



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

**INTERCOL 9
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Kenneth G. Ammon, P.E.
Senior Vice President
WRSScompass



Presentation Overview

- **Background**
- **Federal Rules and Policies**
- **WRDA 2000, Assumptions vs. Reality**
- **CERP Planning Process Impediments**
- **Local Government Impediments**
- **Recommendations To Achieve Environmental Sustainability**
- **Summary**

Comprehensive Everglades Restoration Plan (CERP)

*Rescuing an Endangered Ecosystem:
The Plan to Restore America's Everglades*

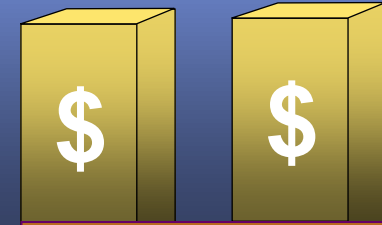


The Central and Southern Florida Project
Comprehensive Review Study (The Restudy) July 1999

- On July 1, 1999, the Secretary of the Army and the State of Florida presented the Plan to Congress
- Approved by Congress as the Framework for Everglades Restoration in the Water Resources Development Act of 2000 (WRDA-2000)

Project Cost Sharing

50% Federal 50% State

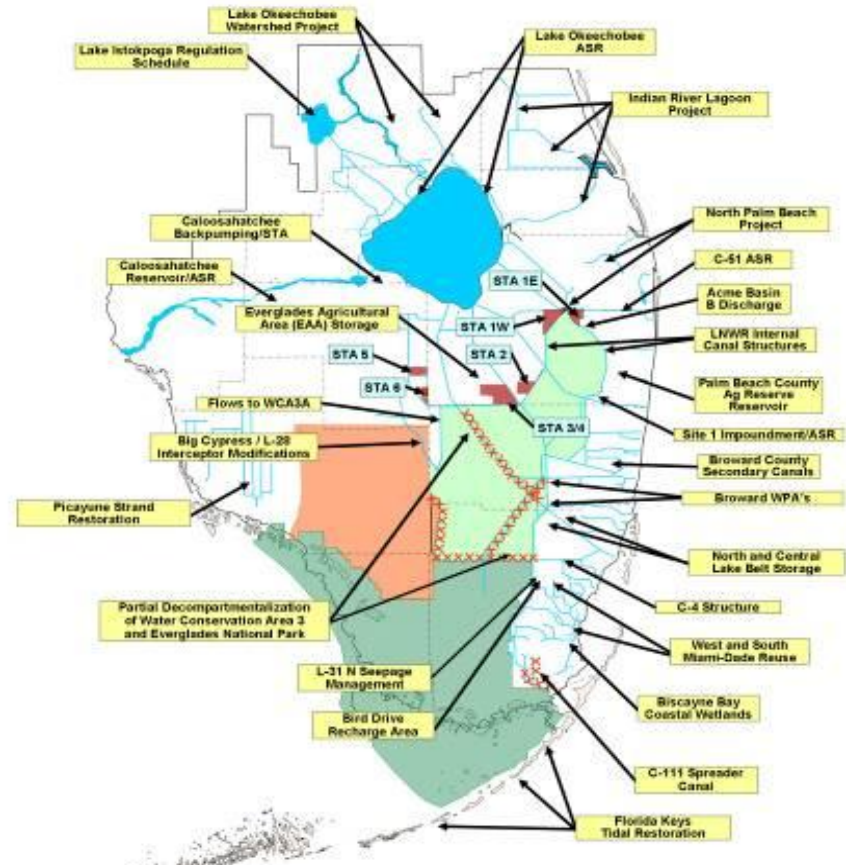


Comprehensive Everglades Restoration Plan

Includes 68 components to be implemented over 35 years



Everglades Restoration

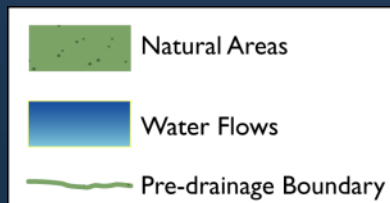
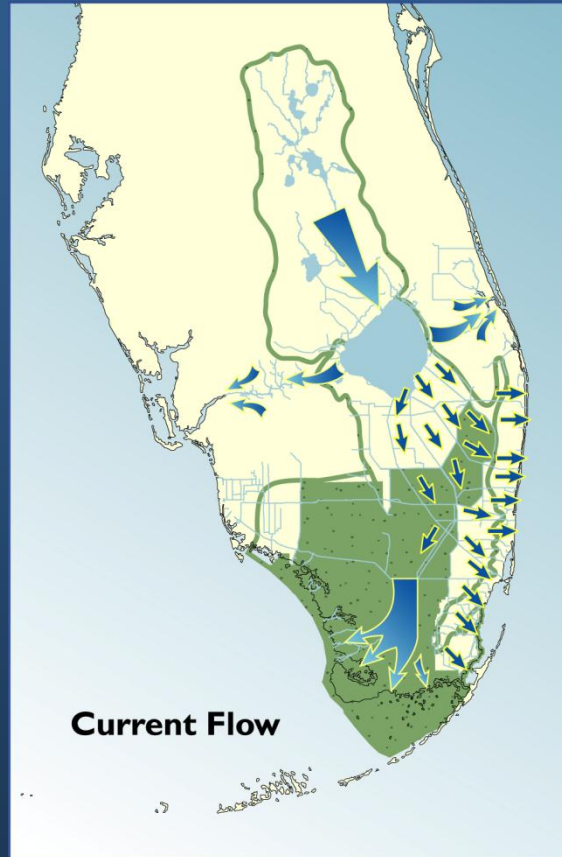
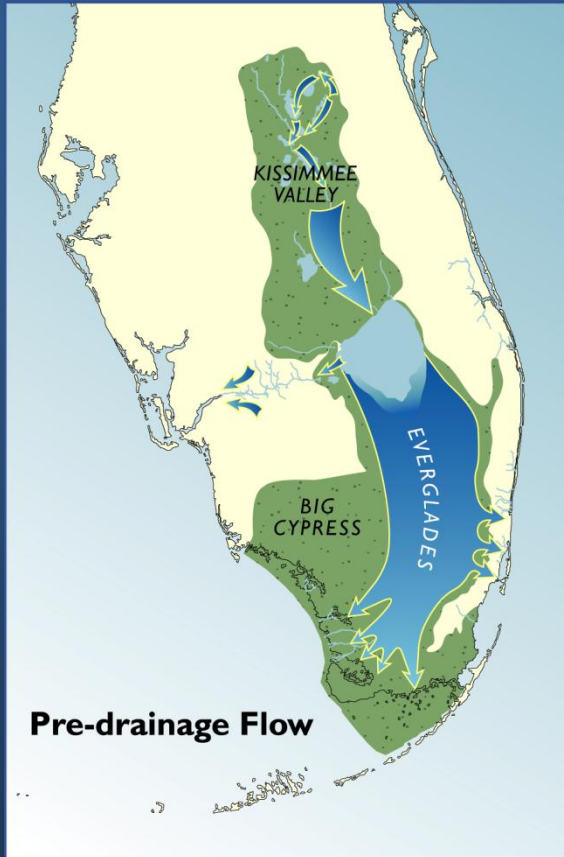


Key

- Comprehensive Everglades Restoration Plan
- Everglades Construction Project



CERP Goal





WRDA 2000 Planning Constraints

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



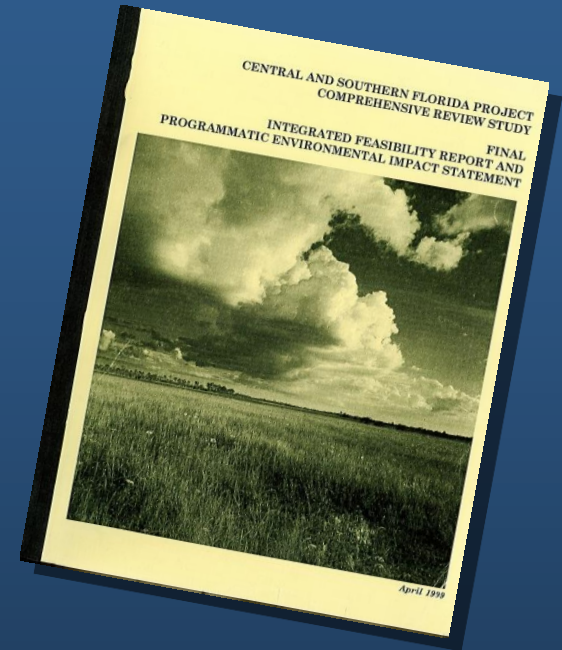
Federal Rule/Policy Constraints

- **National Environmental Policy Act (NEPA)**
- **Endangered Species Act (ESA)**
- **Fish and Wildlife Coordination Act**
- **Clean Water Act**
- **Migratory Bird Species Act (MBSA)**
- **Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)**
- **Anti-Deficiency Act (fiscal accountability)**
- **Federal Advisory Committee Act (FACA)**
- **Water Resources Principles and Guidelines**
- **Corps Planning Regulations**

Assumption vs. Reality

Project Implementation Report Completion

- **1999 Assumption:**
 - Planning process would be streamlined to focus on expedient implementation and completed within 1.5 to 3 years
- **2012 Reality:**
 - Planning process has not been streamlined and Project Implementation Reports have taken from 3 to 10 years for completion



Assumption vs. Reality

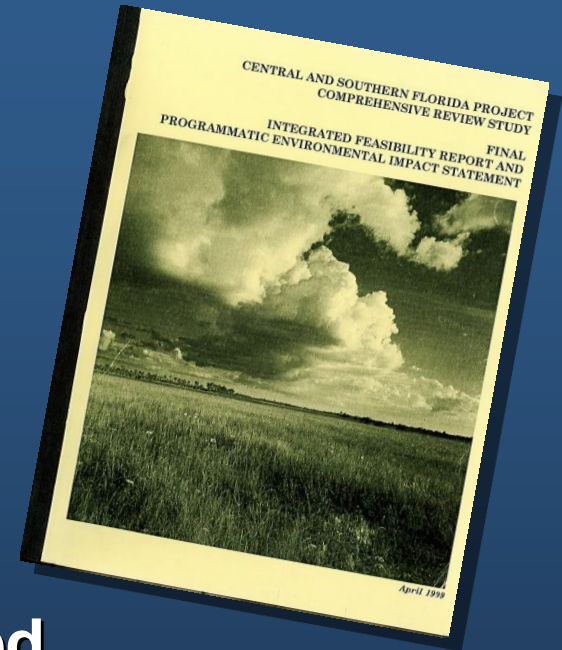
Project Construction

■ 1999 Assumption:

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

■ 2012 Reality:

- < 3% of projects Federally funded for construction through FY2012
 - Picayune Strand and Indian River Lagoon South (Phase 1)
 - Site 1 Levee, stimulus money
- 3 projects authorized - 0 projects completed

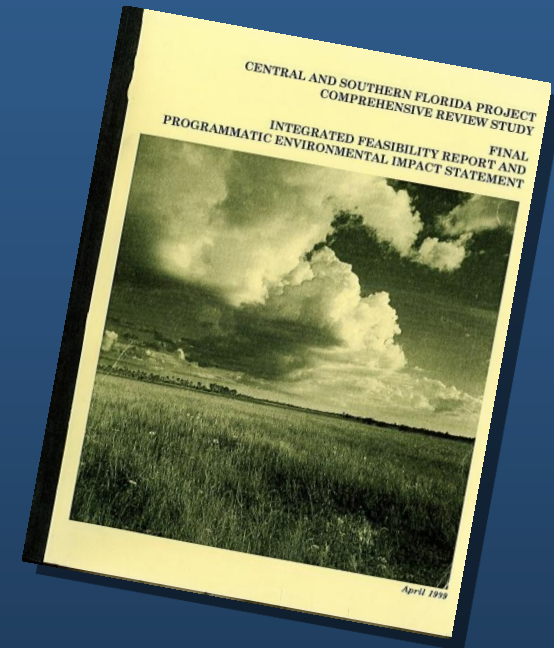




Assumption vs. Reality

Water Resources Development Acts

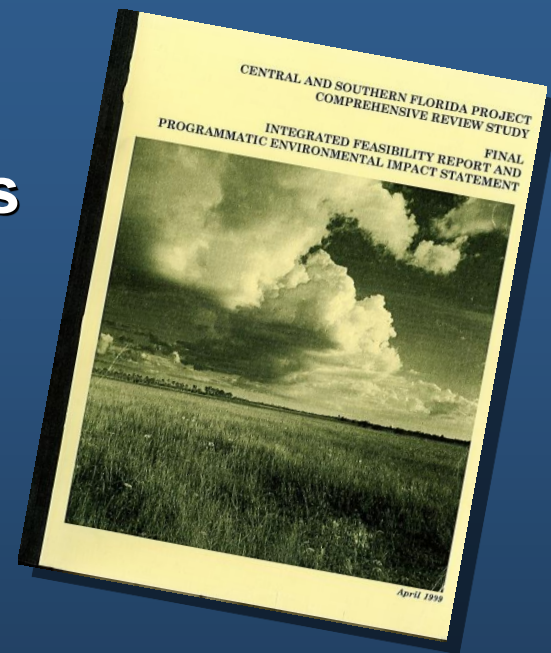
- **1999 Assumption:**
 - WRDAs would be enacted every two years to allow authorization of CERP projects
- **2012 Reality:**
 - One WRDA enacted since 2000 (2007)



Assumption vs. Reality

State and Federal Appropriations

- **1999 Assumption:**
 - State and Federal appropriations for CERP would average \$200 million per year for each agency
 - \$2.4 billion each by 2012
- **2012 Reality:**
 - Federal government has appropriated only \$800 million for CERP in 12 years since WRDA-2000 compared with over \$2.4 billion appropriated by the State



Assumption vs. Reality

Endangered Species Act Compliance

- **1999 Assumption:**
 - CERP would be implemented using a multi-species recovery and a self mitigating approach
- **2012 Reality:**
 - Project planning, designs, construction, operations and monitoring costs are being impacted by single species concerns and mitigation is typically required
 - ESA, MBTA and NEPA





Impediments to CERP Progress

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

*Progress Toward Restoring the Everglades:
The Second Biennial Review, 2008*

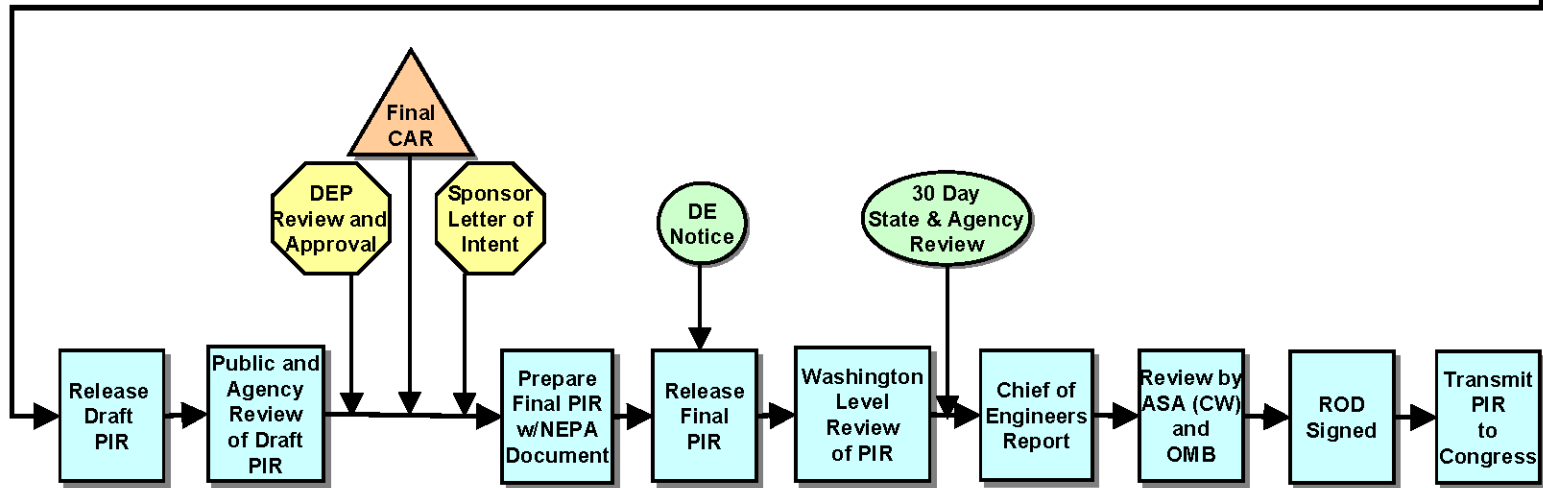
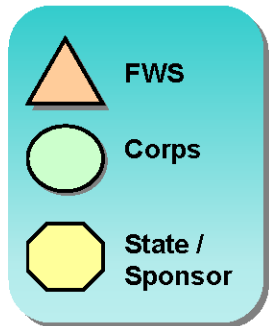
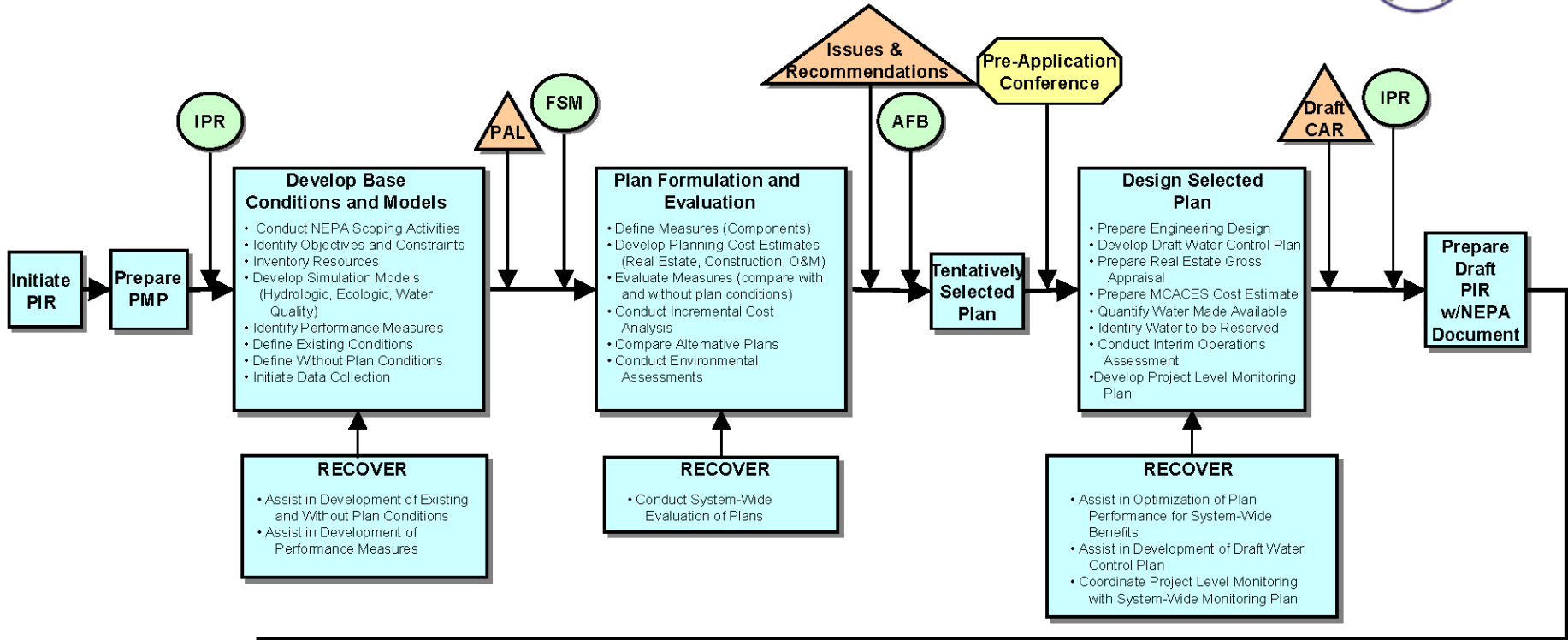
Committee on Independent Scientific Review of Everglades Restoration Progress
Water Science and Technology Board
Board on Environmental Studies and Toxicology
Division on Earth and Life Studies
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- **Complex Federal planning and approval process has been a major cause of delays**
- **Federal funding has fallen far short of that originally envisioned; a more consistent funding stream is required**
- **Endangered Species Act has been implemented with a single-species focus; need a multi-species approach**



TYPICAL PIR PROCESS





CERP Planning Process Impediments

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



CERP Planning Process

Impediments (cont.)

- **Agency and stakeholder dependency on mathematical models**
 - **Development of new and more complex models**
 - **CERP projects require four times the modeling compared with other Corps projects**
- **Requirement to justify environmental benefits of each project based on habitat units versus system-wide with best science**
- **Achieving compliance with Endangered Species Act including single species mgt.**
 - **Biological Assessments**
 - **Monitoring Requirements**



CERP Local Government Impediments

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



CERP Local Government Impediments

- **Counties and cities rules/regulations for construction activities (cont.)**
 - **Sign ordinance fee**
 - **City beautification (\$200,000)**
 - **Canal/road easements and R/W's**
 - **Needed for project but held hostage until other local needs/approvals are provided by regulatory agencies, (permits, school approvals)**



CERP Local Government Impediments

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



Recommendations to Achieve Sustainability of the Everglades

1. Streamline the CERP planning process

■ Optimize

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

■ Reduce

- Dependency on complex models
- Number of required analyses for plan selection and justification
- Level of engineering and design detail in Project Implementation Reports



Recommendations to Achieve Sustainability of the Everglades

1. Streamline the CERP planning process (cont.)

Revise


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



Recommendations to Achieve Sustainability of the Everglades

2. Improve the CERP implementation and funding process:

- **Develop a stronger basis for multi-species recovery planning and management that recognizes all projects contribute to system-wide benefits**
- **Seek Federal legislative changes to:**
 - **Provide more consistent opportunities for CERP project authorization and appropriation**
 - **Develop an alternative Federal funding approach that provides assured funding over a multiple year period for CERP construction**



Recommendations to Achieve Sustainability of the Everglades

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

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



Recommendations to Achieve Sustainability of the Everglades

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


- **CWA – recognize Federal cost share authority for water quality improvement projects including meeting TMDL's**
- **ESA – embrace multi-species management; allow construction and operations exemption for restoration projects in order to meet congressional intent**



Recommendations to Achieve Sustainability of the Everglades

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

- **MBTA – recognize long term habitat creation and allow construction and operation exemption**
- **CERCLA – agrichemical cleanup from agricultural to environmental standard should be cost shared by Federal government**



Recommendations to Achieve Sustainability of the Everglades

4. Revise applicable local government rules, policies and ordinances, or exempt through State legislation to assure fiscal responsibility to the taxpayers:

- Impact fees
- Engineering review fees
- Tree/sign ordinances
- Public canal/road easements and R/W's
- Others?



Summary

- **Most governmental laws rules and policies, are not keeping up with restoration objectives**
- **Streamlining the USACE planning process is mandatory and will result in faster project implementation and reduced costs**
- **Federal environmental rules and policies need to be amended to recognize the unique values of restoration projects and their contribution to habitat creation, sustainability and the public interest**



Summary

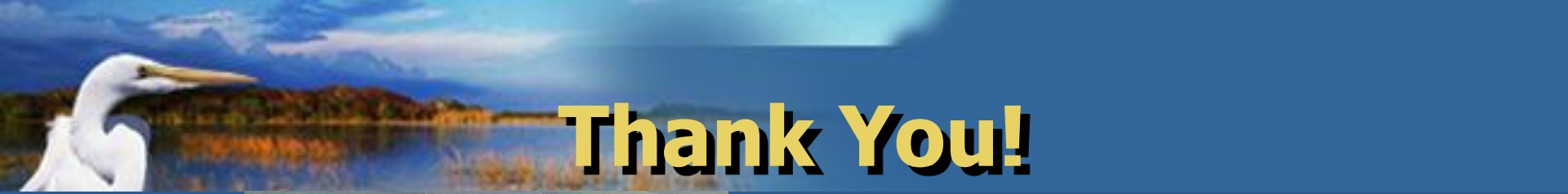
- **Local rules and ordinances need to be amended to exempt environmental restoration projects**
- **State legislation should also be passed to exempt environmental restoration projects from local impact fees to assure fiscal responsibility to the taxpayers**

A white egret stands in a field of tall, dry grass. The bird is facing right, with its long neck curved downwards. The background is a clear, bright blue sky. The text "THANK YOU !" is overlaid in the center of the image.

THANK YOU !

Questions ?





Thank You!





WRDA-2000

CERP Authorizations

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



WRDA-2000

Additional Requirements

WRDA 2000 also required:

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



What is Adaptive Management?

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



CERP Planning Process Impediments

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

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