

**SECTION 13**  
**RECOMMENDATIONS**

This page intentionally left blank

## **SECTION 13 RECOMMENDATIONS**

I am recommending a plan that will restore, enhance and protect an extensive wetland-upland mosaic of critical wildlife habitat in the southwestern portion of the Everglades ecosystem – Picayune Strand. This plan will reverse the environmental impacts that have occurred to wetland systems within the project area over the past fifty years and will provide significant benefits to adjacent and downstream lands and estuaries including the Fakahatchee Strand State Preserve, Collier-Seminole State Park, Ten Thousand Island National Wildlife Area and Everglades National Park. The Picayune Strand Restoration Project was developed from the Southern Golden Gate Estates Restoration (OPE) component of the Comprehensive Everglades Restoration Plan approved by Congress in the Water Resources Development Act of 2000, Public Law 106-541. The Draft Integrated Project Implementation Report and Environmental Impact Statement for this project was titled, “Southern Golden Gate Estates Ecosystem Restoration Project.” The name has been changed to “Picayune Strand Restoration Project” to represent the significant wetland complex that existed prior to human disturbance and that the project will restore.

I find that once restored, the Picayune Strand project area, which encompasses 94 square miles of Collier County between I-75 (Alligator Alley) and US-41 (Tamiami Trail), will provide extensive wetland and upland habitat for fish and wildlife resources, including threatened and endangered species such as the Florida panther, Florida black bear, red cockaded woodpecker and wood stork, as well as other rare habitat such as tropical hammocks and plant species including orchids and bromeliads. Modifications are required to provide for the restoration and protection of this portion of the Everglades ecosystem. These modifications can be undertaken in a manner that allows us to continue to provide existing water supply and flood protection benefits necessary for the economic and social sustainability of the region.

The features of the Picayune Strand Restoration Project were essentially included in the Comprehensive Everglades Restoration Plan that was approved as a framework for modifications and operational changes to the Central and Southern Florida Project that are needed to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. These features require authorization pursuant to the provisions of Section 601(d) of the Water Resources Development Act of 2000.

Therefore, I recommend that the Picayune Strand Restoration Project, as described in the section of this report entitled “The Recommended Plan,” be authorized for construction with such modifications thereof as in the discretion of the Chief of Engineers may be advisable. The total estimated project first cost is \$349,422,000 with an estimated Federal first cost of \$174,111,000 and an estimated non-Federal first cost of \$174,111,000. The estimated total annual cost of operation, maintenance, repair, rehabilitation, replacement, and monitoring and adaptive assessment is \$3,061,000 with an estimated Federal annual cost of \$1,508,000 and an estimated non-Federal annual cost of \$1,508,000.

The above recommendations are made with the provision that the non-Federal sponsor and the Secretary of the Army shall enter into a binding agreement defining the terms and conditions of cooperation for implementing the Project, and that the non-Federal sponsor agrees to perform the following items of local cooperation:

- a. Provide 50 percent of total project costs consistent with the provisions of Section 601(e) of the Water Resources Development Act of 2000 including authority to perform design and construction of project features consistent with Federal law and regulation;
- b. Provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform or assure the performance of all relocations determined by the Government to be necessary for the construction, operation, and maintenance of the project;
- c. Provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the project;
- d. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the local sponsor owns or controls for access to the project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the project;
- e. Assume responsibility for operating, maintaining, repairing, rehabilitating, and replacing (OMRR&R) the project or completed functional portions of the project, including mitigation features, in a manner compatible with the project’s authorized purposes and in

accordance with applicable Federal and State laws and specific directions prescribed in the OMRR&R manuals and any subsequent amendments thereto. Cost sharing for OMRR&R will be in accordance with Section 601 of WRDA 2000:

*“(e) COST SHARING.-*

*(4) OPERATION AND MAINTENANCE.- Notwithstanding section 528(e)(3) of the Water Resources Development Act of 1996 (110 Stat. 3770), the non-Federal sponsor shall be responsible for 50 percent of the cost of operation, maintenance, repair, replacements and rehabilitation activities authorized under this section...”;*

f. Unless otherwise provided for in the statutory authorization for this project, comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

g. Hold and save the Government free from all damages arising for the construction, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the Government or the Government’s contractors;

h. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project to the extent and in such detail as will properly reflect total project costs;

i. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, that may exist in, on, or under lands, easements or rights-of-way necessary for the construction, operation, and maintenance of the project; except that the non-Federal sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government;

j. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on or under

lands, easements, or right-of-ways that the Government determines necessary for the construction, operation, or maintenance;

k. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA;

l. Prevent obstructions of or encroachments on the project lands (including prescribing and enforcing regulations to prevent such obstruction or encroachments) which might reduce ecosystem restoration benefits, hinder operation and maintenance, or interfere with the projects proper function, such as any new developments on project lands or the addition of facilities which would degrade the benefits of the project;

m. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public law 91-646, as amended by title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, operation, and maintenance of the project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act;

n. Comply with all applicable Federal and State laws and regulations, including Section 601 of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army.";

o. Comply with Section 106 of the National Historic Preservation Act in completion of all consultation with the Florida State Historic Preservation Officer and as necessary the Advisory Council on Historic Preservation prior to construction as part of the Pre-construction Engineering Design phase of the project;

p. Provide 50 percent of that portion of total cultural resource preservation mitigation and data recovery costs attributable to the project that are in excess of one percent of the total amount authorized to be appropriated for the project;

q. Not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized;

r. The Non-Federal Sponsor shall maintain an appropriate quantity, quality, timing, and distribution of water to ensure the restoration, preservation and protection of the natural system [meaning all land and water managed by the Federal Government or the State within the South Florida ecosystem, including, but not limited to, water conservation areas; sovereign submerged land; Everglades National Park; Big Cypress National Preserve; other Federal and State (including a political subdivision of the State) land that is designated and managed for conservation purposes; the contiguous near-shore coastal water of South Florida; and any tribal land that is designated and managed for conservation purposes, as approved by the tribe] for so long as the Project remains authorized. This quantity, quality, timing, and distribution of water shall meet applicable water quality standards and be consistent with the natural system restoration goals and objectives of the Comprehensive Everglades Restoration Plan, as the Plan is defined in the Programmatic Regulations. In fulfillment of this obligation, the Non-Federal Sponsor shall:

1) Ensure, through appropriate and legally enforceable means under Florida law, that the quantity, quality, timing, and distribution of water, which this Project Implementation Report identifies is available to the areas benefited by the Picayune Strand Restoration Project, including associated downstream estuaries, (the "Project Affected Areas") and is necessary to achieve the restoration goals and objectives for the Project Affected Areas, will be available to the Project Affected Areas at the time the Project becomes operational and will remain available to the Project Affected Areas for so long as the Project remains authorized.

2a) Prior to the execution of the Project Cooperation Agreement, reserve from the additional water that will be made available by implementation of the Project the water identified in this Project Implementation Report determined to be necessary to achieve the restoration goals and objectives for the Project Affected Areas and the natural system.

2b) After the Project Cooperation Agreement is signed and the Project becomes operational, make such adjustments to this reservation of water that are determined under the Programmatic Regulations to be necessary to achieve the restoration goals and objectives for the Project Affected Areas and the natural system.

3) Provide the Government with written certification that the requirements of subparagraphs 1 and 2 of this paragraph have been fulfilled.

4) For so long as the Project remains authorized, notify and consult with the Secretary of the Army should any change in the reservation of water or other legally enforceable means of protecting water be proposed, so the Government can assure itself that the changed reservation or legally enforceable means of protecting water conforms with the State's obligations under this paragraph and continues to ensure that the appropriate quantity, quality, timing and distribution of water is dedicated and managed to achieve the restoration goals and objectives for the Project Affected Areas and the natural system. Any change to a reservation of additional water made available by implementation of this Project shall require an amendment to the Project Cooperation Agreement.

I recommend that credit for the value of the lands, easements, and rights-of-way required for the Project shall be as follows:

a. For any lands or acreage within the former Southern Golden Gate Estates Subdivision comprised of 55,247 acres acquired by the Non-Federal Sponsor or the Florida Department of Environmental Protection prior to May 31, 2004, the creditable value shall be a sum not to exceed \$75,394,333, subject to a Peer Review Report by a party designated by the Deputy Assistant Secretary of the Army (Civil Works) and approval of the Peer Review Report by the Deputy Assistant Secretary of the Army (Civil Works) and subject to a determination that the lands are required for the Project.

b. For lands, easements and rights-of-way within the former Southern Golden Gate Estates Subdivision comprised of 55,247 acres acquired by the Non-Federal Sponsor or the Florida Department of Environmental Protection after May 31, 2004, the creditable value shall be the actual acquisition cost of such real property interests at the time the interests are acquired, subject to a determination that the lands are required for the Project and that the costs are reasonable, allowable and allocable.

c. Subject to a Peer Review Report by a party designated by the Deputy Assistant Secretary of the Army (Civil Works) and approval of the Peer Review Report by the Deputy Assistant Secretary of the Army (Civil Works), the incidental/administrative costs incurred by the Florida Department of Environmental Protection for the acquisition of all lands,

easements, and rights-of-way within the former Southern Golden Gate Estates Subdivision shall not exceed the sum of \$29,158,914.

d. If the lands, easements and rights-of-way which lie outside the boundaries of the former Southern Golden Gate Estates Subdivision were acquired prior to execution of the Project Cooperation Agreement, the creditable value shall be their purchase price, subject to a determination that the lands are required for the Project and that the costs are reasonable, allowable and allocable, together with their reasonable and necessary incidental costs of acquisition.

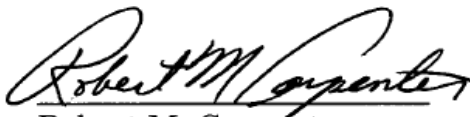
e. The value of lands, easements, or rights-of-way required for the Project which lie outside the boundaries of the former Southern Golden Gate Estates Subdivision acquired by the Non-Federal Sponsor after the effective date of the Project Cooperation Agreement executed for this Project shall be the actual acquisition cost of such real property interests at the time the interests are acquired, subject to a determination that the lands are required for the Project and that the costs are reasonable, allowable and allocable, together with their reasonable and necessary incidental costs of acquisition.

I also recommend that Congress provide authority for the Non-Federal Sponsor to receive credit for planning, engineering, design and construction performed by, or on behalf of, the Non-Federal Sponsor, towards the implementation of the Picayune Strand Restoration Project before project cooperation agreement execution if the Secretary of the Army determines that the work performed was for a reasonable cost, necessary and integral to the Project and was implemented to appropriate design and construction standards.

I also recommend that for the Prairie Canal plugging and installation of culverts under U.S. 41 construction components, the non-Federal sponsor be credited for all construction activities that they complete, including those completed in advance of executing a Project Cooperation Agreement with the Corps subject to: a) certification by the Secretary of the Army that those restoration activities are necessary, for a reasonable cost and integral to the CERP restoration project and b) that the restoration activities have been constructed in accordance with applicable federal and state law. It is in the best interest of the Federal Government for this component to be implemented expeditiously because of the early benefits to several federally listed threatened and endangered species within the Picayune Strand project area, as well as hydrologic benefits to federal lands and estuaries downstream of the project, including Ten Thousand Islands National Wildlife Refuge and Everglades National Park.

Credit for such work is subject to the Secretary of the Army determining that the work is necessary and integral to the authorized Picayune Strand Restoration Project and that the construction is consistent with applicable Corps construction standards and applicable federal law. The non-Federal Sponsor is aware that it will not receive a credit for these costs unless the Congress approves the granting of the credit in law by the authorization of the Picayune Strand Restoration Project and the Secretary of the Army later determines the work is necessary and integral to the authorized Picayune Strand Restoration Project.

The recommendations contained herein reflect the information available at this time and current Departmental policies governing formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of a national Civil Works construction program nor the perspective of higher review levels within the Executive Branch. Consequently, the recommendations may be modified before they are transmitted to the Congress as proposals for authorization and implementation funding. However, prior to transmittal to the Congress, the sponsor, the State, interested Federal agencies, and other parties will be advised of any modifications and will be afforded an opportunity to comment further.



Robert M. Carpenter  
Colonel, Corps of Engineers  
District Engineer