



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, D.C. 20314-1000

APR 30 2009

CECW-CO

MEMORANDUM FOR SOUTH ATLANTIC DIVISION COMMANDER

SUBJECT: Jacksonville District's March 10, 2009, request that CECW-CO-R review and comment on the district's approach to "normal circumstances" and application of Section F of the 1987 Wetland Delineation Manual for jurisdictional determinations in the Everglades Agricultural Area

1. References:

- a. 33 CFR 328.3(b), U.S. Army Corps of Engineers definition of wetlands
- b. 7 CFR 12.30(C)(6), Natural Resource Conservation Service responsibilities regarding wetlands
- c. U.S. Army Corps of Engineers 1987 Wetland Delineation Manual, Section F
- d. Regulatory Guidance Letter 90-07, Clarification of the Phrase "Normal Circumstances" as it Pertains to Cropped Wetlands
- e. Memorandum to All Division and District Counsels, 10 April 1990, "Attempts to Evade 404 Jurisdiction by Pumping Water from Wetlands"

2. The Jacksonville District (SAJ) has requested that CECW-CO-R review and comment on an issue paper that discusses the district's approach to "normal circumstances" and the application of Section F of the 1987 Wetland Delineation Manual for jurisdictional determinations in the Everglades Agricultural Area (EAA). The Jacksonville District is currently processing five requests for approved jurisdictional determinations (JDs) for proposed mining operations in the Everglades Agricultural Area (EAA), in Palm Beach County, Florida. The district has indicated that the parcels proposed for mining operations do not constitute prior converted croplands under Natural Resource Conservation Service (NRCS) regulations since mining represents a change in use and that once a property changes from an agricultural use to non-agricultural use, the PC designation is no longer applicable. Further, the district asserts that upon cessation of mechanized "pumping" the area would revert to jurisdictional wetlands, in accordance with Section F of the 1987 Wetland Delineation Manual that provides for Atypical Situations.

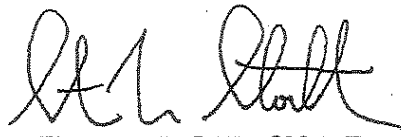
3. CECW-CO-R has reviewed SAJ's issue paper and agrees with SAJ's interpretation of the NRCS regulations and that the change in use provision applies. CECW-CO-R also supports the district's assertion that active "pumping" of the area does not represent new normal circumstances and that when the mechanized pumping ceases, the areas will reestablish as

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wetlands. Finally, CECW-CO-R supports the district's application of Section F of the 1987 Wetland Delineation Manual to account for the lack of hydrophytic vegetation and manipulated hydrology under the active farming operations and finds the district's position to be consistent with national policy.

FOR THE COMMANDER:



STEVEN L. STOCKTON, P.E.
Director of Civil Works

Enclosure