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Reply To: West Palm Beach

December 17, 2007

Stu Appelbaum  
Chief, Everglades Division  
U.S. Army Corps of Engineers, Jacksonville District  
P.O. Box 4970  
Jacksonville, Florida 32232-0019

**Re: Seminole Tribe of Florida Comments on the Guidance Memoranda**

Dear Mr. Appelbaum:

The Seminole Tribe of Florida (“STOF”) is a federally-recognized sovereign Indian Nation with reservations and other lands within the south Florida ecosystem including the Brighton, Big Cypress, Immokalee, Hollywood and Ft. Pierce Reservations. Because of the unique interests of the STOF in relation to the implementation of the Comprehensive Everglades Restoration Plan (“CERP”) we consider the Guidance Memoranda (“GMs”) to be important documents providing direction to project delivery teams (“PDTs”) on how to consistently develop CERP projects in accord with Federal and State law. The CERP Programmatic Regulations and the Water Resources Development Act (“WRDA”) of 2000 also recognize the unique characteristics of the STOF by requiring government-to-government consultation between the U.S. Army Corps of Engineers (“Corps”) and the Department of the Interior (“DOI”) and the STOF on these CERP documents. The STOF has consulted with both agencies on this most recent draft and the prior two drafts of the GMs.

Like the previous draft of the GMs, this draft is improved, but there are still some key issues that are outstanding. We provide no comments on GM 6, as we typically have not provided comments on this GM in the previous versions of the documents and we have no significant issues with this GM in this version. To that end, the STOF has reviewed the other GM documents in detail and we provide the following summary of some of our most important issues.

- We continue to raise the fact that the water required to sustain and restore **environmental areas** on Tribal lands may not be incorporated into the quantities identified in the Tribe’s Work Plan or Water Rights Compact. The quantities of water in these environmental areas are in addition to the figures in the Work Plan and Compact. PDTs should specifically identify the needs of the STOF’s natural areas when a CERP project is in proximity to Tribal lands. It remains unclear how PDTs will address this issue.

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- Decision-making regarding issues that cannot be resolved at the PDT level, and is elevated to another set of decision makers like the Quarterly Review Board, needs to be open and transparent to the public.
- Project phasing, and the features and analyses for that particular phase of a project, must be clearly articulated within the Project Implementation Reports (“PIRS”).
- The relationship between the Savings Clause, non-CERP intervening projects and the other tools to protect stakeholders is still somewhat unclear in terms of direction to PDTs.
- The GMs need to be updated to reflect how the new Lake Okeechobee Regulation Schedule Study (“LORSS”) will factor into a PDTs’ analysis of a CERP project.
- Expand the discussion in GM 4 to include a description of the Regional Water Availability Rule and its application, and use examples to show how the methodology will identify water for the natural system and other water related needs.
- Clearly describe the concept of “operational flexibility” and the process to amend the various operating manuals if a project does not perform as anticipated.

Please refer to the detailed comments on the GM documents which are attached. We appreciate the opportunity to provide you with these comments. For any questions you might have regarding these comments, please contact one of us at 561.640.0820 or Craig Tepper at 954.967.4380 extension 10232.

Sincerely,



Michelle Diffenderfer  
Erin Deady

MWD/ELD  
Attachments

c: Jim Shore, Esquire – Seminole Tribe of Florida  
Craig Tepper – Seminole Tribe of Florida  
Stephen Walker – Lewis Longman & Walker, P.A.  
Patty Power - Jefferson Government Relations

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## **Guidance Memorandum #1: Project Implementation Reports**

Guidance Memorandum (“GM”) #1 provides basic direction to PDTs on how to prepare a Project Implementation Report (“PIR”), the primary CERP approval and decision document. A summary of the comments regarding this GM is as follows:

- The STOF concurs with the project “optimization” approach to expedite project formulation.
- “Partial” actions, such as a partial transfer or elimination of a source can occur as a result of a CERP project and these should also be identified as such in the PIRs.
- Under the “Elevation of Issues” and In-Progress Review sections, the GM describes a process whereby issues that can’t be resolved by PDTs are elevated to the Design Coordination Teams and Quality Review Board, but in the STOFs experience the public does not participate in those meetings. While the STOF understands the need for the PDTs to receive feedback from a higher level, this must be balanced with the public’s ability to participate in critical decision making.
- The “External Peer Review” section is a bit unclear. Clarify if this refers to the actual peer review or the decision to complete the peer review.
- In the “Features to Improve Water Quality” section, the GM states that the PDT should identify any features necessary to improve water quality in the PIR in a manner consistent with .... The GM should clarify if that requirement to identify the water quality features applies to just that phase of the project or the entire project.
- Section 1.18 regarding Consultation with Tribes should include a statement on when the consultation process will likely occur on projects and/or issues. Preferably, after a technical selected plan or an alternative is chosen.

## **Guidance Memorandum #2: Formulation and Evaluation of Alternatives for Project Implementation Reports**

GM #2 provides direction to PDTs on how to formulate and evaluate alternatives for PIRs. A summary of the comments regarding this GM is as follows:

- In Section 2.3, the GM states that goals, problems and opportunities, and planning objectives and constraints should be taken directly from the Plan. In reviewing other PIRs, this doesn’t always seem to be the case and PIRs have had these statements slightly change or conflict with those articulated in the original CERP “Yellow Book”. Starting with the Yellow Book goals and objectives is central to maintaining project support.

- In Section 2.4.2 the GM describes how performance measures should be linked to or impact State and Federal laws and policies, but this should include Tribal laws and policies as well.
- In Section 2.6, the GM still does not describe how changes to the Pre-CERP Baseline water will factor into the project development and evaluation process. The GM simply states that this evaluation will be used in the project development and evaluation process. This previous comment of the STOF's is not addressed in GM #2.
- The GM should describe, in Section 2.11 "Formulation and Evaluation" for the PIR, how the Corps' "Vertical Team" and the Assistant Secretary's office will determine if a project plan formulation process will be optimized or if additional alternatives will be developed. The GM should include some evaluation factors to give direction to PDTs.
- The last Section, 2.11.2.4, is still problematic and does not clearly direct PDTs on what to do if the project is not supported by the "Next Added Increment" analysis. The GM doesn't state how this decision is made, who makes it or what it is based upon.

### **Guidance Memorandum #3: Savings Clause Requirements**

GM #3 provides direction to PDTs on how to adhere to the Savings Clause Requirements in Section 601(h)(5) of WRDA 2000. A summary of the comments regarding this GM is as follows:

- The GM still does not indicate what will occur if a project passes the Savings Clause analysis but does not pass a state or "other tools" analysis such as that required by Section 373.1501, F.S. The GM must provide direction to PDTs on how this will be rectified if one analysis says an alternative is acceptable, but the other does not.
- The new LORSS (and Lake Okeechobee Water Shortage Management LOWSM Plan) must be factored into the various project analyses.
- Section 3.10.4 references a definition of "significant" in the context of identifying if there is an elimination or transfer of a source. This is still very nebulous and there are no factors or criteria detailing this. See Section 3.10.4.
- On page 3-12, it appears as though natural system performance (and achievement thereof) can be a more important project purpose than a significant reduction or elimination of water. This trade-off decision should be based upon the goals and objectives of the project from the Yellow Book. Please explain how project teams will address this issue.
- Please clarify the considerations in defining (economic and technical), and who actually defines, a comparable source (as a replacement) in Section 3.10.5 Step 3.

- On Attachment 3-A-1, in regard to the analysis on a project's impact to fish and wildlife, it states that "any" impact to species will be considered. Please clarify if this means every impact to species or just significant impacts.
- In Attachment 3-I, Step 11, smaller scale modeling should be determined earlier in the Checklist on levels of Service for Flood Protection.

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

GM #4 provides direction to PDTs on how to identify water made available by a CERP project for the natural system and other water related needs. A summary of the comments regarding this GM is as follows:

- Overall, the methodologies seem simplified from the previous two versions of the document, but please include some examples using the methodology and explaining the significance of the various baselines and determinations. GM 3 used this approach very effectively. Please also explain the significance of Figure 4-4 and Tables 4-6 and 4-7.
- Attachment 4-B should be updated to reflect the Regional Water Availability Rule adoption with an explanation of the Rule.
- In Section 4.9, the document should state that all the water needed to achieve project benefits, and the water made available for the natural system as a result of a CERP project, may not be the same amount.
- For this GM, a definitions Section is important. It appears as though the assumptions for the various baselines are defined in Tables 1-1 and 1-2, but further please provide further explanation of these baselines in Section 4.6.1. Please explain the significance of using the 10%, 50% and 90% values for the volume probability curve exceedences.
- Explain the "appropriate" difference in volume probability curves described in the beginning of Section 4.7.
- Please describe how reservations will be "conditioned" as described in Attachment 4-B page 4-B-3.

**Guidance Memorandum #5: Operating Manuals**

GM #5 provides direction to PDTs on how to develop project and systemwide operating manuals. A summary of the comments regarding this GM is as follows:

- Section 5.4.2.3 describes the fact that project operating manuals (“POMs”) and the system operating manual (“SOM”) will be considered to incorporate new information identified during the CERP updates. Please explain if the process in Sections 5.3.1 and 5.3.2 is used to complete this effort.
- The new LORSS should be included as Attachment 5-D (referenced in Section 5.4.3).
- Section 5.4.3 describes the POMs “operational flexibility” and what happens if a project is implemented and can (or cannot) operate within that desired flexibility. If the project cannot operate within that range once brought on line, then a formal process must occur to actually change that POM. That process is not clear and could range from analysis to agency coordination and / or a temporary deviation. Like the other Regulation Schedules, some flexibility is necessary to adapt to changing conditions, but likewise operating under consistent temporary deviations is not predictable.
- In Attachment 5-A-9 d), Tribal water usage should be added to the first sentence.