation of the following:

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

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

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

45
46 (f) Project Implementation Report Review and Approval Process.

1 (1) The Corps of Engineers and the Non-Federal Sponsor shall provide
2 opportunities for review of the draft Project Implementation Report and NEPA document
3 by the Public, in accordance with applicable law.

4 (2) Upon approval of the Project Implementation Report by the Division
5 Engineer and the Non-Federal Sponsor, the Division Engineer shall issue a Public
6 notice announcing completion of the Project Implementation Report based upon (i)
7 his/her endorsement of the findings and recommendations of the District Engineer and
8 the Non-Federal Sponsor, and (ii) his/her Assessment that the report is in accord with
9 current policy. The notice shall indicate that the report has been submitted for
10 Washington level review.

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

15
16 (4) After completion of the policy review, the Chief of Engineers shall
17 transmit the Chief of Engineer's Report to the Assistant Secretary of the Army for Civil
18 Works for review.

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

25 (6) ~~As appropriate, T~~he Project Implementation Report may be used by
26 the Non-Federal Sponsor as the basis for obtaining approval under applicable Florida
27 law.

28
29 (g) ~~Content Format~~ of Project Implementation Reports. The Corps of Engineers
30 and the South Florida Water Management District shall develop and adopt a Procedure in
31 accordance with §385.8 that describes the format ~~and content~~ to be ~~generally~~ used in the
32 preparation of a Project Implementation Report.

33
34 §385.24 Project Cooperation Agreements.

35 (a) General. Prior to initiating construction or implementation of a Project, the
36 Corps of Engineers shall execute a Project Cooperation Agreement with the Non-
37 Federal Sponsor in accordance with applicable law.

38
39 (b) Verification of Water Reservations. Prior to execution of the Project
40 Cooperation Agreement, the District Engineer shall verify that the South Florida Water
41 Management District or the Florida Department of Environmental Protection has,
42 pursuant to State law, Reserved or allocated the total amount of water required for the
43 Natural System, as described in the Project Implementation Report for that Project.

44
45 ~~(c) Assuring Water Reservations Remain in Effect. The Project Cooperation~~
46 ~~Agreement shall include a provision that the reservation or allocation of water for the~~

1 ~~natural system made pursuant to State law shall remain in effect for as long as the Plan is~~
2 ~~authorized and shall not be diminished unless the Corps of Engineers expressly agrees to~~
3 ~~such change.~~

4
5 (c) Savings Clause Provisions. The Project Cooperation Agreement shall include
6 a provision that the Corps of Engineers ~~and~~ ~~or~~ the Non-Federal Sponsor shall not:

7 (1) eliminate or transfer Existing Legal Sources of Water to other
8 Sources of Water until a new Source of Water of comparable quantity and quality as that
9 available on December 11, 2000, the date of enactment of the Water Resources
10 Development Act of 2000 (114 Stat. 2680) is available to replace the Source of Water
11 to be eliminated or reduced ~~lost~~ as a result of implementation of the Project Plan; or

12 (2) reduce Levels of Service for Flood Protection that are in existence
13 on December 11, 2000, the date of enactment of the Water Resources Development Act
14 of 2000 (114 Stat. 2680) and are in accordance with applicable law.

15
16 §385.25 Operating Manuals.

17 (a) General Provisions.

18 (1) The Corps of Engineers and the South Florida Water Management
19 District or other Non-Federal Sponsor, in ~~Consultation with the Department of the~~
20 ~~Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of~~
21 ~~Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local~~
22 ~~agencies~~, shall develop Operating Manuals to ensure that the goals and purposes of the
23 Comprehensive Everglades Restoration Plan are achieved.

24 (2) Operating Manuals for the Comprehensive Everglades Restoration
25 Plan shall consist of a System Operating Manual and Project Operating Manuals. In
26 general, the System Operating Manual shall provide a System-wide operating plan for
27 the operation of the Projects of the Plan and the Project Operating Manuals shall provide
28 the details necessary for integrating the operation of the individual Projects with the
29 System operation described in the System Operating Manual.

30 (3) The Corps of Engineers and the South Florida Water Management
31 District shall develop and adopt a Protocol in accordance with §385.8 that describes the
32 content of Operating Manuals.

33 (4) The Public shall be given notice and opportunity to comment on any
34 ~~significant~~ modification to the Operating Manuals prior to their adoption or revision.

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

37 (6) The Division Engineer and the Non-Federal Sponsor shall approve
38 Operating Manuals prior to their adoption or revision.

39 (7) Operating Manuals shall be consistent with the water Reservation or
40 allocation for the Natural System, ~~the water identified for other water-related needs of~~
41 ~~the region, including water supply and flood protection~~ and the savings clause provisions
42 described in the Project Implementation Report and the Project Cooperation Agreement
43 and the provisions of §385.30(d) and §385.31.

44 (8) ~~As appropriate,~~ ~~The~~ South Florida Water Management District Water
45 Shortage Plan shall be incorporated into the Operating Manuals ~~as a part of the Drought~~
46 ~~Contingency Plan. The Water Shortage Plan and Drought Contingency Plan shall be~~

1 ~~consistent with the water reservation or allocation for the natural system described in the~~
2 ~~Project Implementation Report and the Project Cooperation Agreement.~~

3 (9) Operating Manuals shall reflect the operational criteria used in the
4 identification of water to be ~~R~~reserved or allocated for the ~~N~~natural ~~S~~system, ~~the water~~
5 ~~identified for other water-related needs of the region, including water supply and flood~~
6 ~~protection~~ and the savings clause provisions as described in the Project Implementation
7 Report or Project Cooperation Agreement.

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

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

13
14 (b) System Operating Manual.

15 (1) The Corps of Engineers and the South Florida Water Management
16 District, in ~~C~~onsultation with the ~~Department of the Interior, the Florida Department of~~
17 ~~Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole~~
18 ~~Tribe of Florida, and other Federal, State, and local agencies, to the extent practical,~~ shall
19 develop a System Operating Manual that provides a ~~S~~system-wide operating plan for the
20 operation of ~~P~~projects to ensure that the goals and purposes of the Comprehensive
21 Everglades Restoration Plan are achieved.

22 (2) The System Operating Manual shall initially be based on the existing
23 Central and Southern Florida Project features.

24 (3) The System Operating Manual shall be revised whenever, ~~in the~~
25 ~~discretion of the Corps of Engineers and the non-Federal Sponsor,~~ operational change are
26 made that have ~~S~~system-wide effects or ~~after prior-~~to the completion of new ~~P~~projects
27 that have system-wide effects.

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

31
32 (c) Project Operating Manuals.

33 (1) The Corps of Engineers and the ~~N~~non-~~F~~federal ~~S~~Sponsor shall develop
34 a Project Operating Manual for each ~~P~~project of the Plan that is implemented.

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

38 (3) Each Project Implementation Report shall, ~~as appropriate,~~ include a
39 draft Project Operating Manual including a ~~W~~water ~~C~~ontrol ~~P~~plan as an appendix to the
40 Project Implementation Report. The ~~W~~water ~~C~~ontrol ~~P~~plan contained in the Project
41 Implementation Report shall be revised, if necessary, for the construction phase and the
42 ~~M~~monitoring and testing phase of the Project.

43 (4) The final Project Operating Manual shall be completed ~~after~~ ~~before~~
44 completion of the operational testing and ~~M~~monitoring phase of the ~~P~~project. The final
45 Project Operating Manual shall consider the plan developed in the PIR and information
46 collected during the initial testing and ~~M~~monitoring phase.

1 INCORPORATING NEW INFORMATION INTO THE PLAN

2
3 §385.26 Master Implementation Sequencing Plan

4 (a) The Corps of Engineers and the South Florida Water Management District, in
5 ~~C~~onsultation with the ~~Department of the Interior, the Florida Department of~~
6 ~~Environmental Protection, the Seminole Tribe of Florida, the Miccosukee Tribe of~~
7 ~~Indians of Florida, and other Federal, State, and local agencies~~, shall develop a Master
8 Implementation Sequencing Plan that includes the schedule and sequencing of ~~P~~projects
9 based on the best finding, technical, contracting and other information available.

10 (1) Projects shall be sequenced and scheduled based upon the principles
11 contained in Section 385.5 to accelerate ~~S~~ystem-wide restoration, preservation, and
12 protection benefits while providing for other water related needs of the region, including
13 water supply and flood protection, to the extent practical given funding, engineering, and
14 other constraints.

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

18 (3) The Corps of Engineers and the South Florida Water Management
19 District, in cooperation with other ~~N~~on-~~F~~ederal ~~S~~sponsors, shall initially base the
20 sequence and scheduling of ~~P~~projects of the Comprehensive Everglades Restoration Plan
21 on the July 2001 sequence and schedule developed by the Corps of Engineers and the
22 South Florida Water Management District.

23
24 (b) The Corps of Engineers and the South Florida Water Management District, in
25 ~~C~~onsultation with the ~~Department of the Interior, the Florida Department of~~
26 ~~Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole~~
27 ~~Tribe of Florida, and other Federal, State, and local agencies~~, shall annually review the
28 Master Implementation Sequencing Plan.

29 (1) The Master Implementation Sequencing Plan may be revised as
30 necessary to incorporate new information such as: updated schedules from approved
31 Project Management Plans, the results of pilot projects and other studies, updated funding
32 information, revisions to the Comprehensive Everglades Restoration Plan, Congressional
33 or other authorization or direction, or information resulting from the ~~A~~adaptive
34 ~~A~~assessment program including achievement of ~~I~~nterim ~~G~~goals.

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

38
39 §385.27 Adaptive Assessment Program

40 (a) The Corps of Engineers and the South Florida Water Management District, in
41 ~~C~~onsultation with the ~~Department of the Interior, the Florida Department of~~
42 ~~Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole~~
43 ~~Tribe of Florida, and other Federal, State, and local agencies~~, shall establish an ~~A~~adaptive
44 ~~A~~assessment program to evaluate ~~S~~ystem responses to implementation of the
45 Comprehensive Everglades Restoration Plan, to determine whether or not they match

1 expectations, including the achievement of Interim Goals, and to determine if the Plan
2 should be modified in order to achieve the goals and purposes of the Plan.

3
4 (b) RECOVER shall conduct Aadaptive Aassessment activities and shall
5 develop a Pprotocol in accordance with §385.8 that describes the procedures to be used to
6 conduct Aadaptive Aassessment.

7
8 (c) RECOVER shall develop and implement a System-wide Monitoring plan
9 that is generally developed from a series of ecological conceptual models that are
10 designed to measure status and trends of selected Indicators (Performance Measures),
11 establish base-line variability, and address uncertainties through cause-effect research.

12
13 (d) RECOVER shall use the information collected and analyzed through the
14 System-wide Monitoring program as a basis for conducting Aadaptive Aassessment
15 tasks, which may include, but are not limited to, the following:

16 (1) determining if measured responses are undesirable or are falling short
17 of achieving Interim Goals;

18 (2) determining if corrective actions to improve performance should be
19 considered;

20 (3) identifying options for corrective actions for the Performance
21 Measures to respond as desired; and

22 (4) preparing reports on the Aadaptive Aassessment program.

23
24 (e) Whenever it is deemed necessary, but not any less often than every three
25 years, RECOVER shall prepare an Aadaptive Aassessment report that presents an
26 Aassessment of whether the goals and purposes of the Comprehensive Everglades
27 Restoration Plan are being achieved. If through Aadaptive Aassessment RECOVER finds
28 that undesirable responses are occurring, the Aadaptive Aassessment report shall provide
29 recommendations for improving the performance of the Comprehensive Everglades
30 Restoration Plan. Such recommendations may include, but are not limited to:

31 (1) modifying current operations of the Comprehensive Everglades
32 Restoration Plan;

33 (2) modifying the Comprehensive Everglades Restoration Plan;

34 (3) modifying the sequence or schedule for implementation of the
35 Comprehensive Everglades Restoration Plan; or

36 (4) a combination of these.

37
38 (f) The Corps of Engineers and the South Florida Water Management District and
39 other Non-Federal Sponsors shall consider the Aadaptive Aassessment report prepared
40 by RECOVER in determining if changes to the Comprehensive Everglades Restoration
41 Plan, the operation of the Projects of the Plan, or the sequence or schedule of the
42 Projects of the Plan are necessary to ensure that the goals and purposes of the Plan are
43 achieved.

44
45 §385.28 Revisions to the Comprehensive Everglades Restoration Plan

46 (a) Comprehensive Plan Modification Report

1 (1) Whenever necessary to attain the goals and purposes of the
2 Comprehensive Everglades Restoration Plan or to improve performance of the Plan, the
3 Corps of Engineers and the South Florida Water Management District, in Ceonsultation
4 ~~with the Department of the Interior, the Florida Department of Environmental Protection,~~
5 ~~the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other~~
6 ~~Federal, State, and local agencies~~, shall prepare a Comprehensive Plan Modification
7 Report.

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

11 (3) The Comprehensive Plan Modification Report shall:

12 (i) be initiated at the discretion of the Corps of Engineers and the
13 South Florida Water Management District based on consideration of the
14 recommendations of RECOVER, or other appropriate information;

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

19 (iii) contain information such as: plan formulation and
20 Evaluation, engineering and design, economics, environmental analyses, flood damage
21 Aassessment, and real estate analyses;

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

24 (v) contain appropriate NEPA documentation to supplement the
25 Programmatic Environmental Impact Statement included in the "Final Integrated
26 Feasibility Report and Programmatic Environmental Impact Statement 'dated April 1,
27 2 1999;and

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

32
33 (b) Review and Approval of Comprehensive Plan Modification Report

34 (1) The Corps of Engineers and the South Florida Water Management
35 District shall provide opportunities for review of the draft Comprehensive Plan
36 Modification Report and NEPA document by the Public, as required by, applicable law.

37 (2) Upon approval of the Comprehensive Plan Modification Report by the
38 Division Engineer and the Non-Federal Sponsor, the Division Engineer shall issue a
39 Public notice announcing completion of the Comprehensive Plan Modification Report
40 based upon (i) his/her endorsement of the findings and recommendations of the District
41 Engineer and the Non-Federal Sponsor, and (ii) his/her Aassessment that the report is
42 in accord with current policy. The notice shall indicate that the report has been submitted
43 for Washington level review.

44 (3) Headquarters, US Army Corps of Engineers shall coordinate the
45 Washington level review in accordance with applicable policies and regulations of the
46 Corps of Engineers. Headquarters, US Army Corps of Engineers shall administer the 30-

1 day state and agency review of the Comprehensive Plan Modification Report as required
2 by law.

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

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

8 (6) As appropriate, the Non-Federal Sponsor may use the
9 Comprehensive Plan Modification Report as the basis for obtaining approval under
10 applicable Florida law.

11
12 §385.29 Revisions to Models and Analytical Tools.

13 (a) In carrying out their responsibilities for implementing the Comprehensive
14 Everglades Restoration Plan and these regulations, the Corps of Engineers and the Non-
15 Federal Sponsor shall utilize the models and analytical tools that they believe, ~~in their~~
16 ~~discretion,~~ are most appropriate for conducting analyses for the planning, design,
17 construction, operation, and Aassessment of Pprojects. To the extent practical or as
18 otherwise provided by law, this shall be done in Consultation ~~with the Department of the~~
19 ~~Interior, the Florida Department of Environmental Protection, the Miccosukee Tribe of~~
20 ~~Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local~~
21 ~~agencies.~~

22
23 (b) The Corps of Engineers, the South Florida Water Management District, and other
24 Non-Federal Sponsors, may periodically revise models and analytical tools or develop
25 new ones as needed. Whenever models and analytical tools are significantly revised or
26 new ones developed, the Corps of Engineers and the South Florida Water Management
27 District, in Consultation ~~with the Department of the Interior, the Florida Department of~~
28 ~~Environmental Protection, the Miccosukee Tribe of Indians of Florida, the Seminole~~
29 ~~Tribe of Florida, and other Federal, State, and local agencies,~~ shall reanalyze the Pre-
30 CERP Baseline condition using the revised models and analytical tools so as to provide
31 a similar basis for analyzing the performance of alternative plans, ~~and~~ the identification
32 of water to be Reserved or allocated for the Natural System and the identification of
33 water for other water-related needs of the region, including water supply and flood
34 protection.

1 ENSURING ~~PROTECTION OF THE NATURAL SYSTEM WATER AVAILABIITY~~
2 CONSISTENT WITH THE GOALS AND PURPOSES OF THE PLAN
3

4 §385.30 Achievement of Project Benefits.

5 (a) Development of Pre-CERP Baseline. The Corps of Engineers and the South
6 Florida Water Management District in ~~C~~consultation with the ~~Department of the Interior,~~
7 ~~the Florida Department of Environmental Protection, the Miccosukee Tribe of Indians of~~
8 ~~Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies,~~ shall
9 develop the ~~P~~pre-CERP ~~B~~baseline to determine the quantity, timing, and distribution of
10 ~~New Water water made available~~ by the existing Central and Southern Florida Project on
11 the date of enactment of section 601 of the Water Resources Development Act of 2000
12 (114 Stat. 2680).

13
14 (b) Pre-CERP Baseline Water Availability. ~~To the extent practical, E~~each Project
15 Implementation Report shall consider whether the ~~P~~pre-CERP ~~B~~baseline quantity of
16 water available for the ~~N~~natural ~~S~~system is still available for the ~~N~~natural ~~S~~system and
17 whether the Pre-CERP Baseline quantity of water available for other water-related needs
18 of the region, including water supply and flood protection, is still available. If not, the
19 Project Implementation Report shall consider the loss of ~~P~~pre-CERP ~~B~~baseline water
20 availability in identifying the quantity, timing, and distribution of water to be made
21 available for the ~~N~~natural ~~S~~system or water to be made available for other water-related
22 needs of the region, including water supply and flood protection by a ~~P~~project
23 component. The Project Implementation Report may also consider other remedial actions,
24 including, but not limited to: whether additional quantity, timing, and distribution of
25 water should be made available by subsequent ~~P~~projects; whether to recommend
26 preparation of a Comprehensive Plan Modification Report as described in §385.28; or
27 whether to recommend that the State of Florida and its agencies re-examine the
28 ~~R~~reservation or allocation of water needed under State law in order to meet the needs of
29 the ~~N~~natural ~~S~~system and other water-related needs of the region, including water supply
30 and flood protection.

31
32 (c) Identification of Water to be Reserved or Allocated for the Natural System in
33 the Project Implementation Report

34 (1) Each Project Implementation Report shall identify the appropriate
35 quantity, timing, and distribution of water dedicated and managed for the ~~N~~natural
36 ~~S~~system and shall identify the amount of water to be ~~R~~reserved or allocated for the
37 ~~N~~natural ~~S~~system.

38 (2) The Corps of Engineers and the South Florida Water Management
39 District shall develop and adopt a ~~P~~protocol in accordance with §385.8 for preparing
40 Project Implementation Reports that identifies the appropriate quantity, timing, and
41 distribution of water dedicated and managed for the ~~N~~natural ~~S~~system and identifies the
42 amount of water to be ~~R~~reserved or allocated for the ~~N~~natural ~~S~~system.

43 (i) Project Implementation Reports approved before the date of
44 promulgation of these programmatic regulations or the adoption of the ~~P~~protocol may use
45 whatever method that, in the District Engineer's discretion, and in cooperation with the

1 South Florida Water Management District and the State of Florida, is deemed
2 appropriate.

3 (ii) The ~~P~~protocol shall take into account the natural fluctuation of
4 ~~New Water water made available~~ in any given year; the objective of restoration of the
5 ~~N~~natural ~~S~~system; goal of providing for the other water-related needs of the region; the
6 need for protection of Existing Legal Sources of Water~~existing uses transferred to new~~
7 ~~sources~~; the need to maintain existing Levels of Service for Flood Protection~~levels of~~
8 ~~flood protection~~; contingencies for drought protection; and the need to identify the
9 additional quantity, timing, and distribution of ~~New Water water made available~~ by a new
10 ~~P~~project component while maintaining a ~~S~~system-wide perspective on the amount of
11 ~~New Water water made available~~ by the Comprehensive Everglades Restoration Plan.

12 (iii) The ~~P~~protocol may express the quantity, timing and
13 distribution of water in stage duration curves; ~~exceedence~~exceedance frequency curves;
14 quantities available in average, wet, and dry years; or any other method which, in the
15 District Engineer's discretion, and in cooperation with the South Florida Water
16 Management District and the State of Florida, is deemed appropriate.

17 (iv) The ~~P~~protocol shall provide for re-examination of actual
18 performance after a ~~P~~project component has been in operation for an appropriate period
19 of time.

20
21 (d) Identification of Water for Other Water-Related Needs of the Region

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

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

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

35 (ii) The Protocol shall take into account the natural fluctuation of
36 New Water in any given year, the objective of restoration of the Natural System; the goal
37 of providing for the other water-related needs of the region; the need for protection of
38 Existing Legal Sources of Water; the need for maintaining existing Levels of Service for
39 Flood Protection; contingencies for drought protection; and the need to identify the
40 additional quantity, timing and distribution of New Water by a new Project component
41 while maintaining a Ssystem-wide perspective on the amount of New Water by the
42 Comprehensive Everglades Restoration Plan.

43 (iii) The Protocol may express the quantity, timing and distribution
44 of water in stage duration curves; exceedance frequency curves; quantities available in
45 average, wet, and dry years; or any other method which, in the District Engineer's

1 discretion, and in cooperation with the South Florida Water Management District and the
2 State of Florida is deemed appropriate.

3 (iv) The Protocol shall provide for re-examination of actual
4 performance after a Project component has been in operation for an appropriate period fo
5 time.

6
7 (ed) Variations from Predicted Availability of Water. If, after re-examination of
8 the actual performance of a Pproject component, the Corps of Engineers and the South
9 Florida Water Management District judge that the actual long-term performance of a
10 Pproject component will not meet the quantity, timing, or distribution of water
11 anticipated to be made available by the Project Implementation Report, then:

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

17 (2) in the interim during preparation of this Project Implementation
18 Report, operation of the Pproject shall be consistent with the purposes of the Pproject
19 Component as authorized by Congress and approved under State law. ~~In the absence of~~
20 ~~specific purposes for a p~~project component in the Congressional authorization, then the
21 ~~operation of a p~~project component generally shall be based on providing water in
22 ~~accordance with the following priorities:~~

23 ~~_____ (i) uses transferred from an existing legal source of water to the~~
24 ~~new source made available by that project,~~

25 ~~_____ (ii) new water for restoration of the natural system, and~~

26 ~~_____ (iii) new water for other uses of water.~~

27
28 §385.31 Compliance with Savings Clause Provisions.

29 (a) Elimination or Transfer of Existing Legal Sources of Water. Project
30 Implementation Reports shall include analyses to determine if Eexisting Llegal Ssources
31 of Wwater are to be eliminated or transferred as a result of Pproject implementation. If
32 implementation of the Pproject shall cause ~~a~~ the elimination or transfer of Eexisting
33 Llegal Ssources of Wwater, then the Project Implementation Report shall include an
34 implementation plan that ensures that such elimination or transfer shall not occur until
35 after the Pproject is constructed and operating as intended and is providing a new source
36 of water supply of comparable quantity and quality to the source of water supply that is
37 being eliminated or transferred.

38
39 (b) Existing Level of Service for Flood Protection

40 (1) The Llevel of Sservice for Fflood Pprotection that is in existence on
41 the date of enactment of section 601 of the Water Resources Development Act of 2000
42 (114 Stat. 2680) and in accordance with applicable law shall be determined. To the extent
43 practical, the Ppre-CERP Bbaseline shall be used in determining the, existing Llevel of
44 Sservice for Fflood Pprotection.

45 (2) The plan recommended in the Project Implementation Report shall be
46 evaluated to determine if the Llevel of Sservice for Fflood Pprotection that is in existence

1 on the date of enactment of section 601 of the Water Resources Development Act of
2 2000 (114 Stat. 2680) and in accordance with applicable law will be reduced by
3 implementation of the recommended plan. If so, then the recommended plan shall be
4 modified as necessary to ensure that adverse effects on the existing Llevel of Sservice for
5 Flood Protection are ~~mitigated or~~ eliminated.

6 (3) In developing alternative plans for Evaluation during the preparation
7 of the Project Implementation Report, the Corps of Engineers and the Non-Federal
8 Sponsor ~~may shall~~ consider opportunities to provide greater Llevels of Sservice for
9 Flood Protection or to provide flood protection in locations where there is currently no
10 flood protection, provided that greater Llevels of Sservice for Flood Protection or the
11 provision of flood protection is consistent with the goals and purposes of the
12 Comprehensive Everglades Restoration Plan and the provisions of section 601(f)(2)(B) of
13 the Water Resources Development Act of 2000 (114 Stat.2686).

14
15 §385.32 Interim Goals

16 (a) General

17 (1) The Corps of Engineers and the South Florida Water management
18 District Department of the Army, the Department of the Interior, and the South Florida
19 Water Management District, in Consultation with the Miccosukee Tribe of Indians of
20 Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, shall
21 establish Interim Ggoals to facilitate interagency planning and provide a means by which
22 the restoration success of the Comprehensive Everglades Restoration Plan may be
23 evaluated throughout the implementation process.

24 (2) Interim Ggoals shall:

25 (i) be expressed in terms of ~~measurable~~ restoration Performance
26 Measures standards, including terms of hydrologic and ecologic performance values, that
27 may be associated with specific points during the implementation of the Comprehensive
28 Everglades Restoration Plan and are consistent with the goals and purposes of the Plan;

29 (ii) reflect System-wide and regional ecological responses that are
30 associated with the enhancement of hydrologic and ecologic goals and purposes
31 contained in the Comprehensive Everglades Restoration Plan, as developed by the Project
32 Implementation Reports, including increasing the quantity, timing, and distribution of
33 water dedicated and managed for the restoration of the Natural System, the total spatial
34 extent of natural areas, improving habitat and its functional quality, and improving native
35 plants and animal species abundance and diversity,

36 (iii) include ~~measurable standards~~ Performance Measures for
37 meeting concerning other water-related needs of the region ~~goals and purposes of the~~
38 Plan, including water supply and increasing water supplies for urban, agricultural,
39 ~~industrial and other users~~ and improving and maintaining flood protection;

40 (iv) provide mechanisms and information to facilitate interagency
41 planning and Aassessment for reporting implementation progress, including such
42 accomplishments as completion of Project Implementation Reports, real estate
43 acquisition, completion of pilot project construction, completion of Project construction
44 at specific points during the implementation of the Comprehensive Everglades
45 Restoration Plan, and performance of completed Plan features;

1 (v) provide incremental and sustained benefits to the Natural
2 System, Agricultural and Urban Water Supply, and ~~incidental~~ improvements in
3 flood protection throughout the construction phase of the Comprehensive Everglades
4 Restoration Plan; and

5 (vi) ensure achievement of benefits to the Natural System, and
6 all other water needs of the region users, in progression, until the final achievement of the
7 goals and purposes of the Comprehensive Everglades Restoration Plan can be measured
8 and reported.

9 (3) The Corps of Engineers and the South Florida Water Management
10 District and other Non-Federal Sponsors shall sequence and schedule Projects to
11 achieve the Interim Goals, to the extent practical given funding, technical, or other
12 constraints.

13
14 (b) Development of Interim Goals.

15 (1) RECOVER shall develop recommendations on Interim Goals using a
16 scientifically based collaborative process consistent with the goals and objectives of the
17 Comprehensive Everglades Restoration Plan.

18 (2) RECOVER shall:

19 (i) develop criteria for interim goals that use science and
20 information which, in its discretion, it determines to be the best available and is
21 consistent with the goals and purposes of the Plan;

22 (ii) develop a draft list of Indicators for the Interim Goals in
23 accordance with the criteria;

24 (iii) give the Public notice and opportunity to comment on the
25 draft list of Indicators;

26 (iv) develop the final list of Indicators after considering Public
27 comment on the draft list;

28 (v) develop draft interim Targets for each of the Indicators-,

29 (vi) develop the process and schedule for developing interim
30 Targets for those Indicators where additional information is needed in order to develop
31 draft interim Targets;

32 (vii) prepare draft recommendations on Interim Goals that
33 provide detailed documentation on each of the interim Targets and the process and
34 schedule for developing interim Targets for those Indicators that require additional
35 information;

36 (viii) give the Public notice and opportunity to comment on the
37 draft recommendations; and

38 (ix) prepare final recommendations on Interim Goals after
39 considering Public comment on, the draft recommendations.

40
41 (c) Interim Goals Agreement. Upon receipt of a final report and set of
42 recommendations from RECOVER, the Corps of Engineers and Department of the Army,
43 ~~the Department of the Interior and~~ the South Florida Water Management District shall
44 consider the final report and set of recommendations from RECOVER and develop a
45 proposed agreement set forth an initial suite of Interim Goals with dates for

1 achievement of the Interim Goals and the method of measuring and evaluating the
2 progress toward achievement of the Interim Goals.

3 (1) The Corps of Engineers and the South Florida Water Management District
4 ~~Department of the Army~~ shall Consult ~~with the Miccosukee Tribe of Indians of Florida,~~
5 ~~the Seminole Tribe of Florida, and other Federal, State and local agencies,~~ and shall
6 provide an opportunity for Public notice and comment.

7 (2) After consideration of comments, the Corps of Engineers ~~Department of the~~
8 ~~Army, the Department of the Interior,~~ and the South Florida Water Management District
9 shall sign the agreement, incorporating any suggestions, which in their judgment, are
10 appropriate.

11 (3) The Corps of Engineers ~~Secretary of Army~~ shall publish notice in the Federal
12 Register after the agreement is signed.

13
14 (d) Use of Interim Goals.

15 (1) The Corps of Engineers ~~Department of the Army, the Department of~~
16 ~~the Interior,~~ and the South Florida Water Management District shall use Interim Goals
17 to measure performance of the Comprehensive Everglades Restoration Plan in achieving
18 its goals and purposes. To facilitate the use of Interim Goals for this purpose,
19 RECOVER shall assess progress towards meeting the Interim Goals and shall
20 periodically prepare progress reports to the Corps of Engineers ~~Department of the Army,~~
21 ~~the Department of the Interior,~~ and the South Florida Water Management District on
22 progress towards meeting the Interim Goals.

23 (2) In implementing the Comprehensive Everglades Restoration Plan, the
24 Corps of Engineers and the South Florida Water Management District and other
25 Non-Federal Sponsors shall consider the reports prepared by RECOVER to determine
26 if.

27 (i) revisions to the Comprehensive Everglades Restoration Plan are
28 needed;

29 (ii) revisions to the operation of the Comprehensive Everglades
30 Restoration Plan are needed; or

31 (iii) revisions to the Master Implementation Sequencing Plan are
32 needed.

33
34 (e) Reporting on Interim Goals. Interim Goals shall be used in the periodic
35 reports to Congress as required by section 601(1) of the Water Resources Development
36 Act of 2000 (114 Stat. 2692). The discussion on Interim Goals in the periodic reports
37 shall include:

38 (1) discussion of the performance expected to be achieved since the last periodic
39 report to Congress;

40 (2) discussion of the actual performance of the Comprehensive Everglades
41 Restoration Plan during this period along with a discussion of the measures taken to
42 achieve the Interim Goals-;

43 (3) if performance did not meet the Interim Goals, a discussion of the reasons
44 for such shortfall;

45 (4) recommendations for improving performance; and

1 (5) the Interim Goals to be achieved in the next five years, reflecting the work to
2 be accomplished during the next five years, along with a discussion of measures to be
3 undertaken to achieve those Interim Goals.

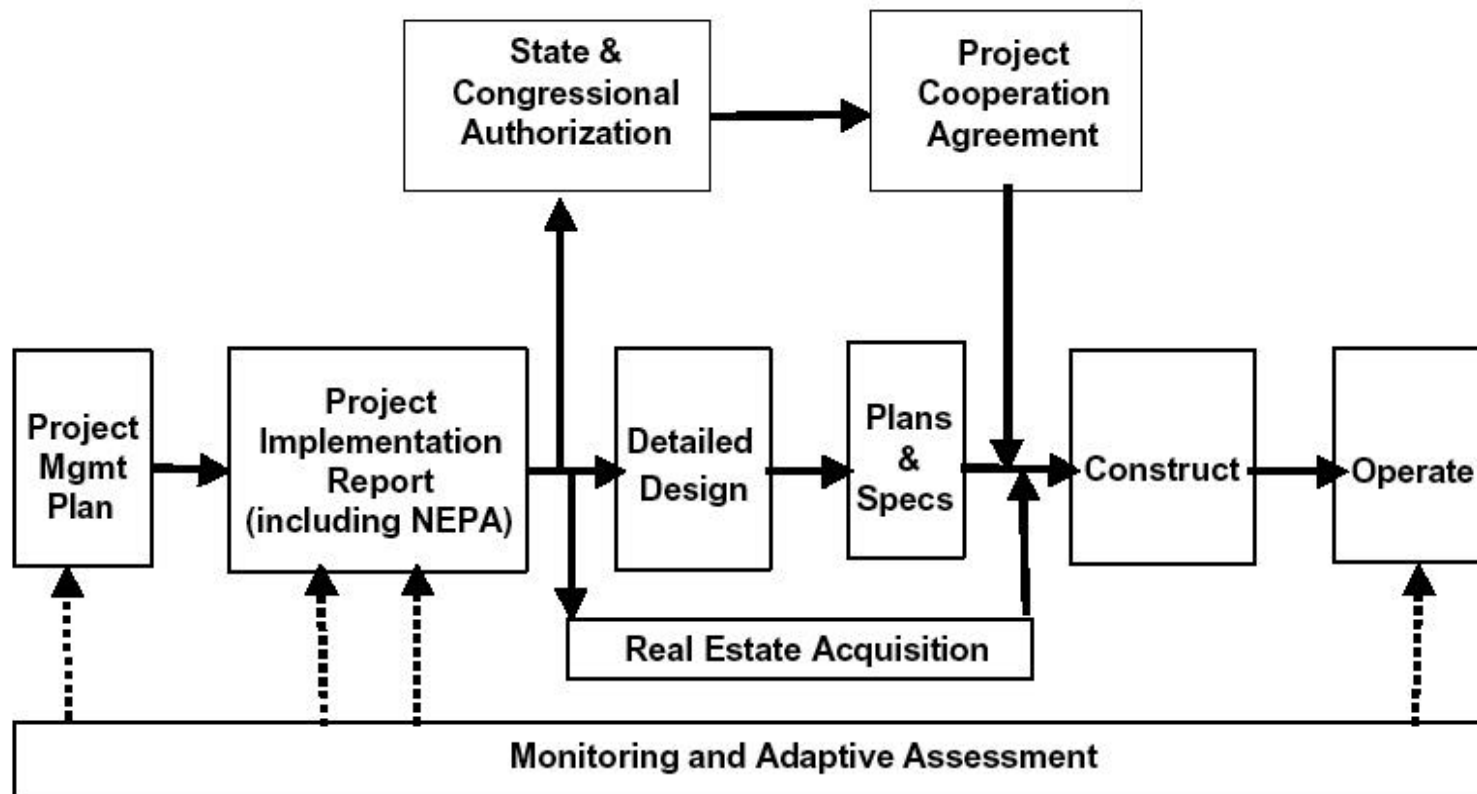
4
5 (f) Revising Interim Goals.

6 (1) Whenever the Corps of Engineers and the South Florida Water
7 Management District deem it necessary, but not any less often than every five years, the y
8 ~~Corps of Engineers and the South Florida Water Management District~~ shall have
9 RECOVER review the Interim Goals to determine whether if it should recommend to
10 ~~the Department of the Army, the Department of the Interior and the South Florida Water~~
11 ~~Management District, that~~ the Interim Goals incorporated into the agreement required
12 under paragraph (c) of this section should be revised due to changed conditions or new
13 information or analyses.

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

1 APPENDIX A to PART 385 – ILLUSTRATIONS TO PART 385

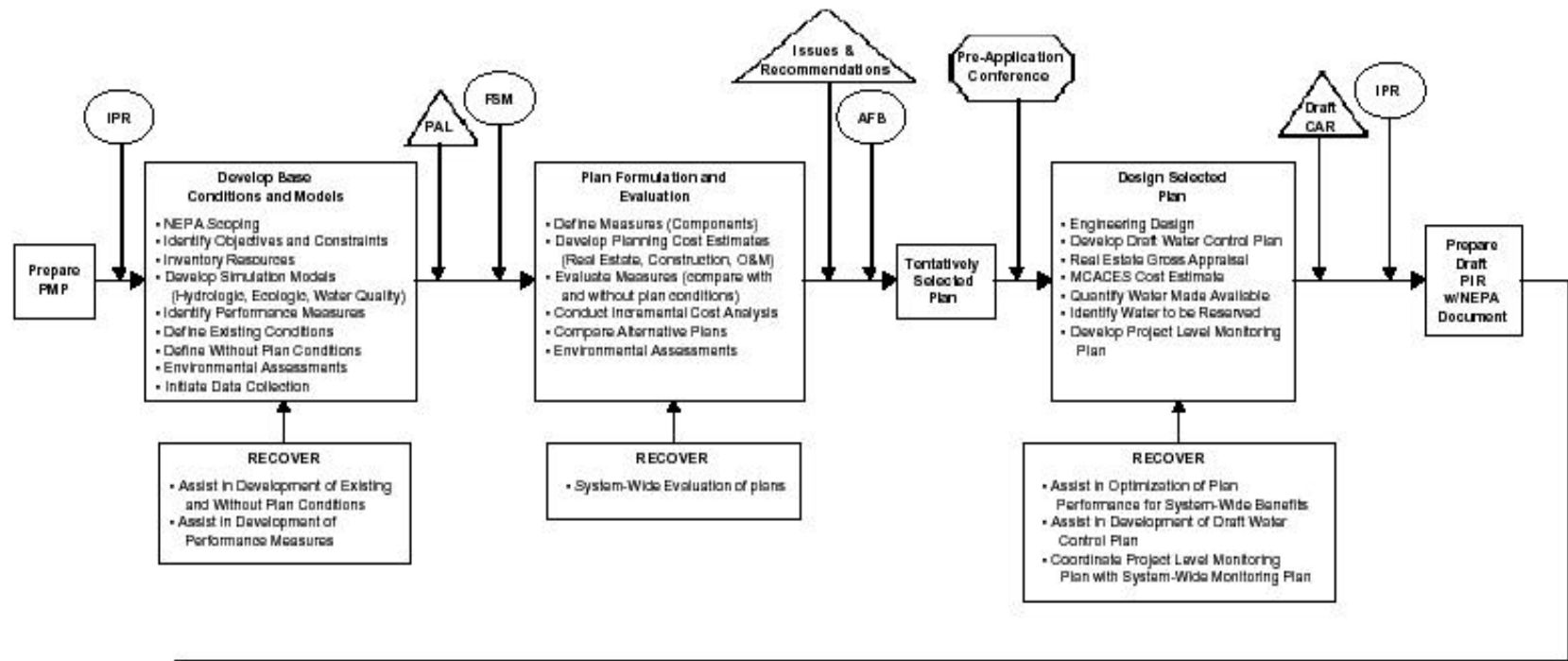
Project Development Process



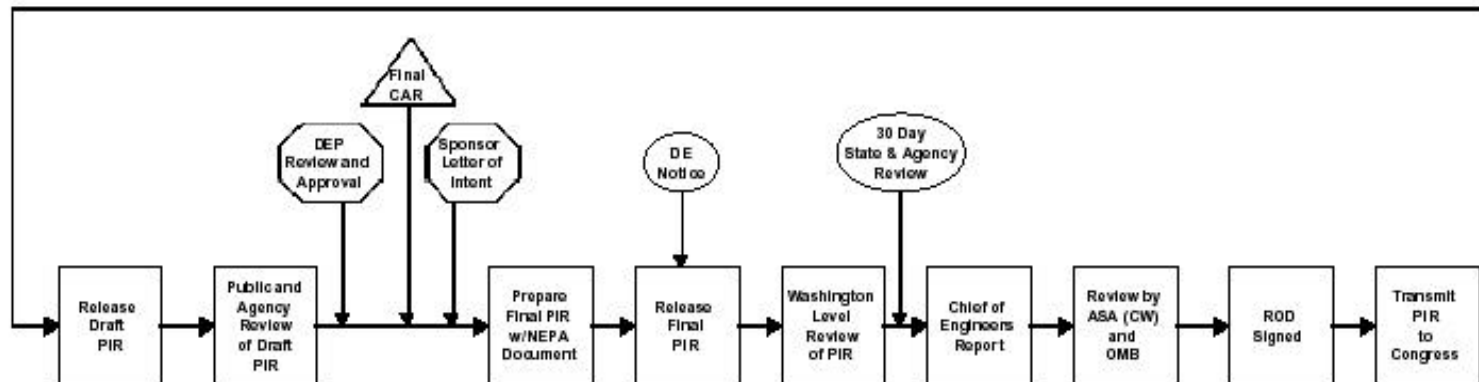
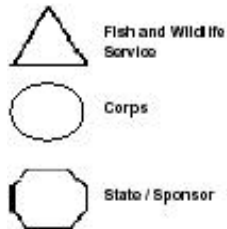
Appendix A

Figure 1

TYPICAL PROJECT IMPLEMENTATION REPORT (PIR) PROCESS



Legend



Appendix A

Figure 2