

commenters realized that we could not include the interim goals in the regulations now but urged that they be made a part of the regulations at a later time. In this regard, five Senators wrote: "We understand that the interim goals will not be ready to include in the regulations before they are finalized, but we urge the Corps to include these goals when they are established rather than relegating them to guidance documents." Two Congressmen commented that the final rule should provide for "adoption of interim restoration goals once the programmatic regulations are completed."

Other comments maintained that interim goals should not be included in the programmatic regulations. Some pointed out that the Plan incorporates adaptive management, continuously assessing and adapting to new information and circumstances. They believe that incorporating fixed goals into regulations is inconsistent with adaptive management. Some commenters maintain that the rulemaking process is structured and cumbersome and that it is impractical to establish and amend interim goals through such a time-consuming process. These commenters believe that placing the interim goals in the programmatic regulations would delay the process of adopting and amending the goals, which is inconsistent with the concept of adaptive management. Other commenters were also concerned with delays but their concerns relate to identifying the interim goals in an Interim Goals Agreement independent of the regulations and making this agreement subject to the concurrence of the Secretary of the Interior and the Governor. These commenters maintain that the statute only grants the Secretary of the Interior and the Governor a concurrence right in the programmatic regulations and extending this right to the Interim Goals Agreement will simply cause delays.

In reviewing the comments, it was apparent that there was significant disagreement on exactly what the interim goals should be. One commenter observed that the interim goals should not include ecological goals as that could subvert the hydrological basis for the Plan. Most commenters who maintained that interim goals must be included in the regulations did not give examples or provide descriptions of the interim goals. Even those who thought that interim goals should be included in the final regulations recognized that additional time was required to perform more modeling related to the interim goals. These commenters understood the importance of modeling in

establishing interim goals that are an effective measure of the Plan's progress toward restoration. A number of commenters, including the Miccosukee Tribe of Indians of Florida, expressed a desire to review and comment on the interim goals before they are set forth in the Interim Goals Agreement.

As a threshold matter, we think it is important to acknowledge the significance of the interim goals. The interim goals provide the yardstick that will measure the success of the restoration effort. It will not be possible to fairly measure the success or failure of the Plan without appropriate interim goals. The final regulations establish principles that will guide the development of the interim goals and the execution of the Interim Goals Agreement discussed in § 385.38(a). These principles will appropriately involve Tribes, governmental interests and the public in the process. The regulations do not contain the specific interim goals because more time is needed to model them to satisfaction; therefore, the final regulations retain the concept of establishing the interim goals in an Interim Goals Agreement. The regulations provide that the public will have the opportunity to review and comment on the Interim Goals Agreement before the agreement is finalized. The regulation also makes clear that interim goals are targets for use by the agencies and Congress in evaluating the success of the restoration effort. They are not standards or schedules enforceable in court. The final regulations provide for the development and use of interim goals that include water quality and ecological indicators in addition to indicators characteristic of anticipated hydrological performance. These indicators will be helpful in making meaningful judgments about the performance of the Plan.

In order to address the concern that interim goals be given appropriate visibility, and to clarify the relationship between the interim goals and the programmatic regulations, the final regulations also contain a new section, 385.1(c), that clarifies our interpretation of the statutory assurances provided for in section 601(h) of WRDA 2000 and how the processes, tools and enforcement mechanism established in this section of the Act constitute an integrated framework for assuring that the goals and purposes of the Plan are achieved. The section clarifies that the programmatic regulations provide a process for developing tools, including Project Implementation Reports, Project Cooperation Agreements, Operating Manuals, interim goals, and other tools

established in the regulations, which are used to guide the planning implementation and evaluation of the project. Section 601(h) also provides an enforcement mechanism, the Agreement between the President and the Governor, under which the State is to 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 natural system are made under State law in accordance with the project implementation report and consistent with the Plan. The President and the Governor signed this Agreement on January 9, 2002.

The new § 385.1(c) further directs the Secretary of the Army to ensure that the public understands the linkage between the process, 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 programmatic regulations, by providing for public notice and comment in the development of the tools; providing notice of final action on tools; making available on the world-wide web or by other appropriate means final, and where appropriate draft, copies of all tools; and explaining through these regulations 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.

The Restoration Coordination and Verification (RECOVER) team will use the principles set forth in the proposed regulations to develop and recommend by no later than six months after the effective date of the programmatic regulations, a set of interim goals for implementation of the Plan. This date was set in recognition of the completion dates for the pre-CERP baseline and the Master Implementation Sequencing Plan. RECOVER has already begun work in order to meet the deadline.

The final regulations specify that the interim goals will identify improvements in quantity, timing, and distribution of water in five-year increments that begin in 2005, with the goals reflecting the results expected to be achieved by 2010 and for each five-year increment thereafter. As stated, the interim goals also will include indicators for water quality improvement and ecological responses,