



DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
2600 ARMY PENTAGON
WASHINGTON, DC 20310-2600

DAEN

11 September 2024

SUBJECT: Comprehensive Everglades Restoration Plan, Western Everglades Restoration Project, Florida, Aquatic Ecosystem Restoration

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on aquatic ecosystem restoration recommendations for the Western Everglades Restoration Project (WERP), Florida. It is accompanied by the report of the Jacksonville District Engineer. This study is a response to Section 601(b)(1) of the Water Resources Development Act (WRDA) of 2000, which approved the Comprehensive Everglades Restoration Plan (CERP) as a framework for modifications and operational changes to the Central and Southern Florida (C&SF) project 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 developing 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 (PED) activities for this project will be continued under current authorities, pursuant to the executed CERP Design Agreement.

2. The reporting officers recommend authorizing a plan that will restore the western basin of the Everglades watershed. The Recommended Plan is the National Ecosystem Restoration (NER) Plan. The Recommended Plan includes the following features (a comprehensive list of features is included in the Final WERP PIR and Environmental Impact Statement (EIS)). The shape and size of all features is subject to change during further analysis in PED.

a. In Region 1, the project features reroute water away from the Seminole Big Cypress Reservation (SBCR) and the Miccosukee Tribe of Indians Alligator Alley Reservation. The North Feeder canal plug would stop canal water flow into the two reservations from the North Feeder Canal sub-basin. The water from the North Feeder Canal sub-basin and the North Feeder Canal would go through the new North Feeder - Canal Extension (C-210) and the Inflow Pump Station (S-210) to the new canal C-213S and the non-federal North Feeder Stormwater Treatment Area described in Paragraph 4 of this Report. Water would then go through a new outfall canal (C-212) and new outfall structure (S-214) to the existing L-3 Canal and into Water Conservation Area 3. The proposed structures would interrupt water drainage from the A2 area and Pond 3 within the C-139 Annex. To maintain drainage, a new canal for the A2 area and Pond 3 would connect to the North Feeder Canal Extension. A new embankment along Pond 5 North and

Pond 5 South and the new outfall canal C-212 would provide access for maintenance of the outfall canal. The Pond 5 North pump station and Pond 5 South pump station would be demolished. Of note, rerouted water must travel through the North Feeder Stormwater Treatment Area described in Paragraph 4 of this Report.

b. In Region 2, the features include canal modifications (e.g., full or partial backfilling, shallowing, berms, spreader features, or other features with hydrologic effects described in the PIR) to the Wingate Mill and Lard Can canals, a spreader canal, and culverts under West Boundary Road and Ranch Road. A number of features were used to develop the recommended plan described in the Recommended Plan but will be refined and are likely to change during the Preconstruction Engineering and Design (PED) phase once the canal modifications are better understood with more refined modeling and land surveys. The Recommended Plan includes: Modifications to the southern portion of the Lard Can Canal and a berm along the western side of the modified canal to protect properties east of the canal from additional surface water; a spreader canal westward from the northern end of the modified section of the Lard Can Canal to distribute Lard Can Canal water southward into the West Feeder Canal Subbasin and toward the Wingate Mill Canal filling; an existing small drainage canal to prevent routing water back toward the Lard Can Canal, modifying the eastern portion of the Wingate Mill Canal, and a weir and spreader canal at the western end of the Wingate Mill Canal. These structures would direct the water toward Kissimmee Billie Slough and Big Cypress National Preserve (BCNP) for restoration benefits. South of the recommended canal modification, the Recommended Plan includes one 180 cubic feet per second (cfs) gated culvert in West Boundary Road to control surface water entering Kissimmee Billie Slough and the Seminole Tribe of Florida (STOF) Big Cypress Reservation (SBCR) Native Area and four 50 cfs culverts in Ranch Road to convey water under the road south toward BCNP.

c. In Region 3, the proposed features include an inline weir on the L-281 Interceptor (L-281) Canal approximately 3.5 miles downstream of the S-190 Structure. The weir will extend the entire width of the existing canal (approximately 180-feet), and its purpose is to prevent water level drawdowns in the SBCR. The weir is anticipated to have a crest elevation of approximately 14.5 ft NGVD, and overtopping will continue to send flow south in the L-281 Canal. The L-281 Canal will be plugged approximately 1.5 miles north of Interstate 75 (I-75) to prevent channelized flow from continuing south. This plug will be designed as a levee tie-in to maintain access between the eastern and western levees to the north of the plug. The area north of the plug and south of the weir effectively acts as a retention pond, recharging the groundwater with no surface outlet to the east, west or south. South of the plug and north of I-75, the L-281 Levee will be degraded, and the L-281 Canal will be backfilled, while maintaining the bench of the western levee. The western levee bench is the access between the Looneyville community and I-75. South of I-75, the L-281 Canal backfill, and levee degrade continues and will allow overland flow through the triangle formed by the current levees and canals. On the Miccosukee Tribe of Indians (MTI) Alligator Alley Reservation (MAAR), there will be restoration of a large tree island named McCormack's Landing that was bisected by the construction of the L-281 Canal and Levee. Restoration of McCormack's Landing will utilize the best available science and Indigenous Knowledge (IK) during the PED phase. The L-281 Extension Canal will be

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completely backfilled, and a majority of the levee will be degraded except for a 300-foot segment at its terminus as requested by the MTI. The 300-foot segment of levee to remain will be utilized by the MTI for a Game Check Station that will be constructed outside of the scope of WERP. The L-28 North (L-28N) Canal will be backfilled, and L-28N Levee will be degraded south of I-75 and will terminate at a plug with a levee tie-in south of I-75. The plug with the levee tie-in will allow access from I-75 to an existing ramp within the triangle as requested by the MTI. Vegetation restoration will occur within an approximately 7,500-acre area at the terminus of the L-28I Extension and within an approximately 4,900-acre area to the east of the L-28N downstream of S-140. Specific acreages of these areas are subject to change based on the spread of nuisance vegetation at the time of project implementation.

d. In Region 4, the features include the L-28 Tieback Canal backfill and Levee degrade, the L-28 South (L-28S) Canal Backfill, the L-28S adjustable control structures, conveyance under US-41, 11-Mile Road, and Loop Road, and the US-41 Canal plug. The L-28 Tieback Canal backfill, and levee degrade is located along the entire 2.1-mile extent of the L-28 Tieback. The L-28 South Canal will be backfilled for approximately 9.1 miles from the S-344 structure south to the US-41 Canal. In this segment, the L-28S Levee will remain. Three bidirectional gated culverts will be placed within the L-28S Levee to allow controlled flow westward or eastward. Along with the L-28S gated culverts, the L-28 Canal backfill will allow water to move more easily from Water Conservation Area 3A (WCA-3A) into BCNP, while still providing some level of control over the elevation of the surface water in the area. To provide for flow distribution and overland drainage under the roadways, five culverts are proposed in 11-Mile Road, four culverts are proposed in US-41, and seven culverts are proposed in Loop Road. Conveyance under US-41 will be evaluated in PED for acceptable wildlife friendly crossing designs and for Florida panthers. Panther crossings being considered are intended to offset impacts to panther movement corridors that will be impacted by construction of culverts along US-41 and 11-Mile Road. A plug will be located on the US-41 Canal immediately south of the terminus of the to-be-backfilled L-28S Canal to prevent southeasterly flows along the canal.

3. The South Florida Water Management District (SFWMD) is the non-federal cost sharing sponsor for all features of the project. Based on Fiscal Year (FY) 2024 price levels, the estimated total first cost of the Recommended Plan (from a previous certification) is \$2,074,230,000. The federal share of the Recommended Plan first cost is estimated at \$1,037,115,000 and the non-federal share is estimated at \$1,037,115,000, which equates to 50 percent federal and 50 percent non-federal. The estimated first cost (from a previous certification) of the North Feeder Stormwater Treatment Area (NFSTA), which is not part of the Recommended Plan but is integral to the WERP federal action, is \$998,661,000, resulting in a total estimated first cost of the Recommended Plan and the NFSTA of \$3,072,891,000. As further discussed in paragraph 4 herein, federal financial assistance towards the State's construction of the NFSTA in the amount of \$320,000,000 is recommended. The total project first cost includes the value of lands, easements, rights-of-way, and relocations (LERR) estimated to be \$388,038,000. The SFWMD will receive credit for the value of LERRs toward the non-federal share. Based on the current PIR, the project estimates, required acquisition of real estate interests totaling

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approximately 42,000 acres, which will be further refined and likely changed in PED once the SFWMD water quality related activities in the feeder basins are implemented, and canal modifications are better understood using additional modeling and site-specific land surveys. These interests required to achieve the project benefits would avoid adverse hydrologic impacts to private property through the acquisition of standard fee estates, standard perpetual road easements for construction, operation, and maintenance of certain culverts, standard temporary work area easements for staging and access, standard flowage easements, and conceptually approved non-standard 50-year easements with automatic 50-year renewals over parcels within the SBCR owned by the United States in Trust for the STOF and MTI and Miccosukee Ranches West. Non-standard estates will be required over additional real estate. In total, 14 of 15 non-standard estates requested have been approved in concept. Additional lesser or non-standard estates will require USACE Headquarters approval prior to acquisition.

There are a myriad of ownership types and land conveyance restrictions within the project area and real estate acquisition will utilize the respective standard estates or conceptually approved non-standard estates. Access to this project area is primarily from I-75 and U.S. Hwy-41. Additional access areas will be by public roads and non-federal sponsor owned lands situated within the project area. Other access areas will be identified during PED for this project. Cost sharing is applied in accordance with the provisions of Section 601(e) of WRDA 2000 and Section 103 of WRDA 1986, as amended (33 U.S.C. § 2213), as follows:

a. The additional annual cost of operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) for the Recommended Plan is estimated to be \$3,670,000 (includes the NFSTA). OMRR&R activities include canal/levee maintenance, electronic communication maintenance, exotic/aquatic plant control, and structure and pump station maintenance/refurbishment. The SFWMD will be responsible for 100 percent of the cost of OMRR&R for the NFSTA and for 50 percent of the cost of project OMRR&R for all other features. The SFWMD responsibility for the operation and maintenance of the nonstructural and nonmechanical elements of each restoration site will cease ten years after ecological success has been determined in accordance with Section 2039 of WRDA 2007, as amended (33 U.S.C. § 2330a).

b. The estimated project first cost includes monitoring costs of \$38,524,000 for the 5-year post construction hydrometeorological, water quality, and ecological monitoring. The total project first cost also includes adaptive management options and invasive species management costs of \$119,067,000. Cost shared monitoring will occur for up to 10 years beginning upon completion of each functional portion of the project.

4. The North Feeder Stormwater Treatment Area (NFSTA), as generally described within Appendix A, Engineering Appendix, of the Final WERP Project Implementation Report and Environmental Impact Statement, is located within the C-139 Annex basin and will treat water entering WCA-3A from the North Feeder Canal Subbasin.

The NFSTA would serve as a water quality feature to meet required State of Florida Clean Water Act compliance and is not being recommended as part of the federal project, as its

construction, operation, and maintenance is a State of Florida responsibility. Nevertheless, the NFSTA is integral to the WERP federal action to capture and redistribute water. The NFSTA serves an important role in mitigating disproportionate and adverse environmental impacts experienced by the Miccosukee Tribe of Indians and Seminole Tribe of Florida, as well as restoring the western basin of the Everglades watershed. Therefore, in furtherance of the Federal trust responsibility to the Miccosukee Tribe of Indians and Seminole Tribe of Florida, as well as the overall objective of CERP to restore, preserve, and protect the South Florida ecosystem, it is recommended that the Secretary be authorized, as part of any WERP authorization, to provide \$320,000,000 in financial assistance to the State of Florida for the State's design and construction of the NFSTA. This financial assistance will not be considered a grant. This amount of financial assistance should be adjusted for inflation for the fiscal year(s) funds are provided.

a. With requisite authority and prior to the provision of financial assistance, within six months of authorization the Secretary will begin negotiation of an agreement with the SFWMD providing that: (1) other than the funds provided as financial assistance, all costs for construction, testing, operation, maintenance, and implementation of the NFSTA are a non-federal responsibility, including any and all associated liabilities; (2) the State is required to obtain any permit or approval required in connection with the NFSTA under federal or State law; (3) as a State project, the NFSTA will not be considered a CERP project; and (4) any additional provisions the Secretary determines are necessary and appropriate.

b. The provision of financial assistance will not be construed to interfere with or supersede any State of Florida water quality features implemented, or to be implemented, under any pending or future judicial proceedings or any control programs designed and implemented by the State for watersheds discharging into the Everglades Protection Area. The provision of financial assistance will not be construed to constitute an interference of any kind or to functionally supersede any state water pollution control remedy. Furthermore, the provision of financial assistance does not constitute consent to federal responsibility or liability in a manner that alleviates the State of Florida's responsibilities for remedying water quality violations as set forth in the Federal Consent Decree in United States v. South Florida Water Management District, No. 88-1886-Civ-Hoeveler/Moreno (S.D. Fla.) or under any pending or future judicial proceedings.

5. Based on a 2.75 percent discount rate and a 50-year period of analysis, the equivalent average annual costs of federal and State features are estimated at \$152,000,000. The average annual cost per habitat unit for the restoration is \$2,100, with an average annual cost per acre of \$197.

6. The Recommended Plan includes comprehensive benefits from a variety of perspectives that address national, state, and local concerns. The Everglades ecosystem is the heart of South Florida and sustains the economic and cultural growth of the region. The WERP footprint encompasses approximately 1,200 square miles of unique wetland and upland habitat providing habitat for multiple federally listed species. The project area also includes Reservation lands of the Miccosukee Tribe of Indians and Seminole Tribe of

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Florida, both of which have contributed Indigenous Knowledge (IK) to this study.

The construction of the C&SF Project reduced flood impacts and allowed development and farming in the project area but caused unintended consequences to the ecosystem by cutting off natural flow of water. The CERP was approved in Section 601(b)(1) of WRDA 2000 as a national priority. Restoration of the Western Everglades will contribute to achieving CERP goals and objectives. The purpose of WERP is to improve the quantity, quality, timing, and distribution of water needed to restore and reconnect the western Everglades ecosystem. WERP involves reconnecting significant portions of the landscape to restore sheet flow and ground water flow including potential modifications to the West Feeder Canal, L-28I Canal, L-28 Tieback Canal and L-28N and L-28S Canals. WERP will reestablish sheet flow from the northwest portion of the study area, across the SBCR and into BCNP. Non-federal sponsor led non-WERP projects will achieve West Feeder water quality targets for restoration of Region 2.

7. In November 2021, the Executive Office of the President on behalf of the Office of Science and Technology Policy and the Council on Environmental Quality issued guidance on “Indigenous Traditional Ecological Knowledge and Federal Decision Making.” IK is a body of observations, oral and written knowledge, practices, and beliefs that promote environmental sustainability and the responsible stewardship of natural resources through relationships between humans and environmental systems. It is applied to phenomena across biological, physical, cultural, and spiritual systems. The plan formulation process incorporated IK to ensure that areas of critical cultural significance to Tribal Nations within the project area would benefit from the Recommended Plan based on quantitative scientific calculations as well as qualitative and evidence-based knowledge owned by the Tribes.

In March 2022, the Office of the Assistant Secretary of the Army (Civil Works) issued guidance on “Implementation of Environmental Justice and the Justice40 Initiative.” The WERP study also considered environmental justice (EJ) factors. The Miccosukee Tribe of Indians and Seminole Tribe of Florida Reservation Lands within the study area are considered EJ communities. The overarching EJ considerations in the WERP planning process included aesthetics, physical considerations, cultural and historic resources, economic considerations, health considerations, and cultural practices.

The Miccosukee Tribe of Indians and Seminole Tribe of Florida have Native American-owned lands, reservation/trust lands, culturally sensitive areas and Traditional Cultural Properties identified within the WERP study area. The perspectives, knowledge and needs of both Tribes were an integral part of this study. Tribal coordination was conducted through formal Government to Government consultations, as well as through less formal technical meetings held with Tribal staff and the Project Delivery Team to incorporate social and cultural benefits provided by specific management measures into the planning process. Because the circumstances of WERP are so unique and specific to improving conditions on Reservation lands, the steps taken to consider Environmental Justice (EJ) in WERP planning were significant. The overarching EJ considerations in WERP planning included aesthetics, physical considerations, cultural and historic resources, economic

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considerations, health considerations, and cultural practices. The alternatives were adjusted throughout the plan formulation to incorporate specific needs within these categories. Furthermore, the team coordinated specific project components and operations of structures in the recommended plan to ensure meaningful involvement with respect to EJ.

The Recommended Plan provides an increase of 72,555 average annual habitat units relative to the WERP future without project scenario. These environmental benefits will help improve the quantity, quality, timing, and distribution of flows throughout the Western Everglades flow path.

8. Compliance with required applicable environmental laws and regulations has been completed. The Florida Department of Environmental Protection provided concurrence on the Coastal Zone Management Act (CZMA) consistency determination and a statement that the proposed project would not impact water quality standards of the state in accordance with Section 401 of Clean Water Act. A final CZMA consistency determination and Clean Water Act Section 401 water quality certification will be obtained from the state during PED when detailed designs for project components are available. The Draft PIR/EIS was released for a 45-day public National Environmental Policy Act (NEPA) review on December 15, 2023, and the Corps hosted two public NEPA meetings on January 17 and 18, 2024. Comments received from the 45-day review and NEPA meetings focused on the planning process, regional hydrologic models used (i.e., appropriate scale), specific features to be included in WERP Region 2 (i.e., West Feeder Canal and Lard Can Canal backfills), and proceeding with a project schedule to preserve the opportunity for Congressional authorization in WRDA 2024. Concerns centered on potential impacts to privately owned lands specifically within the West Feeder Basin (i.e., required real estate interests and lack of coordination with landowners), water supply, flood protection, and water quality. Potential impacts (i.e., appropriate water levels) to vegetation communities such as cypress domes and hardwood hammocks, as well as wildlife resources including the Florida panther and the Florida Panther Conservation Bank were also of concern. While offsetting any affected panther habitat as a result of the NFSTA will be a state responsibility, as part of this recommendation and consistent with the U.S. Fish and Wildlife Service's Biological Opinion, an estimated 24,831 panther habitat units from the existing CERP Picayune Strand Restoration Project will be used to offset the direct loss of panther habitat from construction of the NFSTA.

9. In accordance with USACE policy on the review of decision documents, all technical, engineering, and scientific work underwent an open, dynamic, and rigorous review process. The comprehensive review process included District Quality Control Review, Agency Technical Review, Type I Independent External Peer Review, and Headquarters Policy and Legal Compliance review to confirm the planning analyses, alternative design and safety, and the quality of decisions. Washington-level review indicates that the plan recommended by the reporting officers complies with all essential elements of the U.S. Water Resources Council's Economic and Environmental Principles, Requirements, and Guidelines for Water and Land Related Resources Implementation Studies, as well as other administrative and legislative policies and guidelines. The views of interested parties,

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including federal, State, and local agencies, were considered and all comments from public reviews have been addressed and incorporated into the final report documents where appropriate.

10. USACE decision documents recognize cost risk and uncertainty surrounding implementation. All cost estimates will carry a degree of uncertainty. The estimated total project first cost for the Recommended Plan, which does not include the NFSTA, at the 80 percent confidence interval is estimated at \$2,074,230,000. This project carries a degree of uncertainty such that if the main drivers described below are realized, the first cost for the Recommended Plan could increase to approximately \$3,500,000,000.

The Recommended Plan has various construction and non-construction components. These components range from 18 to 20 percent in project definition. The overall recommended plan is at 20 percent design maturity. Based on the recommended project design of the construction components and scope definition of the non- construction components, the total project cost is designated as a Class 3 estimate. The total project first cost for the Recommended Plan, which does not include the NFSTA, includes a contingency value of \$947,981,000, which is approximately 45 percent of the estimated base project cost of \$2,124,910,000. The cost contingencies are intended to cover cost and schedule increases due to the identified project risks and their probability of occurrence. Changes to assumptions or the basis of design can result in additional risks not currently identified.

For the Recommended Plan project first costs, the currently known major uncertainty drivers are the following: 1) sponsor-led non-WERP project requirements regarding West Feeder Canal Subbasin water quality targets (tied to the risk of potential rulemaking efforts being triggered by failure to meet targets) could cause delays or prevent the project from being implemented in Regions 2 and 3; 2) assumptions regarding material balance (self-sufficiency) of NFSTA could be incorrect; 3) unexpected issues during construction may trigger contractor claims; 4) failure to secure necessary funding in a timely manner could impede the project; 5) further refinements to culvert and weir design, including final decisions on "wildlife considerate" design, could cause increases to projected cost and schedule; 6) sponsor-led requirements regarding grow/in and flow through operations for NFSTA could cause delays; 7) site-specific definition for dewatering could impact projected costs; 8) further refinements to canal modification design could change assumptions of effort, which could increase time and cost; 9) variation in major material costs and bid assumptions; 10) ability of the non- federal sponsor to provide their share of funds and obtain all required real estate interests in a timely fashion (the sponsor will not use or request the federal government to use eminent domain without Governing Board approval), as reflected in the project schedule; and 11) any changes to assumptions on productivity, construction sequencing due to funding allocations, and future market conditions can affect overall project cost.

As the project moves into the next phases, USACE will focus risk management and mitigation on the primary cost and other significant risk drivers to the extent within USACE control. However, there still exists the potential for other unanticipated and uncontrollable

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changes in environmental or economic conditions that could further increase the total project first cost beyond the current estimate and/or necessitate changes in the project's design.

11. In full consideration of the risks as documented in the preceding paragraphs in this report, I concur in the findings, conclusions, and recommendation of the reporting officers. Accordingly, I recommend that the Western Everglades Restoration Project be authorized in accordance with the reporting officers' Recommended Plan at an estimated total project first cost for the Recommended Plan, which does not include the NFSTA, of \$2,074,230,000 with such modifications as in the discretion of the Chief of Engineers may be advisable. My recommendation is subject to cost sharing and other applicable requirements of federal laws, regulations, and policies. Implementation of my recommendation for the Secretary to be authorized to provide \$320,000,000, at FY24 price levels, in financial assistance to the State of Florida for the State's construction of the NFSTA will require enactment of express statutory language. In making this recommendation, I have carefully considered the unique aspects of the project. Federal implementation of the Recommended Plan for ecosystem restoration includes, but is not limited to, the following items of local cooperation to be undertaken by the SFWMD in accordance with applicable federal laws, regulations, and policies:

a. Provide 50 percent of total federal project costs consistent with the provisions of Section 601(e) of the Water Resources Development Act (WRDA) of 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 federal government and the SFWMD jointly determine to be necessary for the construction, operation, maintenance, repair, replacement, and rehabilitation of the project and valuation in accordance with the Master Agreement;

c. Ensure that the lands, easements, and rights-of way required for the project shall not be used as a wetlands bank or mitigation credit for any other non-CERP project;

d. Give the federal government a right to enter, at reasonable times and in a reasonable manner, upon land that the SFWMD owns or controls for access to the project for the purpose of inspection, and, if necessary, for the purpose of constructing, completing, operating, maintaining, repairing, replacing, or rehabilitating the project;

e. Assume responsibility for OMRR&R of the project or completed functional portions of the project, including mitigation features, 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. Cost sharing for OMRR&R will be in accordance with Section 601(e) of WRDA 2000, as amended. Notwithstanding Section 528(e)(3) of WRDA 1996 (110 Stat. 3770), the SFWMD shall be responsible for 50 percent of the cost of OMRR&R activities authorized under this section;

f. Operate, maintain, repair, replace and rehabilitate the recreational features of the

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project at 100 percent non-federal expense;

g. Keep the recreation features, 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 the Flood Control Act of 1970, as amended (42 U.S.C. § 1962d-5b), and Section 103 of the WRDA of 1986, (33 U.S.C. § 2213), which provides that the Assistant Secretary of the Army for Civil Works shall not commence the construction of any water resources project or separable element thereof, until the SFWMD has entered into a written agreement to furnish its required cooperation for the project or separable element;

i. Hold and save the federal government free from all damages arising from design, construction, OMRR&R of the project and any project-related betterments, except for damages due to the fault or negligence of the federal government or its 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 in accordance with the Master Agreement between the Department of the Army and the SFWMD dated August 13, 2009, including Article XI Maintenance of Records and Audit;

k. Perform, or cause to be performed, any investigations for hazardous, toxic, or radioactive wastes (HTRW) that are determined necessary to identify the existence and extent of any HTRW regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C §§ 9601-9675) and any other applicable law, that may exist in, on, or under real property interests necessary for the construction, operation, and maintenance of the project; except that the SFWMD shall not perform such investigations on lands, easements, or rights-of-way that the federal government determines to be subject to the navigation servitude without prior written specific direction by the federal government;

l. Agree, as between the federal government and the non-federal sponsor, to be solely responsibility for the performance and costs of cleanup and response of any HTRW regulated under applicable law that are located in, on, or under real property interests that the federal government and SFWMD jointly determine are necessary for construction or OMRR&R, without reimbursement or credit by the federal government;

m. Agree, as between the federal government and the SFWMD, that the SFWMD shall be considered the owner and operator of the project for purposes of CERCLA liability or other applicable law, and to the maximum extent practicable, shall carry out its responsibilities in a manner that will not cause liability to arise under applicable law;

n. Prevent obstruction of or encroachments on the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the outputs produced by the ecosystem restoration features, hinder operation and maintenance of the project, or interfere with the project's proper function;

o. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4630 and § 4655)

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and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, operation, and maintenance of the project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act;

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, Public Law 88-352 (42 U.S.C. § 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation (AR) 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 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 the Florida's State Historic Preservation Officer, and other interested parties including federally recognized Tribes and as necessary, the Advisory Council on Historic Preservation, prior to construction as part of the Preconstruction Engineering and Design phase of the project.

r. Provide 50 percent of that portion of total data recovery activities associated with historic preservation that exceed one percent of the amount authorized to be appropriated for WERP; data recovery costs under one percent of the authorized WERP cost will be funded in its entirety by the Government. Any costs of data recovery that exceed one percent of the amount authorized to be appropriated for WERP shall not be included in project construction costs or project OMRR&R costs (as defined by the Master Agreement); therefore, credit shall not be afforded to the SFWMD for costs or work in kind associated with data recovery activities that exceed one percent of the amount authorized to be appropriated for WERP.

s. Do not use federal funds to meet the SFWMD'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 the WRDA of 2000, as amended, and in accordance with the Master Agreement;

t. Execute, or certify that the Florida Department of Environmental Protection executed, 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 Section 601(h)(4)(B)(ii) of WRDA 2000 and the SFWMD shall provide information to the federal government regarding such execution. In compliance with 33 C.F.R. Part 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 project partnership agreement after the District Engineer verifies in writing in compliance with 33 C.F.R. Part 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

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SUBJECT: Comprehensive Everglades Restoration Plan, Western Everglades Restoration Project, Florida, Aquatic Ecosystem Restoration

CERP project;

u. Consistent with the September 14, 2011, Memorandum from the Assistant Secretary of the Army for Civil Works, the SFWMD shall be 100 percent responsible for the cost of all actions taken due to the presence of residual agricultural chemicals, at no expense to the federal government and any future costs associated with the presence of residual agricultural chemicals at the federal project site are 100 percent a SFWMD cost and responsibility. As stated in the September 14, 2011, memorandum, normal project engineering and construction activities will remain part of the total project cost if these are the same activities required to implement the project features absent the presence of residual agricultural chemicals; and

v. The determination of applicable water quality standards for the water associated with this project and any necessary treatment or remediation of this water shall be made by regulatory agencies with jurisdiction over any laws or regulations that apply to this project.

12. 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 inherent 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. However, prior to transmittal to Congress, the SFWMD, interested federal agencies, and other parties will be advised of any significant modifications and will be afforded an opportunity to comment further.

A handwritten signature in black ink, appearing to read "J. Spellmon".

LTG SCOTT A. SPELLMON
Lieutenant General, USA
Chief of Engineers