

*DRAFT Conference Call Summary
South Florida Ecosystem Restoration
Task Force
May 20, 2009*

Welcome and Administrative Announcements

Mr. Mike Sole initiated the conference call at 2:00 PM. He thanked everyone for participating in the call and reviewed the ground rules. He asked everyone to allow Mr. Stu Appelbaum to go through his entire presentation before asking questions.

Members Participating

Michael Sole, Vice Chair, Secretary, Department of Environmental Protection
Don Jodrey, Attorney-Advisor, U.S. Department of the Interior
Jose 'Pepe' Diaz, Commissioner, Miami Dade County
Dexter Lehtinen, Miccosukee Tribe of Indians
Sean Morton for Billy Causey, Regional Director, U.S. Department of Commerce
Patty Power for Jim Shore, Seminole Tribe of Florida
Mark Brown, for Eileen Sobeck, Deputy Assistant Attorney General, U.S. Department of Justice
Suzanne Schwartz for Craig Hooks, Director, U.S. Environmental Protection Agency
Tommy Strowd for Carol Wehle, Executive Director, South Florida Water Management District
Craig Schmauder, Deputy General Counsel, U.S. Department of the Army
Doug Lawrence, Acting Deputy Under Secretary, U.S. Department of Agriculture

Executive Director

Greg May, Executive Director, South Florida Ecosystem Restoration Task Force

Special Advisor

Shannon Estenoz, Chair Water, Resources Advisory Commission

Consultation Presentation

Mr. Stu Appelbaum thanked the Task Force for allowing consultation to take place via this call rather than wait until the next Task Force meeting. He reminded everyone that the purpose is to complete their consultation requirements with the Task Force on the proposed five-year extension of the Interagency Agreement with the National Academy of Sciences (NAS) and the Committee on Independent Scientific Review of Everglades Restoration Progress (CISRERP) which is their scientific panel. The consultation requirements are laid out in the Programmatic Regulations (Pro Regs) and in WRDA 2000. WRDA lays out the requirement to set up the panel with a body such as the NAS with the purpose of reviewing the Plan's progress towards achieving the natural system restoration goals of the Plan. The first five year agreement was executed in June 14, 2004 and the first five year contract was administered on June 17, 2004.

Consultation with the Task Force is required to extend the contract. The intergovernmental agreement among the Corps, DOI and the State of Florida governs what they are going to do and how. The Corps in turn contracts with the NAS who in turn sets up the CISRERP panel. CISRERP has produced two biennial reports, the first in 2006 and the second in 2008, and is currently meeting and will produce the third report in 2010. The cost for the first five year agreement was \$2.2 million and it was a 50/50 cost share with the federal government and the non-federal entities. The federal portion is split between the Corps and DOI. There will be a slight increase for the next five year agreement and the estimated costs are \$2.5 million

Initial Member Discussion

Mr. Craig Schmauder asked whether this is an extension or an exercise of an option. Mr. Appelbaum clarified it is an extension for another five years of the cooperative agreement. Ms. Patty Power said they should be talking about what has been received and what the working relationship has been like. Mr. Sole agreed and asked whether they, as a Task Force, are happy with the product and aligned with continuing with the NAS. Ms. Power asked if any other scientific body had been considered. Mr. Appelbaum said that they have not considered any other entities. Mr. Sole asked whether there was a strong basis for considering another entity. He noted that he does not always agree with the conclusions of the NAS and acknowledged that occasionally they go beyond their scope of work. However, he believes they are independent.

Mr. Dexter Lehtinen asked what it is that makes them independent since they rely on what people tell them. Mr. Sole noted that an independent reviewer reviews products and results that are provided to them. They weigh that existing published information and it is not the intent to do a restudy of the results but to have an independent review. He added that he has personally dealt with NAS on other things and re-iterated that he believes they are independent. Mr. Don Jodrey agreed with Mr. Sole and added that DOI supports the extension of the contract with the NAS. NAS does appoint their panel members, set their agenda and invite presenters to present a diversity of viewpoints and DOI believes they are independent. Mr. Lehtinen asked if they rely just on meetings or also talk to people individually. Mr. Jodrey explained they hold a series of meetings throughout the year and they also review published literature. Mr. Sole encouraged the members to go to the NAS website where they list their peer review process. He added that many times they do look at published and un-published data as well.

Mr. Lehtinen noted they are supposed to be reviewing CERP and he questioned how one of the panel members was quoted in the newspaper saying how important it is to build a bridge which was not part of CERP. He was concerned that the panel was changing their mission. Mr. Sole noted he just met with the NAS on another issue and they acknowledged that panel members will have individual biases and it is the panel - as a group - that is the key to the peer review process and not the individual panel member. They strive to work through the biases and produce an unbiased report.

Ms. Shannon Estenoz stated the Water Resources Advisory Commission (WRAC) has not taken a position on this issue. She asked if the contract would go to the Governing Board. Mr. Appelbaum said yes that it would go before the board at their June meeting. Ms. Estenoz said she is comfortable with extending this contract. The NAS has done what has been asked of them and they have come to be a valuable addition to the effort. This is a function intended to inform and educate the Congress and certainly the Task Force would want an independent body that has credibility. She noted that any time there is a collegial body there will be individual biases. She added that these public hearings are often attended by the media and they can quote members of the panel and those biases will be reflected in the media.

Ms. Estenoz asked about the primary components of the budget. Mr. Appelbaum noted there are salaries for the project officers at the NAS, production costs, and travel for the panel members who work pro bono. Ms. Estenoz asked the staff who will be reviewing the renewal to be as cost conscious as possible and try to reduce some of the travel costs noting these are difficult times for all the agencies. She would like to feel comfortable that the budget is as tight as possible when it gets presented to the Governing Board

Ms. Suzanne Schwartz said that NAS tends to do a good job of being independent and reliable in terms of good science. It would be hard to find another group that competes with NAS in that respect. She said it would be worth talking to them about their budget and trying to pare things down adding that her agency has had some success with that in the past. She asked if it would be a completely new panel if the contract was extended. Mr. Appelbaum said it would not be a new panel and a certain percentage of the members are replaced in order maintain the institutional knowledge. They need some measure of continuity but also allow for a fresh perspective. Each panel has a new Chairperson but the staff is constant.

Public Comment

None

Final Member Discussion

Mr. Lehtinen noted his concern that the panel is not supposed to be making policy judgments. They should not be looking at changes to the CERP and going outside the CERP. He questioned why they were going to receive a legal briefing at their next meeting. He also noted that they seem to be discussing things that were established some time ago such as the phosphorus standards in the Everglades. This panel is going to be urged to go outside of science and they should not be considering things such as Modified Waters which is not part of the CERP. The panel should notice that the goal of CERP is Everglades wide and they should not be urged to make policy choices on trade-offs. The upcoming meeting has some good elements, but there are clearly things on the agenda that are of great concern to him. Historical studies of these types of groups show that the staff controls the panels and they are the guys that matter and he would like to know how much they talk to particular agencies. He closed by saying that his main concern is that they stay on science and on the CERP and not make policy choices.

Mr. Schmauder said they need to keep a close reign on the scope of the review and other than that the Army supports the extension as contemplated. He added that the contractual record should be annotated to reflect the outcome of this consultative process so the Administrative Record reflects why this extension was granted. Ms. Estenoz asked if there would be a process to review the budget. Mr. Appelbaum said the staff has gone through the budget but as a signatory, the South Florida Water Management District Governing Board will get to weigh in on whether the budget is appropriate or not. They would like to have the extension in place before the contract expires on June 17th (the Intergovernmental Agreement expires on June 14th). Ms. Estenoz said she wants to make sure they have the opportunity to go back to the NAS to trim the budget if they think they should.

Mr. Doug Lawrence asked whether they considered competing the agreement for purposes of transparency and accountability. Mr. Appelbaum said no. Mr. Sole said it is difficult finding an independent group. He noted that while there are organizations that do peer review, there would be questions about their level of independence. He said the NAS has a strong ethic and demonstration of independence in their reviews and it has the credentials to get the requisite members of the scientific community engaged.

Mr. Lehtinen noted the Pro Regs state that the Army, DOI or the Task Force shall not attempt to influence the panel's review or assign this panel other tasks. Mr. Sole said this goes back to Mr. Lehtinen's original point that the sole scope of this effort is to provide a review of the CERP's progress towards achieving the natural system restoration goals of the Plan and produce a Biennial Report. There is a final statement that prohibits the panel from accepting any other tasks or providing any advice on any other matter to any other entity. Mr. Sole recommended that they give them clear guidance on their mission. Mr. Lehtinen reiterated his concern that the panel will be asked to make recommendations on replacements and amendments to the CERP.

Ms. Power said it is useful to underscore that these folks are well respected on the Hill and they have provided reports that have given helpful information. Mr. Jodrey agreed it is important that they stay on mission. He added that they have been in existence for quite some time and produced numerous reports which explain why Congress mentioned them in the bill language. They have a long history of producing independent reports on various topics.

Consultation Summary

Mr. Sole summarized the consultation discussion: the desire to be cost conscious; to focus on science, implementation, and the progress made; to keep a close reign on the scope; and that the parties associated with the agreement should establish a good administrative record as to why this contract is being extended. Mr. Sole said that this summary concludes consultation.

Next Steps

Mr. Sole announced there has been a proposal to hold the next Task Force meeting in Washington, DC on June 24th. The meetings have been held outside the basin in the past and he

noted his support. He asked whether there were any objections to meeting in DC and there were none. Mr. Sole asked Mr. Greg May to help set up the June 24th Task Force meeting and to provide the members with the information as quickly as possible. Mr. May said they were trying to schedule the start of the meeting around 1:00 PM to allow for same day travel. Mr. Lehtinen asked who the DOI representative on the Task Force will be. Mr. Jodrey said that it may be Mr. Tom Strickland, Assistant Secretary for Fish and Wildlife and Parks.

Mr. Sole thanked everyone for participating. The call ended promptly at 3:00 PM.

Enclosures:

1. Briefing Booklet
 - a. Agenda
 - b. Power Point Presentation on the Extension of the Agreement
 - c. Water Resources Development Act (WRDA) 2000 excerpt
 - d. Programmatic Regulations (Pro Regs) for the Comprehensive Everglades Restoration Plan (CERP) excerpt