

Programmatic Regulations

Task Force Meeting

January 16, 2002





Topics

- *Background*
- *Initial Draft*
- *Key Issues*
- *What's Next*

Assurance of Project Benefits Provisions (Section 601(h) of WRDA 2000)

- ✦ Agreement between President and Governor
- ✦ Programmatic Regulations within 2 years to ensure goals and purposes of Plan are achieved
- ✦ Project Specific Assurances
 - Project Implementation Reports
 - Project Cooperation Agreements
 - Operating Manuals
- ✦ Savings Clause
 - No elimination or transfer of existing legal sources of water
 - Maintenance of flood protection
 - No effect on Seminole Tribal compact

President-Governor Agreement

- ✦ Signed on January 9
- ✦ Agreement provides that water made available by CERP projects will not be permitted or otherwise made unavailable by the State until sufficient reservations are made

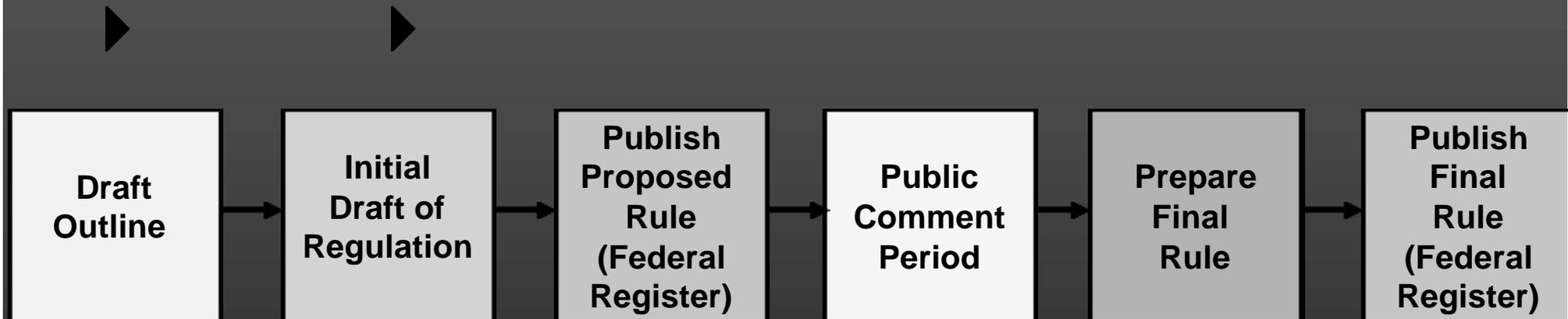


Programmatic Regulations

Section 601(h)(3) requires:

- + ...the Secretary of the Army promulgate programmatic regulations to ensure that the goals and purposes of the Comprehensive Plan are achieved.
- + ...that these regulations be developed within two years of the date of enactment; after notice and opportunity for public comment; with the concurrence of the Governor and the Secretary of the Interior; and in consultation with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other Federal, State, and local agencies.

Programmatic Regulations Development Process



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

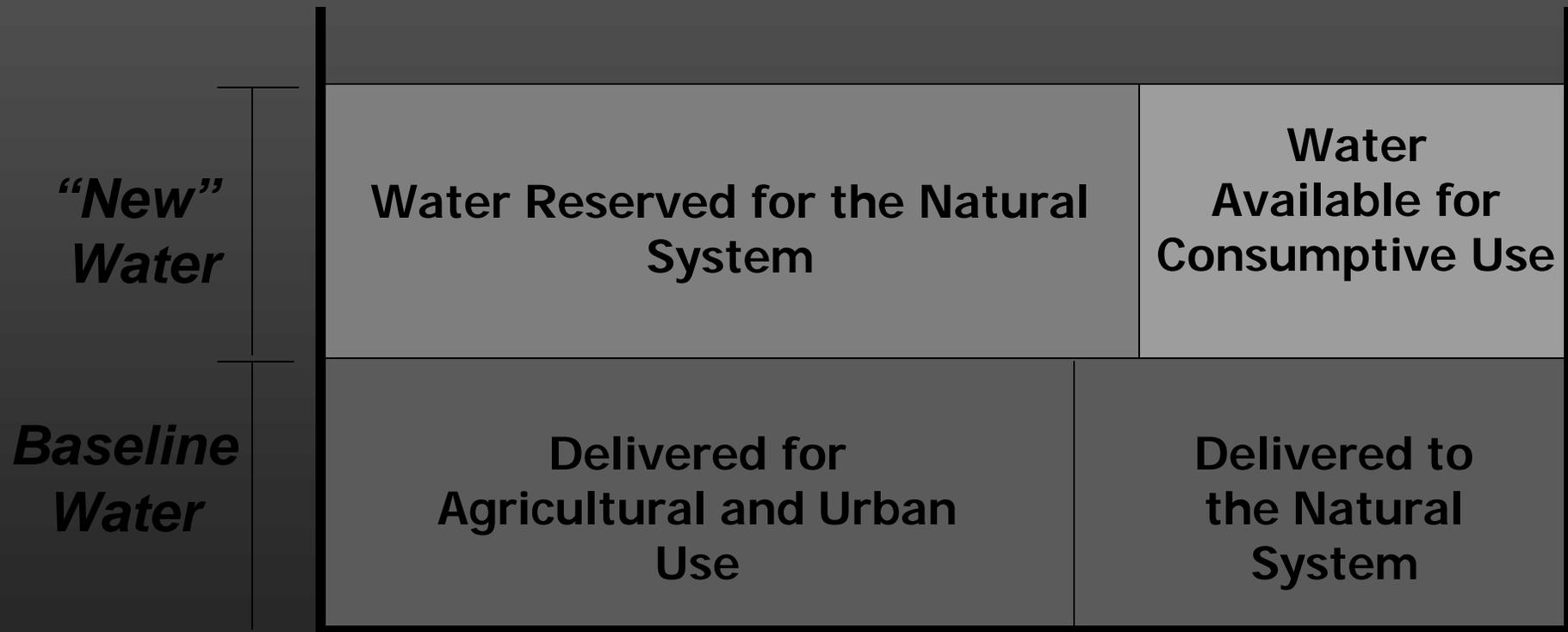
(New Part 385 to Title 33 CFR)

- ✦ 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