

**FACILITATING THE RESOLUTION OF INTERGOVERNMENTAL AND
INTERAGENCY EVERGLADES RESTORATION CONFLICTS:
STRATEGIES AND PROCEDURES**

EXPERT PANEL¹ PROGRESS REPORT

November 8, 2000

The Task Force should “facilitate the resolution of interagency and intergovernmental conflicts associated with the restoration of the South Florida ecosystem among agencies and entities represented on the Task Force.” [WRDA 1996, 528 (f)(2)(F)]

OVERVIEW. This report summarizes the progress to date of an expert Panel assembled to propose ways in which the South Florida Ecosystem Restoration Task Force can help to resolve restoration conflicts. The Panel notes that the mandate of the task force in regards to conflict resolution is quite general. As stated in the Water Resources Development Act of 1996, the Task Force is charged to, “facilitate the resolution of interagency and intergovernmental conflicts,” among Task Force members. The challenge to the Task Force is to determine how to best perform its facilitative role within its broader role of coordinating the “development of consistent policies, strategies, plans, programs, projects, activities and priorities for addressing the restoration, preservation and protection of the South Florida ecosystem.”

South Florida is among the leaders nationally in dealing creatively with inter-jurisdictional, multiple sovereign natural resource restoration issues. Conflict resolution has been, is and will remain an essential condition in assuring progress and success in implementing ecosystem restoration in South Florida. The Panel believes, based upon experiences in other complex natural resource collaborations, that the ability to facilitate the resolution of conflicts is directly related to the exercise of strong leadership, engagement by affected parties, and incentives to do the hard work necessary to prevent, manage and resolve conflicts.

The Panel recognizes the Task Force and Working Group have an important opportunity with the passage and implementation of CERP and the transition in administrations to clarify and further define its role of facilitating the resolution of conflict. Determining how to proceed at this time will require the development of procedures to identify, select, and help to resolve conflicts. At the same time, improvements in the performance of the Task Force and Working Group, and the relations between them, are needed.

BACKGROUND. The Panel reviewed the results of interviews and meetings with the members of the Task Force and Working Group between April and October, 2000 as well as many source documents. The Working Group provided helpful insights about conflict

¹ The expert panel members include: Robert Jones, Esq. Tallahassee, FL, Stuart Langton, PhD. Sanibel Island, FL., Kirk Emerson, PhD., Tuscon AZ, Mike Eng, Tuscon AZ, Gerald Cormick, PhD., Seattle, WA, John Erhmann, PhD., Dillan, CO, Louise Smart, M.S., Boulder, CO, Patricia Bidol-Padva, PhD, Boca Raton, FL, Thomas Ankersen, Esq. Gainesville, FL, Camillo Azcarate, Ft. Myers, FL and James Murley, Esq. Ft. Lauderdale, FL.

resolution in its recent Lessons Learned Report (April 2000). The Panel is aware that the recently enacted CERP legislation may have implications for the role of the Task Force in regard to dispute resolution.² The Task Force and Working Group have no direct authority to impose solutions on conflicts surrounding the South Florida ecosystem restoration effort. Rather, the authority they have resides in their roles for coordinating and facilitating the resolution of conflict. They draw their influence from the consensus they are able to build upon in identifying and working together towards shared restoration goals and the participating agencies' willingness to bring issues related to achieving those goals to the table. To be effective in this role, the Task Force and Working Group must earn the trust of its members.

PERSPECTIVE: The Panel observes that disagreements are inevitable in ecosystem restoration. Further, when managed well they can contribute to problem solving and adaptive management. However, when disagreements become conflicts that inhibit planned action, they beg resolution. In general, conflict resolution options range from those that are essentially collaborative in which the parties maintain control of the process (negotiation, facilitation, mediation, consensus building, etc.) to those that are administrative, legislative and judicial through which a third party is empowered to resolve the matter or impose a solution on the disputing parties. An important mission of the Task Force should be to help resolve conflicts by collaborative means whenever possible. If not, issues of discontent can or will be passed on or will migrate to other forums. This should be undertaken with the recognition of the need to accommodate the diverse mandates and interests of the different members of the Task Force and Working Group. The Panel believes that a complex coordinating organization such as the Task Force requires strong executive and facilitative leadership and provision of sufficient staff resources. While many Task Force and Working Group activities can best be carried out by representatives from member agencies, the interviews and the Panel's experience suggest that adequate staffing is essential to manage effective coordination and to provide services to the Task Force in support of its role in facilitating the resolution of conflict.

PRINCIPLES: The power of the Task Force will rest upon its ability to build consensus and make available its "good offices" as a resource to parties in dispute. The Panel reviewed and built upon the May, 2000 principles³ suggested by the Task Force in proposing five core principles essential to Task Force success in facilitating the resolution of conflict:

- 1. Respect Sovereignty.** Procedures should respect the sovereignty of participating members of the Task Force, and comity between participating agencies, while respecting the needs of all in order to strive to achieve mutually acceptable solutions.

² In S2796 ES, Section XXX, (i) Dispute Resolution, The Secretary of the Army and the Governor are charged with developing "an agreement for resolving disputes between the Corps of Engineers and the State associated with the implementation of the Plan."

³ The May, 2000 Task Force Conflict Resolution Assessment and Discussion summary included the following principles: focus on common goals; promote dialogue not debate; treat each other with civility; clearly communicate interests, concerns and intentions; respect Federal/Tribal/State sovereignties; respect agency missions and authorities; respect private property rights; and make appropriate use of other dispute resolution and consensus building processes and procedures.

2. **Voluntary Participation.** A core principle is the voluntary use of conflict resolution by those represented on the Task Force and Working Group. The Panel supports the conclusion in the Working Group Lessons Learned Workshop in April, 2000 that “Conflict reduction and consensus building are appropriate and realistic goals for the Task Force and Working Group. Some conflicts will need to be resolved in judicial and legislative arenas when that is the choice of the parties who pursue such options.”
3. **Consensus creates influence** for the Task Force and Working Group. The power of the Task Force and Working Group is only as great as the participating agencies are willing to give it, and its authority lies in its ability to build consensus among its members. The Task Force and Working Group must earn the trust of its members.
4. **Good Offices.** The Task Force and Working Group can provide “good offices” for facilitating the resolution of interagency and intergovernmental conflict.
5. **Good Faith.** All members of the Task Force and Working Group need to participate and negotiate in good faith to identify and solve problems and facilitate the resolution of interagency and intergovernmental conflicts.

TASK FORCE ROLES: In interviews with a number of members of the Task Force and Working Group, many suggested a variety of roles that can be undertaken to facilitate the resolution of conflict. Following is a list of those potential roles plus several others the Panel has identified. These roles suggest a range of actions available to the Task Force and Working Group. The potential roles identified related to facilitating the resolution of conflict are as follows.

- Anticipating Conflicts
- Selecting issues that require greater attention
- Framing and summarizing conflict or potential conflict issues
- Identifying obstacles and options
- Fostering dialogue among parties
- Obtaining and sharing information
- Providing neutral forums
- Initiating studies and reports
- Promoting research on issues
- Encouraging mediation among parties
- Advancing coordination among parties
- Elevating issues for others to address

The Panel observes that the Task Force (and its Working Group) has successful experience in playing some of these roles. It should continue to do what it does well. Its effectiveness can be improved, however, by being more expansive, clear, and strategic in selecting roles and in continuously enhancing its ability to carry them out. Some ways to do this are suggested below.

BUILDING AN INTEGRATED SYSTEM: The Panel has been asked to assist the Task Force in developing, “a more integrated set of strategies, approaches, and procedures to facilitate the resolution and reduction of interagency and intergovernmental conflicts.” This implies the need to craft a clearer, more systematic approach. To agree upon the propriety of the roles identified above (or a revised version) is an important initial step. Beyond this, the Task Force and Working Group need to agree on the protocols and practices that will constitute a system to facilitate the resolution of conflict. Important elements of that system are as follows:

1. Establishing criteria for selecting conflict issues to help resolve
2. Adopting procedures for selecting issues of conflict to address
3. Creating and updating a work plan of conflict resolution issues to address
4. Maintaining flexibility to respond to conflict issues that arise in a timely manner.
5. Determining appropriate roles to play in regard to each conflict issue.
6. Clarifying the responsibilities of the Work Group, Task Force and OED in efforts to facilitate the resolution of conflict.
7. Preparing documents that clearly frame issues, and, as needed, documents that provide more in-depth analysis.
8. Building and improving capacity to carry out the various “facilitation” roles in conflict resolution.
9. Refining the ability to determine when how to encourage others to facilitate the restoration of conflict.
10. Assuring sufficient executive staff leadership, resources, and support.
11. Tracking progress, evaluating outcomes, and identifying lessons learned.
12. Involving all Task Force members in designing and implementing efforts to facilitate the resolution of conflict.

KEY ISSUES AND NEXT STEPS. As the Panel continues its effort to develop a report to the Task Force in January, 2001, it has identified the following issues on which it is seeking input from the Task Force:

- Are the Task Force roles identified on page 3 appropriate and sufficient? Should any be deleted? Are there others that should be added?
- Are the twelve action elements on page 4 adequate and realistic? Should others be added?
- How should the Task Force, Working Group and OED work together in taking action to facilitate the resolution of conflict?
- Are the core principles identified on page 3 appropriate and sufficient? Should any be deleted? Are there others that should be added?

The Panel welcomes continuing input from the Task Force and Working Group as it prepares and delivers its report to the Task Force in January, 2001. Based on the discussion and suggestions received at the November 13, 2000 Task Force meeting the Panel will prepare a draft in early December and seek additional comments from the Working Group. The Panel will then prepare and distribute its draft report to the Task Force in advance of its January, 2001 meeting. Please send comments to: Robert Jones, Florida Conflict Resolution Consortium: rmjones@mailers.fsu.edu, 850-644-6320, FAX 850-644-4968, FSU Shaw Building, Suite 132, 2031 East Paul Dirac Dr., Tallahassee, FL 32310.