

**TITLE 16 - CONSERVATION****CHAPTER 1 - NATIONAL PARKS, MILITARY PARKS, MONUMENTS, AND SEASHORES  
SUBCHAPTER LIV - EVERGLADES NATIONAL PARK****§ 410r–8. Modification of certain water projects****(a) Improved water deliveries**

(1) Upon completion of a final report by the Chief of the Army Corps of Engineers, the Secretary of the Army, in consultation with the Secretary, is authorized and directed to construct modifications to the Central and Southern Florida Project to improve water deliveries into the park and shall, to the extent practicable, take steps to restore the natural hydrological conditions within the park.

(2) Such modifications shall be based upon the findings of the Secretary's experimental program authorized in section 1302 of the 1984 Supplemental Appropriations Act (97 Stat. 1292) and generally as set forth in a General Design Memorandum to be prepared by the Jacksonville District entitled "Modified Water Deliveries to Everglades National Park". The Draft of such Memorandum and the Final Memorandum, as prepared by the Jacksonville District, shall be submitted as promptly as practicable to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Natural Resources and the Committee on Public Works and Transportation of the United States House of Representatives.

(3) Construction of project modifications authorized in this subsection and flood protection systems authorized in subsections (c) and (d) of this section are justified by the environmental benefits to be derived by the Everglades ecosystem in general and by the park in particular and shall not require further economic justification.

(4) Nothing in this section shall be construed to limit the operation of project facilities to achieve their design objectives, as set forth in the Congressional authorization and any modifications thereof.

**(b) Determination of adverse effect**

(1) Upon completion of the Final Memorandum referred to in subsection (a) of this section, the Secretary of the Army, in consultation with the South Florida Water Management District, shall make a determination as to whether the residential area within the East Everglades known as the "Eight and One-Half Square Mile Area" or adjacent agricultural areas, all as generally depicted on the map referred to in section 410r–6 (a) of this title, will be adversely affected by project modifications authorized in subsection (a) of this section.

(2) In determining whether adjacent agricultural areas will be adversely affected, the Secretary of the Army shall consider the impact of any flood protection system proposed to be implemented pursuant to subsection (c) of this section on such agricultural areas.

**(c) Flood protection; Eight and One-Half Square Mile Area**

If the Secretary of the Army makes a determination pursuant to subsection (b) of this section that the "Eight and One-Half Square Mile Area" will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for that portion of presently developed land within such area.

**(d) Flood protection; adjacent agricultural area**

(1) If the Secretary of the Army determines pursuant to subsection (b) of this section that an adjacent agricultural area will be adversely affected, the Secretary of the Army is authorized and directed to construct a flood protection system for such area. Such determination shall be based on a finding by the Secretary of the Army that:

(A) the adverse effect will be attributable solely to a project modification authorized in subsection (a) of this section or to a flood protection system implemented pursuant to subsection (c) of this section, or both; and

**(B)** such modification or flood protection system will result in a substantial reduction in the economic utility of such area based on its present agricultural use.

(2) No project modification authorized in subsection (a) of this section which the Secretary of the Army determines will cause an adverse effect pursuant to subsection (b) of this section shall be made operational until the Secretary of the Army has implemented measures to prevent such adverse effect on the adjacent agricultural area: Provided, That the Secretary of the Army or the South Florida Water Management District may operate the modification to the extent that the Secretary of the Army determines that such operation will not adversely affect the adjacent agricultural area: Provided further, That any preventive measure shall be implemented in a manner that presents the least prospect of harm to the natural resources of the park.

(3) Any flood protection system implemented by the Secretary of the Army pursuant to this subsection shall be required only to provide for flood protection for present agricultural uses within such adjacent agricultural area.

(4) The acquisition of land authorized in section 410r-6 of this title shall not be considered a project modification.

**(e) Periodic review**

(1) Not later than 18 months after the completion of the project modifications authorized in subsection (a) of this section, and periodically thereafter, the Secretary of the Army shall review the determination of adverse effect for adjacent agricultural areas.

(2) In conducting such review, the Secretary of the Army shall consult with all affected parties, including, but not limited to, the Secretary, the South Florida Water Management District and agricultural users within adjacent agricultural areas.

(3) If, on the basis of such review, the Secretary of the Army determines that an adjacent agricultural area has been, or will be adversely affected, the Secretary of the Army is authorized and directed, in accordance with the provisions of subsection (d) of this section, to construct a flood protection system for such area: Provided, That the provisions of subsection (d)(2) of this section shall be applicable only to the extent that the Secretary, in consultation with the Secretary of the Army, determines that the park will not be adversely affected.

(4) The provisions of this subsection shall only be applicable if the Secretary of the Army has previously made a determination that such adjacent agricultural area will not be adversely affected.

**(f) Current canal operating levels**

Nothing in this section shall be construed to require or prohibit the Secretary of the Army or the South Florida Water Management District from maintaining the water level within any project canal below the maximum authorized operating level as of December 13, 1989.

**(g) No limitation on other claims**

If the Secretary of the Army makes a determination of no adverse effect pursuant to subsection (b) of this section, such determination shall not be considered as a limitation or prohibition against any available legal remedy which may otherwise be available.

**(h) Coordination**

The Secretary and the Secretary of the Army shall coordinate the construction program authorized under this section and the land acquisition program authorized in section 410r-6 of this title in such a manner as will permit both to proceed concurrently and as will avoid unreasonable interference with property interests prior to the acquisition of such interests by the Secretary under section 410r-6 of this title.

**(i) West Dade Wellfield**

No Federal license, permit, approval, right-of-way or assistance shall be granted or issued with respect to the West Dade Wellfield (to be located in the Bird Drive Drainage Basin, as identified in the Comprehensive Development Master Plan for Dade County, Florida) until the Secretary, the Governor of the State of Florida, the South Florida Water Management District and Dade County, Florida enter

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

into an agreement providing that the South Florida Water Management District's water use permit for the wellfield, if granted, must include the following limiting conditions:

- (1) the wellfield's peak pumpage rate shall not exceed 140,000,000 gallons per day;
- (2) the permit shall include reasonable, enforceable measures to limit demand on the wellfield in times of water shortage; and
- (3) if, during times of water shortage, the District fails to limit demand on the wellfield pursuant to (2), or if the District limits demand on the wellfield pursuant to (2), but the Secretary certifies that operation of the wellfield is still causing significant adverse impacts on the resources of the Park, the Governor shall require the South Florida Water Management District to take necessary actions to alleviate the adverse impact, including, but not limited to, temporary reductions in the pumpage from the wellfield.

**(j) Protection of natural values**

The Secretary of the Army is directed in analysis, design and engineering associated with the development of a general design memorandum for works and operations in the "C-111 basin" area of the East Everglades, to take all measures which are feasible and consistent with the purposes of the project to protect natural values associated with Everglades National Park. Upon completion of a general design memorandum for the area, the Secretary shall prepare and transmit a report to the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate and the Committee on Natural Resources and the Committee on Public Works and Transportation of the United States House of Representatives on the status of the natural resources of the C-111 basin and functionally related lands.

**(k) Acquisition of additional lands**

- (1) Notwithstanding any other provision of sections 410r-5 to 410r-8 of this title, the Secretary is authorized to use funds appropriated pursuant to sections 410r-5 to 410r-8 of this title, including any available funds appropriated to the National Park Service for construction in the Department of the Interior and Related Agencies Appropriations Acts for fiscal years 1991 through 1994 for project modifications by the Army Corps of Engineers, in such amounts as determined by the Secretary, to provide Federal assistance to the State of Florida (including political subdivisions of the State) for acquisition of lands described in paragraph (4).
- (2) With respect to any lands acquired pursuant to this subsection, the Secretary may provide not more than 25 percent of the total cost of such acquisition.
- (3) All funds made available pursuant to this subsection shall be transferred to the State of Florida or a political subdivision of the State, subject to an agreement that any lands acquired with such funds will be managed in perpetuity for the restoration of natural flows to the park or Florida Bay.
- (4) The lands referred to in paragraph (1) are those lands or interests therein adjacent to, or affecting the restoration of natural water flows to, the park or Florida Bay which are located east of the park and known as the Frog Pond, Rocky Glades Agricultural Area, and the Eight-and-One-Half Square-Mile Area.

(Pub. L. 101-229, title I, § 104, Dec. 13, 1989, 103 Stat. 1949; Pub. L. 103-219, Mar. 9, 1994, 108 Stat. 98; Pub. L. 103-437, § 6(d)(9), Nov. 2, 1994, 108 Stat. 4584.)

**References in Text**

Section 1302 of the 1984 Supplemental Appropriations Act, referred to in subsec. (a)(2), is section 1302 of Pub. L. 98-181, title I, Nov. 30, 1983, 97 Stat. 1292, which is not classified to the Code.

The Department of the Interior and Related Agencies Appropriations Acts for fiscal years 1991 through 1994, referred to in subsec. (k)(1), are, respectively, Pub. L. 101-512, Nov. 5, 1990, 104 Stat. 1915, Pub. L. 102-154, Nov. 13, 1991, 105 Stat. 990, Pub. L. 102-381, Oct. 5, 1992, 106 Stat. 1374, and Pub. L. 103-138, Nov. 11, 1993, 107 Stat. 1379. For complete classification of these Acts to the Code, see Tables.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

### **Amendments**

1994—Subsecs. (a)(2), (j). Pub. L. 103–437 substituted “Natural Resources” for “Interior and Insular Affairs” after “Senate and the Committee on”.

Subsec. (k). Pub. L. 103–219 added subsec. (k).

### **Change of Name**

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.