

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. For instance, will the public see if there is a problem in the model? 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 there will be a need to use the Pre-CERP baseline assumptions in a smaller resolution model because the SFWMM has such a large scale?

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 between the tools be resolved?

The section further lists the various legal sources of water including the water rights of the Seminole Tribe 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 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”? While the Tribe understands that certain judgments and assumptions had to be made for the model run, the legally protected statutory Entitlement to the Tribe is higher than the actual conditions in place in the system at the date of enactment of WRDA 2000. Since the Savings Clause specifically protects existing legal sources of water and clearly spells out that the Entitlement to the Seminole Tribe under section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C.

1772e) is an existing legal source, this full Entitlement must be protected under the Savings Clause, not merely “considered” as Section 7.1 states. These quantities must be incorporated into the assumptions in the modeling run.

Additionally, the Tribe would like to make clear that its Entitlement does not include quantities of water to achieve environmental restoration targets on Tribal lands. This quantity is above the Work Plan and Water Rights Compact figures and the Tribe is in the process of identifying specific areas which require corollary quantities of water to ensure the health of those natural systems.

7.3: This section describes the concept of “intervening” non-Plan conditions and upon reviewing Guidance Memorandum 3, this process clearly defines the obligations of CERP in relation to other water resources activities. The examples are particularly helpful in clearly articulating these obligations of CERP. We have provided some specific comments about the STOF’s concerns on those examples in a later section of this document.

7.4.1: This section is helpful in clearly defining how and which Pre-CERP baseline components can be updated and which cannot. Some of these components that can be updated include better mechanisms of interpolating topographic data, an extended period of record and better ways of calculating rainfall data. Allowing for changes in certain key Pre-CERP baseline information will result in a more accurate depiction of the conditions in 2000. The Pre-CERP baseline must provide a clear mechanism for incorporating new information but maintaining the fundamental assumptions for consistent comparisons of project effects on the Savings Clause. While it makes sense that the Pre-CERP baseline assumptions should not be updated in order to ensure that Pre-CERP baseline analysis is based upon similar assumptions, the Tribe disagrees that the assumptions for its water rights are correct.

The last sentence in this section states: “While Pre-CERP baseline simulation may be updated with the commencement of project planning, project determinations with respect to the Savings Clause will not be retroactively affected by an updated Pre-CERP baseline”. This sentence should be clarified. Is there an expectation that this will result in different Pre-CERP baseline analyses for earlier and later projects?

7.4.2: This section outlines the concept that the conditions of 2000 will not change, but the scale of the model used to analyze those conditions may change from project to project. “The project team for each CERP project shall select the appropriate model for the Pre-CERP baseline simulation for their project.” This section should clearly articulate that while the scale of the model may change from project to project, the conditions and the assumptions for the Pre-CERP baseline analysis will not.

The following is a list of the specific questions and issues associated with the assumptions of the Pre-CERP Baseline model:

1. Are topography data sets based on best available field tested data? Specifically does the data set include Brighton and Big Cypress Reservation lands? These areas were on the periphery of the model boundaries previously and has there been any expansion of the

model beyond that used to model the 1999 Restudy? The Tribe would like to better understand how the boundary conditions will predict project effects on Brighton and Big Cypress Reservation lands.

2. Have there been any updates to the 1995 FLUCCS data beyond that information updated with 2000 aerial photography for the Lower East Coast?
3. How does the Pre-CERP baseline account for flexibility within the Lake Okeechobee WSE Regulation Schedule? Which scenarios under WSE account for this operational flexibility within the WSE Regulation Schedule?
5. How are operational changes since the 1991 Supply Side Management Plan was adopted incorporated into the Pre-CERP Baseline?
6. The Pre-CERP baseline accounts for the Seminole Brighton Reservation as follows: “Demands are in agreement with the entitlement quantities as per Table 7, Agreement 41-21 (Nov. 92)”. Table 7 is based upon shortage for the Indian Prairie Basin serviced by Lake Istokpoga or Lake Okeechobee. The limit should be that in the Tribe’s Work Plan which is based on a justifiable demand. Therefore, this assumption should be re-worded or remodeled to use the Work Plan as a Pre-CERP Baseline assumption, including the operational plans in place to make those deliveries per Agreement 41-21 where the necessary canal levels are established.
7. The Pre-CERP baseline accounts for the Seminole Big Cypress Reservation as follows: “Irrigation and runoff were estimated using ASFIRS method based on existing planted acreage. The 1 in 5 demand is in agreement with the Seminole Compact (Work Plan = 2606 MGM, Model = 2659 MGM). For the purposes of this model run the 2659 MGM figure should be used to account for Big Cypress demands.
8. The Pre-CERP baseline accounts for the Seminole Hollywood Reservation as follows: “Hollywood Reservation demands are set forth under VI.C of the Water Rights Compact”. The Tribe wants to make clear that there are sources beyond those listed in the Water Rights Compact such as agreement with municipal service providers. The Tribe’s understanding is that this assumption is accounted for in conjunction with the demands projected in the Lower East Coast Water Supply Plan, but this language should clearly reflect the multiple sources the Tribe relies up on to provide water supply to the Hollywood Reservation lands.
9. The Pre-CERP baseline assumption for the Big Cypress National Preserve includes the following: “The northern end of Big Cypress receives flows from S-190. Tamiami Trail culverts are not modeled in SFWMM due to coarse (2x2 mile) model resolution.” The Tribe would like clarification on the figures being used to represent flows through the S-190 structure, which is regulated by the SFWMD. Additionally, the word “Preserve” should be added to the title of this assumption just to ensure a clear understanding that this is not the same area as the Tribe’s Big Cypress Reservation.

Regarding the timing of finalizing the Pre-CERP baseline the Programmatic Regulations state:

Section 385.35(a)(1): Not later than six months after the effective date of the regulations of this part, USACE and the SFWMD shall, in consultation with ... develop for approval by the Secretary of the Army, the Pre-CERP baseline to be used to aid the USACE and the SFWMD in determining if existing legal sources of water will be eliminated or transferred as a result of project implementation described in §385.36 and memorialize the Pre-CERP Baseline in an appropriate

document.

The STOF wants to ensure that there is ample time for an additional model run of the Pre-CERP baseline for final public review. The STOF wants to ensure that enough time is provided during and after the comment period to incorporate our comments on the assumption issues. The Corps and SFWMD should clearly state if and when they anticipate revised modeling runs to be available for review and comment.

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