



DEPARTMENT OF THE ARMY  
OFFICE OF THE CHIEF OF ENGINEERS  
WASHINGTON, D.C. 20314-1000

MAY 2 2012

CECW-SAD (1105-2-10a)

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project, Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida.

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on ecosystem restoration improvements for Phase I of the Biscayne Bay Coastal Wetlands (BBCW) Project, located in Miami-Dade County, Florida. It is accompanied by the reports of the Jacksonville District Engineer and the South Atlantic Division Engineer. These reports are in response to Section 601 of the Water Resources Development Act (WRDA) of 2000, which authorized the Comprehensive Everglades Restoration Plan (CERP) 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. WRDA 2000 identified specific requirements for implementing components of the CERP, including the development of a decision document known as a Project Implementation Report (PIR). The requirements of a PIR are addressed in this report and are subject to review and approval by the Secretary of the Army. Preconstruction engineering and design activities for this project will be continued under the CERP Design Agreement.
2. The proposed Biscayne Bay Coastal Wetlands project was previously identified in CERP and requires specific authorization under Section 601(d) of WRDA 2000. The original scope of the project has been altered in order to better address restoration goals in the study area and the BBCW project was split into two phases. Phase I is the first step toward meeting restoration goals in the study area. By rehydrating coastal wetlands and reducing damaging point source freshwater discharge to Biscayne Bay, the Phase I Recommended Plan is integral to the health of the south Florida ecosystem. Due to changes in scope and intended restoration area, Phase I of the proposed BBCW project is recommended for specific Congressional authorization consistent with WRDA 2000, Section 601(d). The second phase of the project would consider restoration of freshwater wetlands in the Model Lands/Barnes Sound area, the southernmost portion of the study area. It is expected that the second phase will also seek authorization under Section 601(d).
3. Although cost sharing of the ecosystem restoration features for this project is governed by Section 601 of WRDA 2000, as amended, cost sharing of the recreation features is governed by Section 103 of the WRDA 1986, as amended. In particular, in accordance with Section 103(j) of WRDA 1986, 100 percent of the cost of Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) of the recreation features is the non-Federal sponsor's responsibility. In addition, section 601(e)(5)(B) of WRDA 2000, as amended, governs credit for non-Federal sponsor design and construction work on the ecosystem restoration features of the project, whereas

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)(4)), governs credit for non-Federal sponsor design and construction work on the recreation features of the project.

4. The final PIR and integrated Environmental Impact Statement (EIS) recommends a project that contributes significantly to all of the ecological goals and objectives of the CERP: (1) Increasing the spatial extent of natural areas; (2) improving habitat function and quality; and (3) improving native plant and animal abundance and diversity. In addition, it contributes to the economic values and social well being of the project area by providing recreational opportunities. The historical Everglades ecosystem was previously defined by a mosaic of uplands, freshwater marsh, deepwater sloughs, and estuarine habitats that supported a diverse community of fish and wildlife. Today nearly all aspects of south Florida's flora and fauna have been affected by development, altered hydrology, nutrient input and spread of non-native species that have resulted directly or indirectly from a century of water management for human needs. Significant areas within the project study boundary are characterized by a low-productivity dwarf mangrove forest, known as the "white zone" - due to its appearance on aerial photos - which are caused by salt deposits on the soil surface that are primarily a result of wide seasonal fluctuations in salinity and the absence of freshwater input from upstream sources. The PIR confirms information in the CERP and provides a project-level evaluation of costs and benefits associated with construction and operation of this ecosystem restoration project. The Recommended Plan will improve functional fish and wildlife habitat in Florida Bay and Biscayne Bay. The portion of the Everglades ecosystem directly affected by the BBCW project provides habitat for 21 Federally-listed endangered or threatened species, including the West Indian Manatee, Florida Panther, Cape Sable Seaside Sparrow, and the American Crocodile. Overall, approximately 11,000 acres will benefit from restored overland sheetflow. The South Florida Water Management District (SFWMD), the non-Federal sponsor, has begun land acquisition and construction of the project through its expedited construction program. As such, the BBCW Phase I project can be implemented quickly, substantially advancing the realization of project benefits in an area that has been degraded by past water management practices.

5. The reporting officers recommend a plan for ecosystem restoration and recreation. The Recommended Plan would improve the ecological function of coastal wetlands in Biscayne Bay by redirecting freshwater - currently discharged through man-made canals directly to the Bay - to coastal wetlands adjacent to the Bay. This will provide a more natural and historic flow and restore healthier salinity patterns in Biscayne Bay. Biscayne Bay is located in Miami-Dade County south of the city of Miami on the Atlantic coast and east of the city of Homestead, Florida. The Recommended Plan, Alternative O Phase I, encompasses a footprint of approximately 3,761 acres and includes features in three of the project's four sub-components (hydrologically distinct regions of the study area): Deering Estate, Cutler Wetlands, and L-31 East Flow Way. There are no features in the fourth region, Model Land Basin. A description of the features recommended for the sub-component areas is as follows:

*Deering Estate:* This region is in the northern part of the project area and includes an approximately 500-foot extension of the C-100A Spur Canal through the Power's Addition Parcel (Power's Parcel), construction of a freshwater wetland on the Power's Parcel and delivery of fresh water to Cutler Creek and ultimately to coastal wetlands along Biscayne Bay.

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

*Cutler Wetlands:* Features in this region, which is in the central portion of the project area, include a pump station, a conveyance canal, a spreader canal, culverts and mosquito control ditch plugs. The pump station, located on C-1, will deliver water to a 6,900-foot lined conveyance canal that will run under SW 97th Avenue, SW 87th Avenue (L-31E Levee), and across the L-31E Borrow Canal via concrete box culverts and deliver water to the spreader canal located in the saltwater wetlands. The spreader canal is divided into four segments.

*L-31 East Flow Way:* Features in this region, which is in the southern portion of the project area, will isolate the L-31E Borrow Canal from the major discharge canals (C-102, Military Canal and C-103) and allow freshwater flow through the L-31E Levee to the saltwater wetlands. Gated culverts and inverted siphon structures will isolate the L-31E Borrow Canal from these canals, allowing L-31E Borrow Canal to maintain higher water levels. Two pump stations and a series of culverts will move fresh water directly to the saltwater wetlands east of L-31E. Two more pump stations and a spreader canal will deliver water to the freshwater wetlands south of C-103.

Recreational opportunities are also provided at the site within the project footprint.

*Recreation Features:* The recreation activities proposed include biking/walking trails, environmental interpretation, canoeing/kayaking, bank fishing, tent camping and nature study. Proposed facilities include interpretive signage, shade shelter, handicapped accessible waterless restrooms, handicapped parking, tent platforms, pedestrian bridge, benches, bike rack, trash receptacles, park security gate, trail signage, potable water source and a bird watching platform.

6. The total first cost of the Recommend Plan from the final PIR/EIS, based upon October 2011 (FY12) price levels, is estimated to be \$164,070,000. The total first cost for the ecosystem restoration features is estimated to be \$162,229,000 and the recreation first cost is estimated to be \$1,841,000. The total project cost being sought for authorization is \$192,418,000, which includes all costs for construction; lands, easements, rights-of-way, and relocations; recreation facilities; pre-construction, engineering and design (PED) and construction management costs; and sunk PIR costs (\$28,348,700).

7. In accordance with the cost-sharing requirements of Section 601(e) of the WRDA 2000, as amended, the Federal cost of the Recommended Plan is \$96,209,000 and the non-Federal cost is \$96,209,000. The estimated lands, easements, right-of-way, and relocation (LERRs) costs for the Recommended Plan are \$80,985,000. Based on FY12 price levels, a 40-year period of economic evaluation and a 4.00% discount rate, the equivalent annual cost of the proposed project is estimated to be \$11,126,000, which includes OMRR&R, monitoring, interest during construction and amortization, but not sunk costs. The estimated annual costs for ecosystem restoration OMRR&R, including vegetation management, is \$1,873,000. The total project monitoring cost is estimated to be \$1,917,000 with an average annual cost of \$193,000. The project monitoring period is five years except for endangered species monitoring, which is 10 years. Any costs associated with project monitoring beyond 10 years after completion of construction of the Project (or a component of the Project) shall be a non-Federal responsibility. The annual OMRR&R costs for recreation are estimated at \$25,000.

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

8. As a component of the CERP program, the interagency/interdisciplinary scientific and technical team, formed to ensure that system-wide goals are met, will participate in the annual monitoring to assess system-wide changes. In accordance with Sections 601(e)(4) and 601(e)(5)(D) of WRDA 2000, OMRR&R costs and adaptive assessment and monitoring costs for ecosystem restoration will be shared equally between the Federal Government and the non-Federal sponsor. The Project Monitoring Plan was developed assuming that major, ongoing monitoring programs that are not funded by the Project would continue to supply data relevant to the Project. The Project Monitoring Plan shall not include items that are already required to be monitored by another Federal agency or other entity as part of their regular responsibilities or required by law. Should any of these monitoring programs be discontinued or significantly curtailed, then monitoring priorities and funding options may be re-evaluated to ensure proper Project evaluation. In accordance with Section 103(j) of the WRDA 1986, as amended, OMRR&R costs related to recreation features will be funded 100 percent by the non-Federal sponsor.

9. To ensure that an effective ecosystem restoration plan was recommended, cost effectiveness/incremental cost analysis techniques were used to evaluate alternative restoration plans. These techniques determined the selected alternative plan to be cost-effective and incrementally justified. The hydraulic model and ecological model utilized to estimate the ecological outputs that were used in the economic analysis were both peer-reviewed and certified for use in the project. The plan recommended for implementation is the National Ecosystem Restoration (NER) plan, supports the Incremental Adaptive Restoration principles established by the National Research Council, and was prepared in a collaborative environment. The Recommended Plan provides benefits by: (1) restoring the quantity, timing, and distribution of water delivered to Biscayne Bay; (2) improving hydroperiods and hydropatterns in the project area; and, (3) restoring coastal zone salinities in Biscayne Bay and its tributaries. The project will restore the overland sheetflow in an approximately 11,000-acre area and improve the ecology of Biscayne Bay, including its freshwater and saltwater wetlands, nearshore bay habitat, marine nursery habitat, and the oyster reef community.

10. In accordance with the WRDA 2000 Section 601(f)(2), individual CERP projects may be justified by the environmental benefits derived by the South Florida ecosystem. Similarly, Section 385.9(a) of the CERP Programmatic Regulations (33 CFR Part 385) requires that individual projects shall be formulated, evaluated, and justified based on their ability to contribute to the goals and purposes of the Plan and on their ability to provide benefits that justify costs on a next-added increment (NAI) basis. Due to the project location at the terminus of the Everglades system, the BBCW Phase I project does not depend on any other CERP or non-CERP projects to achieve the estimated ecological benefits. The NAI analysis evaluates the effects, or outputs, of the Recommended Plan as the next project to be added to the group of already approved CERP projects. The results of the NAI analysis showed that as a stand-alone project, the BBCW Recommended Plan nearly doubles the spatial extent of the functional habitat expected to exist in the future without-project condition. The Recommended Plan will produce an average annual increase of 9,276 habitat units at an annual cost of \$11,003,000 for a cost of \$1,186 per habitat unit. Based on these parameters, the BBCW Phase I project is justified by the environmental benefits derived by the South Florida ecosystem. The average annual cost for recreation is \$123,000 and average annual net benefits are \$58,000. The benefit to cost ratio for the proposed recreation features is approximately 2.1 to 1.

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

11. Of the total 3,761 acres identified for the Project, approximately 1,421 acres would be required in fee and approximately 149 acres would require perpetual easement interest. Additionally, approximately 1,254 acres would be provided through the execution of Supplemental Agreements between the SFWMD, the State of Florida and local Miami-Dade County government entities. Approximately 937 acres are currently owned by the United States; National Park Service for Biscayne National Park (BNP) which will provide a Memorandum of Agreement to the SFWMD for the use of these lands.

12. In accordance with the Corps of Engineers' (Corps) Engineering Circular on review of decision documents, all technical, engineering, and scientific work underwent an open, dynamic, and vigorous review process to ensure technical quality. This included Agency Technical Review (ATR), Independent External Peer Review (IEPR), and a Corps Headquarters policy and legal review. All concerns of the ATR have been addressed and incorporated into the final report. The IEPR was managed by Battelle Memorial Institute, a non-profit science and technology organization with experience in establishing and administering peer review panels for the Corps. A total of 19 comments were documented. Overall, the Panel found the BBCW PIR/EIS a well-written document that contained adequate information to interpret plan selection and recommendations. The panel also acknowledged the public involvement and collaborative efforts in the development of the report, and encouraged the Corps to document the usage of recent scientific data in the expansion of the project to include additional restoration opportunities. The comments of high significance included requests to expand the discussion and analysis of the future conditions relating to sea level rise and water availability. In response to these comments, the PIR was modified to include an expanded and more quantitative and graphical discussion of the potential impacts of sea level rise and clarification of the relationship between the water available for diversion and the hydrologic regimes needed to achieve the target level of wetlands area and function. The Final Report and Certification from the IEPR Panel was issued 1 December 2009.

13. The Final PIR/EIS was published for State and Agency Review on 7 January 2012. The majority of the comments received were favorable and in support of the project. In response to comments received from the Florida Department of Environmental Protection (FDEP), the Corps sent a letter in April 2012 that clarified the roles and responsibilities of the Corps and the non-Federal sponsor in addressing residual agricultural chemicals on project lands. The Corps also sent a letter in response to comments from Homestead Air Reserve Base (HARB). HARB requested additional information on the potential for bird strikes to aircraft operating from the airbase and expressed concerns regarding increases in bird populations, and specifically whether predatory birds, most implicated in aircraft strikes, would increase due to the ecological improvements. HARB requested that the Corps further research predator/prey avian relationships. The Corps has done this by soliciting information from avian experts at Everglades National Park, Biscayne Bay National Park, U.S. Fish and Wildlife Service, Audubon Florida, Fish and Wildlife Conservation Commission and the University of Florida, all of whom are familiar with the BBCW Phase I project area, the project objectives and the hydrological modeling predictions. There was agreement amongst resource agencies that there will not be an increase in predatory birds such as raptors and vultures as a result of the restoration. Specifically, wetland rehydration achieved by the BBCW Phase I project and resulting wading bird increase are not likely to serve as an additional attractant to predatory birds beyond the geographic features already serving to guide raptors and other migratory birds along Florida coasts. The Corps Jacksonville District staff met with HARB

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

representatives to discuss their concerns and the Recommended Plan. The Corps sent a response letter to HARB in April 2012 that provided the Corps' analysis and indicated the Corps' willingness to continue to work through the concerns of the airbase. The letter also requested that HARB continue to share information with the Corps in order to realize opportunities to minimize wildlife risks to aviation and human safety, as necessary, while protecting valuable environmental resources.

14. Section 601(e)(5)(B) of WRDA 2000, as amended by Section 6004 of the WRDA 2007, authorizes credit toward the non-Federal share for non-Federal design and construction work completed during the period of design or construction, subject to execution of the design or project partnership agreement and subject to a determination by the Secretary that the work is integral to the project. As part of its initiative for early implementation of certain CERP projects, the non-Federal sponsor has stated that it is constructing several features of Phase I of the BBCW project consistent with the PIR, in advance of Congressional authorization and the signing of a project partnership agreement. As such, a separate EIS has been completed and a Department of the Army permit has been issued to the non-Federal sponsor for expedited construction of this project; construction of the project has already begun by the State of Florida in the Deering Estates and L-31E Flow Way areas of the project. As required by the February 2008 Implementation Guidance for Section 6004 of WRDA 2007 – CERP Work In-Kind Credits, the non-Federal sponsor entered into a Pre-Partnership Credit Agreement for the BBCW project on 13 August 2009. The reporting officers believe that it is in the public interest for this Project to be implemented expeditiously due to the early restoration of Federal lands in Everglades National Park and ecological benefits to the wetlands and estuaries in other portions of the South Florida ecosystem. Therefore, the reporting officers recommend that the non-Federal sponsor be credited for all reasonable, allowable, necessary, auditable, and allocable costs applicable to the Biscayne Bay Coastal Wetlands Phase I Project, as may be authorized by law including those incurred prior to the execution of a project partnership agreement, subject to authorization of the Project by law, a determination by the Assistant Secretary of the Army (Civil Works) or his/her designee that the In-kind work is integral to the authorized CERP Project, that the costs are reasonable, allowable, necessary, auditable, and allocable, and that the In-kind work has been implemented in accordance with government standards and applicable Federal and state laws.

15. The Non-Federal Sponsor and the U.S. Department of the Army entered into an agreement known as the Master Agreement Between the Department of the Army and South Florida Water Management District for Cooperation in Constructing and Operating, Maintaining, Repairing, Replacing and Rehabilitating Projects Authorized to be Undertaken Pursuant to the Comprehensive Everglades Restoration Plan dated 13 August 2009 (hereinafter "Master Agreement"). The Master Agreement sets forth the terms of participation in the construction and OMRR&R of projects under CERP that will apply to any future project for which the non-Federal sponsor and the Government have entered into a PPA. The uniform terms of the Master Agreement will be incorporated by reference into the BBCW Project, Phase I, PPA.

16. Credits for non-Federal design and construction will be evaluated in accordance with the terms of the Master Agreement. All documentation provided by the non-Federal sponsor will be thoroughly reviewed by the Corps to determine reasonable, allowable, necessary, auditable, and allocable costs. Upon completion of this review, a financial audit will be conducted prior to

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

granting final credit. Coordination between Corps and the non-Federal sponsor will occur throughout design and construction via the Corps' Regulatory process. The credit afforded to the non-Federal sponsor will be limited to the lesser of the following: (1) actual costs that are reasonable, allowable, necessary, auditable, and allocable to the Project; or (2) the Corps' estimate of the cost of the work allocable to the Project had the Corps performed the work. The non-Federal sponsor intends to implement this work using its own funds and would not use funds originating from other Federal sources unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute and in accordance with Section 601 (e)(3) of WRDA 2000 as amended and the Master Agreement.

17. Washington level review indicates that the plan recommended by the reporting officers is environmentally justified, technically sound, cost effective, and socially acceptable. The plan conforms to essential elements of the U.S. Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and complies with other administration and legislative policies and guidelines. Also, the views of interested parties, including Federal, State and local agencies, have been considered.

18. The Project complies with the following requirements of the WRDA 2000, as amended:

a. Project Implementation Report (PIR). The requirements of a PIR as defined by Section 601(h)(4)(A).

b. Reservation or Allocation of Water for the Natural System. Sections 601(h)(4)(A)(iii)(IV) and (V) require identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system and the amount of water to be reserved or allocated for the natural system. In accordance with the regulations, an analysis was conducted to identify water dedicated and managed for the natural system. Accordingly, the non-Federal sponsor will protect the water that was identified as necessary to achieve the benefits of the Project, using water reservation or allocation authority under Florida law.

c. Elimination or Transfer of Existing Legal Sources of Water. Section 601(h)(5)(A) states that existing legal sources of water shall not be eliminated or transferred until a new source of water supply of comparable quantity and quality is available to replace the water to be lost as a result of the CERP. An analysis of project effects on existing legal sources of water was conducted and it was determined that implementation of the BBCW Phase I project will not result in a transfer or elimination of existing legal sources of water.

d. Maintenance of Flood Protection. Section 601 (h)(5)(B) states that the Plan shall not reduce levels of service for flood protection that are in existence on the date of enactment of this Act and in accordance with applicable law. Potential flooding effects as a result of the proposed project were analyzed and the results indicated that the proposed project would not have an adverse impact on the level of service for flood protection in the project area.

19. I generally concur with the findings, conclusions, and recommendations of the reporting officers. Accordingly, I recommend that the plan described herein for ecosystem restoration and recreation be authorized for implementation as a Federal Project, with such modifications as in the

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

discretion of the Chief of Engineers may be advisable, and subject to cost-sharing, financing, and other applicable requirements of Section 601 of WRDA 2000, as amended. In addition, I recommend that the non-Federal sponsor be authorized to receive credit for work accomplished prior to execution of a PPA for this Project, in accordance with the terms described in paragraphs 14 and 16 of this report.

Further, this recommendation is subject to the non-Federal sponsor agreeing to comply with all applicable Federal laws and the following items of local cooperation:

- a. Provide 50 percent of total project costs consistent with the provisions of Section 601(e) of the WRDA 2000, as amended, 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 that the Government and the non-Federal sponsor jointly determine to be necessary for the construction and OMRR&R of the Project and valuation will be in accordance with the Master Agreement.
- c. Shall not use the ecosystem restoration features or lands, easements, and rights-of-way required for such features as a wetlands bank or mitigation credit for any other non-CERP projects.
- d. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the non-Federal 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, repairing, replacing, and rehabilitating the Project or completed functional portions of the Project 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. Notwithstanding Section 528(e)(3) of WRDA 1996 (110 Stat. 3770), the non-Federal sponsor shall be responsible for 50 percent of the cost of OMRR&R activities authorized under this section.
- f. The non-Federal sponsor shall operate, maintain, repair, replace and rehabilitate the recreational features of the Project and is responsible for 100 percent of the costs.
- g. Keep the recreation features, and access roads, parking areas, and other associated public use facilities, open and available to all on equal terms.
- h. Unless otherwise provided for in the statutory authorization for this Project, comply with Section 221 of PL 91-611, Flood Control Act of 1970, as amended, and Section 103 of the WRDA of 1986, PL 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,

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the Project or separable element.

i. Hold and save the Government free from all damages arising from the construction, OMRR&R 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.

j. 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 and comply with the provisions of the CERP Master Agreement between the Department of Army and the South Florida Water Management District for Cooperation in Constructing and Operating, Maintaining, Repairing, Replacing, and Rehabilitating Projects Authorized to be Undertaken Pursuant to the Comprehensive Everglades Restoration Plan, executed on 13 August 2009, including Article XI Maintenance of Records and Audit.

k. 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 and operation and maintenance (O&M) 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.

l. 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 necessary for the construction and OMRR&R.

m. As between the Government and the non-Federal sponsor, the non-Federal sponsor shall be considered the operator of the Project for the purposes of CERCLA liability. To the maximum extent practicable, the non-Federal sponsor shall OMRR&R the Project in a manner that will not cause liability to arise under CERCLA.

n. Prevent obstructions of and encroachments on the Project (including prescribing and enforcing regulations to prevent such obstruction or encroachments) which might reduce ecosystem restoration benefits, hinder O&M, or interfere with the Project's proper function, such as any new developments on Project lands or the addition of facilities which would degrade the benefits of the Project.

o. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, PL 91-646, as amended by the title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (PL 100-17), and Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, O&M of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act.

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

- p. Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, PL 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," and all applicable Federal labor standards and requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act [formerly 40 U.S.C. 276a et seq.], the Contract Work Hours and Safety Standards Act [formerly 40 U.S.C. 327 et seq.] and the Copeland Anti-Kickback Act [formerly 40 U.S.C. 276c]).
- q. Comply with Section 106 of the National Historic Preservation Act in completion of all consultation with Florida's State Historic Preservation Office and, as necessary, the Advisory Council on Historic Preservation prior to construction as part of the Pre-construction Engineering and Design phase of the Project.
- r. 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.
- s. Do 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 and in accordance with Section 601(e)(3) of WRDA 2000.
- t. The non-Federal sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs consistent with its statutory authority.
- (1) Not less than once each year the non-Federal sponsor shall inform affected interests of the extent of protection afforded by the Project.
  - (2) The non-Federal sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.
  - (3) The non-Federal sponsor shall comply with Section 402 of WRDA 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to have prepared, within one year after the date of signing a project partnership agreement for the Project, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the Project. As required by Section 402, as amended, the non-Federal interest shall implement such plan not later than one year after completion of construction of the Project. The non-Federal

SUBJECT: Biscayne Bay Coastal Wetlands Phase I Project. Comprehensive Everglades Restoration Plan, Central and Southern Florida Project, Miami-Dade County, Florida

sponsor shall provide an information copy of the plan to the Government upon its preparation.

(4) The non-Federal sponsor shall prescribe and enforce regulations to prevent obstruction of or encroachment on the Project or on the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project, that could reduce the level of protection the Project affords, hinder operation or maintenance of the Project, or interfere with the Project's proper function.

u. The non-Federal sponsor shall execute under State law the reservation or allocation of water for the natural system as identified in the PIR for this authorized CERP Project as required by Sections 601(h)(4)(B)(ii) of WRDA 2000 and the non-Federal Sponsor shall provide information to the Government regarding such execution. In compliance with 33 CFR 385, the District Engineer will verify such reservation or allocation in writing. Any change to such reservation or allocation of water shall require an amendment to the PPA after the District Engineer verifies in writing in compliance with 33 CFR 385 that the revised reservation or allocation continues to provide for an appropriate quantity, timing, and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new information since completion of the PIR for the authorized CERP Project.

20. The recommendation contained herein reflects the information available at this time and current Departmental policies governing formulation of individual projects. It does not reflect program and budgeting priorities in the formulation of a national Civil Works construction program or the perspective of higher review levels within the executive branch. Consequently, the recommendation may be modified before it is transmitted to the Congress as a proposal for authorization and implementation funding.



MERDITH W.B. TEMPLE  
Major General, USA  
Acting Commander