

**South Florida Ecosystem Restoration Task Force**  
**Miami, Florida**  
**May 24, 2000**

**WRDA 2000 Discussion**

**Task Force Discussion of Proposed Agenda Topics** (*with issues added during meeting in italics*)

- A. Project Purpose: Balance among natural systems, water supply and flood control.**
- *Water conservation and supply issues*
  - *Protection of estuaries*
  - *Equal protection of entire Everglades*
  - *Is project purpose consistent with the original project purpose?*
- B. Authority for Expedited Implementation:**
- **Early Authorization**
  - **Project Implementation Report (PIR) requirements**
- C. Seminole Water Rights Compact**
- D. Assuring Project Benefits**
- Programmatic Regulations
  - Roles of Secretary DOI, Governor, Tribes
  - Project specific regulations
  - *Defining Ecosystem*
  - *Clarifying treatment of existing water uses*
  - *Dealing with Water Quality*
- 1) CERP as the Framework?**
- *Chief's Report*
- 2) Other Issues:**
- 1) *Collateral laws impacts on the restoration statute and implementation*
  - 2) *Statement on private property rights protection*
  - 3) *Status of precursor projects (e.g. Mod waters, etc.)*
  - 4) *Environmental justice issues*
  - 5) *Role of the Task Force and whether organizational/representation issues should be addressed in WRDA 2000? State Co-Chair?*

## Public Comments (a.m.) - WRDA 2000 Issues

- A. Water quality
- B. Include the Florida Keys National Marine Sanctuary
- C. Federal, state, tribal partnership is critical
- D. Importance of focus on the multiple benefits of the restoration
- E. Water reuse/conservation and adequate water for the estuaries
- F. Inclusion of the Chief's report (245,000 acre feet issue) and costs and physical impacts on water supply and delivery (e.g. Lake Worth)
- G. Impacts on socio-economically disadvantaged communities. Environmental justice issues and water quality concerns around Lake Okeechobee. Concerns with omission of environmental justice and consideration of socio-economically disadvantaged communities within Graham/Mack discussion draft.

## Public Comment (p.m.) - WRDA 2000 Issues

- A. Drainage should be considered a consumptive use because it takes away water that could be used for other purposes
- B. Reestablish purpose regarding flood protection. A particularly important issue for agriculture in for South Dade County and Homestead area.
- C. Reserve water up front for natural system - this is critical because there may not be water left.
- D. State law is good but untested. Minimum flows and levels have been around for 20 years but little progress has been made in protecting natural systems. Problem with LE Coast Water supply plan.
- E. DOI needs appropriate and strong role in restoration because they manage such a large percentage of natural system.

## TASK FORCE DISCUSSION

### A. Project Purpose: Balance among natural systems, water supply and flood control.

Additional issues raised by Task Force members:

- 1) *Water conservation and supply issues*
- 2) *Protection of estuaries*
- 3) *Equal protection of entire Everglades*
- 4) *Is project purpose consistent with the original project purpose?*

### Discussion/Concerns

- Since 1948 "balance" has been the standard for managing the Everglades and South Florida.
- Getting all the water right should still be the fundamental basis.
- Protect all water uses/purposes.
- Don't have to fight over water- enough to meet the reasonable needs of all.
- "Priority" has always been an issue of contention among the stakeholders.

But ultimately “balance” has been the answer delivered from the consensus process.

- Water supply and restoration—need to be taken together. Integration is the key.
- Believe that all agree the benefits under CERP (4/99) need to be achieved and maintained for all sectors.
- Roughly speaking there is about an 80% split directed towards Everglades restoration and the natural system and 20% directed towards urban and agricultural interests in water supply and flood protection. This is not included in legislative language.
- Not the intent of the Administration to change the balance in their draft.
- Current models do not clearly indicate exactly what the benefits will be for the Seminoles because outside the geographic area covered by models. Critical for Seminoles that everyone agrees now to have “balance” as a core value. Seminoles willing to balance needs but assurances are required to insure the balance is maintained as projects go forward.
- Clarification for concerns over “equal protection” indicated that there is a mix of water quality and water quantity concerns. Seeking an affirmative statement that we are dealing with one ecosystem.
- Defining “ecosystem” not the issue for Miccosukees, so much as affirming equal protection for all parts of the Everglades system.
- Can the Definitions Section be reviewed to clarify respect for private property rights?

### **Suggestions for reconciling different perspectives**

- Is there consensus support for achieving and maintaining benefits under the CERP?
- April '99 CERP should be the framework for the legislation?
- Should the balance language from WRDA 96 be used in the WRDA 2000?
- Should WRDA 2000 be silent on the “Chief’s report”?
- Should WRDA include a specific reference to an ongoing mechanism/test to evaluate benefits as projects move forward?
- WRDA should provide a “clean baseline” for evaluating the balance in the future.
- WRDA should provide affirmative language that all parts of the Everglades system will be treated equally.
- WRDA should include “water conservation” language in the purpose section.

### **B. Authority for Expedited Implementation:**

- 1) Early Authorization**
- 2) Project Implementation Report (PIR) requirements**

### **Discussion/Concerns**

- 10 out of 11 (minus the monitoring project) of the 68 projects are proposed for

- early authorization under Administration proposal.
- Traditional ACOE process includes development of feasibility studies and a Chief's Report that is then submitted for congressional approval. How much flexibility should there be with this approval process? How many congressional checks and balances are needed? Trust is a big issue in terms of those opposing the proposal.
- There is a precedent of 40 projects ("contingent authority") with congressional approval that are subject to Chief's Report but are not reviewed by Congress before implementing.
- Critical Projects experience might offer a model for how to succeed here. The Task Force/Working Group developed their own procedure for prioritizing projects. They kept the process at the table and built consensus.
- Proposed bill contemplates a review "process" after authorization in that PIRs will be done through a very public process.
- The theory is that early authorization may help reduce delays.
- There is a concern about the larger projects.
- The issue is "speed of implementation vs trust." How much flexibility is there presently? Few projects seem to go back to Congress for review.
- Information on the 10 projects proposed for early authorization is in the plan. You must do a PIR before turning dirt under the administration proposal.
- Support early authorization in principle, but adequate review is needed.

### **Suggestions for reconciling different perspectives**

- Provide additional checks and balance mechanism for the larger projects (i.e. all 10?)
- WRDA 99 on non-federal flood protection used a model of developing thresholds that triggered reports back to congress short of actual authorization needed.

## **C. Seminole Water Rights Compact**

### **Discussion/Concerns**

- Seminole water rights have been enacted into state law - consistent with state water law system - enacted in federal law and tribal law.
- Tribe and Water Management District have work together on this.
- Water allocation process under WRDA 2000 would have an impact on tribe's water compact.
- Support CERP's dedication of water to natural system.
- Compact was negotiated in '85-'87. There has been 13 years of positive experience in implementing the compact. Litigation has not been needed. Tribe believes that experience holds parallels for current situation. Ultimate dispute resolution goes to Federal court under compact.
- Integrated into state water law system.
- Provided "process" for determining water allocation rather than establishing a specific quantity of water.
- Concern in the bill about "All waters" to be allocated under PIR system.

- What could law provide? Compact with state system works, e.g. issue over replacement water source did not impede restoration.
- Looking for a “process guarantee”- concerned about triggering the “law of unintended consequences”
- Urge caution — go slower, build consensus on issue of federal, state and tribal law.
- Note: This plan will increase water supply by 1.7 million acre/feet a day. The issue here is a principle about partnership—we can get through this together.

### **Suggestions for reconciling different perspectives**

- Use the Seminole Compact process as model for building trust, having assurances discussion and building consensus.

### **D. Assuring Project Benefits**

- Programmatic Regulations
- Roles of Secretary DOI, Governor, Tribe
- Project specific regulations
- *Defining Ecosystem*
- *Clarifying treatment of existing water uses*
- *Dealing with Water Quality*

### **Discussion/Concerns**

- Concern regarding Secretary DOI’s concurrence/veto authority
- Federal state and tribal share interest in assurance for natural system.
- Include in project purposes, water supply and flood protection that Congress recognized in WRDA 96.
- Regarding Programmatic Regulations, the drafters of administration bill were “charting new territory” and developed it using three principles:
  - 1) How to define benefits that CERP delivers?
  - 2) How to define them so that in future all partners- ACOE, State and DOI can be held accountable over time for providing benefits?
  - 3) Be clear enough on the benefits so the state knows how much of the new water provided can be permitted and how much needs to be reserved under state law?
- Other principles incorporated in the drafting included:
  - Preserving the existing uses - (70%/ 30%)
  - Add new 1.8 and split that 80% natural system/ 20% human urban/agriculture
  - Existing rights- don’t take away any unless you can immediately replace.
- Regarding the concurrence issue and the proposed role of Secretary of DOI, the intent was to recognize DOI as the “biggest customer” of the new project. Hoped for a corresponding state and tribal partnership role for this.
- Programmatic regulations were to be the baseline to measure PIRS for each component.
- No mention of tribal sovereign water rights.

- Another reason for programmatic regulations—bridge the gap between now and 15 years down the line when project specific regulations are in place.
- Population growth a key issue to consider—look at projections in '48 compared with what has occurred.
- Why not establish agreements by “contract” – concept of a contractual relationship?
- “Dedicated and managed” for natural system- want to retain the principle- enough water for natural system consistent with state and tribal law.
- “Adjustments” along the way are critical to maintaining benefits for system - concept of adaptive management.
- This needs to be a dynamic process—use the water control plan process and allow for adaptation. Use the system in place and do this.
- How much water was reserved for Everglades under state law? State established minimum flows and levels and here we are 20 years later. Lower East Coast water supply plan allowed for harm to the Everglades.
- Would like to have assurances for the natural system and for the estuaries.
- In the administration proposal, the “assurances” was intended to deal with benefits to “human environment” as well.
- Concurrence relates only to the “setting of target expectations” for how to distribute water.
- Not clear how administration proposal would affect the State’s 373 process.
- Consistency within the WRDA needed regarding authority of Secretary.
- Who will identify the water to “manage”? There is only consultation with state and no reference to tribes on this task.
- If the administration had worked through these principles together, we would not have to be here now.
- Is there a constitutional issue with concurrence by the Governor? It is now believed that there may be some flexibility on this, as the federal lawyers are reviewing this issue. There is an ongoing review.
- An example of where this concurrence with the Governor has occurred is with the Florida Keys National Marine Sanctuary.

### **Suggestions for reconciling different perspectives**

- Delete Secretary DOI’s “veto” and include the tribes
- Get everyone involved in the PIR process
- Need a process for “setting the targets” that involves more of the partners.

### **E. CERP as the Framework?**

- *Chief’s Report*

### **Discussion/Concerns**

- Support for using CERP as a framework rather than the Chief’s report has been noted from the purpose discussion earlier.

- Miccosukee's believe that trust has been broken. Need to excise the Chief's Report entirely from WRDA 2000, and eliminate any discretion for the ACOE and DOI.

## **F. Other Issues**

### ***Environmental justice issues:***

- Careful review and understanding of impacts on minority communities and agreement on how to address them is needed.
- Greater sensitivity is needed to different cultural interests and concerns.
- Administrative language didn't handle impacts to individual communities impacts, although it did address minority business issues.
- Concern that the section dropped entirely out of the Graham/Mack staff discussion draft with no explanation.
- There is some congressional reluctance to write environmental justice provisions into new law.

### **Role and Structure of the Task Force**

- Referenced in WRDA? Respond to the WRDA Graham Mack staff draft?
- Should language regarding the governance structure of the Task Force go into WRDA?
- General support for the idea of a State Co-Chair. Desirable to have broader leadership for the Task Force. What's the best way to do this? Co-Chairmanship could be linked to funding obligations to pay for system management.
- Could Secretary DOI delegate a chair? Task Force could make a recommendation?

### **Reflections on the Meeting**

- Need to remember to see the forest for the trees.
- Appreciated Task Force meeting on important needs and issues.
- Trust is key. Role of the Task Force in future is involved. Mistrust can be prevented by working things out together.
- This has been long process. Consensus is reflected in the CERP.
- Trust broke down with the Chief's letter.
- Today's meeting focused on dialogue rather than achieving consensus.
- Meeting was 90% positive. However, *ad hominum* insults impede the process.
- There's more common ground on issues than others may try to make it appear.
- There is strong evidence that all the participants care passionately about restoring the Everglades.
- Want to implement the CERP.
- If we had stayed together and worked these issues through at this table,

we could have prevented the breakdown in trust.

- How quickly “trust” can evaporate if things aren’t brought to table.
- Drafting of WRDA legislation is an “iterative” process. The final version will hopefully result in significant improvements.
- Suggest having this kind of exchange earlier in process.

### **Next Steps**

- 1) June 19 mini-meeting on the Strategic Plan
- 2) Seek help from members in drafting or reacting to language on structural change options for Task Force for consideration in WRDA?
- 3) July meeting will be a regular meeting.
- 4) October quarterly meeting should be scheduled.