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To: Joseph Redican, U.S. Army Corps of Engineers
John Morgan, South Florida Water Management District

From: Mary Ann Gosa, Florida Farm Bureau Federation

Re: Comments Regarding the Draft CERP Guidance Memoranda

On behalf of the Florida Farm Bureau Federation, I appreciate the opportunity to submit comments on the draft Comprehensive Everglades Restoration Plan (CERP) Guidance Memoranda. As stated in the past, we support implementation of CERP consistent with the balanced purposes as stated in the Water Resources Development Act (WRDA) of 2000. However, we have some basic concerns with the initial draft of the Guidance Memoranda.

The Guidance Memoranda favor the natural system benefits over other water-related benefits, which is in direct opposition to the concept of a balanced plan. This is most apparent in the definition of "beneficial water," which is defined to include only water that contributes to the restoration of natural systems. In addition, Attachment 3-C to Guidance Memorandum 3 provides the protection of the Savings Clause to natural system benefits provided by "an intervening non-CERP condition." This provides exclusive protection to natural system benefits over and above that provided to other water-related benefits and is inconsistent with the provisions of WRDA 2000.

One of the purposes of Guidance Memorandum 4 is to provide instructions for identifying the appropriate quantity, timing, and distribution of water to be dedicated and managed for the natural system. However, it goes well beyond this purpose and unnecessarily impinges on state jurisdiction over water reservations. WRDA 2000 restricts the Secretary of the Army from executing a Project Cooperation Agreement until the State sets a reservation or allocation of water for the natural system under state law. In other words, it establishes a condition that must be met before execution of the agreement, and whether that condition is met is solely at the discretion of the local sponsor. Attachment 4-D appears to contractually obligate the local sponsor to meet this condition and is inconsistent with the prohibition in the Programmatic Regulations (Section 385.2(e)) against prescribing any process of Florida law.

Finally, in general, the Guidance Memoranda appear overly broad in regard to their stated purpose of providing “technical guidance for internal management of Corps of Engineers personnel during Plan implementation,” (Section 385.5, Programmatic Regulations). For example, although it may seem necessary to cite relevant policies, the creation of new policy would appear to go beyond the stated purpose of providing technical guidance. Guidance Memorandum 3 and 4, in particular, seem to go well beyond this purpose and in some cases may be inconsistent with existing law and regulation.