

**SECTION 11**  
**RECOMMENDATIONS**

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## SECTION 11 RECOMMENDATIONS

I am recommending a plan that will restore and protect a resource of national significance – the St. Lucie River and Estuary and the southern Indian River Lagoon in Florida. This plan will reverse the environmental impacts that have occurred for the past fifty years as a result of the existing Central and Southern Florida Flood Control System. The Indian River Lagoon-South Plan has been developed from the components C-44 Basin Storage Reservoir (B) and C-23/C-24/C-25/Northfork and South Fork Storage Reservoirs (UU) of the Comprehensive Everglades Restoration Plan approved by Congress in the Water Resources Development Act of 2000, Public Law 106-541.

I find that the St. Lucie River and southern Indian River Lagoon ecosystem, which extends from the northern county border of St. Lucie County south to the southern border of Martin County, includes the most biodiverse estuarine and near-shore communities in Florida, provides diverse habitats for species of fish and wildlife while providing important water supply, water quality, flood control, and recreation functions.

The St. Lucie River and southern Indian River Lagoon ecosystem is *endangered* as a result of adverse changes in the quantity and distribution of water, the timing of flows, and the degradation of water quality. Restoration of this ecosystem is vital to achieve environmental and economic sustainability in the south Florida region. Modifications to the Central and Southern Florida Project 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 and improve existing water supply and flood control benefits necessary for the economic and social sustainability of the region.

The Indian River Lagoon-South Plan includes the C-44 Basin Storage Reservoir which was authorized under Section 601(b)(2)(C)(i) of the Water Resource Development Act of 2000 at a cost of \$112,562,000 as an “Initial Project”. However, the Indian River Lagoon –South Plan significantly changes the cost and scope of the authorized C-44 Basin Storage Reservoir feature.

The other components of the Indian River Lagoon –South Plan 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 elements require authorization pursuant to the provisions of Section 601(d) of the Water Resources Development Act of 2000.

Further, I find the water quality treatment features included in the Indian River Lagoon –South Plan are not part of the Everglades Construction Project and are essential to Everglades restoration consistent with Section 528(e)(2)(B) of WRDA 1996 and are eligible for 50-50 cost sharing.

Therefore, I recommend that the Indian River Lagoon-South Plan, as described in the section of this report entitled “The Recommended Plan,” be authorized with such modifications thereof as in the discretion of the Chief of Engineers, may be advisable, for construction with the requisite determination by the Secretary of the Army that the water quality features are essential to the Everglades. The total estimated project first cost is \$1,207,288,000 with an estimated Federal first cost of \$603,644,000 and an estimated non-Federal first cost of \$603,644,000. The estimated total annual cost of operation, maintenance, repair, rehabilitation, and replacement is \$6,145,000 with an estimated Federal annual cost of \$3,072,500 and an estimated non-Federal annual cost of \$3,072,500.

I also recommend that the C-44 Basin Storage Reservoir which was authorized under Section 601(b)(2)(C)(i) of the Water Resource Development Act of 2000 at a cost of \$112,562,000 be deauthorized.

I further find that the unconstructed irrigation and flood control features in Martin and St. Lucie Counties described in Senate Document Number 101, Ninetieth Congress, and House Document Number 369, Ninetieth Congress, are no longer needed due to changed conditions and the implementation of the recommended Indian River Lagoon-South Plan. Therefore, I also recommend that the unconstructed irrigation and flood control features in Martin and St. Lucie Counties authorized in the Flood Control Act of 1968, Public Law 90-483 under Section 203, Title: Central and Southern Florida, be deauthorized.

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, replacing, or rehabilitating the project;

e. Assume responsibility for operating, maintaining, replacing, repairing, and rehabilitating (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 (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 that 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 and preservation of the natural system for so long as the Project remains authorized. This flow of water shall be consistent with the restoration goals of the Comprehensive Plan and meet all applicable water quality standards. The Non-Federal Sponsor shall:

1) Ensure, through appropriate and legally enforceable means available under Florida law, that the flow of water, which this Project Implementation Report has identified was available to the St. Lucie River and southern Indian River Lagoon on the date of enactment of WRDA 2000 and beneficial to the natural system, will be available for the natural system at the time the project becomes operational and will remain available for so long as the Project remains authorized.

2) Prior to the execution of the Project Cooperation Agreement, reserve the additional water that will be made available by

implementation of the project and that is necessary for the restoration and preservation of the natural system.

3) After the Project Cooperation Agreement is signed, make such adjustments to any reservation of water for this Project, that later information, science, or analyses shows is necessary for the restoration and preservation of the natural system.

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

5) For so long as the Project remains authorized, notify the Secretary of the Army should any change be made in the reservation of water or other legally enforceable means of protecting water and consult with the Government, so that the Government may verify that the changed reservation or legally enforceable means of protecting water continues to ensure that the appropriate quantity, quality, timing, and distribution of water is dedicated and managed for the restoration and preservation of the natural system. Any change to a reservation of water for this Project shall require an amendment to the Project Cooperation Agreement.

I recommend that Congress provide authority for the Non-Federal Sponsor to receive credit for planning, engineering, design and construction performed by it, or under contract by it, towards the implementation of the Indian River Lagoon South 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 credit for the value of the lands, easements rights-of-way required for the Project shall be as follows:

- a. If the lands, easements and rights-of-way were acquired prior to execution of the project cooperation agreement, the creditable value shall be their purchase price, subject to a determination of reasonableness, together with their reasonable and necessary incidental costs of acquisition.
- b. The value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of the Project Cooperation Agreement executed for this Project shall be the fair market value of such real property interests at the time the interests are acquired.

Consistent with section 601(e)(3)(B) of the Water Resources Development Act of 2000, I recommend that funds provided to the non-Federal sponsor under the Conservation Reserve Enhancement Program (CREP) and the Wetlands Reserve Program (WRP) for the Project shall be credited toward the non-Federal share of the costs of the Project if the Secretary of Agriculture certifies that the

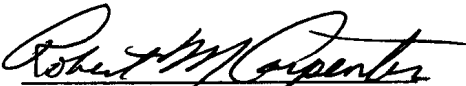
funds provided may be used for that purpose. This recommendation does not include funds provided under section 390 of the Federal Agriculture Improvement and Reform Act of 1996.

Consistent with section 601(e)(3)(B) of the Water Resources Development Act of 2000, I also recommend that for the Natural Storage and Treatment Area components, including the Allapattah, Palmar and Cypress Creek Complexes, the non-Federal sponsor be credited for all construction activities that they complete under the Wetlands Reserve Program, including those completed in advance of executing a Project Cooperation Agreement with the Corps subject to: a) written certification by the Secretary of the U.S. Department of Agriculture that use of the Wetlands Reserve Program funds as credit towards the non-Federal sponsor's share of this project is permitted, b) 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 c) that the restoration activities have been constructed in accordance with applicable federal and state law. It may be necessary for the non-Federal sponsor to initiate construction activities in advance of a Project Cooperation Agreement execution in order to meet the schedule requirements specified in the U.S. Department of Agriculture's policy for the Wetlands Reserve Program. It is in the best interest of the Federal Government for this component to be implemented expeditiously through the Wetlands Reserve Program because of the early benefits to several federally listed threatened and endangered species and the early water quality benefits to the Indian River Lagoon.

The non-Federal sponsor is exploring opportunities to employ alternative project delivery methods to expedite implementation of C-44 Basin reservoir and stormwater treatment area components of the Indian River Lagoon-South Recommended Plan. Such delivery methods may include the formation of a public-private partnership in which the non-Federal sponsor enters into an agreement or agreements with a private entity for the provision of services that may include designing, building, operating and financing these components. Expedited implementation may involve the non-Federal sponsor initiating construction activities prior to executing a Project Cooperation Agreement (PCA). Expedited implementation of the C-44 Basin components is in the best interest of the Federal Government because of the early benefits to the St. Lucie Estuary, the Indian River Lagoon and Lake Okeechobee, potential cost savings and reduced cash flow demands. Therefore, I recommend that the non-Federal sponsor receive credit for all reasonable, necessary, auditable and allocable costs incurred for implementing the C-44 Basin components whether incurred prior to or after executing a Project Cooperation Agreement (PCA) with the Corps, including appropriate costs incurred under a public-private partnership. Credit for such work is subject to the Secretary of the Army determining that the work is necessary and integral to the authorized Indian River Lagoon 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 Indian River Lagoon Project and the Secretary of the Army later determines the work is necessary and integral to the authorized Indian River Lagoon 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.



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