

*Approved Meeting Minutes  
South Florida Ecosystem Restoration Task Force  
Miami, Florida  
January 13, 2005*

**Welcome and Administrative Announcements**

Ms. Allbright called the meeting called to order at 8:55 AM noting the purpose of the special workshop was to continue the consultation process started at the December regular meeting.

*Marti Allbright, Chair, U.S. Department of the Interior*

*Colleen Castille, Vice-Chair, Secretary, Department of Environmental Protection*

*Henry Dean, Executive Director, South Florida Water Management District*

*Jose Diaz, Commissioner, Miami Dade County*

*Andrew Emrich, Counselor to the Assistant Attorney General, U.S. Department of Justice*

*David Gagner for Mack Gray, U.S. Department of Agriculture*

*Richard Harvey for Benjamin Grumbles, Acting Assistant Administrator for Water, U.S. Environmental Protection Agency*

*Dexter Lehtinen, Special Assistant to the Miccosukee Tribe of Indians*

*Jim Murley for Clarence Anthony, Mayor, City of Palm Bay*

*Peter Ortner for Timothy Keeney, Deputy Assistant Secretary for Oceans and Atmosphere, U. S. Department of Commerce*

*Patty Power for Jim Shore, General Counsel, Seminole Tribe of Florida*

*John Paul Woodley, U.S. Department of the Army*

*Michael Collins, Water Resources Advisory Commission*

**Whiparound**

Mr. Peter Ortner announced the fifth Florida Bay Science Conference would be held in December and the follow-up GEER Conference would be held the following June. Mr. John Paul Woodley said he attended the last Science Conference held in December 2004 in Florida and was very impressed. Copies of the proceedings were available at this meeting for those that were interested. Mr. Henry Dean announced the groundbreaking for the second Acceler8 project would be held the following day for the first test cell in the Everglades Agricultural Reservoir at the G-370 pump station. Mr. Mike Collins noted the WRAC held a special workshop on the Guidance Memoranda and there was consensus and concern among the group that the document's language had gone astray, particularly on savings and reservations. Mr. David Gagner announced Mack Gray would be retiring next month and he would serve as the interim representative until a replacement was named.

**Consultation Provisions Discussion**

Ms. Allbright noted the consultation provisions document (Encl. 2) had been revised based on the written comments and discussion at the December meeting. She reiterated that it was an Army document intended to provide guidance to the Army on how consultation would be conducted. Mr. Dean said the SFWMD had submitted suggestions that appeared to have been incorporated and the Governing Board was comfortable with the current version. Ms. Patty Power said the Seminole's comments had been incorporated. She asked how the document would be used and if there would be a broader application. Ms. Allbright explained the document would not be adopted by the Task Force but clarified how the Army would consult with the Task Force. Mr. Earl Stockdale reminded the members that the genesis of the document was the briefing on the Indian River Lagoon (IRL) and the questions regarding consultation. Mr. Ortner stated NOAA was comfortable with the document adding it set forth a philosophy and an approach that was fundamental to the relationship of the Task Force and CERP. Ms. Allbright noted there seemed to be consensus the Task Force was satisfied with the document.

**Master Implementation Sequencing Plan (MISP)**

Mr. Dennis Duke provided a presentation (Encl. 3) reviewing the comments received on the last draft of the MISP. Those comments included but were not limited to the following: the MISP should clarify the rationale for changes to the 1999 sequence and should include model runs of the performance; the MISP

must account for development pressure and rising land values in sequencing components; the MISP was inconsistent with the Task Force consultation requirements and programmatic regulations requirements; the MISP significantly delays implementation of large portions of expected CERP ecological benefits and compromises the ability to achieve restoration targets. Next steps include reviewing the comments and consulting with the SFWMD and DOI. The MISP will be revised and made available for public review. Future reviews will be made at least every five years and adjustments would be made as needed.

Ms. Colleen Castille clarified the state was still committed to spending \$125 million a year on non-Acceler8 projects (page 8) and asked that the language reflect that the state would significantly contribute to non-acceler8 projects on a pay as you go basis (page 9).

Commissioner Diaz provided a letter (Encl. 3) with comments from Dade County noting the importance of local government having input. Mr. Dean said he concurred with the points outlined in the Dade County letter adding that there was a tremendous amount of work to be done with a finite amount of resources.

Ms. Power said it was important for the document to explain why certain decisions were made and it would be helpful to explain why projects were moved around. The Tribe also feels strongly that the stakeholder groups should have their issues addressed.

Mr. Ortner on behalf of NOAA expressed his concern for the coastal marine ecosystem. He said some activities must be done early, such as land acquisition, because of increasing land values; identifying enough water from a total system perspective; and distributing the water with projects like de-compartmentalization and C-111 spreader. He noted formal written comments would be submitted to the Corps.

Mr. Gagner said his agency's greatest concern has been land acquisition and the removal of lands from agriculture. He wanted to ensure that land acquisitions would not adversely affect the agricultural industry. He noted there were conservation practices being implemented in central California compatible with rice farming.

Mr. Collins noted one of the WRAC comments dealt with the scheduling being related to funding. Comments that Acceler8 in some way is not Everglades related are erroneous. To say that the only Everglades is Everglades National Park is condemning the park to death. Ms. Allbright clarified they are providing comments, suggestions and perspectives to the Corps' for consideration as a Task Force. The Task Force consultation does not take the place of those individual consultations. DOI has also filed comments on the MISP. On behalf of the Task Force she summarized the Task Force comments as follows:

- the state concurs with others who have been concerned with language that made it appear the state's Acceler8 program reduced their commitment to CERP
- there have been concerns/suggestions about local government input, flooding and keeping a balance in the sequencing and prioritization
- keeping stakeholders involved through the prioritization process
- there were concerns expressed over the need to make sure the prioritization reflects the highest needs
- sometimes they were quick to take one approach when perhaps there are other approaches available, allow all stakeholders and land owners to be accommodated without eliminating uses and financial and economic benefits

Mr. Woodley said this was an excellent example of the consultation process and would allow the Corps to complete the MISP fully informed. At the end of the day, there will be no question that it was not done in an open and transparent manner.

### **Public Comment on MISP**

Ms. Jennifer Jurado (Broward County Water Resources Division) noted her agency's comments were not reflected in Mr. Duke's presentation. Their comments were on the Broward County Secondary Canal Improvement project which is complementary to the function and effectiveness of the Broward WPA. There will be substantial water quality benefits by pursuing secondary canal integration and they will enhance the quality of discharge to the C-11 canal. Through increasing the storage capacity of the secondary canal system the discharges will be reduced. By raising water levels, they are confident they will reduce seepage. This project has the ability to reduce their reliance on the regional system. The impoundments such as the C-11 that will provide some water supply for meeting urban needs. This project should be pursued parallel to the Broward WPA. Broward County is concerned that the continued development and redevelopment can have a negative impact on their ability to pursue this project. She asked the Corps to reconsider the inclusion of the secondary canal project as a band one project.

Ms. April Gromnicki (Audubon) said they were satisfied with the current sequencing plan. She expressed concern with the natural storage area with the IRL project and asked that it be moved to band two and said that it could not wait until 2020. Audubon is committed to working with the agencies to get the resources for that acquisition. While they appreciate that most lands will need to be acquired in fee simple, it may be appropriate to use less than fee tools to protect lands from development – their first priority. They are very concerned with the status of source water for Biscayne Bay restoration which they believe needs to be incorporated into the Biscayne Bay Coastal Wetlands in band two, noting comments have been provided in writing to the Army. She also provided comments on the Guidance Memoranda noting that Audubon believes that the law committed to reserving the total amount of water necessary for restoration. However, only the project water is reserved in the Guidance Memoranda and not the base water and she urged that the issue be resolved. She provided a copy of Audubon's letter to the Corps (Encl. 4).

### **Guidance Memoranda (GM) and Pre-CERP Baseline**

Mr. Stu Appelbaum provided a presentation (Encl. 5) reviewing the comments received on the GM and Pre-CERP baseline. He said that an additional consultation meeting was scheduled with the Miccosukee Tribe in February. He provided a general overview of the comments which included but were not limited to: GMs 1 and 2 need more emphasis on improving benefits consistent with the plan and any significant restructuring of benefits should be done through plan formulation, rather than PIR formulation; consultation should have occurred earlier in the process and throughout the drafting of the GMs; Miami Dade supports expedited procedures for acquiring lands and recognizes other legal protections besides the Savings Clause.

Mr. Collins asked whether they would expand or narrow the scope of the GMs. Mr. Earl Stockdale stated that terms like expand and limit were subjective and they would review the comments and make the appropriate changes. Mr. Lehtinen noted they had submitted written comments on January 10, 2005. Ms. Castille highlighted the issue that the Governor and the President committed to reserving water for the ecosystem and they still have that position. Mr. Collins noted WRAC expressed a concern that the language in the GM should carefully reflect the commitment the state and the federal government made at that time. Mr. Gastesi said the scale of the modeling needs to be looked at. Mr. Dean said they were concerned with the PIR and PCA language as it relates to reservations and hoped to work it out.

Ms. Power said the Seminole Tribe has some expectation that the Guidance Memoranda and Pre CERP baseline will address some of the greater policy issues and provide guidance to the PDTs. She noted the Tribe's concern with non-CERP projects such as Modified Water Deliveries and the critical projects that were not protected by the Savings Clause but were supported by Task Force member agencies. It is important for them to be protected since it did not make sense to have a CERP project negatively impact a critical project with the same ultimate purpose. GM 4 provides examples on how the MWD would be protected and could provide some information on how to provide protection for similar projects that are not CERP projects. The SWIM model does not address a lot of their lands and they are working with the SFWMD. Mr. Ortnier said there needs to be a more clear and functional process, whether it be a set of guidelines, to deal with issues not addressable in a within project basis, for example making sure that water of an appropriate quality and quantity is available for the next project down the line. Mr. Collins noted for

the record that the Governing Board has directed staff to initiate rule making on initial reservations for FWS and they are already conducting workshops to address the issue.

Ms. Allbright summarized the comments: questioning where the Guidance Memoranda fit into the scheme of policy/decision making and how decisions that were postponed earlier would be addressed; making sure that water is available for restoration and other needs; the state and the District have stated they are committed to ensuring the WRDA 2000 language and their agreements are met; while overall there is support for the Guidance Memoranda there is a need to address the bigger policy issues and ensure it guides the development of PIRs.

Ms. Castille asked what documents would be helpful to understand the project and process in addition to the Yellow book and WRDA. Mr. Appelbaum said the body of knowledge related to CERP would include understanding the Yellow Book, WRDA 2000, the Programmatic Regulations and the Guidance Memoranda. By 2007, there would be quite a few PIRs that might differ from the yellow book due to adaptive management. Ms. Allbright noted Interior provided written comments and some have been reflected in the presentation. They are working the one remaining item which was the reserved water issue. They want to make sure that those who come later understand the commitment and there is a clear method of ensuring the water intended to go to restoration and ecosystem purposes - improve habitat, protect species and restore the Everglades - is available and protected for that use.

#### **Public Comment on GM and Pre-CERP Baseline**

Barbara Miedema (Sugar Cane Growers Cooperative of Florida) noted she has been involved in this process since 1988 and they are strong supporters of the Everglades Restoration Plan. They commend everyone for meeting the deadlines and appreciate the staff for meeting with them. She provided a handout (Encl. 6) highlighting their concerns which included a belief that the Guidance Memoranda go beyond the technical and process required in the programmatic regulations and attempt to establish policy. It provides greater protections for the elimination or transfers of water for meeting environmental needs than the protection for other sources and does not allow for a reduction of an environmental source made available by a non-CERP intervening project while the same level of protection is not provided to other users. Changes to the operations of Lake Okeechobee should be covered by the elimination or transfer protections. The other major concern is with the reservations which they believe go beyond the federal government's authority and infringes on the state's authority to make water allocations.

Phil Parsons (Florida Sugar Cane League) noted that Mr. Appelbaum listed all the federal documents but failed to mention the state laws that would be relevant to the partnership. The issue of reservations has been the most divisive issue and the programmatic regulations made it clear that nothing in federal law would prescribe or dictate how the state exercises its authority. They believe the GMs cross that line and tell the state how to exercise their authority. He said that he believed that reservations would continue to be debated and was confident it would be resolved.

Tom MacVicar (Agricultural Water Users) said the pre-CERP baseline is as important as the Guidance Memorandum and it contained two serious errors. First, it assumes that water utilities are capped at the quantity they used in the year 2000, not the quantity that was permitted by the state in 2000. The District has the legal authority to change what is in a permit as it comes for renewal, however, the Corps should not have the authority to tell its planning team to assume something different. The second error is with the BMP replacement water that will impact the modeling. The farmers in the Everglades Agricultural Area (EAA), the dominant upstream watershed to the Everglades, implemented a BMP program thinking that it would reduce their runoff into Everglades. It has been found that those BMPs do not reduce the flow. The assumption in the base model is that the BMPs do not reduce flow and over 100,000 acre feet per year of BMP replacement water is taken from the lake and sent to the Everglades. There is no capacity in the STAs to treat BMP replacement water if there hasn't been a reduction in flow caused by BMPs. This will distort all future water budgets and is a serious flaw to perpetuate it in the pre-CERP baseline.

Mr. Lehtinen said that properly planned permitting was in itself a use; a public utility gets a permit for a certain amount of water even though consumers may only be using a percentage of that. They should be looking at permitted rather than actual use which is what Mr. MacVicar stated. He asked how they keep

from rewarding irresponsible over permitting. He asked whether there was a solution to this. Mr. Collins said they re-did the B list rules, which are the water consumption rules for the Water Management District to try and reach a balance between the two needs. If you have needs beyond what you are actually using, that is a five year allocation and has to match the use. You can get a twenty year permit for your baseline (what you are actually using) but whatever part you are projecting is in five year increments. The utilities do not have the total amount they had permitted and they are not limited to what they were using. Mr. Tom MacVicar clarified his concern was with having the baseline for every future CERP project assume something that is counter to what the state has already done. Individual PIRs may develop a separate baseline but the Pre-CERP baseline should reflect the status of state law at the time.

Mr. Woodley again said he appreciated the thoughtfulness of the comments and said they would be taken into account. He anticipated there would be further opportunities to refine these ideas. Ms. Allbright noted this discussion has highlighted some important policy issues that need additional discussion.

#### **Interim Goals and Interim Targets Update**

Mr. John Ogden noted that consistent with the programmatic regulations, RECOVER has developed a set of recommended interim goals and targets and transmitted the document to the Corps, SFWMD and DOI on January 10<sup>th</sup>. He provided a presentation (Encl. 6) reviewing the next steps. The agencies will consider RECOVER's recommendations in developing the Interim Goals Agreement and establishing interim targets for CERP. The agencies will enter into consultation as required. He reviewed the two sections of the document (main report and the appendix) and provided examples from a summary table. He clarified that although they do not have the science or the models necessary today for all the goals it was important to keep the indicators in the report because new models and additional science will hopefully be in place by 2010. Ms. Power asked when the document would be available for review. Mr. May noted that consultation with the Task Force was required for the Interim Goals Agreement.

#### **Manatee Pass Gate PCA Signing Ceremony**

The SFWMD and the Corps of Engineers executed the Manatee Pass Gate PCA.

#### **Open Discussion**

Ms. Allbright noted next meeting was scheduled for February 15 – 16, 2005. The meeting adjourned at 11:45 AM.

#### **Enclosures:**

1. Agenda
2. Draft Consultation Provisions (Jan. 7, 2005)
3. MISP power point
4. Audubon of Florida letter
5. Guidance Memoranda and Pre-CERP baseline power point
6. Written comments by the South Florida Agricultural Coalition
7. Interim Goals and Interim Targets power point