

were concerned that under the proposed regulations, changes to reservations or allocations of water could be made without the same congressional and public involvement that occurred for the initial reservation. Several Senators, while recognizing that reservations may need to be revised, expressed the view that because Congress approves projects based on a quantification of water, it also has a responsibility to ensure that when any change to a reservation of water occurs, that the Project Cooperation Agreement be changed to account for de minimus changes or changes consistent with the purposes of the Plan, or that the change be authorized by Congress.

Many commenters observed that the proposed regulations did not address the possibility that the actual performance of a project or project component might not meet the performance expected in the Project Implementation Report (PIR). As explained, WRDA 2000 requires that the Secretary not execute a Project Cooperation Agreement until a reservation or allocation of water for the natural system has been executed under State law. This raises the potential for problems under the provisions in WRDA 2000 that require sufficient reservations of water for the restoration of the natural system to be made under State law in accordance with the PIR for that project and provisions in the savings clause of WRDA 2000 that prohibit the elimination or transfer of existing legal sources of water. The problem arises if the actual performance of a project does not meet the projections of the water to be produced by the project or component laid out in the PIR. This led us to conclude that the final regulations must contain a discussion of what actions should be taken if a project or component does not perform as expected. This issue arises because the performance of a project or component will impact the reservation of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system, and whether a new source of water supply of comparable quantity and quality has been provided to replace an existing legal source, as required by the savings clause. The amount of water identified in the PIR is only a projection and the actual amount of water produced by a project will only be known when the project has been operated. The proposed regulations also were designed not to interfere in the State reservation process while providing, consistent with Congressional intent, that the reservation remain consistent with the

agreements reached between the State and Federal government in the Project Cooperation Agreement.

The proposed regulations recognized that reservations or allocations of water are a State responsibility. We attempted to ensure that the purpose of CERP reservations were met in the final regulations by requiring that the Project Cooperation Agreement include a finding that the required reservation has been made before execution of a Project Cooperation Agreement and by providing that the parties execute an amendment to the agreement if there is a change in the reservations. The final regulations also specify that "State law" includes reservations or allocations of water made by the South Florida Water Management District or the Florida Department of Environmental Protection under authority of Florida law. The intent was to preserve the State's control over its reservation and allocation process while also protecting the Federal interest in proceeding with the project only if adequate water had been reserved for the natural system.

In order to clarify our process and provide further assurances to concerned parties, the final regulations include provisions which state that prior to the execution of the Project Cooperation Agreement, the District Engineer will verify that the initial reservation has been made by the State, and that the District Engineer's verification will be referred to in the Project Cooperation Agreement and made available to the public. This provision is consistent with the right of third parties to enforce the reservation provisions of the President-Governor agreement of January 9, 2002. The final regulations retain the provision in the proposed regulations that reservations or allocations of water are a State responsibility and that any change to the reservation or allocation of water for the natural system made under State law will require an amendment to the Project Cooperation Agreement. The final regulations also retain the provision in the proposed regulations that the District Engineer will, in consultation with other agencies and the Tribes, make a determination, after considering any changed circumstances or new information since completion of the PIR, 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 and satisfies the requirements of the project-specific assurances of CERP.

The final regulations also provide that the Secretary of the Army will notify the appropriate committees of Congress if a change in reservation is made after

approval of the PIR. The Secretary's and the State's reasons for changing the reservation and information about any new or changed circumstances will also be provided to Congress. This provision will assist Congressional oversight of any project, and its oversight of the integrity of the reservation process.

We feel that these measures provide adequate assurances that the requirements of WRDA 2000 will be followed while not infringing upon the authority of the State of Florida. The open process also ensures both government and public oversight.

I. Interim Goals

Many comments focused on development of the interim goals. As background, section 601(h)(3)(c)(i)(III) of WRDA 2000 requires that the "Programmatic regulations * * * establish a process * * * to ensure the protection of the natural system consistent with the goals and purposes of the Plan, including the establishment of interim goals to provide a means by which the restoration success of the Plan may be evaluated throughout the implementation process." Interim goals provide a means of tracking restoration performance and for periodically evaluating the accuracy of predictions of system responses to the effects of the Plan. Progress towards meeting the interim goals is to be reported to Congress as part of the periodic reports required by WRDA 2000.

There was universal agreement among agencies, tribes, interest groups, and the public that interim goals will be useful for measuring the restoration success of the Plan; however, there was disagreement about whether the interim goals should be included in the final programmatic regulations. Some commenters believed that WRDA 2000 required that the interim goals be included in the programmatic regulations. In contrast, other commenters maintained that WRDA 2000 merely required that the regulations develop "a process" for establishing interim goals, and did not require that the goals themselves be in the regulations. Other commenters expressed views that did not relate to statutory considerations. Some of these commenters believed that it was important to include the interim goals in the programmatic regulations to give them appropriate visibility and to ensure that the interim goals are actually met. These commenters also believed that including the interim goals in the regulations would have the additional benefit of enabling the public to take part in the process of establishing the goals. Another group of