

regulation to include a definition for urban water supply. We have not included a definition of urban water supply because we believe that such a definition should be more appropriately developed with the definition of existing legal sources of water that will be defined in the required guidance memorandum.

U. Flood Protection

The WRDA 2000 provisions concerning the maintenance of flood protection were of interest to several commenters. Section 601(h)(5)(B) of WRDA 2000 contains a savings clause provision that is designed to ensure that levels of service for flood protection are not reduced by implementation of a project. This provision specifically states "implementation of the Plan shall not reduce levels of service for flood protection that are "(i) in existence on the date of enactment of this Act; and (ii) in accordance with applicable law."

The report of the Senate Committee on Environment and Public Works on WRDA 2000 (Senate Report No. 106–362) describes the intent of the flood protection savings clause as follows:

With respect to flood control, the committee intends that implementation of the Plan will not result in significant adverse impact to any person with an existing, legally recognized right to a level of protection against flooding. The committee does not intend that, consistent with benefits included in the Plan, this bill create any new rights to a level of protection against flooding that is not currently recognized under applicable Federal or State law.

Several commenters felt that the final regulations should contain additional guidance on how to interpret the provisions providing for the maintenance of flood protection. One commenter believed that the savings clause provisions for flood protection also should be extended to the natural system and should be interpreted to prevent the transfer of excessive water to the natural system. This commenter also felt that the final regulations should define the term "in accordance with applicable law." Some commenters questioned how the Plan would address opportunities for increased levels of flood protection or the provision of flood protection in locations where there currently is no flood protection. These commenters felt that the regulation should specify that during the implementation of the Plan, the Project Delivery Teams will consider opportunities for providing additional flood protection.

We have concluded that the existing levels of service for flood protection for a particular area should be determined

on a project-by-project basis. Accordingly, the final regulations specify that Project Implementation Reports will include an appropriate analysis and consider the operational conditions included in the pre-CERP baseline to demonstrate that the levels of service for flood protection that were in existence on the date of enactment of WRDA 2000 and is in accordance with applicable law will not be reduced by the project. The Project Implementation Report process provides numerous opportunities for the Project Delivery Team, the public, and the South Florida Ecosystem Restoration Task Force, to examine the levels of service of flood protection provided by previous projects and any law applicable to the specific area affected by the Project Implementation Report. Finally, the regulations acknowledge that the overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. Accordingly, the final regulations provide for the evaluation of additional flood protection, provided that such flood protection is consistent with the other goals and purposes of the Plan.

V. NEPA Compliance

The Council on Environmental Quality regulations that implement the National Environmental Policy Act (NEPA) (40 CFR 1505.1 and 1507.3), specify that agencies must issue regulations identifying typical classes of actions that normally require environmental impact statements, that normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions), or that normally require environmental assessments but not necessarily environmental impact statements. The Corps of Engineers has adopted procedures fulfilling this requirement in 33 CFR 230. The final regulations consider the actions needed to implement the Plan on a system-wide basis and apply the principles of 33 CFR 230 to those actions to ensure that the provisions of NEPA are fulfilled. The regulations identify certain actions that generally require preparation of a NEPA document (either an Environmental Impact Statement or an environmental assessment) or that do not require the preparation of a NEPA document because they are subject to a categorical exclusion under NEPA.

The final regulations envision that ordinarily the NEPA documentation for a particular project will accompany the Project Implementation Report. For this

reason, other project-specific documents such as the Project Cooperation Agreement, Project Management Plan, and plans and specifications for the project are listed as categorically excluded from NEPA documentation requirements. It is important to note that identifying a document as being categorically excluded from NEPA does not mean that the environmental effects of the action covered by that document will not be analyzed as required under NEPA. The Corps of Engineers will fully analyze and consider these effects at an appropriate time as required by NEPA. This analysis will be accomplished at the time the Corps of Engineers develops its specific project proposal in the Project Implementation Report. This process accords with NEPA's provisions on timing (40 CFR 1502.5 and 1508.23) and its admonishment to avoid duplication (§ 1500.4) and improper segmentation of Federal actions (§ 1502.4).

Some commenters expressed the view that the guidance memorandum for determining the quantity, timing and distribution of water dedicated and managed for the natural system in a Project Implementation Report (PIR) should be analyzed in an Environmental Impact Statement (EIS). Since the guidance memorandum is procedural and does not affect the environment, recommend legislation, or determine a specific quantity, timing, or distribution of water for a specific component, it is not considered a "major Federal action" under NEPA. As noted, the specific project proposal, which is governed by the guidance memorandum, will be subject to a full NEPA analysis in the Project Implementation Report.

Similar comments were directed at the interim goals. Some commenters felt that the interim goals were not "major Federal actions" affecting the environment under NEPA. These commenters regarded the interim goals as evaluation and reporting tools. Other commenters maintained that the interim goals are planning goals and that as such should be subject to a full NEPA analysis. We have determined that the interim goals and interim targets do not require separate NEPA analysis. Interim goals are means by which the restoration success of the Plan may be evaluated; interim targets are means by which progress towards other water-related needs of the region may be evaluated. The Plan itself has undergone NEPA analysis. Future decisions about the environment that involve interim goals and interim targets will be analyzed in other NEPA documents. Projects implementing the Plan will be analyzed under NEPA in Project