

SECTION 10

**COMPLIANCE WITH ENVIRONMENTAL
REQUIREMENTS**

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SECTION 10 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

The alternative plans were considered in relation to compliance with Federal environmental review and consultation requirements and Florida State review and funding requirements.

10.1 NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

The project is in compliance with Section 102(2) C of the National Environmental Policy Act (NEPA) of 1969 as amended, 42 U.S.C. 4321, *et seq.* P.L. 91-190, at this stage in planning. Scoping was initiated with a scoping letter sent on December 2, 1996 as part of the Comprehensive Review Study. The draft Supplement to the Comprehensive Review Study Programmatic Environmental Impact Statement was released in November 2001. It covered the feasibility phase studies for the Indian River Lagoon – South (IRLS) Feasibility Study and was circulated in accordance with the NEPA for a period not less than 45 days. A final Supplement to the Comprehensive Review Study Programmatic Environmental Impact Statement was released in October 2002. A notice of availability was sent to all previous participants and published in the Federal Register on October 11, 2002. No adverse comments were received. Subsequently, examination of the WRDA 2000 requirements for Project Implementation Reports (PIR) under CERP, and additional site studies and formulation efforts introduced additional documentation and public coordination requirements. Therefore, a Notice of Intent to prepare a Draft Supplement to the Final SEIS for the Indian River Lagoon Feasibility Study was published in the Federal Register on September 29, 2003. The Draft SEIS along with a Draft Project Implementation Report (PIR) was circulated to the public and resource agencies for review and comment in accordance with NEPA. A notice of availability was sent to all previous participants and was published in the Federal Register on December 19, 2003.

The preferred plan and alternatives were presented to the South Florida Water Management District (SFWMD) governing board on 9 May 2002. Public workshops were held during the fall of 2001. A public meeting to address the Draft PIR and Draft SEIS was held on January 13, 2004. This project is in compliance with the Act.

10.2 ENDANGERED SPECIES ACT OF 1973

Informal consultation has been initiated for this project. The Endangered species identified by the U. S. Fish and Wildlife Service (USFWS) are discussed in **Appendix E**. The USFWS has confirmed, by letter dated April 2001, that it agrees with the biological assessment prepared for the project by the U.S. Army Corps of Engineers (Corps). The letter requesting concurrence that the project will cause no adverse effect to listed species was sent to the USFWS in February, 2001 under the provisions of the Endangered Species Act (ESA) of 1973 (50 CFR 402). The USFWS agreed with this summary in a letter dated 2 March 2001. This letter provides that the Corps perform surveys for Threatened and Endangered plants and for Caracara. Coordination with the USFWS will continue throughout project implementation. Consultation was initiated with the National Marine Fisheries Service (NMFS) on May 25, 2001 and completed on 18 March 2002. This project was fully coordinated under the ESA and is therefore, in full compliance with the Act.

10.3 FISH AND WILDLIFE COORDINATION ACT OF 1958

In response to the requirements of this Act, the Corps has and will continue to maintain continuous coordination with the USFWS and the Florida Fish and Wildlife Conservation Commission (FWCC) during all stages of the planning and implementation of this project. USFWS submitted, under separate cover, a Planning Aid Report, a draft Fish and Wildlife Coordination Act (FWCA) report in May 2001, and a final FWCA report on 27 February 2002. The comments provided as a part of these reports were reviewed by the Corps of Engineers and served to provide a framework for future investigation of scenarios and modifications to the recommended plan. On 6 February 2004 the USFWS submitted a supplement to their final FWCA report to address the design refinements to the C-44 components of the recommended plan. The final FWCA report, and the supplement, is included in **Appendix E**. This project is in full compliance with the Act.

10.4 NATIONAL HISTORIC PRESERVATION ACT OF 1966

PL 89-665 the Archeology and Historic Preservation Act (PL 93-291), and executive order 11593) Archival research, and consultation with the State Historic Preservation Officer (SHPO), will be completed during the PED phase once project specific designs are developed. This consultation will be in accordance with the National Historic Preservation Act, as amended; the Archeological and Historic Preservation Act, as amended, Executive Order 11593, and 36 CFR Part 800 (Protection of Historic Properties). Letters dated 13 December 2001 and 11 February 2002 were received from the SHPO identified that there are historic resources within the project areas and that they will be

addressed in future consultation. Project specific surveys for cultural resources and site evaluations will be conducted during Pre-construction Engineering and Design Phase of the project. The project will be in compliance with each of these Federal laws.

10.5 CLEAN WATER ACT OF 1972

The project is in compliance with this Act and will be achieved with issuance of a Section 404 permit from the State of Florida. All State water quality standards would be met. A Section 404 (b) evaluation is included in this report as **Appendix E (E.1)**. A public notice was issued and a public hearing was held in a manner that satisfies the requirements of Section 404 of the Clean Water Act.

10.6 CLEAN AIR ACT OF 1972

Coordination with the U. S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection, (FDEP) Air Quality Division determined the overall project is in compliance with the Clean Air Act. No permits will be required at this stage of planning. Full compliance will be achieved with receipt of comments on the Draft Supplemental Environmental Impact Statement from the EPA. Coordination of this Draft Supplement will also comply with Section 309 of the Clean Air Act. Correspondence from EPA and other agencies can be found in **Appendix H**. Discussion of any issues therein can be found in the Public and Agency Involvement section of this statement.

10.7 COASTAL ZONE MANAGEMENT ACT OF 1972

The study is in compliance at this time. Full compliance would be achieved with receipt of comments from the Florida State Clearinghouse. A Federal consistency determination in accordance with 15 CFR 930 Subpart C is included in this report in **Appendix E (E.2)**.

10.8 FARMLAND PROTECTION POLICY ACT OF 1981

Coordination with the U. S. Department of Agriculture, Natural Resources Conservation Service (NRCS) in Gainesville, Florida to meet the requirements of the Farmland Protection Policy Act has been completed. Completed form AD1006 (NRCS form on converting agricultural lands) can be found in **Appendix H**. Almost all land in central and southern Florida used for agricultural production has been designated unique farmland. This land has a unique combination of soil quality, location, growing season, and moisture supply for producing high value food and fiber crops. The Final Plan includes

several components that may require land in central and southern Florida to be removed from agricultural production. Coordination under this law has been completed prior to coordination of the Final Supplemental Environmental Impact Statement.

10.9 WILD AND SCENIC RIVER ACT OF 1968

No designated Wild and Scenic river reaches would be affected by project related activities. This act is not applicable.

10.10 MARINE MAMMAL PROTECTION ACT OF 1972

Incorporation of the safeguards used to protect threatened or endangered species during dredging and disposal operations would also protect any marine mammals in the area, therefore, we do not anticipate that the project will result in take as defined by the MMPA.

10.11 ESTUARY PROTECTION ACT OF 1968

This project's primary objective is to restore the St. Lucie estuary and southern Indian River Lagoon. This project is in compliance.

10.12 FEDERAL WATER PROJECT RECREATION ACT

The principles of the Federal Water Project Recreation Act, (Public Law 89-72) as amended, have been fulfilled by complying with the recreation cost sharing criteria as outlined in *Section 2* (a), paragraph (2).

10.13 SUBMERGED LANDS ACT OF 1953

The project would occur on submerged lands of the State of Florida. The project has been coordinated with the State of Florida and is in compliance with the Act.

10.14 COASTAL BARRIER RESOURCES ACT AND COASTAL BARRIER IMPROVEMENT ACT OF 1990

There are no designated coastal barrier resources in the project area that would be affected by this project. These Acts are not applicable.

10.15 RIVERS AND HARBORS ACT OF 1899

The proposed work would not obstruct navigable waters of the United States. The proposed action has been subject to the public notice, public hearing, and other evaluations normally conducted for activities subject to the Act. The project is in full compliance.

10.16 ANADROMOUS FISH CONSERVATION ACT

Anadromous fish species would not be affected. The project has been coordinated with the NMFS and complies with the Act. Specific concerns will be addressed during the Essential Fish Habitat resolutions.

10.17 MIGRATORY BIRD TREATY ACT AND MIGRATORY BIRD CONSERVATION ACT

The restoration of the natural areas in Martin and St. Lucie Counties, restoration of the southern IRL and SLE will restore and enhance quality foraging, roosting and nesting areas for migratory birds. The project complies with these acts.

10.18 MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT

The Marine Protection, Research and Sanctuaries Act does not apply to this project. The disposal activities addressed in this Environmental Impact Statement have been evaluated under Section 404 of the Clean Water Act (see *Appendix E*).

10.19 RESOURCE CONSERVATION AND RECOVERY ACT OF 1976

No substances regulated under this Act and related laws have been identified in project lands at this stage of planning. The project is in compliance.

10.20 TOXIC SUBSTANCES CONTROL ACT OF 1976

No substances regulated under this Act and related laws have been identified in project lands at this stage of planning. The project is in compliance.

10.21 MAGNUSON-STEVENS CONSERVATION AND MANAGEMENT ACT

This Act requires the preparation of an Essential Fish Habitat Assessment and coordination with the NMFS. The Essential Fish Habitat assessment within the draft Integrated Feasibility Report and Supplemental Environmental Impact

Statement dated November 2001, and was coordinated with the NMFS during the normal NEPA coordination process. A NMFS letter dated 17 December 2001 concurred with the Corps determination that restoration of SLE and southern IRL should benefit essential fish habitat (*Appendix H*). This final report is in compliance with this Act.

10.22 SECTION 904 OF THE 1986 WATER RESOURCES DEVELOPMENT ACT

Section 904 of the 1986 Water Resources Development Act (WRDA) requires that the plan formulation and evaluation process address quantifiable and unquantifiable benefits and costs of the quality of the total environment, and preservation of cultural and historical values. The study and report are in compliance.

10.23 SECTION 307 OF THE 1990 WATER RESOURCES DEVELOPMENT ACT

Section 307 of WRDA 1990 establishes, as part of the water resources development program, an interim goal of no overall net loss of the Nation's remaining wetlands, and a long-term goal of increasing the quality and quantity of the Nation's wetlands. The recommended plan is in full compliance.

10.24 E.O. 11990, PROTECTION OF WETLANDS

This project plans to restore approximately 50,000 acres of wetlands on over 90,000 acres of wetland/upland mosaic. Any minor impacts to wetlands during construction or by the implementation of the reservoirs and STAs will be offset by the wetland restoration. In siting the reservoirs and STAs, the goal is to avoid and minimize any wetland impact. This project complies with the goals of this Executive Order.

10.25 E.O. 11988, FLOOD PLAIN MANAGEMENT

The project is in the base flood plain (100-year flood) and has been evaluated in accordance with this Executive Order. Project is in compliance.

10.26 E.O. 12114, ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

This Executive Order is not applicable to this study.

10.27 E.O. 13089, CORAL REEF PROTECTION

The proposed action may indirectly affect coral reef ecosystems as defined by the Executive Order. The Everglades restoration is designed to reduce extreme discharges of freshwater and nutrients to both the SLE and southern IRL and return them to a more natural regime. Seagrasses and nearshore habitats will benefit from this restoration plan. Some isolated reefs just outside of the SLE should benefit from a reduction of freshwater, but monitoring will be needed to determine any effects. This project is in compliance.

10.28 E.O. 12898, ENVIRONMENTAL JUSTICE

Executive Order 12898 requires the Federal government to achieve environmental justice by identifying and addressing disproportionately high adverse effects of its activities on minority and low-income populations, and by involving potentially affected minorities in the public coordination process. It also requires the analysis of information such as the race, national origin, and income level for areas expected to be impacted by environmental actions. Populations at risk have been profiled in *Appendix F* (Socio-Economics) in *Section F.2* (Population and Economy) and *Section F.12* (Other Social Effects). These profile data include racial/ethnic population distribution, aged population, percentage of households below the poverty threshold, income, and unemployment, by county for the 16-county study area, as well as for the State and Nation for ranking comparison purposes. It is acknowledged that the rural communities where reservoirs may be sited may be partially characterized by low income and relatively high unemployment status. These populations may be vulnerable to the effects of land acquisition in areas of relatively low real estate values, and may find it difficult to obtain comparable property elsewhere in the counties. On the other hand, reservoirs and STA are proposed for largely agricultural rural areas, where population density is low, so displacement of residents will be minimized. Furthermore, construction of the reservoirs and STA are expected to generate additional employment. The Corps believes the number of affected populations is likely to be small. Further analysis of community impacts will be undertaken when more specific site information is available.

The IRLS projects will provide benefit to the quality of life by improving the natural environment we live in. The IRLS project features of reservoirs, wetland restorations, and filter marshes, by design, are in locations remote from urban populations such that negative impacts are eliminated for most communities. The IRLS study is Congressionally approved, funded with Federal and State dollars to improve the water quality for humans and the environment.

The IRLS project does not present any environmental impacts that are highly adverse and disproportionate to low income, minority or Tribal

populations. Furthermore, the EPA's, 1990 Potential Environmental Justice data validates that there are no communities of low income, minority or Tribal populations near IRLS project sites that could be negatively impacted by the planned location of project components. The 1990 EPA data is relevant as the 2000 census was not available during the IRLS study period. Project sites are located based upon hydrologic characteristics, land availability and interconnection to existing canals and structures to optimize operations. Furthermore, in the consideration of project sites, urban areas are avoided to eliminate the negative impacts typically associated with site location of large projects. Through "willing seller agreements" a variety of land rights have been or will be acquired that allow the use of land for the resulting improvements to the human quality of life and the intended environmental benefits intended by the IRLS.

These environmental benefits provide quality of life improvements to all people and primarily to people in the communities with in the IRLS study area. Reservoirs and filter marshes will capture peak storm water runoff flows to hold water for later environmental releases and other beneficial water related purposes. By the nature of design, this operating procedure will maintain if not improve flood control. Vast areas of wetlands will act as filter marshes or enhanced for restoration purposes to change water quality for the better. This will improve the quality of human life by providing increased wildlife activity, a special bonus for those who appreciate seeing increases in fish and bird populations. This logically translates to the increased benefits in enjoyment, aesthetics, and economics for sport fishing and individuals that rely on fish for part of their diet.

Many lands acquired for IRLS project will cause citrus grove operations to move to different locations within of the IRLS study area. This movement of citrus groves from one part of the IRLS study area to another part of the IRLS study area results in no net loss of citrus groves. Some, but not all of the citrus groves are older citrus groves that may move or change in the natural course of agricultural land development. New citrus groves are expected to locate on existing pasturelands. These new citrus groves, like all new citrus groves, improve operations as technology improves and will use the latest and most efficient irrigation feasible. Over the life of the Everglades Restoration, which the IRLS is a part of there will be normal movement and change in agriculturally lands. The CERP Socio-economic and Environmental Justice plan will complete a comprehensive study of the expected movement and change in agricultural lands and evaluate the additional economic effects of changes resulting from the CERP projects. This project is in compliance.

10.29 FLORIDA STATUTES 373.1501 AND 373.026 (AMENDED)

During the 1999 legislative session, Florida lawmakers created s. 373.1501 and amended s. 373.026 of the Florida Statutes. Section 373.1501 provides a legislative finding that the Comprehensive Review Study is important for restoring the Everglades ecosystem and for sustaining the environment, economy, and social well being of South Florida. Legislative intent was to facilitate and support the CERP through a process concurrent with Federal government review and congressional authorization. Further legislative intent was to ensure that all project components are implemented through appropriate processes and are consistent with the balanced policies and purposes of Chapter 373, F.S. Specifically, s. 373.026(8)(b), F.S. directs FDEP to collaborate with the SFWMD in the CERP and to approve each project component with or without amendments prior to submission of such components to Congress for authorization.

The criteria upon which FDEP to base its approval of project components is contained within s. 373.1501(5), F.S. and is incorporated below:

S. 373.1501 (5) In its role as local sponsor for the project, the district shall comply with its responsibilities under this chapter and implement project components through appropriate provisions of this chapter. In the development of project components, the district shall:

(a) Analyze and evaluate all needs to be met in a comprehensive manner and consider all applicable water resource issues, including water supply, water quality, flood protection, threatened and endangered species, and other natural system and habitat needs;

(b) Determine with reasonable certainty that all project components are feasible based upon standard engineering practices and technologies and are the most efficient and cost-effective of feasible alternatives or combination of alternatives, consistent with restudy purposes, implementation of project components, and operation of the project;

(c) Determine with reasonable certainty that all project components are consistent with applicable law and regulations, and can be permitted and operated as proposed. For purposes of such determination:

- 1. The district shall convene a pre-application conference with all state and federal agencies with applicable regulatory jurisdiction;*
- 2. State agencies with applicable regulatory jurisdiction shall participate in the pre-application conference and provide information necessary for the district's determination; and*

3. *The district shall request that federal agencies with applicable regulatory jurisdiction participate in the pre-application conference and provide information necessary for the district's determination;*

(d) Consistent with chapter 373, the purposes for the restudy provided in the Water Resources Development Act of 1996, and other applicable federal law, provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components so as to adversely impact existing legal users, that existing levels of service for flood protection will not be diminished outside the geographic area of the project component, and that water management practices will continue to adapt to meet the needs of the restored natural environment;

(e) Ensure that implementation of project components is coordinated with existing utilities and public infrastructure and that impacts to and relocation of existing utility or public infrastructure are minimized

Section 7 of **Appendix J** of the PIR will be submitted by SFWMD to FDEP for approval, pursuant to s. 373.1501(5), F.S. and s. 373.026(8)(b), for the recommended plan features of the IRLS project. This report is intended to provide FDEP with the technical information necessary to make a determination of compliance with state law for CERP projects.