

*Approved Minutes
South Florida Ecosystem Restoration
Task Force Meeting
Washington, DC
March 21, 2002*

Ann Klee called the meeting to order at 8:50 AM. She stated that she appreciated everyone's continued interest and involvement. She noted this was the third meeting in the last three months. Tom Gibson moved to approve the February minutes, which was seconded. The minutes were adopted as presented. Ms. Klee invited the Task Force members to provide any opening comments. The attendees included:

Ann Klee, Chair, U.S. Department of the Interior
David Struhs, Vice-Chair, Secretary, Department of Environmental Protection
Les Brownlee, Under Secretary of the Army and Acting Assistant Secretary for Civil Works
Michael Collins, Executive Director, Water Resources Advisory Commission
Henry Dean, Executive Director, South Florida Water Management District
Jose Diaz, Mayor, City of Sweetwater
Andrew Emrich, U.S. Department of Justice
Thomas J. Gibson, Associate Administrator, U.S. Environmental Protection Agency
Mack Gray, Acting Deputy Undersecretary, U.S. Department of Agriculture
Frank Jimenez, Executive Office of the Governor
Linda Lawson, Acting Deputy Assistant Secretary for Policy, U.S. Department of Transportation
Dexter Lehtinen, Special Assistant, Miccosukee Tribe of Indians
Patty Power for Jim Shore, Seminole Tribe of Florida
Sloan Rappoport, U.S. Department of Commerce
Rock Salt, Executive Director, South Florida Ecosystem Restoration Task Force

Mr. David Struhs stated the debate in Florida has not been on whether but how to fund its share of Everglades restoration. The Legislature has already authorized \$100 million for the next state fiscal year. Governor Bush has reiterated his support for a quarter of a billion dollars. The resources are there and the authority to borrow more if necessary is also there. The state has submitted a proposed water quality standard for phosphorus of 10 ppb to the state's Environment Regulation Commission. This is a citizen panel appointed by the Governor to review water quality standards prior to their promulgation. Final decision is expected at the end of this year or early next year. He noted that little disagreement has been seen on the numeric standard of 10 ppb as being scientifically sound.

Mr. Andrew Emrich had nothing new to report from Justice.

Mr. Thomas J. Gibson asked for an update on ASR issues from the Issue Team Chair and others. **Follow-up: Ms Klee agreed it was an excellent suggestion and agreed that would be planned for the next meeting.**

Mr. Les Brownlee said he was glad to have the opportunity to be a part of this process and was here to listen and learn. Looking forward to be a part of the effort to restore this national treasure.

Mr. Henry Dean followed up on Secretary Struhs' report that as of this month 25% of the lands (73,000 acres) needed to implement CERP have been acquired. To date \$300 million, which is 15% of the estimated budget for land acquisition for CERP, has been expended.

Ms. Linda Lawson reiterated the department's commitment to this effort. She reminded everyone that the priorities for the Transportation Program are set by state DOT. She noted the Florida DOT has been an active participant in this program. She noted that the Federal Highway Administration has had a wetlands replacement goal of 1.5 to 1 for every year, which has been exceeded two-to-one for the last 6 years. In Florida, for the year 2000, it was 3.5 to 1.

Ms. Patty Power said the Seminole Tribe is looking forward to hearing more on the Programmatic Regulations and was pleased with the Task Force taking on what they view as critical issues surrounding CERP implementation.

Mr. Sloan Rappoport stated that the Department of Commerce and NOAA feel strongly about their role in science and monitoring of the restoration effort. NOAA will be issuing for the first time ever in April, a report card on the health of the Florida Keys/Coral Reef System. This would be a product of monitoring and assessment activities conducted by federal, state and university experts. He noted the large black water event occurring on the west coast of Florida, large algae bloom, possibly triggered by heavy rains or nutrients flowing into the coastal waters. He pointed to this to emphasize the close connection between the flows of inland waters and the coastal ocean. Follow-up: **Report card will be provided to the Task Force members.**

Mr. Ron Marlow said that along with Dr. Gray, he spent a week in Florida in early March. They visited south Dade County and met with farmers who had experienced significant flood damage in 1999 and 2000, \$400 million. They expressed concerns about flooding and elevated water tables. His agency encourages giving a high priority to those projects that would alleviate this situation and maximize flood control. Visited the Everglades Agricultural Area and observed intense monitoring by the farmers on their farms to reduce phosphorus loading. He noted that there are a lot of issues in the Lake Okeechobee area because of residual phosphorus building up in the soil over the years. Visited with ranchers and dairymen who have been reducing phosphorus loading but not to the degree that needs to be accomplished. It will take a number of avenues i.e., lake phosphorus management and watershed phosphorus control and treatment facilities. Continue to hear concerns over the phosphorus standards in terms of where and how measurements will be taking place as well as in meeting the standards.

Mr. Dexter Lehtinen appreciated the revised agenda since he needed to leave early.

Mr. Michael Collins said the Water Resources Advisory Commission has worked on Programmatic Regulations for the last 4-5 months and deferred his comments to that portion of the agenda.

Mr. Frank Jimenez had no comments at this time.

Mayor Jose L. Diaz said he was proud and thankful to be a part of this Task Force. He noted his concern as to what positions have been taking on the flooding issues. He represents an urban area and community referred to as ground zero for flooding. Residents seem to be flooded more often and there is a need to find out why and what can be done to have the balance between the ecosystem that will be restored and the urban areas.

Programmatic Regulations

Mr. Stu Appelbaum provided a status update on the activities associated with the regulations. He summarized public comments, which have been posted on the web and are available, ranging from agencies and groups offering suggestions to full mark-ups of the initial draft. He believed the draft served the intent to begin discussions and focus on the key issues. Comments have helped in sharpening and revising the document. The Coordination and Consultation section has been moved and language improved with regards to the Secretary of the Interior's responsibility and a subsection was added on the Task Force's role. It is envisioned the consultation role would continue with the Task Force, Working Group and any advisory body the Task Force designates i.e. Water Resources Advisory Commission. The consultation language has been improved to make it clear that all documents and processes require consultation with the state, DOI, other federal agencies, tribes, state and local governments.

The role of RECOVER, a multi agency/disciplinary team, is an integral part in the implementation of CERP. It provides management and coordination of its six constituent teams. It will not provide independent scientific review or make decisions. It will serve three functions: evaluation, assessment and planning and integration. Much time has been spent to clarify the language of the RECOVER section in the regulations to make clear its mission and responsibilities.

The definition of restoration has been revised to reflect the context of the Plan. The goals and purpose of the plan are up front and together in the regulation. It has been clarified that the protocols are to be developed jointly by the Corps and the WMD, with concurrence from DOI and the state in consultation with others and the opportunity for public comment. The six areas where the protocols will be developed are: general format and content of PIRs; processes for formulation and evaluation of alternatives for PIRs; procedures for system-wide evaluation of PIR alternatives by RECOVER; general content of operating manuals; general processes for adaptive assessment activities of RECOVER; process used in PIRs for identifying water to be dedicated and managed for natural system. A provision was added to make sure the information is developed for the local sponsor to seek approval under state law. The verification requirement in the Project Cooperation Agreements (PCAs) has been changed to a finding that the water reservation has been made in accordance with the PIR. Changes to operating manuals are expected in the future as projects come online or new information becomes available. This will provide a loop back that the reservation may be revised as necessary. If changes are to be made in the reservation, then it has to be done in consultation with the Corps, DOI and others. Mr. Collins stated that his understanding is that rather than focus on the PCA it will be focused on the adaptive assessment and management of how these projects will fit together and provide flexibility if one project does not meet a specific goal.

Mr. Gibson stated that once a project is up and running, the change has to be at the operating manual level. Mr. Appelbaum clarified that the reservation is initially set with the PIR and the Operating Manual needs to be consistent with the reservation. Once you have operated the project and other projects come online and changes are necessary, then the necessary revisions need to be made. Ms. Power stated that setting a reservation for water for the natural system is a state obligation. The Seminole Tribe is concerned that the reservation will be set in a PIR, which is produced by the local sponsor and the Corps and then those numbers will be changed as you move along. The reservation does not need to change since the needs of the natural system will not change. Tribe is concerned with the state process being affected by this, although not the intention, it may happen. Mr. Appelbaum noted that Water Management District staff is beginning to lay out some of the procedures, processes and issues involved with reservations. He added that he was more comfortable with a system-wide approach. He noted this is why the identification of water has been deferred to a protocol because they are not ready to begin writing rules. Mr. Struhs pointed out that the reservations will be tied to the needs of the natural system and will change as the understanding of the needs changes over time.

Ms. Klee asked what would be done if the water is reserved on a project-by-project basis and find the goals are not being met for the system. Mr. Appelbaum noted the projects are building blocks and need to be implemented on a project-by-project basis but what really matters is how they fit together to achieve system-wide goals. The potential for double counting is a concern. Mr. Struhs added that the integrity of the system is what's cared about most and if the projects are managed correctly you get the desired results. Some water may have more benefit to the system than other water. Where the project is in the system and when the water from the project is available is an important consideration. Mr. Collins said the WRAC has serious concerns with the ability of the District to develop a technical water budget to determine where the water is coming from. **Follow-up: Ms. Klee requested a briefing at a future meeting on how the State Reservation Process would work in conjunction with CERP implementation.** Ms. Power agreed this would be helpful and stated that some of the problem may be the terminology being used. She stated the tribe compact is based on Chapter 373 of Florida Water Law and are strong advocates for keeping it the way it is. Mr. Lehtinen asked for the other draft and Mr. Appelbaum stated that it is not yet available.

Mr. Collins said what is being presented here is in response to comments and it is useful to see progress is being made and is headed in the right direction. Mr. Lehtinen would like to see the draft before stating that progress is being made. Mr. Appelbaum added that performance measures would be developed and used to evaluate projects and make revisions as needed to deal with shortfalls. Performance measures will be reviewed every five years. Deadlines for the establishment of interim goals are now included as well as a plan of action if the goals are not met. The agencies need to make decisions as part of the plan of action. The document will be submitted to OMB on April 1st and will be published in the Federal Register. The formal process of rule making will start. Not sure if OMB will be able to complete the review in 30 days and agencies are encouraged to provide comments to OMB as quickly as possible.

Ms. Klee stated that the draft regulations have given RECOVER a broad scope of authority. RECOVER is technical staff yet a lot of what they are doing includes getting involved in policy and technical questions. She asked for clarification on how the technical information gets filtered through the management layer and how the policy decisions will be made. Mr. Appelbaum clarified that RECOVER has a broad range of responsibilities on the technical side and the regulations show that they are to prepare reports for consideration by the agencies for decision-making. Their products will be put out as drafts requiring agency actions. RECOVER does not have stand-alone responsibility or authority. Ms. Klee noted the concern that Interior's role seemed diluted in the December draft. Mr. Lehtinen said the Tribe was pleased with the December draft and that it addresses a lot of the problems. He noted his concern with the role of RECOVER, as well as the way CERP will change throughout the years.

Mr. Lehtinen commented on the letter from Congressman Skeen (Encl. 3). Ms. Klee clarified that Congressman Skeen Chairs the Appropriations Sub-Committee that provides the funding for the Interior Department. The comments raised in the letter reflect the ongoing concern that the taxpayers are getting what they will be paying for. Mr. Lehtinen noted this is not the sub-committee that handles Corps funding and produced WRDA 2000. He urged everyone to read it for its value. Ms. Klee clarified this was not a threatening letter and it reflects the opinion of two members of Congress. She felt Mr. Lehtinen was making too much of this letter. Mr. Gibson said it was important for Interior's role to be recognized.

Ms. Klee opened the discussion on the role of the Task Force in CERP implementation. Mr. Struhs said he would resist having the Task Force vote either for or against the regulations because everyone's role is different. Ms. Klee agreed that it would be difficult for the Task Force to take a position as a group on the regulations. She asked whether the Task Force should provide formal/informal recommendations on issues like adaptive management, water reservations and interim goals. Mr. Lehtinen said a greater role for Interior and the Task Force is needed and recommendations or comments should come to the Task Force who in turn would make a recommendation to the decision-maker. He suggested that if the Task Force is unable to make a decision then no other interagency group could make the decision either.

Ms. Klee agreed the Task Force could be helpful but RECOVER or Task Force does not have the authority to make decisions. She said she wanted to see the regulations incorporate a process for the Task Force to make recommendations to the Corps similar to its role in the development of CERP. She also did not think the Task Force should serve as a conduit for recommendations from RECOVER but should receive regular briefings. Mr. Lehtinen added that interim performance goals are very important and have the potential to deviate or change, he suggested putting them before the Task Force and having them adopted at the highest level. Mr. Dean clarified that RECOVER recommendations would come back to the Corps and the District with consultation with the other agencies. The decision would be up to the Corps and SFWMD to take action. The Task Force would have input on RECOVER recommendations before final action is taken to modify a project. Ms. Power said there are two roles for the Task Force: 1) it could serve as a policy complement to the technical aspect of RECOVER by monitoring the direction they are going in looking at the broader technical issues; and 2) this group could provide the forum to discuss issues in that are in dispute. Mr. Rappoport agreed with Mr. Lehtinen's comments and said it would be appropriate for RECOVER to possibly report to the Task Force and provide regular briefings. Mr. Collins stated many of the concerns regarding RECOVER and stakeholders are related to its exclusive position in its ability to raise technical issues. He suggested the Task Force, in addition to making recommendations, serve as a forum where stakeholders can raise issues.

Ms. Klee asked if there was any value to having the Task Force work on formal comments on what role it should be playing in implementation of CERP. Mr. Lehtinen was in favor of this idea since it would add value. Mr. Salt said WRDA 96, provides for a statutory duty for the Task Force to provide comments on the Plan. The statute does not talk about a Task Force duty during implementation of the Plan, which is what is being discussed now. There is nothing in the Act that prevents this group from making future recommendations. The Task Force has previously tasked the Working Group to develop recommendations for Task Force consideration. Mr. Gibson said formal rulemaking is different and could be challenged and was not sure how a formal comment submitted by the Task Force would be handled. Ms. Klee said the General Counsel from all the agencies look at it. Mr. Struhs suggested discussing how to memorialize and record a consensus that has no legal standing. **Action: Working Group tasked to come up with options**

on what role the Task Force could play in CERP implementation and a discussion will be held at that time on how to memorialize it.

Science Coordination

Ms. Klee said numerous discussions have been held over the past few meetings on the importance of science and making sure decisions related to restoration are based on the best possible science. She noted there are multiple entities researching and reviewing science. The relationship between all of those groups as well as how the Task Force would meet its statutory responsibility to establish an outside panel to review science has been questioned. She introduced Ms. Jean Bahr, the Chair of the Committee for the Restoration of the Everglades Ecosystem (CROGEE).

Ms. Bahr stated the CROGEE was established in 1999 and reports directly to the Task Force. The group consists of physical, biological scientists, engineers and social scientists. Most committee members have been involved since the beginning. The scope of work was outlined in the cooperative agreement between the National Research Council, National Academy of Sciences and the Department of Interior. CROGEE was tasked to provide independent scientific peer review. Members receive no compensation for their involvement and participate to for the satisfaction to see sound science applied. She stated there has been frustration among the Committee members on issues they thought they could provide peer review but was not a part of the work plan. Ms. Klee noted this suggests a conflict and NRC peer review panels are done frequently at the request of Congress on a specific issue. This does not give the panel free range to identify other issues. Ms. Bahr stated they are done in the context of an issue that is a broadly defined. Ms. Klee clarified that there is no effort by the Task Force or anyone else to inappropriately narrow what is being done. When Congress asks for peer review, the NRC meets with Congress to define the range of the review and the relevant issues. Mr. Struhs said the client defines the purview.

The Aquifer Storage and Recovery Report was released in February 2001. Pilot projects were reviewed and deficiencies were identified with regards to the need for regional hydro-geologic analyses. Mr. Salt agreed to provide this Task Force with copies of the report. **Follow-up: The report will be provided prior to the next meeting.** Mr. Collins said that because there wasn't a sitting Task Force when the February report was released, there was no entity to respond to a spin program conducted in the press. He suggested that future releases coincide with meetings of this group enabling this group to comment on it. Mr. Parker said it was a reasonable proposal.

The Assessment of Ecological Indicators Report is in progress and due out this summer. Committee has been trying to examine the process by which those indicators will be defined, not what the indicators should be since that is the role of RECOVER. Mr. Emrich asked if this report would be released to the Task Force. Ms. Bahr clarified reports go through the Academy peer review process and are then released.

Marine Ecosystems are critical of the Everglades system and the Committee will be reviewing the science to assess the effect of CERP on those systems. A report will be going out for the NRC review process and will be released in June. Initial presentations have been given on the process by which restoration storage options are being selected. It has not yet been decided on what will be produced in terms of a report, and the committee may provide a short letter report. The Committee proposed a workplan item dealing with the human dynamics issue but was not approved by the Task Force. CERP needs to have flexibility in its design to be able to adjust to the human drivers. Restoration could fail despite the best hydrologic and biologic science. Mr. Salt noted this last item was controversial even with the Working Group and the state and district were part of the 5 in the 15 to 5 vote in the Working Group. Ms. Bahr added that the current committee structure is capable and anxious to provide the overall review on CERP implementation. It is premature to provide a peer review of the ecological indicators, which have not yet been defined.

Ms. Klee noted there are two tasks, first is the statutory responsibility to have an independent scientific review on how implementation of the Plan is progressing. Secondly there are the activities that CROGEE has engaged in to date. There is a question about whether both those activities should be continued under CROGEE or whether there are other entities that could do some of the work being done by CROGEE. Ms. Bahr stated CROGEE was initially created to provide a peer review of the process by trying to identify those tasks that contribute while ensuring sound science is applied.

Ms. Klee added there would be issues that will need independent peer review. In those circumstances, she stated that it was her position that the Task Force, Congress or even the Corps should be directing the scope of peer review and not CROGEE or the entity undertaking the peer review. Ms. Klee said the human dynamics proposal did not come from the Task Force or Congress. Mr. Parker clarified that when the charter was written for the CROGEE it was broadly written in 1999. The Working Group identified ten items as possible work items. Mr. Collins clarified the Task Force did not ask for the human dynamics piece. Mr. Salt stated this item was on the list generated by the Working Group and proved to be very controversial.

Mr. Emrich asked for a copy of the 1999 cooperative agreement with CROGEE and made a motion for it to be provided prior to the next Task Force meeting. This contract pre-dates WRDA 2000 and an updated contract may be needed. The Task Force has a role to consult but the Secretary of Interior, Army and the Governor make the final decision.

Ms. Klee said the purpose today was to hear a status of update from CROGEE. The next meeting will focus on how to comply with the terms of the statute and what role does CROGEE fulfill with what they have been doing. Mr. Salt said the Corps is laying out protocols and processes for RECOVER that addresses how science fits into the process. WRDA 2000 also called for this independent science review that looks a lot like CROGEE. And thirdly, the Science Coordination Team (SCT) was created to meet the Task Force's statutory responsibility. It is important to get the RECOVER and CROGEE issues settled before looking into the SCT. Mr. Ronnie Best said the Task Force had been involved in the past with the activities of CROGEE, and the Working Group was not taking independent action with regards to CROGEE. Mr. Frank Jimenez said he has yet to discern a single coordinated science effort and encouraged this group to look at the whole thing. Ms. Klee agreed, did see overlap, and shared his interest. Mr. Salt said he hoped this Task Force would help integrate this effort.

Voting Protocols

Ms. Klee noted the protocols were included in the readahead package. Ms. Klee emphasized that as Chair she felt strongly that voting is to be a last resort and this is to be a consensus group. This is intended to be the exception and not the rule. Mr. Diaz made a motion to adopt the Voting Protocols, which were seconded. **Action: Task Force adopted Consensus and Voting Protocols without objection.**

Dispute Resolution

Rock Salt noted that the previous Task Force received a report and recommendations from an expert panel they had commissioned. The Task Force directed the Working Group to develop proposed protocols as suggested in the expert panel report. Working Group worked on this item and has been using the protocol in the interim until it receives guidance for the Task Force. **Follow-up: This item will be discussed at the next meeting and presented for adoption at that time.**

Ms. Klee thanked everyone and proposed meeting again on June 6 – 7, 2002 and asked that if anyone had issues to please inform her for inclusion on the agenda. Rock Salt recognized Neal McAliley and noted he was leaving government service and thanked him for his outstanding service to the Working Group. Meeting adjourned at 12:15 PM.

Enclosures:

1. Briefing Binder
 - a. Agenda
 - b. Draft Programmatic Regulations (Dec. 2001)
 - c. Science Coordination and Oversight – Staff Summary Paper
 - d. Approved CROGEE Tasks
 - e. Science Coordination Team Charter
 - f. WRDA 2000 extract on Independent Science Review
 - g. February meeting minutes
 - h. Task Force memo to OMB
 - i. EPA appointment letter

- j. St. Thomas Law Review thank you letter
 - k. Consensus and Voting Protocol
 - l. Dispute Resolution, Working Group recommendation
 - m. Task Force expert panel report
 - n. WRDA 1996
 - o. WRDA 2000
 - p. Task Force Roster
 - q. Working Group Charter
 - r. Working Group Roster
- 2. Dexter Lehtinen thoughts on Programmatic Regulations (Feb 2002)
 - 3. Congressman Skeen Letter