



Florida Department of Environmental Protection

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Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

December 17, 2007

U.S. Army Corps of Engineers
Jacksonville District
Attention: Stu Appelbaum
P.O. Box 4970
Jacksonville, FL 32232-0019

Dear Mr. Appelbaum:

We have reviewed the revised final draft document entitled "Programmatic Regulations Six Program-Wide Guidance Memoranda" dated July 2007. We appreciate the amount of effort that went into the development of this document and commend the staff from the various agencies that contributed to its completion.

The Department, in coordination with the South Florida Water Management District, has identified three substantive issues that should be addressed prior to the submittal of the Guidance Memoranda to Governor Crist for his concurrence. In addition to the issues below, we have included (attachment 1) technical and editorial comments for your consideration.

1. The land crediting decision (actual versus appraised) contemplated on page 1-7 lines 29 - 31 should be made in conjunction with the non-federal sponsor.
2. On November 30, 2007, Secretary Woodley issued a memorandum clarifying the U.S. Army's policy on water quality features for the Comprehensive Everglades Restoration Plan. The Guidance Memoranda should be revised to provide clear direction reflective of this policy determination. We have provided recommended language in attachment 2.
3. In order for the reader to clearly understand the applicability of the Guidance Memoranda pursuant to the Programmatic Regulations for CERP, key terms should be defined. Many terms, although used daily, have specific meaning in the context of the Guidance Memoranda. Specifically, a definition of CERP project and CERP feature should be developed.

Mr. Stu Appelbaum
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We look forward to continued coordination with the United States Army Corps of Engineers as we move forward with approval from the Secretary of the Army and concurrence by the Secretary of Interior and Governor. If you have any questions regarding this letter, please feel free to contact me at (850) 245-2088.

Sincerely,

Greg Knecht
Director, Office of Ecosystem Projects

Attachments:

Attachment 1 - Specific technical and editorial comments

Attachment 2 - Replacement Text for Section 1.14 Features to Improve Water Quality

CC Jerry Brooks, FDEP
Tom Oliff, SFWMD
Kenneth G. Ammon, SFWMD
Brenda Mills, SFWMD
Stacey Feken, FDEP

Attachment 1 - Specific Technical and Editorial Comments

Guidance Memorandum #4 Identifying Water Made Available for the Natural System and for Other Water-Related Needs

Page 4-4; Lines 12-22, section 4.5.3 *Hydrologically Separate Basins* should be clarified to reflect that though hydrologically separate basins are exempt from system-wide evaluations, they are not exempt from project level evaluations. As currently worded, it appears that for certain CERP projects, that the identification of the amount of water made available through the implementation of that project is not required. It is our interpretation of WRDA 2000 that the identification of water to be reserved or allocated for the natural system and other water related needs is a requirement of all CERP projects.

Guidance Memorandum #5 Operating Manuals

Page 5-1; Lines 11 & 12, replace last sentence with:

“For developed areas, including agricultural areas, the operations are often intended to provide water supply and/or flood control benefits as described in the PIR in addition to operational considerations for natural areas.”

Page 5-7, Section 5.4.2.4 – should specify the need to prepare a water quality monitoring plan, which is a requirement for all operations permits.

Page 5-11; Section 5.5.4 – Updating the Final POM: Note that Florida Department of Environmental Protection (FDEP) shall be notified of any proposed revisions to Project Operating Manual (POM)s and System Operating Manual (SOM)s (Line 17) in addition to United States Army Corps of Engineers (USACE) regulations. Lines 35-37: sentence should refer to the section on updating SOMs and note that the USACE is the entity responsible for completing this activity.

Attachment 5-A

Page 5-A-6; Lines 13-16, under (4) Project Relationships, indicates that POMs of existing projects may need to be revised due to new POMs. Please clarify text to indicate whether this will be the responsibility of the proposed project and, if it is an older plan, whether the WCM will be revised to comply with the new format for POMs.

Page 5-A-13; Lines 34-38, under (20) Consistency with Adaptive Management Program and Periodic CERP Updates, add FDEP as an approving agency for changes in the operating plan as required under permit conditions.

Page 5-A-2; Line 7, revise text to “water manager” refers to an individual or entity. It is unlikely that the same “individual” will be involved from the PIR to Operations.

Page 5-A-10; Line 39, (12) Flood Emergency Action Plan: Consider deleting the word “Flood” to coincide with use of this Plan in CERP.

Page 5-A-12; Lines 33-39, Paragraph 17 could be combined with Paragraph 11 on page 5-A-10 lines 29-37.

Page 5-A-14; Line 5, suggest just identifying as “no longer applicable” and not deleting a section in order to keep the same numbers and section consistent for every project.

Attachment 2 - Replacement Text for Section 1.14 Features to Improve Water Quality

Page 1-10, Delete lines 21 through 27 and replace with the following:

In accordance with the policy memorandum signed by Secretary Woodley on November 30, 2007, "Comprehensive Everglades Restoration Plan, Water Quality Improvements, Policy Determination", the PDT will evaluate and describe in the PIR the benefits of potential water quality improvement features, including benefits for water quality features for projects where inflows do not currently meet water quality standards. If the water quality features are determined to be essential to Everglades restoration, then the PIR may include a recommendation to Congress that the Secretary of the Army be given specific statutory authority to construct and cost-share construction of the subject water quality improvement features on a 50-50 basis. The cost of operating and maintaining such features would be allocated so that the costs of bringing the inflowing water into compliance with pre-project water quality standards would be born 100 percent by the Non-Federal Sponsor. Any operations and maintenance costs associated with incremental benefits above the compliance standard will be considered CERP benefits and would be recommended for 50-50 cost-share in accordance with the project cost-sharing for CERP.