Governmental Laws, Rules and Policies, Are They Keeping Up With Restoration Objectives?

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Presentation Overview

- Background
- Federal Rules and Policies
- WRDA 2000, Assumptions vs. Reality
- CERP Planning Process Impediments
- Local Government Impediments
- Recommendations To Achieve Environmental Sustainability
- Summary
Comprehensive Everglades Restoration Plan (CERP)

- On July 1, 1999, the Secretary of the Army and the State of Florida presented the Plan to Congress.


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Project Cost Sharing

50% Federal 50% State

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Comprehensive Everglades Restoration Plan

Includes 68 components to be implemented over 35 years
CERP Goal

Pre-drainage Flow

Current Flow

Restored Flow

Legend:
- Natural Areas
- Water Flows
- Pre-drainage Boundary
WRDA 2000 Planning Constraints

- Protect existing levels of service of flood protection
- Protect existing legal sources of water
- Identify quantity, timing, and distribution of water made available
- Reserve water made available for the natural system prior to authorization
- Water made available by CERP projects will not be made unavailable in future
- Operations plan consistent with the above
Federal Rule/Policy Constraints

- National Environmental Policy Act (NEPA)
- Endangered Species Act (ESA)
- Fish and Wildlife Coordination Act
- Clean Water Act
- Migratory Bird Species Act (MBSA)
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Anti-Deficiency Act (fiscal accountability)
- Federal Advisory Committee Act (FACA)
- Water Resources Principles and Guidelines
- Corps Planning Regulations
1999 Assumption:
- Planning process would be streamlined to focus on expedient implementation and completed within 1.5 to 3 years

2012 Reality:
- Planning process has not been streamlined and Project Implementation Reports have taken from 3 to 10 years for completion
Assumption vs. Reality
Project Construction

1999 Assumption:
- Over 60% of the 68 CERP components would be under construction, and 30% would be completed, by the end of FY2012

2012 Reality:
- < 3% of projects Federally funded for construction through FY2012
  - Picayune Strand and Indian River Lagoon South (Phase 1)
  - Site 1 Levee, stimulus money
- 3 projects authorized - 0 projects completed
Assumption vs. Reality
Water Resources Development Acts

1999 Assumption:
- WRDAs would be enacted every two years to allow authorization of CERP projects

2012 Reality:
- One WRDA enacted since 2000 (2007)
Assumption vs. Reality
State and Federal Appropriations

1999 Assumption:
- State and Federal appropriations for CERP would average $200 million per year for each agency
- $2.4 billion each by 2012

2012 Reality:
- Federal government has appropriated only $800 million for CERP in 12 years since WRDA-2000 compared with over $2.4 billion appropriated by the State
Assumption vs. Reality
Endangered Species Act Compliance

1999 Assumption:
- CERP would be implemented using a multi-species recovery and a self mitigating approach

2012 Reality:
- Project planning, designs, construction, operations and monitoring costs are being impacted by single species concerns and mitigation is typically required
  - ESA, MBTA and NEPA
Impediments to CERP Progress

National Research Council’s Second Biennial Progress Report to Congress – September 2008

- Complex Federal planning and approval process has been a major cause of delays
- Federal funding has fallen far short of that originally envisioned; a more consistent funding stream is required
- Endangered Species Act has been implemented with a single-species focus; need a multi-species approach
CERP Planning Process
Impediments

- Expectations for the level of engineering and design in Project Implementation Reports
- Multilayer stovepipe review and approval process within Corps
  - Jacksonville District
  - South Atlantic Division
  - Headquarters
  - Civil Works Review Board
  - Assistant Secretary of the Army for Civil Works Office
  - Office of Management and Budget
Agency and stakeholder dependency on mathematical models

- Development of new and more complex models
- CERP projects require four times the modeling compared with other Corps projects

Requirement to justify environmental benefits of each project based on habitat units versus system-wide with best science

Achieving compliance with Endangered Species Act including single species mgt.

- Biological Assessments
- Monitoring Requirements
CERP Local Government
Impediments

- Counties and cities rules/regulations for construction activities (land development based)
  - Impact fees
    - Road use etc.
  - Engineering review fees
    - Based on % estimated cost of project
  - Tree ordinances
    - Clearing restrictions
Counties and cities rules/regulations for construction activities (cont.)

- Sign ordinance fee
  - City beautification ($200,000)
- Canal/road easements and R/W’s
  - Needed for project but held hostage until other local needs/approvals are provided by regulatory agencies, (permits, school approvals)
CERP Local Government
Impediments

- Counties and cities rules/regulations for construction activities (cont.)
  - Operations and maintenance responsibility
    - Local infrastructure improvements needed for the project, who bears long term costs
  - Local mitigation requirements
    - Wetland mitigation
Recommendations to Achieve Sustainability of the Everglades

1. Streamline the CERP planning process

- **Optimize**
  - Opportunities for public and stakeholder involvement
  - Process and timing for identification and resolution of inter-agency issues

- **Reduce**
  - Dependency on complex models
  - Number of required analyses for plan selection and justification
  - Level of engineering and design detail in Project Implementation Reports
Recommendations to Achieve Sustainability of the Everglades

1. Streamline the CERP planning process (cont.)

Revise

- Requirements for project benefit analysis to allow options to “habitat units”
- Stovepipe USACE independent reviews to parallel reviews and increase delegation downward to District level
- Planning process, reduce steps, eliminate redundancy
  - Goal should be 2 year maximum planning time frame
Recommendations to Achieve Sustainability of the Everglades

2. Improve the CERP implementation and funding process:

■ Develop a stronger basis for multi-species recovery planning and management that recognizes all projects contribute to system-wide benefits

■ Seek Federal legislative changes to:
  ■ Provide more consistent opportunities for CERP project authorization and appropriation
  ■ Develop an alternative Federal funding approach that provides assured funding over a multiple year period for CERP construction
Recommendations to Achieve Sustainability of the Everglades

3. Revise applicable federal rules and policies to recognize uniqueness of environmental restoration programs:

- Anti-Deficiency Act – allow Federal partner to outspend local sponsor on program costs for a reasonable time period
- FACA – exempt project planning meetings and allow all parties at the table
- NEPA – provide self mitigating provisions for environmental restoration projects
Recommendations to Achieve Sustainability of the Everglades

3. Revise applicable federal rules and policies to recognize uniqueness of environmental restoration programs (cont.):

- **CWA** – recognize Federal cost share authority for water quality improvement projects including meeting TMDL’s

- **ESA** – embrace multi-species management; allow construction and operations exemption for restoration projects in order to meet congressional intent
Recommendations to Achieve Sustainability of the Everglades

3. Revise applicable federal rules and policies to recognize uniqueness of environmental restoration programs (cont.):

- MBTA – recognize long term habitat creation and allow construction and operation exemption
- CERCLA – agrichemical cleanup from agricultural to environmental standard should be cost shared by Federal government
4. Revise applicable local government rules, policies and ordinances, or exempt through State legislation to assure fiscal responsibility to the taxpayers:

- Impact fees
- Engineering review fees
- Tree/sign ordinances
- Public canal/road easements and R/W’s
- Others?
Most governmental laws rules and policies, are not keeping up with restoration objectives

Streamlining the USACE planning process is mandatory and will result in faster project implementation and reduced costs

Federal environmental rules and policies need to be amended to recognize the unique values of restoration projects and their contribution to habitat creation, sustainability and the public interest
Local rules and ordinances need to be amended to exempt environmental restoration projects

State legislation should also be passed to exempt environmental restoration projects from local impact fees to assure fiscal responsibility to the taxpayers
THANK YOU!

Questions?
Thank You!
WRDA-2000
CERP Authorizations

- Approved the CERP as the framework for Everglades restoration
  - Required approval of a project implementation report for each project
- Authorized 50-50 cost-share for all project phases
  - Planning
  - Design
  - Construction (and lands)
  - Operations and maintenance
- Authorized Corps to credit the Sponsor for “in-kind work” on planning, design and construction
- Authorized Corps to carry-over credits between projects to balance the 50-50 cost-share programmatically
WRDA 2000 also required:

- Secretary of the Army and Governor to execute a dispute resolution agreement within 180 days
- Corps to promulgate CERP Programmatic Regulations within two years
- Secretary of the Army and Governor to establish an Independent Scientific Review Panel to review CERP progress
- Secretary of the Army and Secretary of the Interior to submit a progress report to Congress at least once every five years
What is Adaptive Management?

Additional processes that should be considered:

- Performance objectives and permits should include recognition that there will always be short term environmental impacts when restoring and altered ecosystem.
  - Water quality, endangered species, hydropattern vegetative, habitat alteration, exotics
- Rigid adherence to existing environmental rules should be avoided during construction and during project start up recognizing that the long term benefits outweigh the short term risk (or modify rules).
CERP Planning Process

Impediments

- Complex Federal planning process
  - National Environmental Policy Act
  - Water Resources Principles and Guidelines
  - Corps Planning Regulations
  - Endangered Species Act
  - Fish and Wildlife Coordination Act
  - Clean Water Act

- Further complicated by WRDA-2000 and the CERP Programmatic Regulations
  - Next-added increment analysis
  - Savings clause
  - Quantification of water to be reserved or allocated