

(c) Nothing in this part shall be interpreted to amend, alter, diminish, or otherwise affect:

(1) The rights, powers and duties provided under the "Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement," dated January 9, 2002 pursuant to section 601(h)(2) of WRDA 2000; or

(2) Any existing legal water rights of the United States, the State of Florida, the Miccosukee Tribe of Indians of Florida, or the Seminole Tribe of Florida, including rights under the compact among the Seminole Tribe of Florida, the State, and the South Florida Water Management District, defining the scope and use of water rights of the Seminole Tribe of Florida, as codified by section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e).

(d) This part is intended to aid the internal management of the implementing agencies and is not intended to create any right or benefit enforceable at law by a party against the implementing agencies or their officers. Nothing in this part shall create a right or expectation to benefits or enhancements, temporary or permanent, in third parties that are not specifically authorized by Congress in section 601 of WRDA 2000.

(e) Nothing in this part is intended to, or shall be interpreted to, reserve or allocate water or to prescribe the process for reserving or allocating water or for water management under Florida law. Nor is this part intended to, nor shall it be interpreted to, prescribe any process of Florida law.

§ 385.3 Definitions.

For the purposes of this part, the following terms are defined:

Adaptive management means the continuous process of seeking a better understanding of the natural system and human environment in the South Florida ecosystem, and seeking continuous refinements in and improvements to the Plan to respond to new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized

changes to the Plan in order to ensure that the goals and purposes of the Plan are fulfilled.

Alternative plan means a plan that consists of a system of structural and/or nonstructural measures, strategies, or programs formulated to achieve, fully or partially, the goals and purposes of the Plan, as further defined in section 1.6.1 of the Water Resources Council's "Economic and Environmental Guidelines for Water and Related Land Resources Implementation Studies," dated March 10, 1983.

Assessment means the process whereby the actual performance of implemented projects is measured and interpreted based on analyses of information obtained from research, monitoring, modeling, or other relevant sources.

Central and Southern Florida (C&SF) Project means the project for Central and Southern Florida authorized under the heading "CENTRAL AND SOUTHERN FLORIDA" in section 203 of the Flood Control Act of 1948 (62 Stat. 1176) and any modification authorized by any other provision of law, including section 601 of WRDA 2000.

Component means features of the Plan that include, but are not limited to, storage reservoirs, aquifer storage and recovery facilities, stormwater treatment areas, water reuse facilities, canals, levees, pumps, water control structures, and seepage management facilities; the removal of canals, levees, pumps, and water control structures; and operational changes.

Comprehensive Everglades Restoration Plan (CERP) means the plan contained in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999, as modified by section 601 of WRDA 2000, and any subsequent modification authorized in law.

Comprehensive Plan Modification Report means the report prepared for approval by Congress of major changes to the Plan that are necessary to ensure that the goals and purposes of the Plan are achieved. The Comprehensive Plan Modification Report describes the formulation and evaluation of alternatives, recommended modifications to the Plan, and other economic, environmental, and engineering information,

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and includes the appropriate NEPA document.

Concurrence means the issuance of a written statement of concurrence or the failure to provide such a written statement within a time frame prescribed by law or this part.

Consultation means a process to ensure meaningful and timely input in the development of program and project activities, reports, manuals, plans, and other documents from Federal, State, and local agencies, the Miccosukee Tribe of Indians of Florida, and the Seminole Tribe of Florida.

Coordination means the formal exchange of information and views, by letter, report, or other prescribed means, between the Corps of Engineers and the non-Federal sponsor and another agency or tribe, including but not limited to, the exchange of information and views regarding the development of Project Implementation Reports, Operating Manuals, and Comprehensive Plan Modification Reports. Coordination activities are required by and in accordance with purposes and procedures established by Federal policy (public law, executive order, agency regulation, memorandum of agreement, and other documents that memorialize policy of the Corps of Engineers).

Cost-effective means the least costly way of attaining a given level of output or performance, consistent with the goals and purposes of the Plan and applicable laws.

Design Agreement means the agreement between the Corps of Engineers and a non-Federal sponsor concerning cost sharing for activities related to planning, engineering, design, and other activities needed to implement the Plan.

Dispute means any disagreement between the agencies or tribes associated with implementation of the Plan that cannot be resolved by the members of a Project Delivery Team or RECOVER and that is elevated to decision makers at the respective agencies or tribes.

District Engineer means the District Engineer of the Corps of Engineers, Jacksonville District.

Division Engineer means the Division Engineer of the Corps of Engineers, South Atlantic Division.

Drought contingency plan means the plan required by §222.5(i)(5) of this chapter and described in implementing Engineer Regulation ER 1110-2-1941 "Drought Contingency Plans," and means a plan contained within an Operating Manual that describes procedures for dealing with drought situations that affect management decisions for operating projects.

Environmental and economic equity means the fair treatment of all persons regardless of race, color, creed, national origin, or economic status, including environmental justice, and the provision of economic opportunities for small business concerns controlled by socially and economically disadvantaged individuals, including individuals with limited English proficiency, in the implementation of the Plan.

Environmental justice means identifying and addressing, disproportionately high and adverse human health or environmental effects of a Federal agency's programs, policies, and activities on minority and low-income populations, in accordance with applicable laws, regulations, and Executive Orders.

Evaluation means the process whereby the performance of plans and designs relative to desired objectives is forecast through predictive modeling and other tools.

Expected performance level means the projected level of benefits to the natural system and human environment described in the Plan.

External peer review means a process to review and validate the scientific and technical processes and information developed for implementation of the Plan that is independent of the agencies involved in the implementation of the Plan.

Goals and purposes of the Plan means the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection.

Governor means the Governor of the State of Florida.

Guidance memorandum means the specific procedure, process, or other guidance specified in §385.5(b) that is developed and approved by the Secretary of the Army with the concurrence of the

Secretary of the Interior and the Governor.

Improved or new flood protection benefits means increased or new levels of service for flood protection that are identified in a Project Implementation Report and approved as a purpose of the project.

Independent scientific review means the process established pursuant to section 601(j) of WRDA 2000 to review the Plan's progress toward achieving the natural system restoration goals of the Plan.

Individual feature of the Plan means a component or group of components of the Plan related to and limited to one specific project of the Plan.

Interim goal is a means by which restoration success of the Plan may be evaluated throughout the implementation process. Interim goals provide a means of tracking restoration performance, as well as a basis for reporting on the progress made at specified intervals of time towards restoration of the South Florida ecosystem, and for periodically evaluating the accuracy of predictions of system responses to the effects of the Plan.

Interim target is a means by which the success of the Plan in providing for other water-related needs of the region, including water supply and flood protection, may be evaluated throughout the implementation process. Interim targets provide a means of tracking Plan performance, as well as a basis for reporting on progress made at specified intervals of time towards providing for other water-related needs of the region, and for periodically evaluating the accuracy of predictions of system responses to the effects of the Plan.

Justified has the same meaning as in section 601(f)(2) of WRDA 2000 which states that the Secretary of the Army, in carrying out any activity to restore, preserve, or protect the South Florida ecosystem, may determine that an activity is justified by the environmental benefits derived by the South Florida ecosystem and no further economic justification for the activity is required, if the Secretary determines that the activity is cost-effective.

Levels of service for flood protection means the expected performance of the Central and Southern Project and

other water management systems in the South Florida ecosystem, consistent with applicable law, for a specific area or region.

Master Implementation Sequencing Plan means the document that describes the sequencing and scheduling for the projects of the Plan.

Mediation means a non-binding dispute resolution process designed to assist the disputing parties to resolve a disagreement. In mediation, the parties mutually select a neutral and impartial third party to facilitate the negotiations.

Monitoring means the systematic process of collecting data designed to show the status, trends, and relationships of elements of the natural system and human environment at specific locations and times.

Natural system means 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; Biscayne National Park; Big Cypress National Preserve; other Federal or State (including a political subdivision of a 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.

Next-added increment means the evaluation of an alternative as the next project to be added to a system of projects already implemented. For the purposes of this part, this means analyzing an alternative as the next project to be added to a system of projects that includes only those projects that have been approved according to general provision of law or specific authorization of Congress and are likely to have been implemented by the time the project being evaluated is completed.

Non-Federal sponsor means a legally constituted public body that has full authority and capability to perform the terms of the Project Cooperation Agreement and the ability to pay damages, if necessary, in the event of failure to perform, pursuant to section 221

of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b).

Operating Manuals means the set of documents that describe how the projects of the Plan and the Central and Southern Florida Project are to be operated to ensure that the goals and purposes of the Plan are achieved. Operating Manuals include the System Operating Manual and Project Operating Manuals. Operating Manuals contain water control plans, regulation schedules, and operating criteria for project and/or system regulations as well as additional information necessary to operate projects to ensure that the goals and purposes of the Plan are achieved.

Optimize means to follow a reasonable and practical process for developing a plan that returns the greatest excess of benefits, both monetary and non-monetary, over costs.

Outreach means activities undertaken to inform the public about the Plan and activities associated with implementation of the Plan, and to involve the public in the decision-making process for implementing the Plan.

Performance measure means an element or component of the natural system or human environment that is expected to be influenced by the Plan that has been selected to be evaluated or monitored as representative of a class of responses to implementation of the Plan and compared with a level of output that is expected and desired during or following the implementation of the Plan.

Periodic CERP update means the evaluation of the Plan that is conducted periodically with new or updated modeling that includes the latest available scientific, technical, and planning information.

Pilot project means a project undertaken to address uncertainties associated with certain components of the Plan such as aquifer storage and recovery, in-ground reservoir technology, seepage management, and wastewater reuse. The purpose of pilot projects is to develop information necessary to better determine the technical feasibility of these components prior to development of a Project Implementation Report.

Pilot Project Design Report means the report that contains the technical information necessary to implement a pilot project.

Pilot Project Technical Data Report means the report that documents the findings and conclusions from the implementation and testing phases of a pilot project.

Plan means the Comprehensive Everglades Restoration Plan contained in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999, as modified by section 601 of WRDA 2000, and any subsequent modification authorized in law.

Plans and specifications means the information required to bid and construct the recommended project described in the Project Implementation Report.

Pre-CERP baseline means the hydrologic conditions in the South Florida ecosystem on the date of enactment of WRDA 2000, as modeled by using a multi-year period of record based on assumptions such as land use, population, water demand, water quality, and assumed operations of the Central and Southern Florida Project.

Program-level activity means those tasks, activities, or products that support more than one project or that are system-wide in scope.

Program Management Plan means the document that describes the activities, tasks, and responsibilities that will be used to produce and deliver the products that comprise a program-level activity.

Project means a component or group of components of the Plan that are implemented together to provide functional benefits towards achieving the goals and purposes of the Plan.

Project Cooperation Agreement (PCA) means the legal agreement between the Department of the Army and a non-Federal sponsor that is executed prior to project construction. The Project Cooperation Agreement describes the financial, legal, and other responsibilities for construction, operation, maintenance, repair, rehabilitation, and replacement of a project.

Project Delivery Team means the inter-agency, interdisciplinary team led by the Corps of Engineers and the

non-Federal sponsor that develops the technical products necessary to implement a project.

Project Implementation Report (PIR) means the report prepared by the Corps of Engineers and the non-Federal sponsor pursuant to section 601(h)(4)(A) of WRDA 2000 and described in section 10.3 of the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999.

Project Management Plan means the document that describes the activities, tasks, and responsibilities that will be used to produce and deliver the products necessary to implement a project.

Project Operating Manual means the manual that describes the operating criteria for a project or group of projects of the Plan. The Project Operating Manual is considered a supplement to the System Operating Manual and presents more detailed information on the operation of a specific project or group of projects.

Public means any individuals, organizations, or non-Federal unit of government that might be affected by or interested in the implementation of the Plan. The public includes regional, State, and local government entities and officials, public and private organizations, including community-based organizations, Native American (Indian) tribes, and individuals.

Quality control plan means the plan prepared in accordance with applicable regulations and policies of the Corps of Engineers that describes the procedures that will be employed to insure compliance with all technical and policy requirements of the Corps of Engineers and the non-Federal sponsor.

Reservation of water for the natural system means the actions taken by the South Florida Water Management District or the Florida Department of Environmental Protection, pursuant to Florida law, to legally reserve water from allocation for consumptive use for the protection of fish and wildlife.

Restoration means the recovery and protection of the South Florida ecosystem so that it once again achieves and sustains those essential hydrological and biological characteristics that defined the undisturbed South Florida ecosystem. As author-

ized by Congress, the restored South Florida ecosystem will be significantly healthier than the current system; however it will not completely replicate the undisturbed South Florida ecosystem.

Restoration Coordination and Verification (RECOVER) means the interagency and interdisciplinary scientific and technical team described in the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement," dated April 1, 1999 and established by the Corps of Engineers and the South Florida Water Management District to: ensure that a system-wide perspective is maintained; ensure the highest quality scientific and technical information is applied throughout the implementation process; and to assess, evaluate, and integrate the projects of the Plan with the overall goal of ensuring that the goals and purposes of the Plan are achieved.

South Florida ecosystem means the area consisting of the land and water within the boundary of the South Florida Water Management District in effect on July 1, 1999, including but not limited to, the Everglades, the Florida Keys, and the contiguous near-shore coastal water of South Florida.

South Florida Ecosystem Restoration Task Force (Task Force) means the task force established pursuant to section 528(f) of WRDA 1996 (110 Stat. 3770).

South Florida Water Management District (SFWMD) means the public body constituted by the State of Florida pursuant to Chapter 373.069 of the Florida Statutes.

State means the State of Florida.

System Operating Manual means the Operating Manual that provides an integrated system-wide framework for operating all of the implemented projects of the Plan and the Central and Southern Florida Project.

System-wide means pertaining to the Central and Southern Florida Project or the South Florida ecosystem, as a whole.

Technical review means the process that confirms that the engineering, economic, environmental, and other aspects of project formulation and design are in accord with appropriate Federal,

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State, and Corps of Engineers established standards and criteria, regulations, laws, codes, principles, and professional procedures that are necessary to ensure a quality product. Technical review also confirms the constructability and effectiveness of the product and the use of clearly justified and valid assumptions and methodologies.

Technical Review Team means the team established by the Corps of Engineers and the non-Federal sponsor to ensure quality control of documents and products produced by the Project Delivery Team through periodic technical reviews of the technical aspects of projects.

Water budget means an account of all water inflows, outflows, and changes in storage over a period of time.

Water dedicated and managed for the natural system means the water to be reserved or allocated for the natural system under State law as identified in a Project Implementation Report.

Water made available means the water expected to be generated pursuant to the implementation of a project of the Plan in accordance with the Project Implementation Report for that project.

Without CERP condition means the conditions predicted (forecast) in the South Florida ecosystem without implementation of any of the projects of the Plan.

WRDA 1996 means the Water Resources Development Act of 1996, Public Law 104-303, which was enacted on October 12, 1996.

WRDA 2000 means the Water Resources Development Act of 2000, Public Law 106-541, which was enacted on December 11, 2000.

§ 385.4 Limitation on applicability of programmatic regulations.

In accordance with section 601(h)(3)(c)(ii) of WRDA 2000, this part expressly prohibits “the requirement for concurrence by the Secretary of the Interior or the Governor on Project Implementation Reports, Project Cooperation Agreements, Operating Manuals for individual projects undertaken in the Plan, and any other documents relating to the development, implementation, and management of indi-

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vidual features of the Plan, unless such concurrence is provided for in other Federal or State laws.”

§ 385.5 Guidance memoranda.

(a) *General.* (1) Technical guidance for internal management of Corps of Engineers personnel during Plan implementation will be normally issued in the form of Engineer Regulations, Circulars, Manuals, or Pamphlets, or other appropriate form of guidance.

(2) Guidance on the following six program-wide subjects shall be promulgated in accordance with paragraphs (b) and (c) of this section:

(i) General format and content of Project Implementation Reports (§ 385.26(a));

(ii) Instructions for formulation and evaluation of alternatives developed for Project Implementation Reports, their cost effectiveness and impacts (§ 385.26(b));

(iii) General content of operating manuals (§ 385.28(a));

(iv) General directions for the conduct of the assessment activities of RECOVER (§ 385.31(b));

(v) Instructions relevant to Project Implementation Reports for identifying the appropriate quantity, timing, and distribution of water to be dedicated and managed for the natural system (§ 385.35(b)); and

(vi) Instructions relevant to Project Implementation Reports for identifying if an elimination or transfer of existing legal sources of water will occur as a result of implementation of the Plan (§ 385.36(b)).

(b) *Special processes for development of six program-wide guidance memoranda.* The Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop the six guidance memoranda described in paragraph (a) of this section for approval by the Secretary of the Army. The Corps of Engineers and the South Florida Water Management District shall also consult