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{ REPORT
106-363 }RESTORING THE EVERGLADES,
AN AMERICAN LEGACY ACT

REPORT

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

together with

MINORITY VIEWS

TO ACCOMPANY

S. 2797



JULY 27, 2000.—Ordered to be printed.

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106TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 106-363

RESTORING THE EVERGLADES, AN AMERICAN LEGACY ACT

JULY 27, 2000.—Ordered to be printed.

Mr. SMITH, of New Hampshire from the Committee on
Environment and Public Works, submitted the following

REPORT

[To accompany S. 2797]

The Committee on Environment and Public Works, to which was referred the bill (S. 2797) to authorize a comprehensive Everglades restoration plan, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

BACKGROUND

In its natural state, the South Florida ecosystem was once connected by the flow of water south from Lake Okeechobee through vast freshwater marshes—known as the Everglades—to Florida Bay and on to the coral reefs of the Florida Keys. The Everglades covered approximately 18,000 square miles and were the heart of a unique and biologically productive region, supporting vast colonies of wading birds, a mixture of temperate and tropical plant and animal species, and teeming coastal fisheries. These superlative natural resources were nationally recognized with the establishment of Everglades National Park in 1947. Since that time, the Federal investment in preserving the Everglades has increased. Other significant federally designated conservation areas established since 1947 include Big Cypress National Preserve, Biscayne National Park, Florida Keys National Marine Sanctuary, and 16 National Wildlife Refuges, including A.R.M. Loxahatchee National Wildlife Refuge. The State of Florida has actively participated in this effort and set aside additional lands for conservation purposes.

In 1948, in response to a series of devastating floods that occurred in the region, Congress authorized the Central and Southern Florida (C&SF) Project. The C&SF Project authorized the U.S. Army Corps of Engineers (Army Corps) to provide: flood control; re-

gional water supply for agricultural and urban areas; prevention of salt water intrusion; water supply to Everglades National Park; preservation of fish and wildlife; recreation; and navigation.

Unfortunately, the project has had unintended consequences on the unique natural environment which constitutes the Everglades and Florida Bay ecosystems. Water that flowed unimpeded through the southern half of the State, nearly 1.7 billion gallons of water a day, has been redirected to the Atlantic Ocean or the Gulf of Mexico, disrupting the natural sheet flow through the South Florida ecosystem. As a result of the high volume of discharges of water, coastal estuaries are in peril, while water needed for the ecosystem and regional water supplies is wasted. In addition, runoff from cities and farms has resulted in high levels of phosphorus and other contaminants polluting the water. The C&SF Project also has resulted in a 90–95 percent drop in the wading bird population, and more than 1.5 million acres of land are infested with invasive exotic plants. The South Florida ecosystem also is home to 68 threatened or endangered plant and animal species. The size of the historic Everglades has been reduced by half.

For several decades, this committee and the Congress have taken steps to address many of the C&SF Project's unintended harms to the natural system. The Water Resources Development Act (WRDA) of 1992 authorized a Comprehensive Review Study (Restudy) of the C&SF Project. The purpose of the Restudy was to recommend modifications to the C&SF Project to restore the Everglades and Florida Bay ecosystems while providing for the other water-related needs of the region.

WRDA '96 provided further direction to the Restudy. It established the 50/50 cost share between the Federal Government and the State of Florida for construction of critical restoration projects; gave credit for lands acquired by the South Florida Water Management District (the local sponsor); and established the South Florida Ecosystem Restoration Task Force under the chairmanship of the Secretary of the Interior. The Task Force also includes the Secretaries of Commerce, the Army, Agriculture, and Transportation; the Administrator of the Environmental Protection Agency, the U.S. Attorney General, a representative of the Miccosukee and the Seminole tribes, two representatives of the State of Florida, and a representative of the South Florida Water Management District. The Task Force is charged with coordinating the development of policies, strategies, plans, and activities that address the restoration, preservation, and protection of the South Florida ecosystem.

Also, WRDA '96 spelled out the restoration activities that should be included in the Restudy, mainly: the restoration, preservation and protection of the South Florida ecosystem; the protection of water quality; and the reduction of the loss of fresh water from the Everglades, while providing the flood control and enhancement of water supply objectives served by the C&SF Project. Furthermore, WRDA '96 mandated that the Army Corps present this Plan to Congress on July 1, 1999.

A major provision of WRDA '96 provided for "Critical Restoration Projects," ecosystem projects designated by the Secretary of the Army, the Task Force, and the local sponsor as having immediate and substantial restoration, preservation, and protection benefits.

Federal expenditures for the projects were capped at \$25 million per project, with a total of \$75 million authorized for the period between fiscal years 1997 through 1999. WRDA 1999 extended this authorization period through 2003.

THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

As required by WRDA '96, the Restudy or "Comprehensive Everglades Restoration Plan" (CERP or Plan) was submitted to Congress on July 1, 1999. The Plan defines the major project for ecosystem restoration, water supply, and other water-related purposes, as well as defining a process for implementation. The keys to restoration include increasing the amount of water available by providing increased storage ability and capacity; improving the timing and distribution of water flows and levels; ensuring the quality of the water that is directed to the natural system; and restoring the connectivity of the system that was so severely compartmentalized by the original project.

The Plan has 68 project components to be implemented over a 35-year period. These components are expected to deliver the following benefits: improve the functioning of over 2.4 million acres of the South Florida ecosystem; stabilize Lake Okeechobee water levels for littoral zone health; improve urban and agricultural water supply; improve deliveries to Florida Bay, Biscayne Bay, and other coastal estuaries; and improve regional water quality conditions, while maintaining the existing levels of flood protection. In addition, the Plan will eliminate the damaging freshwater releases to the Caloosahatchee and St. Lucie estuaries.

A key element of the Plan is adaptive assessment, an approach to monitoring the progress of the Plan, providing built-in flexibility, and giving the implementors of the Plan the opportunity to respond to unforeseen circumstances by making modifications, as necessary.

Although the Plan contains a number of key components designed to benefit federally designated areas by improving the quantity, quality, timing and distribution of water, the Plan is interconnected, with each project component related to the other. Further, the Plan is to be implemented using the principles of adaptive assessment, recognizing that modifications will be made in the future based upon new information. Overall, the 68 individual project components of the Plan, to be implemented over a 35 year period, will improve the ecologic health and economic sustainability of over 2.4 million acres of the South Florida ecosystem

THE RESTORING THE EVERGLADES, AN AMERICAN LEGACY ACT

The "Restoring the Everglades, an American Legacy Act" (REAL Act) was introduced on June 27, 2000, by Senators Smith, Voinovich, Baucus, Graham, and Mack. This bill approves the CERP as a framework and authorizes the first set of projects and implementation procedures. As such, the REAL Act represents the first stage of the restoration process.

A project of this size is not without uncertainties. The REAL Act authorizes four pilot projects to address the effectiveness of some of the technologies being proposed. In addition, this bill authorizes an initial ten construction projects. These projects were carefully

selected by the Army Corps and the South Florida Water Management District and included in the Plan as the projects that would, once constructed, have immediate benefits to the natural system. Almost right away, the Plan begins to restore the natural sheet flow that years of human interference has interrupted.

S. 2797 authorizes so-called “programmatically authority” so that the Army Corps and the non-Federal sponsor can move forward with critical projects that will have immediate, independent, and substantial benefits to the natural system. Together, these components represent the first phase. The remaining projects will be submitted to Congress for authorization biennially, as part of future WRDAs.

One of the key components of the CERP is the inherent flexibility provided by adaptive assessment. Under the adaptive assessment approach, the Plan can be modified, based on any new and improved information or modeling. With a project of this size and duration, it is inevitable that new technologies will emerge, modeling systems will be perfected, and monitoring of the ecosystem will continue to provide up-to-the-minute data on the effectiveness of project components. It is important that these factors be incorporated into the Plan, when the new and improved information will enhance the restoration effort.

The REAL Act also contains a carefully balanced assurances provision that provides the mechanism to ensure that project benefits for the natural system are attained. The United States and the State of Florida will enter into an up-front, binding agreement that will ensure that water generated by the Plan will be available for the natural system. Furthermore, the Secretary of the Army, in concurrence with the Governor of the State of Florida and the Secretary of the Interior will promulgate programmatic regulations which will establish a process to ensure that the goals and purposes of the Plan are achieved.

The total estimated cost of construction, including real estate costs, for the Plan is \$7.8 billion dollars over the 35-year implementation period, shared 50/50 between the federal government and the State of Florida. The State of Florida recently passed legislation that will enable them to pay for and carry out their share of the responsibilities over the next 10 years. The average Federal cost is \$200 million a year over the next 20 years. Annual operation and maintenance costs, which are also split 50/50, are estimated to be \$172 million once all project components are complete.

Restoration benefits not only Floridians, but the millions of people who visit Florida each year to behold this unique ecosystem. The committee views this effort to restore the Everglades ecosystem as our legacy to future generations.

SECTION-BY-SECTION SUMMARY

Section. 1. Short Title

This section designates the title of the bill as the “Restoring the Everglades, an American Legacy Act.”

Sec. 2. Comprehensive Everglades Restoration Plan.

(a). Definitions

SUMMARY

Subsections (a)(1) through (7) provide definitions for terms specific to the Comprehensive Everglades Restoration Plan.

Subsection (a)(1) defines the “Central and Southern Florida Project” as the Central and Southern Florida project authorized by section 203 of the Flood Control Act of 1948 and any subsequent amendments made to that section.

Subsection (a)(2) defines the term “Governor” as the Governor of the State of Florida.

Subsection (a)(3) defines the term “natural system” as including all the lands and water managed by the Federal Government or the State within the boundary of the South Florida Water Management District including, but not limited to, the water conservation areas, sovereign submerged lands, Everglades National Parks, Biscayne National Park, Big Cypress National Preserve, coral reefs, State and Federal lands that are designated for conservation purposes, and any tribal lands that the tribes designate for conservation purposes.

Subsection (a)(4), defines the term “Plan” as the Comprehensive Everglades Restoration Plan contained in the “Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,” dated April 1, 1999, as modified by this bill. This definition does not include the final report of the Chief of Engineers on the C&SF Project Comprehensive Review Study dated June 22, 1999.

Subsection (a)(5) defines the Secretary as the Secretary of the Army.

Subsection (a)(6) defines the term “South Florida ecosystem” as the land and water within the boundary of the South Florida Water Management District in effect on July 1, 1999. Included within the boundary is the Everglades, the Florida Keys and the contiguous near-shore coastal water of South Florida. The committee does not intend for the contents of section (a)(6)(B) to exclude other areas that meet the criteria of subsection (a)(6)(A) from the definition of the South Florida ecosystem.

Subsection (a)(7) defines the term “State” as the State of Florida.

(b). Comprehensive Everglades Restoration Plan.

SUMMARY

Subsection (b)(1)(A) approves the Plan, except as modified by this bill, as a framework for modifications and operational changes to the C&SF Project that are needed to restore, preserve, and protect the South Florida ecosystem; provide for the protection of water quality in, and the reduction of the loss of fresh water from, the Everglades; provide for the water-related needs of the region, including flood control, the enhancement of water supplies, and other objectives served by the C&SF Project.

Subsection (b)(1)(B) directs the Secretary to integrate the activities described in subparagraph (A) with ongoing Federal and State

projects and activities in accordance with section 528(c) of WRDA '96 (110 Stat. 3769).

Subsection (b)(2)(A) requires the Secretary of the Army to take into consideration State water quality standards, and include whatever features the Secretary believes are necessary to ensure that the ten projects and the four pilot projects authorized in this bill meet all relevant water quality standards.

Subsection (b)(2)(B) authorizes the Secretary of the Army to construct four pilot projects at a total cost of \$69,000,000, with a Federal cost of \$34,500,000. In addition, the Secretary of the Army is required to provide an opportunity for the public to review and comment on each project in accordance with Federal law.

Subsection (b)(2)(B)(i) authorizes the Caloosahatchee River (C-43) Basin Aquifer Storage and Recovery pilot project, at a total cost of \$6,000,000, with a Federal cost of \$3,000,000.

Subsection (b)(2)(B)(ii) authorizes the Lake Belt In-Ground Reservoir Technology pilot project, at a total cost of \$23,000,000, with a Federal cost of \$11,500,000.

Subsection (b)(2)(B)(iii) authorizes the L-31 Seepage Management pilot project, at a total cost of \$10,000,000, with a Federal cost of \$5,000,000.

Subsection (b)(2)(B)(iv) authorizes the Wastewater Reuse Technology pilot project, at a total cost of \$30,000,000, with a Federal cost of \$15,000,000.

Subsection (b)(2)(C) authorizes the Secretary of the Army to construct ten initial projects, subject to a favorable Chief of Engineers report and approval by resolution of the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, at a total cost of \$1,100,918,000, with a Federal cost of \$550,459,000.

Subsection (b)(2)(C)(i) authorizes construction of the C-44 Basin Storage Reservoir, at a total cost of \$112,562,000, with a Federal cost \$56,281,000.

Subsection (b)(2)(C)(ii) authorizes construction of the Everglades Agricultural Area Storage Reservoirs, at a total cost of \$233,408,000, with a Federal cost of \$116,704,000.

Subsection (b)(2)(C)(iii) authorizes the construction of the Site 1 Impoundment, at a total cost of \$38,535,000, with a Federal cost \$19,267,500.

Subsection (b)(2)(C)(iv) authorizes the construction of Water Conservation Areas 3A/3B Levee Seepage Management, at a total cost of \$100,335,000, with a Federal cost of \$50,167,500.

Subsection (b)(2)(C)(v) authorizes the construction of the C-11 Impoundment and Stormwater Treatment Area, at a total cost of \$124,837,000, with a Federal cost of \$62,418,500.

Subsection (b)(2)(C)(vi) authorizes the construction of the C-9 Impoundment and Stormwater Treatment Area, at a total cost of \$89,146,000, with a Federal cost of \$44,573,000.

Subsection (b)(2)(C)(vii) authorizes the construction of the Taylor Creek-Nubbin Slough Storage and Treatment Area, at a total cost of \$104,027,000, with a Federal cost \$52,013,500.

Subsection (b)(2)(C)(viii) authorizes construction to raise and bridge the east portion of the Tamiami Trail and fill the Miami

Canal within Water Conservation Area 3, at a total cost of \$26,946,000, with a Federal cost of \$13,473,000.

Subsection (b)(2)(C)(ix) authorizes the construction of the North New River Improvements, at a total cost of \$77,087,000, with a Federal cost of \$38,543,500.

Subsection (b)(2)(C)(x) authorizes the construction of the C-111 Spreader Canal, at a total cost of \$94,035,000, with a Federal cost of \$47,017,500.

Subsection (b)(2)(C)(xi) authorizes a ten-year Adaptive Assessment and Monitoring program, at a total cost of \$100,000,000, with a Federal cost \$50,000,000.

Subsection (b)(2)(D)(i) requires that before implementation of a project described in clauses (i) through (x) of subparagraph (C), the Secretary shall review and approve for the project a project implementation report prepared in accordance with subsections (f) and (h).

Subsection (b)(2)(D)(ii) requires the Secretary to submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate the project implementation report required by subsections (f) and (h) for each project under this paragraph (including all relevant data and information on all costs).

Subsection (b)(2)(D)(iii) directs that no appropriation shall be made to construct any project under this paragraph if the project implementation report for the project has not been approved by resolutions adopted by the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.

Subsection (b)(2)(D)(iv) directs that no appropriation shall be made to construct the Water Conservation Area 3 Decentralization and Sheetflow Enhancement Project or the Central Lakebelt Storage Project until the completion of the project to improve water deliveries to Everglades National Park authorized by section 104 of the Everglades National Park Protection and Expansion Act of 1989 (16 U.S.C. 410r-8).

Subsection (b)(2)(E) restates that Section 902 of WRDA '86 (33 U.S.C. 2280) shall apply to each project feature authorized under this subsection.

DISCUSSION

This subsection approves the Comprehensive Everglades Restoration Plan, as modified by this bill, as a framework to make changes to the C&SF Project. Changes to the project are intended to restore the South Florida ecosystem, and in particular the Everglades, by improving water quality and reducing the amount of fresh water lost from within the system. In addition, the project modifications are intended to provide for the water related needs of the region. The water related needs of the region are defined to include providing flood control and enhancing water supplies. In undertaking these activities, the Secretary must integrate them with ongoing Federal and State projects and activities in accordance with section 528(c) of WRDA '96 (110 Stat. 3769).

The Plan contains a general outline of the quantities of water to be produced by each project. According to the Army Corps, 80 per-

cent of the water generated by the Plan is needed for the natural system in order to attain restoration goals, and 20 percent of the water generated for use in the human environment. The committee recognizes the levels of uncertainty involved in the Plan and fully intends for the adaptive assessment and monitoring process to account for such as the Plan is executed. Subject to future authorizations by Congress, the committee fully expects that the water necessary for restoration, currently estimated at 80 percent of the water generated by the Plan, will be reserved or allocated for the benefit of the natural system.

Endorsement of the Plan as a restoration framework is not intended as an artificial constraint on innovation in its implementation. The committee does not expect rigid adherence to the Plan as it was submitted to Congress. This result would be inconsistent with the adaptive assessment principles in the Plan. Restoration of the Everglades is the goal, not adherence to the modeling on which the April, 1999 Plan was based. Instead, the committee expects that the agencies responsible for project implementation report formulation and Plan implementation will seek continuous improvement of the Plan based upon new information, improved modeling, new technology and changed circumstances. Further, the committee expects that the implementing agencies will make every effort to accelerate the delivery of Plan benefits to the natural system to the extent practicable. It is estimated that 3 to 5 acres of land in the South Florida ecosystem are lost per day under current conditions. Time is of the essence in this restoration effort.

In implementing the Plan, the Secretary of the Army is required to take into consideration State water quality standards, and include such features the Secretary determines are necessary to ensure that all ground water and surface water discharges from any project feature authorized in this bill meet all applicable water quality standards and applicable permitting requirements.

The pilot projects. There are six pilot projects described in the Plan, two of which were authorized in WRDA '99 and four which are authorized in this bill. The pilot projects are necessary to address uncertainties associated with some of the physical features that are proposed in the Plan. These pilot projects include aquifer storage and recovery in the Caloosahatchee River Basin; in-ground reservoir technology in the Lake Belt region of Miami-Dade County; levee seepage management technology adjacent to Everglades National Park; and advanced wastewater reuse technology to determine the feasibility of reusing wastewater for ecological restoration. The authorized funding level for the design, construction, and monitoring of the pilot projects is \$69,000,000, to be equally cost shared between the Federal Government and the State of Florida. The Plan's concept of adaptive assessment allows for future changes to be made in the Plan. This includes consideration of the results of the pilot projects. The committee directs the Army Corps to ensure that the overall benefits described in the Plan are maintained and any necessary changes incorporated in the event any pilot project demonstrates technical infeasibility.

Three aquifer storage and recovery pilot projects were proposed in the Plan, and one of those aquifer storage and recovery pilots, the Caloosahatchee River (C-43) Basin Aquifer Storage and Recov-

ery, is included in this bill. This pilot project and the two aquifer storage and recovery projects authorized in WRDA '99 are necessary to identify the most suitable sites for the aquifer storage and recovery wells, and determine the water quality necessary for injections into the well and the water quality of the receiving aquifer. In addition, the pilot projects will provide information on the hydrogeological and geotechnical characteristics of the upper Floridian Aquifer System within the regions, and the ability of the upper Floridian Aquifer System to store injected water for future recovery. The Army Corps expects to design the Caloosahatchee project between November 2000 and October 2001, construct the project between October 2001 through October 2002, and monitor the results between October 2002 through October 2005.

The second pilot project authorized by this bill is the Lake Belt In-Ground Reservoir Technology project. This project utilizes areas to store water where lime rock mining has occurred. The pilot project is necessary in order to assure that the mine retains water and also includes subterranean seepage barriers around the perimeter in order to enable drawdown during dry periods, prevent seepage losses, and protect water quality. The Army Corps expects to complete design in June 2001, will construct the project between June 2001 through December 2005, and will monitor the results between December 2005 through December 2011.

The third pilot project authorized by this bill is the L-31 Seepage Management project. The purpose of this project is to investigate seepage management technologies to control seepage from Everglades National Park. Hydrologic modeling performed by the Army Corps have shown that controlling seepage from the Everglades results in desirable hydrologic conditions. However, the proposed technologies could have unintended results elsewhere. The pilot project will provide the necessary information to determine the appropriate amount of wet season groundwater flow to return to Everglades National Park while minimizing potential impacts to Miami-Dade County's West Wellfield and freshwater flows to Biscayne Bay. The Army Corps of Engineers expects to design the project between November 2000 and October 2001, construct the project between October 2001 through October 2002, and monitor the results between October 2000 through October 2003.

The fourth pilot project authorized by this bill is the Wastewater Reuse Technology project. This pilot project will address water quality issues associated with discharging reclaimed water into natural areas such as West Palm Beach's Catchment Area, Biscayne National Park, and the Bird Drive Basin, as well as determining the level of superior treatment and the appropriate methodologies for that treatment. After treatment to remove nitrogen and phosphorus, the water will be used to restore 1,500 acres of wetlands and to recharge wetlands surrounding the City of West Palm Beach's wellfield. A portion of the treated water will be used to recharge a residential lake system surrounding the City's wellfield and a Palm Beach County wellfield. In addition, this project will reduce the City's dependence on surface water from Lake Okeechobee during dry or drought events, and create or restore approximately 2,000 acres of wetlands. The Army Corps expects to complete design in September 2003, will construct the

project between September 2003 through September 2005, and will monitor the result between September 2003 through December 2007.

The ten initial construction projects. This subsection also authorizes the Secretary of the Army to construct ten initial projects. These projects were carefully chosen by the Army Corps and the South Florida Water Management District because they were viewed as the projects that would provide the most immediate system-wide improvements in water quantity, quality and flow distribution. Prior to beginning construction on the ten initial projects, the Secretary of the Army must approve the project implementation report in accordance with the requirements of this bill, and submit the reports to the Committee on Environment and Public Works in the Senate and the Committee on Transportation and Infrastructure in the House of Representatives. Funding cannot be appropriated for construction of the ten initial projects until the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives approve the project implementation report for a project by resolution. In order to ensure against cost overruns, if the cost of constructing the projects exceeds 20 percent of the authorized amount, after allowance for inflation as measured by appropriate cost indexes, the Army Corps must seek from Congress an authorization for the additional amount required.

The C-44 Basin Storage Reservoir project is a 40,000 acre-foot water storage reservoir. This component will provide significant regional water quality benefits through the reduction of nutrients entering the St. Lucie River and the Indian River Lagoon by reducing damaging water releases from Lake Okeechobee. In addition, this project will moderate damaging releases to the St. Lucie estuary from Lake Okeechobee and the surrounding basin.

The Everglades Agricultural Area Storage Reservoir project will result in approximately 300,000 acre-feet of water storage and will improve the timing of the environmental water releases to the Water Conservation Areas, reduce damaging freshwater releases to the estuaries, and meet supplemental water supply for agricultural demands in the Everglades Agricultural Area (EAA). Phase I of the project included in the initial authorization will further enhance the performance of Stormwater Treatment Areas 3 and 4, thereby improving the overall water quality of EAA water releases into the Everglades. Lands for the construction of this component have been acquired by the South Florida Water Management District through the purchase and exchange of the Talisman Sugar Corporation properties through funds provided by the Department of the Interior.

The Army Corps should maximize use of the lands acquired through the Talisman purchase and exchange, as well as other EAA lands held by the non-Federal sponsor, in the design and construction of Phase 1 of this project feature. Further, the Corps should seek to take full advantage of the Talisman lands by maximizing the depth of water stored in the Talisman Water Storage Reservoir. The lands are presently leased for agricultural production, which is a sound land management practice that should last only until the lands are needed for restoration. As such, the Army

Corps and the non-Federal sponsor are expected to provide the necessary notification to the lessors so the acquired lands can be used for Everglades restoration purposes as promptly as possible, consistent with the anticipated expiration dates in 2005 and 2007 of the current leases. It is expected that the lands will be needed in 2005 as required by the Plan. As a result, the Corps of Engineers will be required to notify the lessees by October 1, 2002, if the lands are to be used for restoration beginning in 2005.

The Site 1 Impoundment project consists of a 15,000 acre-foot water storage reservoir. This reservoir will be located adjacent to Loxahatchee National Wildlife Refuge and will capture water, currently sent to tide, to supplement water deliveries to the Hillsboro Canal during dry periods, thereby reducing water demands on Lake Okeechobee and Loxahatchee National Wildlife Refuge. Much of the land that is required for this feature has already been acquired by the South Florida Water Management District.

The Water Conservation Areas 3A/3B levee Seepage Management project will control seepage from Water Conservation Areas 3A and 3B by improving groundwater elevations, and will provide flood protection for the C-11 Basin.

The C-11 Impoundment and Stormwater Treatment Area project consists of a 6,400 acre-foot impoundment and stormwater treatment area, located in western Broward County. This project will divert and treat runoff from the western C-11 Basin that is currently discharged into Water Conservation Areas 3A and 3B. After treatment, the water will then supply either Water Conservation Area 3A, the C-9 Stormwater Treatment Area, or the North Lake Belt Storage Area. This project is necessary because the original C&SF Project design provides that the Western C-11 Basin drainage be pumped into Water Conservation Area 3. Once completed, this project will provide the necessary facilities to maintain flood protection within the Basin, while reducing flows through the S-9 pump station to Water Conservation Area 3.

The C-9 Impoundment and Stormwater Treatment Area project consists of a 10,000 acre-foot impoundment and stormwater treatment area to enhance groundwater recharge in the western C-9 Basin in Broward County, provide seepage control for Water Conservation Area 3 and buffer areas to the west, provide flood protection, and provide treatment of runoff in the North Lake Belt Storage Area.

The Taylor Creek-Nubbin Slough Storage and Treatment Area project consists of a 50,000 acre-foot water storage reservoir and 20,000 acre-foot stormwater treatment area that will allow flows to Lake Okeechobee to be attenuated when lake levels are high or rising, and improve water quality treatment flows from Taylor Creek and Nubbin Slough basin, which currently contribute to the highest phosphorus inflow concentrations to Lake Okeechobee.

The project to raise and bridge the east portion of the of the Tamiami Trail and fill the Miami Canal within Water Conservation Area 3 consists of modifying or removing water control structures in Water Conservation Areas 3A and 3B to enhance sheetflow within the remaining natural system areas within the Everglades, thereby reestablishing the ecological and hydrological connections between Water Conservation Areas 3A and 3B, Everglades Na-

tional Park and Big Cypress National Preserve. The first phase of enhancing sheetflow necessitates elevating eastern portions of Tamiami Trail and backfilling portions of the Miami Canal within Water Conservation Area 3.

The project to construct the North New River Improvements will improve the North New River Canal and southern conveyance system in order to handle increased water flows resulting from the backfilling of the Miami Canal within Water Conservation Area 3 to allow for continued water supply deliveries to Miami-Dade County.

The C-111 Spreader Canal project will improve water deliveries and enhance the connectivity and sheetflow in the Model Lands and Southern Glades areas, reduce wet season flows in C-111 and decrease potential flood risk in the lower south Miami-Dade County area. Existing C-111 Project design features are enhanced through the construction of a stormwater treatment area, enlarging the S-332E pump station, and extending the canal under U.S. Highway 1 and Card Sound Road into the Model Lands. This feature also results in filling the Southern portion of the C-111 Canal and removal of S-18C and S-197 structures.

Adaptive Assessment and Monitoring. The Adaptive Assessment and Monitoring program provides an organized process for adapting the Plan as new information becomes available, ensuring that long-term implementation of the Plan delivers the benefits intended. In addition to the inevitable uncertainties, natural and human systems will at times respond in ways that are not anticipated or predicted by any existing hypothesis. Adaptive assessment should moderate these responses by providing an in-place process for early detection and interpretation of the unexpected.

Conditions. Prior to implementation of any of the ten initial construction projects authorized in this bill, the Secretary shall review and approve for the project a project implementation report, prepared in accordance with subsections (f) and (h). This project implementation report is to be submitted to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate for approval by committee resolution. No appropriation shall be made to construct any of the ten initial projects authorized in this bill until the project implementation report for the project is approved.

Modified Water Deliveries Project. The Modified Water Deliveries to Everglades National Park Project, authorized by section 104 of the Everglades National Park Protection and Expansion Act of 1989, is an important element in Everglades restoration since it provides for increased and more natural water deliveries to Everglades National Park through the Shark River Slough. Completion of the project will enhance the recovery of the endangered Cape Sable Seaside Sparrow and environmental restoration north of Everglades National Park. The completion of the Modified Water Deliveries project has been delayed because of controversy over flood mitigation to the adjacent 8.5 square mile area. The committee is encouraged by recent progress in reaching a resolution of the issues on the project, and urges the Secretary of the Interior, Secretary of Army, South Florida Water Management District and the Governor of Florida to continue to cooperate in implementing this criti-

cal project as soon as possible. To emphasize the committee's concern, the bill includes a provision to preclude construction appropriations for projects in the Plan that are dependent on the completion of the Modified Water Deliveries Project, specifically the Water Conservation Area 3 Decomartmentalization and Sheetflow Enhancement Project and the Central Lakebelt Storage Project, until completion of the Modified Water Deliveries to Everglades National Park Project.

(c) Additional Program Authority

SUMMARY

Subsection (c)(1) authorizes the Secretary to expedite the implementation of modifications to the C&SF Project that are described in and consistent with the Plan and that will produce independent and substantial benefits to the restoration, preservation and protection of the South Florida ecosystem.

Subsection (c)(2) requires that before implementation of any project feature authorized by this subsection, the Secretary shall review and approve for the project feature a project implementation report, prepared in accordance with subsections (f) and (h).

Subsection (c)(3) caps the total Federal cost of each project carried out under this subsection at \$12,500,000, with the overall project cost not to exceed \$25,000,000. The total Federal cost of all projects carried out under this subsection shall not exceed \$206,000,000.

DISCUSSION

WRDA '96 authorized Everglades Ecosystem Restoration Projects, or "critical projects," as they are more commonly known. These projects are defined as those which would produce independent and substantial benefits to the restoration, preservation and protection of the South Florida ecosystem. A programmatic authority is included in subsection (c), which provides an authority similar to the "critical projects" authorized in section 528(b)(3) of WRDA '96. Prior to implementation, the Secretary must review and approve a project implementation report for each project, which must be consistent with subsections (f) and (h). The total Federal cost for each project shall not exceed \$12,500,000 and the aggregate Federal costs of all projects authorized under this authority shall not exceed \$206,000,000. There are 21 such projects in the Plan that meet the criteria set forth in this bill.

(d) Authorization of Future Projects

SUMMARY

Subsection (d)(1) directs that each project except those projects authorized by subsections (b) and (c) require a specific authorization of Congress.

Subsection (d)(2) requires that before seeking Congressional authorization for a project under paragraph (1), the Secretary shall submit to Congress a description of the project and a project implementation report prepared in accordance with subsections (f) and (h).

DISCUSSION

This subsection provides the mechanism by which future projects are authorized. The recommended components of the Plan that are not authorized by this bill or eligible under the program authority subsection require a specific authorization by Congress. These future projects are expected to be authorized for construction in subsequent WRDAs.

Prior to the authorization of any project not authorized in subsections (b) or (c) of this bill, the Secretary must transmit a project implementation report to Congress. This allows the Secretary to complete the additional studies necessary to propose future authorizations to the Congress for the elements of the Plan not authorized in subsections (b) and (c), as well as studies related to the improvement of the performance of the features of the Plan. Such future authorizations shall be consistent with subsections (f) and (h) of this bill.

(e). Cost Sharing

SUMMARY

Subsection (e)(1) directs the Federal share of the cost of implementing the projects authorized in subsections (b), (c), and (d) to be 50 percent.

Subsection (e)(2) directs the non-Federal sponsor to be responsible for the acquisition of all lands, easements and rights-of-way, and relocations, and provides credit for such acquisitions toward the non-Federal share regardless of the date of acquisition.

Subsection (e)(3)(A) provides that the non-Federal sponsor may accept Federal funding for the purchase of any necessary land, easement, right-of-way, or relocation, provided that the funds are credited toward the Federal share of the cost of the project.

Subsection (e)(3)(B) provides that funds appropriated to the non-Federal sponsor under U.S. Department of Agriculture programs may be credited toward the non-Federal share of the cost of the Plan, if the Secretary of Agriculture certifies that the funds provided may be used for that purpose.

Subsection (e)(4) directs that, notwithstanding section 528(e)(3) of WRDA '96 (110 Stat. 3770), the cost share for operations and maintenance will be split 50/50 between the Federal and non-Federal sponsor.

Subsection (e)(5)(A) authorizes the Army Corps to provide credit to the non-Federal sponsor, regardless of the date of acquisition, for the value of lands or interests in lands and incidental costs for land acquired by the non-Federal sponsor in accordance with a project implementation report.

Subsection (e)(5)(B) authorizes the Army Corps to provide credit to the non-Federal sponsor for work performed on implementation of the Plan, if the credit is provided for work completed during the applicable period of the project, as defined in the respective agreement between the Secretary and the non-Federal sponsor for that stage of the project. The Secretary must also make a determination that the work is integral to the project.

Subsection (e)(5)(C) authorizes credit to be carried over between authorized projects.

Subsection (e)(5)(D) directs periodic monitoring at both the preconstruction engineering and design phase and the construction phase to ensure that the non-Federal sponsor's contributions comprise the appropriate percentage share for the cost of projects in the Plan.

DISCUSSION

Responsibilities for implementing the Plan will be shared 50/50 by the Army Corps and the South Florida Water Management District. As is standard with Army Corps projects, the non-Federal sponsor is responsible for all land, easements, rights-of-way, and relocations necessary to implement the Plan. The non-Federal sponsor will be afforded credit for providing these lands, easements, rights-of-way, and relocations. The non-Federal sponsor may use Federal funds for the purchase of such lands, easements, rights-of-way, and relocations necessary to carry out the project, so long as those funds are credited toward the Federal share of the cost of the project. The exception is that funds provided to the non-Federal sponsor by the U.S. Department of Agriculture shall be credited toward the non-Federal share of the cost of the Plan, if the Secretary of Agriculture certifies that the funds provided may be used for that purpose.

The majority of the Plan's projects accomplish restoration of the South Florida ecosystem and directly benefit Everglades National Park, Biscayne National Park, Big Cypress National Preserve, and Loxahatchee National Wildlife Refuge. Therefore, notwithstanding Section 528 (e)(3) of WRDA '96, the cost of operating and maintaining the projects in the Plan will also be shared equally between the Federal and non-Federal sponsors. While the committee supports the traditional non-Federal operation and maintenance responsibility, the unique nature of this project and the Federal benefits from the restoration Plan warrants the sharing of operation and maintenance costs. Approximately half the lands that comprise the natural system in the South Florida ecosystem are Federally-managed lands, and these Federal lands will realize substantial benefits through the implementation of the CERP.

Notwithstanding section 528(e)(4) of WRDA '96 (110 Stat. 3770) and regardless of the date of acquisition, the value of lands or interest in lands and incidental costs for land acquired by the non-Federal sponsor in accordance with a project implementation report for any project included in the Plan and authorized by Congress shall be included in the total cost of the project and credited toward the non-Federal share of the cost of the project.

The Secretary may also provide credit, including in-kind credit, toward the non-Federal share for the reasonable cost of any work performed in connection with a study, preconstruction engineering and design, or construction that is necessary for the implementation of the Plan. The credit is conditioned upon: the work being completed during the period of design, as defined in a design agreement between the Secretary and the non-Federal sponsor; the credit being provided for work completed during the period of construction, as defined in a project cooperation agreement between the Secretary and the non-Federal sponsor; the design agreement or project cooperation agreement prescribing the terms and condition

of the credit; and the Secretary determining that the work performed by the non-Federal sponsor is integral to the project.

Any credit provided may be carried over to another authorized project, in accordance with the periodic monitoring performed by the Secretary. The periodic monitoring, which shall be assessed for each project on a 5-year basis, will ensure that the contributions of the non-Federal sponsor equal a 50 percent proportionate share for projects in the Plan. The Secretary will monitor the preconstruction engineering and design phase and the construction phase separately. Credit or work provided shall be subject to audit by the Secretary.

(f). Evaluation of Projects

SUMMARY

Subsection (f)(1) requires that prior to implementing any project authorized in subsections (c) and (d) or any of the clauses (i) through (x) of subsection (b)(2)(C), the Secretary, in cooperation with the non-Federal sponsor and after notice and opportunity for public comment, shall complete a project implementation report for each project to address its cost-effectiveness, engineering feasibility, and potential environmental impacts. This section requires that the project implementation report for each project be consistent with subsection (h).

Subsection (f)(2)(A) states that in carrying out any activity authorized under this section or any other provision of law to restore, preserve or protect the South Florida ecosystem, the Secretary may determine that the activity is justified by the environmental benefits derived by the South Florida ecosystem and no further economic justification for the activity is required, if the Secretary determines the activity is cost effective.

Subsection (f)(2)(B) provides that (f)(2)(A) shall not apply to any separable element intended to produce benefits that are predominantly unrelated to the restoration, preservation, and protection of the natural system.

DISCUSSION

Subsection (f) describes the mechanism for the evaluation of projects. Prior to implementation of any projects authorized by this bill, the Secretary, in cooperation with the non-Federal sponsor, and after notice and opportunity for public comment, shall complete a project implementation report for the project.

The project implementation report is a new type of reporting document, similar to a General Reevaluation Report in that it will contain additional project formulation and evaluation. The project implementation report also will contain General Design Memorandum level of detail, or higher, for engineering and design. Some of the tasks associated with the preparation of the project implementation report will include: surveys and mapping; geotechnical analyses; flood damage assessment; real estate analyses; and preparation of supplemental National Environmental Policy Act documents. The project implementation reports will bridge the gap between the programmatic-level design contained in the Plan and the detailed design necessary to proceed to construction. Furthermore, each

project implementation report will be accompanied by a project Management Plan, which will detail schedules, funding requirements, and resource needs for final design and construction of the project.

(g). Exclusions and Limitations

SUMMARY

Subsection (g) directs that some components of the Plan are not approved for implementation subject to certain exclusions and limitations.

Subsection(g)(1) directs that any project designed to implement the capture and use of the approximately 245,000 acre-feet of water described in section 7.7.2 of the Plan shall not be implemented until the project-specific feasibility study on the need for and physical delivery of the approximately 245,000 acre-feet of water, conducted by the Secretary, in cooperation with the non-Federal sponsor, is completed; the project is favorably recommended in a final report of the Chief of Engineers; and the project is authorized by an Act of Congress. The project-specific feasibility study shall include a comprehensive analysis of the structural facilities proposed to deliver the approximately 245,000 acre-feet of water to the natural system; an assessment of the requirements to divert and treat the water; an assessment of delivery alternatives; an assessment of the feasibility of delivering the water downstream while not substantially reducing authorized levels of service for flood protection to affected properties; and any other assessments that are determined by the Secretary to be necessary to complete the study.

Subsection (g)(2) directs that upon completion and evaluation of the wastewater reuse pilot project, the Secretary in an appropriately timed 5-year report, shall describe the results of the evaluation of advanced wastewater reuse in meeting, in a cost effective manner, the requirements of the natural system. This report shall be submitted to the Congress before Congressional authorization is sought for advanced wastewater reuse projects.

Subsection (g)(3) directs that the Federal share for land acquisition to enhance existing wetland systems along the Loxahatchee National Wildlife Refuge, including the Stazzulla tract, should be funded through the budget of the Department of the Interior, and that the Southern Corkscrew regional ecosystem watershed addition should be accomplished outside the scope of the Plan.

DISCUSSION

Certain components of the Plan are excluded from the overall approval of the Plan or are included with conditions or limitations as follows:

- *245,000 acre-feet of water.* Section 7.7.2 of the Plan describes the potential capture and use of approximately 245,000 acre-feet of additional water. The Plan concluded that this additional water would substantially improve the performance of the Plan in meeting restoration goals for Everglades and Biscayne National Parks but had the potential to have adverse impacts elsewhere in the system and, therefore, required additional study before being incorporated into the Plan. The bill provides that any project that is de-

signed to implement the capture and use of the approximately 245,000 acre-feet of water shall not proceed until a project-specific feasibility study on the need for and physical delivery of the additional water is completed, favorably recommended to the Congress in a final report of the Chief of Engineers, and authorized by an Act of Congress.

- *Wastewater Reuse.* The Plan includes a wastewater treatment plant expansion at the existing South District Wastewater Treatment plant in Miami-Dade County and at a future West Miami Dade Wastewater Treatment Plant to produce superior, advanced treatment of wastewater for reuse in Everglades National Park and Biscayne Bay restoration. The plant upgrades will potentially produce a combined 230 million gallons of water per day. The combined cost of the upgrades is about \$800 million in construction costs and \$85 million in operation and maintenance costs. There is concern about the high cost of treating this water, and whether the treatment system will be capable of treating the wastewater to appropriate levels for reuse in the natural system. The results of the wastewater reuse pilot project will be carefully reviewed in considering the ability of the treatment system to meet water quality requirements.

Additional water is needed to meet the requirements of restoration of the natural system including Biscayne Bay. Therefore, subsection (g) directs that the Secretary, in consultation with the Department of the Interior, the Environmental Protection Agency, the State of Florida and local governments to investigate in conjunction with the implementation of the Wastewater Reuse Technology Pilot project, potential sources of water other than reuse for providing freshwater flows to Biscayne Bay focusing on lower cost alternatives; defining target freshwater flows for Biscayne Bay based on the quality, timing, and distribution of flows needed to provide and maintain the estuarine functions of Biscayne Bay, Biscayne National Park and associated coastal wetlands; and performing further evaluations to determine whether restoration targets can be better achieved. These evaluations are to be included in an appropriate 5-year report to the Congress before any authorization is sought for advanced treatment and reuse of wastewater.

- *Land Acquisition projects.* Two of the projects included in the Plan are primarily land acquisition. While these projects have merit, they are not appropriate for implementation under the program of the Army Corps. Accordingly, the bill provides that the Federal share for land acquisition in the project to enhance existing wetlands systems along the Loxahatchee National Wildlife Refuge, including the Stazzulla tract, should be funded through the budget of the Department of Interior and that the Southern Corkscrew regional eco-system watershed addition should be accomplished outside the scope of the Plan.

(h). Assurance of Project Benefits

SUMMARY

Subsection (h)(1) is a general statement of Congressional purpose and intent to guide the implementation of authorized Plan activities, including the agreement between the President and Governor

required by subsection (h)(2), programmatic regulations required by subsection (h)(3), and the project-specific assurances required by subsection (h)(4).

With the exception of the pilot projects, subsection (h)(2)(A) provides that no appropriation shall be made for construction of a project contained in the Plan until the President and the Governor enter into a binding agreement under which the State will ensure, by regulation or other appropriate means, that water made available under the Plan for the restoration of the natural system is available as specified in the Plan. The committee expects this agreement to be executed early in the Plan implementation process. Subsection (h)(2)(B)(i) establishes a Federal cause of action to enforce a failure by Federal or State officials to comply with any provision of the agreement. This section provides for injunctive relief directing an official, found to be in noncompliance with the agreement, to comply. Subsection (h)(2)(B)(ii) requires sixty-day notification to the Secretary prior to commencement of an action under clause (i), and bars a civil action under clause (i) if the United States has commenced and is diligently prosecuting an action for the failure to comply in either Federal or State court.

Subsection (h)(3)(A) requires the Secretary of the Army to issue programmatic regulations within 2 years of the date of enactment. The purpose of the programmatic regulations is to ensure, over the life of the Central and South Florida Project, that the goals and purposes of the Plan are achieved. The Governor and the Secretary of Interior must concur on the regulations prior to issuance; additionally, consultation with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Environmental Protection Agency, the Department of Commerce, and other Federal, State and local agencies is required.

The content of the programmatic regulations is specified in subsection (h)(3)(B). Programmatic regulations will be the basis for determining the content and sufficiency of project-specific assurance documents required by subsection (h)(4). The regulations shall establish a process to: provide guidance for the development of project implementation reports, project cooperation agreements, and operating manuals to ensure that the goals and objectives of the Plan are achieved; ensure that new information resulting from changed or unforeseen circumstances, new scientific or technical information or information that is developed through the principles of adaptive assessment contained in the Plan, or future authorized changes to the Plan are integrated into the implementation of the Plan; and ensure the protection of the natural system consistent with the goals and purposes of the Plan.

It is possible that projects authorized for construction in this bill may be ready to proceed to construction prior to issuance of the programmatic regulations. Subsection (h)(3)(C)(i) provides a transition rule, and requires that all project implementation reports approved before the date of promulgation of the programmatic regulations shall be consistent with the Plan. Subsection (h)(3)(C)(ii) further provides that, once issued, the preamble of the programmatic regulations shall include a statement concerning the consistency with the programmatic regulations of any project implementation

reports that were approved before the date of promulgation of the regulations.

Subsection (h)(3)(D) establishes an ongoing duty for the Secretary to ensure that the programmatic regulations will result in attainment of Plan goals and purposes. Review of the regulations not less often than every 5 years is the minimum requirement, however this duty may require review and revision more frequently than the minimum five-year interval. Under subsection (h)(3)(B)(ii), the initial programmatic regulations themselves must include a process to account for new information, changed or unforeseen circumstances, or Congressionally-authorized changes to Plan elements (such as a decision not to proceed with certain projects or unproven technologies).

Subsection (h)(4) establishes requirements for the three project-specific documents that ultimately deliver Plan benefits—project implementation reports (“PIRs”); project cooperation agreements (“PCAs”); and operating manuals. Subsection (h)(4)(A) states the procedures and requirements governing PIRs. Development of a PIR is a joint responsibility of the Secretary and non-Federal project sponsor. The PIR is developed in accordance with section 10.3.1 of the Plan, as modified by the additional requirements in this bill ((h)(4)(A)(i)). The Secretary and non-Federal sponsor must coordinate with appropriate Federal, State, tribal and local officials when developing a PIR ((h)(4)(A)(ii)).

Subsection (h)(4)(B) references and incorporates the existing process under which PCAs are executed on Army Corps construction projects. PCAs are a final check on assuring project benefits. PCAs are essentially a contract for each specific project. This subsection requires execution of a PCA for each authorized project. Further, the Secretary may not sign a PCA until water for the natural system identified in the project implementation report is actually reserved or allocated under State law.

Subsection (h)(4)(C) governs development of project operating manuals. The Secretary and the non-Federal sponsor shall develop and issue, for each project or group of projects, an operating manual that is consistent with the water reservation or allocation for the natural system described in the PIR and the PCA for the project or group of projects ((h)(4)(C)(i)). Any significant modification by the Secretary and the non-Federal sponsor to an operating manual after the operating manual is issued shall only be carried out subject to notice and opportunity for public comment ((h)(4)(C)(ii)).

Subsection (h)(5) is a savings clause that is designed to preserve the existing legal rights of persons and entities served by the Central and South Florida project and potentially affected by implementation of the Plan. Subsection (h)(5)(A) addresses the rights of existing legal water users. The subsection states that the Secretary shall ensure that the implementation of the Plan, including physical or operational modifications to the C&SF Project, does not cause significant adverse impact on existing legal water users.

Subsection (h)(5)(B) establishes a condition upon project implementation that prohibits elimination of existing legal sources of water due to Plan implementation until a new source of water sup-

ply of comparable quantity and quality is available to replace the water to be lost.

Subsection (h)(5)(C) states the rule for maintenance of flood protection. The provision is intended to ensure that persons legally entitled to flood protection are not harmed by implementation of the Plan. The provision provides that in implementing the Plan, the Secretary shall maintain authorized levels of flood protection in existence on the date of enactment of this bill, in accordance with applicable law.

Subsection (h)(5)(D) states that nothing in this bill prevents the State from allocating or reserving water, as provided under State law, to the extent consistent with this bill.

Subsection (h)(5)(E) is a savings clause designed to specifically protect a compact between the State, the South Florida Water Management District and the Seminole Tribe of Florida defining the scope and use of water rights of the Seminole Tribe of Florida, as codified by section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e).

DISCUSSION

Assurances Generally. The predominant Federal interest in this bill is the restoration of the South Florida ecosystem. Subsection (h) provides the assurance that the considerable Federal investment made in this bill, and additional investments expected in subsequent Acts of Congress implementing the Plan, will result in the restoration of the Everglades.

Subsection (h) does more than provide the necessary assurances. It also defines the relation among the various Federal, State and local governmental entities charged with Plan implementation responsibilities. The subsection places procedural and substantive requirements on both the Federal Government and the State of Florida. Most importantly, subsection (h) strikes a careful balance between the Federal interest in ensuring that predicted Plan benefits, including benefits to Federal lands, are attained, and the State's interest in: ensuring that State-owned or managed lands also receive predicted Plan benefits; and preserving its traditional sovereignty over the reservation and allocation of water within the State's boundaries.

Subsection (h)(1) of the bill restates and codifies the purpose of the Plan, as stated on page ii of the Plan summary. In conjunction with section 2(b), which approves the Plan as a framework for modifications to the existing C&SF Project, this subsection provides overall guidance in reconciling the changes made to the C&SF Project by WRDA '96 with implementation of the Plan. Sections 2(b) and 2(h) clearly specify that the purpose of Federal involvement in this project is to restore, preserve, and protect the Southern Florida ecosystem, which was damaged by past authorized Federal actions carried out to implement the original, more limited purposes of the C&SF Project.¹

¹ While section 2(b)(1) of the bill expressly approves the Plan as the framework for restoration, many parties have testified that additional assurances were needed, especially assurances that the natural system would receive the intended benefits when the Plan is implemented. The bill also contains additional requirements that are not included in the Plan. The bill therefore does

There are three key elements in how the bill provides the needed assurances while creating a partnership between the Federal and State governments. The first element is a requirement that the President and Governor execute a binding, enforceable agreement that the water generated by the Plan will in fact be available for restoration when needed. This agreement is intended to answer concerns that the water needed for the restoration of the natural system will be available for that purpose as individual projects are completed. The second element is the programmatic regulations. These regulations, issued by the Secretary of the Army, require the concurrence of both the Governor and the Secretary of Interior. This relationship between the principal State and Federal trustees for the resources that will benefit from implementation of the Plan is unique in Federal environmental law, and is intended to create a true Federal-State partnership. The third elements are the project-specific documents which provide enforceable project-specific quantification of the appropriate amount, timing and distribution of water for the natural system and for other Plan purposes.

Assurances Agreement. In testimony before the committee and during the negotiations on subsection (h), concerns were expressed that the State's permitting process could result in the over allocation of new water to be derived from the implementation of the Plan. The State of Florida raised concerns that this bill not federalize State water law, and that Plan implementation instead rely upon State law and processes in reserving or allocating water. Subsection (h)(2) balances both of these important concerns.

Subsection (h)(2) does not specify in detail the contents of the agreement. The committee intends that the agreement between the Governor and the President result in a binding requirement for the State to manage its consumptive use permitting process in such a manner that does not infringe upon the ability of the State to deliver the water made available under the Plan for the restoration of the natural system as projects come on-line in later years. The agreement is not intended to create a mechanism for the Federal Government to become involved, on a permit-by-permit basis, in the State's consumptive use permitting decisions. Rather, the agreement will attest that the State will not pre-allocate any water generated by the Plan. Actual allocation and reservation of water generated by implementation of Plan projects is governed by subsection (h)(4). Under subsection (h)(4), any allocation and reservation of Plan water is identified under a cooperative Federal-State partnership and executed under State water law. The President and Governor should execute the agreement required by subsection (h)(2) as soon as is practicable.

Subsection (h)(2)(B) makes the agreement enforceable by establishing a cause of action in Federal courts for injunctive relief in case the Federal or State officials fail to comply with the agreement. This provision, which allows any person or entity aggrieved by a failure to comply to bring a cause of action, is narrowly tailored to remain consistent with United States Supreme Court juris-

modify the Plan, and any inconsistency between the bill and the Plan must be resolved in favor of the bill.

prudence on State sovereign immunity under the Eleventh Amendment to the Constitution.²

Programmatic Regulations. Subsection (h)(3) requires the issuance of programmatic regulations. The purpose of the programmatic regulations are to ensure, over the life of the C&SF Project, that the goals and purposes of the Plan are achieved. Further, the programmatic regulations guide the implementation of the project implementation reports, and they must be periodically reviewed not less often than every 5 years to ensure that new information is integrated into implementation of the Plan. The programmatic regulations are therefore a central component in the adaptive assessment and management process on which success of the Plan, and this bill, depends.

The process for developing the programmatic regulations recognizes the stewardship responsibilities of governmental entities with trustee relationships for the resources that will benefit from Plan implementation. As the Secretary of the Interior and the State of Florida share, in approximately equal proportions, responsibility for most of the remaining natural system areas to benefit from the Plan, and further recognizing that the State will share equally in the cost of Plan implementation with the Federal Government, subsection (h)(3) requires that the Secretary issue the programmatic regulations only with the concurrence of the Secretary of the Interior and the Governor of Florida. This unique Federal-State partnership will allow for improved up-front planning during the implementation of the Plan and should improve coordination among the affected agencies, each with varying missions and responsibilities. In developing the programmatic regulations, the Federal and State partners should establish interim goals—expressed in terms of restoration standards—to provide a means by which the restoration success of the Plan may be evaluated throughout the implementation process. The restoration standards should be quantitative and measurable at specific points in the Plan implementation. The Secretary and the Secretary of the Interior are required to report on the progress toward these goals as part of the required reporting process.

Project-Specific Assurances. Project-specific assurances are included requiring the project-specific implementation reports to be consistent with the Plan and the programmatic regulations. The PIRs are the documents that will identify and quantify the water that is necessary to attain the restoration of the natural system. The State, using its own State water law, will execute the reservations or allocations for the natural system that are specified in the PIR before the Secretary can execute the PCA, which is the contract between the Secretary and non-Federal sponsor that is the prerequisite for construction of Plan projects. Finally, subsection (h)(4)(C) requires consistency between the operating manuals and the water reservations or allocations for the natural system.

Savings Clause. Subsection (h)(5) requires the Secretary to ensure that implementation of the Plan does not cause substantial

²Although the Eleventh Amendment prohibits Congress from making the State of Florida capable of being sued in Federal court, an exception is provided by the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908). *Ex Parte Young* provides that Congress may authorize suits against State officers to enforce Federal law. The cause of action here fully comports with *Ex Parte Young*.

adverse impacts on existing legal uses of water, including water allocated to the Seminole Tribe of Florida as codified under Federal and State law, the Miccosukee Tribe of Indians of Florida, water for Everglades National Park, water for the preservation of fish and wildlife in the natural system, agricultural water supply and other legal uses as of the date of enactment of this bill. Elimination of existing sources of water supply is barred until new sources of comparable quantity and quality of water are available; existing authorized levels of flood protection are maintained; and the water compact among the Seminole Tribe of Florida, the State, and the South Florida Water Management District is specifically preserved.

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.

(i). Dispute Resolution

SUMMARY

Subsection (i)(1) directs the Governor and the Secretary, within 180 days of enactment of this bill, to develop an agreement for resolving disputes between the Army Corps and the South Florida Water Management District. Subsections (i)(1)(A), (i)(1)(B), and (i)(1)(C) describe what must be included in the mechanism for the timely and efficient resolution of disputes.

Subsection (i)(2) directs that the Secretary shall not approve a project implementation report under this bill until the agreement established under this subsection has been executed.

Subsection (i)(3) states that nothing in the agreement established under this subsection shall alter or amend any existing Federal or State law.

DISCUSSION

This bill provides a mechanism by which disputes between the Secretary and the Governor are resolved. Within 180 days from the date of enactment, the Secretary and the Governor shall develop an agreement on how to resolve disputes between the Army Corps and the State, related to the implementation of the Plan. This agreement will establish a mechanism for the resolution of disputes, including: a preference for the resolution of disputes between the Jacksonville District of the Corps of Engineers and the South Florida Water Management District; a mechanism for the Jacksonville District of the Corps of Engineers or the South Florida Water Management District to initiate the dispute resolution process for unresolved issues; the establishment of appropriate time-frames and intermediate steps for the elevation of disputes to the Governor and the Secretary; and a mechanism for the final resolution of disputes, within 180 days from the date that the dispute resolution process is initiated.

(j) Independent Scientific Review

SUMMARY

Subsection (j)(1) directs the Secretary of the Army, the Secretary of the Interior, and the State of Florida, in consultation with the South Florida Ecosystem Restoration Task Force, to establish an independent scientific review panel, convened by a body such as the National Academy of Sciences, to review the Plan's progress toward achieving the natural system's restoration goals of the Plan.

Subsection (j)(2) directs the panel described in paragraph (1) to produce a biennial report to Congress, the Secretary of the Army, the Secretary of Interior, and the State of Florida that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

DISCUSSION

Subsection (j) directs the Secretary, the Secretary of the Interior, and the State, in consultation with the South Florida Ecosystem Restoration Task Force, to establish an independent scientific panel to conduct on-going review of the progress achieved by the Plan's execution in attaining the restoration goals of the Plan. The panel is to be convened by a body, such as the National Academy of Sciences, with expertise in assembling panels for the purpose of conducting independent scientific reviews.

The committee expects the body convening the review panel to use established practices for assuring the independence of members employed in this instance. This includes assuring that neither panel members, nor the institutions they represent, have a vested interest in the outcome of the scientific review or the execution of the Plan. The committee also expects the review panel to contain individuals reflecting a balance of the knowledge, training, and experience suitable to comprehensively review and assess the Plan's progress toward achieving restoration goals. The committee believes that members of the review panel should have expertise in applicable scientific disciplines and include individuals possessing specific scientific experience with, and knowledge of, the South Florida ecosystem. This subsection is not intended to necessarily preclude the National Research Council's Committee on Restoration of the Greater Everglades Ecosystem, either in part or in full, from assuming the specified duties of the independent scientific review panel.

The panel is directed to produce a biennial report and submit its findings to Congress, the Secretary, the Secretary of the Interior, and the State of Florida. The committee intends for these reports to address the Plan's progress toward achieving the restoration goals of the Plan on a biennial basis. The panel is directed to include in each report an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

(k). Outreach and Assistance

SUMMARY

Subsection (k)(1) directs the Secretary, in executing the Plan, to ensure that small business concerns owned and controlled by socially and economically disadvantaged individuals are provided opportunities to participate under section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

Subsection (k)(2) requires the Secretary to ensure that impacts on socially and economically disadvantaged individuals, including individuals with limited English proficiency, and communities are considered during implementation of the Plan, and that such individuals have opportunity to review and comment on the Plan's implementation. The Secretary shall also ensure that public outreach and educational opportunities are provided to the individuals of South Florida, including individuals with limited English proficiency, and in particular for socially and economically disadvantaged communities.

DISCUSSION

This subsection directs the Secretary to ensure that small businesses owned and controlled by socially and economically disadvantaged individuals have an opportunity to participate in the Plan. Under section 15(g) of the Small Business Act, Federal agencies are required to establish goals for awarding contracts to small businesses, including socially and economically disadvantaged businesses. This provision reiterates that requirement for purposes of carrying out the Plan.

The Secretary is also directed to consider the impacts of implementing the Plan on socially and economically disadvantaged individuals, including those with limited English proficiency. Recognizing that a large percentage of the population of the South Florida ecosystem is made up of minority groups (e.g., 20.5 percent Hispanic), this provision ensures that the individuals have opportunities to review and comment on the implementation of the Plan. In addition, the Secretary shall ensure that public outreach and educational opportunities are provided to these same individuals.

The Plan must be adequately explained to the people of South Florida, in particular to those in socially and economically disadvantaged communities. The Secretary should work closely with the non-Federal sponsor to identify local partners for these efforts, such as existing non-profit institutions with experience in researching and exhibiting South Florida ecosystems for the general public and conducting outreach programs for socially and economically disadvantaged communities and individuals with limited English proficiency. Because of the large number of individuals in the area with limited English proficiency, the Secretary should ensure that the outreach and education programs are communicated so that these individuals can understand the Plan and implementation process.

(l). Report to Congress.

Subsection (l) requires the Secretary and the Secretary of the Interior, in consultation with the Environmental Protection Agency,

the Department of Commerce and the State of Florida to submit a report to Congress on the implementation of the Plan. The report shall be submitted on October 1, 2005, and not less than every 5 years thereafter. The report shall include: a description of planning, design, and construction work completed; the amount of funds expended during the period covered by the report, including an analysis of funds expended for adaptive assessment; the work anticipated over the next 5-year period; a determination by each Secretary and the Administrator of the Environmental Protection Agency concerning the benefits to the natural system and the human environment achieved by the date of the report and whether the completed projects are being operated consistent with the assurances provisions in subsection (h); and a review of the activities required under the outreach and assistance provisions of subsection (k). The role of the Environmental Protection Agency in this determination helps to ensure that water quality benefits, an essential component of the restoration effort, will be achieved, and that an ecosystem-wide perspective will be maintained.

HEARINGS

On January 7, 2000, the Committee on Environment and Public Works held a field hearing in Naples, Florida, to receive testimony on the Comprehensive Everglades Restoration Plan. Witnesses who testified were: the Honorable Carol Browner, Administrator, U.S. Environmental Protection Agency; the Honorable Joseph Westphal, Assistant Secretary of the Army (Civil Works); Mary Doyle, Counselor to the Secretary and Chair of the South Florida Ecosystem Task Force, U.S. Department of the Interior; the Honorable David Struhs, Secretary of the Florida Department of Environmental Protection; Captain Mike Collins, Chairman of the South Florida Water Management District; Jim Shore, Counsel to the Seminole Tribe of Florida; Dexter Lehtinen, representing the Miccosukee Tribe of Indians; the Honorable Nora Williams, Commissioner of Monroe County, Florida; Malcolm S. "Bubba" Wade, Senior Vice President of U.S. Sugar Corporation; and the Honorable Nathaniel Reed, former Assistant Secretary of the Interior.

On May 11, 2000, the Committee on Environment and Public Works met to consider the Administration's legislative proposal for the Comprehensive Everglades Restoration Plan, included in S. 2437. The committee received testimony from the Honorable Jeb Bush, Governor of the State of Florida; Patricia Power, representing the Seminole Tribe of Florida; Dexter Lehtinen, representing the Miccosukee Tribe of Indians; Captain Mike Collins, Chairman of the South Florida Water Management District; the Honorable Joseph Westphal, Assistant Secretary of the Army (Civil Works); Gary Guzy, General Counsel of the U.S. Environmental Protection Agency; Mary Doyle, Acting Assistant Secretary for Water and Science, and the Chair of the South Florida Ecosystem Task Force, Department of the Interior; Mr. Ken Keck, Director of Legislative and Regulatory Affairs, Florida Citrus Mutual; and Dr. David Guggenheim, President, The Conservancy of Southwest Florida, Co-Chair, the Everglades Coalition.

LEGISLATIVE HISTORY

On April 13, 2000, Senators Smith and Baucus introduced by request the Administration's proposal for the Water Resources Development Act of 2000 (S. 2437). Section 3 of that bill contained the Administration's proposal for approval and authorization of the Comprehensive Everglades Restoration Plan. On June 27, 2000, Senators Smith, Voinovich, Baucus, Graham, and Mack introduced the Restoring the Everglades, an American Legacy Act (S. 2797). On that same day, Senator Voinovich, Smith and Baucus introduced the Water Resources Development Act of 2000 (S. 2796).

S. 2797, as amended, was reported by the Committee on Environment and Public Works on June 28, 2000. In addition, S. 2796 was amended to include S. 2797, as reported by the committee, as Title VI of the bill.

ROLLCALL VOTES

On June 28, 2000, the Committee on Environment and Public Works met to consider S. 2797, the Restoring the Everglades, an American Legacy Act. An amendment offered by Senators Smith of New Hampshire, Baucus, Voinovich and Graham was agreed to by voice vote. An amendment offered by Senator Graham on a Dispute Resolution Mechanism was adopted by voice vote. An amendment offered by Senator Warner on operation and maintenance was defeated by 10 nays to 8 ayes. Voting in favor were Senators Bennett, Bond, Crapo, Hutchison, Inhofe, Thomas, Voinovich, and Warner. Voting against were Senators Baucus, Boxer, Chafee, Graham, Lautenberg, Lieberman, Moynihan, Reid, Smith of New Hampshire, and Wyden. A motion to report the bill as amended was agreed to by rollcall vote of 17 ayes and 1 nay. Voting in favor were Senators Bennett, Baucus, Bond, Boxer, Chafee, Crapo, Graham, Hutchison, Lautenberg, Lieberman, Moynihan, Reid, Smith of New Hampshire, Thomas, Voinovich, Warner, and Wyden. Voting against was Senator Inhofe.

EVALUATION OF REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication of the report of the committee's estimate of the regulatory impact made by the bill as reported. No regulatory impact is expected by the passage of S. 2797. The bill will not affect the personal privacy of others.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), the committee finds that this bill would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. All of its governmental directives are imposed on Federal agencies. The bill does not directly impose any private sector mandates.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Act requires each report to contain a statement of the cost of a reported

bill prepared by the Congressional Budget Office. Senate Rule XXVI paragraph 11(a)(3) allows the report to include a statement of the reasons why compliance by the committee is impracticable. The committee is unable to include a statement of the cost at this time because the Congressional Budget Office has not finished an analysis of the bill.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate require changes in existing law to be indicated in the report. No changes to existing law will occur with the passage of this bill

MINORITY VIEWS OF SENATOR JAMES M. INHOFE

Mr. Chairman, I would like to outline my objections to S. 2797, the "Restoring the Everglades, An American Legacy Act." As my vote indicates, I have strong objections to this legislation. While I recognize the Everglades as a national treasure, S. 2797 sets precedents, which I can not, in good conscious, condone. My five major concerns with this legislation are: (1) the new precedent which requires the federal government to pay for a portion of operations and maintenance costs; (2) the violation of Committee on the Environment and Public Works' policy concerning the need for a Chief of the Army Corps of Engineer's report before project authorization; (3) the basis of the restoration project on unproven technology; (4) the open-ended nature of costs of this project; and (5) the strong possibility that the Restoring the Everglades, An American Legacy Act will not be considered as a stand alone bill.

First, S. 2797 sets a terrible precedent on operations and maintenance. S. 2797 will result in \$20 million per year in operations and maintenance costs. Furthermore, when the entire Comprehensive Everglades Restoration Plan is up and running, operations and maintenance costs are estimated to be \$172 million every year. These are enormous, neverending costs!

Though federal funds are used to construct Water Development Projects, since 1986, the cost of operations and maintenance of the projects has been the non-federal entities (usually state or local governments) responsibility. The Committee should not forget that this critical cost-share policy was a key factor in breaking a 16 year stalemate on Water Resources Development Authorization (WRDA) legislation. The Everglades Restoration Act splits the cost of operations and maintenance of the Everglades $\frac{1}{2}$ to the federal government and $\frac{1}{2}$ to the state of Florida. Not only is this provision unprecedented, it is also going to cost the federal government a great deal of money. Furthermore, because the federal government has not paid for operations and maintenance costs, states and localities have enormous backlogs of operations and maintenance costs due to lack of funding. The precedent, which the Everglades legislation sets, could open a pandora's box having the federal government take on expenses for the operations and maintenance of many projects. There are a number of Oklahoma projects, which I would consider national treasures, that could use federal funds for operations and maintenance costs.

Second, by allowing Everglades projects to go forward without a Chief of the Army Corps of Engineer's report, S. 2797 is a serious departure from committee policy. S. 2797 authorizes 10 projects at a cost of \$1.1 billion with no reports of the Chief of Engineers on these projects. Since 1986, it has been the policy of the Committee on Environment and Public Works to require projects to have undergone full and final engineering, economic and environmental re-

view by the Chief of Engineers prior to project approvals by the Committee.

Normally, the Corps of Engineers water resources project study process can be initiated when either of the two Public Works Committees of the Congress approves a committee resolution requesting that the study of a potential project area be undertaken. Once such a resolution is approved by either committee, the Corps is authorized to proceed with a reconnaissance study of the proposed project at 100 percent federal cost. The purpose of a reconnaissance study is to determine whether or not there is a federal interest in the project. Authorization of a reconnaissance study may also be provided by statute. Army Corps policy now requires all reconnaissance studies to be completed within 12 months and at a cost of no greater than \$100,000.

If, after completion of the reconnaissance study, a project is deemed to be in the federal interest, the federal government and a non-federal sponsor may enter into an equally cost-shared feasibility study. The feasibility study includes a more detailed set of engineering, economic and environmental analyses to determine whether a project is justified to advance to the construction phase. When the feasibility study is completed, the Corps District Engineer reviews the results and forwards a recommendation on the project to the Division Engineer. The Division Engineer issues a Division Engineer's notice and then submits the report to Corps Headquarters. Corps Headquarters performs a final review and submits the report for the mandatory (33 U.S.C. 701 1(a)) 30-day State and federal agency review period. After these reviews are complete and the report is found favorable, a report is prepared for the final recommendation of the Chief of Engineers. The report of the Chief of Engineers is forwarded to the Assistant Secretary of the Army (Civil Works) for Administration review and submission to the Congress.

This process was established to protect taxpayer dollars by ensuring the soundness of all projects. Therefore, all projects, which are a part of the Comprehensive Everglades Restoration Plan, should and must be subject to this same process.

Third, I have serious concerns about the wisdom of a federal investment in unproven technologies—particularly a \$7.8 billion investment. The project approval process, described above, was established to prevent exactly what is happening with S. 2797—a gamble with the American taxpayers money. Because of the many unproven technologies, which the Corp is planning to use to restore the Everglades, the Comprehensive Everglades Restoration Plan is gambling with tax dollars. A great example of why Congress should follow the normal process for approving projects and wait for reports of the Chief of Engineers on the Everglades projects.

Fourth, the total cost of the Comprehensive Everglades Restoration Plan is estimated at \$7.8 billion over 38 years. This is the current estimate. I have serious concerns about this potential for cost over runs associated with this project. As with almost all federal programs, this project will probably cost much more at the end of the day. For example, in 1967, when the Medicare program was passed by Congress, the program was estimated to cost \$3.4 billion. In 2000, the costs of the program are estimated to \$232 billion. No

one could have foreseen this exponential growth! A cost cap on the Comprehensive Everglades Restoration Plan must be considered. However, the future costs of project of this magnitude must be taken into consideration by Congress.

Finally, I object to the Committee's action to attach the Restoring the Everglades, An American Legacy Act to the Water Resources Development Act of 2000. Because of the scale and departure from existing law and policy of S. 2797, this legislation should be considered as a stand alone bill—not a provision in the Water Resources Development Act of 2000. Proponents of the legislation want to have their cake and eat it to. On one hand, they want a special process, breaking Committee policies, for authorizing Everglades projects. On the other hand, they are willing to consider the Restoring the Everglades, An American Legacy Act not on its own merits, but rather hide the bill in the popular Water Resources Development Act. This is an attempt to provide legitimacy to an otherwise illegitimate process.

Again, I recognize the Everglades as a national treasure as I do many places in Oklahoma. As Congress considers Everglades restoration legislation, all I ask is that Congress play by the rules.

