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- Transit
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- Vizcaya Museum and Gardens
- Water and Sewer

January 7, 2005

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U.S. Army Corps of Engineers
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Dear Messrs. Redican and Morgan:

Miami-Dade County appreciates the opportunity to continue to be a part of the Everglades restoration process. In that spirit, the County is providing comments on three important documents that will shape and guide the Comprehensive Everglades Restoration Plan ("CERP") implementation process. These documents include the Six Program-Wide Guidance Memoranda (GM), the Pre-CERP Baseline and the Master Implementation Sequencing Plan ("MISP"). The documents provide a road map for how projects will be formulated, how they will be sequenced and what is the baseline point for comparing the effects of a project on an existing legal source.

Miami-Dade County occupies a unique setting in the CERP landscape, between two national parks and with the largest human population in the State of Florida. Because we are situated at the downstream end of the CERP area, we are concerned about elements north of us that may ultimately affect the amount and quality of water reaching our natural areas and urban and agricultural water supplies. Miami-Dade County has a long record of supporting environmentally sustainable growth, through proactive wellfield protection programs and regulation, water conservation, alternative water supply development, investment in water management infrastructure, and restoration and acquisition of environmentally sensitive lands. We hope that the documents listed above will recognize, encourage and build upon such local efforts.

The following presents a general overview of the broader issues that are of concern to the County. These general comments are supplemented by specific comments on the three documents and are attached to this cover letter.

Delivering Excellence Every Day

Guidance Memoranda

Land Acquisition

A procedure for expediting land acquisition, regardless of project, is needed to assure accomplishment of CERP goals and timelines. Increasing cost of land, ongoing land development, other land use changes, or protracted real estate transactions may preclude implementation of a selected alternative if acquisition is delayed until after Project Implementation Report (PIR) authorization. Miami-Dade County has a progressive environmentally endangered lands acquisition program, and has successfully partnered with public and private agencies on fee simple acquisition from willing sellers for more than a decade. We also encourage consideration of other alternatives for securing needed lands, including donations, public-private partnerships, easements, covenants, lease-purchase, or even purchase-lease back scenarios in selected cases in the region provided these less-than-fee-simple approaches are compatible with the overarching goals of the Project.

Level of Detail in the Guidance Memoranda

The Six Program-Wide Guidance Memoranda are designed to provide guidance to Project Teams from initial design to construction of projects. These Guidance Memoranda must strike a balance between providing enough detail to Project Teams that they know how to formulate the projects according to specific procedures, but broad enough so that the general public and stakeholders will be able to determine from the project implementation process how a project might affect their interest. This draft of the Guidance Memoranda lacks specific enough detail so that a Project Team can adequately formulate projects. For example, the documents contain many subjective or vague terms, such as "significant effect", without much guidance to the teams on how to apply or interpret them. A few extra inches of water for a few days may not be "significant" if the context is a ridge-and-slough system, but if the water is in your living room, or the lobby of your business it is very "significant."

Other Legal Protections in Addition to the Savings Clause

When designing projects, teams must be aware that other legal entitlements to flood protection and water supply exist. While the County understands the analysis under the Savings Clause is protective of conditions as they existed in December of 2000, the Guidance Memoranda documents need to more clearly articulate other protections under State and Federal law. Additionally, other projects have been, or are in the process of being authorized, constructed and implemented. Project teams must also be aware that other environmental restoration activities are taking place at the local level. There should be clearer direction to articulate what these other projects or activities are throughout a CERP project's development so that the team can be aware of and factor in these efforts in their project design. There should also be a clearer discussion of the requirements and compliance with the National Environmental Policy Act ("NEPA") requirements and how a project team must ensure these are fulfilled in their project documentation process.

Discussion of Federal Emergency Management Agency ("FEMA") Projects and Regulations

There has been significant public investment at the local, state, and federal levels in projects to restore and mitigate flooding impacts in Miami-Dade County. The County is unique compared to other south Florida communities in that the recent level of this investment is close to one billion

dollars. Much of this investment occurred just prior to and after December 2000. FEMA projects such as forward pumps on the C-4 and C-6 canals and the emergency impoundment on the C-4 have been completed since 2000. These projects are of regional importance, and serve some of the most densely populated areas of the County. These areas were also the most heavily damaged by Hurricane Irene and the No-Name storm of October 2000, and were recognized by the Local Mitigation Strategy Committee, FEMA, and the Miami-Dade County Flood Management Task Force as areas having the most need for flood mitigation improvements.

Additionally, other ongoing projects such as canal dredging, the USACE Miami-Dade County Regional Canal Restudy and the Combined Structural Operating Plan (CSOP) will provide added flood protection to residents throughout the County, and the CSOP will particularly benefit agricultural areas and the 8.5 Square Mile Area.

Guidance Memoranda 3 and the Pre-CERP baseline discuss some of the protections that the Savings Clause affords for non-CERP intervening projects, but the County remains very concerned that these documents articulate a policy that will allow those benefits to be partially or entirely negated by a CERP project. Although we recognize that this may be legal under the WRDA 2000 language and Programmatic Regulations, it is certainly not sound policy or in the interest of CERP to even suggest compromising these flood mitigation or recovery investments. To the contrary, this compromise could result in significant financial liability being imposed on CERP stakeholders, when the above projects are in place, and if the reduction in flood losses and protection of residents and property are not realized during major rain events due to CERP activities implemented pursuant to interpretations of the Savings Clause as described in the GMs. The Guidance Memoranda must deal with this issue by directing project teams to identify the level of flood service potentially reduced after implementation of a CERP project and identify economic losses from local, state or federal investment in flood mitigation projects. Project teams should be directed to coordinate with FEMA projects, regulations and representatives.

Modeling Used in Project Formulation and Design

We recommend that baselines and GMs include specific procedures for coordination and integration of *both* regional and project-level modeling and assessment. Individual PIR's may not provide an adequate basis for addressing allocations and savings clause requirements. Regional models may not have adequate vertical and horizontal resolution to adequately assess hydrologic conditions related to resource protection, water supply or flood protection on a project scale. All regional modeling efforts should incorporate all available and updated topographic data, including LIDAR and project specific data for natural and urban areas. Project teams should have guidance on when to use smaller scale, integrated models that can analyze more local impacts on flooding, saltwater intrusion and drinking water demand. However, project teams may not have access, expertise or funds to conduct modeling or review when impacts or benefits occur beyond a project boundary or footprint. There are some natural systems, wellfields or flood prone areas within Miami-Dade that are not within any CERP project boundary. When analysis suggests that a project may affect water quantity, quality, or timing to natural, agricultural, or urban areas elsewhere in South Florida, then a coordinated regional or systemwide perspective, such as that provided by RECOVER, should be included in the assessment.

Modified and Next Added Increment

These sections in Guidance Memorandum 4 need to be revised for clarity. The rationale and integration of the two methodologies is unclear from the document. Additionally, the changing of

the amount of the water identified for the natural system and other water related needs based on the proportion split between those uses of water must be added into the 11 step process for identifying water.

Pre-CERP Baseline

Interim Operation Plan ("IOP")

The Pre-CERP baseline includes levels of service that were in existence as of December 2000 for use in analyzing the Savings Clause in WRDA 2000. While the County understands that it is necessary to use one point of reference for comparison, the Interim Operating Plan resulted in higher groundwater stages during the wet season that negatively impacted flood protection to the urban areas to the east of Everglades National Park, as well as listed species habitat. The IOP was subsequently adjusted due to these negative impacts. This operating condition is not acceptable for determining whether or not a later CERP project will have a negative impact on flooding.

Savings Clause

The period of record modeled for the actual wellfield pumpage for the pre-CERP baseline is the year 2000. During a portion of that year, South Florida experienced drought conditions and instituted supply side management and local water restriction enforcement, and at other times during that year extreme storms and flooding conditions occurred. The Year 2000 is not a typical rainfall year or indicative of typical wellfield pumpage. Additionally, it could also be argued that consumptive users that successfully implemented conservation are being penalized.

Master Implementation Sequencing Plan

Seepage Management

Miami-Dade County recognizes the importance of early sequencing of the L31N Seepage Management Pilot and the Everglades National Park Seepage Management project to meeting the natural systems needs in Everglades National Park and also for reducing the risk of flooding in urban and agriculture lands to the east. However, the actual construction and operation of seepage management alternatives must seek a balance among various natural system needs, flood protection, and water supply. The Seepage Management projects should be implemented in conjunction with other water-producing projects so as to balance or offset potential negative impact on flows to Biscayne Bay, saltwater intrusion in the Biscayne Aquifer, and to water supply.

Wastewater Reuse Pilot Project

The pilot project must be completed early in the CERP process to address uncertainty about the ecological and economic feasibility of this technology for sensitive natural system restoration. Wastewater reuse is one of few CERP projects that will actually establish a new source of water, and information from the pilot project is critical to determining whether or not this is a viable source of freshwater for Biscayne Bay. The information developed will guide decisions about how and where this reclaimed water may best be used in full-scale. Therefore, this project must be moved up to an earlier Band.

Bird Drive Recharge Area

Generally, the County is concerned with the pace of land acquisition in project footprints subject to severe escalating land values, such as the Bird Drive Recharge Area. Every effort must be made to expedite land acquisition in these footprints where this pressure exists, but the delay of this particular project coupled with the effect of reducing flows from the Seepage Management project could act to have a negative effect on recharging the County's west wellfield as well as other natural system impacts. Every effort must be made to expedite land acquisition and accelerate this project.

Decomartmentalization

Any backfilling of canals in conjunction with the Decompartmentalization project will have a direct impact on water supply deliveries. Consequently, the backfilling of these canals must take place after planned canal improvements, and extensions, and the C-9 Impoundment project.

Miami-Dade County recognizes the challenges in finalizing these technical and policy issues to be incorporated into these CERP program documents. The County also remains committed to a balanced approach in the implementation of the CERP as a program that will restore the natural system while meeting the other water related needs of the region. We look forward to working with you to meet those goals. For any further assistance regarding these comments, please contact Roman Gastesi, Jr. in the Office of Water Management at 305.375.1260.

Sincerely,



George Burgess
County Manager

c: Jim Vearil, U.S. Army Corps of Engineers
Agnes McLean, SFWMD
Juan H. Diaz-Carreras, SFWMD
William Brant, Miami-Dade WASD
John Renfrow, Miami-Dade DERM

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

General Comments

This guidance memorandum directs the activities of project teams in conducting further analysis and developing a Project Implementation Report (“PIR”) to guide final design of Plan components. As a supporter and participant in the original C&SF Restudy process, Miami-Dade County is acutely aware of the limitations of the project design outlined in the Comprehensive Plan because of the lack of background information, time deadlines, and limitations of the regional modeling process that were clearly evident during the Restudy process. Congressional directives, provided during the hearings on the Comprehensive Plan, indicated that the Corps of Engineers should exceed the performance of D13R during the design and implementation phases of the Plan. The County continues to support the concept that improvements to the Plan are achievable, and strongly recommends that Guidance Memorandum 1 encourage the project teams to seek improved performance at every opportunity.

We are concerned that the directives included in this GM appear, instead, to limit the project team to optimizing the components listed in the Comprehensive Plan unless those components do not meet the goals and objectives of the Plan. We have provided suggestions below for specific language that should be included to encourage project teams to continually seek performance improvements to the Comprehensive Plan, as directed by Congress.

The section on land acquisition appears to focus on issues related to acquisition of private land for project purposes, and therefore emphasizes the decision process for choosing fee simple acquisition vs. obtaining an easement. A process for acquiring title or easement on land already in public ownership is not outlined in the Guidance Memorandum. Specifically, the process as presented does not appropriately address the complex situation in Miami-Dade County and other South Florida counties, where CERP footprints may overlap with areas where parks and conservation lands have already been acquired. Such lands may have legal restrictions on their use tied to the source of funding such as tax referenda, bonds, or grants that allowed for their acquisition. The Guidance Memorandum should include a separate provision for review of potential land use restrictions on existing public lands (such as is provided for private land in Section 1.7.3 lines 15 &16) and also include language that emphasizes early contact with local governments to coordinate on exploring the potential for use of these lands in CERP projects. Early coordination in the plan formulation process would ensure that the appropriate agreements are generated and/or components modified to account for such restrictions.

CERP includes parallel efforts to develop future without project conditions to use as a comparison for plan alternatives: RECOVER is in charge of developing updated regional future without project conditions as part of the CERP update process, and individual projects are in charge of developing future without project conditions that are relevant to the local project (Section 1.9.1, Bullet 4). There are two subject areas where these parallel processes may result in inconsistencies: background land use issues and determining which CERP projects should be included in the future without project condition. The effort to update the regional model with

new conditions is a lengthy process, and is not undertaken lightly. There is, therefore, a potential for the RECOVER future without project conditions to be out of date relative to the future without project conditions developed at the project level. Careful coordination of the regional and local efforts should be undertaken to ensure that regional and project level modeling results are compatible and comparable. We strongly recommend that the most up-to-date information be incorporated in a timely manner for future without project conditions at both levels, since South Florida is continuing to experience high pressure for urban growth, and this must be accurately represented if CERP projects are to ultimately meet performance goals.

Specific Comments

Section 1.3: This section directs the project team to begin alternative formulation with the component as described in the Comprehensive Plan, and includes a statement that “In most cases, it is envisioned that this process will simply entail optimization of the component(s) described in the Plan. However, in some cases, additional formulation may be needed.” We recognize that the Restudy team did a tremendous job in developing a suite of conceptual components that, taken as a whole, should result in substantial restoration of the Everglades system, and agree with the premise that the team should start with the ideas outlined in the Plan. We are, however, concerned that this section does not adequately acknowledge the direction from Congress to improve upon performance of the Plan wherever possible and may result in inadvertently directing the project team to merely flesh out the existing component and “make do” rather than seeking improvements as part of the plan formulation process. We suggest that the following wording in this section would maintain the idea of continuity with the Plan while more actively directing project teams to seek improvements in performance: “In many cases, it is envisioned that this process will entail optimization of the component(s) described in the Plan. However, the project team should continue to seek ways to improve performance of the plan during the formulation process, therefore, additional formulation may be needed.”

Section 1.4: This section lists requirements for inclusion in the PIR. Since a substantial area within Miami-Dade County is within the 100-year floodplain as defined by Federal Emergency Management Agency (“FEMA”) regulations, FEMA regulations should be specifically included in the list of applicable federal regulations that must be met.

Section 1.5: This section states that the programmatic authority of Section 601(c) of WRDA 2000 allows the Secretary of the Army to approve CERP projects that cost less than \$25 million, and also states that there are currently 21 projects that are eligible to be considered under this programmatic authority. Those projects should be listed somewhere in the document, along with a date to define “currently”, since this situation may change. It is not clear what would or could be eliminated in the PIR for such projects in order to create an “abbreviated document”, particularly when requirements in WRDA 2000 and NEPA must still be met. Additional guidance that more specifically defines what may be deleted should be included. It should be noted that projects may have to be moved out of this category as time passes, even if few modifications to the original D-13R component are added, due to increasing land acquisition costs or increasing construction costs. Therefore, eliminating information in the PIR to expedite the approval process should be done with caution, since that information may ultimately be

needed.

Section 1.6: This section discusses review processes that must be undertaken during the development of the PIR. Section 1.9 discusses the In-Progress Review process in more detail, but this section should clarify that it is a Corps process since this is the first time it is mentioned. Later discussions imply that the IPR, FSM, and AFB processes are primarily communication tools. If any of these are points where “go-no go” decisions may be made, a mechanism for stakeholder input to this decision process should be included.

Section 1.7: This section outlines the general principles for taking land acquisition costs into account when figuring cost estimates for CERP projects. Given the high land costs plus the recent extremely high rate of appreciation of land values in Miami-Dade County, we strongly support the position put forth in Section 1.7.2 that individual projects should not be limited to a cap of 25% of project costs for land acquisition.

Section 1.7.3: This section should define “OMRR&R”.

Section 1.9: This section directs initial evaluation process for the project team and falls short of encouraging project teams to fulfill the directive from Congress to meet or exceed the performance of D13R during plan formulation. The following changes should be made to more clearly encourage project teams to thoroughly understand local problems and seek better opportunities to address them:

- The sentence beginning on page 1-6, line 14 should read “The project team will determine if the project component(s) still meets the goals, objectives and purposes as defined for the project component and whether there are opportunities for additional improvements to plan performance through modification or revision of the components.”
- The sentence beginning on page 1-6, line 19 should read “After conducting scoping activities with agencies and the public, the project team should identify any needed refinements to the goals and objectives that would better reflect local problems and opportunities for restoration and whether there are any new issues or conditions that would require additional analysis or revisions to the problems, opportunities, goals or objectives for the project component(s).”
- The sentence beginning on page 1-6, line 22 should read “The project team is responsible for conducting activities to affirm that the project component(s) continue to contribute to meeting the goals and purposes of the Plan and contribute to meeting or exceeding the benefits of the Plan.”
- The sentence beginning on page 1-6, line 25 should read “If it meets the goals and purposes of the Plan, and there are no opportunities to achieve additional benefits, then the focus of the PIR will be on documenting this information, optimizing the Plan’s component’s design, and completing the additional analyses required for PIR’s.”
- The sentence beginning on page 1-7, line 21 should read “The extent of plan formulation necessary will be based on whether the project described in the Plan will meet its goals

and objectives and/or whether improved performance can be achieved by additional formulation.”

- The sentence beginning on page 1-7, line 38 should read “If approved to continue with the detailed design of the alternative described in the Plan, then the project team should develop alternatives that optimize the design and seek to improve performance of the alternative.”
- The sentence beginning on page 1-8, line 8 should read “If the project described in the Plan no longer meets its goals and objectives, or if improved performance can be achieved through additional effort, formulate additional alternatives by developing management measures, at different scales or sites to meet the project’s goals and objectives.”
- The sentence beginning on page 1-12, line 20 should read “In many cases, it is envisioned that this process will entail optimization of the component detailed in the Plan. However, if there are opportunities to improve performance, additional formulation would be appropriate.”
- The box beginning on page 1-17, line 36 should read “If the project team has determined that no additional opportunities to improve performance exist, the team will describe development of design alternatives that optimize the component described in the Plan. Such optimization alternatives might include incremental changes in component size, configuration or specific location.”

Section 1.9.1: Bullet 4 states “Use existing and future conditions described in the Plan and update with new information if necessary.” Please refer the reader to Attachment 1-A, Section C for further clarification on what constitutes future without project conditions at the project level; there has been some confusion. In addition, the County recommends that direction be given to project team members to consult with local government planning departments for the most up-to-date information on future projections for socioeconomic issues. Land development pressure has continued to increase in areas of Miami-Dade County that are within CERP project footprints, therefore it is important for project staff to include the most recent projections.

Section 1.9.1: Bullet 4 states “Use existing and future conditions described in the Plan and update with new information if necessary.” Updates to the regional future projections are undertaken only periodically because of the vast area involved and the time needed to accomplish the task. The guidance memorandum indicates that future without project conditions relevant to a local project would be developed at the time the project is initiated, using the best available projections. This may result in inconsistencies between the regional future condition and the local project’s future condition, particularly for projections on socioeconomic attributes such as population growth and land use changes. The RECOVER review process is designed to ensure that local project performance measures and conditions are consistent with RECOVER tools in order to provide continuity across projects, and in practice, items that are judged as inconsistent with RECOVER are revised to provide consistency. For future without project conditions, however, modifying local project future without project conditions to be consistent with RECOVER future without project conditions could result in an inadequate evaluation of project benefits because of the use of obsolete future projections. The County recommends that the most accurate and up-to-date projections be used at the project level in order to most

effectively evaluate the benefits and impacts of project features, and that RECOVER should take responsibility for ensuring that the regional future without project conditions are as consistent as possible with local projections.

Attachment 1-A: Section I-C indicates that alternatives will be evaluated for benefits relative to future without project conditions that include CERP projects that have already been authorized. Does “authorized” mean that Congress has authorized the PIR process to proceed, or does it mean that a PIR has been finalized and accepted by Congress? If the former, it is not clear how the project team should be treating projects that have been authorized to proceed by Congress but the alternative formulation process has not yet been completed. Given the possibility for changes to the Comprehensive Plan version in order to seek performance improvements, it could be challenging to represent such projects and appropriately credit their benefits if final design and construction is not yet complete. This is particularly important for coordinating with projects that have a possibility for providing additional water to the system, since a downstream project must have reasonable information on the available water in order to best utilize it. We recommend that project teams be tasked with including only those projects where a PIR has been completed and the final configuration of the component is available.

Attachment 1-A, Section I-C: It is not clear whether RECOVER will be using the same definition of future without project condition in its periodic updates to the system-wide modeling. The regional definition of future without project conditions must be coordinated with project-level definitions in order for the results of the regional evaluation of project benefits to be valid.

Attachment I-A, Section IIB-B-4: It is not clear why the guidance memorandum makes a distinction between water reclamation and water reuse, since the provided definitions are not mutually exclusive, and either category qualifies for federal cost sharing. The definitions, starting on page 1-20, line 39 states that “Water reclamation is defined as diverting water formerly discharged to tide or otherwise disposed to increase the volume of water available for the Everglades ecosystem restoration. Water reuse is defined as modifying the use of water from its present function (e.g., flood control) in a current location to a preferred function (e.g., hydrologic restoration) in a preferred location.” Since flood protection is the primary reason that water is discharged to tide through the C&SF Project canals and this is the primary source for additional water to either provide for hydrologic restoration in natural systems or provide for water supply needs during dry periods, water reclamation, as defined, does not seem different from water reuse.

Attachment I-A, Section III: There was no Section III-D positioned between Section III-C (begins page 1-25) and Section III-E (begins page 1-27).

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

Specific Comments

2.5.1: On pages 2-3 this section states that “Because CERP projects are selected and justified based on their system-wide benefits, project teams should use system-wide performance measures developed by RECOVER for evaluation. As appropriate, the IG/IT should be used in the evaluation process. In addition to system-wide performance measures, project teams may develop project-specific performance measures, if necessary to capture localized alternative effects.” Given that there is already a RECOVER team that participates in the development and application of the system-wide performance measures, and discussion on the interaction between RECOVER and the project teams that follows this section, it is difficult to believe that the intent was to have the project teams perform the system-wide evaluation, yet that is the interpretation, given how this paragraph is structured. The value of the project team is in examining the effects of project features at a high degree of resolution, to ensure that project performance will meet or exceed original projections without violating the flood protection constraint or creating other unintended consequences. In order to do that, the project team must evaluate the project alternatives at a much higher resolution than would be practical for system-wide analysis. Therefore, to ensure that both of these purposes are achieved, there should be an appropriate division of labor between the project teams and RECOVER, with both contributing to plan formulation. This paragraph should therefore be modified to read “Because CERP projects are selected and justified based on their system-wide benefits; project teams should coordinate efforts with RECOVER to ensure that the evaluation process includes analysis of system-wide effects. In addition to system-wide performance evaluation, project teams should develop project-specific performance measures that are consistent with system-wide performance measures to better evaluate localized alternative effects. As appropriate, the IG/IT should be used in the evaluation process.”

Project Teams should justify the use of additional project-specific performance measures and there should be some type of check and balance in place to ensure consistency between new project-specific performance measures, system level performance measures and the use of interim goals and targets. The document merely states that RECOVER will conduct this consistency review, but there is no discussion of how the review will take place.

This section also discusses the development of performance measures and the use of a sub-set of interim goals and targets to evaluate and formulate alternative plans. The document should clarify what entity makes the determination on which interim goals and targets to use and whether they are appropriate to use. The document should also clarify how project teams can develop project-specific performance measures, if necessary to capture localized alternative effects.

2.5.2: On page 2-4, the section indicates that the Conceptual Ecological Models (“CEM’s”) should guide development of project-level performance measures. That direction is sound, but in

recognition of the fact that additional information may become available over time that results in modification of the CEM's, the guidance should not preclude a project team from developing performance measures that address a problem that may not have been adequately covered in the current version of the CEM's. The following sentences should be added to the paragraph that begins on page 2-4, line 14 and ends on page 2-4, line 26: "Nothing in this Guidance Memorandum should preclude the development of additional performance measures that are based on stressors that were not adequately addressed in the CEM's. Any information related to such stressors should, however, be provided to RECOVER for inclusion in future updates to the CEM's."

2.5.3.: This section describes how project teams can use the CERP system-wide performance measures or develop additional measures to gauge the effects of the projects on the ability to supply water for urban and agricultural users or continue providing flood protection. This section should include specific direction to project teams that any project specific performance measures should be reviewed by RECOVER for consistency with overall Plan goals and objectives.

2.5.5: The first paragraph in this section refers to a period of analysis used in a Project Implementation Report ("PIR") as consistent with the period of analysis used in the most current version of the Plan. The document should clarify if the most current version of the Plan is based on a change that occurred in the Initial CERP Update, a Comprehensive Plan Modification Report or simply define what the most current version of the Plan means and how it can be changed over time. The paragraph also describes the period of analysis end-point for a PIR and that it will be consistent with the most current Plan. The concept of the period of analysis end-point should be further defined.

2.5.7: The document states that trade-off analysis is the procedure to identify the potential gains and losses associated with producing a larger or lesser amount of a given output or outputs. When creating or utilizing a trade-off analysis the rationale for such decisions should be clear to the reader of PIR and the decisions based on this analysis should be transparent to the public.

2.6: In the third paragraph in the section, the document states that project teams should continue detailed design of the selected plan previously formulated if it continues to meet the purposes described in the Plan and provides the benefits expected in the Plan. The process or some criteria should be incorporated into this section that describes what is considered when that decision is made. There should be some level of oversight from a higher level such as RECOVER in making that determination.

2.6.1: The last paragraph in the section states that evaluation criteria and performance measures that are used in the PIR process should be consistent with the goals and objectives of the projects. The reality of the development projects is that evaluation criteria and performance measures must be consistent with the goals and objectives of the projects. Again, RECOVER should be the responsible entity to make sure this occurs.

2.6.3: This section describes the process for determining if there have been any changes to Pre-CERP baseline water. The section states that the results of this comparison will be factored into project formulation and evaluation. Will the fact that there has been a change in Pre-CERP baseline water be a driving influence on project development and evaluation? How is this change weighted in the evaluation process for a particular project alternative? The linkage between this comparison and how it will be factored into project formulation and evaluation needs to be clarified. This section should also clarify when this determination is made because of the time involved in developing a PIR. This time lag could lead to changes between when the comparison is made for evaluation purposes and when the project comes on line. This comparison should be made at multiple intervals over the project formulation process.

2.7.1: In this section, the following statement needs to be clarified: “The projects will be formulated to optimize system-wide benefits and costs while ensuring beneficial, although not necessarily optimal, local and interim impacts.” This statement seems to indicate that local and interim impacts are secondary in consideration to system-wide benefits. When projects result in local and interim impacts, it is incumbent upon an entity like RECOVER to ensure that CERP does not create unacceptable local or interim impacts. Decisions that result in such trade-offs must be made in an open and transparent process that is at a higher level than a project delivery team.

Additionally, some projects may be intended to have specifically other benefits such as water supply. A statement should be added to this section to provide direction to project teams that not all projects will be subject to this optimization of system-wide benefits analysis because not all projects are intended to have such benefits.

2.7.1.1: The following statement seems to expand on Section 2.7.1: “The project team will formulate and evaluate an alternative that maximizes the achievement of local and system-wide goals and objectives of the Plan by considering various ranges and configurations of the project under consideration.” Is this how a project team will make decisions about optimizing system-wide benefits and costs while ensuring beneficial local and interim impacts? It seems that this is direction to the project teams on how to determine the best mix of system-wide benefits and local and interim impacts. If that is the case and this section proscribes that trade-off process, then the section should state it more clearly.

The last paragraph in this section states that alternative plans should include updated real estate costs. This issue has continued to be problematic in the implementation of CERP projects in that PIRs consistently are underestimating land costs. Perhaps more direction to project teams on the types of information and age of the information should be given to ensure more accurate updated real estate costs.

2.7.1.2: This section describes how the differences in the various alternatives can be compared in terms of cost. The direction to the project team is that a “best buy” plan should be determined through evaluation of the different alternatives. The criteria for determining a “best buy” plan should be developed and incorporated into this section. The criteria should be balanced to ensure that measured environmental lift occurs cost effectively. Without such criteria, “best buy” plans

can be subjective in nature.

2.7.1.3: When identifying a selected alternative plan, project teams should be careful in how they determine how a project meets the various CERP requirements, interim goals and targets, performance measures and project-specific performance measures. How well a project meets the goals and objectives of the plan should be the primary evaluation tool.

2.7.2: The second paragraph provides direction to the project on what to do if a project is not justified under the next-added increment. The project team may need to consider combining the selected alternative plan with other CERP components to identify an alternative that can be justified on a next-added increment basis or to consider delaying the implementation of the selected alternative plan in order for the selected alternative plan to be justified on a next-added increment basis. This section should have some additional guidance on when it is appropriate to employ which strategy. Project teams should not be able to eliminate inefficiencies in a project or design simply by delaying, re-sequencing or adding it to a different group of projects.

The last paragraph describes the use of the next-added increment analysis in relation to the State's Acceler8 program. This section should include a discussion of why it is important or necessary to group the selected alternative plan presented in each PIR will be analyzed as the next-added increment to the suite of other Acceler8 projects. The entire group of Acceler8 projects is considered as an increment. It is not clear why the individual selected alternative plans no longer will be analyzed as a next added increment to CERP. The rationale for this strategy should be explained.

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

Specific Comments

3.3: In this section, the document states that under some circumstances it is anticipated that existing legal sources of water may be partially or entirely eliminated or transferred to new sources as a result of project implementation. The section gets to the intent of the Savings Clause of WRDA 2000 in regard to flood protection in later paragraphs, but the language in WRDA 2000 should be clear in the paragraph describing elimination or transfer of existing legal sources, therefore, the document should clearly state in the first paragraph of this section, that this elimination or transfer of an existing legal source cannot occur until a new source of comparable quantity and quality is available to replace the water lost as a result of implementation of the Plan.

3.5: The last sentence should clarify that the Pre-CERP baseline provides the results of a South Florida Water Management Model (SFWMM v.5.4) simulation based on assumptions necessary to simulate the pre-CERP hydrologic conditions which were in existence in December of 2000. When reading the section and the excerpt from the Savings Clause of WRDA 2000, it would appear that all of the assumptions are based on a multi-year period of record. This section should clarify that while the Savings Clause specifically states that the modeling utilizes a multi-year period of record, the Pre-CERP baseline assumptions for water supply and other uses are, in reality, based on actual demands as of December 2000.

3.6: Although we support involvement of “project teams” for identifying elimination or transfer of water, we are concerned that teams will not have adequate tools, resources, or budgets for assessing water quantity, quality, and delivery issues beyond the project boundary. It is also not clear how this section applies in the case of projects that are “receiving” water rather than “providing” water.

3.7: This section describes the concept intervening non-CERP projects. Attachments 3-A and 3-B provide examples of the various scenarios under which an intervening non-CERP project or CERP project must make up for lost benefits. The strategy of providing these examples is very helpful in understanding the relationship between CERP and intervening non-CERP projects. We understand why it is important to establish a consistent baseline for the purpose of comparing alternatives, and that the baseline cannot be adjusted for various “intervening” projects. Although not prohibited by the Savings Clause, it is not good policy to rely on a structural or operating system that is known to be deficient (e.g. does not meet established regulations for flood protection or protection of endangered species), or to implement an alternative that will compromise “intervening” benefits to natural systems or other water needs, some of which have been accomplished at significant public expense. This risks cost-effectiveness and public support for CERP projects. Therefore, the GMs should provide an alternative approach to quantifying and protecting water benefits from “intervening” projects.

Additionally, what is lacking in this section is a discussion of the other legal protections that are available for the existing legal sources or users, aside from the Savings Clause. These legal protections are specifically outlined in Guidance Memorandum #4, but this section should include a paragraph summarizing those protections as well. This section essentially says what is or is not protected by the Savings Clause and a discussion of the other legal protections under federal or state law would create a more balanced approach to addressing the impacts of intervening non-CERP projects or conditions.

3.8.2.1: We understand the reasoning behind using actual consumptive use to establish the 2000 baseline. However, in the context of assuring that authorized (i.e. permitted or allocated) uses are protected, the GM should also assess scenarios for more typical rainfall years, rather than drought conditions when local water restrictions and supply side management are in place. It could also be argued that consumptive users that successfully implemented conservation measures are “penalized” compared to wasteful consumers.

3.8.2.2: As indicated for the preceding section comments, we are concerned about reliance on ISOP, which is regarded as being legally insufficient to protect listed species and maintain flood protection, for establishing natural systems water supply baselines. Also, given the variability of biological systems, and uncertainties inherent in complex ecological models, we recommend consideration of a statistical range or confidence levels for determining Savings Clause protection.

3.9. 1: The last paragraph in the Section states, “Other analyses besides the Savings Clause will be undertaken for levels of service for flood protection in the PIR”. The document should list some examples and applications of these other examples.

3.9.2: Include a new statement “Local regulations define level of service for flood protection differently than the Savings Clause, and local definitions must be taken into account for project reviews. Therefore, Attachment 3D provides a list of other analyses to be performed in addition to that required by the Savings Clause. Attachment 3E provides a checklist for the levels of service for flood protection analyses for the selected alternatives.”

3.10.1: As noted in general comments, we support coordinated application of both local and regional modeling for evaluation of legal sources. However, we are not aware of any adequate modeling tools for assessing water quality.

3.10.2: Include a statement at the end of the section to include “However, the local levels of flood protection (December 2000) should be used as constraints to eliminate alternatives that reduce level of service for flood protection.”

This section also describes the intent of the Savings Clause that it does not prohibit an elimination or transfer of an existing legal source, but that a replacement sources of comparable quantity and quality needs to be identified and available prior to the elimination or transfer. This section should further state that Project Team’s should list in the relevant PIR when that

replacement source, including from what project the source will originate, comes on line and when the source elimination or transfer will be made. The section makes the distinction between “evaluation criteria” and “performance measures”. The section should explain the differences between the two and how evaluation criteria are to be weighted if they are not to be used as performance measures.

3.10.4: This paragraph should be deleted or clarified. It fails to provide constructive guidance to any team. It contains numerous subjective terms, such as “similar, but not necessary {sic} exact”, “simple change”, “consider all the facts.” Which facts and how might a team apply them?

Comparable is defined as meaning similar, but not exact. More accurately, this section should define comparable as water suitable and appropriate for its intended use. The section states that more than a simple change in water quality or quantity is necessary to rise to the level of an elimination or transfer. Project teams are directed to address this issue by considering all the facts. These simple changes may also result in a downstream recipient of that water having to compensate for that change and the project team has no real process for determining if those impacts are just being moved to another user. It is also likely that without clearer guidance, teams will reach inconsistent conclusions, and perhaps even select alternatives that cannot be reconciled. This section should be expanded to include some type of discussion about how project teams will analyze changes in water quality or quantity by considering all the facts, including the economics of such a change. What a project team might construe as a “simple change” may result in a large economic impact to a provider of that quantity of water or additional costs in treating that water to a certain standard. Therefore, an Appendix should be added to this section that describes specific factors and a process for a project team to determine if water is comparable when a source is being transferred or eliminated. It is recommended that if a project team determines there are changes in water quantity or quality, particularly beyond the project boundary, that there is coordination with RECOVER or other similar regional group.

3.10.5: The next section attempts to address the issues raised in Section 3.10.4, but misses the mark in only elaborating that differences in hydrological response under a Savings Clause analysis should be significant and adverse. More guidance should be offered to define what constitutes a “significant and adverse impact.” A few more inches of water may be extremely adverse and significant, if it is in your living room or lobby of your business. The last sentence of the first paragraph in this section should be edited to include the following addition. “Project teams should consider all the facts, including other analyses for flood protection in addition to the Savings Clause as described in Section 3.10.9.” Again, the section should be expanded to deal with the economic issues associated with changes in water quality or quantity as a result in a CERP project.

3.10.6: If implementation of a CERP project results in an elimination or transfer of an existing legal source, then the PIR will include an implementation plan that ensures the source or quality switch will not occur until the comparable water is available to replace it. More direction should be provided about what must be addressed in this implementation plan.

The section further lists various actions that can be undertaken if analyses show that operation of the project will result in an elimination or transfer of an existing legal source. We support involvement of project teams, but believe that when it becomes necessary to “look to see if there are other CERP projects” which can address the elimination or transfer, the GM should define a procedure for coordination through RECOVER or similar regional authority. This will be particularly important if, as suggested in the last bullet under this section, that the comprehensive Plan must be modified or a project must be eliminated. This is not a unilateral task for a Project Team. Criteria should be listed associated with these alternative courses of action to provide some direction to the Project Team on when to employ which strategy. Additionally, RECOVER should have some role in reviewing the use of any of these strategies. RECOVER’s role in this decision making process should be clearly articulated in this section.

3.10.7: This section should be expanded to provide some direction to the Project Team that the economic ramifications of these considerations should be a part of the analysis in determining whether a replacement source is comparable on a case by case basis. The economic evaluation should be tied to the PIR cost estimate of the project to ensure that stakeholders do not bear the burden of unanticipated costs of CERP project or project team actions.

3.10.8: The first sentence of the section should be edited to include the following addition. “No alternative plan can be selected if it fails the tests for levels of service for flood protection as established by the Saving Clause and attachments 3D and 3E.

3.10.9: Create a new section titled “Other Analyses for Flood Protection in Addition to Savings Clause – All projects shall perform additional analyses for flood protection as outlined in attachments 3B, 3D, and 3E.”

3.11: The County continues to have concerns with the strong reliance on the SFWMM as the primary tool in determining project impacts for water supply and flood protection. This section should clarify that project teams should be encouraged to use smaller scale site specific modeling when it is available.

3.11.1: The County commends your recognition that a large-scale model is not sufficient to determine the level of flood protection and your inclusion of small scale models for this purpose. Under no circumstances should this provision be removed from the GM.

3.11.4 and 3.11.5: The County supports the use of screening criteria for existing legal sources and flood protection level of service, but remain concerned that some Project Teams may not have adequate resources or expertise to develop and apply such screening criteria. We are also concerned about how a Project Team would be able to apply such criteria to natural or urban systems that are beyond the project boundaries.

Attachments 3A, 3B and 3C: These Attachments, while very useful, should be revised to reflect the parity amongst water users, stakeholders and interests in CERP. Attachment 3C however should use the same format of providing examples of the impacts of intervening non-CERP projects, as Attachments 3A and 3B. The discussion of state legal protections for users and

sources of water afforded under state law described in Attachment 3C should be incorporated into Attachments 3A and 3B. Attachment 3C should be more consistent with the format of Attachments 3A and 3B, by providing examples of the relationship between CERP and the Modified Water Deliveries and C-111 projects. Concurrently, Attachments 3A and 3B should be clarified and a general discussion should be added regarding the state protections that are afforded under state law on the relationship between CERP and intervening non-CERP projects.

Attachment 3A: The Everglades Construction Project is another example of an intervening non-CERP project that was not operational on the date of enactment of WRDA 2000, but stands to significantly impact the flow of water south from Lake Okeechobee. The Stormwater Treatment Areas (“STA”) themselves will become water users to ensure the health of the vegetation that will provide a water cleansing function, which will result in a reduction of flow south. CERP projects could further reduce water flowing south from these facilities. This further reduction in flow by a CERP project would constitute elimination or transfer if the reduction in flow lessens the amount or quality available in 2000 under example (4) in Attachment 3A. Delays and changes in project planning in the STA construction might provide a skewed interpretation of the amount of water that was available downstream of these facilities in 2000. The effects of the changes on project construction for the STAs should be clearly factored into a Savings Clause analysis by a Project Team, to ensure that CERP project do not further erode recipients of downstream flows.

Attachment 3-B: This Attachment discusses the relationship between the Savings Clause and intervening non-CERP projects. Of particular interest to Miami Dade County is this relationship in the context of the Modified Water Deliveries project. Specifically, it appears that if the Modified Water Deliveries project confers a greater or lesser level of flood protection as it impacts western Miami-Dade County, and a CERP project changes that level of flood protection further, then there may or may not be Savings Clause protection depending on how that change relates to levels of service in 2000. Project teams should be particularly sensitive when developing alternatives that impact flows/flood protection in the southern end. No other intervening non-CERP project has had such sensitivity to it and this intervening non-CERP project should probably receive a higher level of scrutiny.

Page 3-20 lines 1 – 5: These statements would result in modifying the flood plain in adverse ways and against FEMA, State, and local regulations. FEMA might require map amendments called LOMAR.

Attachment 3-D: Include a bullet as follows “FEMA National Flood Insurance Program (CFR 59- 65) requirements shall be required for flood protection purposes.”

Also in this section, the last bullet on Groundwater Impacts states “there are no known Federal, state, local, or Chapter 298 works specifically creating a groundwater level of service at the date of enactment”. This statement is not correct. Chapter 24 Miami Dade County Code and Chapter 40E F.A.C., Rules of the South Florida Water Management District both include provisions for maximum ground water levels in design constraints.

Attachment 3-E: Edit (2) on the checklist to include: Q. Does the project create an impact to the existing floodplain as established on the FIRM maps?

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

General Comments

This section should include a definitions section for such terms as beneficial existing water, water made available by a project, total water made available by the plan, additional water made available by a project, all water made available, and any other key terms.

Sections 4.3 and 4.4 emphasize procedures for identifying water made available by a project. However, many projects (CERP and non-CERP) will not generate or store water, but may actually use, divert or consume it. It is not clear from the general discussion of water requirements and identifications how a project or system that needs additional water pursuant to restoration goals will be assured of receiving it. How will development of a PIR by a project team provide a mechanism for redistributing existing or new water? This seems to be a regional or sub-regional task that requires coordination by RECOVER or similar system-wide team.

Specific Comments

4.3: The third paragraph in this section states that “While the reservation or allocation of water is a process solely undertaken by the State, WRDA 2000 and the programmatic regulations require that this reservation or allocation be based on the identification of water made available for the natural system outlined in the PIR.” The preceding two sentences allude to this point, but it should be clarified in the third sentence. This statement should be revised to clearly show that the State’s obligation under WRDA 2000 and the programmatic regulations is to reserve or allocate this *beneficial project* water.

The fourth paragraph in this section should reflect that the State is undertaking an initial reservations rule process, under current state law, which may provide a foundation for later CERP project water reservations.

Page 4-2, line 42: “past” should be “part”

4.4.2: This section describes the General Methodology for quantifying the water produced by the project. The second paragraph describes the process that water identified in the PIR will be reserved by the state by using the modified next added increment method with the provision that the *proportion* of water delivered to the natural system and for other water-related needs, as predicted through the next-added increment method will be maintained. In this section, or the sub-sections to follow, there is no provision for how this “proportion” of water is to be determined or incorporated as part of the procedure for identifying water in Section 4.4.3. This direction to the Project Team’s should be clearly outlined in this or the following sub-sections. Additionally, in this section, there should be a discussion or explanation of how this methodology was derived and why it was necessary.

Section 4.4.2 (and also 4.4.2.3): The first paragraph states that the “project team will also identify the total water that will be made available by the Plan.” This language seems to state that a project-level group will perform a system-wide analysis of total water made available by CERP (=“the Plan”). This is not appropriate, since it is unlikely that project teams would have resources, expertise, or perspective to make such identifications, or reach consistent conclusions. Such determinations should be made by system-wide teams, such as RECOVER. If the statement was not intended to refer to the “Plan” in its comprehensive entirety, then the sentence should be rewritten and clarified.

4.4.2.1: This section does not include a discussion of why it is necessary to base the analysis of the water made available by the project on the Modified Next Added Increment methodology. It appears that assuming all built or authorized CERP projects and all non-CERP projects that have approved operating plan as of the time the PIR is initiated would accurately reflects the state of reality at the time the water is identified for the natural system and other water related needs in the PIR.

4.4.2.2: Similarly, this section should include a discussion of why it is necessary to base the determination of the proportion of water delivered to the natural system and for other water-related needs on a Next Added Increment methodology. Does one methodology estimate water identified for the natural system one way and the other methodology estimate the proportion of water between the natural system and other water-related needs another way?

These discussions and the diagrams that accompany them are confusing and contain CERP terminology that is obscure even to an informed reader, particularly without more context. References are made to “authorized” or “approved” projects and operating plans, but it is not clear who or what this means. Does “authorized” refer to project concepts authorized by Congress, or does this term refer specifically to authorization of a particular detailed PIR? It should be noted that some non-CERP intervening projects may be structural only, without operating plans (e.g. maintenance dredging of a canal), and therefore it is not clear to us how the “modified” methods applies. We also do not understand how these methods may apply in cases where CERP and non-CERP projects may not “add” or increase available water. As previously stated, it is not clear in the discussion how project teams will be able to obtain or apply necessary information for projects that are beyond their own project boundaries.

4.4.3: This section outlines the process for identifying water. Step (6) of this process should be revised to reflect that the identification of water for the natural system occurs based on the Modified Next Added Increment methodology. A Step should be added under the next section for other water-related needs that reflects the need to determine the proportion of water going to the natural system and other water related needs using the Next Added Increment methodology. Finally, a section or steps should be added before the final section that procedurally outline for a Project Team what is to be done with the proportion determination once it is made. The stage of this revision based on the Next-Added Increment proportion needs to be detailed, whether it occurs in the PIR document or the Operating Manual portion of the document. Attachment 4-B should be revised corresponding to these additional steps.

In the eleven-step procedure, we do not understand what is meant in step 1 by “hydrologically separate”. We are operating under a general understanding that virtually all natural and human components of the system are hydrologically connected by surface water or groundwater and its management system. Please provide specific examples for clarification of projects that are hydrologically separate.

Also, because many steps involve calculating “water made available”, the procedure seems to be based on a presumption that the project or analysis will result in water being produced by the all projects, or that the project will produce enough water to meet restoration and other water related needs. In many cases, a restoration project or natural system may have a deficit of water, even after the selected alternative is applied. In some cases the goals of the project are not to produce water but to change the distribution, quality and/or timing of water.

It is not clear if this analysis is intended to be applied at the project-level or a higher level. Some natural systems or other needs are not entirely within one project boundary (south Miami-Dade wetlands, Florida Bay), or they may be downstream and not within any specific project footprint (north Biscayne Bay). How are these to be integrated into the analysis?

4.5: The second paragraph in this section describes the three basic water budget components that should be identified for each natural area. Seepage is a large factor affecting water budgets in Miami-Dade County, therefore, this concept should be added to this paragraph when discussing water budget components.

Section 4.5 and 4.5.1: Both flow and water levels are important measures for assessing water requirements and budgets. However, we note that in many cases, there is little data available on measured flow. Models evaluating flow to estuaries are still undergoing development and refinement, particularly efforts to link coastal hydrographic models to regional hydrologic models. Although the hypothetical analysis depicted in Figure 4-4 is helpful in an idealized scenario, we are concerned that natural variability and uncertainty associated with available modeling tools will limit effectiveness of this procedure.

4.5.1: This section describes beneficial water for the natural system. The second paragraph states, “The sum of the beneficial water in the modified next-added increment and additional beneficial water together made up the total beneficial water for the natural system.” What is additional beneficial water? Is this additional *existing* water? Where does the additional beneficial water come from? Water identified to be reserved is based on the water in the modified next-added increment so it is unclear what “additional beneficial water” actually is. This sentence should be clarified.

4.5.2: Line 16 in the second paragraph of this section describes the water existing in the C&SF project system. The second sentence in the section describes “existing water supply” in the C&SF project system that is available to meet natural system targets and which is required for the protection of fish and wildlife. “Existing water supply” is a specific term which includes urban and agricultural water supply. This term should be clarified because not all existing water supply is available to meet natural system targets and is required for the protection of fish and

wildlife. The following could clarify the sentence: “This water is composed of **that portion of the existing water** in the C&SF project system which is available to meet natural system targets and which is required for the protection of fish and wildlife.

The last paragraph in this section states, “...this quantification includes any changes the project makes in the quantity, timing or distribution of water from the pre-CERP condition that is beneficial.” Is the pre-CERP condition synonymous with pre-CERP baseline? If not, pre-CERP condition should be defined.

Section 4.5.3: It is not clear how a project team will be able to determine where water made available by their project will eventually be allocated, assuming there is system-wide water available. This task, along with identification of conveyance routes, should be coordinated by regional or sub-regional teams, such as RECOVER.

4.7: This section discusses the concepts of identifying all water made available by a project. The last paragraph states that it is difficult to ensure that water that is not needed by the natural system is not required to support benefits to natural systems or other water-related needs and that it may be necessary to support downstream systems. Because the County is one of the users in the furthest south portions of the system and at the end of the downstream flow, this section is so important to clarify; there should be an Appendix and examples to clarify how this determination is made. This section should add some type of factors, criteria or process that Project Team’s can use to help determine whether or not water is needed by another user.

Section 4.9: A determination must be made that water quantity made available by a project meets water quality requirements. However, we do not believe that a project team will necessarily be able to determine what the water quality requirements of other natural systems or needs are. This is another example of a procedure that will require coordination among project teams or a system-wide team, such as RECOVER. We note that there is no project-level or system-wide water quality model available at this time.

Furthermore, we suggest revision of line 31 on page 4-12. Meeting water quality “standards” alone is not adequate to assure that restoration, fish and wildlife, and human needs will be met. Some “standards”, such as nutrient levels or antidegradation targets have not yet been established, and are likely to vary from one natural or human need to another. Finally, some water quality and contaminant issues, such as “emerging pollutants of concern”, involve unregulated compounds, sediment contamination or biological effects. Project teams needs direction on how to deal with these contaminants.

Section 4.12: This section refers to “the three categories identified above.” However, Section 4.5.2, which describes “Categories of Water to be Identified for the Natural System”, defines two categories. Please clarify the categories of water mentioned in 4.12, or otherwise reconcile these two sections.

Attachment 4-B: This or another document should include guidance on how a Project Team should address or prioritize natural system and all water needs such as salinity control, urban

water supply, flood control, agriculture water supply, etc, if water is made available by the project, but is insufficient to meet total needs. Furthermore, there should be similar guidance at a regional or sub-regional scale to address how water available from some projects will be allocated among natural systems and other needs, if the combined total natural and other water needs will not be satisfied.

Step 1: See earlier comments on Section 4.4.3

Step 2: We support the use of project-level models, since we agree that the boundaries, resolution, and sensitivity of regional models may not be adequate for assessing local effects. We also strongly recommend that all system-wide, sub-regional, and local models be updated with more precise and recent topographic, hydrologic, and ecologic data. Please add the following paragraph: "The selected model should incorporate the most recent available topography information". The model topography should be of sufficient detail and quality to include all landscape features (such as levees, canals, roadways, large buildings, old sloughs and any other features) that can modify surface storage of water or influence how surface water flows." Although we strongly support use of local models (as noted above), we also remain concerned that local and regional models may not be compatible, or that because local models require boundary condition input from regional models, they still may not be adequately sensitive. We therefore recommend inclusion of a specific procedure for assuring compatibility of various project-level and system-wide models.

Step 3: We recommend this step be revised to define a procedure for evaluation of effects of beyond project boundaries. As noted in earlier comments, based upon our staff experience on Project Teams, we do not believe that these teams will have resources, expertise, or authority to conduct evaluations or water requirements beyond their own project boundaries. We are not aware of modeling tools or modeling funds within a project that would be sufficient for regional or system-wide analyses. Further, we are concerned that various project teams could reach inconsistent conclusions. We therefore suggest major revision of this step, to define a procedure that requires involvement of RECOVER or a similar regional coordination group to evaluate water requirements at the point when a project team determines that there are changes in water quantity, quality, or delivery (fluxes) beyond the project boundary. The project team should not be unilaterally responsible for determining system-wide effects. We also believe that water requirements or system-wide effects may be too complex or uncertain to describe in a standardized table format, such as Table 4-B-1.

The language used throughout this section uses neutral terms when referring to project effects, which is appropriate since effects may be positive or negative. However, on page 4-20, line 33, the language shifts to emphasize benefits only. In recognition of the possibility that a project may have negative effects, lines 33 through 45 should be modified as follows to use neutral language:

Projects may modify water availability for the natural system and other water-related

needs in two general ways:

1. System-wide effects

Hydrologic effects that occur outside of the watershed or basin in which the project is located through the storage, management, treatment, and delivery of water via the regional water management system.

2. Project-level effects

Hydrologic effects that occur within the watershed or basin in which the project is located (e.g., natural areas, wetlands, salinity control) or within the features of project components (e.g., reservoirs, storm water treatment areas, wellfield recharge distribution canal).

Step 4: We support and encourage project teams to consider all potential natural systems effects of their projects, but as noted earlier, we believe this task should be coordinated with a regional team, such as RECOVER.

Step 5 and 6: Some language is missing from line 43, page 4-23. "Outflow" may include consumptive uses in some basins or project areas. We agree with the conceptual description of development of a water budget and identification of "beneficial" water, but note that even many stage and flow variables are not precisely known, or are entirely simulated, interpolated, or extrapolated. Also, there are complex natural and human-related stressors that affect quantity, quality and timing of water necessary to protect fish and wildlife, which are not addressed by relatively simple integral equations based on "flow" or elevation alone. The resulting analysis will include a great deal of uncertainty. A statistical range or confidence interval may be a more realistic assessment.

The water budget analysis for the project area should include a preliminary examination of the restoration volume that would be needed to provide maximum benefits for the protection of fish and wildlife within the project area. This volume should be compared to the volume actually available in the water budget for the project area to determine if there is need for importing water from outside the project area in order to achieve restoration objectives. The deficit or surplus of water for the project area should be identified in this step.

Step 9 describes the targets that are defined for the cells when modeling lower east coast service area stage targets. A bullet should be added to this list that includes maintaining canals to ensure the integrity of design. Stages that are too low can induce the collapse of canal walls therefore, this target should be added.

Also, in this section, it is unclear what maintaining canals for water supply irrigation means. This bullet could mean maintaining canal elevations for general water supply or specific supply irrigation. Therefore, if the broader definition is intended, the bullet should be rewritten to include maintaining canals for water supply.

The County believes that the inclusion of Model Language that must be included in every PIR

runs counter to the project implementation process. Sufficient assurances exist within Federal and State law to ensure that reservations are made and program assurances are carried out. Further, the County believes that this Model Language is problematic for the following reasons.

Issues regarding Guidance Memoranda #4 Model Language

1. The non-Federal and Federal sponsor should both be responsible for maintaining an appropriate quantity, quality, timing and distribution since both parties have control over various operational schemes and regulation scheduled.
2. The first paragraph describes consistency with “natural system restoration goals and objectives of CERP”. This terminology seems to introduce a new concept. How are these “natural system restoration goals and objectives” different from the “goals and purposes in the Plan” in WRDA 2000 and the Programmatic Regulations? Natural system restoration goals and objectives could be something different. Additionally, who makes the determination that the “maintained” water referred to in the introductory paragraph is consistent with these natural system restoration goals and objectives?
3. Again paragraph 1 refers to “restoration goals and objectives”. It appears that achieving the restoration goals and objectives could be something more than achieving the goals and purposes of the Plan.
4. Paragraph 2a refers to these same restoration goals and objectives for the (project name) and the natural system. Again, from a consistency standpoint, what are restoration goals and objectives for the natural system and are they different than the goals and purposes of the Plan? The language “and the natural system” should be struck and the sentence should end with “necessary to achieve the goals and purposes of the Plan”.
5. The same comment applies to paragraph 2b.
6. Paragraph 3 describes a written certification process. What kind of written certification and is this something different than language in the project implementation report or project cooperation agreement? This type of written certification process could be construed as some type of contractual requirement above and beyond that required in the signing of the Project Cooperation Agreement (“PCA”). Therefore, this language must be clarified because it has no basis in WRDA 2000 or the Programmatic Regulations.
7. Paragraph 4 requires notification and consultation on “any change” in the reservation of water or other legally enforceable means of protecting water. While changes in reservations are contemplated, this language does not anticipate changes that will be required as part of the adaptive assessment or management processes built into CERP. These adjustments will be normal functions of CERP project process and therefore, should be accounted for in this notification and consultation process. It is not appropriate for the Secretary of the Army to be notified and consulted on a change to other legally enforceable means of protecting water that are proposed. This falls outside the scope of the Federal interest which is ensuring that the reservations are made on a project by project basis. This is very open-ended and could lead to this notification and consultation requirement to have far reaching consequences for the

state in managing its regulatory programs. Additionally, is it appropriate for the Secretary of the Army to be notified and consulted on “any changes” to the reservation and other legally enforceable means of protecting water no matter how small the change may be? Finally, what criteria will be used to determine whether or not a changed reservation or legally enforceable means of protecting water conforms to the State’s obligations under this paragraph?

8. The President Governor’s Agreement, WRDA 2000 and the Programmatic Regulations already articulate the Federal-State responsibilities for implementing CERP. This model language seems to impose additional requirements beyond those responsibilities that were never negotiated in Federal or State law. The position of the County is that these assurances in Federal and State law are more than adequate to address the requirements of identifying water for the natural system and other water related needs and therefore, inclusion of any written certification of compliance with these paragraphs or an additional notification and consultation process is beyond the scope of what should be contained within a project implementation report or the responsibility of a project team. If this type of language is to be negotiated, the proper forum is not direction to a project team as part of developing a project implementation report.

Guidance Memorandum #5: General Content of Operating Manuals

Specific Comments

5.3.1: The first paragraph describes the concept that Draft Project Operating Manuals (“POMs”) will be updated and revised for subsequent phases of project implementation, including construction. Will this be a function of RECOVER? The document should state who is responsible for the updating and revising of the POMs.

The last paragraph of this section discusses how the development of POMs will be carried out in a public process within the framework of NEPA and other applicable laws and regulations. Will this public process include public hearings, workshops or other mechanisms for public input? This public process should be described in more detail.

This section should also clarify what is meant by the development of POMs within the framework of NEPA and other applicable laws and regulations. This section is unclear about what these other applicable laws and regulations are and what will be used or defined as a basis for legal operations of the system.

5.4.1.1: The second paragraph in this section describes the coordination through the operational planning process between modelers, designers and water managers. This coordination role specifically focuses on ensuring that the modelers “clearly understand the objectives of the project features articulated in the PIR, and how the operations of each feature are intended to meet ~~the~~ those objectives”.

5.4.1.2: This section discusses the public review process as updates and revisions to the POMs occur. What forum or group will these updates and revisions occur in? This section should be expanded to clarify how public review of these updates and revisions will occur.

5.4.2.1: This section addresses consistency of the POMs with water reservations and allocations. The last paragraph in the section describes the process whereby project teams will develop operating criteria to simulate operations of structural features of the selected plan and to “maximize natural system benefits and other regional benefits from the selected alternative plan”. This section should reflect that this exercise to maximize these benefits must be completed consistent with the goals and objectives of the Plan and for the project.

5.4.3: This section provides more detail regarding the relationship between operational flexibility and adaptive management. The range of examples of this operational flexibility includes spillway headwater stages and the decision tree for the Water Supply and Environment (“WSE”) Regulation Schedule. The section should state that the POMs must include enough information that a stakeholder reading the POM will have some understanding about the parameters of this operational flexibility.

The last sentence in this section lends itself to this same concept. Determining whether or not operational modifications fall inside or outside the scope of the operational flexibility in the

POM can only be done if those analyzing the operational modification understand the parameters of that flexibility. The parameters must be specific enough to determine if the operational modifications are inside or outside of the scope of the POM.

5.5: This section outlines the circumstances under which POMs are updated. The clarity of the points for updates and revisions provides clear direction on anticipated updates. The section also describes the need or desire to revise the POM based on additional scientific information, new CERP or non-CERP project being implemented, new CERP updates, etc. There must be a process to update the POMs to account for this new information as it affects the operations of a particular project, but this process could also be endless. These updates should only be necessary if these revisions cannot be captured within the operational flexibility determined for the project. The development of the operations must strike a balance between providing enough operational flexibility to account for reasonable changes, but be specific enough so that stakeholders can determine how project operations will affect their interests.

5.5.1: This section describes the Draft POM that will be included in a PIR. The section states, "Water management operations in the Draft POM will consider operations of existing or planned project, including both CERP and non-CERP project that may influence operations of the subject project." How will the PIR consider future planned projects if their operations are unknown? Does the PIR simply raise the issue that there may be a linkage when the future planned project is implemented or does the Project Team analyze potential scenarios based on predicted future operations? It would appear that the PIR can only raise potential issues but not necessarily "consider" future planned projects when developing operations for the current project. This section should provide more detail to a Project Team on how they are to "consider" these future planned projects when developing the POM.

Figure 5.2: This figure should be revised to show what entity is responsible for what stage of the process in developing the POM.

5.5.5: This section describes the process to revise the POM during long-term operations and maintenance. The section states that this will be done in accordance with the programmatic regulations. This section should provide more details on this process as outlined in the programmatic and applicable USACE regulations.

Pre-CERP Baseline Comments

4.0: This section describes the process that was used to develop the Pre-CERP baseline. This section should more clearly detail under what entity the “team responsible for developing the Pre-CERP baseline” operated under. Specifically, was this an interagency team under RECOVER or was it an issue group that met through the Water Resources Advisory Commission?

The last paragraph of the section describes how the concurrence process with the Secretary of the Interior and the Governor’s office will occur. The last paragraph states that a copy of any concurrency or non-concurrency statements shall be made a part of the administrative record and referenced in the final determination of the Pre-CERP baseline. This section should clearly describe what “the final determination of the Pre-CERP baseline” is and how changes will be made between the time the draft document is released and the concurrence process concludes. This section should also detail whether or not the Pre-CERP baseline model will be re-run after public comment is concluded. Figure 2 should be revised to reflect a revised model run in the section on “Revise and Develop Pre-CERP baseline called for in § 385.35(a)”. The concern is that after public comment and review, there will not be ample time to re-run the model and allow review of those new modeling results.

5.0: The section describes a process by which each project team may need to simulate Pre-CERP baseline assumptions using the best available modeling tools for their project. This statement and process should be more clearly detailed. The phrase “simulate the Pre-CERP baseline assumptions” is confusing. Does this mean that because the 2x2 SFWMM v.5.4 will not be able to capture all project effects and reflect a true picture of Pre-CERP baseline and that there is a need to use the same Pre-CERP baseline assumptions in a smaller resolution model?

7.1: This section states that “specifically, the Pre-CERP baseline is to be used as part of the analysis for determining if an existing legal source has been eliminated or transferred as a result of project implementation”. What other tools would be used in the Savings Clause/Pre-CERP baseline analysis for existing legal sources and could these additional tools show different results than using the Pre-CERP baseline to make this determination? How would conflicts be resolved?

The section further lists the various legal sources of water including the water rights of the Seminole Tribe and the Minimum Deliveries for Everglades National Park (“ENP”) and that these existing legal sources are protected through Federal and State law. This section states that these existing legal entitlements must be “considered” in the Savings Clause analysis. How will these existing legal entitlements be “considered in the Savings Clause analysis”? It is unclear what that this means if the concept of the Pre-CERP baseline is to “represent as closely as possible the actual conditions in place in the system at that time”?

