

385.36 Elimination or transfer of existing legal sources of water.

385.37 Flood protection.

385.38 Interim goals.

385.39 Evaluating progress towards other water-related needs of the region provided for in the Plan.

385.40 Reports to Congress.

APPENDIX A TO PART 385—ILLUSTRATIONS TO PART 385

AUTHORITY: Section 601, Pub. L. 106-541, 114 Stat. 2680; 10 U.S.C. 3013(g)(3); 33 U.S.C. 1 and 701; and 5 U.S.C. 301.

SOURCE: 68 FR 64220, Nov. 12, 2003, unless otherwise noted.

Subpart A—General Provisions

§ 385.1 Purpose of the programmatic regulations.

(a) The programmatic regulations of this part implement the provisions of section 601(h)(3) of the Water Resources Development Act of 2000, Public Law 106-541, 114 Stat. 2688 (hereinafter “WRDA 2000”), which was enacted on December 11, 2000.

(b) The purpose of the programmatic regulations of this part is to ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan (the Plan) are achieved and to establish the processes necessary for implementing the Plan. Some of these processes are project specific, including, but not limited to, development of Project Implementation Reports, Project Cooperation Agreements, plans and specifications, Pilot Project Technical Data Reports, and Operating Manuals. Other processes are of more general applicability, including, but not limited to, development of program-wide guidance memoranda, interim goals, interim targets, and the Master Implementation Sequencing Plan. Taken together, these processes will ensure that the restoration purposes and other goals of the Plan are achieved. The regulations of this part also describe the relationship among the various entities responsible for implementation of the Plan.

(c) Section 601(h) of WRDA 2000 establishes an integrated framework for assuring that the goals and purposes of the Plan are achieved. This framework includes tools for planning, implementation, and evaluation; a process for developing these tools in an open pub-

lic process, with input from other Federal, State, and local agencies; and an enforcement mechanism to ensure that the requirements of the statute are carried out.

(1) *Tools.* (i) The specific planning tool established by section 601(h) is the Project Implementation Report.

(ii) The specific implementation tools established by section 601(h) are Project Cooperation Agreements and Operating Manuals.

(iii) The specific evaluation tool established by section 601(h) is the interim goals for evaluating the restoration success of the Plan.

(iv) In addition to the specific planning, implementation, and evaluation tools established by section 601(h), the regulations of this part establish additional tools, including but not limited to, Project Management Plans, Program Management Plans, Comprehensive Plan Modification Reports, the Master Implementation Sequencing Plan, and interim targets for evaluating progress towards achieving the other water related needs of the region.

(2) *Processes.* The regulations of this part establish the processes for developing these tools. Consistent with section 601(h), these regulations have been developed, after notice and opportunity for public content, with the concurrence of the Secretary of the Interior and the Governor, 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, the Florida Department of Environmental Protection, and other Federal, State, and local agencies.

(3) *Enforcement mechanism.* The specific enforcement mechanism established by Section 601(h) is the “Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement,” dated January 9, 2002, between the President and the Governor, under which the State shall ensure, by regulation or other appropriate means, that water made available by each project in the Plan shall not be permitted for a consumptive use or otherwise made unavailable by the State until such time as sufficient reservations of water for the restoration of the

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natural system are made under State law in accordance with the project implementation report and consistent with the Plan.

(4) *Public information.* The Secretary of the Army shall ensure that the public understands the linkage between the processes, tools, and enforcement mechanism and can monitor the effectiveness of this integrated framework in assuring that the goals and purposes of the Plan are achieved, as provided for in the regulations of this part, by:

(i) Providing for public notice and comment in the development of planning, implementation, and evaluation tools;

(ii) Providing notice of final action on planning, evaluation, and implementation tools;

(iii) Making available to the public on a web site or by other appropriate means final, and where appropriate draft, copies of all planning, evaluation, and implementation tools; and

(iv) Explaining through the regulations of this part and by other appropriate means the process for developing the tools, the linkage between the process, tools, and enforcement mechanism, and the means by which these elements constitute an integrated framework for assuring that the goals and purposes of the Plan are achieved.

§ 385.2 Applicability of the programmatic regulations.

(a) This part applies to all activities conducted to implement the Comprehensive Everglades Restoration Plan.

(b) As used in this part, the Secretary of the Army acts through the Assistant Secretary of the Army for Civil Works with respect to the Army's civil works program pursuant to 10 U.S.C. 3016.

(c) Nothing in this part shall be interpreted to amend, alter, diminish, or otherwise affect:

(1) The rights, powers and duties provided under the "Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement," dated January 9, 2002 pursuant to section 601(h)(2) of WRDA 2000; or

(2) Any existing legal water rights of the United States, the State of Florida, the Miccosukee Tribe of Indians of

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Florida, or the Seminole Tribe of Florida, including rights under the compact among the Seminole Tribe of Florida, the State, and the South Florida Water Management District, defining the scope and use of water rights of the Seminole Tribe of Florida, as codified by section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e).

(d) This part is intended to aid the internal management of the implementing agencies and is not intended to create any right or benefit enforceable at law by a party against the implementing agencies or their officers. Nothing in this part shall create a right or expectation to benefits or enhancements, temporary or permanent, in third parties that are not specifically authorized by Congress in section 601 of WRDA 2000.

(e) Nothing in this part is intended to, or shall be interpreted to, reserve or allocate water or to prescribe the process for reserving or allocating water or for water management under Florida law. Nor is this part intended to, nor shall it be interpreted to, prescribe any process of Florida law.

§ 385.3 Definitions.

For the purposes of this part, the following terms are defined:

Adaptive management means the continuous process of seeking a better understanding of the natural system and human environment in the South Florida ecosystem, and seeking continuous refinements in and improvements to the Plan to respond to new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized changes to the Plan in order to ensure that the goals and purposes of the Plan are fulfilled.

Alternative plan means a plan that consists of a system of structural and/or nonstructural measures, strategies, or programs formulated to achieve, fully or partially, the goals and purposes of the Plan, as further defined in section 1.6.1 of the Water Resources Council's "Economic and Environmental Guidelines for Water and Related Land