

Approved Minutes  
 South Florida Ecosystem Restoration  
 Working Group Meeting  
 Sheraton Suites Plantation  
 January 14, 2002

**Welcome and Introductions**

Wayne Daltry called the meeting to order at 1:00 PM. The agenda (Enclosure 1) was ratified.

Working Group Members	Jan 14	Jan 15	Alternates
Aller, Chuck - FL Dept of Agriculture and Consumer Services	-	-	Ray Scott (both days)
Barnett, Ernie – FL Dept of Environmental Protection	-	-	John Outland (both days)
Best, Ronnie – U.S.G.S.	√	√	
Bradford, Mark – Bureau of Indian Affairs	-	-	
Brad Brown – NOAA, National Marine Fisheries Service	-	√	Essie Duffie (first day)
Billy Causey – NOAA, FL Keys Nat'l Marine Sanctuary	√	√	
Wayne Daltry - Southwest FL Regional Planning Council	√	√	
Henry Dean – South Florida Water Management District	-	-	Joan Lawrence
Frank Duke – Palm Beach County Planning	-	-	Isaac Hoyos (both days)
Gene Duncan - Miccosukee Tribe of Indians of FL	-	-	
Maureen Finnerty – National Park Service	√	√	
Dade County DERM (alternate)	-	-	Jim Ferro (both days)
George Hadley – U.S. Dept of Transportation	-	-	
Thaddeus Hamilton - U.S. Department of Agriculture	√	√	
Richard Harvey – Environmental Protection Agency	√	√	
Ronald Jones – Southeast Environmental Research Center	-	-	
Barbara Junge – U.S. Attorney's Office	√	√	
Neal McAiley – U.S. Dept. of Justice	√	√	
COL Greg May - U.S. Army Corps of Engineers	√	√	
Ken Metcalf – Department of Community Affairs	-	-	
Peter Ortner – NOAA	√	√	
Donna Pope - FL Dept. of Transportation	-	-	Marjorie Bixby (both days)
Fred Rapach – Palm Beach County Water Utilities Dept	√	√	
Terry Rice – Miccosukee Tribe of Indians of Florida	√	√	
Jay Slack – U.S. Fish and Wildlife Service	√	√	
Rick Smith - Office of the Governor of Florida	√	√	
Ron Smola – U.S. Department of Agriculture	√	√	
Steve Somerville - Broward County Department of Natural Resource Protection	-	-	
Craig Tepper, Seminole Tribe of Florida	√	√	
Joe Walsh - Florida Fish and Wildlife Conservation Commission	√	√	
Julio Fanjul, Special Advisor	√	√	
Rock Salt, Special Advisor	√	√	

**Report on Water Projects and Initiatives**

Dennis Duke provided a Power Point presentation (Encl. 2). The agreement between the President and the Governor was signed on January 9, 2002. Initial draft of the Programmatic Regulations was released for public comment in December with the formal draft to be released in March 2002. Comments received will be used as a basis for improving the formal draft. Dispute resolution agreement has been developed and is awaiting signature. Three projects, Southern Golden Gate Estates, WPAs and Indian River Lagoon, are being targeted for WRDA 2002 submission. CERP implementation schedule update is being started and will be an ongoing effort. Seminole Big Cypress Critical Project Groundbreaking Ceremony scheduled for tomorrow. Comment period on the draft report for WPAs has been extended to January 16, 2002. Second public meeting on Tamiami Trail is scheduled for tomorrow at Plantation High School. Lakebelt Project Management Plan Workshop scheduled at the Miami Field Station on January 16, 2002. Florida Keys/Florida Bay Feasibility Cost Sharing Agreement will be presented to the SFWMD Governing Board at their February 2002 meeting. Rock Salt said the Department of Interior was

pleased with the Agreement that accomplishes everything the law required. However, by itself by itself it does not provide the assurances that are needed.

### Programmatic Regulations

Stu Appelbaum provided an update (Encl. 3) on the draft regulations (Encl. 4) released in December. The public meetings will continue. Project Implementation Reports (PIRs) need to identify the amount of water to be reserved for natural system under state law. Project Cooperation Agreements (PCAs) cannot be executed until reservation identified in PIR is executed under state law. Operating Manuals must be consistent with water reservation described in PIR and PCA. "New Water" will be captured with CERP projects and some of this water has to be reserved for the natural system that is covered by the Agreement. RECOVER is the entity to conduct the adaptive assessment activities and prepare reports. Undesirable responses that are identified will be changed to improve the performance of the plan. Operations may be modified as well as the sequence or schedule for implementation. Four major issues have emerged: amount of detail, interim goals, linkage between state law and CERP development process and the effect of actual availability of water on reservations. He noted the initial draft contains the processes necessary to guide implementation and the development of protocols. Seven protocols are currently in various stages of development. The white paper prepared by the SFWMD will lay the groundwork for the identification of the water to be reserved for preparing PIRs. RECOVER has the lead for developing the recommendations for interim goals (technical) that will be performance-based. RECOVER will then assess periodically the progress towards meeting those interim goals. Pre-CERP baseline will be developed and each PIR must consider if the baseline water is still available for the natural system. If not, PIR to consider loss of pre-CERP baseline water availability in identifying water to be made available to the natural system by project component and the PIR may consider other remedial actions. There is concern that if the baseline is diminished you will fall short of meeting the goal. Various stakeholder meetings scheduled in the upcoming weeks with the initial draft to be revised.

Gene Duncan noted his concern over the role of RECOVER and the lack of not having a chain of command. He suggested the interim goals go to the Task Force. Stu replied the RECOVER members would take the reports back to their respective agencies. Terry Rice reminded that WRDA 96 prescribes a role for the Task Force. Rock Salt said the Task Force was given a role in the development of CERP not in the implementation. He added the Corps needs to provide clarification on what it intends and asked each of the Working Group members to provide their agency perspective. Neal McAliley asked about the legal definition of a legal source of water. Stu acknowledged the initial draft does not contain a definition. The statute gives water for Everglades National Park as an example as well as water for the tribe. Fred Rapach noted the utilities have some concerns, but he was very supportive of the Agreement. He said he was unclear about the baseline water availability in the interim period until the Corps projects come online. He noted the concern with interest groups that existing water will be used during this interim period and no new water available for the projects. Stu Appelbaum stated the Corps has an obligation in the PIRs to not impact existing legal sources of water and not adversely impact flood protection. It is a shared responsibility of the state and feds to figure out the baseline. Gene Duncan asked about the CERP refinement process and whether the Corps would have to go to Congress every time someone updates the plan. Stu Appelbaum explained Congress expected changes and only those major modifications to the plan had to go to Congress.

Terry Rice spoke of the NEPA exclusions included in the draft regulations and clarified it was not the changes but the process used to make the changes. There has been no discussion of cost and there is a 902 requirement with this project. Stu Appelbaum said the law authorized the first ten initial projects subject to Section 902 requirements. The price tag cannot increase by more than 20 percent (exclusive of inflation) without going back to Congress. Neal McAliley suggested it would be helpful to have an expert on state water law at a future meeting since the rules of whom will get to use the water will be governed by state law. Rock Salt said that water that is lost and made unavailable under the flood protection rules is not managed the same way as the consumptive use permits and questioned how that is figured into the baseline. Fred Rapach

asked if there was the capability to run a hypothetical project to better understand how to quantify the water. Stu Appelbaum said the protocol for the reservation of water is very complex and technical and the system cannot be operated without recognition that the water needed will be a variable amount.

Essie Duffie said NOAA would provide written comments. Ron Smola said the presentation captures the agricultural concerns. Joe Walsh said his agency would provide written comments in a couple of weeks. Craig Tepper said the Seminole tribe has a lot of suggestions including defining restoration and defining when the systems has been restored. It also appeared the middle of the state with there being nothing to define the floors. Julio Fanjul announced WRAC would be hosting public meetings with the various stakeholders. Jim Ferro said the County was reviewing it. Wayne Daltry said it was a good draft. Peter Ortner said he was not 100% comfortable with the assurances and the reservations for the natural system. Asked about the role for the other agencies to comment. Fred Rapach noted his concern about the emphasis on looking out for the federal interests when this is a partnership. The regulations should be a process that will allow for adaptive management.

Rick Smith pointed to the St. John's case and offered to provide a briefing to the Working Group. John Outland stated DEP has been involved and is comfortable adding that it is consistent with Florida Water Law. Ron Jones said the role of RECOVER has the potential to become unbalanced with most members being from the WMD and the Corps. The quantity of water reservation is the topic with no discussion of quality. The type of water necessary for the natural system needs to be discussed.

Rick Smith suggested also emphasizing the WRDA benefits. Florida water law will be used to reserve water but there needs to be discussion of 373 and administrative procedures. Need to be assured that the regulations do not adversely affect Florida law. Joan Lawrence was supportive and would work with others to have a panel on Florida water law. Maureen Finnerty said the Park Service was also supportive. Concerned with the role of Interior and how RECOVER would work to have their information folded in. She added that interim goals would need to have measurable milestones.

Gene Duncan said the role of RECOVER as well as the need for a chain of command for Task Force influence on the interim goals so that not just two agencies get input. The tribe is also concerned with the state process on water allocation and reservation and the standard of serious harm is flawed. Terry Rice said it was a good draft and doing the operation plan with the planning is good. Consultation with the tribes is good but not to the greatest extent practical. Suggested not limiting input to those named in WRDA. Richard Harvey stated his concern with water quality. Ronnie Best said science should be more explicit rather than implied and offered to provide language to the Corps. Jay Slack said the Corps did a good job and he would continue to work with the Corps and the state. He commended the Corps' approach to out this draft so that input would be meaningful.

#### Public Comment

Mary Munson (Nationals Parks Conservation Assoc.) provided COL May with the EVCO letter (Encl. 5) on the regulations. She noted her disappointment with the draft but appreciated the chance to comment on it. The regulations remove the role of Interior from this process. By deferring to protocols also removes Interior from concurrence on important decisions. She urged the Corps to include the protocols in the regulations and to restore Interior's concurrence role as well adding measurable goals.

Shannon Estenoz (WWF) said it was good to have the opportunity to review this draft. The Coalition has strong objections to the initial draft. She underscored that the two overarching concerns are with the deferral of assurances to protocols that are yet to be written. This process has not served the Everglades well in the past. The regulation also reduces Interior's role in consultation. Think the language is sufficient to protect the future bank account for the Everglades

the concern is how the SFWMD would interpret the agreement and the programmatic regulations. Also objected to CERP being implemented on a project-by-project basis, did not want to fight for the water 68 times. She asked for programmatic level interim goals.

Richard Grosso (Environmental and Land Use Law Center) said reservations for the system needs to be implemented flexibly. The reservation is what the natural system needs not what it needs unless it is needed by a utility. The regulations is the one place where the concept of restoration can be given some legal standing and needs to be more clearly defined. There is no excuse for not putting the goal into the law. He closed by saying that all the answers on how state and federal laws will interplay may never be known.

April Gromnicki (Audubon of Florida) underscored Richard Grosso's comment. She stated that balance must be achieved in the process. Assurances and reservations are to prepare for the worst-case scenario. Need to give the Everglades water because it has been short-changed for too long. Need a process to move into an open forum. Adaptive assessment and adaptive implementation need more specificity. Restoration success is performance goals not progress goals.

Sally Yozell (Battelle Memorial Institute) said her organization is putting together an index of all the monitoring projects going on throughout south Florida. Over a thousand requests have been sent out with a mixed response. In order to establish a base line on what monitoring programs are going on this information is critical. She asked for Working Group member agencies to provide the information.

## RECOVER

John Ogden provided a Power Point Presentation (Encl. 6) announced they are working on a second version of the system-wide comprehensive monitoring plan. It will be used to measure the progress and success of CERP. Performance measures have been substantially re-written, new section created at the request of many working on this. Performance measures integrated into monitoring packages by topics and objectives. Six monitoring packages, heart of the document, will be in the plan (i.e., total system, water quality, water supply, biota of concern (species), Greater Everglades Wetlands). Each package would identify what will be measured system-wide. Draft will be completed in January. Numbers and cost estimates will be completed by March 2002. Prioritization workshops will be scheduled in March to determine priorities. Full public and peer review will begin in April. Cost information will be collected by different elements of the plan. Gene Duncan asked how much of the \$10 million would be used to reimburse agencies that are already doing the monitoring. John Ogden said a guideline would be laid out to decide who would pay for what. Existing monitoring would continue to be covered by the agencies. Substantial new monitoring is required to fill in the gaps. Peter Ortner said the amount of money CERP will spend on monitoring is no larger than what being spent in the southern estuaries. Folks would continue to pay for what they have been paying for anyway. Ron Jones said it has already been contemplated and need to be vigilant to not let that happen.

## Preparation for Task Force Meeting

Rock Salt reviewed the Task Force agenda (Encl. 7a). Secretary Norton has invited the Task Force members to have breakfast on Wednesday morning. First portion of the meeting is intended to allow the Task Force members to share their perspectives with the Secretary. COL May scheduled to introduce the Working Group. Discussions on the RECOVER MOU (Encl. 7b), Voting Protocol (Encl. 7c) and WRAC (Encl. 7d) resolution will follow. Dexter Lehtinen sent a letter (Encl. 8) raising some issues in regards to the MOU and has asked that the signing be deferred to give the Task Force the opportunity to discuss it. Governing Board has authorized Michael Collins to sign on behalf of the WMD, pending any policy discussions. Several Task Force members are going on a field trip and will then attend the groundbreaking ceremony.

## RECOVER Memorandum of Understanding (MOU)

COL May explained the RECOVER MOU is symbolic. Agencies have committed to working in a collaborative process. COE is still prepared to participate but would like to hear what concerns the various agencies represented at the table had. Jim Ferro said the County adopted an ordinance in support of the MOU. Jay Slack said FWS is supportive of the RECOVER process and feel their concerns have been taken into account. Ronnie Best said it was quite clear the MOU is a statement of unity and USGS intends to sign the MOU. Craig Tepper said he would be unable to sign it and he was unable to have a representative attend all of those meetings. Joseph Walsh said he was happy with the MOU as written and his agency would have a signatory. Ron Smola was in support of the MOU. Thaddeus Hamilton said he hoped to have this signed at the Task Force level. Essie Duffie said NOAA supports it. Richard Harvey said he has not had time to brief the new Regional Administrator and Task Force representative and was uncomfortable signing at this time. Neal McAliley said he was counting on the scientists to figure it out. Marjorie Bixby said her agency needs to choose a signatory and is very supportive. Gene Duncan stated that this group is not being used effectively to deal with tough issues. Miccosukee Tribe likes the RECOVER process as long as it is an informal meeting of the minds. Signing the MOU formalizes the process and did not agree that it needed to be signed by the agencies. MOU has never been to the Task Force and suggested it be discussed there. Maureen Finnerty and Joan Lawrence both support it. Billy Causey said he was ready to sign. Ray Scott said his agency was ready to sign.

John Outland said DEP was not prepared to sign, however, they support the process. Craig Tepper clarified that although he did support airing out the issues, structurally, he did not have the financial resources to devote lawyers and paralegals to this effort. Fred Rapach agreed it made sense to have the Task Force discuss this and then consider the signing of the MOU as proper protocol. RECOVER will play a more significant role in the Programmatic Regulations. Peter Ortner said the lawyers have asked for some boilerplate stuff to be inserted before they allow signing. Wayne Daltry endorsed participation and said it would be appropriate for the Task Force to review and endorse it. COL May said the Working Group should resolve 70 – 75 % of the issues and the Task Force should discuss the policy issues, Terry Rice said the Working Group has never resolved an issue that has not then been forwarded to the TF. Once buy-in from agencies is being sought, then it becomes a policy matter.

Fred Rapach noted the Commission was created by the SFWMD in April to serve as an advisory body to the Governing Board. He asked if there could be a recommendation or position that could be contrary to the Working Group recommendation. Rock Salt said yes, this could happen. Peter Ortner said he was not clear why the Governing Board wanted a group like this, other than for information. He asked why they should be named as an advisory body to the Task Force. Rock Salt replied that similar to the Governor's Commission the intent was to get stakeholder advice. Joan Lawrence added WRAC represents a variety of different interests other than agencies. Thaddeus Hamilton asked why they would advise the Task Force and not the Working Group. Rock Salt explained the language in the draft resolution parallels the language used for the Governor's Commission. The Task Force could decide to alter the language at the meeting.

## Discussion on Seminole Groundbreaking Ceremony

Craig Tepper provided the logistics for the ceremony. Food would be provided at the Community Center and everyone was encouraged everyone to attend.

## Public Comment

Mike Richardson (himself) stated this would be the last Working Group meeting he would be attending. He said they have been effective in bringing the south Dade issues to the group. He and charged Rock with reminding everyone of the south Dade issues.

### Passing of the Gavel

Wayne Daltry stated he was honored to serve as Chair of the Working Group over the past year. Fred Rapach described Wayne's approach as "subtle" and said it had been an honor and a privilege to have him as Chair. Thaddeus Hamilton thanked him for his leadership adding that he "blew up the box". Jay Slack commented on how well he has run the meetings. Terry Rice described Wayne Daltry as the father of the southwest Florida EIS and thanked him for all of his work. Joan Lawrence also thanked him and added that she appreciated his leadership. Billy Causey stated he planned to continue to work alongside him, as there is more focus on issues in SW Florida. COL May thanked Wayne for his sense of humor when one was necessary. He opened the floor for Vice Chair nominations. Neal McAliley nominated Rick Smith and Billy Causey seconded nomination. The Working Group voted in favor of Rick Smith serving as Vice Chair.

Meeting adjourned at 5:45PM

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January 15, 2002

Welcome and Introductions

COL May called meeting called to order at 8:45 AM. On behalf of the Working Group, he said his thoughts and prayers go out to Jim Shore.

Strategy Document

Rock Salt said the GAO concluded that the plan was not complete and that the linkage between the projects and the goals were not clear. Allyn Childress presented the revised draft Strategy (Encl. 9). First strategic Plan completed in July 2000 and a few more items in Goal 3 are now included. Another objective in habitat has been incorporated and the linkages have been improved. This document will be updated every two years. **Follow-up: Working Group members were asked to review and provide comments by February 8, 2002.** Rock Salt thanked Allyn Childress for all her hard work and announced she has accepted a position with the South Florida Regional Planning Council.

ASR Issue Team Update

Richard Harvey reminded everyone that the Working Group formed the ASR Team in September 1998 and that team prepared a report in July 1999 identifying critical issues that needed to be addressed. In October 2000, CROGEE also engaged in evaluating the ASR concept and evaluated three issues that needed to be addressed (regional science, water quality and local feasibility) if regional ASR was going to work as intended. The CERP ASR program took the Issue Team and CROGEE recommendations and formed project development teams, which are proceeding ahead. The CROGEE report recommended that in addition to pilot programs a more regional approach needed to be evaluated. The ASR CERP Program has proceeded to initiate pilot well testing around Lake Okeechobee, Hillsboro Canal and Caloosahatchee. Evaluation of treatment technologies has also commenced for those wells and they are on schedule.

He explained that the intent of the second ASR Issue Team formed by the Working Group was to make sure the ASR CERP Program is adequately addressing those issues identified by both the Issue Team and CROGEE reports. There have been ongoing discussions on the role of this ASR Issue Team should be and it has been agreed that the most appropriate place to raise and resolve issues is through the PDT process. It is the ASR Team's finding that the PDT process is working and it is comfortable that issues are being addressed as directed by the CROGEE. Peter Ortnier asked about the status of the regional study. Richard reported they are working on their workplan but are making good progress. Trying to figure out that most appropriate role for the SCT to add value to this process. He also noted that all the ASR Issue Team members actively participate in the PDT process. COL May added that the PDT is the appropriate place for folks to enter the dialogue.

Rock Salt reminded everyone that at the time CROGEE met the assumption was that all the ASR costs had to be within the authorized number for the pilot project. Subsequent to the CROGEE meeting, the Corps broke out the regional study as a program element and that meant it would not be considered as part of the cap. Fred Rapach noted that Henry Dean sent a letter to the World Wildlife Fund stating that it would no longer seek a variance for the pilot projects. It was hoped that the pilot projects and the regional study would address all of the technical concerns related with ASR. One of those concerns was with the level of treatment for the use of raw water. The letter from EPA dated March 7, 2001 determined that DEP could grant variances. He asked when the answer on the microbial die-off issue would be provided. Richard Harvey clarified that this did not mean the microbial die-off issue is totally off the table. The District and the Corps has contracted with the Dr. Rose from the University of South Florida to initiate the lab component of

that study. The St. John's River Water Management District is also working on the drainage wells in Orlando, which have the same type of microbial issues associated with those drainage wells. He said looking at the microbial issues has been postponed. Peter Ortner announced the next CROGEE meeting will be held on February 7 – 8, 2002 in Jacksonville.

#### Biscayne Bay Issue Team Update

Rhonda Haag presented the Biscayne Bay Annual Report (Encl. 10) as charged in the Charter. The Biscayne Bay Partnership Initiative Report and Team Charter were used to develop a list of priority actions and make recommendations to the Working Group. Team will focus on 5 funding requirements. Issue Team is trying to identify funding and opportunities and has divided all the projects that have been identified into eight overarching themes. She reviewed table 2 of the handout provided 15 ranked projects for FY 2002-2003 totaling \$14.2 million with \$8 million needed for land acquisition. Some of the ranked projects are a continuation of a funded project from 2001. Questions still remain about the matching dollar amounts. Water quality monitoring is the top priority followed by the Biscayne Bay performance measure development. Team will work to identify additional funding sources (i.e. federal and local). Peter Ortner commended the team for the amount of work they did in a short time. Joan Lawrence said this information would be a part of the District's package to the Legislature. Rock Salt asked the Working Group to accept the report from the team and forward to the Task Force for information with the expectation that the various entities would work on their piece and the WMD would follow up on funding. Rick asked for funding to be identified to the fullest extent possible. Ronnie Best made a motion to accept the draft for informational purposes. Billy Causey said this would be a good example for the Task Force of the types of products that can be produced. Joan Lawrence supported this be presented for informational purposes. Brad Brown said the fact the Legislature came to the Working Group speaks highly of the group. **Follow-up: This document would be provided to the Task Force as an example of the types of things the regional teams are doing.**

#### 2002 Working Group Workplan

Rock Salt reviewed the proposed 2002 workplan (Encl.11). He asked for comments and edits to be provided to Sandy Soto. Rick Smith suggested asking the PDT to provide a presentation on their work when it is ripe. Thaddeus Hamilton asked for work items to be submitted in time for the OEEECT's meeting. Fred Rapach – may be assigned by the Task Force to assist the Task Force. Draft plan tentatively endorsed by WG.

#### Public Comment

None

#### Review of Working Group Requests/Follow-up Action Items

- State and Water Management experts on Florida Water Law will be asked to participate in discussions at the March meeting.
- Comments on the Strategy Document are due to Sandy Soto by February 8.
- Fred Rapach requested future meetings on Programmatic Regulations be ½ day in length

#### Open Discussion

Fred Rapach – Senate Report – COL May – law is what it is – does not go into details – go back to the report and see what the Senate had in mind when - - need to resolve that – stakeholder let's address that and get it understood. Joseph Walsh asked about the RECOVER MOU. Rock Salt noted it is currently on the agenda to be discussed at the Task Force meeting.

Meeting adjourned at 10:45 AM.

#### Enclosures:

1. Agenda
2. Corps Power Point Update

3. Programmatic Regulations Power Point Presentation
4. Draft Programmatic Regulations
5. Everglades Coalition Letter (dated Jan. 3, 2002)
6. RECOVER Power Point Presentation
7.
  - a. Task Force Agenda
  - b. Draft RECOVER MOU
  - c. Draft Voting Protocol
  - d. WRAC Resolution
8. Dexter Lehtinen Letter (dated Dec. 20, 2001)
9. Draft Strategy Document (dated Jan. 2002)
10. Biscayne Bay Regional Restoration 2001 Annual Report – Executive Summary
11. 2002 Working Group Workplan
12. Working Group Roster (Nov. 15, 2001)