

Programmatic Regulations

Working Group Meeting

January 14, 2002



**COMPREHENSIVE EVERGLADES
RESTORATION PLAN**

Current Status

- Initial Draft released on December 28
- Meetings scheduled with agencies, tribes, stakeholders, and public to discuss Initial Draft
- Water Resources Advisory Commission meeting January 17-18

Content of Regulations

Establish a Process —

- For development of project implementation reports, project cooperation agreements, and operating manuals that **ensure that goals and objectives of the Plan are achieved**
- To ensure that **new information** from changed or unforeseen circumstances, new scientific or technical information or information developed through adaptive management, or future authorized changes to the Plan are **integrated into the implementation of the Plan**
- To ensure the protection of the natural system consistent with the goals and purposes of the Plan, including the **establishment of interim goals to provide a means to evaluate success of the Plan**

Outline of Initial Draft Regulation

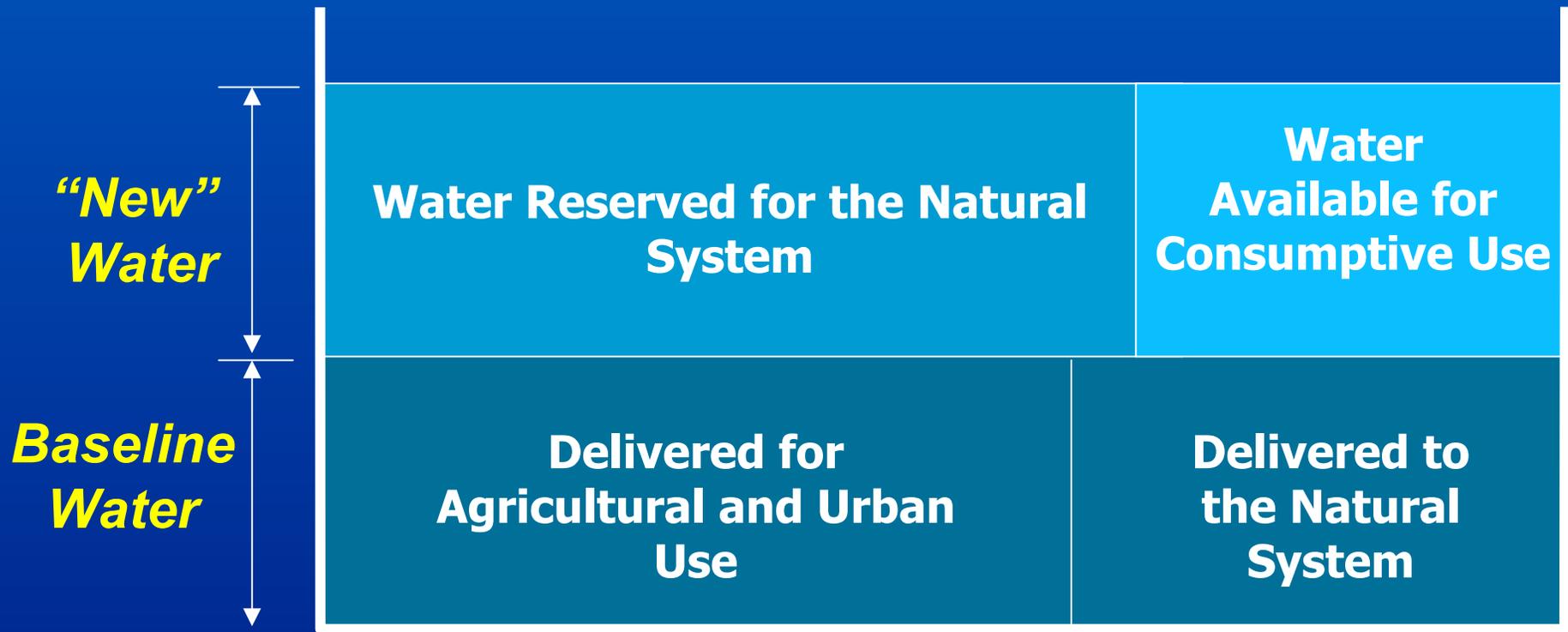
(New Part 385 to Title 33 CFR)

- Preamble
- Purpose and Scope
- CERP Implementation Processes
- Incorporating New Information into the Plan
- Ensuring Protection of the Natural System
Consistent with the Goals and Purposes of the Plan
- Appendix

Project-Specific Assurances

- Project Implementation Reports (PIR)
 - Identify amount of water to be reserved for natural system under state law
- Project Cooperation Agreements (PCA)
 - Can not be executed until reservation identified in PIR is executed under state law
- Operating Manuals
 - Must be consistent with water reservation described in PIR and PCA

Identifying Water Made Available by CERP



Adaptive Assessment Program

- RECOVER to conduct adaptive assessment activities and prepare reports
- If undesirable responses are detected through adaptive assessment:
 - Modify operations
 - Modify the Plan
 - Modify sequence or schedule for implementation

Key Issues

- Amount of detail in regulation
- Interim goals
- Linkage between state reservation process and CERP project development process
- Effect of actual availability of water on reservations

Amount of Detail in Regulation

- Initial draft contains processes necessary to guide CERP implementation
- Initial draft requires protocols to be developed for procedures that are too detailed or technical for regulation
 - Protocols to be jointly developed and adopted by Corps and SFWMD in consultation with others
 - Protocols must be consistent with programmatic regulations, applicable law, and achieving goals and purposes of Plan
 - Opportunities for public comment before adoption or revision of protocols

Protocols Under Development

- Major tasks needed to prepare Project Implementation Reports
- Formulation and evaluation of alternative plans
- Procedures for evaluation of alternative plans from system-wide perspective by RECOVER
- Format and content of Project Implementation Reports
- Content of Operating Manuals
- Adaptive assessment procedures
- Identification of water to be reserved (for preparing Project Implementation Reports)

Interim Goals

- Initial draft describes purpose and use of interim goals
- RECOVER to lead public process for developing recommendations for interim goals
- Interim goals agreement to be signed by Army, DOI, and SFWMD developed through public process
- RECOVER to periodically assess progress towards meeting interim goals
- Interim goals to be used in periodic reports to Congress

Linkage with Water Reservations

- PIR to identify water to be reserved for the natural system
 - Protocol to be developed for identification procedure
 - Reservation to be made under State law
- As part of PCA process, District Engineer to verify reservation has been made as described in PIR
- PCA to include provision that reservation to remain in effect and not be diminished unless Corps agrees to change
- PCA to include provision for compliance with savings clause by Corps and non-Federal sponsor

Baseline Water Availability

- Pre-CERP baseline to be developed
- Each PIR will consider if pre-CERP baseline water for the natural system is still available
- If not –
 - PIR to consider loss of pre-CERP baseline water availability in identifying water to be made available to the natural system by project component
 - PIR may also consider other remedial actions:
 - Whether additional water should be made available by subsequent projects,
 - Whether to recommend preparation of Comprehensive Plan Modification Report
 - Whether to recommend State re-examine reservation needed under State law

Variation from Predicted Water Availability

- Determine if revisions to the Plan are needed
 - If so, prepare Comprehensive Plan Modification Report
- In interim, operate project consistent with Congressionally authorized purposes
 - In absence of specific purposes in Congressional authorization, operate generally in accordance with following priorities:
 - Uses transferred from existing legal sources of water to new source made available (savings clause)
 - “New water” for restoration of the natural system
 - “New water” for other uses of water

Initial Concerns with Initial Draft

- Environmental Interests
 - Lack of restoration standards
 - Protocols are non-binding
 - No deadline for developing protocols
 - Role of DOI
- Utility Interests
 - Need flexibility to adjust reservations
 - Implement reservations after project produces water
 - Provide performance measures for other water-related needs
 - Variations from predicted availability of water should be shared equitably
- Agricultural Interests
 - Role of RECOVER
 - Definition of restoration
 - Lack of timelines for protocols
 - Relationship of regulation to Florida water law

Proposed Revisions to Schedule

- Issue: OMB needs 60 days to review proposed rule and final rule before publishing in Federal Register
- In order to meet December promulgation date:
 - Submit proposed rule to OMB March 1
 - Publish proposed rule May 10
 - Close public comment period July 10
 - Submit final rule to OMB October 1
 - Receive DOI and State concurrence by December 1
 - Publish final rule December 10

What's Next

- Analyze comments received on Initial Draft
- Revise Initial Draft
 - Make improvements based on public comment
 - Ensure consistency with President-Governor Agreement
- Submit proposed rule for OMB review
- Publish proposed rule in Federal Register

**Comprehensive Everglades Restoration
Plan**

Programmatic Regulations

Initial Draft – December 2001



Thank you