

CHAPTER 6
COMPLIANCE WITH ENVIRONMENTAL
REQUIREMENTS

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6.0 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

Coordination with and evaluation of required compliance with specific federal acts, executive orders, and other policies for the various alternatives was achieved, in part, by coordinating this document with appropriate agencies and the public. This section documents compliance with all applicable federal statutes, executive orders, and policies.

6.1 CLEAN AIR ACT OF 1970, AS AMENDED

The initial Clean Air Act was enacted in 1970 and was dramatically revised and expanded in 1990, giving the U.S. Environmental Protection Agency (USEPA) broader authority to implement and enforce regulations that reduce acid rain, urban air pollution, and toxic air emissions. As described in Chapter 8, air quality permits may be required for pump stations. The South Florida Water Management District (SFWMD) will apply for these permits, which the Florida Department of Environmental Protection (FDEP) and the USEPA will review, if necessary. The Proposed Action complies with this statute.

6.2 CLEAN WATER ACT OF 1972, AS AMENDED

The Federal Water Pollution Control Act Amendments of 1972 became commonly known as the Clean Water Act (CWA) with its amendment in 1977. The act established the basic structure for regulating discharges of pollutants into the waters of the United States. The Proposed Action would assist existing stormwater treatment areas (STAs) in making progress towards achieving water quality goals for total phosphorus in the Everglades Protection Area (EPA). As described in Chapter 8, the construction of the shallow FEB, deep FEB or Reservoir, or STA alternatives would require a CWA, Section 404 Dredge and Fill Permit issued by U.S. Army Corps of Engineers (USACE). The applicability of Section 404 triggers Section 401 Water Quality Certification of the CWA. A Section 404 permit application has been submitted to USACE.

In addition, the STAs also require, and have been issued a Section 402, National Pollution Discharge Elimination System permit by Florida DEP. This permit requires compliance with applicable state water quality standards.

The Proposed Action complies with the CWA of 1972, as amended.

6.3 COASTAL ZONE MANAGEMENT ACT OF 1972

The Coastal Zone Management Act of 1972, as amended, provides the national policy to preserve, protect, develop, and restore the nation's coastal zones and was established

to encourage states to better manage their coastal resource. The statute assists coastal states in developing state coastal management programs and achieving a balance between competing uses of coastal resources. The statute requires that federal actions that may affect any land or water use of the coastal zone be “consistent” with the enforceable policies of a coastal state’s or territory’s federally approved coastal management program. The Proposed Action is consistent with the Florida Coastal Management Program. No comments on the Notice of Intent (NOI) for this environmental impact statement (EIS) have been submitted by the Florida State Clearinghouse.

6.4 ENDANGERED SPECIES ACT OF 1973

The Endangered Species Act of 1973 replaced the Endangered Species Conservation Act of 1969 and provides protections for species that are threatened or endangered throughout all or a significant portion of their geographic range and the habitats that those species use. In the ESA, “endangered” species are defined as in danger of extinction throughout all or a significant portion of its range, “threatened” species are likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and “species of special concern” might need concentrated conservation actions. The EIS assesses effects to all federal and state listed species that are expected to occur in the project-affected area, described in Chapter 3. Coordination for threatened and endangered species was initiated with USFWS on December 10, 2012. Per agreement between USACE and USFWS, the biological assessment (BA) for the project site will determine the effects to listed species by comparing the baseline condition defined as the projects that have been previously consulted with the USFWS to the changes resulting from the construction and operation of the applicant’s preferred alternative. A biological opinion will be obtained from USFWS before USACE issues the record of decision (ROD) and makes a permit decision on the Section 404 permit application. The USACE’ decision will comply with the ESA.

6.5 ESTUARY PROTECTION ACT OF 1968

The Estuary Protection Act emphasizes the values of estuaries and the need to conserve these natural resources. The Act authorized an inventory and studies of U.S. estuaries to determine whether these areas should be acquired by the federal government for protection, and authorized cost-sharing between the federal and state governments for management of estuary resources.

Water management in Lake Okeechobee periodically involves releasing large quantities of water into these estuaries, resulting in changes in salinity and in dissolved oxygen

content, increased turbidity, and nitrification within the estuaries. None of the action alternatives would change freshwater releases from Lake Okeechobee to the Northern Estuaries, which include the St. Lucie and Caloosahatchee Estuaries and the Indian River Lagoon. Therefore, all of the action alternatives would not change the frequency, duration, or timing of lake releases. The alternatives discussed within this document would not adversely affect estuaries nor increase the frequency and/or duration of releases to the estuaries. The project complies with this statute.

6.6 EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS

Executive Order 11990 requires federal agencies to avoid, to the extent possible, the adverse impacts associated with destruction or modification of wetlands. The action complies with the goals of this executive order.

6.7 EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT

Executive Order 11988 requires federal agencies to avoid, to the extent possible, the long and short-term adverse impacts associated with occupancy and modification of floodplains. It further directs federal agencies to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. The project is in the base floodplain (100-year flood) and has been evaluated in accordance with this executive order. The action is in compliance.

6.8 EXECUTIVE ORDER 12866, REGULATORY PLANNING AND REVIEW

Executive Order 12866 aims to improve the process of planning and reviewing of regulations and to make it more efficient. Its objective is to re-establish the federal government's primary position in the regulatory decision-making process and to make the process more accessible to the public. This Executive Order is intended only to improve the internal management of the Federal Government. The action is in compliance.

6.9 EXECUTIVE ORDER 12875, ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP

The purpose of Executive Order 12875 is to enhance intergovernmental consultation and collaboration on federal matters and to prevent the federal government from imposing unfunded regulations on state, local, and tribal governments. It prohibits federal agencies from putting into effect any regulations that are not required by statute unless the affected state, local, and tribal governments are provided funds by

the federal government. However, this executive order only applies to those regulations which the federal government has the power to waive. It requires federal agencies to provide the Director of the Office of Management and Budget a representation of all consultations and collaborations that occur between the agency and the affected governments. This executive order also requires that the federal agency allow time for state, local, and tribal governments to participate in the development of such regulations. The agency shall take into account any application provided by the affected government to waive regulatory requirements in order to provide flexibility to the affected government as long as these are in compliance with the federal policy objectives. The action is in compliance.

6.10 EXECUTIVE ORDER 12898, ENVIRONMENTAL JUSTICE

Executive Order 12898 requires federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Executive Order 12898 requires the Federal government to review the effects of their programs and actions on minorities and low income communities. As described in Chapter 4, the effects of the Proposed Action would not be disproportionate toward any minority or low-income populations. The action complies with the goals of this Executive Order.

6.11 EXECUTIVE ORDER 13112, INVASIVE SPECIES

Executive Order 13112 requires federal agencies to, among other tasks, prevent the introduction of invasive species, monitor invasive species populations, restore native species and habitat where invasions have occurred, and promote public education. The proposed Action Alternatives would reduce total phosphorus loading, which should reduce the proliferation of invasive cattails in the EPA. This action complies with this executive order.

6.12 FARMLAND PROTECTION POLICY ACT OF 1981

The purpose of the Farmland Protection Policy Act (FPPA) is to “minimize the extent to which Federal programs contribute to the unnecessary conversion of farmland to nonagricultural uses...” The act specifically targets the urban sprawl resulting from the conversion, and the associated wastes of resources and energy. This project has been coordinated with the Natural Resources Conservation Service (NRCS) and complies with this statute.

6.13 FISH AND WILDLIFE COORDINATION ACT OF 1958

The Fish and Wildlife Coordination Act (FWCA) requires that fish and wildlife receive equal consideration as other project components for proposed water resource development projects and that appropriate mitigation for impacts be provided. This statute is implemented through consultation with the USFWS.

As described in Chapter 7, the Department of Interior (DOI) and the USFWMD are cooperating agencies in developing this EIS. An ongoing consultation process between the USACE and the USFWS has involved regular communication and exchange of input between the agencies through monthly interagency coordination meetings, public scoping meetings, and correspondence. A final record of the USFWS determination is included in the Final EIS in Appendix L.

6.14 MAGNUSON-STEVENSON FISHERY CONSERVATION ACT

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) mandated NMFS and the Fisheries Management Council include the identification and protection of essential fish habitat (EFH) in all federal fishery management plans. NMFS implements and enforces the MSFCMA through consultation with federal agencies required for any federally funded, permitted, or proposed work that may affect EFH. As documented in Chapter 3, no EFH exists within the footprint of the project or within an extended distance of the proposed project. As a result, consultation with NMFS was not initiated. The Proposed Action complies with this statute.

6.15 MARINE MAMMAL PROTECTION ACT OF 1972, AS AMENDED

The Marine Mammal Protection Act prohibits the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and also prohibits importation of marine mammals and marine mammal products into the United States. The only marine mammal known to enter waterways within the EAA is the West Indian manatee. The Comprehensive Everglades Restoration Plan (CERP) Interagency Manatee Task Force showed that manatees navigated through the Okeechobee Waterway and accessed the EAA canals through the gates at the S- 351, S-352 and S-354 structures (CERP Interagency Manatee Task Force, 2006). (The task force is made up of representatives from USFWS, FWC, USACE, USGS, the National Park Service, the Miami-Dade Department of Environmental Resources Management, and private researchers.) Subsequently, manatee barriers have been installed at these control structures;

therefore, manatees are not expected within canals adjacent to the project. The Proposed Action complies with the Marine Mammal Protection Act.

6.16 MIGRATORY BIRD TREATY ACT OF 1918, AS AMENDED, AND THE MIGRATORY BIRD CONSERVATION ACT

The Migratory Bird Treaty Act (MBTA) of 1918, as amended, prohibits pursuing, hunting, taking, capturing, killing, or selling migratory birds, as identified in the Act, through international conventions between the United States and Great Britain, Mexico, Japan, Canada, and Russia. The Migratory Bird Conservation Act establishes a Migratory Bird Conservation Commission that makes decisions acquiring lands or waterbodies identified by the Secretary of the Interior as necessary for the conservation of migratory birds.

Many wading birds, including the wood stork, use the project area for foraging. Wading birds were observed feeding in the footprint of the proposed project, but no nesting activity was observed during the site visits in October and November 2012. Foraging habitat within the project site is marginal because of past land-use practices and encroachment by exotic plant species. It is anticipated that the construction of a shallow FEB or a STA would improve foraging habitat within the STA expansion, but the construction of the deep FEB would not improve foraging habitat due to the deep water depths. No migratory birds or their nests will be adversely affected by the Proposed Action. This action complies with these statutes.

6.17 NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

The purpose of the National Environmental Policy Act (NEPA) is “To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality” (42 USC Section 4321). It encourages public participation and comment, and it ensures that all branches of government consider environmental consequences of federal projects.

NEPA requires environmental impacts be considered within the federal decision-making process. Council on Environmental Quality (CEQ) established regulations for implementing NEPA (under Title 40 CFR Section 1500). The USACE has its own supplemental regulations for complying with NEPA (33 CFR 320) for its Civil Works Program. These regulations call for the preparation of an EIS for authorization of any

major federal project that could have significant effects on the environment. The USACE Jacksonville District Commander is the responsible official for NEPA actions within the district. Ultimately, the decision whether to implement the Proposed Action, one of the other Action Alternatives, or the No Action Alternative will be made at USACE Headquarters in Washington DC. Any decision made will be in compliance with NEPA.

As stated above, NEPA requires environmental impacts be considered within the federal decision-making process. The decision to grant an approval for a change in land use under the Grant Agreement is a federal decision as contemplated by NEPA.

NEPA requires agencies to cooperate with other federal agencies and state and local governments, and to involve public stakeholders or citizens. Chapter 8 and Appendix F document the public involvement process completed as part of this EIS.

6.18 NATIONAL HISTORIC PRESERVATION ACT OF 1966, AS AMENDED

The National Historic Preservation Act (NHPA) was enacted to provide adequate protection for historic resources, including archaeological sites. The National Register of Historic Places (NRHP), National Historic Landmarks, and the posts of State Historic Preservation Officers (SHPOs) were established under this act. NHPA requires federal agencies to take into consideration the effects of their undertakings on cultural resources that are listed in, eligible for, or nominated to the NRHP. Federal agencies must consult with the SHPO and interested federally recognized Native American tribes.

Consultation with the Florida Department of State Division of Historical Resources was initiated in 2006. A Phase 1 cultural resources survey report was prepared and submitted to the SHPO. The SHPO found the report complete and sufficient in accordance with Chapter 1A-46, FAC. Based on the report recommendations, SHPO concluded that the construction of the A-1 Reservoir would have no effect on any historic properties eligible for listing on the NRHP (See Appendix F, SHPO letter dated December 13, 2002).

In 2012, the SFWMD conducted a separate Phase 1 cultural resource assessment survey of the A-1 project area. In the Cultural Resource Assessment Report, the Bureau of Archeological Research concluded that there are no NRHP eligible sites in the project area and did not recommend further archeological work at the A-1 project site. A copy of the report is found in Appendix F. The SHPO is currently reviewing the CRAR to determine if they concur with the Bureau of Archeological Research's conclusions.

6.19 NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT OF 1990

The Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001 et seq.) establishes a means for American Indians to request the return or repatriation of human remains and other cultural items presently held by Federal agencies or federally assisted museums or institutions. The act also contains provisions regarding the intentional excavation and removal of, inadvertent discovery of, and illegal trafficking in American Indian human remains and cultural items. Major actions under this law include: (a) establishing a review committee with monitoring and policymaking responsibilities; (b) developing regulations for repatriation, including procedures for identifying lineal descent or cultural affiliation needed for claims. (c) providing oversight of museum programs designed to meet the inventory requirements and deadlines of this law; and (d) developing procedures to handle unexpected discoveries of graves or grave goods during activities on Federal or tribal lands. All Federal agencies that manage land or are responsible for archaeological collections obtained from their lands or generated by their activities must comply with this act. USACE managers of ground disturbing activities on Federal and tribal lands are to be aware of the statutory provisions treating inadvertent discoveries of American Indian remains and cultural objects. Regulations implementing the act are found at 43 CFR 10.

6.20 RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, AS AMENDED

The Resource Conservation and Recovery Act (RCRA) provides guidance for hazardous waste disposal and gives USEPA the authority to establish waste management laws and regulations. RCRA's primary goals are to protect human health and the environment from the potential hazards of waste disposal, to conserve energy and natural resources, to reduce the amount of waste generated, and to ensure that wastes are managed in an environmentally sound manner. Chapter 3 discloses the results of investigations of hazardous waste disposals in the project footprint. The proposed project would comply with this statute.

6.21 SEMINOLE INDIAN CLAIMS SETTLEMENT ACT OF 1987

The Florida Indian (Seminole) Land Claims Settlement Act of 1987 directed the SFWMD the State of Florida, and the Seminole Tribe to execute an agreement for the purposes of resolving tribal land claims and settling the lawsuit filed by the Seminole Tribe of Florida (Seminole Tribe), which involved certain land claims within the State.

Agreements to resolve tribal land claims were executed between the three parties, which included conveyance of land and payment of consideration to the tribe, and implementing legislation by the Congress of the United States and the Legislature of the State of Florida. An agreement known as the Water Rights Compact (Compact) was executed between the State of Florida, the SFWMD, and the Seminole Tribe. The Compact specifically defined tribal water rights. This Compact was adopted into federal and state law. It includes a series of provisions establishing the Seminole Tribe's water rights and creating several "entitlements" to surface water for each of the Tribe's reservations. This project would not alter the terms of the Compact.

6.22 SOLID WASTE DISPOSAL ACT OF 1965

The Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (42 USC 6901 et seq.) as amended, govern the transportation, treatment, storage, and disposal of hazardous waste and nonhazardous waste (that is, municipal solid waste). Under the Resources Conservation and Recovery Act of 1976, which amended the Solid Waste Disposal Act of 1965, USEPA defines and identifies hazardous waste; establishes standards for its transportation, treatment, storage, and disposal; and requires permits for persons engaged in hazardous waste activities. Regulations imposed on a generator or on a treatment, storage, or disposal facility vary according to the type and quantity of hazardous waste generated, treated, stored, or disposed, and the methods of treatment, storage, and disposal. The State of Florida has adopted by reference portions of the Federal regulations into its Florida Administrative Code Rule 62-730. Chapter 3 discloses the results of investigations of hazardous waste disposals in the project footprint. The proposed project would comply with this statute.