

RECOVER's origins trace back to the April 1999 "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement." RECOVER is an interdisciplinary, interagency scientific and technical team that was designed to perform system-wide analyses. In reviewing the comments on the proposed regulations, we felt that some misunderstanding might exist concerning the role of RECOVER. For example, some commenters suggested that RECOVER should be an independent body because independent science plays an important role in implementing the Plan. While RECOVER is a science-based group because many of its members possess scientific expertise, it is not an independent agency. It is an interagency group consisting of members from governmental entities. The role of RECOVER is to promote an integrated view within the implementing agencies on matters relevant to the implementation of the Plan in order to ensure that the goals and purposes of the Plan are achieved. Independent scientific research will be used to gain perspectives on these issues from outside parties and will be provided by entities other than RECOVER.

The final regulations recognize that RECOVER is an existing, presently functioning interagency team. The final regulations are consistent with the description of RECOVER in the Plan and envision that RECOVER will play an important role in ensuring that a system-wide perspective is applied and that the best available scientific and technical information is used during the development, implementation, and evaluation of the Plan. The final regulations address a number of issues. They recognize that the Corps of Engineers and the South Florida Water Management District will oversee the activities of RECOVER. The final regulations also identify the members of the RECOVER Leadership Group, which includes the program managers from the Corps of Engineers and the South Florida Water Management District, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, the U.S. Geological Survey, Everglades National Park, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Agriculture and Consumer Services, the Florida Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission. The diverse membership of the Leadership Group assures that the views of Federal

agencies, State agencies, and Tribes are appropriately represented. The final regulations outline a series of specific scientific and technical duties RECOVER will perform to assist the Corps of Engineers and the non-Federal sponsors in achieving the goals and purposes of the Plan, particularly restoration of the natural system. We have grouped these duties under the three major missions of RECOVER—assessment, evaluation, and planning/integration activities.

Again, the final regulations indicate that RECOVER is an interagency, interdisciplinary, scientific and technical team. The regulations state that the documents prepared by RECOVER are to be provided to the Corps of Engineers and the South Florida Water Management District for consideration as they carry out their responsibilities in implementing the Plan. The regulations specify that the Corps of Engineers and the SFWMD will consult with other Federal agencies, state agencies, local agencies and Tribes, as they consider the information that is provided by RECOVER.

Several commenters expressed the view that RECOVER is an advisory body that is subject to the Federal Advisory Committee Act (FACA). We concluded that FACA does not apply to RECOVER. FACA contains an exception for meetings "held exclusively between Federal officials and elected officers of State, local, and tribal governments," where those meetings "are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration." Unfunded Mandates Act, Public Law 104-4, 109 Stat. 48, 65 (1995), 2 U.S.C. 1501, 1534 et seq. RECOVER's meetings and activities fall within this exception. Another commenter noted that FACA does not apply to the South Florida Ecosystem Restoration Task Force, pursuant to WRDA 1996 and proposed that RECOVER be made an advisory committee to the South Florida Ecosystem Restoration Task Force to avoid the application of FACA. Because we have determined FACA does not apply to RECOVER's meetings and activities, we do not believe this action is necessary.

H. Reservation or Allocation of Water for the Natural System

The provisions in the proposed regulations concerning the reservation or allocation of water for the natural system were of interest to a number of

parties. A brief discussion of the legislative foundation of these provisions proves helpful in understanding these comments.

The Plan authorized in WRDA 2000 is a framework plan designed to improve the distribution of water to the South Florida ecosystem. In accordance with section 601(f) of WRDA 2000, the Secretary of the Army, in coordination with the non-Federal sponsor, must prepare a Project Implementation Report before proceeding with an individual project that is included in the Plan. Section 601(h)(4)(A) of WRDA 2000 states that the Project Implementation Report must, among other items, identify the amount of water to be reserved or allocated for the natural system in order to provide for the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system, and comply with applicable water quality and permitting standards. Section 601(h)(4)(B)(2) of WRDA 2000 specifies that the reservation or allocation of water for the natural system will be implemented under State law and must be made before the Department of the Army can execute a Project Cooperation Agreement for a project.

Several commenters expressed concern about the process for verifying that a reservation or allocation of water for the natural system has been made under State law. One commenter believed that the regulations should clarify the process for determining reservations by establishing a restoration target of water to be reserved or established for each area of the ecosystem. Another commenter requested that the Corps of Engineers develop procedures for verifying that the reservation or allocation of water identified in the Project Implementation Report has been executed under State law. Two commenters believed that the requirement to amend the Project Cooperation Agreement (PCA) whenever the State revises the reservation limits the State's discretion to make appropriate reservations under State law. These commenters also believe that the requirement to revise the PCA is unnecessary as the State is required to make reservations that are consistent with the requirements of the President-Governor agreement of January 9, 2002, and that agreement is specifically enforceable in court. Both the State of Florida and the South Florida Water Management District expressed the view that in enacting WRDA 2000, Congress had not preempted State water law and that the programmatic regulations should not impede or interfere with Florida water law. Several commenters