

analyses to determine if existing legal sources of water are to be eliminated or transferred as a result of project implementation. If implementation of the project shall cause an elimination or transfer of existing legal sources of water, then the Project Implementation Report shall include an implementation plan that ensures that such elimination or transfer shall not occur until a new source of water of comparable quantity and quality is available to replace the water to be lost as a result of implementation of the Plan. The Corps of Engineers and the non-Federal sponsor shall determine if implementation of the project will cause an elimination or transfer of existing legal sources of water by comparing the availability of water with the recommended project with the pre-CERP baseline developed in accordance with §385.35(a), by using the water quality and other analyses developed in §385.35(a)(1)(iii), and by using other appropriate information.

(b) The Corps of Engineers and the South Florida Water Management District shall develop a guidance memorandum in accordance with §385.5 for approval by the Secretary of the Army, with the concurrence of the Secretary of the Interior and the Governor, that describes the process for determining if existing legal sources of water are to be eliminated or transferred and for determining how and when a new source of water of comparable quantity and quality as that available on the date of enactment of WRDA 2000 is available to replace the water to be lost as a result of implementation of the Plan. The guidance memorandum shall also describe the process for comparing the recommended project with the pre-CERP baseline to determine if existing legal sources of water are to be transferred or eliminated as a result of project implementation. The guidance memorandum shall include a definition for existing legal sources of water for the purposes of determining if existing legal sources of water are to be eliminated or transferred. Existing legal sources of water shall include those for:

(1) An agricultural or urban water supply;

(2) Allocation or entitlement to the Seminole Indian Tribe of Florida under section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e);

(3) The Miccosukee Tribe of Indians of Florida;

(4) Water supply for Everglades National Park; and

(5) Water supply for fish and wildlife.

(c) Until guidance is issued, issues involving existing legal sources of water should be resolved on a case-by-case basis considering all factors that can be identified as relevant to decisions under the savings clause.

§ 385.37 Flood protection.

(a) *General.* In accordance with section 601 of WRDA 2000, flood protection, consistent with restoration, preservation, and protection of the natural system, is a purpose of the Plan.

(b) *Existing flood protection.* Each Project Implementation Report shall include appropriate analyses, and consider the operational conditions included in the pre-CERP baseline developed pursuant to §385.35(a), to demonstrate that the levels of service for flood protection that:

(1) Were in existence on the date of enactment of section 601 of WRDA 2000; and

(2) Are in accordance with applicable law, will not be reduced by implementation of the project.

(c) *Improved and new flood protection.* The overarching objective of the Plan is 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. As appropriate, the Corps of Engineers and the non-Federal sponsor shall consider opportunities to provide additional flood protection, consistent with restoration of the natural system, and the provisions of section 601(f)(2)(B) of WRDA 2000 and other applicable laws.

§ 385.38 Interim goals.

(a) *Agreement.* (1) The Secretary of the Army, the Secretary of the Interior, and the Governor shall, not later