



Department of Environmental Protection

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January 7, 2005

Mr. John Morgan
SFWMD
3301 Gun Club Road
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Mr. Juan Diaz- Carreras
SFWMD
3301 Gun Club Road
West Palm Beach, FL 33406

Mr. Joe Redican
USACE
701 San Marco Boulevard
Jacksonville, FL 32232-0019

Dear Mr. Morgan, Mr. Diaz-Carreras and Mr. Redican:

We have reviewed the draft documents entitled "Programmatic Regulations Six Program-Wide Guidance Memoranda", and "Programmatic Regulations Draft Master Implementation Sequencing Plan" dated November 2004. We appreciate the amount of effort that went into the development of these documents and offer the following comments in hopes of improving the final documents. In addition to the comments below, we will transmit an electronic version of guidance memoranda document using strikethrough and underline to identify minor edits.

Guidance Memorandum #1 – General Format and Content of Project Implementation Reports

Section 1.9, PIR Activities, and Attachment 1-A briefly discusses the activities necessary to complete a PIR. As required by WRDA 2000 and Chapter 373 Florida Statutes, water quality standards must be met. The guidance memorandum should specifically highlight this constraint and discuss the need to exclude alternatives from the formulation process which violate the constraint.

On Page 1-20, lines 15 – 46 are intended to identify the requirements for features to improve water quality. However, the purpose of these two paragraphs is unclear. We recommend moving the first paragraph on the assumed future without project water quality condition to section 1C on page 1-16. The second paragraph which specifically identifies the cost sharing provisions of WRDA 1996 and WRDA 2000 should not be included in the section on "Evaluation of Alternative Plans." If it is necessary to once again state the water quality cost sharing requirements specified in the Acts, this paragraph should be moved to Section E on "Selection and Implementation of the Selected Alternative Plan" (page 1-27).

On Page 1-26, lines 4 – 9 discuss the inclusion of an implementation plan in the PIR if an elimination or transfer of existing legal sources of water occurs. The implementation plan is to ensure that the elimination or transfer will not occur until a new source of comparable quality is available. According to the text GM #3 provides guidance on how to conduct the analysis for determining "comparable" quality. We were unable to find such guidance in GM #3.

Guidance Memorandum #2 – Instructions for Formulation and Evaluation of Alternative Developed for Project Implementation Reports, Their Cost Effectiveness and Impacts

We are encouraged to see that the guidance recognizes that the Comprehensive Plan should be the foundation for plan formulation and evaluation. For many projects included in The Plan the project purpose remains the same. The need to “go back to the drawing board” drains critical resources and delays implementation of projects.

Guidance Memorandum #3 – Identifying If An Elimination or Transfer of Existing Legal Sources of Water Will Occur As A Result of Implementation of the Plan

Section 3.10.7 on Page 3-10 is insufficient guidance on the determination of comparable sources for water quantity or quality. While we agree the level of significance should be done on a case by case basis, the memorandum should provide more detail on the evaluation necessary to determine comparable water quality between sources.

Guidance Memorandum #4 – Identifying the Appropriate Quantity, Quality, Timing and Distribution of Water to Be Delivered and Managed for the Natural System and for Other Water-Related Needs

Starting in section 4.5 and throughout GM #4 stormwater treatment areas are defined as “natural areas.” While it is important to ensure the quantity of water necessary to achieve treatment goals is maintained, these are not natural areas, these are treatment systems and any wildlife benefits are ancillary.

Section 4.12 and Attachment 4-D refer to model language for the assurance of project benefits. This model language attempts to *contractually* bind the State of Florida to actions solely taken under the state’s legal authority to manage existing water in the system that was there before CERP. This language is inconsistent with Section 385.2(e) of the Programmatic Regulations which prohibits prescribing any process of Florida law and is inappropriate. The State of Florida is providing appropriate assurances regarding protection of existing natural system water. The SFWMD has formally initiated rule development under state law to adopt initial reservations for Everglades and key areas in the south Florida ecosystem and our federal partners will be involved in rule development process. Furthermore, there are already several enforcement mechanisms and legal requirements existing in state and federal law to assure CERP water will be protected as contemplated under WRDA 2000 and the programmatic regulations. We understand our obligation to manage the state’s water allocation process in such a way to ensure water made available by these projects for the natural system will be protected and are fully committed to fulfilling our responsibilities under state law.

Guidance Memorandum #5 – General Content of Operating Manuals

Editorial comments and recommendations contained in strikethrough and underline version provided electronically.

Guidance memorandum #6 – General Directions for the Conduct of the Assessment Activities of Restoration Coordination and Verification (RECOVER)

Editorial comments and recommendations contained in strikethrough and underline version provided electronically.

Master Implementation Sequencing Plan

We understand and agree with the logic and constraints used in the determination of the MISP. Because of the critical nature of the complete Biscayne Bay project, we request that phase II of this project, specifically the development of the tentatively selected plan, be accelerated as resources become available.

We look forward to continuing our partnership and look forward to providing input throughout the development of the revised Guidance Memoranda. If you have any questions regarding the comments contained in this letter, please feel free to contact me at 850-245-8428.

Sincerely,



Ernie Barnett
Director of Ecosystem Projects

Cc: Greg Knecht