

of the Army, the Department of the Interior, and the State, as well as representatives of other Federal agencies were in attendance to listen to these views. Additionally, the meeting afforded attendees an opportunity to engage directly with each other. This open dialogue was especially useful in developing a thorough understanding of the parties' views.

This final rule was developed after considering all of the information received at the meetings, as well as written comments that were received from agencies, interest groups, and the public.

### III. Discussion of Final Rule

We received approximately 820 comments on the proposed regulations issued on August 2, 2002. Of these comments, approximately 800 were individual or form letters from the public. In general, these letters requested that the proposed regulations be revised to: give the Department of the Interior a greater voice in approving CERP documents and participating in RECOVER; to strengthen the independence of the independent scientific review panel to ensure that its reviews are objective, and to incorporate the interim goals in the final regulations. We also received approximately 25 letters from various types of organizations, members of Congress, Federal, State, and local agencies, the Miccosukee Tribe of Indians of Florida, and the Seminole Tribe of Florida. These letters included detailed comments on the recommendations and specific proposals for revisions in a number of areas.

All of the comments were generally supportive of the effort to issue final regulations. We have carefully considered all of these comments in developing today's final rule. The following paragraphs include a description of the significant issues raised by these comments and a discussion of how these issues were addressed in the final regulations. In reviewing these comments, we sought to reconcile different points of view and to find consensus solutions to common concerns. In a few instances this was not possible because the parties simply held diametrically opposing views. In these instances, our decisions on proposed revisions were guided by our judgment as to what would best fulfill Congressional intent with respect to the goals and purposes of CERP. The final rule remains similar to the proposed rule in organization and structure, but contains the substantive and editorial changes that were made to address the

issues raised by the comments. The Army is confident that these final programmatic regulations provide an excellent framework for the implementation of CERP as envisioned by Congress.

### IV. Discussion of Comments

#### A. Amount of Detail in the Proposed Regulations

A number of commenters shared their views on the appropriate level of detail that should be contained in the regulations. Some commenters believed that the programmatic regulations should be very detailed and directive in terms of specific procedures and outcomes. Others believed that the programmatic regulations should be process-oriented and provide a general framework for implementing CERP. A few of these commenters also expressed concern that the Federal regulations not infringe on the sovereignty of the State of Florida or its right to allocate its water resources. Others sought to ensure that the regulations safeguard the Federal interest and investment in restoration, preservation, and protection of the South Florida ecosystem, including Federal properties within South Florida, such as national parks and wildlife refuges.

The final regulations attempt to recognize these diverse views. We made a number of changes to the proposed rule in order to clarify the procedures and processes specified in the regulations to ensure that the goals and purposes of the Plan are achieved. As in the proposed rule, the final regulations also call for the development of detailed guidance memoranda in the future to specifically address issues of system-wide import. In striking a balance between process and specificity, we strove to address those matters that could be specifically dealt with now while avoiding being so prescriptive that we would lose the flexibility to respond to new technical and scientific information revealed during implementation of the Plan.

#### B. Guidance Memoranda

A number of commenters raised concerns about the guidance memoranda described in the proposed regulations. These concerns varied but, in general, related to either the substantive matters addressed in the guidance memoranda or the process for finalizing the guidance memoranda. Some commenters felt that the concurrence provisions contained in the proposed regulations would delay finalizing the guidance memoranda. Others felt that the concurrence

provisions in the proposed regulations did not give the Secretary of the Interior or the Governor of Florida an appropriate role in approving the guidance memoranda because it appeared that the Secretary of the Army could finalize these documents after giving good faith consideration to comments from the Department of the Interior and the Governor, notwithstanding the fact that either or both officials had concerns about finalizing the regulations.

Some commenters believed that the scheduled completion dates for developing the guidance memoranda were unrealistic and should be changed. Others expressed the view that issues addressed in the guidance memoranda should be covered in the programmatic regulations. In addition, they were concerned that the guidance memoranda did not have the same legal status as the programmatic regulations and thus would not have the same legal import. These commenters stated that if the material intended for inclusion in the guidance memoranda was not included in the final rule then the guidance memoranda should be included in the programmatic regulations at the next revision. Several commenters also believed that the proposed regulations gave an inappropriate role to the South Florida Water Management District in the development of the guidance memoranda. One commenter requested that an additional guidance memorandum be developed to provide a procedure for determining if implementation of a project will cause the elimination or transfer of existing legal sources of water. The Seminole Tribe commented that "existing legal source" of water is a new concept not found in Florida statutes or regulations. The Tribe requested that the programmatic regulations set up a process for defining "existing legal source" of water and addressing how an "existing legal source" of water would be replaced to comply with the savings clause.

The comments reflected a difference of opinion with respect to whether certain issues should be addressed in the guidance memoranda or the programmatic regulations and whether the Department of the Interior and the Governor of Florida should have concurrence over the guidance memoranda, as they do with regard to the programmatic regulations. Some of the commenters believe that the issues that are proposed for discussion in the guidance memoranda should be included in the regulations because they cover processes and matters of system-