

106TH CONGRESS
2D SESSION

H. R. 5121

To authorize a comprehensive Everglades restoration plan.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2000

Mr. SHAW introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize a comprehensive Everglades restoration plan.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoring the Ever-
5 glades, an American Legacy Act”.

6 **SEC. 2. COMPREHENSIVE EVERGLADES RESTORATION**

7 **PLAN.**

8 (a) **DEFINITIONS.**—In this section, the following defi-
9 nitions apply:

1 (1) CENTRAL AND SOUTHERN FLORIDA
2 PROJECT.—

3 (A) IN GENERAL.—The term “Central and
4 Southern Florida Project” means the project
5 for Central and Southern Florida authorized
6 under the heading “CENTRAL AND SOUTHERN
7 FLORIDA” in section 203 of the Flood Control
8 Act of 1948 (62 Stat. 1176).

9 (B) INCLUSION.—The term “Central and
10 Southern Florida Project” includes any modi-
11 fication to the project authorized by this Act or
12 any other provision of law.

13 (2) GOVERNOR.—The term “Governor” means
14 the Governor of the State of Florida.

15 (3) NATURAL SYSTEM.—

16 (A) IN GENERAL.—The term “natural sys-
17 tem” means all land and water managed by the
18 Federal Government or the State within the
19 South Florida ecosystem.

20 (B) INCLUSIONS.—The term “natural sys-
21 tem” includes—

- 22 (i) water conservation areas;
23 (ii) sovereign submerged land;
24 (iii) Everglades National Park;
25 (iv) Biscayne National Park;

- 1 (v) Big Cypress National Preserve;
- 2 (vi) other Federal or State (including
- 3 a political subdivision of a State) land that
- 4 is designated and managed for conserva-
- 5 tion purposes; and
- 6 (vii) any tribal land that is designated
- 7 and managed for conservation purposes, as
- 8 approved by the tribe.

9 (4) PLAN.—The term “Plan” means the Com-

10 prehensive Everglades Restoration Plan contained in

11 the “Final Integrated Feasibility Report and Pro-

12 grammatic Environmental Impact Statement”, dated

13 April 1, 1999, as modified by this Act.

14 (5) SECRETARY.—The term “Secretary” means

15 the Secretary of the Army.

16 (6) SOUTH FLORIDA ECOSYSTEM.—

17 (A) IN GENERAL.—The term “South Flor-

18 ida ecosystem” means the area consisting of the

19 land and water within the boundary of the

20 South Florida Water Management District in

21 effect on July 1, 1999.

22 (B) INCLUSIONS.—The term “South Flor-

23 ida ecosystem” includes—

- 24 (i) the Everglades;
- 25 (ii) the Florida Keys; and

1 (iii) the contiguous near-shore coastal
2 water of South Florida.

3 (7) STATE.—The term “State” means the State
4 of Florida.

5 (b) COMPREHENSIVE EVERGLADES RESTORATION
6 PLAN.—

7 (1) APPROVAL.—

8 (A) IN GENERAL.—Except as modified by
9 this Act, the Plan is approved as a framework
10 for modifications and operational changes to
11 the Central and Southern Florida Project that
12 are needed to restore, preserve, and protect the
13 South Florida ecosystem while providing for
14 other water-related needs of the region, includ-
15 ing water supply and flood protection. The Plan
16 shall be implemented to ensure the protection of
17 water quality in, the reduction of the loss of
18 fresh water from, and the improvement of the
19 environment of the South Florida ecosystem
20 and to achieve and maintain the benefits to the
21 natural system and human environment de-
22 scribed in the Plan, and required pursuant to
23 this Act, for as long as the project is author-
24 ized.

1 (B) INTEGRATION.—In carrying out the
2 Plan, the Secretary shall integrate the activities
3 described in subparagraph (A) with ongoing
4 Federal and State projects and activities in ac-
5 cordance with section 528(c) of the Water Re-
6 sources Development Act of 1996 (110 Stat.
7 3769–3770). Unless specifically provided here-
8 in, nothing in this Act shall be construed to
9 modify any existing cost share or responsibility
10 for projects as listed in subsection (c) or (e) of
11 section 528 of the Water Resources Develop-
12 ment Act of 1996 (110 Stat. 3769–3770).

13 (2) SPECIFIC AUTHORIZATIONS.—

14 (A) IN GENERAL.—

15 (i) PROJECTS.—The Secretary shall
16 carry out the projects included in the Plan
17 in accordance with subparagraphs (B),
18 (C), (D) and (E).

19 (ii) CONSIDERATIONS.—In carrying
20 out activities described in the Plan, the
21 Secretary shall—

22 (I) take into account the protec-
23 tion of water quality by considering
24 applicable State water quality stand-
25 ards; and

1 (II) include such features as the
2 Secretary determines are necessary to
3 ensure that all ground water and sur-
4 face water discharges from any
5 project feature authorized by this sub-
6 section will meet all applicable water
7 quality standards and applicable water
8 quality permitting requirements.

9 (iii) REVIEW AND COMMENT.—In de-
10 veloping the projects authorized under sub-
11 paragraph (B), the Secretary shall provide
12 for public review and comment in accord-
13 ance with applicable Federal law.

14 (B) PILOT PROJECTS.—The following pilot
15 projects are authorized for implementation,
16 after review and approval by the Secretary, at
17 a total cost of \$69,000,000, with an estimated
18 Federal cost of \$34,500,000 and an estimated
19 non-Federal cost of \$34,500,000:

20 (i) Caloosahatchee River (C-43)
21 Basin ASR, at a total cost of \$6,000,000,
22 with an estimated Federal cost of
23 \$3,000,000 and an estimated non-Federal
24 cost of \$3,000,000.

1 (ii) Lake Belt In-Ground Reservoir
2 Technology, at a total cost of \$23,000,000,
3 with an estimated Federal cost of
4 \$11,500,000 and an estimated non-Federal
5 cost of \$11,500,000.

6 (iii) L-31N Seepage Management, at
7 a total cost of \$10,000,000, with an esti-
8 mated Federal cost of \$5,000,000 and an
9 estimated non-Federal cost of \$5,000,000.

10 (iv) Wastewater Reuse Technology, at
11 a total cost of \$30,000,000, with an esti-
12 mated Federal cost of \$15,000,000 and an
13 estimated non-Federal cost of
14 \$15,000,000.

15 (C) INITIAL PROJECTS.—The following
16 projects are authorized for implementation,
17 after review and approval by the Secretary, sub-
18 ject to the conditions stated in subparagraph
19 (D), at a total cost of \$1,100,918,000, with an
20 estimated Federal cost of \$550,459,000 and an
21 estimated non-Federal cost of \$550,459,000:

22 (i) C-44 Basin Storage Reservoir, at
23 a total cost of \$112,562,000, with an esti-
24 mated Federal cost of \$56,281,000 and an

1 estimated non-Federal cost of
2 \$56,281,000.

3 (ii) Everglades Agricultural Area
4 Storage Reservoirs—Phase I, at a total
5 cost of \$233,408,000, with an estimated
6 Federal cost of \$116,704,000 and an esti-
7 mated non-Federal cost of \$116,704,000.

8 (iii) Site 1 Impoundment, at a total
9 cost of \$38,535,000, with an estimated
10 Federal cost of \$19,267,500 and an esti-
11 mated non-Federal cost of \$19,267,500.

12 (iv) Water Conservation Areas 3A/3B
13 Levee Seepage Management, at a total cost
14 of \$100,335,000, with an estimated Fed-
15 eral cost of \$50,167,500 and an estimated
16 non-Federal cost of \$50,167,500.

17 (v) C-11 Impoundment and
18 Stormwater Treatment Area, at a total
19 cost of \$124,837,000, with an estimated
20 Federal cost of \$62,418,500 and an esti-
21 mated non-Federal cost of \$62,418,500.

22 (vi) C-9 Impoundment and
23 Stormwater Treatment Area, at a total
24 cost of \$89,146,000, with an estimated

1 Federal cost of \$44,573,000 and an esti-
2 mated non-Federal cost of \$44,573,000.

3 (vii) Taylor Creek/Nubbin Slough
4 Storage and Treatment Area, at a total
5 cost of \$104,027,000, with an estimated
6 Federal cost of \$52,013,500 and an esti-
7 mated non-Federal cost of \$52,013,500.

8 (viii) Raise and Bridge East Portion
9 of Tamiami Trail and Fill Miami Canal
10 within Water Conservation Area 3, at a
11 total cost of \$26,946,000, with an esti-
12 mated Federal cost of \$13,473,000 and an
13 estimated non-Federal cost of
14 \$13,473,000.

15 (ix) North New River Improvements,
16 at a total cost of \$77,087,000, with an es-
17 timated Federal cost of \$38,543,500 and
18 an estimated non-Federal cost of
19 \$38,543,500.

20 (x) C-111 Spreader Canal, at a total
21 cost of \$94,035,000, with an estimated
22 Federal cost of \$47,017,500 and an esti-
23 mated non-Federal cost of \$47,017,500.

24 (xi) Adaptive Assessment and Moni-
25 toring Program, at a total cost of

1 \$100,000,000, with an estimated Federal
2 cost of \$50,000,000 and an estimated non-
3 Federal cost of \$50,000,000.

4 (D) CONDITIONS.—

5 (i) PROJECT IMPLEMENTATION RE-
6 PORTS.—Before implementation of a
7 project described in any of clauses (i)
8 through (x) of subparagraph (C), the Sec-
9 retary shall review and approve for the
10 project a project implementation report
11 prepared in accordance with subsections (f)
12 and (h).

13 (ii) SUBMISSION OF REPORT.—The
14 Secretary shall submit to the Committee
15 on Transportation and Infrastructure of
16 the House of Representatives and the
17 Committee on Environment and Public
18 Works of the Senate the project implemen-
19 tation report required by subsections (f)
20 and (h) for each project under this para-
21 graph (including all relevant data and in-
22 formation on all costs).

23 (iii) FUNDING CONTINGENT ON AP-
24 PROVAL.—No appropriation shall be made
25 to construct any project under this para-

1 graph if the project implementation report
2 for the project has not been approved by
3 resolutions adopted by the Committee on
4 Transportation and Infrastructure of the
5 House of Representatives and the Com-
6 mittee on Environment and Public Works
7 of the Senate.

8 (iv) MODIFIED WATER DELIVERY.—

9 No appropriation shall be made to con-
10 struct the Water Conservation Area 3
11 Decentralization and Sheetflow
12 Enhancement Project (including compo-
13 nent AA, Additional S-345 Structures;
14 component QQ Phase 1, Raise and Bridge
15 East Portion of Tamiami Trail and Fill
16 Miami Canal within WCA 3; component
17 QQ Phase 2, WCA 3
18 Decentralization and Sheetflow
19 Enhancement; and component SS, North
20 New River Improvements) or the Central
21 Lakebelt Storage Project (including com-
22 ponents S and EEE, Central Lake Belt
23 Storage Area) until the completion of the
24 project to improve water deliveries to Ever-
25 glades National Park authorized by section

1 104 of the Everglades National Park Pro-
2 tection and Expansion Act of 1989 (16
3 U.S.C. 410r-8).

4 (E) MAXIMUM COST OF PROJECTS.—Sec-
5 tion 902 of the Water Resources Development
6 Act of 1986 (33 U.S.C. 2280) shall apply to
7 each project feature authorized under this sub-
8 section.

9 (c) ADDITIONAL PROGRAM AUTHORITY.—

10 (1) IN GENERAL.—To expedite implementation
11 of the Plan, the Secretary may implement modifica-
12 tions to the Central and Southern Florida Project
13 that—

14 (A) are described in the Plan; and

15 (B) will produce a substantial benefit to
16 the restoration, preservation and protection of
17 the South Florida ecosystem.

18 (2) PROJECT IMPLEMENTATION REPORTS.—Be-
19 fore implementation of any project feature author-
20 ized under this subsection, the Secretary shall review
21 and approve for the project feature a project imple-
22 mentation report prepared in accordance with sub-
23 sections (f) and (h).

24 (3) FUNDING.—

25 (A) INDIVIDUAL PROJECT FUNDING.—

1 (i) FEDERAL COST.—The total Fed-
2 eral cost of each project carried out under
3 this subsection shall not exceed
4 \$12,500,000.

5 (ii) OVERALL COST.—The total cost of
6 each project carried out under this sub-
7 section shall not exceed \$25,000,000.

8 (B) AGGREGATE COST.—The total cost of
9 all projects carried out under this subsection
10 shall not exceed \$206,000,000, with an esti-
11 mated Federal cost of \$103,000,000 and an es-
12 timated non-Federal cost of \$103,000,000.

13 (d) AUTHORIZATION OF FUTURE PROJECTS.—

14 (1) IN GENERAL.—Except for a project author-
15 ized by subsection (b) or (c), any project included in
16 the Plan shall require a specific authorization by
17 Congress.

18 (2) SUBMISSION OF REPORT.—Before seeking
19 congressional authorization for a project under para-
20 graph (1), the Secretary shall submit to Congress—

21 (A) a description of the project; and

22 (B) a project implementation report for
23 the project prepared in accordance with sub-
24 sections (f) and (h).

25 (e) COST SHARING.—

1 (1) FEDERAL SHARE.—The Federal share of
2 the cost of carrying out a project authorized by sub-
3 section (b), (c), or (d) shall be 50 percent.

4 (2) NON-FEDERAL RESPONSIBILITIES.—The
5 non-Federal sponsor with respect to a project de-
6 scribed in subsection (b), (c), or (d), shall be—

7 (A) responsible for all land, easements,
8 rights-of-way, and relocations necessary to im-
9 plement the Plan; and

10 (B) afforded credit toward the non-Federal
11 share of the cost of carrying out the project in
12 accordance with paragraph (5)(A).

13 (3) FEDERAL ASSISTANCE.—

14 (A) IN GENERAL.—The non-Federal spon-
15 sor with respect to a project authorized by sub-
16 section (b), (c), or (d) may use Federal funds
17 for the purchase of any land, easement, rights-
18 of-way, or relocation that is necessary to carry
19 out the project if any funds so used are credited
20 toward the Federal share of the cost of the
21 project.

22 (B) AGRICULTURE FUNDS.—Funds pro-
23 vided to the non-Federal sponsor under the
24 Conservation Restoration and Enhancement
25 Program (CREP) and the Wetlands Reserve

1 Program (WRP) for projects in the Plan shall
2 be credited toward the non-Federal share of the
3 cost of the Plan if the Secretary of Agriculture
4 certifies that the funds provided may be used
5 for that purpose. Funds to be credited do not
6 include funds provided under section 390 of the
7 Federal Agriculture Improvement and Reform
8 Act of 1996 (110 Stat. 1022).

9 (4) OPERATION AND MAINTENANCE.—Notwith-
10 standing section 528(e)(3) of the Water Resources
11 Development Act of 1996 (110 Stat. 3770), the non-
12 Federal sponsor shall be responsible for 50 percent
13 of the cost of operation, maintenance, repair, re-
14 placement, and rehabilitation activities authorized
15 under this section.

16 (5) CREDIT.—

17 (A) IN GENERAL.—Notwithstanding sec-
18 tion 528(e)(4) of the Water Resources Develop-
19 ment Act of 1996 (110 Stat. 3770), and re-
20 gardless of the date of acquisition, the value of
21 lands or interests in lands and incidental costs
22 for land acquired by a non-Federal sponsor in
23 accordance with a project implementation re-
24 port for any project included in the Plan and
25 authorized by Congress shall be—

1 (i) included in the total cost of the
2 project; and

3 (ii) credited toward the non-Federal
4 share of the cost of the project.

5 (B) WORK.—The Secretary may provide
6 credit, including in-kind credit, toward the non-
7 Federal share for the reasonable cost of any
8 work performed in connection with a study,
9 preconstruction engineering and design, or con-
10 struction that is necessary for the implementa-
11 tion of the Plan, if—

12 (i)(I) the credit is provided for work
13 completed during the period of design, as
14 defined in a design agreement between the
15 Secretary and the non-Federal sponsor; or

16 (II) the credit is provided for work
17 completed during the period of construc-
18 tion, as defined in a project cooperation
19 agreement for an authorized project be-
20 tween the Secretary and the non-Federal
21 sponsor;

22 (ii) the design agreement or the
23 project cooperation agreement prescribes
24 the terms and conditions of the credit; and

1 (iii) the Secretary determines that the
2 work performed by the non-Federal spon-
3 sor is integral to the project.

4 (C) TREATMENT OF CREDIT BETWEEN
5 PROJECTS.—Any credit provided under this
6 paragraph may be carried over between author-
7 ized projects in accordance with subparagraph
8 (D).

9 (D) PERIODIC MONITORING.—

10 (i) IN GENERAL.—To ensure that the
11 contributions of the non-Federal sponsor
12 equal 50 percent proportionate share for
13 projects in the Plan, during each 5-year
14 period, beginning with commencement of
15 design of the Plan, the Secretary shall, for
16 each project—

17 (I) monitor the non-Federal pro-
18 vision of cash, in-kind services, and
19 land; and

20 (II) manage, to the maximum ex-
21 tent practicable, the requirement of
22 the non-Federal sponsor to provide
23 cash, in-kind services, and land.

1 (ii) OTHER MONITORING.—The Sec-
2 retary shall conduct monitoring under
3 clause (i) separately for—

4 (I) the preconstruction engineer-
5 ing and design phase; and

6 (II) the construction phase.

7 (E) AUDITS.—Credit for land (including
8 land value and incidental costs) or work pro-
9 vided under this subsection shall be subject to
10 audit by the Secretary.

11 (f) EVALUATION OF PROJECTS.—

12 (1) IN GENERAL.—Before implementation of a
13 project authorized by subsection (c) or (d) or any of
14 clauses (i) through (x) of subsection (b)(2)(C), the
15 Secretary, in cooperation with the non-Federal spon-
16 sor, shall, after notice and opportunity for public
17 comment and in accordance with subsection (h),
18 complete a project implementation report for the
19 project.

20 (2) PROJECT JUSTIFICATION.—

21 (A) IN GENERAL.—Notwithstanding sec-
22 tion 209 of the Flood Control Act of 1970 (42
23 U.S.C. 1962–2) or any other provision of law,
24 in carrying out any activity authorized under
25 this section or any other provision of law to re-

1 store, preserve, or protect the South Florida
2 ecosystem, the Secretary may determine that—

3 (i) the activity is justified by the envi-
4 ronmental benefits derived by the South
5 Florida ecosystem; and

6 (ii) no further economic justification
7 for the activity is required, if the Secretary
8 determines that the activity is cost-effec-
9 tive.

10 (B) APPLICABILITY.—Subparagraph (A)
11 shall not apply to any separable element in-
12 tended to produce benefits that are predomi-
13 nantly unrelated to the restoration, preserva-
14 tion, and protection of the natural system.

15 (g) EXCLUSIONS AND LIMITATIONS.—The following
16 Plan components are not approved for implementation:

17 (1) WATER INCLUDED IN THE PLAN.—

18 (A) IN GENERAL.—Any project that is de-
19 signed to implement the capture and use of the
20 approximately 245,000 acre-feet of water de-
21 scribed in section 7.7.2 of the Plan shall not be
22 implemented until such time as—

23 (i) the project-specific feasibility study
24 described in subparagraph (B) on the need
25 for and physical delivery of the approxi-

1 mately 245,000 acre-feet of water, con-
2 ducted by the Secretary, in cooperation
3 with the non-Federal sponsor, is com-
4 pleted;

5 (ii) the project is favorably rec-
6 ommended in a final report of the Chief of
7 Engineers; and

8 (iii) the project is authorized by Act
9 of Congress.

10 (B) PROJECT-SPECIFIC FEASIBILITY
11 STUDY.—The project-specific feasibility study
12 referred to in subparagraph (A) shall include—

13 (i) a comprehensive analysis of the
14 structural facilities proposed to deliver the
15 approximately 245,000 acre-feet of water
16 to the natural system;

17 (ii) an assessment of the requirements
18 to divert and treat the water;

19 (iii) an assessment of delivery alter-
20 natives;

21 (iv) an assessment of the feasibility of
22 delivering the water downstream while
23 maintaining current levels of flood protec-
24 tion to affected property; and

1 (v) any other assessments that are de-
2 termined by the Secretary to be necessary
3 to complete the study.

4 (2) WASTEWATER REUSE.—

5 (A) IN GENERAL.—On completion and
6 evaluation of the wastewater reuse pilot project
7 described in subsection (b)(2)(B)(iv), the Sec-
8 retary, in an appropriately timed 5-year report,
9 shall describe the results of the evaluation of
10 advanced wastewater reuse in meeting, in a cost
11 effective manner, the requirements of restora-
12 tion of the natural system.

13 (B) SUBMISSION.—The Secretary shall
14 submit to Congress the report described in sub-
15 paragraph (A) before congressional authoriza-
16 tion for advanced wastewater reuse is sought.

17 (3) PROJECTS APPROVED WITH LIMITATIONS.—

18 The following projects in the Plan are approved for
19 implementation with limitations:

20 (A) LOXAHATCHEE NATIONAL WILDLIFE
21 REFUGE.—The Federal share for land acquisi-
22 tion in the project to enhance existing wetland
23 systems along the Loxahatchee National Wild-
24 life Refuge, including the Stazzulla tract,

1 should be funded through the budget of the De-
2 partment of the Interior.

3 (B) SOUTHERN CORKSCREW REGIONAL
4 ECOSYSTEM.—The Southern Corkscrew regional
5 ecosystem watershed addition should be accom-
6 plished outside the scope of the Plan.

7 (h) ASSURANCE OF PROJECT BENEFITS.—

8 (1) IN GENERAL.—The overarching objective of
9 the Plan is the restoration, preservation, and protec-
10 tion of the South Florida Ecosystem while providing
11 for other water-related needs of the region, including
12 water supply and flood protection. The Plan shall be
13 implemented to ensure the protection of water qual-
14 ity in, the reduction of the loss of fresh water from,
15 the improvement of the environment of the South
16 Florida Ecosystem and to achieve and maintain the
17 benefits to the natural system and human environ-
18 ment described in the Plan, and required pursuant
19 to this Act, for as long as the project is authorized.

20 (2) AGREEMENT.—

21 (A) IN GENERAL.—In order to ensure that
22 water generated by the Plan will be made avail-
23 able for the restoration of the natural system,
24 no appropriations, except for any pilot project
25 described in subsection (b)(2)(B), shall be made

1 for the construction of a project contained in
2 the Plan until the President and the Governor
3 enter into a binding agreement under which the
4 State shall ensure, by regulation or other ap-
5 propriate means, that water made available by
6 each project in the Plan shall not be permitted
7 for a consumptive use or otherwise made un-
8 available by the State until such time as suffi-
9 cient reservations of water for the restoration of
10 the natural system are made under State law in
11 accordance with the project implementation re-
12 port for that project and consistent with the
13 Plan.

14 (B) ENFORCEMENT.—

15 (i) IN GENERAL.—Any person or enti-
16 ty that is aggrieved by a failure of the
17 United States or any other Federal Gov-
18 ernment instrumentality or agency, or the
19 Governor or any other officer of a State in-
20 strumentality or agency, to comply with
21 any provision of the agreement entered
22 into under subparagraph (A) may bring a
23 civil action in United States district court
24 for an injunction directing the United
25 States or any other Federal Government

1 instrumentality or agency or the Governor
2 or any other officer of a State instrumen-
3 tality or agency, as the case may be, to
4 comply with the agreement.

5 (ii) LIMITATIONS ON COMMENCEMENT
6 OF CIVIL ACTION.—No civil action may be
7 commenced under clause (i)—

8 (I) before the date that is 60
9 days after the Secretary receives writ-
10 ten notice of a failure to comply with
11 the agreement; or

12 (II) if the United States has
13 commenced and is diligently pros-
14 ecuting an action in a court of the
15 United States or a State to redress a
16 failure to comply with the agreement.

17 (3) PROGRAMMATIC REGULATIONS.—

18 (A) ISSUANCE.—Not later than 2 years
19 after the date of enactment of this Act, the Sec-
20 retary shall, after notice and opportunity for
21 public comment—

22 (i) with the concurrence of—

23 (I) the Governor; and

24 (II) the Secretary of the Interior;

25 and

- 1 (ii) in consultation with—
2 (I) the Seminole Tribe of Flor-
3 ida;
4 (II) the Miccosukee Tribe of In-
5 dians of Florida;
6 (III) the Administrator of the
7 Environmental Protection Agency;
8 (IV) the Secretary of Commerce;
9 and
10 (V) other Federal, State, and
11 local agencies;

12 promulgate programmatic regulations to ensure
13 that the goals and purposes of the Plan are
14 achieved.

15 (B) CONCURRENCY STATEMENT.—Not
16 later than 180 days from the end of the public
17 comment period on proposed programmatic reg-
18 ulations, the Secretary of the Interior and the
19 Governor shall provide the Secretary with a
20 written statement of concurrence or nonconcur-
21 rence. A failure to provide a written statement
22 of concurrence or nonconcurrence within such
23 time frame will be deemed as meeting the con-
24 currence requirements of subsection
25 (h)(3)(A)(i). A copy of any concurrency or non-

1 concurrency statements shall be made a part of
2 the administrative record and referenced in the
3 final programmatic regulations. Any noncon-
4 currence statement shall specifically detail the
5 reason or reasons for the nonconcurrence.

6 (C) CONTENT OF REGULATIONS.—Pro-
7 grammatic regulations promulgated under this
8 paragraph shall establish a process—

9 (i) for the development of project im-
10 plementation reports, project cooperation
11 agreements, and operating manuals that
12 ensure that the goals and objectives of the
13 Plan are achieved;

14 (ii) to ensure that new information re-
15 sulting from changed or unforeseen cir-
16 cumstances, new scientific or technical in-
17 formation or information that is developed
18 through the principles of adaptive manage-
19 ment contained in the Plan, or future au-
20 thorized changes to the Plan are integrated
21 into the implementation of the Plan; and

22 (iii) to ensure the protection of the
23 natural system consistent with the goals
24 and purposes of the Plan, including the es-
25 tablishment of interim goals to provide a

1 means by which the restoration success of
2 the Plan may be evaluated throughout the
3 implementation process.

4 (D) SCHEDULE AND TRANSITION RULE.—

5 (i) IN GENERAL.—All project imple-
6 mentation reports approved before the date
7 of promulgation of the programmatic regu-
8 lations shall be consistent with the Plan.

9 (ii) PREAMBLE.—The preamble of the
10 programmatic regulations shall include a
11 statement concerning the consistency with
12 the programmatic regulations of any
13 project implementation reports that were
14 approved before the date of promulgation
15 of the regulations.

16 (E) REVIEW OF PROGRAMMATIC REGULA-
17 TIONS.—Whenever necessary to attain Plan
18 goals and purposes, but not less often than
19 every 5 years, the Secretary, in accordance with
20 subparagraph (A), shall review the pro-
21 grammatic regulations promulgated under this
22 paragraph.

23 (4) PROJECT-SPECIFIC ASSURANCES.—

24 (A) PROJECT IMPLEMENTATION RE-
25 PORTS.—

1 (i) IN GENERAL.—The Secretary and
2 the non-Federal sponsor shall develop
3 project implementation reports in accord-
4 ance with section 10.3.1 of the Plan.

5 (ii) COORDINATION.—In developing a
6 project implementation report, the Sec-
7 retary and the non-Federal sponsor shall
8 coordinate with appropriate Federal, State,
9 tribal, and local governments.

10 (iii) REQUIREMENTS.—A project im-
11 plementation report shall—

12 (I) be consistent with the Plan
13 and the programmatic regulations
14 promulgated under paragraph (3);

15 (II) describe how each of the re-
16 quirements stated in paragraph
17 (3)(B) is satisfied;

18 (III) comply with the National
19 Environmental Policy Act of 1969 (42
20 U.S.C. 4321 et seq.);

21 (IV) identify the appropriate
22 quantity, timing, and distribution of
23 water dedicated and managed for the
24 natural system;

1 (V) identify the amount of water
2 to be reserved or allocated for the nat-
3 ural system necessary to implement,
4 under State law, subclauses (IV) and
5 (VI);

6 (VI) comply with applicable
7 water quality standards and applicable
8 water quality permitting requirements
9 under subsection (b)(2)(A)(ii);

10 (VII) be based on the best avail-
11 able science; and

12 (VIII) include an analysis con-
13 cerning the cost-effectiveness and en-
14 gineering feasibility of the project.

15 (B) PROJECT COOPERATION AGREE-
16 MENTS.—

17 (i) IN GENERAL.—The Secretary and
18 the non-Federal sponsor shall execute
19 project cooperation agreements in accord-
20 ance with section 10 of the Plan.

21 (ii) CONDITION.—The Secretary shall
22 not execute a project cooperation agree-
23 ment until any reservation or allocation of
24 water for the natural system identified in

1 the project implementation report is exe-
2 cuted under State law.

3 (C) OPERATING MANUALS.—

4 (i) IN GENERAL.—The Secretary and
5 the non-Federal sponsor shall develop and
6 issue, for each project or group of projects,
7 an operating manual that is consistent
8 with the water reservation or allocation for
9 the natural system described in the project
10 implementation report and the project co-
11 operation agreement for the project or
12 group of projects.

13 (ii) MODIFICATIONS.—Any significant
14 modification by the Secretary and the non-
15 Federal sponsor to an operating manual
16 after the operating manual is issued shall
17 only be carried out subject to notice and
18 opportunity for public comment.

19 (5) SAVINGS CLAUSE.—

20 (A) NO ELIMINATION OR TRANSFER.—

21 Until a new source of water supply of com-
22 parable quantity and quality as that available
23 on the date of enactment of this Act is available
24 to replace the water to be lost as a result of im-
25 plementation of the Plan, the Secretary and the

1 non-Federal sponsor shall not eliminate or
2 transfer existing legal sources of water, includ-
3 ing those for—

4 (i) an agricultural or urban water
5 supply;

6 (ii) allocation or entitlement to the
7 Seminole Indian Tribe of Florida under
8 section 7 of the Seminole Indian Land
9 Claims Settlement Act of 1987 (25 U.S.C.
10 1772e);

11 (iii) the Miccosukee Tribe of Indians
12 of Florida;

13 (iv) water supply for Everglades Na-
14 tional Park; or

15 (v) water supply for fish and wildlife.

16 (B) MAINTENANCE OF FLOOD PROTEC-
17 TION.—Implementation of the Plan shall not re-
18 duce levels of service for flood protection that
19 are—

20 (i) in existence on the date of enact-
21 ment of this Act; and

22 (ii) in accordance with applicable law.

23 (C) NO EFFECT ON TRIBAL COMPACT.—
24 Nothing in this Act amends, alters, prevents, or
25 otherwise abrogates rights of the Seminole In-

1 dian Tribe of Florida under the compact among
2 the Seminole Tribe of Florida, the State, and
3 the South Florida Water Management District,
4 defining the scope and use of water rights of
5 the Seminole Tribe of Florida, as codified by
6 section 7 of the Seminole Indian Land Claims
7 Settlement Act of 1987 (25 U.S.C. 1772e).

8 (i) DISPUTE RESOLUTION.—

9 (1) IN GENERAL.—Within 180 days from the
10 date of enactment of this Act, the Secretary and the
11 Governor shall develop an agreement for resolving
12 disputes between the Corps of Engineers and the
13 State associated with the implementation of the
14 Plan. Such agreement shall establish a mechanism
15 for the timely and efficient resolution of disputes,
16 including—

17 (A) a preference for the resolution of dis-
18 putes between the Jacksonville District of the
19 Corps of Engineers and the South Florida
20 Water Management District;

21 (B) a mechanism for the Jacksonville Dis-
22 trict of the Corps of Engineers or the South
23 Florida Water Management District to initiate
24 the dispute resolution process for unresolved
25 issues;

1 (C) the establishment of appropriate time-
2 frames and intermediate steps for the elevation
3 of disputes to the Governor and the Secretary;
4 and

5 (D) a mechanism for the final resolution of
6 disputes, within 180 days from the date that
7 the dispute resolution process is initiated under
8 subparagraph (B).

9 (2) CONDITION FOR REPORT APPROVAL.—The
10 Secretary shall not approve a project implementation
11 report under this Act until the agreement estab-
12 lished under this subsection has been executed.

13 (3) NO EFFECT ON LAW.—Nothing in the
14 agreement established under this subsection shall
15 alter or amend any existing Federal or State law or
16 the responsibility of any party to the agreement to
17 comply with any Federal or State law.

18 (j) INDEPENDENT SCIENTIFIC REVIEW.—

19 (1) IN GENERAL.—The Secretary, the Secretary
20 of the Interior, and the Governor, in consultation
21 with the South Florida Ecosystem Restoration Task
22 Force, shall establish an independent scientific re-
23 view panel convened by a body, such as the National
24 Academy of Sciences, to review the Plan’s progress

1 toward achieving the natural system restoration
2 goals of the Plan.

3 (2) REPORT.—The panel described in para-
4 graph (1) shall produce a biennial report to Con-
5 gress, the Secretary, the Secretary of the Interior,
6 and the Governor that includes an assessment of ec-
7 ological indicators and other measures of progress in
8 restoring the ecology of the natural system, based on
9 the Plan.

10 (k) OUTREACH AND ASSISTANCE.—

11 (1) SMALL BUSINESS CONCERNS OWNED AND
12 OPERATED BY SOCIALLY AND ECONOMICALLY DIS-
13 ADVANTAGED INDIVIDUALS.—In executing the Plan,
14 the Secretary shall ensure that small business con-
15 cerns owned and controlled by socially and economi-
16 cally disadvantaged individuals are provided oppor-
17 tunities to participate under section 15(g) of the
18 Small Business Act (15 U.S.C. 644(g)).

19 (2) COMMUNITY OUTREACH AND EDUCATION.—

20 (A) IN GENERAL.—The Secretary shall en-
21 sure that impacts on socially and economically
22 disadvantaged individuals, including individuals
23 with limited English proficiency, and commu-
24 nities are considered during implementation of
25 the Plan, and that such individuals have oppor-

1 tunities to review and comment on its imple-
2 mentation.

3 (B) PROVISION OF OPPORTUNITIES.—The
4 Secretary shall ensure, to the maximum extent
5 practicable, that public outreach and edu-
6 cational opportunities are provided, during im-
7 plementation of the Plan, to the individuals of
8 South Florida, including individuals with lim-
9 ited English proficiency, and in particular for
10 socially and economically disadvantaged com-
11 munities.

12 (I) REPORT TO CONGRESS.—Beginning on October 1,
13 2005, and periodically thereafter until October 1, 2036,
14 the Secretary and the Secretary of the Interior, in con-
15 sultation with the Environmental Protection Agency, the
16 Department of Commerce, and the State of Florida, shall
17 jointly submit to Congress a report on the implementation
18 of the Plan. Such reports shall be completed not less often
19 than every 5 years. Such reports shall include a descrip-
20 tion of planning, design, and construction work completed,
21 the amount of funds expended during the period covered
22 by the report (including a detailed analysis of the funds
23 expended for adaptive assessment under subsection
24 (b)(2)(C)(xi)), and the work anticipated over the next 5-
25 year period. In addition, each report shall include—

1 (1) the determination of each Secretary, and
2 the Administrator of the Environmental Protection
3 Agency, concerning the benefits to the natural sys-
4 tem and the human environment achieved as of the
5 date of the report and whether the completed
6 projects of the Plan are being operated in a manner
7 that is consistent with the requirements of sub-
8 section (h);

9 (2) progress toward interim goals established in
10 accordance with subsection (h)(3)(B)(iii); and

11 (3) a review of the activities performed by the
12 Secretary under subsection (k) as they relate to so-
13 cially and economically disadvantaged individuals
14 and individuals with limited English proficiency.

15 (m) SEVERABILITY.—If any provision or remedy pro-
16 vided by this section is found to be unconstitutional or
17 unenforceable by any court of competent jurisdiction, any
18 remaining provisions in this section shall remain valid and
19 enforceable.

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