

# ASSESSMENT OF OPPORTUNITIES FOR MULTI-STAKEHOLDER COLLABORATION

ON THE  
ENVIRONMENTAL IMPACT STATEMENT PROCESS  
FOR THE  
COMBINED STRUCTURAL AND OPERATIONAL PLAN  
FOR  
MODIFIED WATER DELIVERIES TO EVERGLADES NATIONAL PARK  
AND  
C-111 CANAL PROJECTS

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photos courtesy of South Florida Water Management District

Prepared at the request of:  
U.S. ARMY CORPS OF ENGINEERS  
EVERGLADES NATIONAL PARK  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
U.S. FISH AND WILDLIFE SERVICE

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The purpose of this report is to assess the opportunities for a multi-stakeholder collaborative Environmental Impact Statement (EIS) process in support of the Combined Structural and Operational Plan (CSOP) for the Modified Water Deliveries and C-111 Canal projects. This assessment has been conducted by the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) at the joint request of Everglades National Park (Park), the South Florida Water Management District (District), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Army Corps of Engineers (Corps) (jointly referred to as the “sponsoring agencies”).

The objective of the report is to offer a set of process design options for consideration by the sponsoring agencies and interested stakeholders in crafting a CSOP EIS process that will be broadly supported as legitimate and appropriate for developing a shared solution to CSOP.

An initial draft of this report was provided to the sponsoring agencies for factual corrections and comments. Agency feedback has been incorporated at the discretion of the assessment team. This final report is the independent work product of the assessment team and has not been formally reviewed and/or approved by the sponsoring agencies. This report is being simultaneously released to the sponsoring agencies and to the individuals who were interviewed. The report is also available through the U.S. Institute’s web site at: [http://www.ecr.gov/s\\_publications.htm](http://www.ecr.gov/s_publications.htm).

The U.S. Institute wishes to thank all those who contributed their time and shared their candid perspectives during the interview process. Our findings and suggestions have relied heavily on your collective insights.



All south Florida photos courtesy of the South Florida Water Management District.

## LIST OF ABBREVIATIONS AND ACRONYMS USED IN THIS REPORT

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8.5 SMA	8.5 Square Mile Area
C&SF Project	Central & Southern Florida Project
C-111	Central & Southern Florida Project's C-111 Canal
CEQ	Council on Environmental Quality
CERP	Comprehensive Everglades Restoration Plan
Core Planning Team	The Sponsoring Agencies (the Corps, the Park, the District and USFWS) when acting as part of the proposed collaborative process
CSOP EIS	Combined Structural and Operational Plan Environmental Impact Statement
CSOP	Combined Structural and Operational Plan
CSOP Advisory Body	Multi-stakeholder body to advise the Sponsoring Agencies on CSOP issues
CSSS	Cape Sable Seaside Sparrow
DOI	U.S. Department of the Interior
EEPA	Everglades Expansion and Protection Act
EIS	Environmental Impact Statement
ENP	Everglades National Park (the Park)
ESA	Endangered Species Act
FACA	Federal Advisory Committee Act
U.S. Institute	U.S. Institute for Environmental Conflict Resolution
IOP	Interim Operational Plan (for the protection of the Cape Sable Seaside Sparrow)
ISOP	Interim Structural and Operational Plan (for the protection of the Cape Sable Seaside Sparrow)
MOU	Memorandum of Understanding executed 10/15/2002 by the Sponsoring Agencies
MWD	Modified Water Deliveries to Everglades National Park
NEPA	National Environmental Policy Act
ROD	Record of Decision
SFWMD (District)	South Florida Water Management District (the District)
Sponsoring Agencies	The Corps, the Park, the District, and USFWS
Task Force	The South Florida Ecosystem Restoration Task Force
USACE (Corps)	U.S. Army Corps of Engineers (the Corps)
USFWS	U.S. Fish and Wildlife Service
WCA	Water Conservation Area
Working Group	The South Florida Ecosystem Restoration Task Force's Working Group
WRAC	South Florida Water Management District's Water Resource Advisory Commission

This report is an assessment of opportunities for a multi-stakeholder collaborative Environmental Impact Statement (“EIS”) process in support of the Combined Structural and Operational Plan (CSOP) for the Modified Water Deliveries (MWD) and C-111 Canal projects. The assessment was conducted by the U.S. Institute for Environmental Conflict Resolution (Institute) at the joint request of Everglades National Park, the South Florida Water Management District, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers (“sponsoring agencies”).

The four agencies initially sought neutral assistance from the Institute in January 2001, at the suggestion of the President’s Council on Environmental Quality, to help them in resolving interagency disputes over hydrology modeling related to the Interim Operating Plan (“IOP”) for protection of the endangered Cape Sable seaside sparrow (“CSSS”). At that time, one of the options proposed by the Institute was for the four agencies to consider combining a collaborative interagency conflict resolution effort with a multi-stakeholder approach to the upcoming CSOP EIS process. Since then, due to their success in working together to address their differences over IOP, the four agencies have now also committed to continue their interagency collaboration on CSOP and to jointly sponsor a multi-stakeholder EIS process. They have agreed to collectively consult with and seek the direct involvement of other governmental and nongovernmental entities that may have an interest in participating in the CSOP process.

This assessment was conducted to gain a better understanding of the interest in and ability of all stakeholders, including other governmental entities as well as nongovernmental organizations and individuals, to participate productively in a collaborative CSOP EIS process. The findings of this assessment are based, in part, on interviews with 48 individuals from federal, state and local government, tribes, and community, environmental, recreational, and agricultural groups.

Given the long history of the MWD and C-111 projects and the potential adverse impacts to ENP, Miccosukee tribal lands, and to agricultural, residential, and other developed areas adjacent to ENP, as well as to the greater Everglades ecosystem, there has been during the last decade and continuing today, considerable public controversy regarding these two projects. For example, some agricultural and urban stakeholders are highly concerned that they are still not yet benefiting from improved flood protection features they feel were a part of the long-delayed MWD and C-111 projects. On the other hand, some environmental stakeholders feel that unrealistic and erroneous expectations have been created about the level of flood protection authorized by Congress. They consider the water flow benefits to Everglades National Park to be central to the authorized purposes of the MWD and C-111 projects and they feel these benefits have not been realized because of urban and agricultural stakeholders’ concerns regarding flooding. Litigation that may directly or indirectly challenge certain critical aspects of the MWD and C-111 projects has been brought by environmental groups, the Miccosukee Tribe, and other interest groups. Strong pressure to complete MWD has come from congressional requirements that these this project be completed before a myriad of other Everglades restoration projects can be implemented under the authority of the Comprehensive Everglades Restoration Plan (CERP).

In conferring with each of the sponsoring agencies, the assessment team identified a number of shared goals for both continuing their current interagency collaborative efforts and for pursuing a multi-stakeholder CSOP EIS process. These goals include: reaching interagency agreement on a preferred alternative for CSOP, gaining broad intergovernmental and public support for a CSOP solution, reducing the likelihood of litigation that would further delay CSOP implementation, and building increased trust among CSOP stakeholders.

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From interviews with stakeholders, the Institute’s assessment team found that the CSOP substantive issues of greatest concern relate to flooding east of L-31N and C-111, hydrologic conditions in natural areas, water supply, pre-storm drawdown of canal water levels, access for recreational fishing, and the comprehensive restoration of the Everglades. Ranges of different perspectives on these substantive issues are associated with several distinct categories of primary interest that include: local community interests, agricultural interests, environmental interests, recreational interests, tribal interests, and state agency interests.

The interviews further revealed that stakeholders have significant concerns regarding a collaborative CSOP process. These concerns center around four major themes: lack of trust, the need for CSOP to be implemented quickly, skepticism about the sponsoring agencies’ commitment to collaboration, and “process fatigue” from the demands of so many Everglades-related governmental processes.

Suggestions provided by stakeholders to help enhance a collaborative CSOP process focus on ensuring the efficiency and coordination of meetings with other ongoing Everglades restoration-related activities and on making sure that the decision-making process is open and transparent to the public.

The key obstacles to successful multi-stakeholder collaboration identified by the Institute are: the long history of polarized relationships, ongoing litigation involving CSOP-related issues, the highly technical nature of CSOP, extreme process fatigue, Federal Advisory Committee Act (FACA) restrictions regarding nongovernmental participation on advisory bodies, the constraints posed by the congressionally-authorized purposes for MWD and C-111 projects, severe time factors, and continuing uncertainty about the agencies’ commitment to collaboration.

Despite these significant obstacles, the assessment team concludes that a multi-stakeholder approach to the CSOP EIS process is possible. The key factor in arriving at this conclusion is the assessment team’s discernment that many of the stakeholders interviewed realize that they are unlikely to unilaterally achieve their own key interests without also adequately addressing the needs and interests of other stakeholders. Stakeholders have seen repeatedly how failure to adequately accommodate and reconcile others’ interests leads to continued impasse, thereby preventing all groups from benefiting either individually or collectively. This kind of realization, if broadly shared among the range of stakeholders, creates powerful incentives to work together to create shared solutions – but only if there is sufficient confidence and trust in the efficacy and fairness of the decision-making process. Another key factor enhancing the feasibility of successful multi-stakeholder involvement is that the four sponsoring agencies’ common goals for the CSOP process can likely only be achieved through pursuing a multi-stakeholder approach to creating a shared solution to CSOP. A successful multi-stakeholder process will not be easy, nor will it guarantee a universally accepted final CSOP decision. However, in the judgment of the assessment team, a multi-stakeholder approach provides the best opportunity for successful implementation of CSOP with the fewest additional subsequent delays, while also establishing a crucial constructive foundation for future Everglades restoration projects.

The assessment team suggests that the sponsoring agencies take full advantage of the multiple opportunities the National Environmental Policy Act (NEPA) provides for interagency collaboration, enhanced stakeholder participation, and transparent decision-making at each step of the EIS process. A spectrum of options available for different levels of participation by other governmental and nongovernmental entities in the NEPA process is provided for consideration by the sponsoring agencies and other stakeholders in the report’s section on Process Design Options.

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If the sponsoring agencies are committed to pursuing a multi-stakeholder CSOP EIS process and sufficient interest exists among stakeholders to participate in good faith in a collaborative effort, the assessment team suggests they consider incorporating several key elements in their process design: a Core Planning Team made up of the sponsoring agencies; a multi-stakeholder CSOP Advisory Body; government-to-government consultation with Native American Tribes; Technical Working Groups; Technical Workshops; and CSOP Focus Groups.

The Core Planning Team members would share decision-making responsibility for CSOP in accordance with the Memorandum of Understanding recently executed by the sponsoring agencies (see Appendix C). The Core Planning Team would continue to engage in collaborative, consensus-based decision-making regarding procedural and substantive steps in the EIS process up to the CSOP Record of Decision. The Corps would retain its final authority for the CSOP EIS Record of Decision.

The CSOP Advisory Body could be the focal point of multi-stakeholder involvement and an efficient mechanism for direct consultation between the sponsoring agencies (Core Planning Team) and other governmental and nongovernmental stakeholders. The CSOP Advisory Body should have a multi-stakeholder composition that includes appropriate representatives of other governmental and nongovernmental interests. The CSOP Advisory Body's main purpose would be to consult with and advise the Core Planning Team on CSOP issues. The Advisory Body could be designed to seek agreement on its advice and recommendations to the Core Planning Team. If consensus among members of the CSOP Advisory Body could not be achieved, the areas of agreement and disagreement would be documented and taken into consideration by the Core Planning Team. To address the issues of mistrust and concerns about the fairness of the multi-stakeholder process, the proceedings of the CSOP Advisory Body should be facilitated by a team of independent, neutral, and experienced facilitators, and a set of ground rules should be developed and agreed to by all the participants.

The CSOP Advisory Body could be established and the members selected by the Core Planning Team in coordination with one or more of the agreed upon convening entities that are legally authorized to create Federal Advisory Committee Act-exempt advisory bodies. In addition to the CSOP Advisory Body, the assessment team suggests that the Corps approach the governing leadership of the federally-recognized Miccosukee Tribe of Indians of Florida and Seminole Tribe of Indians with respect as mutual sovereigns to determine a mutually acceptable protocol and designated points of contact for meaningful formal government-to-government consultation on CSOP. The Corps could also work with the tribes to satisfactorily address any concerns regarding how their sovereignty might be affected by participation in a multi-stakeholder advisory process.

The assessment team also suggests considering the use of Technical Working Groups, Technical Workshops, and CSOP Focus Groups as needed by the Core Planning Team, in consultation with a CSOP Advisory Body, to gather or disseminate information.

Incorporating input from discussions with the sponsoring agencies' CSOP Project Managers and considering important key elements, the assessment team has proposed seven process design alternatives for consideration by the sponsoring agencies and interested stakeholders. The alternatives utilize different approaches to providing enhanced opportunities for multi-stakeholder participation in the CSOP EIS process.



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The assessment team recognizes that the sponsoring agencies' and the various stakeholders' reactions and receptivity to the process design options presented in this assessment will ultimately determine if and how a multi-stakeholder approach to CSOP should be pursued. The multi-stakeholder process design elements being suggested assume active participation by a broad range of governmental and nongovernmental interests. If stakeholders respond predominately negatively to the process design suggestions included in this assessment, it's possible that additional process design options could be developed based on the feedback received that might be more acceptable. However, if broad participation cannot ultimately be attained, then the sponsoring agencies will need to reassess the feasibility of their pursuit of a collaborative multi-stakeholder approach and consider taking a more traditional path of consultation and public participation through the EIS process.

Representatives of many federal, state, and local governmental agencies and tribal governments, as well as a number of nongovernmental entities, have expressed at least a tentative interest in participating in a collaborative CSOP EIS process. The willingness of stakeholders to participate depends heavily on whether the proposed collaborative process addresses the concerns that were raised during the interviews, i.e., lack of trust, process and meeting fatigue, the need for expeditious decision making, and skepticism about the commitment of the sponsoring agencies to collaboration. After the stakeholders have had an opportunity to review this report and consider the process design alternatives, there will be a further opportunity, through the facilitated consultation process envisioned by the assessment team, for the participants to consider the feasibility of the collaborative multi-stakeholder approach, to help shape the process, refine the elements, and offer practical ideas for improvement. By involving stakeholders in the decision making about collaboration and in the design for such a process, the assessment team believes there would be an enhanced likelihood that the CSOP EIS process will ultimately result in a plan that achieves the sponsoring agencies' shared goals of interagency agreement, broad public support, less litigation, and greater trust.



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# 1. INTRODUCTION

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## BACKGROUND FOR THIS ASSESSMENT

At the beginning of January 2001, the U.S. Army Corps of Engineers (Corps) contacted the U.S. Institute for Environmental Conflict Resolution (Institute) to request neutral assistance in resolving a long-standing interagency conflict over the use and interpretation of hydrologic modeling results related to emergency water management decisions for protecting the endangered Cape Sable seaside sparrow (CSSS). The request from the Corps came at the suggestion of the Council on Environmental Quality (CEQ) in the Executive Office of the President, which is responsible for overseeing federal agencies' implementation of the National Environmental Policy Act (NEPA) and helping to resolve interagency differences that arise during NEPA processes. When the Institute became involved, the Corps had already completed a Draft Environmental Impact Statement (DEIS) for an Interim Operational Plan (IOP) to protect the endangered CSSS until the long-delayed Modified Water Deliveries (MWD) to the Everglades National Park and C-111 Canal (C-111) projects could be completed.

The Institute's assistance was requested due to its unique role, as established by the U.S. Congress in 1998, to assist in the resolution of interagency, intergovernmental, and multi-stakeholder environmental, natural resource, and public lands conflicts. The Institute is part of the Morris K. Udall Foundation, an independent agency of the executive branch overseen by a board of trustees appointed by the President. The Institute serves as an impartial, nonpartisan institution providing professional independent neutral expertise, services, and resources to all parties involved in environmental disputes, regardless of who initiates or pays for the assistance. Additional information on the Institute and the assessment team is provided in Appendix G.

With the concurrence of the Corps and the three other agencies involved — Everglades National Park (ENP), the U.S. Fish and Wildlife Service (USFWS), and the South Florida Water Management District (SFWMD) — the Institute suggested taking a step-wise approach to the conflict resolution effort, beginning with an assessment of the interagency conflict followed by an initial meeting with the leadership of the four agencies. This initial interagency meeting was used to assess the agencies' individual and collective interests in pursuing a collaborative conflict resolution effort and to determine appropriate next steps if there was sufficient mutual commitment to proceed.

One of the initial options proposed to the agencies by the Institute was consideration of a collaborative interagency and multi-stakeholder EIS process for the upcoming development of the Combined Structural and Operational Plan (CSOP) for the MWD and C-111 projects. The agencies' leadership decided, however, that it was premature to consider pursuing a collaborative CSOP process. The immediate priority was to resolve their interagency differences over the IOP. Consideration of a collaborative approach to CSOP would be contingent on successfully negotiating a solution for the IOP. As the four agencies made progress in their efforts to work together on an IOP solution, they indicated a willingness to also collaborate on CSOP. Furthermore, they agreed to consider jointly sponsoring a multi-stakeholder CSOP EIS process and to seek the active involvement of other state, local, and tribal governmental entities, as well as concerned stakeholders and nongovernmental organizations. However, before embarking on this new approach, the four agencies wanted to find out how stakeholders would react to an invitation to collaborate with them on CSOP. The agencies were especially eager to identify those entities that would be both interested and able to work with them in a partnering role during the CSOP EIS process.

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Once again, the Corps, ENP, SFWMD, and USFWS asked the Institute to provide independent neutral assistance by assessing the interest of other entities in participating in CSOP and to help guide the design of an appropriate multi-stakeholder EIS process.

The assessment process began with the four agencies providing the Institute with the names of people associated with different governmental and nongovernmental stakeholder agencies, organizations, and interests who would be able to provide important individual perspectives on the issues relevant to a multi-stakeholder CSOP EIS process.

The Institute's project team for this assessment consisted of Senior Program Manager Michael Eng and subcontracted third-party neutrals, Analee Mayes, President of Consensus Builders, Inc. of Tampa, and Carlos Alvarez of Tallahassee. Ms. Mayes and Mr. Alvarez conducted the interviews, either in person or by telephone, with 48 individuals from state and local government, tribes, agencies, and environmental, recreational, and agricultural interest groups. In addition to the individuals identified by the Sponsoring Agencies, the Institute also interviewed others during the assessment, whose support and leadership, it was determined, would be critical for a successful multi-stakeholder CSOP EIS process.

To help organize the structure of the interviews and ensure consistency in the information gathering process, the Institute's assessment team developed a set of questions that were provided in a letter of introduction to those contacted for interviews (see Appendix A). People interviewed (see Appendix B) were provided assurances about honoring their requests for confidentiality regarding any particularly sensitive information they wished to share with the assessment team. They were advised, however, that the intent was to incorporate their comments and perspectives into a report, but without any direct attributions of specific statements.

Because of the Institute's role as a third-party neutral, the confidentiality of all notes from the interviews is explicitly protected by the Alternative Dispute Resolution Act of 1996 (ADRA). Furthermore, communications with the Institute that are confidential under ADRA are not subject to disclosure under the Freedom of Information Act (FOIA). Further information about the Institute and the confidentiality provisions under which it operates can be found at its Web site, [www.ecr.gov](http://www.ecr.gov).

The scope of this assessment has been limited to identifying key issues and concerns, as well as opportunities for multi-stakeholder participation in the CSOP EIS process. It was not conducted with the intent of evaluating substantive issues and concerns related to other Everglades projects or more broadly to the Comprehensive Everglades Restoration Plan (CERP).

The objective of the report is to offer a set of process design options for consideration by the sponsoring agencies and interested stakeholders in crafting a CSOP EIS process that will be broadly supported as legitimate and appropriate for developing a shared solution to CSOP.

An initial draft of this report was provided to the sponsoring agencies for factual corrections and comments. Agency feedback has been incorporated at the discretion of the assessment team. This final report is the independent work product of the assessment team and has not been formally reviewed and/or approved by the sponsoring agencies. This report is being simultaneously released to the sponsoring agencies and to the individuals who were interviewed. The report will also be made publicly available through the U.S. Institute's web site at: [www.ecr.gov/s\\_publications.htm](http://www.ecr.gov/s_publications.htm).

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## ORGANIZATION OF THIS REPORT

This report is composed of five sections. The first section of the report is this “Introduction,” which provides the reasons for and procedures used for developing this assessment report and a brief background of the Institute.

“CSOP History and Overview” is the second section of the report, and it discusses the history of prior governmental initiatives affecting CSOP.

The third section of the report, “Findings and Analysis,” presents the substantive and procedural issues that concerned those persons who were interviewed. The purpose of this Findings and Analysis section is to help support an improved understanding and appreciation of how other governmental and nongovernmental stakeholders are experiencing the current situation and to increase the sponsoring agencies’ awareness of how the prospects for multi-stakeholder collaboration on CSOP are perceived by others.

The fourth section, “Goals, Obstacles, and Feasibility for Successful Collaboration on CSOP,” describes the sponsoring agencies’ shared goals for a multi-stakeholder CSOP EIS process. The assessment team then identifies potentially significant obstacles to successful collaboration. The section concludes by considering the feasibility of achieving the sponsoring agencies’ goals using a collaborative multi-stakeholder approach.

The fifth and final section, “Multi-Stakeholder CSOP Process Design Options,” suggests potential directions for pursuing collaborative solutions to CSOP.

This report includes Appendices A, B, C, D, E, F, G and H. Appendix A includes the letter of introduction to those who were interviewed. Appendix B is the list of individuals interviewed for this assessment and their organizational affiliations. Appendix C is the recently established Memorandum of Understanding among the four sponsoring agencies describing their agreement to collaborate on CSOP and to jointly convene and sponsor a multi-stakeholder EIS process. Appendix D is a table of substantive CSOP issues of concern to stakeholders. Appendix E is a compilation of stakeholder comments regarding CSOP collaborative process design concerns and issues. Appendix F contains a table listing the key steps in the EIS along with options and opportunities they provide for enhanced stakeholder participation and collaboration with the sponsoring agencies. Appendix G contains a table listing advantages and disadvantages of various design options for a multi-stakeholder CSOP EIS process. Appendix H provides background information on the Institute and the assessment team members.



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## 2. CSOP HISTORY AND OVERVIEW

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### BACKGROUND OF CSOP AND RELATED PROJECTS

The Combined Structural and Operational Plan (CSOP) is an integrated structural and operational plan for two projects of the Central & Southern Florida Project (C&SF Project) — the Modified Water Deliveries (MWD) Project and the C-111 Canal (C-111) Project. The intent of CSOP is to be consistent with the purposes of the MWD and C-111 projects as defined by the authorizing legislation and further refined by subsequent general design memoranda, general reevaluation reports, and supplements to these documents. CSOP must also be viewed in the context of the other operating plans that have preceded the ultimate implementation of CSOP. The following is a brief history of the MWD and C-111 projects and other related projects. The intent of this section is to provide the reader with an understanding of the present setting for the CSOP collaborative process.

### THE MWD PROJECT

Due to concerns about adverse impacts to the Everglades National Park (ENP) ecosystem and other related issues, the U.S. Congress passed the Everglades Expansion and Protection Act (EEPA) in 1989. The EEPA added 107,600 acres to ENP and called for improved water deliveries into the Park and, to the extent practicable, restoration of the natural hydrologic conditions in the Park.

As part of the plan to increase water deliveries to the ENP, the EEPA authorized the MWD Project. Pursuant to this congressional authorization, the 1992 Corps' General Design Memorandum and Environmental Impact Statement on the MWD Project (1992 MWD Project GDM/EIS) addressed structural modifications, additions, and operational changes to the existing C&SF Project necessary to enable water deliveries for the restoration of more natural hydrologic conditions in ENP. These structural improvements include a number of new spillways, culverts, and pump stations to allow the transfer of water to the Park from the water conservation areas (WCAs) north of the Park. The MWD Project also includes the construction of a bridge on Tamiami Trail (U.S. 41) to enhance water transfer capabilities, as well as degrading the L-67 extension levee that functions as a hydrologic barrier.



Because the redistribution of water pursuant to the MWD has the potential to adversely impact existing development, several mitigation features were included as part of the MWD Project in addition to the improvements previously noted. These consist of initiatives to alleviate impacts to Miccosukee tribal lands and developed areas on the western edge of Miami-Dade County, including the 8.5 Square Mile Area (8.5 SMA), located adjacent to the eastern boundary of ENP, that has been partially developed and is subject to recurrent flooding.

The 1992 MWD Project GDM/EIS also presented a preliminary operational plan for water management that, at the time, was recognized as being subject to modifications as a result of new data on changing ecological conditions during the post-1992 MWD Project GDM/EIS design and construction period.



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## THE C-111 PROJECT

The C-111 canal is a part of the South Miami-Dade portion of the C&SF Project. It was originally authorized in 1962 to provide flood control to agricultural lands in South Dade County and to discharge floodwaters to Taylor Slough in ENP. In 1968, modifications were authorized to provide water supply to ENP and South Miami-Dade County. However, environmental concerns caused construction to be discontinued before all the authorized project features were completed.

In 1994, the Corps completed the C-111 General Reevaluation Report with an integrated Environmental Impact Statement (1994 C-111 GRR/EIS). The 1994 C -111 GRR/EIS recommended project modifications to the C&SF Project designed to maintain existing flood protection and other C&SF Project purposes in the developed areas east of the C-111 canal while restoring natural hydrologic conditions in the Taylor Slough and eastern panhandle areas of ENP. These improvements and their ultimate operational plans are generally referred to as the C-111 Project. Development of an operational plan for the authorized structures and features addressed in the 1994 C-111 GRR/EIS was deferred until a later date and has not yet been developed.



## EXPERIMENTAL WATER DELIVERIES TO ENP

In 1969, Congress authorized a minimum schedule of water deliveries from the C&SF Project to the ENP. In 1983, Congress authorized the Corps to deviate from the minimum delivery schedule for two years in order to conduct an Experimental Program of Water Deliveries (“Experimental Program”) to improve hydrologic conditions within the ENP. Congress subsequently authorized the continuation of the Experimental Program until the MWD Project was completed and implemented.

A program for water deliveries to the ENP, commonly referred to as Test 7 of the Experimental Program of modified water deliveries, was initiated in October 1995. In February 1999, the USFWS issued a Biological Opinion under the Endangered Species Act (ESA) for the Modified Water Deliveries and C-111 Projects and the Experimental Program. The biological opinion concluded that the provisions of Test 7, Phase 1, were jeopardizing the continued existence of the Cape Sable seaside sparrow (CSSS).

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## **CSSS BIOLOGICAL OPINION AND INTERIM STRUCTURAL AND OPERATIONAL PLANS**

The USFWS' biological opinion also concluded that ultimate protection for the sparrow would be achieved by implementing the MWD Project as quickly as possible. In its biological opinion, USFWS presented a Reasonable and Prudent Alternative (RPA) to Test 7, Phase 1, of the Experimental Program that the USFWS believed would avoid jeopardizing the sparrow in the interim period until the MWD Project was completed. The RPA recommended certain hydrologic conditions be maintained in the sparrow's breeding habitat and that a vegetation management program be implemented.

In January 2000, the Experimental Program was terminated, and in March 2000, Test 7, Phase 1, was replaced with the Interim Structural and Operational Plan (ISOP). The ISOP was designed to meet the conditions of the RPA until implementation of the Interim Operational Plan (IOP). The Corps was authorized by CEQ to conduct emergency operations under ISOP for the 2001 sparrow-nesting season.



Photo courtesy of Dan Nehler, USFWS

### **PRESENT STATUS OF THE MWD AND C-111 PROJECTS**

At the present time, some but not all of the improvements envisioned for the MWD and C-111 projects have been constructed. In addition, given the historic and proposed changes to them, the MWD and C-111 projects have become hydrologically connected through the water management system of South Florida. Moreover, as of today, no final operational plan has been developed for the combined MWD and C-111 projects. Consequently, because of added features, additional ecological data, and the lack of a final operational plan for the MWD and C-111 projects, a new analysis is required for the integration of the facilities and operations of the two projects.

CSOP is intended to be the integrated structural and operating plan based on that analysis. The intent of CSOP is to be consistent with the purposes of the MWD and C-111 projects as defined by the authorizing legislation and further refined by subsequent general design memoranda, general reevaluation reports, and supplements to these documents.

### **INTERIM OPERATIONAL PLAN (IOP) FOR MWD AND C-111 PROJECTS**

Due to the additional time required to analyze the changes to the structural and operational features of CSOP through an EIS process and to construct the decided-upon facilities, the Corps, ENP, the District, and USFWS, with neutral facilitation assistance from the Institute, have worked together collaboratively to develop a mutually acceptable IOP until the CSOP EIS process can be completed. IOP was developed through a facilitated conflict resolution process among these four agencies that began in January 2001. Their interagency discussions resulted in an agreement on a new preferred alternative that was included in a Supplemental Draft Environmental Impact Statement issued in December 2001. In response to additional concerns raised during the public comment period, a revised preferred alternative was then negotiated and included in the Final Environmental Impact Statement issued in May 2002. A Record of Decision (ROD) for IOP was signed in July 2002. The

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ROD incorporated an adaptive management approach that provides for operational flexibility contingent on monitoring results of real-time conditions.

## CSOP EIS PROCESS

CSOP will involve balancing environmental restoration, flood control, recreation, water supply, and other C&SF Project purposes while also meeting applicable water quality standards. Both projects have the potential to impact the South Florida ecosystem, agricultural interests, developed areas, and tribal, state, regional, and local governments' resources, and recreational fishing interests. These potential impacts introduce significant issues that must be addressed in an EIS.

The Corps, ENP, USFWS, and the District have agreed to jointly sponsor a multi-stakeholder CSOP EIS process. The Corps is the lead agency, and ENP, USFWS, and the District are to be designated as cooperating agencies in the CSOP EIS process.

## CONTROVERSIES SURROUNDING CSOP

Given the long history of the MWD and C-111 projects and the potential adverse impacts to ENP, Miccosukee tribal lands, recreational fishing, and to agricultural, residential, and other developed areas adjacent to ENP, as well as to the greater Everglades ecosystem, there has been during the last decade and continuing today, considerable public controversy regarding these two projects. The cause or causes for the long delays in implementing the MWD and C-111 projects are difficult to conclusively determine and are subject to dispute among the various stakeholders. The controversy has been heightened by continuing ecological stresses to the Everglades ecosystem, such as impacts to CSSS habitat and recent flood events in the area, including Hurricane Irene in 1999 and the "No-Name Storm" in 2000. These storms resulted in considerable flood damage to agricultural and residential areas.

A number of affected interests are very displeased with the present situation. For example, some agricultural and urban stakeholders have expressed dismay that they are still not benefiting from improved flood protection features they feel were a part of the long-delayed MWD and C-111 projects. Rather, some say they have been subjected to decreased flood protection due to the maintaining of higher water levels in the canals as a result of the Experimental Water Deliveries Program created to field-test various water management options. On the other hand, some environmental interests say that unrealistic and erroneous expectations have been created about the level of flood protection authorized by Congress. They maintain that the water flow benefits to ENP, considered central to the authorized purposes of the MWD and C-111 projects, have not been realized because of the concerns of urban and agricultural interests regarding flooding.

Not surprisingly, the controversy involving the overall Everglades restoration and the MWD and C-111 projects has also resulted in litigation that directly or indirectly has affected the two projects. Litigation between the federal government and Florida state agencies dealing with water quality issues has imposed, through settlement agreements, criteria for total phosphorous input into the Shark River Slough, Taylor Slough, and coastal basin areas of ENP. Other litigation brought by environmental groups, the Miccosukee Tribe, and other affected parties has challenged aspects of the MWD and C-111 projects, such as the plan to protect the CSSS, the IOP, and the authorization

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to purchase private property in the 8.5 SMA. Some of this litigation is ongoing. Recently, a federal magistrate issued a ruling that concluded that the MWD Project did not provide authorization for the federal purchase of private lands in the 8.5 SMA without state participation. This has been a key element of the overall MWD Project, and if this decision stands, it may have significant ramifications for the implementation of CSOP.

In addition, pressure to complete the MWD project has come from congressional action requiring that this project be completed before a myriad of other Everglades restoration projects can be implemented under the authority of the Comprehensive Everglades Restoration Plan (CERP).



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### 3. FINDINGS AND ANALYSIS

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Through interviews with stakeholders, the Institute assessed the significant substantive and procedural issues related to CSOP and the potential opportunities for a successful multi-stakeholder CSOP EIS process.



#### SIGNIFICANT SUBSTANTIVE ISSUES

Stakeholders interviewed were asked to identify the issues related to CSOP about which they were most concerned. The specific substantive issues of significant concern that were identified have to do with flooding east of L-31N and C-111, hydrologic conditions in natural areas, water supply, pre-storm drawdown, access for recreational fishing, and comprehensive Everglades restoration.

A synopsis of the substantive issues is presented below. The various perspectives on these substantive issues are more extensively presented in Appendix D according to different categories of primary interest that emerged during the interviews. These categories of interest were: local community interests, agricultural interests, environmental interests, recreational fishing interests, tribal interests, and state agency interests. The analyses should not be viewed as characterizations by the assessment team of agencies' or nongovernmental organizations' official positions on these issues. Also, individuals or entities within a particular category may not share or emphasize all of the same issues presented under the categories. Rather, this synopsis and Appendix D reveal the range of different interests on key substantive issues of significant concern that will need to be addressed and satisfactorily reconciled to garner broad support for a CSOP solution.

#### SYNOPSIS OF SUBSTANTIVE ISSUES

Generally, urban interests and agricultural interests have serious concerns about flooding east of the L-31N and C-111 canals. Urban interests in areas such as Sweetwater and Homestead are upset about recent flooding in developed areas they say is largely a result of higher operational canal levels to keep more water in ENP. Similarly, agricultural interests are disturbed about the flooding of crops, especially root zone flooding, that the agricultural interests attribute to higher canal levels. Two major storm events, Hurricane Irene in 1999 and the "No-Name" Storm in 2000, resulted in major flooding in urban and agricultural areas that some interviewed stakeholders say could have been avoided or significantly reduced with lower canal levels.

Urban and agricultural interests want a balanced approach to restoring the hydrologic conditions to natural areas. They feel that flooding impacts to urban and agricultural lands must be taken into consideration and that significant flooding impacts should be avoided. Both interests speak forcefully against what they perceive to be a single species management approach to Everglades restoration that they say has occurred because of the CSSS biological opinion. Also, these interests say the C&SF Project must be managed to address the region's water supply needs.

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In contrast, environmental interests generally say that a significant amount of the area's recent flooding was due to an increase in impervious surfaces and inadequate stormwater facilities in urban areas. In addition, environmental interests insist that urban and agricultural interests have come to expect higher levels of flood protection than were ever intended or authorized by Congress for the C&SF Project.

Environmental interests want ENP restoration to be the main focus of CSOP. While flooding, recreation and water supply are to be considered, they believe the overriding goal of CSOP should be to provide significant and lasting hydrological improvements to ENP.

Tribal interests want CSOP to be implemented and provide necessary hydrological improvements to tribal lands. For example, CSOP should rectify the loss of tree islands in Water Conservation Areas 3A and 3B, loss of snail kite habitat, wood stork habitat, and American crocodile habitat. Important concerns about water quality must also be addressed by CSOP.

Overall, tribal interests feel a more balanced approach to Everglades restoration must be taken. ENP is an important segment, they say, but is only a part of the greater Everglades ecosystem. Solutions for improving hydrological flows to the ENP must be considered in light of impacts elsewhere in the Everglades ecosystem and in nearby agricultural and urban areas. Similarly to agricultural and urban interests, tribal interests object to what they perceive as a single species management approach to the Everglades, as some argue has occurred with regard to the CSSS.

State agencies have a variety of interests in CSOP, which is not surprising given the broad range of agencies' missions involved. Overall, state agencies emphasized the need for a balanced approach to ENP restoration that takes into consideration the region's flood control, water supply and recreational needs. Like the tribes, several state agencies noted that the CSSS biological opinion resulted in an unbalanced Everglades restoration program that focused too much on one species to the detriment of other needs.

Recreational interests' main concern is retaining the recreational benefits present in the C&SF Project. In particular, they object to the filling of canals, such as the L-67C canal, that provide a recreational fishing resource and economic benefits for the region, and they emphasize the need to avoid the flooding of tree islands that provide deer habitat. They also stress the need for a balanced approach to Everglades restoration and their dislike for the single species management approach that they perceive to be the result of the CSSS biological opinion.

## **SIGNIFICANT PROCESS ISSUES**

This section summarizes process issues related to CSOP that particularly concerned those who were interviewed. These concerns have been organized according to four major themes that emerged – lack of trust, the need to implement the projects quickly, skepticism about the agencies' commitment to collaboration, and process/meeting fatigue. These concerns have a direct bearing on the prospects for successful multi-stakeholder involvement in CSOP. They need to be carefully considered in developing appropriate expectations for and the design of a multi-stakeholder CSOP EIS process. Appendix E contains specific illustrative comments related to the topics and scenarios detailed below.

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## Mistrust

A topic that surfaced in virtually every interview with stakeholders was mistrust among the persons and entities that are affected by the CSOP EIS process. Almost every one of the stakeholders interviewed mentioned some kind of mistrust of one or more government agencies, private entities, or individuals within those institutions. Generally, but not always, the mistrust was directed at an entity or individual that appeared not to share the individual's or group's primary goals. Some specific reasons for the mistrust were disclosed, but at times, the mistrust arose out of a general perception of the agency, group, or individual.

Generally, five scenarios describe the contexts through which mistrust developed among stakeholders.

1. The perception that an agency has gone back on a commitment or a promise made in the past.
2. The perception that persons or agencies were working behind the scenes contrary to public pronouncements.
3. The perception that agency action was not driven by legal requirements and technical data but rather that persons within the agencies manipulated legal requirements and technical data to advance a preferred outcome.
4. The perception that certain agencies or groups never consider their concerns or act against the interests of the stakeholder.
5. Perceptions about the delays, disputes among agencies, or errors that have occurred during the planning and implementation of the MWD and C-111 projects. Consequently, there is an assumption that the responsible agencies — ENP, the District, the Corps, and USFWS – cannot be trusted to competently complete these projects.

Although mistrust was a consistent theme heard from the interviews, some of the stakeholders acknowledged the difficult task the agencies have had in implementing these projects because of competing interests. Some stakeholders had positive comments regarding actions by particular agencies.

## Need to Implement Projects Quickly

A number of the individuals interviewed expressed concern about how long it has taken for implementation of the MWD and C-111 projects. They anticipate benefits for both the environment and flood protection, and would like the expected benefits to be realized as soon as possible. Some perceived little or no controversy over the projects and did not understand why implementation is taking so long. Some individuals were not aware that an EIS was required for CSOP and were surprised to hear that it could take two years or more to complete the EIS process before there is an approved operating plan. Other individuals expressed concern that the collaborative process might reopen issues that were previously resolved and perhaps cause project implementation to be further delayed for that reason.



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In addition to the delay in implementation of the MWD and C-111 projects, delay of restoration projects in general was perceived to erode public support for restoration, so much so that some warned that without a show of progress by the agencies, overall support for continued Everglades restoration funding might be jeopardized.

### Skepticism about Agencies' Commitment to Collaboration

Many of the individuals interviewed expressed skepticism about the agencies' commitment to collaboration. Some individuals believe the Park and the USFWS are unwilling to consider urban and agricultural interests at all. The agencies are perceived as being single-mission agencies, not concerned with or required to find a solution that balances the needs of all the interests.

The USFWS was perceived by many as too focused on "single species management," i.e., focused on improvement of conditions for the CSSS to the detriment of other species' habitat values as well as urban and agricultural interests. Some perceived the Corps as similarly too narrowly focused on the CSSS because of concerns about potential enforcement action being brought against individual Corps employees for violation of the Endangered Species Act (ESA).

Some perceived the Park as having a history of not being engaged in the early stages of negotiations, and then being critical or unwilling to agree, or pulling out of an agreement toward the end of the decision-making process.

Others did not perceive the Corps as having a good track record for collaboration in previous NEPA processes. Some individuals indicated they saw a pattern of the Corps initiating consultation and then closing off communication, emerging with alternatives or a draft NEPA document, offering the opportunity for comment, and then closing off communication again, back and forth, until a decision was made. As the Corps released a document or proposed an alternative, the other agencies and nongovernmental organizations were not able to determine what caused the Corps to make the choices it made. They would prefer a more continuously open and transparent process that would allow them more of a role in making key decisions and provide the opportunity to better understand the Corps' reasoning, as the lead agency, for taking one course of action over another.

Many individuals reported being angry and upset about being excluded from recent interagency negotiations on IOP. They felt their interests were not being adequately considered by the agencies' decisions, and that their views were not represented.

Some individuals were suspicious of the role of the Institute's facilitation team, expressing concern that it was being used by the agencies to "manage" the stakeholders rather than to facilitate their involvement in the CSOP EIS process. Some were also skeptical of the facilitation team's ability to be impartial with a broader group of agencies and nongovernmental organizations, because the Institute itself is a federal agency, and because the facilitators had already been facilitating an interagency group composed of representatives of the three federal agencies and the District and had therefore probably developed a close working relationship with them.

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## Process/Meeting Fatigue

Many of the stakeholders said that their personal energy and organization's resources have been stretched beyond reason in trying to deal with the various aspects of Everglades restoration. This seems to be a great concern to both the private and public sectors. Almost invariably the same people that are likely to be involved with the CSOP EIS process are also involved in some other aspect of Everglades restoration, such as CERP projects, the South Florida Ecosystem Restoration Task Force and the Working Group, the District's Water Resource Advisory Commission, the many committees and subgroups involved in those efforts, and litigation. All of these activities result in many meetings to coordinate and attend outside their offices, correspondence to handle, issues to consider and resolve, and, of course, deadlines to be met. Many of these activities are long-term in nature. Generally these activities are not coordinated with other activities dealing with the Everglades or a particular agency's activities such as the District's Governing Board meetings.

In addition, for many governmental agency personnel, this comes at a time of budget cuts and added responsibilities, which limit the amount of time they can devote to particular issues. Also, many of these individuals and entities have been involved with Everglades restoration issues for over a decade or more and feel a sense of futility in seemingly having to deal with the same issues repeatedly.

## STAKEHOLDERS' SUGGESTIONS FOR EFFECTIVE COLLABORATION ON CSOP

Many of those interviewed made suggestions to help ensure that a collaborative CSOP EIS process would be more user-friendly and efficient so as to help alleviate Everglades restoration process fatigue. They also emphasized the need for transparency of the decision-making process. Some even offered assistance for a multi-stakeholder process by providing facilities for meetings and their own expertise in conducting public involvement processes. Specific suggestions included:

- Publishing meeting calendars sufficiently ahead to help minimize conflicts.
- Coordinating CSOP meetings with other scheduled Everglades restoration meetings.
- Having longer, but fewer meetings.
- Rotating meeting locations throughout the South Florida area.
- Publishing project schedule milestones and weekly or biweekly project updates.
- Publishing summaries or other documentation of decisions.
- Sponsoring working groups or workshops with open membership.
- Making CSOP meetings open to the public.
- Communicating periodically using regular mail and e-mail lists.
- Setting up informal comment opportunities on the Web with provision for agency responses.
- Publishing a set of "Frequently Asked Questions."
- Making source documents available in hard copy at a federal depository in Miami and Homestead as well as downloadable from the Web.
- Presenting the schedule and overall process up front, showing direct connections between collaborative process elements and the EIS decision points.

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## 4. GOALS, OBSTACLES, AND FEASIBILITY FOR SUCCESSFUL MULTI-STAKEHOLDER COLLABORATION ON CSOP

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### SPONSORING AGENCIES' GOALS FOR PURSUING A COLLABORATIVE MULTI-STAKEHOLDER APPROACH

The CSOP sponsoring agencies have indicated their belief that a collaborative approach can help them achieve better outcomes while ensuring that each agency's mandates and legal requirements are adequately met. The nature of CSOP, which involves efforts to restore the natural hydrological conditions in the Everglades while maintaining flood protection within the C-111 project area and at the same time meeting all of the other C&SF Project purposes, virtually eliminates the feasibility of unilateral actions by any one agency. For example, the Corps must work closely with other agencies and stakeholders if they are to develop a viable and acceptable CSOP solution that can be implemented successfully. The CSOP sponsoring agencies have a number of specific common goals they hope to achieve through a collaborative multi-stakeholder process.

#### Interagency Agreement on CSOP

The Corps, the District, the Park and the USFWS share a common goal of reaching agreement on a preferred alternative for CSOP. Although there are clearly concerns about whether this is possible, the agencies acknowledge that successful implementation of a viable solution to CSOP is likely dependent on their mutual concurrence.

#### Broad Consensus for CSOP Solution

Another goal of the sponsoring agencies for using a collaborative multi-stakeholder approach to the CSOP EIS process is to gain the consent and support of other key governmental and nongovernmental entities for the eventual decision that is reached. Collectively, these entities represent the wide range of interests and communities potentially affected by the CSOP decision. Their active participation in a collaborative process would help ensure that important concerns are identified early on so they can be addressed when crafting possible alternatives or mitigation measures. By satisfactorily addressing the important concerns of other entities in crafting a final solution, the sponsoring agencies believe an effective multi-stakeholder collaborative process would increase the likelihood of garnering the broad public and political support needed for successful and timely implementation of CSOP. Furthermore, the active participation of other entities would confer added legitimacy and credibility to the CSOP EIS process because of their collective accountability to their constituencies and to the larger public citizenry.

#### Avoidance of Litigation

Another shared goal of the sponsoring agencies for pursuing a collaborative multi-stakeholder CSOP EIS process is to avoid future lawsuits brought by stakeholders and other interested parties that will further delay or jeopardize implementation of the MWD and C-111 projects. All parties involved appear to acknowledge the need for and potential benefits of implementing these projects. However, there is still considerable debate about what should be the relative balance between Everglades restoration and the maintenance of flood protection, as well as how to address concerns related to environmental justice, threatened and endangered species, impacts to tribal and state lands, water quality, water supply, recreation, and adverse socioeconomic impacts associated with alternative courses of action on CSOP. Enhanced stakeholder involvement in the CSOP EIS process can help establish realistic expectations regarding what may be possible to achieve within the parameters of

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the authorized purposes and constraints of the projects. If key stakeholders can be productively engaged in identifying important concerns that need to be addressed during CSOP and in providing specific feedback at key steps in the EIS process, the sponsoring agencies will have additional information to progressively improve and refine their initial set of alternatives. If the sponsoring agencies are able to collaboratively craft a preferred alternative that can be expected to achieve the authorized project purposes and objectives, while also addressing key stakeholder concerns either through project modifications or additional mitigation measures, the potential for future litigation that would likely delay or prevent implementation can be minimized.

### Building Trust Among Stakeholders

Another goal of pursuing a multi-stakeholder collaborative CSOP EIS process is to provide opportunities for trust building among parties that have been highly polarized and suspicious of each other's motives. In such situations, trust can only develop gradually – one step at a time. Collaborative processes allow stakeholders to be fully informed of other stakeholders' interests and rationale for their positions, while also serving to diminish rumors and attribution of inaccurate motives. Such a process encourages stakeholders to collaborate to meet the needs and interests of each other. Each time a mutual commitment is made and kept, an opportunity is created to incrementally build trust and improve relations. Each time a commitment is broken, trust diminishes and relations deteriorate further. Successful future implementation of CERP will require effective working relationships and ongoing collaboration for many years to come. Many of those interviewed mentioned the crucial importance of CSOP in creating a favorable trajectory for CERP.

The question is whether the incentives for collaboration and the possibility of achieving mutual goals are enough to overcome several decades of adversarial relations among many of the parties involved and instead motivate constructive participation in an effort to create better outcomes than currently exist for all interests.

## THE MEANING OF COLLABORATION AND PRE-CONDITIONS FOR SUCCESS

To collaborate literally means “to work together.” Participants choose to enter into a collaborative relationship to accomplish results they are more likely to achieve by working together than by working alone or in an adversarial relationship. For a collaborative effort to be successful, all the participants must be able to identify some shared objectives they are willing to work together to achieve. In a collaborative process, each participating entity should also be able to pursue its own self-interests as long as they are not incompatible with the shared objectives of the entire collaborating group. Collaboration, then, is the dual pursuit of both self-interests and collective interests, with the ultimate goal of achieving better outcomes than currently exist for all the participants. The challenge of collaboration is to satisfactorily address the important concerns, and reconcile the different needs, of participants in order to formulate a solution that is broadly supported and meets key interests of each entity.

Collaborative processes can be difficult to define and describe precisely, because key principles of collaboration are that processes are tailored to address the specific context of the issues and participants involved, and the participants themselves help design the process to make it appropriate

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for their specific circumstances and set of constraints. Collaborative endeavors are generally successful when all participants make a concerted effort to seek agreement at each important step in the process of formulating a solution. Successful collaboration is built upon a foundation of successive procedural and substantive agreements reached by the participants throughout the decision-making process.

Collaborative processes can be successful if they are instituted under the right circumstances and managed correctly. Collaborative approaches have been used in a variety of complex environmental and land use dispute situations where, like CSOP, the positions of the parties seem unyielding and irreconcilable, and the controversy involves scientifically complex and uncertain issues. Effective collaboration can also provide additional benefits resulting from increased communication, mutual disclosure of relevant information early in the analytical process, sharing of available data and staff expertise, improved coordination, avoidance of duplicated efforts, and proactive resolution of interagency disagreements.

CSOP presents a situation where a number of key pre-conditions have developed that are necessary for successful interagency collaboration. For example, the sponsoring agencies have come to realize that they must satisfactorily accommodate each other's important needs, requirements, and interests, as well as those of other key stakeholders, if they hope to be able to implement a viable CSOP solution. Consequently, significant self-interests overlap with shared common goals. Leaders of the sponsoring agencies have indicated their strong endorsement and commitment to interagency collaboration on CSOP. They have already devoted considerable staff and funding resources to support an interagency CSOP planning team effort and the provision of neutral facilitation assistance. Through their successful efforts on IOP, staff of the sponsoring agencies have been able to enhance their collaboration skills and developed some confidence in their collective ability to work together to constructively address their differences.

Consequently, the prospects for successful collaboration among the sponsoring agencies on CSOP continue to improve as they make progress in clarifying mutual expectations and parameters for the EIS process. However, the likelihood for successful collaboration with other stakeholders is still unclear. Stakeholders' reactions and receptivity to the process design options presented in this report will ultimately determine if and how a multi-stakeholder approach to CSOP should be pursued.

## **OBSTACLES TO SUCCESSFUL MULTI-STAKEHOLDER COLLABORATION ON CSOP**

A number of factors represent significant potential obstacles to successful multi-stakeholder collaboration on CSOP. To be effective, a CSOP process design strategy will need to satisfactorily address or minimize the influence of these factors.

### **History of Polarized Relationships**

A considerable impediment to successful multi-stakeholder collaboration is the long history of polarized adversarial relationships among many of the stakeholders in CSOP. The level of frustration, resentment, mistrust, and in some cases outright hostility, as revealed in the stakeholder interviews, creates a significant challenge for anyone attempting to engage the diverse stakeholder interests to work together constructively.

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## Ongoing Litigation

Ongoing and unresolved litigation involving CSOP-related issues is also a potentially significant obstacle to multi-stakeholder collaboration — certainly for the parties directly involved, but also for other interested stakeholders. Constant litigation creates uncertainties that undermine the interest and commitment required to work together to develop a solution that all interests can support. Furthermore, a highly litigious environment tends to promote adversarial personal relations, formalized and carefully guarded communication, and severely restricted sharing of information. Successful collaboration, on the other hand, requires the development of cooperative relations, open communication, and mutual sharing of relevant information. As long as some stakeholders see their interests being better met through litigation than through collaboration, it may be difficult to engage all stakeholders constructively in a shared effort to seek a viable solution for CSOP.



Of particular concern is current litigation involving the 8.5 SMA. This litigation seeks to undo certain private land acquisitions made by the federal government on the eastern edge of the greater Everglades area. The purchase of these properties is a key component to the present assumptions regarding CSOP. Recently, a federal magistrate held that the land acquisitions by the federal government were improper because they were not authorized by the controlling statutory authority. If the purchase of these properties is prevented, the implementation of CSOP is unlikely under the timetable presently being considered by the sponsoring agencies, and certain substantive assumptions underlying CSOP will have to be revisited.

## Technical Nature of CSOP

The technical aspects of the CSOP EIS decision-making process create hindrances to multi-stakeholder collaboration for many potential participants who do not have access to the technical expertise required to evaluate the results of complex hydrological and ecological modeling. Collaborative efforts require shared access to information and transparent decision-making processes so that all stakeholders understand the rationale for decisions being made and can see the objective basis for decisions. In addition, the various models themselves have acknowledged limitations in predicting actual on-the-ground conditions, especially when applied at different spatial scales than for which they were originally designed.



Nonetheless, prior assessment of the environmental benefits and flooding impacts associated with different alternatives relies to a large extent on the interpretation of modeling results. Differing interpretations of modeling results by adversarial interests have been a frequent source of conflict. Accordingly, the modeling process must be made as transparent and accessible as possible to interested stakeholders, and modeling data and results must be conveyed in a manner that is understandable to as many of the stakeholders as possible.

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## Process Fatigue

The “process fatigue” factor mentioned previously in this report as a theme heard consistently in the interviews also represents a significant obstacle to productive multi-stakeholder collaboration on the CSOP EIS process. Many individuals are participating in numerous Everglades restoration-related activities. Some are already feeling stretched beyond their capacity to stay meaningfully involved in multiple processes. A collaborative multi-stakeholder CSOP EIS process would place additional demands on both public and private sector individuals. Therefore, any collaborative effort must be streamlined and all meetings must be highly productive and worth the participants’ time.

## FACA Requirements

Another constraint affecting the type and degree of multi-stakeholder collaboration possible with the CSOP EIS process is the Federal Advisory Committee Act (FACA). FACA requires that federal agencies follow special procedures to establish advisory groups that provide them with policy advice or recommendations. FACA, however, applies only if the proposed advisory group has nongovernmental entities or individuals as part of its membership. Public consultation processes generally not considered subject to FACA requirements include public meetings, information exchange forums, focus group meetings, and meetings initiated by nongovernmental organizations.

FACA procedures are meant to further the interests of openness, accountability and balance when the federal government seeks formal advice in the formulation of policy decisions. However, establishing a FACA committee can be quite time consuming. FACA advisory committees must be formally established and chartered with the General Services Administration. The length of time required to establish a FACA committee could jeopardize the current timetable for implementing CSOP.

As a result, FACA places constraints on the degree of collaboration that may be possible with nongovernmental stakeholders in developing a solution for CSOP, unless a FACA committee is formally chartered or the CSOP process takes advantage of established exemptions to FACA.

## Authorized Project Purposes for MWD and C-111

The congressionally authorized purposes for the MWD and C-111 projects also constrain efforts to collaborate with stakeholders on the CSOP EIS process. Although subject to conflicting interpretations when attempts are made to define them explicitly, the authorized project purposes establish parameters on the range of acceptable alternative courses of action. Some stakeholders may be unwilling to accept these parameters. Successful multi-stakeholder collaboration on CSOP would require clarification and agreement, or at least consent, regarding the legislative purposes for the projects and acceptance of those constraints when working together in crafting a viable solution.

## Time Factors

Time factors are a challenging obstacle to successful multi-stakeholder collaboration on CSOP. The proposed CSOP schedule is tight for many reasons, including trying to make up for past delays in implementing MDW and C-111 and the length of time that was required to complete IOP. Many of those interviewed emphasized their frustration and impatience with these



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delays. Furthermore, there is also a keen awareness that CSOP needs to be implemented before proceeding with other CERP projects. However, a collaborative multi-stakeholder EIS process can be expected to take more time than a traditional NEPA process. Given the highly technical aspects of CSOP and the current level of distrust among stakeholders, additional time will be required to develop the kind of joint problem-solving attitude that is needed to create a viable solution.

### Uncertainty About Agencies' Commitment to Collaboration

Another possible obstacle to successful multi-stakeholder collaboration could be the failure of the sponsoring agencies to adequately communicate to other stakeholders their shared commitment to working together to reach agreement on a viable solution for CSOP. By their recent establishment of an MOU (see Appendix C), the sponsoring agencies have taken an important step in conveying a clear commitment to interagency collaboration on CSOP as well as to a multi-stakeholder EIS process. This formal agreement needs to be followed up conscientiously by the sponsoring agencies to assure that their actions remain consistent with their commitment to collaboration. Behavior that is incompatible with successful collaboration raises doubt about their commitment, undermining the confidence of staff and promoting the kind of skepticism about agencies' sincerity expressed by stakeholders in many of the interviews. A failure to follow through on stated commitments to collaborate could be expected to have adverse consequences on the successful implementation of CSOP as well as on the future prospects for CERP.

Due to this skepticism of stakeholders, if any of the sponsoring agencies are still reluctant to fully commit to work together to try to reach agreement on a mutually acceptable solution for CSOP and to meaningfully involve other interested governmental entities and nongovernmental stakeholders, they should continue their interagency discussions to resolve any outstanding concerns before moving forward with engaging other participants.

## FEASIBILITY OF SUCCESSFUL MULTI-STAKEHOLDER COLLABORATION ON CSOP

Despite these significant obstacles, the judgment of the assessment team is that a multi-stakeholder approach to the CSOP EIS process is possible. The key factor in arriving at this conclusion is the assessment team's discernment that many of the stakeholders interviewed realize that they cannot unilaterally achieve their own key interests without also adequately addressing the needs and interests of other stakeholders. The implementation of MWD and C-111 projects has been delayed for approximately a decade. The inability to resolve differences and build broad consensus for a viable solution among interested and affected governmental and nongovernmental stakeholders has been a major reason for this delay. Stakeholders have seen repeatedly how failure to adequately accommodate and reconcile each other's interests leads to continued impasse, thereby preventing all groups from benefiting either individually or collectively. Many of those interviewed also conveyed their recognition that the future of CERP relies to a great extent on the successful completion and implementation of CSOP. These kinds of realizations, if broadly shared among the range of stakeholders, create powerful incentives to work together to create shared solutions – but only if there is sufficient confidence and trust in the efficacy and fairness of the decision-making process.

Another key factor enhancing the feasibility of multi-stakeholder involvement is the assessment team's analysis that the sponsoring agencies' shared goals for the CSOP process can likely only be

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achieved through pursuing a multi-stakeholder approach to creating a shared solution to CSOP. The feasibility of achieving each of these shared goals will be addressed in turn.

### Sponsoring Agencies' Agreement on CSOP

Clearly, reaching full agreement among all stakeholders on the best solution for CSOP will be a difficult task and ultimately may not be achievable. However, the assessment team does consider it feasible for the Corps, ENP, SFWMD, and USFWS to reach agreement on a preferred alternative for CSOP. This conclusion is based on the four agencies' demonstrated ability to sufficiently reconcile their differences to reach agreement on IOP, as well as on their progress in working together through preliminary planning issues for CSOP.

### Broad Consensus for CSOP Solution

The conclusion of the assessment team is that it is also feasible to gain the consent and support of other key governmental and nongovernmental entities for a CSOP solution. Almost without exception, individuals interviewed expressed optimism that agreement could be reached and that a collaborative multi-stakeholder approach to CSOP could be successful. However, interviewees also stressed that reaching agreement would not be easy and that some stakeholders would have to be more flexible than they have in the past.

From a process standpoint, a primary requirement will be creating and managing an efficient organizational structure for multi-stakeholder collaboration that provides timely opportunities for key entities to contribute advice directly to the sponsoring agencies at important junctures in the EIS planning process. The sponsoring agencies will need to work together to demonstrate they have incorporated stakeholders' advice and recommendations to the extent possible in developing alternatives and in crafting an initial draft preferred alternative, as well as in refining and improving it before it becomes the final preferred alternative. If the sponsoring agencies do not adopt all the advice and recommendations they receive, the reasons and rationale must be fully and clearly explained to stakeholders. To build broad consensus on a solution for CSOP will necessitate balanced outcomes that satisfactorily address the most important concerns of all constituent groups while also minimizing the extent of negative impacts on any one interest.

### Avoidance of Litigation

Previous Everglades-related litigation has been initiated by tribal and nongovernmental stakeholders regarding both procedural and substantive issues. While there is no way to completely avoid litigation risks, a robust EIS process that provides meaningful opportunities for stakeholder participation is probably the best approach for achieving this objective. Government-to-government consultation with tribes should be given immediate enhanced priority. To minimize the likelihood of future litigation, nongovernmental stakeholders and tribes must be confident that their key concerns are understood and are being carefully considered in drafting proposals. Effective opportunities should be made available for stakeholders to provide specific feedback and recommendations on draft proposals before they are finalized. The sponsoring agencies should also be able to demonstrate to stakeholders how their concerns have been addressed and why their suggestions have or have not been incorporated into revised proposals. The steps in the decision-making process should be transparent, and user-friendly information about the process made readily available.

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## Building Trust Among Stakeholders

The assessment team also considers it possible to use the CSOP EIS process to provide opportunities for trust building among stakeholders who have previously been highly polarized and suspicious of each other's motives. By establishing a range of opportunities for meaningful stakeholder and public participation, by providing easy access to clearly presented information, and by engaging in a transparent decision-making process, the sponsoring agencies can help create a more conducive climate for improving relationships among traditional adversaries. By working together productively to address the concerns of other entities, the sponsoring agencies can use the CSOP EIS process to build the broad political support among stakeholders that will be needed for successful implementation. The creation of trust among CSOP stakeholders will take time, given the history of conflict.

A successful multi-stakeholder process will not be easy, nor will it guarantee a universally accepted final CSOP decision. However, in the judgment of the assessment team, a multi-stakeholder approach provides the best opportunity for successfully implementing CSOP with the fewest additional subsequent delays while also establishing a crucial foundation for approaching the numerous CERP projects that lie ahead.

Ultimately, the reactions of the sponsoring agencies and other interested stakeholders and their receptivity to the process design options presented in this report will determine if and how a multi-stakeholder approach to CSOP should be pursued.



## 5. MULTI-STAKEHOLDER CSOP PROCESS DESIGN OPTIONS

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### NEPA AS THE FRAMEWORK FOR MULTI-STAKEHOLDER PARTICIPATION ON CSOP

As a federal action that will have significant environmental impacts, CSOP must comply with the National Environmental Policy Act (NEPA) and its requirements for completing an environmental impact statement. NEPA is the primary law establishing the nation's fundamental environmental policy, which is based on informed decision-making. NEPA obliges federal agencies to study and take into consideration the environmental impacts of their proposed actions – both positive and negative. NEPA requires that an EIS be prepared if the anticipated impacts could be significant or if there is substantial public interest or controversy regarding the anticipated impacts of a proposed action. Although NEPA requires an assessment of environmental impacts, the law allows federal agencies broad discretion in determining the degree of environmental impact that will be allowed to occur as a result of a proposed action.

Public involvement is a fundamental cornerstone of NEPA. The law requires federal agencies to consider and respond to public concerns raised about a proposed action. Although an EIS process is commonly viewed as a set of required procedural steps that federal agencies must follow in making formal decisions, it can also serve as a framework for interagency collaboration and consensus building with other federal, state, and local agencies and tribal governments, as well as with stakeholders and interested nongovernmental organizations. In order to achieve the goals of the four sponsoring agencies for the CSOP process, the assessment team suggests that the sponsoring agencies take full advantage of the multiple opportunities provided by the NEPA process framework for interagency collaboration and enhanced stakeholder participation at each stage of the EIS process.

### Different Levels of Participation in NEPA Decision Making

NEPA allows for a wide spectrum of different levels of participation with different entities. Participating entities can be most easily categorized as either governmental or nongovernmental, such as listed below.

#### GOVERNMENTAL ENTITIES

- Federal agencies
- Tribal governments and agencies
- State governments and agencies
- Regional governments and agencies
- Local governments and agencies

#### NON-GOVERNMENTAL ENTITIES

- Community groups
- Resource user groups
- Advocacy groups
- Public interest organizations
- General public

Varying levels of participation can be viewed as ranging across a spectrum corresponding to the degree of influence that the lead agency wishes to share with another entity over the decision-making process. At the left end of the participation spectrum, a lead agency would simply provide due notice and inform others about a decision-making process without providing the opportunity to influence the decision. A higher level of participation representing the beginnings of a collaboration effort would occur when a lead agency consults with others and obtains their specific feedback during a decision-making process. The next level of participation along the spectrum would occur when a lead agency involves others directly in the decision-making process to ensure their concerns are understood and addressed. A significant degree of influence is granted when a lead agency agrees to collaborate with others and work together in formulating a solution, while still retaining its ultimate decision-making authority. This Spectrum of Participation in NEPA Decision-Making is depicted in the diagram below:

## SPECTRUM OF PARTICIPATION IN NEPA DECISION-MAKING



INFORM	CONSULT	INVOLVE	COLLABORATE
Lead agency provides others with information to assist them in understanding the problem being addressed, the alternatives considered, and the final decision made.	Lead agency informs others about a decision-making process and also seeks their feedback on analysis, alternatives, and proposed decision.	Lead agency works directly with others to ensure their issues and concerns are understood, considered, and directly reflected in the alternatives developed. Feedback is provided on how their input influenced the final decision.	Lead agency partners with others on each aspect of the decision-making process, including the development of alternatives, analysis of alternatives and the formulation of the preferred alternative, while retaining ultimate authority for the final decision.

A lead agency may choose to grant varying degrees of influence over its decision to different governmental and nongovernmental entities, depending on a number of considerations, which might include:

- What are the legal requirements and constraints for participation by different entities?
- Are other entities interested in and capable of participating effectively in the decision-making process?
- How can other entities contribute to an improved decision-making process? Do they have special expertise, information, or resources to contribute?
- Do the other entities share goals with the lead agency regarding the proposed action, and are they willing to work together in partnership to achieve them?
- Is their expertise or assistance needed to develop an informed decision?
- How affected would the other entities be by the final decision?
- Do the other entities have requirements that must be met if a solution is to be viable?
- Is assistance from other entities needed to implement the decision or monitor its impacts?
- Do other entities have the ability to block a decision if their concerns are not addressed?
- What is the history of the working relationships with the other entities?
- Can the other entities be trusted to keep the commitments they make?

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Although some of these questions were explored during this assessment, the four sponsoring agencies will undoubtedly want to further clarify these issues with interested participants in the CSOP process.

The following section outlines some of the advantages and disadvantages associated with pursuing the different levels of participation in relation to the shared goals of the four sponsoring agencies for a multi-stakeholder CSOP process.



## ADVANTAGES AND DISADVANTAGES OF DIFFERENT LEVELS OF PARTICIPATION IN NEPA DECISION-MAKING

Different levels of participation in NEPA decision-making have certain advantages and disadvantages. These should be considered in the context of the sponsoring agencies' shared goals for conducting a multi-stakeholder CSOP EIS process. Approaches derived from the lower end of the participation spectrum starting with "Consult" are less collaborative in nature. They are also less likely to achieve the sponsoring agencies' goals for a multi-stakeholder CSOP EIS process described earlier in this report. In selecting an optimal approach to utilize, it is necessary for the sponsoring agencies to prioritize their goals and possibly make some trade-offs, especially regarding the time required to complete the EIS process. However, the payoff for investing this kind of time, especially during the initial stages of a collaborative effort can be in gaining broad support for the solution that is eventually developed, as well as smoother and quicker implementation of the Record of Decision.

	INFORM	CONSULT	INVOLVE	COLLABORATE
Advantages:	<ul style="list-style-type: none"> <li>- Clarity and predictability regarding decision-making steps, schedule, and opportunities for people to influence outcome.</li> <li>- May be most efficient in terms of time, staff effort, and agency expense, if actions are non-controversial.</li> </ul>	<ul style="list-style-type: none"> <li>- Clarity and predictability regarding decision-making steps, schedule.</li> <li>- Provides opportunities for stakeholder participation and some influence over the outcome.</li> <li>- Meets minimum NEPA requirements for public participation.</li> </ul>	<ul style="list-style-type: none"> <li>- Enhanced opportunities for stakeholder participation and influence over the outcome.</li> <li>- Potential to strengthen working relationships with stakeholders for future collaboration.</li> <li>- May help reduce likelihood of legal challenges.</li> </ul>	<ul style="list-style-type: none"> <li>- Opportunities for joint fact-finding, joint development of alternatives, and crafting options that meet important interests of stakeholders.</li> <li>- Outcomes tend to be more durable if jointly inventive and negotiated.</li> <li>- Reduced likelihood of legal challenges.</li> <li>- Provides greatest likelihood for achieving interagency agreement on preferred alternative, broad support for CSOP solution, avoiding future litigation, and building trust among parties.</li> </ul>
Disadvantages:	<ul style="list-style-type: none"> <li>- Because information flows in one-way direction, there are limited opportunities for dialogue and mutual learning.</li> <li>- Will not achieve the sponsoring agencies' goals for collaborative CSOP EIS process.</li> </ul>	<ul style="list-style-type: none"> <li>- Stakeholders are likely to challenge the process and/or the decision if they don't see evidence their comments were addressed.</li> <li>- Unlikely to achieve the sponsoring agencies' goals for collaborative CSOP EIS process.</li> </ul>	<ul style="list-style-type: none"> <li>- Stakeholders may challenge the process and/or the decision if they don't see evidence their concerns were addressed.</li> <li>- Unlikely to achieve all the sponsoring agencies' goals for collaborative process.</li> <li>- Likely to add additional time and expense to EIS process.</li> </ul>	<ul style="list-style-type: none"> <li>- Requires substantial time and commitment to structure and facilitate effectively.</li> <li>- Without establishing productive working relations with each entity, some parties may not participate in good faith and could work to undermine the process.</li> <li>- Likely to add time and expense to EIS process.</li> </ul>

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## NEPA STEPS AND OPPORTUNITIES FOR ENHANCED PARTICIPATION AND COLLABORATION

NEPA provides a lead agency with a range of opportunities for interagency collaboration and enhanced multi-stakeholder participation at each key step in the EIS process. These key steps include:

- ✓ Propose an action
- ✓ Designate cooperating agencies
- ✓ Notice of Intent
- ✓ Scoping
- ✓ Develop alternatives
- ✓ Analyze alternatives
- ✓ Draft EIS
- ✓ Supplemental EIS (as needed)
- ✓ Final EIS
- ✓ Record of Decision
- ✓ Implement and monitor decision

The Corps, as the lead agency for CSOP, is primarily responsible and officially accountable for conducting the EIS process. However, the Corps has reached agreement with ENP, USFWS, and the SFWMD to jointly sponsor the CSOP EIS process. As outlined in their Memorandum of Understanding (see Appendix C), they will be making decisions together at the various steps in the EIS process. Exactly which opportunities are pursued for enhancing participation and collaboration with other governmental and nongovernmental stakeholders will be determined in part by reactions to this report and continuing indications of interest to participate in the CSOP EIS process.

A table listing each of the key steps in an EIS process and highlighting some of the options and opportunities that could be considered by the Corps for enhancing collaboration with the other sponsoring agencies and multi-stakeholder participation in the CSOP EIS process is included in Appendix F.



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## KEY CONSIDERATIONS FOR A MULTI-STAKEHOLDER CSOP PROCESS DESIGN

The assessment team focused on several key considerations and constraints that have significantly influenced its crafting of proposed process design options for a multi-stakeholder CSOP EIS for consideration by the sponsoring agencies and other interested stakeholders.

### Polarized Relationships, Skepticism, and Mistrust Among Stakeholders

The history of polarized relationships, skepticism, and mistrust among CSOP stakeholders and the four sponsoring agencies, as revealed in the interviews, necessitate an appropriate process design that is perceived as legitimate and that establishes confidence and trust in the efficacy, fairness, and transparency of the decision-making process. Consequently, the assessment team considers it virtually essential that the sponsoring agencies utilize the services of expert, credible, independent, and impartial neutrals to help guide the design and facilitation of the CSOP multi-stakeholder process. Furthermore, the Corps and the other sponsoring agencies must be willing to work towards making their decision making process as transparent as possible.

### FACA Considerations

Establishing a FACA advisory body is likely to add significant additional time requirements to an already tight CSOP time schedule. The South Florida Ecosystem Restoration Task Force, however, was provided a legislative exemption from FACA for establishing multi-stakeholder advisory committees to address Everglades restoration issues. The assessment team has had exploratory discussions with Task Force officials who indicated that a FACA-exempt CSOP multi-stakeholder advisory body composed of both governmental and nongovernmental participants could be legally established under the auspices of the Task Force. Creating a multi-stakeholder advisory body under the auspices of the Task Force could provide similar stakeholder participation benefits as a FACA advisory committee.

Another possibility for addressing the legal and time constraints associated with establishing a FACA advisory committee would be to establish a multi-stakeholder advisory body through the District's Water Resource Advisory Commission (WRAC). If established under the auspices of a state agency, the applicability of FACA is not clear. This option would need further exploration by the Corps' solicitor to ascertain whether such an advisory body would be exempt from FACA in the joint federal/state sponsoring agency context of CSOP.

### NEPA EIS Compliance

Interagency collaboration and multi-stakeholder participation on CSOP needs to take place within the context of a NEPA EIS process. This constraint means that the Corps and the other sponsoring agencies should plan to take full advantage of the opportunities for collaboration available under the NEPA framework at key steps in the EIS process.

### Time Limitations

The desire to implement CSOP quickly without further unnecessary delays was expressed by many who were interviewed. This desire for quick resolution, however, must be tempered with the importance of avoiding more litigation over procedural violations of NEPA and the

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additional impediments to implementation it would cause. It is also important that the EIS process be robust in its development and analysis of alternatives, be transparent to others, and be clearly documented. In addition, as addressed earlier, a collaborative process will likely require more initial time in the short term. One of the lessons of the IOP process is that it may be better to go slowly, include stakeholders in the process, and be very thorough during the early stages of a decision-making process to allow for more rapid progress later on.

### Process Fatigue

The significant concerns raised about process fatigue must be thoughtfully addressed to allow for the kind of meaningful engagement required to build consensus around a jointly developed solution for CSOP. A collaborative multi-stakeholder CSOP EIS process must be well organized to make efficient use of participants' time. Use of experienced expert neutrals to design and facilitate the multi-stakeholder process can help ensure process efficiencies. The participants themselves should be involved in helping to design the collaborative process, and their suggestions for improving efficiency should be seriously considered by the sponsoring agencies.

## SUGGESTED KEY ELEMENTS OF A MULTI-STAKEHOLDER CSOP EIS PROCESS

### DESIGN

Acknowledging the constraints on the EIS process and the obstacles to successful collaboration described previously, and assuming the shared goals of the sponsoring agencies for a multi-stakeholder CSOP process, the assessment team suggests that the several key process design elements be considered in bringing together the diverse set of interested stakeholders. If the intent is to pursue a collaborative multi-stakeholder approach using the flexibility provided by the NEPA EIS framework, the different information-generating, gathering and sharing techniques suggested should be considered in combination to maximize the likelihood of ensuring widespread understanding and broad support for the eventual CSOP solution.

The key process design elements being suggested by the assessment team for consideration by the sponsoring agencies and interested stakeholders include: 1) a Core Planning Team composed of the sponsoring agencies; 2) a CSOP Advisory Body, made up of governmental and nongovernmental stakeholder representatives; 3) government-to-government consultation between federally recognized tribes and the Corps and, if necessary, with the other sponsoring agencies; 4) technical working groups and technical workshops convened by the Core Planning Team that are open to all interested stakeholders; and 5) focus groups also convened by the Core Planning Team to explore specific issues and concerns of the different groups of stakeholders. A more detailed discussion of the suggested elements follows.



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**Core Planning Team** — Through a recently adopted Memorandum of Understanding (see Appendix C), the Corps as the lead agency for CSOP has extended the offer to jointly sponsor the CSOP EIS process with the Park, the District, and the USFWS. Together, these four agencies would constitute the “Core Planning Team.” The Core Planning Team would be composed of staff appointed by the sponsoring agencies who have relevant technical and policy expertise related to the issues being addressed in CSOP, as well as access to guidance from agency leadership. The Corps would have the lead role in coordinating the work of the Core Planning Team, and neutral facilitation assistance would be provided. To help ensure transparency and instill confidence in the legitimacy of the decision-making process, Core Planning Team meetings could be open for observation by the public and limited public comment. The Core Planning Team’s primary responsibility would be to collaboratively plan and coordinate each step in the EIS process prior to directly engaging any multi-stakeholder advisory groups formed for CSOP, other additional interested stakeholders, or the general public. The Core Planning Team would engage in collaborative, consensus-based decision-making regarding each procedural and substantive step in the EIS process up to the Record of Decision. Issues with significant policy implications may need to be elevated by the Core Planning Team to their agency officials for resolution and guidance. The Corps would retain authority for the final CSOP Record of Decision.

The Core Planning Team’s initial tasks would be to reach agreement on the purpose and objectives of CSOP, as well as the assumptions and constraints that must be adhered to in crafting a viable solution. The Core Planning Team would collaboratively prepare draft proposals throughout the EIS process to use in seeking specific feedback from any advisory groups formed for CSOP, other interested stakeholders, and the general public. The Core Planning Team would then incorporate the feedback received to successively refine and improve the proposal. Revised proposals would be disseminated back to those who provided feedback and also be made widely available to all interested parties. In short, the Core Planning Team’s role would be to gather information, conduct analyses, present results, and draft proposals for consideration and feedback from interested and affected stakeholders and the public.

**CSOP Advisory Body** — A CSOP Advisory Body, with a membership that represents the range of governmental and nongovernmental interests in CSOP issues, could be established by the sponsoring agencies to help identify concerns and potential impacts that need to be addressed and to provide informed advice throughout the EIS process. The assessment team envisions a CSOP Advisory Body to be advisory in nature, providing guidance and feedback to the sponsoring agencies at the request and need of the Core Planning Team. Obviously, while the sponsoring agencies would ultimately determine the outcome of the EIS process, the needs and interests of the members of the CSOP Advisory Body would need to be given thorough consideration in the deliberations of the Core Planning Team if the multi-stakeholder CSOP process is to succeed in producing a solution that will be broadly supported. Indeed, all decisions of the Core Planning Team developed through input from the CSOP Advisory Body should be clearly articulated and supported by rationale that is understandable to all CSOP Advisory Body members, even if they might not agree with it fully.

It is clearly advantageous, from the perspective of time constraints, for any advisory bodies created to assist with the CSOP process be convened under the auspices of an existing

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governmental entity that is congressionally authorized to establish FACA-exempt advisory committees. Ideally, such an entity would also be directly involved with Everglades restoration issues. Such an arrangement would help avoid the significant time delays usually inherent in the establishment of Advisory Committees chartered under the provisions of FACA. It would also take advantage of existing organizational structures, facilitate coordination with other Everglades restoration activities, and establish linkages to the broader long-term comprehensive goals of Everglades restoration efforts. Of the options available, it appears that the South Florida Ecosystem Restoration Task Force's Working Group and the District's Water Resource Advisory Commission (WRAC) may provide exemptions to FACA, as well as a direct connection to the Comprehensive Everglades Restoration Plan process. It would be advisable for legal counsel to the lead agency to further explore these options to determine FACA exemptions and requirements.

An advisory body whose membership is limited to representatives of governmental entities would also likely be exempt from FACA requirements. However, using this approach, the sponsoring agencies would be less likely to achieve their shared goals of gaining broad support for a CSOP solution, of minimizing the likelihood of future legal challenges, and of building increased trust among stakeholders.

An advisory body established by the U.S. Institute would also be exempt from FACA requirements. While there may be some advantages to utilizing the auspices of a neutral independent institution such as the U.S. Institute for convening an advisory body, the U.S. Institute is not a known entity to most CSOP stakeholders. It also could not provide direct connections to the CERP process. If there were a desire to pursue this kind of approach for establishing a CSOP advisory body, another convening option would be to consider using the joint auspices of both the U.S. Institute and the Florida Conflict Resolution Consortium. The Consortium is a Florida State University-based program established by the legislature to provide a leadership role in promoting the informed use of consensus building and alternative dispute resolution to meet the growing demand for better and more durable solutions to Florida's public problems.

Setting aside any judgment as to the most suitable convener of a CSOP Advisory Body, the assessment team recommends that the following criteria serve as guidance in establishing such a body:

- ✓ If possible, utilize an entity that has a FACA exemption to minimize time delays.
- ✓ If possible, utilize an existing entity that is involved with Everglades restoration issues.
- ✓ Include representatives of both governmental and nongovernmental entities.
- ✓ Ensure that membership encompasses the range of different interests affected by CSOP.
- ✓ Allow for the membership of the advisory body to be selected by the Core Planning Team, assisted by neutral facilitators, with the advice and consent of the convening entity.
- ✓ Ensure that members of the advisory body have the following qualifications: effective communication and collaboration skills; commitment to participate actively and

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constructively; familiarity with issues associated with the MWD and C-111 projects; ability to devote the time necessary to participate in required meetings as well as review information between meetings; willingness to abide by the ground rules adopted the advisory body; and motivation to work towards reaching agreement with other members on their advice to the sponsoring agencies.

- ✓ Ensure that the operating protocols and explicit ground rules for the advisory body are developed by the Core Planning Team in close consultation with the prospective members of the advisory body with assistance from neutral experts in process design and with the consent of the convening entity.
- ✓ Encourage, but not require, the advisory body to reach consensus regarding its advice to the sponsoring agencies.
- ✓ Allow for the recommendations of the advisory body to be transmitted directly to the sponsoring agencies through the Core Planning Team without modification by the convening entity.
- ✓ Informed by the work of the advisory body, allow for the convening entity to also provide its own advice and recommendations to the sponsoring agencies.
- ✓ Ensure that the sponsoring agencies are committed to thoroughly considering the recommendations of the advisory body in its decision-making.
- ✓ Provide expert independent neutral facilitation assistance to the advisory body.
- ✓ Ensure that the membership of the advisory body is limited to 15 to 20 individuals to allow for dialogue and active participation by all members.

**Government-to-Government Consultation with Native American Tribes** — Federally recognized tribes are independent self-governing sovereign entities. The federal government has a trust obligation to protect tribal interests, and agencies are required to consult with federally recognized tribes on a government-to-government basis regarding proposed actions that may affect tribal interests. The lead agency should approach the governing leadership of the federally recognized Miccosukee Tribe of Indians of Florida and Seminole Tribe of Indians with respect as mutual sovereigns to determine an acceptable protocol and designated points of contact for meaningful formal government-to-government consultation on CSOP. The lead agency should work with the tribes to satisfactorily address concerns regarding how their sovereignty might be affected by participation in a collaborative process. The assessment team considers such government-to-government consultation to be an essential element of any viable solution to CSOP.

**Technical Working Groups** — The Core Planning Team could establish Technical Working Groups as needed to gather and analyze available information and data on specific issues to be addressed during the EIS process. Technical Working Groups could be chaired by a staff representative of one of the sponsoring agencies but could be open to all interested governmental and nongovernmental participants with technical expertise to contribute. Members of the Technical Working Groups could be expected to contribute relevant information and expertise on the subject being examined and should be willing to abide by

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the ground rules established to help ensure productive collaboration. Working Groups could process information, synthesize issues and ideas, and bring their findings, conclusions, or recommendations to the Core Planning Team and the CSOP Advisory Body. If Technical Working Groups cannot reach a general consensus on their conclusions, they could present their areas of agreement and disagreement. It is the Core Planning Team's responsibility to determine how to deal with technical disagreements. The lead agency should consider whether FACA requirements apply to the suggested Technical Working Groups. FACA requirements may not apply if the Technical Working Groups involve only participants from governmental entities or if they are established under the auspices of an entity that has been provided authorized exemptions from FACA.

**Technical Workshops** — Not all governmental and nongovernmental stakeholders will have the interest and staff resources to participate regularly on Technical Working Groups. Nonetheless, they may still wish to be informed and have an opportunity to provide input on technical decisions being incorporated into draft proposals for consideration by the Core Planning Team at key stages of the EIS process. To accommodate this need, the Core Planning Team could periodically host Technical Workshops on specific technical issues. The Core Planning Team could present available information, results, and analyses and engage with workshop participants in determining what choices should be made and how best to proceed with the next steps. Potential Technical Workshops could focus on such topics as the development of various performance measures with which to analyze modeling results and the review of modeling results along with assessment of their implications. Should there be a determination that FACA requirements apply to the Technical Working Groups, Technical Workshops could be used as an alternative to Technical Working Groups.

**CSOP Focus Groups** — The CSOP Core Planning Team and the CSOP Advisory Body could jointly convene Focus Groups around specific important issues and concerns related to CSOP. The primary function of the Focus Groups could be to provide opportunities for more constructive interactions, information exchange, input, and consultation between the sponsoring agencies and specific targeted groups of stakeholders. Focus Groups could allow stakeholders to directly communicate their concerns about potential CSOP issues and solutions. For example, the Core Planning Team could have an opportunity to explain and answer questions about the authorized objectives of the CSOP project and the constraints within which alternatives must be crafted. The Focus Groups could also provide specific feedback on draft proposals developed by the Core Planning Team. The CSOP Advisory Body could assist the Core Planning Team in identifying appropriate issues around which to convene Focus Groups to help ensure that key stakeholder concerns are understood and considered in crafting proposals.

## **PROCESS DESIGN ALTERNATIVES FOR CSOP MULTI-STAKEHOLDER PARTICIPATION**

Incorporating input from previous discussions with the sponsoring agencies' CSOP Project Managers and considering the key elements described above, the assessment team has crafted seven fairly distinct process design alternatives that utilize different approaches to providing opportunities for multi-stakeholder participation in the CSOP EIS process. These alternatives go beyond the approach described as "Consult" under the Spectrum of Participation in NEPA Decision Making outlined above. (The "Consult" approach generally corresponds with the minimum NEPA requirements for public participation.)

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The seven alternatives proposed for consideration by the sponsoring agencies and interested stakeholders are basically positioned between the “Involve” and the “Collaborate” approaches on the NEPA Participation Spectrum. Exactly where along the spectrum the various alternatives or even a selected alternative might fall, would depend on the specific operating procedures and ground rules that are adopted for the particular process, especially regarding the rules for making decisions. The assessment team suggests that these determinations be made, to a large extent, based on the reactions to this report and the receptivity towards the various proposed approaches by the sponsoring agencies and the different stakeholders interested in participating in the CSOP process. The assessment team envisions a facilitated consultation process with interested stakeholders in conjunction with further negotiations among the sponsoring agencies to craft the final design for a multi-stakeholder CSOP process.

The seven CSOP multi-stakeholder process design alternatives developed by the assessment team include the following:

- Alternative #1 FACA Advisory Committee
- Alternative #2 Technical Workshops, Technical Working Groups, and Focus Groups
- Alternative #3 Non-FACA Advisory Body Composed of Governmental Entities Only
- Alternative #4 Non-FACA Advisory Body Established by the District’s Water Resources Advisory Commission (WRAC)
- Alternative #5 Non-FACA Advisory Body Established by the U.S. Institute
- Alternative #6 Non-FACA Advisory Body Established by the Task Force’s Working Group
- Alternative #7 Two Non-FACA Multi-Stakeholder Advisory Bodies Established by the Task Force’s Working Group and the District’s Water Resources Advisory Commission (WRAC)

Common to all the alternatives is a Core Planning Team composed of staff appointed by the sponsoring agencies, as well as government-to-government consultation with the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Indians. All the alternatives also include the utilization of Technical Working Groups, Focus Groups, and Technical Workshops.

Each process design alternative has certain advantages and disadvantages in terms of how they are able to address the various constraints on the CSOP EIS process and the obstacles to successful collaboration discussed earlier in this report. Some of these disadvantages may be partially mitigated by emphasizing certain process design elements. In addition, different alternatives may have varying degrees of associated litigation risk related to their qualification as legal exemptions to the requirements of the Federal Advisory Committee Act (FACA). These risks should be explored and considered more fully by legal counsel of the lead agency, which bears ultimate responsibility for implementing NEPA and meeting its procedural requirements with regard to public participation.

Detailed descriptions of the advantages and disadvantages of the seven CSOP multi-stakeholder process design alternatives developed by the assessment team are included in Appendix G.

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## CONCLUSION

The multi-stakeholder process design elements suggested by the assessment team assume active participation by a broad range of governmental and nongovernmental interests. If stakeholders respond predominately negatively to the process design suggestions included in this assessment, it's possible that additional process design options could be developed based on the feedback received, that might be more acceptable. However, if broad participation cannot ultimately be attained, then the sponsoring agencies will need to reconsider the feasibility of their pursuit of a collaborative multi-stakeholder approach and perhaps choose to take a more traditional path of consultation and public participation during the EIS process.

Representatives of many federal, state and local governmental agencies and tribal governments, as well as a number of nongovernmental entities, have expressed at least a tentative interest in participating in a collaborative CSOP EIS process. The willingness of stakeholders to participate depends heavily on whether the proposed collaborative process options address the concerns that were raised during the interviews, i.e., lack of trust, process and meeting fatigue, the need for expeditious decision making, and skepticism about the commitment of the sponsoring agencies to collaboration. After the stakeholders have had an opportunity to review the report and consider the process design alternatives, there will be a further opportunity, through the facilitated consultation process envisioned by the assessment team, for the participants to consider the feasibility of the collaborative multi-stakeholder approach, to help shape the process, refine the elements, and offer practical ideas for improvement. By involving stakeholders in the decision making about collaboration and in the design for such a process, the assessment team believes there would be an enhanced likelihood that the CSOP EIS process will ultimately result in a plan that achieves the sponsoring agencies' shared goals of interagency agreement, broad public support, less litigation, and greater trust.



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## FEEDBACK ON THIS REPORT

Your suggestions, comments and feedback on this report and the proposed design options for stakeholder participation in the CSOP EIS process are eagerly requested. You are welcome to contact any of the following people:

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calvarez@unr.net

Mike Eng, U.S. Institute  
(520) 670-5299  
eng@ecr.gov

Analee Mayes  
(813) 289-8500  
amayes@consensusbuildersinc.com

- Appendix A: Letter of Introduction to Persons Interviewed**
- Appendix B: List of Persons Interviewed**
- Appendix C: Memorandum of Understanding**
- Appendix D: Table of Substantive Issues of Significant Concern**
- Appendix E: Stakeholder Comments on Process Design Issues**
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APPENDIX A:  
LETTER OF INTRODUCTION TO PERSONS INTERVIEWED

March 25, 2002

Dear \_\_\_\_\_ :

The U.S. Army Corps of Engineers, Everglades National Park, the South Florida Water Management District, and the U.S. Fish and Wildlife Service have decided to jointly sponsor a collaborative Environmental Impact Statement (EIS) process for development of the Combined Structural and Operational Plan (CSOP) for the Modified Water Deliveries Project to Everglades National Park (Mod-Waters) and the C-111 Structural Modifications Project (C-111). The agencies are also seeking the active involvement of other state, local, and tribal governmental entities, as well as potentially impacted or concerned stakeholders, in the CSOP EIS process. The sponsoring agencies would like to find out how other entities might be interested in participating in the CSOP EIS process. They are also eager to identify those entities that would be both interested and able to work with them in a yet-to-be fully defined “partnering” role.

In its capacity as an impartial and non-partisan independent federal agency established by Congress to assist in the resolution of interagency, intergovernmental, and multi-stakeholder environmental disputes, the U.S. Institute for Environmental Conflict Resolution has been asked by the Corps, the Park, the District, and the Fish and Wildlife Service to assist them in assessing the interest of other entities in participating in CSOP and to help them design an appropriate collaborative EIS process.

Consequently, we would like to interview you, another appropriate individual, or possibly a small group from your government, agency, organization, or group to learn about your interest in participating in a collaborative CSOP EIS process. We will call you during the week of March 25-29 to schedule a time for the interview that is convenient for you. We hope to complete the interviews between April 1-10. If possible, we would like to meet and talk with you in-person. If this is not possible, we would then plan to conduct the interviews by telephone. The interviews are expected to take approximately 45 minutes.

The four sponsoring agencies have developed a brief statement describing the “Purpose and Need” for the Combined Structural and Operational Plan. A copy is attached for your information. A large folding map of the region with current water management features will be included with a hard copy of this letter that is being mailed to you.

To help us organize our discussion with you, we have developed a set of questions presented below that we would hope to cover during our conversation. Through your responses and those of other entities, we will describe in a draft report to the four sponsoring agencies, the range and types of interests in participating in the CSOP EIS process. We will also attempt to integrate what we have learned from you and others and propose to the sponsoring agencies some options and recommendations for the design of a collaborative CSOP EIS process. Following incorporation of their feedback and agreements on an appropriate process design, a draft partnering agreement will be developed and circulated for consideration and modification by those entities that wish to participate in a partnership capacity on CSOP. It is expected that a final Partnering Agreement, possibly in the form of a Memorandum of Understanding, will be prepared for ratification by all participating entities.

These are the questions we would like to address during the course of our interview with you:

1. What are the issues that most concern you about CSOP? How might the interests of your agency/organization be affected by CSOP? Do you think agreement is possible on these issues?
2. Are you comfortable with the attached "Purpose and Need" statement for the project?
3. What are your views on the restoration requirements for Everglades National Park?
4. What are your views on the appropriate level of flood protection authorized by the Mod-Waters and C-111 projects?
5. What are your views on resolving potential conflicts between the needs of the environment and the needs for flood protection/water supply?
6. What are your interests in participating the CSOP EIS process?
7. Assuming there was an opportunity for an inclusive, collaborative process for preparing the CSOP EIS, how would your agency/organization prefer to be involved? At what stages of the process, e.g., developing hydrologic modeling protocols, developing some initial options, refining these options, developing a range of alternatives, evaluating the alternatives, developing a preferred alternative? How? Who in particular from your agency/organization would be likely to participate?
8. What kinds of contributions (biological, social/cultural, economic, information; technical expertise; political support; access to potential affected constituents,; etc.) could you provide to the process?
9. Are there any obstacles that you can think of to your active and consistent participation in such a process, e.g., resource constraints, technical expertise, buy-in to the process by your agency/organization, travel limitations, lack of Internet access or email, etc.?
10. What kind of mechanism would your agency/organization likely use to ensure the active engagement of your decision-makers?
11. What is the proper protocol for potentially formalizing a commitment by your agency/organization to enter into a "partnering agreement" for participation in a collaborative CSOP EIS process?
12. Are there any processes that you have had a good experience with that you would especially like to see incorporated into a collaborative CSOP EIS process? Are there any processes that you would especially like the Corps, as the lead agency, to avoid employing in a collaborative CSOP EIS process?
13. What do you see as the key interests that must be satisfied for a successful CSOP EIS process?
14. Given the history of relationships among the parties involved in Everglades issues, do you think they would be able to work together effectively on a collaboratively designed partnership for the CSOP EIS process? Why? What would need to change?
15. How do you think other key parties in Everglades issues will respond to the opportunity to participate as a partner in a collaborative CSOP EIS process?
16. Is there anyone else in your agency/organization that I should talk to?
17. Can you suggest other parties we should talk to who may have an interest in participating in a collaborative EIS process for CSOP?

Information shared with us during the interview will be unattributed, i.e., the opinions, perspectives and ideas expressed will not be attributed to any specific individual, agency or organization. In addition, any information shared with us that you would prefer be kept completely confidential and not be incorporated into the assessment report will be kept confidential. Because of the U.S. Institute's

role as a third-party neutral, the confidentiality of all notes from the interviews are explicitly protected by the Alternative Dispute Resolution Act of 1996, as well as Federal Rules of Civil Procedure. Furthermore, confidential notes and reports developed by the U.S. Institute are not subject to Freedom of Information Act (FOIA) requests. Further information about the U.S. Institute and the confidentiality provisions under which it operates, can be found at our website, <http://www.ecr.gov/index.htm>.

The U.S. Institute's assessment team consists of Senior Program Manager Michael Eng and sub-contracted third party neutrals, Analee Mayes, President of Consensus Builders, Inc. of Tampa and Carlos Alvarez of Tallahassee. It is expected that Ms. Mayes and Mr. Alvarez will conduct most of the interviews.

We thank you in advance for your willingness to speak with us and for your assistance in helping us design an appropriate collaborative EIS process. We appreciate how busy you are and truly value the time you will spend with us. We look forward to speaking with you and to learning about your perspective on and interests in CSOP.

If you have any immediate questions or concerns before we call to schedule the interviews, please feel free to contact Michael Eng at (520) 670-5299 or [eng@ecr.gov](mailto:eng@ecr.gov). Thanks again. We look forward to talking with you.

Sincerely,

Michael Eng  
Senior Program Manager

cc: Cheryl Ulrich, CSOP Project Manager, US Army Corps of Engineers  
Dan Nehler, CSOP Project Manager, US Fish and Wildlife Service  
David Sikkema, CSOP Project Manager, Everglades National Park  
David Swift, CSOP Project Manager, South Florida Water Management District



**APPENDIX B:  
LIST OF PERSONS INTERVIEWED**

John Adornato, III, National Parks and Conservation Association  
Bill Baker, MacVicar Federico and Lamb, Inc.  
Dr. Carlos Balerdi, University of Florida Agriculture Extension Office/Miami-Dade County  
Cooperative Extension Service  
Ernie Barnett, Florida Department of Environmental Protection  
Dave Bogardus, Sierra Club  
Mike Collins, South Florida Water Management District Governing Board  
Antonio Cotarelo, Miami-Dade Co. DERM  
Erin Deady, Audubon of Florida  
Mayor Jose Pepe Diaz, City of Sweetwater  
Cindy Dwyer, Miami-Dade Co. Planning and Zoning, South Dade Watershed Plan  
Shannon Estenoz, World Wildlife Fund  
Jean Evoy, Miami-Dade Co. DERM  
Jim Farrell, Miami-Dade Co. DERM  
Alen Forago, Sierra Club  
Madeleine Fortin, 8.5 SMA Legal Defense Foundation  
Dave Friedrichs, Dade County Farm Bureau  
Dr. Joseph Garpfolo, University of Florida Agricultural Extension Office/Miami-Dade County  
Cooperative Extension Service  
Roman Gastesi, Miami-Dade Co. Water Resources  
Bertha Goldenberg, Miami-Dade Co. Water and Sewer Department  
Richard Grosso, Environmental and Land Use Law Center, Nova University  
Pete Hernandez, Miami-Dade Co. Assistant County Manager  
Dave Kaplan, Dade County Farm Bureau  
Mary Lamberts, University of Florida Agricultural Extension Office/Miami-Dade County  
Cooperative Extension Service  
Charles LaPradd, City of Homestead  
Tom MacVicar, MacVicar Federico and Lamb, Inc.  
Linda McCarthy, Florida Department of Agriculture and Consumer Services  
L. Jack Moller, Everglades Coordinating Council  
Dan Nehler, U.S. Fish & Wildlife Service  
Teresa Olczyk, University of Florida Agricultural Extension Office/Miami-Dade County  
Cooperative Extension Service  
Al Ovies, South Florida Anglers for Everglades Restoration (SAFER)  
Rick Pearson, South Florida Anglers for Everglades Restoration (SAFER)



**Hilberto Peralta, Miami-Dade Co. DERM**  
**Barbara J. Powell, Everglades Coordinating Council**  
**Donald Pybas, University of Florida Agriculture Extension Office/Miami-Dade County**  
**Cooperative Extension Service**  
**Lee Rawlinson, Miami-Dade County Planning and Zoning**  
**Bill Reck, U.S. Department of Agriculture**  
**Colonel Terry Rice, Miccosukee Tribe of Indians of Florida**  
**Joette Lorion Rice, Miccosukee Tribe of Indians of Florida**  
**Brad Sewell, Natural Resources Defense Council**  
**Mike Shehadeh, City of Homestead**  
**Rick Smith, Governor's Office**  
**Katy Sorenson, Miami-Dade County Commissioner**  
**Rebecca Sosa, Miami-Dade County Commissioner**  
**Kim Taplin, U.S. Army Corps of Engineers**  
**Craig Tepper, Seminole Tribe of Indians**  
**Tim Towles, Florida Fish and Wildlife Conservation Commission**  
**John Ulman, Natural Resources Defense Council**  
**Joe Walsh, Florida Fish and Wildlife Conservation Commission**

## APPENDIX C

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**UNITED STATES ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT;**  
**and**  
**NATIONAL PARK SERVICE, EVERGLADES NATIONAL PARK;**  
**SOUTH FLORIDA WATER MANAGEMENT DISTRICT;**  
**UNITED STATES FISH AND WILDLIFE SERVICE, SOUTH FLORIDA FIELD**  
**OFFICE**

**Agreement to Jointly Sponsor Collaborative  
Combined Structural and Operating Plan (“CSOP”)  
Environmental Impact Statement (“EIS”) Process**

### A. PARTIES

This Memorandum of Understanding (MOU) is hereby entered into by, between, and among the United States Army Corps of Engineers, Jacksonville District (the “Corps”), the National Park Service, Everglades National Park (the “Park”), the South Florida Water Management District (the “District”), and the United States Fish and Wildlife Service, South Florida Field Office (the “Service”).

### B. PURPOSES

As established in the National Environmental Policy Act (NEPA), under which this CSOP EIS process is being conducted, it is the continuing policy of the federal government, in cooperation with State and local governments, Tribes, and other concerned public and private organizations, to use all practicable means and measures, including technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

Accordingly, the purposes of this MOU are:

1. To establish the parties’ agreement and commitment in jointly sponsoring a collaborative Environmental Impact Statement (“EIS”) process under NEPA in the development of a Combined Structural and Operating Plan (“CSOP”) for Modified Water Deliveries to Everglades National Park (Mod-Waters) and the Canal 111 Project (“C-111”).
2. To establish the Park, the District, and the Service as cooperating agencies in the CSOP process.
3. To affirm that the Corps has sole and ultimate decision-making authority for the Record of Decision and primary responsibility for NEPA compliance and preparation of the EIS.
4. To establish the commitment of the parties to seek agreement on key steps in the EIS process, including: development of the Purpose and Need Statement for the proposed action, development of the Goals and Objectives for the proposed action, development of

a range of alternatives, modeling and analysis of the alternatives, consideration of public comments, and development of a preferred alternative.

5. To affirm the commitment of the Corps to fully consider the views of the Park, the District, and the Service in developing its Record of Decision and to work with the agencies to collaboratively monitor the impacts of its decision.
6. To affirm the agencies' agreement to jointly sponsor a multi-stakeholder process in which they will collectively consult with and seek the involvement of other entities that may have an interest in participating in the CSOP EIS process.

### **C. AUTHORITIES**

This MOU is based on and consistent with the authorities provided in the following laws, regulations, orders, decisions and documents:

- Everglades Preservation and Expansion Act of 1989, Public Law 100-229
- National Environmental Policy Act of 1969, as amended, 42 USC § 4321 et seq.
- The Endangered Species Act of 1973, as amended, 16 USC § 1531 et seq.
- Environmental Policy and Conflict Resolution Act of 1998, Public Law 105-156
- Administrative Dispute Resolution Act of 1996, Public Law 104-320
- Title 33, Code of Federal Regulations, Part 320
- Title 40, Code of Federal Regulations, Parts 1500-1508
- Executive Order 11988, Floodplain Management, May 24, 1977
- Executive Order 11990, Protection of Wetlands, May 24, 1977
- Executive Order 13158, Marine Protected Areas, May 26, 2000
- Executive Order 13112, Invasive Species, February 3, 1999
- Executive Order 13089, Coral Reef Protection, June 11, 1998
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994
- Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended May 24, 1977
- Modified Waters General Design Memorandum (GDM), 1992
- Draft Supplemental Modified Waters GDM, April 2000
- C-111 General Reevaluation Report (GRR) Environmental Impact Statement, 1994
- Real Estate Memorandum (REDM), November 1994
- 8.5 Square Mile Area Record of Decision, December 2000
- Supplemental C-111 GRR Environmental Impact Statement, 2002

### **D. RELEVANT GUIDANCE FROM COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)**

The establishment of this MOU is consistent with the following guidance provided by the Council on Environmental Quality:

- Memorandum for Heads of Federal Agencies, "Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act" with Attachment 1:

“Factors for Determining Whether to Invite, Decline, or End Cooperating Agency Status”, January 30, 2002

- Memorandum for Heads of Federal Agencies, “Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act”, July 28, 1999
- “The National Environmental Policy Act: A Study of its Effectiveness After Twenty-five Years”, January 1997
- “Environmental Justice: Guidance Under the National Environmental Policy Act”, December 10, 1997
- “Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act”, January 1993
- “Council on Environmental Quality Guidance Regarding NEPA Regulations”, 1983
- CEQ’s Forty Most Asked Questions Concerning NEPA Regulations, March 21, 1981

#### **E. STATEMENT OF MUTUAL INTERESTS AND BENEFITS**

All parties recognize they can benefit from collaboration on the CSOP EIS process, as well as from increased communication, disclosure of relevant information early in the analytical process, sharing of available data and staff expertise, improved coordination, avoidance of duplicated efforts, and proactive resolution of interagency disputes. Additionally, the parties can benefit from engaging in collaboration to help achieve better outcomes for all parties while ensuring that each agency’s key mandates and legal requirements are adequately and appropriately met.

#### **F. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:**

##### **I. BASIC ROLES.**

- The **U.S. Army Corps of Engineers** is the lead agency for the CSOP EIS process with the sole and ultimate decision-making authority for the Record of Decision and primary responsibility for NEPA compliance, as well as preparation of the environmental impact statement. The Corps mission is to provide engineering services to the nation, including the planning, designing, building, and operating of water resource and civil works projects. In accordance with this mission, the Corps began investigating the hydrologic problems in south Florida in the 1940’s which resulted in their design and construction of a complex multi-purpose water management system designed to meet the needs of the region with regards to flood control, regional water supply for agricultural areas, urban areas and Everglades National Park, the preservation of fish and wildlife resources, the prevention of salt-water intrusion, navigation and recreation. The Corps has special expertise in all aspects of water resource engineering and management that includes meteorology, hydrology, planning, design, construction, the integration of project features and operations, and a detailed understanding of the operational capabilities and limitations of the water management system to contribute to a well-informed decision on CSOP.

- **Everglades National Park**, as the primary funder of the Modified Waters project, is a principal benefactor of the CSOP process. The Park's mission is to preserve unimpaired the natural and cultural values of Everglades National Park for the enjoyment, education, and inspiration of this and future generations, including a permanent wilderness preserving essential primitive conditions including the natural abundance, diversity, behavior, and ecological integrity of its flora and fauna. The Park has special biological, ecological, and hydrology expertise to contribute toward a well-informed decision on CSOP.
- The **South Florida Water Management District** is the local sponsor of the C-111 project and primary operational implementer of the CSOP decision. The mission of the South Florida Water Management District is to manage and protect water resources of the region by balancing and improving water quality, flood control, natural systems, and water supply. The District has special biological, ecological, and hydrology expertise, as well as detailed understanding of the capabilities and limitations of the regional water management system, to contribute toward a well-informed decision on CSOP.
- The **U.S. Fish and Wildlife Service** has legal responsibility to enforce the Endangered Species Act and to review proposed actions to determine whether they would result in jeopardy to any endangered species; and if so, how to mitigate or avoid that jeopardy situation. The Service has the responsibility to communicate its determinations to the lead agency through a Coordination Act Report, which is incorporated into the environmental impact statement. The Service has special biological and ecological expertise to contribute toward a well-informed decision on CSOP.

## II. THE CORPS SHALL:

1. Serve as the lead agency for the CSOP EIS process with sole and ultimate decision-making authority for the Record of Decision and primary responsibility for NEPA compliance, as well as preparation of the environmental impact statement.
2. Designate the Park, the District, and the Service as cooperating agencies in the CSOP EIS process.
3. Fully utilize the relevant data and assessments provided by the Park, the District, and the Service in support of the decision-making process.
4. Seek agreement with the Park, the District, and the Service on key steps of the NEPA process, including: development of the Purpose and Need Statement for the proposed action, development of the Goals and Objectives for the proposed action, development of a range of alternatives, modeling and analysis of the alternatives, consideration of public comments, and development of a preferred alternative.
5. Utilize mediation to resolve important disagreements among the four sponsoring agencies involving issues during the NEPA process.
6. Elevate unresolved issues to the next highest level of decision-making within the District, the state, the U.S. Fish and Wildlife Service, or Everglades

National Park when three of the four agencies have agreed that they are at an impasse, which requires elevation to resolve.

7. Exercise its independent authority regarding issues of key importance to the other parties to this agreement only after mediation and elevation efforts, pursued according to a mutually agreed upon schedule and deadline, have failed to resolve an impasse.
8. Fully consider the views of the Park, the District, and the Service in developing its Record of Decision.
9. Work with the Park, the District, and the Service to collaboratively monitor the impacts of its decision.

### **III. THE PARK, THE DISTRICT, AND THE SERVICE SHALL:**

1. Serve as cooperating agencies and joint sponsors with the Corps of a collaborative CSOP EIS process.
2. Contribute data and information relevant to the CSOP decision-making process.
3. Cooperate with the Corps in providing neutral facilitation and mediation support for the CSOP EIS process, as mutually determined is required.
4. Provide adequate staff resources to ensure active participation on the interagency CSOP Core Planning Team (“Team”) and its Sub-Teams to provide for timely development and review of draft documents.

### **IV. THE CORPS, THE PARK, THE DISTRICT, AND THE SERVICE SHALL:**

1. Work collaboratively with each other through the Team to seek agreement on detailed ground rules for their interaction, a statement of the purpose and need for the proposed action, the goals and objectives for the proposed action, the process for scoping relevant issues, the process for involving other interested and affected entities, the schedule for completion of milestones, development of a range of alternatives, modeling and analysis of alternatives, consideration of public comments, development of a preferred alternative, and monitoring the impacts of the decision.
2. Designate appropriate representatives with relevant technical and policy expertise and delegated provisional negotiating authority to the Team and any Sub-Teams established, which will seek to develop consensus-based recommendations for consideration by agency policy decision-makers in accordance with the respective decision-making requirements of each agency.
3. Seek the endorsement and active support for their participation in a collaborative CSOP EIS process within their own hierarchies and up any relevant chains-of-command or necessary levels of review and approval for decisions during the CSOP process.

**V. INTERAGENCY CSOP CORE PLANNING TEAM.**

Each party shall designate representatives with relevant technical and policy expertise and delegated provisional negotiating authority to the Team and any Sub-Teams established, which will seek to develop consensus-based recommendations for consideration by agency policy decision-makers in accordance with the respective decision-making requirements of each party.

**VI. GROUND RULES FOR INTERAGENCY COLLABORATION ON CSOP.**

Within 60 days following the effective date of this MOU, the parties shall develop and agree upon a detailed set of ground rules for their interagency collaboration on CSOP. Among the elements to be addressed and clarified in these ground rules shall be:

- Purpose and Need for CSOP
- Goals and Objectives of CSOP
- Schedule and deadlines for the overall CSOP process and key milestones
- Modeling strategy for CSOP
- Base condition for modeling
- Purpose, need, and use of the Flood Study
- Protocols for sharing information
- Lead agency roles and responsibilities
- Cooperating agency roles and responsibilities
- How to handle a withdrawal from the collaborative process
- Representation on the Team
- Role, responsibilities, delegated decision-making authority, and constraints on agency representatives the Team
- Decision making rules of the Team
- Policy review and ratification process for interim recommendations developed by the Team
- Use of facilitation and mediation assistance to help resolve interagency disagreements during the NEPA process
- Elevation process within and among parties for policy questions that need to be resolved during key steps in the NEPA process
- Process for resolution and/or peer review of technical issues
- Frequency, schedule, length, agendas, location, organization, planning, conduct, and documentation of Team meetings
- Expectations regarding access to information, confidentiality of interagency dispute resolution sessions, and disclosure
- Communications with the media, the public, the courts, political institutions
- Expectations regarding costs and expenses for participants and for facilitation and mediation services
- Role and responsibilities of any other cooperating agencies
- How to handle new participants
- Role and responsibilities of other partnering entities

- Constituent outreach and communication plan
- Stakeholder participation plan
- Public participation plan

This MOU shall be amended to incorporate the ground rules for the parties' collaboration on the CSOP EIS process once they are developed.

**G. STANDARD CONDITIONS:**

- I. AUTHORITIES.** Nothing in this MOU shall be construed to extend the jurisdiction or decision-making authority of any party to this MOU beyond that which exists under current laws and regulations. Nothing in this MOU shall be construed as limiting or affecting the authority or legal responsibility of any party, or as binding any party to perform beyond the respective authority of each, or to require any party to assume or expend any specific sum of money. The provisions of this MOU are subject to the laws and regulations of the State of Florida, the laws of the United States, and the regulations of the Department of the Army and the Department of the Interior, as they may be applicable. Nothing in this MOU shall be construed as affecting the decision-making requirements of any party or impairing the independent judgment of each party regarding policy decisions.
- II. LEGAL RIGHTS AND REMEDIES.** Nothing in this MOU shall be construed to alter the legal rights and remedies that each party would otherwise have. No party waives any legal rights or defenses by entering into this MOU or participating in the process contemplated hereby. This MOU may not be used as evidence by or against any party in any legal proceeding, whether now existing or subsequent.
- III. SOVEREIGN IMMUNITY.** The State of Florida and the agencies of the federal government do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- IV. SEVERABILITY.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.
- V. THIRD PARTY BENEFICIARY RIGHTS.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only among the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU.
- VI. NON-FUND OBLIGATION DOCUMENT.** This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to



this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate rules, policies, and statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Nothing herein constitutes a binding commitment to fund any of the proceedings encompassed by the MOU. Any specific cost sharing or funding shall be executed separately through other funding mechanisms, as deemed necessary and appropriate by each of the signatories.

- VII. PARTICIPATION IN SIMILAR ACTIVITIES WITH OTHER ENTITIES.** This MOU in no way restricts any of the parties from participating in similar activities with other public or private agencies, organizations, and individuals.
- VIII. MODIFICATION.** Any party may request changes in this MOU. Any changes, modifications or amendments to this MOU which are mutually agreed upon by and among the parties to this MOU shall be incorporated by written instrument, executed and signed by all parties to this MOU.
- IX. TERMINATION.** Any party to this MOU may terminate in writing its participation in this agreement in whole, or in part, at any time before the date of expiration, with 30 days notice to the other parties.
- X. ENTIRETY OF AGREEMENT.** This MOU, consisting of nine (9) pages, represents the entire and integrated agreement among the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- XI. PRIMARY CONTACTS.** The primary agency contacts for carrying out the provisions of this MOU are the CSOP Project Managers for each agency:

Kim Taplin for U.S. Army Corps of Engineers  
Dave Sikkema for Everglades National Park  
Dave Swift for the South Florida Water Management District  
Dan Nehler for U.S. Fish and Wildlife Service

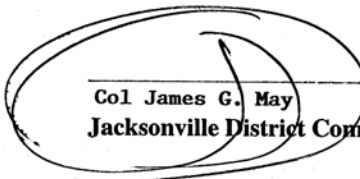
- XII. EFFECTIVE DATE.** The effective date of this MOU is the date of the signature last affixed to these pages.
- XIII. COMPLETION DATE.** Unless terminated sooner, this MOU is effective through December 31, 2005, at which time it will expire unless renewed by the parties through a duly executed amendment hereto.

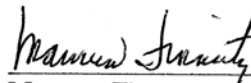
**H. SIGNATURES**

In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU, as set forth herein.

**U.S. Army Corps of Engineers**

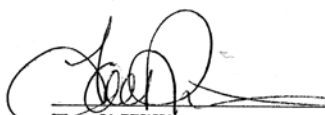
**Everglades National Park**

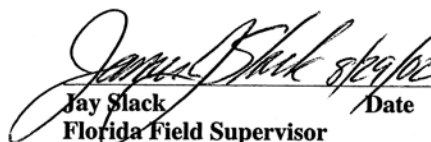
  
\_\_\_\_\_  
Col. James G. May                      Date  
Jacksonville District Commander                      15 OCT 02

  
\_\_\_\_\_  
Maureen Finnerty                      Date  
Superintendent                      9/14/02

**South Florida Water Management District**

**U.S. Fish and Wildlife Service**

  
\_\_\_\_\_  
Trudi Williams                      Date  
Chair, SFWMD Governing Board                      8/15/02

  
\_\_\_\_\_  
Jay Slack                      Date  
Florida Field Supervisor                      8/29/02

**SFWMD PROCUREMENT APPROVED:**

  
\_\_\_\_\_  
Signature                      Date  
8/7/02

**SFWMD OFFICE OF COUNSEL APPROVED:**

  
\_\_\_\_\_  
Signature                      Date  
8/7/02

## APPENDIX D

### TABLE OF SUBSTANTIVE ISSUES OF SIGNIFICANT CONCERN

#### Substantive Issues of Significant Concern

People interviewed were asked to identify the issues related to CSOP about which they were most concerned. The specific substantive issues of significant concern that were identified have to do with flooding east of L-31N and C-111, hydrologic conditions in natural areas, water supply, pre-storm drawdown, access for recreation, and comprehensive Everglades restoration. The different perspectives on these substantive issues are presented according to different primary interests that emerged during the interviews. These interests were: local community, agricultural, environmental, recreational, tribal, and state agency. **The list should not be viewed as characterizations by the Institute of different agencies' or non-governmental organizations' official positions on these issues. Also, individuals or entities within a particular category may not share or emphasize all of the issues presented under the categories.** Rather, the following table reveals the range of different interests on key substantive issues of significant concern that will need to be addressed and satisfactorily reconciled to garner broad support for a CSOP solution.

#### Issues of Significant Concern

Issue	Local Community Interests	Agricultural Interests	Environmental Interests	Recreational Interests	Tribal Interests	State Agency Interests
<b>Flooding east of L-31N and C-111</b>	<ul style="list-style-type: none"> <li>Preventing the type of flooding that has occurred in the city over the last 8-10 years, e.g., with Hurricane Irene that caused widespread flooding and extensive property damage and deaths.</li> <li>Balancing flood</li> </ul>	<ul style="list-style-type: none"> <li>Addressing devastating flooding (3 floods in last 10 years), which was caused in large part by relatively recent higher water levels in canals and which could have been avoided.</li> <li>Avoiding</li> </ul>	<ul style="list-style-type: none"> <li>Ensuring that while agricultural and urban interests are provided with flood protection, the corresponding hydrologic improvements for ENP are also achieved.</li> <li>Clarifying that recent improvements in flood protection that are</li> </ul>	<ul style="list-style-type: none"> <li>Avoiding backfilling of canals, which would be detrimental to flood control.</li> <li>Removing impediments to flow to prevent flooding.</li> </ul>		<ul style="list-style-type: none"> <li>Minimizing impacts on private property.</li> <li>Clarifying that agricultural land can't be kept dry 100 percent of the time, but that the C-111 Project will help protect agriculture.</li> </ul>

Issue	Local Community Interests	Agricultural Interests	Environmental Interests	Recreational Interests	Tribal Interests	State Agency Interests
	<p>protection, water supply, and protection of the natural environment.</p> <ul style="list-style-type: none"> <li>Addressing serious flooding situation that occurs throughout Miami-Dade County year after year.</li> <li>Correcting one of the main causes of past flooding, i.e., having canals at Test 7 levels when Hurricane Irene and the No-Name Storm hit.</li> <li>Addressing flooding in the 8.5 SMA, which is result of impoundment of water to the north between L-31N and the L-67 extension.</li> </ul>	<p>continuing and worsening flooding problems, especially root-zone flooding due to high water levels in the canals.</p> <ul style="list-style-type: none"> <li>Exploring lining canals to prevent seepage and the associated root-zone flooding.</li> <li>Limiting the duration of flooding with storms such as Hurricane Irene and the No-Name Storm, which was affected by the way the system was operated, i.e., Test 7 canal levels.</li> </ul>	<p>now accepted as the norm may not be available in the future, so for example, trees that are more susceptible to flooding may not be suitable for the area east of L-31N.</p>			
<p><b>Hydrology in natural areas</b></p>	<ul style="list-style-type: none"> <li>Balancing flood protection, water supply, and protection of the natural environment.</li> </ul>		<ul style="list-style-type: none"> <li>Avoiding further delay in achieving restoration of historic hydrologic flow in ENP.</li> <li>Protecting short hydroperiod wetlands as a key resource at stake in the MWD and C-111 projects.</li> <li>Giving priority in CSOP to the needs of</li> </ul>		<ul style="list-style-type: none"> <li>Preventing loss of tree islands in WCA-3A and 3B.</li> <li>Addressing issues of flooding of tribal lands caused by operational policies implemented as a result of the CSSS biological opinion, e.g., closing of the S-12's, which caused water to back up and</li> </ul>	<ul style="list-style-type: none"> <li>Meeting the obligation under the law to provide water to the Park to protect Park resources.</li> <li>Addressing the detrimental effects ISOP has had on the Park.</li> <li>Protecting CSSS Subpopulation D, which is already on the</li> </ul>

Issue	Local Community Interests	Agricultural Interests	Environmental Interests	Recreational Interests	Tribal Interests	State Agency Interests
			the environment.		<p>flood WCA-3A. Tree islands have been devastated and many destroyed.</p> <ul style="list-style-type: none"> <li>• Addressing consequences of flooding in WCA-3A, which has adversely affected snail kite habitat. Other species like the wood stork and the American crocodile have been adversely affected.</li> <li>• Preventing water pollution from agricultural and urban areas.</li> <li>• Addressing the Big Cypress' hydrologic needs. It is drier than it ought to be and long-term changes in vegetation have occurred.</li> </ul>	<p>wet side and likely to get wetter with IOP.</p> <ul style="list-style-type: none"> <li>• Preventing the loss of tree islands in WCA-3A and 3B.</li> <li>• Protecting other species besides the sparrow, e.g., snail kite and limpkin.</li> <li>• Avoiding jeopardizing state lands with CSOP. WCA-3A has been harmed by the closing of the S-12 structures.</li> <li>• Correcting the lack of flow through WCA-3B, which has caused subsidence, increasing the risk of flooding of tree islands.</li> <li>• Addressing the fact that WCA-3B is drier than it ought to be, increasing the risk of fire.</li> </ul>

Issue	Local Community Interests	Agricultural Interests	Environmental Interests	Recreational Interests	Tribal Interests	State Agency Interests
<b>Water supply</b>	<ul style="list-style-type: none"> <li>• Providing for reservoirs for water supply during drought.</li> <li>• Balancing flood protection, water supply, and protection of the natural environment.</li> </ul>	<ul style="list-style-type: none"> <li>• Improving the water management system because, originally, all the canals and associated structures were built simply to control flooding. Now they are being used for specific water deliveries programs but the system was not built for that purpose, and therefore it is not working.</li> </ul>		<ul style="list-style-type: none"> <li>• Treating water needs of citizens as just as important as any environmental need to restore the Everglades.</li> </ul>	<ul style="list-style-type: none"> <li>• Avoiding moving too much water to the east with MWD and depleting water resources of tribal lands.</li> <li>• Protecting tribal water rights as CERP is planned and implemented.</li> </ul>	
<b>Pre-storm drawdown</b>	<ul style="list-style-type: none"> <li>• Having the ability to prepare for the rainy season and respond to the public's need for flood protection in anticipation of a storm.</li> </ul>	<ul style="list-style-type: none"> <li>• Maintaining lower canal levels so it doesn't take as long to draw down the canals in anticipation of a storm event.</li> </ul>	<ul style="list-style-type: none"> <li>• Avoiding misuse of an "emergency" standard to lower canal levels.</li> <li>• Avoiding providing carte blanche to the District and the Corps to operate the system for flood protection regardless of the consequences to ENP. In the past, emergency meant either a hurricane or named tropical storm. Now, there is a 3<sup>rd</sup> test – any storm event that could cause flooding and present a health and safety issue.</li> </ul>			

Issue	Local Community Interests	Agricultural Interests	Environmental Interests	Recreational Interests	Tribal Interests	State Agency Interests
<b>Access for recreation</b>				<ul style="list-style-type: none"> <li>Preventing the filling of the L-67C canal or any other canals that provide recreational fishing opportunities as part of MWD. The fishing value of canals is unique. They support many freshwater fishing tournaments. There are significant economic benefits associated with this recreational resource.</li> </ul>		<ul style="list-style-type: none"> <li>Addressing concerns about filling in L-67A and blocking access for fishermen. This is one of the most used canals and the site of tournaments.</li> </ul>
<b>Everglades restoration</b>	<ul style="list-style-type: none"> <li>Protecting the Everglades for future generations</li> <li>Taking a balanced approach, considering the needs of the ecosystem and flooding impacts.</li> <li>Keeping in mind that taxpayers fund the restoration projects.</li> <li>Keeping in mind that CERP isn't a return to natural systems. It's an even greater manipulation of the system than is occurring now.</li> </ul>	<ul style="list-style-type: none"> <li>Ending single species management because it has been to the detriment of the ENP and the rest of the Everglades.</li> </ul>	<ul style="list-style-type: none"> <li>Providing significant improvements in operations and possibly additional structural improvements, as critical for ENP. This is the overriding priority of CSOP.</li> </ul>	<ul style="list-style-type: none"> <li>Protecting the environment. What is good for the environment is good for the sport of fishing.</li> <li>Ending single species management because it has been to the detriment of the ENP and the rest of the Everglades.</li> </ul>	<ul style="list-style-type: none"> <li>Protecting ENP and the rest of the Everglades equally. ENP should not be the only part of the Everglades protected at the expense of the rest of the Everglades.</li> <li>Preserving tribal-owned Everglades in their natural state.</li> <li>Ending single species management because it has been to the detriment of the ENP and the rest of the Everglades.</li> </ul>	<ul style="list-style-type: none"> <li>Making sure state funds are spent in a financially responsible manner.</li> <li>Ending single species management because it has been to the detriment of the ENP and the rest of the Everglades.</li> </ul>

## APPENDIX E

### STAKEHOLDER COMMENTS ON PROCESS DESIGN ISSUES

#### Lack of Trust

1. The perception that an agency has gone back on a commitment or a promise in the past.

##### Illustrative comments:

- *What assurances do we have that the Corps will not do what it has done in the past and abandon collaboration part way through the process?*
- *Very upset with the District backing out of the agreed IOP alternative.*
- *U.S. Department of Interior (DOI) has a record of pulling out of agreements at the last moment.*

2. The perception that persons or agencies were working behind the scenes contrary to public pronouncements.

##### Illustrative comments:

- *Citizens were lied to by the agencies in the past when they were told that the canal water levels had not changed.*
- *Persons hired by certain groups have a vested interest in keeping issues from being resolved. Uncertainty and conflict are creating a lot of work for people.*
- *ENP and environmental groups are always secretly helping each other.*
- *How can good faith be developed going into the CSOP process right after the exclusionary process used in IOP?*
- *Agencies have misused the computer, putting out thousands of pages instead of producing concise, useful reports in hard copy.*
- *Agencies can't be trusted to tell the truth.*
- *Contractors for the agencies are often times too connected with the agencies because of past or future business dealings with them. Studies are biased.*
- *Flooding in urban areas is largely the result of increased impervious surfaces and lack of stormwater facilities and not, as claimed by urban interests, the result of higher canal levels. ENP is being blamed for flooding in order to get federal dollars to resolve local, self-made problems.*

3. The perception that agency action was not driven by legal requirements and technical data but rather because persons within the agencies manipulated legal requirements and technical data to advance a preferred outcome.



Illustrative comments:

- *The emergency standard used to lower canal levels has been misused. In the past, emergency meant either a hurricane or a named tropical storm. Now, there's a 3<sup>rd</sup> test — any storm event threat that could cause flooding and represent a health and safety issue. This is carte blanche for the District and the Corps to operate the system for flood protection regardless of the consequences to the ENP.*
  - *The Corps made decisions regarding the CSSS to keep their staff from going to jail and this has been to the detriment of other parts of the system.*
  - *Do not believe the USFWS study on the CSSS and do not think the CSSS is endangered. The CSSS is being used by the ENP and USFWS to attain other goals they have for ENP. USFWS has been caught in other situations outside the state lying about problems to endangered species. Its credibility is questionable.*
  - *The District is making decisions based on politics and not on the law, facts and the science. The District said it was extra modeling that caused them to back out of the IOP alternative, but when pressed, the District admitted there was no new modeling but rather a supposedly new review of existing data.*
  - *The ENP superintendent wanted a “notch in his belt” by acquiring the 8.5 SMA and expanding the ENP. It's been a waste of time that has seriously harmed the Park.*
  - *Agricultural and urban interests want flood protection aspects of the MWD and C-111 projects built first but the corresponding hydrological fixes for ENP never get built afterwards. Then the agricultural and urban interests assume the new level of flood protection must be kept in perpetuity but with no corresponding hydrologic benefits for ENP having been achieved.*
  - *Presentations by the agencies are too technical, use too many acronyms and too much agency internal language that makes no sense to other participants and is intended to allow the agencies to do whatever they want.*
4. The perception that certain agencies or groups never consider their concerns or act against the interests of the stakeholder.

Illustrative comments:

- *DOI only wants to protect their piece of the Everglades but are willing to sacrifice other parts of the Everglades. State-owned and Miccosukee Tribe-owned Everglades are sacrificed despite legislative mandate that these areas be preserved in their natural state.*
- *ENP does not care in any way about the farming community.*

- *When the environmental groups or ENP cannot agree to a proposal, they are labeled by the agricultural and local governments as “hardheaded.” When the District goes as far as backing out of an agreement, they are simply called “prudent.”*
  - *ENP is keeping water levels high so they can flood the agricultural areas and then buy the land for the ENP at a cheaper rate.*
  - *Recent flooding in urban areas is the result of a number of factors but primarily the increased water levels in the canals.*
  - *Some people feel that the blind rush to save the CSSS caused the human deaths that have occurred because of the flooding.*
  - *When it comes to a battle between the bird and people getting flooded, the bird will lose.*
  - *Government agencies have no commitment to private property or agriculture.*
  - *ENP has a “manifest destiny” philosophy. ENP wants the whole area of the greater Everglades for the Park to the exclusion of everyone else, especially the sportsmen.*
  - *Environmental organizations do not want recreation to be a part of this resource.*
  - *Environmental extremism is crippling restoration efforts. There is a refusal to accommodate human needs in resolving environmental issues.*
  - *The objectives of the Park and South Dade agriculture are diametrically opposed.*
5. Perceptions about the delays, dispute among agencies, or errors that have occurred during the planning and implementation of the MWD and C-111 projects. Consequently, there is an assumption that the responsible agencies — ENP, the District, the Corps, and USFWS – cannot be trusted to competently complete these projects.

Illustrative comments:

- *The fights between the agencies in implementing the MWD and C-111 projects are inexcusable.*
- *Most farmers blame the floods of 1999 and 2000 on the delays caused by internal agency disputes.*
- *Since the projects have not been completed, DOI, ENP, and USFWS have not done their congressionally mandated jobs, and the persons responsible should be dismissed.*
- *Enough time must be given to the planning and public input on these projects. Sometimes the rush to get things done creates mistrust with all parties to the process.*

- *ENP has no idea what the correct water levels are.*
- *Agency analysis needs to be peer reviewed*

## STAKEHOLDERS' POSITIVE COMMENTS REGARDING ACTIONS BY PARTICULAR AGENCIES

### Illustrative comments:

- *The Corps and the District need to create some "wobble room" as far as dealing with the movement of water. Presently there is no room for things to go wrong and this greatly affects the flexibility necessary to operate the system. Because of the uncertainties involved, e.g., whether a storm event will take place and the magnitude of the storm event, the system must have substantial flexibility.*
- *Greg May and Henry Dean deserve praise. For the first time, we have two people working together who understand the need for balance.*
- *Some of the ENP personnel are better now than before in terms of dealing with outside interests, but they still are mainly concerned with ENP and not with any of the other significantly affected groups.*

## Need to Implement Projects Quickly

### Illustrative comments:

- *The projects' worst enemy is delay. The more delay, the less public support. Everglades restoration funding could dry up.*
- *My understanding is that there is agreement on these projects. There is no conflict to resolve.*
- *ENP has gotten worse because of inaction.*
- *Property damage has been caused because the agencies have not removed the impediments to water flow to prevent flooding.*
- *Without political support and strong support from stakeholders, the money for restoration will not be there.*
- *It is urgent to get CSOP done in order to move the CERP projects forward.*
- *Once completed, the C-111 Project is supposed to make sure problems attributable to high canal levels don't occur.*

- *Our main concern is delay in implementing the MWD and C-111 projects and whether the projects' purpose of restoring the historic hydrologic flow to ENP will be accomplished.*
- *Projects need to be done on time to earn the trust of legislators and the public.*
- *We are exasperated with how long it has taken the MWD and C-111 projects to get implemented. The delays are inexcusable. Twelve years is too long a wait to do what Congress told these agencies to do. We are not interested in talking about the projects. We just want the projects to be completed and operational.*
- *The blame for the MWD Project not being completed belongs to the ENP and USFWS. Environmental groups have not helped matters by seeking to have Tamiami Trail elevated and focusing on land purchases along the edges of ENP. This has been a wasteful process of both time and money, delaying the implementation of the MWD project.*
- *The MWD and C-111 projects are long overdue. They have been dragging on forever. But the parties will not be able to control the fact that court decisions could throw a wrench in the works and affect the schedule.*

## Skepticism about Agencies' Commitment to Collaboration

### Illustrative comments:

- *Are the sponsoring agencies really committed to a collaborative process?*
- *The collaborative EIS is a smokescreen for the ENP and USFWS to get what they want.*
- *The facilitators are only going to be responsive to the federal agencies that pay them because they have ongoing working relationships with those agencies.*
- *The federal agencies listen to you but then do whatever they want.*
- *DOI has a record of pulling out of agreements at the last minute.*
- *Just offering the opportunity for public comment (during scoping, on the Draft EIS, etc.) does not provide sufficient or meaningful participation. The Corps will just "blow us off."*
- *The process of using hired facilitators to conduct interviews instead of the sponsoring agencies meeting directly with the affected parties is "bogus," a form of issue management.*
- *In IOP, the agencies were pressured into reaching agreements while not even being allowed to listen to the affected parties' concerns.*
- *The government agencies hide behind closed doors.*
- *Would prefer to participate fully, not as in CERP teams, where the agencies participate and the other affected parties are allowed to just observe and comment at the end.*

- *Don't like the "single species management" approach taken by USFWS. The CSSS plan is an example of this approach. All species should be considered in any approach taken and socioeconomic considerations must also be weighted.*
- *ENP, USFWS, and DOI are only interested in things that affect them. These agencies must learn to balance other interests.*
- *ENP, the Park Service, and DOI view the restoration of ENP as the end all and be all, and damn everything and everyone else.*
- *ENP does not care in any way about the farming community.*
- *ENP is keeping the water levels high so they can flood the agricultural areas and then buy the land for ENP at a cheaper rate. The "hole in the donut" inside the Park and the Frog Pond outside ENP have been cited numerous times as examples of the ENP strategy to obtain more and more agricultural lands for ENP.*
- *USFWS does not have any credibility with the farming community.*
- *The region's water issues should not be driven by one species while hurting other species such as deer, bald eagles, and snail kites, the agricultural community, and all the communities near ENP.*
- *The collaborative process' only purpose is to make things look good for the regulators.*
- *ENP and USFWS are only thinking about their own interests and not developing a balanced approach. The process will never work unless these agencies consider other entities' interests. Single species management will jeopardize the Everglades ecosystem.*
- *Single species management is wrong. The CSSS issue has been manipulated by the ENP and USFWS to get more property for the ENP.*
- *DOI only wants to protect their piece of the Everglades while sacrificing other parts of the Everglades owned by the state and the tribes.*
- *There is a lack of accountability in the ENP and USFWS.*
- *Single species management must stop. Solutions to the Everglades issues must always consider the impact to all species and the human population*
- *ENP and USFWS are single-purpose oriented. The Corps, SFWMD, and Florida Department of Environmental Protection have a duty to balance a variety of interests — flood control, ecological values, water supply, and ownership responsibilities. This creates inevitable conflicts between agencies as well as between some agencies and the public. All agencies need to take a balanced approach.*
- *The IOP process caused perception problems for South Dade farmers. Some state agencies would also like to have been involved.*

- *The Park wants all the land to Krome Avenue.*
- *The Park won't get everything they want, but if they don't, they'll publicly criticize the plan.*
- *Reaching agreement on CSOP will require "give and take". The Park doesn't seem willing to make any concessions to accommodate others. They are very rigid, and things they have insisted upon in the past have not always turned out to be best for the Park. But, if the parties can't reach agreement on CSOP, then CERP will not be successful either.*

## Process/Meeting Fatigue

### Illustrative comments:

- *Government doesn't realize what a burden it is to sit in meetings with agencies all the time. Keep in mind we have a life.*
- *Too many Everglades meetings and burnout by agencies and other interests.*
- *Too many activities dealing with the Everglades, and the resources of interested agencies are insufficient to adequately handle all the issues involved.*
- *Process is time-consuming and inefficient. If nothing gets done, ENP is harmed.*
- *There are so many meetings going on about the Everglades every month that we cannot keep up with the details.*

## SUGGESTIONS FOR EFFECTIVE COLLABORATION ON CSOP

### Illustrative comments:

- *Coordinate meetings with other Everglades activities in South Florida and use e-mails and document transfer through the Internet for efficient use of everyone's time.*
- *Meetings should not conflict with CERP meetings.*
- *Information should be shared by hard copy. There have been no reports produced for ISOP or IOP.*
- *Clarify what decisions are going to be made collaboratively.*
- *The presentations by the agencies are too technical, use too many acronyms and too much agency internal language that makes no sense to other participants and is intended to allow agencies to do whatever they want.*

- *Meetings need to be fewer but intensive. It is better to have a multiday meeting than schedule short meetings over a period of time. Continuity and momentum towards a consensus is lost by short meetings over an extended period of time.*
- *Creativity is needed.*
- *Decision making is transparent. Past practice of the Corps has been to reserve decision making and only seek input.*
- *It is critical to get everyone to the table and make an honest attempt to share information.*
- *You don't want to reopen issues through the collaborative process.*
- *Materials should be distributed in advance.*
- *Agency and groups must bring people to the meetings with the power to negotiate. We never seem to get the "yes" guy.*
- *Principals should get involved — not their representatives — to the extent possible.*

Stakeholders' offer of using their resources to help the CSOP EIS process.

**Illustrative comments:**

- *If the process were coordinated with other activities, Miami-Dade County's resources would be considerable. They have full computer capabilities, modeling expertise, experience with other facilitated processes, and knowledge of interests and parties.*
- *The University of Florida Agricultural Extension office in south Dade has large meeting facilities available and can be reserved ahead of time.*

## APPENDIX F:

### NEPA STEPS AND OPPORTUNITIES FOR ENHANCED PARTICIPATION AND COLLABORATION

NEPA provides a range of opportunities for interagency collaboration and enhanced multi-stakeholder participation at each key step in the EIS process. The following table lists the key steps in an EIS process and highlights some of the options and opportunities that could be considered by the Corps for enhancing collaboration with the other sponsoring agencies and multi-stakeholder participation in the CSOP EIS process.

NEPA Steps	Inform	Consult	Involve	Collaborate
<p><b>Propose an action:</b> The proposed action by the Corps is the development of a combined structural and operating plan for the MWD and C-111 projects.</p>			<ul style="list-style-type: none"> <li>Corps could consult directly with and seek input from other federal, tribal, state, and local agencies, as well as nongovernmental stakeholder groups to help appropriately frame and describe the proposed CSOP action in a manner that will invite and motivate their constructive engagement in the CSOP EIS process.</li> </ul>	<ul style="list-style-type: none"> <li>Corps could work closely with ENP, SFWMD, and USFWS (due to their key roles in funding, concurring, implementing, and monitoring the final CSOP decision) to collaboratively frame the proposed action so that it clearly describes the project's congressionally authorized purposes, needs, and objectives, as well as regulatory and fiscal constraints that must be satisfactorily addressed in order to develop a viable operating plan for the combined MWD and C-111 projects.</li> </ul>
<p><b>Designate cooperating agencies:</b> Cooperating agencies in a NEPA process may be any federal, state, local, or tribal agency with discretionary authority over the proposed action, jurisdiction by law, or special expertise with respect to the environmental impacts expected to result from a proposed action.</p>				<ul style="list-style-type: none"> <li>(Because of their central roles and necessary expertise in developing a viable solution for CSOP, the Corps has indicated its intent to designate ENP, SFWMD, and USFWS as cooperating agencies.)</li> <li>Corps could formally extend cooperating agency status invitations to additional interested state, local, and tribal agencies with CSOP project-related information, expertise, or jurisdiction</li> </ul>



NEPA Steps	Inform	Consult	Involve	Collaborate
<p><b>Notice of Intent:</b> Publication of a Notice of Intent in the <i>Federal Register</i> is the first formal step in an EIS process. It serves as the official legal notice that a federal agency is commencing the preparation of an EIS. The Notice of Intent describes the proposed action, possible alternatives to the proposed action, and the scoping process that will be used by the lead agency.</p> <p><b>Scoping:</b> Scoping is an open public process for soliciting input to identify the range and nature of issues and potential impacts associated with the proposed action that need to be addressed in the EIS and the methods by which they will be evaluated.</p>	<ul style="list-style-type: none"> <li>Corps could use the Notice of Intent to emphasize its commitment to interagency and stakeholder collaboration on CSOP, to describe the proposed action in plain language understandable to the general public, to clearly state the required objectives of the project as well as the constraints and parameters, and to outline a scoping process that will invite constructive participation and engagement by affected and interested stakeholders in contributing to the development of a viable solution for CSOP</li> <li>Corps could use the scoping process to establish realistic expectations among the public by clarifying and emphasizing the CSOP project purpose and the authorized project objectives.</li> <li>Corps could initiate the scoping process with the establishment of a public information clearinghouse, along with a dedicated Web site, that provides comprehensive information about the CSOP process in plain language understandable to the general public and that also serves as a common source for dissemination of information among cooperating agencies, as well as to other interested members of the public.</li> </ul>	<ul style="list-style-type: none"> <li>Corps could use the scoping process to help identify additional desired objectives that might be pursued in addition to the authorized objectives if they can also be achieved within the project constraints.</li> <li>Corps could design and conduct public scoping meetings in ways that invite participation and encourage more constructive engagement with the public.</li> </ul>	<ul style="list-style-type: none"> <li>Corps could supplement scoping meetings with targeted outreach activities to stakeholder groups to promote constructive engagement and to identify important issues and concerns related to the CSOP project.</li> </ul>	<ul style="list-style-type: none"> <li>Corps could jointly conduct the scoping process with other sponsoring agencies and other cooperating agencies to help establish the credibility and legitimacy of a collaborative interagency CSOP EIS process as well as ensure the broadest level of stakeholder participation in identifying issues and concerns related to the CSOP project.</li> <li>Corps could establish a multi-stakeholder advisory body to provide advice and recommendations on CSOP.</li> </ul>

<b>NEPA Steps</b>	<b>Inform</b>	<b>Consult</b>	<b>Involve</b>	<b>Collaborate</b>
<p><b>Develop alternatives:</b> The lead agency develops a range of alternative ways to accomplish the purpose and needs of the proposed action while also addressing important issues and impacts identified during the scoping process.</p>			<ul style="list-style-type: none"> <li>Corps could develop a preliminary set of alternatives to consider for CSOP and seek direct feedback from cooperating agencies and stakeholders before finalizing them for further analysis.</li> </ul>	<ul style="list-style-type: none"> <li>Corps and other sponsoring agencies could collaboratively develop an initial set of alternatives for CSOP with other cooperative agencies and/or a multi-stakeholder advisory body.</li> </ul>
<p><b>Analyze alternatives:</b> The lead agency analyzes the initial set of alternatives and documents its method for evaluation.</p>	<ul style="list-style-type: none"> <li>Corps could clearly document the methodology and rationale for the analysis of alternatives as well as their conclusions and make these readily available to the public.</li> </ul>	<ul style="list-style-type: none"> <li>Corps could solicit comments and feedback on their analysis of alternatives and their conclusions.</li> </ul>	<ul style="list-style-type: none"> <li>Corps could hold public workshops to explain their analysis of alternatives to enhance understanding and obtain feedback directly from interested stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>Corps and other sponsoring agencies could collaboratively analyze alternatives with other cooperating agencies and/or a multi-stakeholder advisory body to help ensure mutual understanding of the analytical methodology and conclusions.</li> </ul>

<b>NEPA Steps</b>	<b>Inform</b>	<b>Consult</b>	<b>Involve</b>	<b>Collaborate</b>
<p><b>Draft EIS:</b> The lead agency prepares and disseminates a Draft EIS for public review and comment. The Draft EIS must explain why the lead agency is undertaking the proposed action and what objectives they intend to achieve by that action. The Statement of Purpose and Need section should explain the problem being addressed and discuss the expected benefits from the proposed action. A range of alternatives that could accomplish the proposed action's purpose and need must be presented, along with an analysis of how well they would achieve the desired objectives. If possible, the lead agency should present its preferred alternative that best fulfills the purpose and need of the proposed action. The Draft EIS must also describe the environment of the area affected by the proposed action and the alternatives and discuss both direct and indirect environmental impacts as well as their significance. Any proposed means for mitigating adverse environmental impacts must also be discussed. Any adverse impacts that cannot be avoided through mitigation measures, project redesign, or selection of environmentally superior alternatives must be identified.</p>	<p>• Corps could produce a Draft EIS that is written in plain language that avoids excessive technical jargon or over reliance on technical analysis that would be confusing to the general public. (Technical analyses should be included in appendices of the EIS.) As much as possible, information could be summarized and presented in a format that decision makers and the general public can readily understand.</p>	<p>• Corps could facilitate public commenting on the Draft EIS by accepting written, verbal, and Internet submissions.          • Corps could hold open house sessions to explain the alternatives analyzed and to seek feedback on the potential impacts of the preferred alternative.</p>	<p>• Corps could hold targeted stakeholder focus group meetings to explain the alternatives analyzed, seek specific feedback on the expected impacts of the proposed preferred alternative, and solicit suggestions on how to improve it.</p>	<p>• Corps and other sponsoring agencies could develop a preferred alternative collaboratively with other cooperating agencies and/or a multi-stakeholder advisory body based on a joint analysis of the alternatives.</p>

<b>NEPA Steps</b>	<b>Inform</b>	<b>Consult</b>	<b>Involve</b>	<b>Collaborate</b>
<p><b>Supplemental EIS:</b> The lead agency must prepare a supplement to a Draft or Final EIS if substantial changes are made in a proposed action that would affect its environmental impacts or if there are new circumstances or information relevant to the analysis of environmental impacts of the proposed action.</p>	<ul style="list-style-type: none"> <li>Corps could produce a Supplemental EIS that is written in plain language that avoids excessive technical jargon or over reliance on technical analysis that would be confusing to the general public. (Technical analyses should be included in appendices of the EIS.) As much as possible, information could be summarized and presented in a format that decision makers and the general public can readily understand.</li> </ul>	<ul style="list-style-type: none"> <li>Corps could improve and refine the preferred alternative identified in the Draft EIS based on public comments received and any additional information or analyses conducted and issue a Supplemental Draft EIS for a second round of public comment.</li> <li>Corps could facilitate public commenting on the Supplemental EIS by accepting written, verbal, and Internet submissions.</li> <li>Corps could hold open house sessions to explain the new alternatives analyzed and to seek feedback on the potential impacts of the revised preferred alternative.</li> </ul>	<ul style="list-style-type: none"> <li>Corps could hold targeted stakeholder focus group meetings to explain the revised preferred alternative, seek specific feedback on the expected impacts of the revised preferred alternative, and solicit suggestions on how to improve it further.</li> </ul>	<ul style="list-style-type: none"> <li>Corps and sponsoring agencies could develop an improved and refined preferred alternative collaboratively with other cooperating agencies and/or a multi-stakeholder advisory body, based on a joint consideration of public comments received on the Draft EIS, and issue a Supplemental Draft EIS for broader review and public comment.</li> </ul>

<b>NEPA Steps</b>	<b>Inform</b>	<b>Consult</b>	<b>Involve</b>	<b>Collaborate</b>
<p><b>Prepare Final EIS:</b> The Final EIS is prepared after comments on the Draft EIS (and Supplemental EIS if issued) have been received and reviewed. The lead agency must respond to all comments received and discuss responsible opposing views on issues raised that were inadequately addressed in the Draft EIS. If consideration of public comments results in significant modifications to the proposed action or alternatives, the development and evaluation of new alternatives, or changes in the method of analysis, a supplement to the Draft EIS may be warranted. Otherwise, the Final EIS would essentially constitute a rewrite of the Draft EIS incorporating appropriate suggestions from the comments gathered and adding any new information or analyses since the Draft EIS was issued. The Final EIS is circulated to agencies with jurisdiction or special expertise, appropriate regulatory agencies, persons who submitted comments or who requested a copy. This is the final opportunity for public review of the proposed action and the alternatives that were analyzed and considered.</p>			<ul style="list-style-type: none"> <li>• Sponsoring agencies could hold a stakeholder workshop to solicit suggestions on how to further improve the preferred alternative.</li> </ul>	<ul style="list-style-type: none"> <li>• Sponsoring agencies could develop an improved and refined preferred alternative collaboratively with other cooperating agencies and/or a multi-stakeholder advisory group, based on a joint consideration of public comments received on the Draft EIS (and Supplemental EIS if issued).</li> </ul>

NEPA Steps	Inform	Consult	Involve	Collaborate
<p><b>Record of Decision:</b> The Record of Decision represents the lead agency's official ultimate decision regarding the final course of action it will take after consideration of all the information gathered during the EIS process. The Record of Decision should explain why the decision was made. It should include the key factors and alternatives that were considered as well as identify the environmentally preferred alternative. Any mitigation measures being taken should be clarified, along with the associated monitoring program for those measures.</p>				<ul style="list-style-type: none"> <li>Corps could consider comments received on the Final EIS and consult with other sponsoring agencies, cooperating agencies, and/or a multi-stakeholder advisory group before making a final decision.</li> </ul>
<p><b>Implement and monitor decision:</b> If mitigation measures are adopted in the Record of Decision, the lead agency must also include a monitoring and enforcement program for each mitigation measure. Monitoring is recommended to confirm their predictions of impact, to ensure the effectiveness of any mitigation, and to adapt projects to account for uncertainties in impact prediction.</p>	<ul style="list-style-type: none"> <li>Corps could provide readily available access to monitoring data and analysis related to progress on achievement of the CSOP project objectives.</li> </ul>		<ul style="list-style-type: none"> <li>Sponsoring agencies could convene stakeholder workshops to review and analyze monitoring data related to progress on achievement of the CSOP project objectives.</li> </ul>	<ul style="list-style-type: none"> <li>Corps could establish an adaptive management process with other relevant agencies to collaboratively monitor implementation of the Record of Decision and the achievement of the project objectives as well as to consider the need for adjustments based on project performance.</li> </ul>

## APPENDIX G

### TABLES ON CSOP STAKEHOLDER PARTICIPATION PROCESS DESIGN ALTERNATIVES

#### Notes on CSOP Advisory Committee Design Options Tables

1. These tables are intended to provide a quick overview of the different CSOP Advisory Committee design options being reviewed and the major advantages and disadvantages of each option. Also provided are some suggestions on how to alleviate some of the disadvantages for each option. The CSOP Collaborative Process Assessment report contains a more detailed description of concepts such as Core Planning Team, CSOP Advisory Committee, Technical Working Groups and others used in the tables.
2. All assumptions in the tables on the applicability of or exemptions to FACA must be determined by legal counsel.
3. The table for each alternative is intended to provide all the relevant comments for that alternative. Therefore, there is some repetition of advantages, disadvantages and suggestions between the tables since some of the options share some of these items.
4. No discussion of advantages or disadvantages is presented specifically for Technical Working Groups, Focus Groups or Technical Workshops (except for Focus Groups as part of Alternative B that contains no advisory body) since these collaborative process elements are present in all the collaborative process options in the tables.
5. Technical Working Groups consisting of government and private stakeholders may be subject to FACA.
6. For all collaborative process options, the Core Planning Team retains the decision making power for CSOP issues as set forth in the MOU. The Core Planning Team is to engage in a collaborative, consensus-based decision-making regarding procedural and substantive steps in the EIS process up to the Record of Decision. The USACE retains the final authority for the CSOP Record of Decision.
7. All advisory committees, regardless of makeup, are advisory in nature and will strive to reach consensus on issues for advice to the Core Planning Team. If consensus cannot be achieved, the areas of agreement and disagreement will be documented and taken into consideration by the Core Planning Team.

## ALTERNATIVE #1: FACA Advisory Committee

POTENTIAL CSOP COLLABORATIVE PROCESS	ADVANTAGES	DISADVANTAGES	SUGGESTIONS FOR OVERCOMING DISADVANTAGES
<p>Core Planning Team            ↑            Multi-Stakeholder FACA Committee            ↑            1. Technical Working Groups            2. Technical Workshops            3. CSOP Focus Groups</p> <p style="text-align: center;">+</p> <p>Government to Government Consultation with Native American Tribes</p>	<ul style="list-style-type: none"> <li>• Core Planning Team retains final decision-making authority for CSOP in accordance with MOU.</li> <li>• Ability to build broad consensus among stakeholders with history of conflict that could have short- and long-term benefits.</li> <li>• Core Planning Team selects members of FACA Committee and participates in establishing the procedures to be used by the FACA Committee.</li> <li>• Stakeholders are required to learn and consider other stakeholders' needs and interests.</li> <li>• Conducive to alleviating stakeholder mistrust and skepticism of collaborative process.</li> <li>• While more time consuming up-front, may be most time efficient overall by lessening disputes at the final stages of CSOP decision-making.</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment of FACA Committee may be time consuming and could cause CSOP schedule delays.</li> <li>• Some members of FACA Committee could be disruptive to the collaborative process.</li> <li>• Working to develop consensus as much as possible within the FACA Committee will add additional time, expense and commitment of agency resources to EIS requirements.</li> <li>• Potential poor participation in the FACA Committee after initial meetings due to process fatigue or lack of interest in issues not affecting stakeholders' interests.</li> <li>• Some stakeholders may be hesitant to fully discuss positions within FACA Committee because of opposing views or personality conflicts.</li> <li>• Some stakeholders may object to joining a FACA Committee because of nature or rules of the committee, time requirements or other reasons and therefore some stakeholders' interests may not be represented.</li> </ul>	<ul style="list-style-type: none"> <li>• Determine the procedural and time requirements for establishing a FACA Committee and assess whether the schedule can still be achieved by overlapping tasks, e.g., allow for focus groups and technical workshops to be liberally used during the timeframe necessary to establish a FACA committee and keep all stakeholders apprised as to the status of the FACA committee.</li> <li>• Have clear ground rules and agreement by stakeholders as to the collaborative nature of the FACA Committee and procedures for dismissing members not substantially complying with the ground rules.</li> <li>• FACA committee members should be chosen to assure as much expertise as possible on CSOP issues and thereby limiting needs for technical working groups and technical workshops.</li> <li>• FACA committee members should be carefully chosen for their ability to articulate interests clearly and work with others to resolve disputes.</li> <li>• FACA committee meetings</li> </ul>



			<p>should be neutrally facilitated, and facilitators must create an atmosphere for open and meaningful dialogue for all members. In between meetings, facilitators must make sure participants stay engaged and work to resolve issues as they arise.</p> <ul style="list-style-type: none"><li>• FACA Committee meetings need to be designed and conducted to be productive and worth members' time.</li><li>• Make the Core Planning Team meetings open to the public so that the stakeholders can evaluate the rationale for the decisions being made.</li></ul>
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## ALTERNATIVE #2: Workshops, Working Groups and Focus Groups Only

POTENTIAL CSOP COLLABORATIVE PROCESS	ADVANTAGES	DISADVANTAGES	SUGGESTIONS FOR OVERCOMING DISADVANTAGES
<p>Core Planning Team            ↑            1. Technical Working Groups            2. Technical Workshops            3. CSOP Focus Groups</p> <p style="text-align: center;">+</p> <p>Government to Government Consultation with Native American Tribes</p>	<ul style="list-style-type: none"> <li>• Core Planning Team retains decision-making authority for CSOP in accordance with MOU.</li> <li>• Less time consuming from a short-term standpoint and more efficient in terms of agency resources than all other collaborative processes being considered.</li> <li>• Least expensive in compliance with EIS requirements of all the collaborative processes being considered.</li> <li>• Focus groups allow participants to fully communicate their positions without negative influence of participants with an opposing position.</li> <li>• More control by the Core Planning Team of the collaborative process than all other collaborative processes being considered.</li> </ul>	<ul style="list-style-type: none"> <li>• Limited opportunities for stakeholders to work with each other to resolve differences and to fully understand and explore the rationale behind stakeholder positions.</li> <li>• Least likely of all collaborative processes being considered to deal with stakeholder mistrust and skepticism of collaborative process.</li> <li>• Does not further the long-term goal of collaboration among stakeholders involved in Everglades restoration issues.</li> <li>• Could be more time-consuming long-term if stakeholders feel their interests have not been fully considered, and judicial or legislative alternatives are pursued. (This is a risk for all alternatives but the assumption is that the more stakeholders discuss and consider all issues and pursue collaborative solutions, the less likely they will pursue judicial or legislative solutions.)</li> </ul>	<ul style="list-style-type: none"> <li>• Make generous use of focus groups, technical working groups and technical workshops so that stakeholders can feel their concerns are being considered.</li> <li>• Have continuous individual contacts with stakeholders to update them and apprise them of how their concerns and suggestions are being addressed and to seek further input.</li> <li>• Make the Core Planning Team meetings open to the public so that the stakeholders can evaluate the rationale for the decisions being made.</li> </ul>

### ALTERNATIVE #3: NON-FACA ADVISORY COMMITTEE COMPOSED OF GOVERNMENTAL ENTITIES ONLY

POTENTIAL CSOP COLLABORATIVE PROCESS	ADVANTAGES	DISADVANTAGES	SUGGESTIONS FOR OVERCOMING DISADVANTAGES
<p>Core Planning Team ↑ Non-FACA advisory group composed solely of governmental entities (CSOP Cooperating Agency Council) ↑     ↑ 1. Technical Working Groups 2. Technical Workshops 3. CSOP Focus Groups</p> <p style="text-align: center;">+</p> <p>Government to Government Consultation with Native American Tribes</p>	<ul style="list-style-type: none"> <li>• Does not have to comply with FACA requirements.</li> <li>• Core Planning Team retains decision making for CSOP in accordance with MOU.</li> <li>• Ability to build broad consensus among some of the major governmental stakeholders with history of conflict, which could have short- and long-term benefits.</li> <li>• Core Planning Team able to select members for the CSOP Cooperating Agency Council.</li> <li>• Most governmental agencies are familiar with the need to balance their interests in a process that involves multiple interests.</li> <li>• For the governmental entities involved, has the potential to lessen stakeholder mistrust and alleviate skepticism of collaborative process.</li> </ul>	<ul style="list-style-type: none"> <li>• Important non-governmental stakeholders do not participate as part of the CSOP Cooperating Agency Council. Ability to gain all the benefits of collaborative decision-making is lessened regardless of focus groups, working groups or technical workshops.</li> <li>• Issues of mistrust and skepticism about collaborative process remain and may be augmented for nongovernmental stakeholders.</li> <li>• Working to develop consensus as much as possible within the CSOP Cooperating Agency Council will require more time, expense and commitment of agency resources than if no advisory committee, regardless of type, was established.</li> <li>• Potential poor participation on the CSOP Cooperating Agency Council after initial meetings due to process fatigue or lack of interest in issues not affecting stakeholder interests.</li> <li>• Some governmental stakeholders may object to joining the CSOP Cooperating Agency Council because of nature or rules of the council, time requirements or other</li> </ul>	<ul style="list-style-type: none"> <li>• Make the CSOP Cooperating Agency Council membership as broad as possible to capture as many of the issues that would be advocated by the nongovernmental stakeholders.</li> <li>• Provide ample opportunity for nongovernmental stakeholders to participate and obtain information through focus groups and technical workshops.</li> <li>• Make the Core Planning Team and CSOP Cooperating Agency Council meetings open to the other stakeholders and the public so that the stakeholders can evaluate the rationale for the decisions being made.</li> <li>• Have continuous individual contacts with stakeholders to update them and apprise them of how their concerns and suggestions are being addressed.</li> <li>• Cooperating Agency Council meetings should be facilitated and facilitators must create an atmosphere for open and meaningful dialogue for all members. In between meetings, facilitators must make sure participants stay engaged and work to resolve issues as</li> </ul>

		reasons, and therefore some stakeholders' interests may not be represented.	they arise. <ul style="list-style-type: none"><li>• Cooperating Agency Council meetings need to be designed and conducted to be productive and worth members' time.</li></ul>
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## ALTERNATIVE #4: NON-FACA ADVISORY COMMITTEE ESTABLISHED BY THE SFWMD'S WRAC

POTENTIAL CSOP COLLABORATIVE PROCESS	ADVANTAGES	DISADVANTAGES	SUGGESTIONS FOR OVERCOMING DISADVANTAGES
<p>Core Planning Team            ↑            Multi-Stakeholder non-FACA Advisory Committee established under SFWMD's Water Resource Advisory Commission (WRAC)            ↑            1. Technical Working Groups            2. Technical Workshops            3. CSOP Focus Groups            +            Government to Government Consultation with Native American Tribes</p>	<ul style="list-style-type: none"> <li>• Assumes the advisory committee does not have to meet the procedural requirements of FACA.</li> <li>• Core Planning Team retains decision-making authority for CSOP in accordance with MOU.</li> <li>• Ability to build broad consensus among many of stakeholders with history of conflict, which could have short- and long-term benefits.</li> <li>• Stakeholders in the non-FACA advisory committee are required to learn and consider other stakeholders' needs and interests.</li> <li>• Conducive to alleviating stakeholder mistrust and alleviating skepticism of collaborative process.</li> <li>• A CSOP Advisory Committee established under WRAC could take advantage of existing organizational structure, facilitate coordination with other Everglades restoration activities and establish a linkage with broader long-term goals of CERP.</li> </ul>	<ul style="list-style-type: none"> <li>• District's procedures may not allow Core Planning Team to select members of the Advisory Committee.</li> <li>• A CSOP Advisory Committee under WRAC would likely be subject to Florida's Government-in-the-Sunshine and public records laws dealing with public notice, public hearings and open records.</li> <li>• May be subject to procedural or time requirements imposed by WRAC outside the control of the Core Planning Team.</li> <li>• If members of WRAC were assigned to Advisory Committee, may have work overload issues.</li> <li>• Working to develop consensus as much as possible within the non-FACA advisory committee will require more time, expense and commitment of agency resources than if no advisory committee, regardless of type, was established.</li> <li>• Potential poor participation in the non-FACA advisory committee after initial meetings due to process fatigue or lack of interest in issues not affecting stakeholder interests.</li> <li>• Some stakeholders may be hesitant to fully discuss positions</li> </ul>	<ul style="list-style-type: none"> <li>• Obtain legal opinion as to the applicability of Florida's Government-in-the-Sunshine and public records laws and, if applicable, determine impact of compliance.</li> <li>• Confer with chairpersons and administrative and legal staff of WRAC to determine feasibility and requirements of this option that may lessen some of the concerns in the disadvantages section such as compliance with protocols or rules of the WRAC and ability of the Core Planning Team to choose members.</li> <li>• Advisory Committee meetings should be neutrally facilitated and facilitators must create an atmosphere for open and meaningful dialogue for all members. In between meetings, facilitators must make sure participants stay engaged and work to resolve issues as they arise.</li> <li>• Advisory Committee meetings need to be designed and conducted to be productive and worth members' time.</li> <li>• Membership on Advisory Committee should be carefully chosen to assure as much expertise as possible on CSOP issues, thereby limiting needs</li> </ul>

		<p>within the non-FACA advisory committee because of opposing views or personality conflicts.</p> <ul style="list-style-type: none"><li>• Some stakeholders may object to joining the non-FACA committee because of nature or rules of the committee, time requirements or other reasons, and therefore some stakeholders' interests may not be represented.</li></ul>	<p>for technical working groups and technical workshops.</p> <ul style="list-style-type: none"><li>• Membership on Advisory Committee should be carefully chosen for their ability to articulate interests clearly and work with others to resolve disputes.</li><li>• Make the Core Planning Team and Advisory Committee meetings open to the public so stakeholders can evaluate the rationale for the decisions being made.</li></ul>
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**ALTERNATIVE #5: NON-FACA ADVISORY COMMITTEE ESTABLISHED BY THE U.S. INSTITUTE**

<p><b>POTENTIAL CSOP COLLABORATIVE PROCESS</b></p>	<p><b>ADVANTAGES</b></p>	<p><b>DISADVANTAGES</b></p>	<p><b>SUGGESTIONS FOR OVERCOMING DISADVANTAGES</b></p>
<p>Core Planning Team ↑ Multi-Stakeholder non-FACA Advisory Committee established by U.S. Institute ↑     ↑ 1. Technical Working Groups 2. Technical Workshops 3. CSOP Focus Groups  +</p>	<ul style="list-style-type: none"> <li>• U.S. Institute convened Advisory Committee is exempt from FACA.</li> <li>• Core Planning Team retains decision-making authority for CSOP in accordance with MOU.</li> <li>• Ability to build broad consensus among many of stakeholders with history of conflict, which could have short- and long-term benefits.</li> <li>• Stakeholders on the Advisory Committee are required to learn and consider other stakeholders’ needs and interests.</li> <li>• Conducive to alleviating stakeholder mistrust and alleviating skepticism of collaborative process.</li> </ul>	<ul style="list-style-type: none"> <li>• Stakeholders not familiar with U.S. Institute could be skeptical of its convening role.</li> <li>• Advisory Committee would not provide direct linkage to existing Everglades restoration-related organizational structures or activities.</li> <li>• Working to develop consensus within the Advisory Committee will require more time, expense and commitment of agency resources than if no advisory committee, regardless of type, was established.</li> <li>• Potential poor participation on the Advisory Committee after initial meetings due to process fatigue or lack of interest in issues not affecting stakeholder interests.</li> <li>• Some stakeholders may be hesitant to fully discuss positions within the Advisory Committee because of opposing views or personality conflicts.</li> <li>• Some stakeholders may object to joining the Advisory Committee because of nature or rules of the committee, time requirements or other reasons, and therefore some stakeholders’ interests may not be represented.</li> </ul>	<ul style="list-style-type: none"> <li>• Advisory Committee meetings should be neutrally facilitated and facilitators must create an atmosphere for open and meaningful dialogue for all members. In between meetings, facilitators must make sure participants stay engaged and work to resolve issues as they arise.</li> <li>• Advisory Committee meetings need to be designed and conducted to be productive and worth members’ time.</li> <li>• Membership on Advisory Committee should be carefully chosen to assure as much expertise as possible on CSOP issues, thereby limiting needs for technical working groups and technical workshops.</li> <li>• Membership on Advisory Committee should be carefully chosen for their ability to articulate interests clearly and work with others to resolve disputes.</li> <li>• Make the Core Planning Team and Advisory Committee meetings open to the public so stakeholders can evaluate the rationale for the decisions being made.</li> </ul>

## ALTERNATIVE #6: NON-FACA ADVISORY COMMITTEE ESTABLISHED BY THE TASK FORCE'S WORKING GROUP

Potential CSOP Collaborative Process	Advantages	Disadvantages	Suggestions For Overcoming Disadvantages
<p>Core Planning Team            ↑            ↑            Multi-Stakeholder Non-FACA Advisory Committee established under auspices of the Everglades Ecosystem Restoration Task Force's Working Group:</p> <ol style="list-style-type: none"> <li>↑</li> <li>1. Technical Working Groups</li> <li>2. Technical Workshops</li> <li>3. CSOP Focus Groups</li> </ol> <p style="text-align: center;">+</p> <p>Government to Government Consultation with Native American Tribes</p>	<ul style="list-style-type: none"> <li>• Takes advantage of existing organizational structure, facilitates coordination with other Everglades restoration activities and establishes linkage with broader long-term goals of CERP.</li> <li>• Assumes do not have to meet the procedural requirements of FACA because of current legislative exemptions.</li> <li>• Core Planning Team retains decision-making authority for CSOP in accordance with MOU.</li> <li>• Ability to build broad consensus among many of stakeholders with history of conflict, which could have short- and long-term benefits.</li> <li>• Core Planning Team should be able to select members for the Advisory Committees with consent of the Working Group.</li> <li>• Stakeholders on the Advisory Committees are required to learn and consider other stakeholders' needs and interests.</li> </ul>	<ul style="list-style-type: none"> <li>• May be subject to procedural or time requirements imposed by the Working Group outside the control of the Core Planning Team.</li> <li>• Members of the Advisory Committee may have work overload issues.</li> <li>• Some members of the Advisory Committee could be disruptive to the collaborative process and dismissal may be difficult due to protocols of the Working Group.</li> <li>• Working to develop consensus within the advisory committee will require more time, expense and agency resources than if no Advisory Committee, regardless of type, was established.</li> <li>• Potential poor participation in the Advisory Committees after initial meetings due to process fatigue or lack of interest in issues not affecting stakeholder interests.</li> <li>• Some stakeholders may be hesitant to fully discuss positions within the advisory committee</li> </ul>	<ul style="list-style-type: none"> <li>• Confer with chairpersons and executive staff of Working Group to determine feasibility and requirements of this option that may lessen some of the concerns in the disadvantages section such as compliance with protocols or rules of the Working Group and ability of the Core Planning Team to choose members.</li> <li>• Membership of Advisory Committee should be chosen to assure as much expertise as possible on CSOP issues and thereby limiting needs for technical working groups and technical workshops.</li> <li>• Advisory Committee members should be carefully chosen for their ability to articulate interests clearly and work with others to resolve disputes.</li> <li>• Advisory Committee meetings should be facilitated and facilitators must create an atmosphere for open and meaningful dialogue for all members. In between</li> </ul>



	<ul style="list-style-type: none"> <li>• Has the potential to lessen stakeholder mistrust and alleviate skepticism of collaborative process.</li> </ul>	<p>because of opposing views or personality conflicts.</p>	<p>meetings, facilitators must make sure participants stay engaged and work to resolve issues as they arise.</p> <ul style="list-style-type: none"> <li>• Advisory Committee meetings need to be designed and conducted to be productive and worth members' time.</li> <li>• Make the Core Planning Team and Advisory Committee meetings open to the public so that all stakeholders can evaluate the rationale for the decisions being made.</li> </ul>
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## ALTERNATIVE #7: TWO NON-FACA ADVISORY COMMITTEES ESTABLISHED BY THE TASK FORCE'S WORKING GROUP AND THE WRAC

Potential CSOP Collaborative Process	Advantages	Disadvantages	Suggestions For Overcoming Disadvantages
<p>Core Planning Team ↑ Two Multi-Stakeholder Non-FACA Committees; one established by the Everglades Ecosystem Restoration Task Force's Working Group and the other by SFWMD's Water Resource Advisory Commission (WRAC):</p> <ol style="list-style-type: none"> <li>1. Working Group Advisory Committee</li> <li>2. Water Resources Advisory Council Advisory Committee</li> </ol> <p>↑ 1. Technical Working Groups 2. Technical Workshops 3. CSOP Focus Groups</p> <p>+ Government to Government Consultation with Native American Tribes</p>	<ul style="list-style-type: none"> <li>• Takes advantage of existing organizational structures, facilitates coordination with other Everglades restoration activities and establishes linkage with broader long-term goals of CERP.</li> <li>• Assumes do not have to meet the procedural requirements of FACA because of current legislative exemptions or design of the advisory committee.</li> <li>• Core Planning Team retains decision-making authority for CSOP in accordance with MOU.</li> <li>• Ability to build broad consensus among many of stakeholders with history of conflict, which could have short- and long-term benefits.</li> <li>• Stakeholders on the Advisory Committees are required to learn and consider other stakeholders' needs and positions.</li> <li>• Has the potential to lessen stakeholder mistrust and alleviate skepticism of collaborative process.</li> </ul>	<ul style="list-style-type: none"> <li>• Additional time, expense and agency resources are necessary to deal with two Advisory Committees.</li> <li>• Most groups to coordinate of all the collaborative process alternatives being considered.</li> <li>• May be subject to procedural or time requirements imposed by the Working Group and WRAC outside the control of the Core Planning Team.</li> <li>• Members of the two Advisory Committees may have work overload issues.</li> <li>• May be subject to Florida's Government-in-the-Sunshine and public records laws dealing with public notice, public hearings and open records.</li> <li>• Selection of members to the Advisory Committees could be limited to Working Group and WRAC members and may leave some stakeholders representatives out of an advisory role.</li> <li>• Some stakeholders may refuse to join advisory committees based on additional workload or other reasons.</li> <li>• Some members of the Advisory Committees could be disruptive to the collaborative process and</li> </ul>	<ul style="list-style-type: none"> <li>• Obtain legal opinion from the SFWMD legal staff regarding applicability of Florida's Government-in-the-Sunshine and public records laws and, if applicable, determine impact of compliance.</li> <li>• Confer with chairpersons and executive staff of Working Group and WRAC to determine feasibility and requirements of this option that may lessen some of the concerns in the disadvantages section such as compliance with protocols or rules of the Working Group and WRAC and ability of the Core Planning Team to choose members.</li> <li>• May be able to merge the two Advisory Committees to act as one and still be exempt from FACA.</li> <li>• Members on Advisory Committees should be chosen to assure as much expertise as possible on CSOP issues, thereby limiting needs for technical working groups and technical workshops.</li> <li>• Advisory Committee members should be carefully chosen for their ability to articulate interests clearly and work with others to</li> </ul>

		<p>dismissal may be more difficult because of rules or protocols of the Working Group and WRAC.</p> <ul style="list-style-type: none"> <li>Working to develop within the two Advisory Committees will require more time, expense and commitment of agency resources than if no Advisory Committee, regardless of type, was established.</li> <li>Potential poor participation in the two non-FACA advisory committees after initial meetings due to process fatigue or lack of interest in issues not affecting stakeholder interests.</li> <li>Some stakeholders may be hesitant to fully discuss positions within the two Advisory Committees because of opposing views or personality conflicts.</li> <li>Potential for confusion if the two Advisory Committees reach different conclusions.</li> <li>Potential for competition regarding which Advisory Committee has more status and authority.</li> </ul>	<p>resolve disputes.</p> <ul style="list-style-type: none"> <li>Advisory Committee meetings should be facilitated and facilitators must create an atmosphere for open and meaningful dialogue for all members. In between meetings, facilitators must make sure participants stay engaged and work to resolve issues as they arise.</li> <li>Advisory Committee meetings need to be designed and conducted to be productive and worth members' time</li> <li>Make the Core Planning Team and non-Advisory Committee meetings open to the public so that all stakeholders can evaluate the rationale for the decisions being made.</li> </ul>
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## APPENDIX H

### BACKGROUND INFORMATION ON THE U.S. INSTITUTE AND THE ASSESSMENT TEAM MEMBERS

U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation

#### BACKGROUND

The U. S. Institute for Environmental Conflict Resolution (the Institute) is a federal program established by the U.S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The Institute is part of the Morris K. Udall Foundation, an independent agency of the executive branch overseen by a board of trustees appointed by the President. The Institute serves as an impartial, nonpartisan institution providing professional expertise, services, and resources to all parties involved in environmental disputes, regardless of who initiates or pays for assistance. The Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the Institute maintains a roster of qualified facilitators and mediators with substantial experience in environmental conflict resolution (ECR) and can help parties in selecting an appropriate neutral. (See [www.ecr.gov](http://www.ecr.gov) for more information about the Institute.)

#### THE INSTITUTE'S ROLE

- **Assessment and Convening** — While the Institute's professional staff provides direct mediation and facilitation assistance on selected cases, its primary task has become the critical role of assessing the nature of the disputes, convening the parties, and assuring the right conditions are in place for constructive deliberations.
- **Interagency Conflicts** — The Institute assists agencies involved in intra-agency and interagency disputes over conflicting mandates or overlapping jurisdictions, as well as conflicts between states and federal agencies.
- **The Roster System** — The Institute maintains a national roster of over 200 environmental mediators and facilitators located in 39 states and the District of Columbia. The vast majority of the cases and projects in which the Institute is involved are referred out or subcontracted to its roster members.
- **Assistance to Dispute Resolution Programs** — The Institute provides assistance to other agency dispute resolution programs, such as strategic planning, program development, partnering, roster service, and program evaluation.

#### OTHER INSTITUTE PROGRAMS

The Institute has in place several programs to increase the appropriate use of ECR, including a matching funds program to support ECR processes and a biennial national conference program. The Institute is also mandated by Congress to assist in the implementation of Section 101 of NEPA through assessment, mediation, consensus building, and other collaborative processes. Work is currently underway to address this charge through Innovative Collaborative Opportunities for NEPA (ICON).

## Assessment Team

### Michael Eng

Mike Eng is a Senior Program Manager at the U.S. Institute for Environmental Conflict Resolution where his responsibilities focus on protected areas and natural resource issues, especially in designing and facilitating collaborative multi-stakeholder ecosystem management efforts. Mike has broad experience in natural resource policy and marine resource management, as well as extensive knowledge and expertise in facilitation, consensus building, and public participation processes. Institute projects he has worked on include: facilitation of various interagency efforts concerning restoration of the Florida Everglades and the Upper Klamath Basin in Oregon; design and co-facilitation of the Channel Islands Marine Reserve Working Group process; management of a multi-agency public input process for the President's Northwestern Hawaiian Islands Marine Protected Area Initiative; and assistance with watershed restoration planning efforts by Oregon Watershed Councils.

Previously, Mike has worked at the National Oceanic and Atmospheric Administration's Coastal Services Center in Charleston, South Carolina, where he provided process design, facilitation, and training development services to the coastal management community throughout the US. While there, he facilitated the Dry Tortugas Marine Ecological Reserve process and designed and facilitated a collaborative multi-agency coastal partnerships workshop convened by Alaska's Coastal Zone Management Program. In other positions with NOAA, he conducted fisheries and oceanographic studies aboard research vessels in the Pacific Northwest, Alaska, and Hawaii. Mike has also worked for the National Park Service in marine law enforcement and natural and cultural resource management in coastal and marine parks. He was formerly the Superintendent of Fort Jefferson National Monument (now Dry Tortugas National Park) in the Florida Keys and participated in the interagency effort to develop the management plan for the Florida Keys National Marine Sanctuary. At the University of Washington, Mike was the Marine Program Manager for the Olympic Natural Resources Center, a research institute whose mission is to develop innovative approaches for managing the natural resources of the Olympic Peninsula that integrate human, economic, and ecological values. Mike was a US Peace Corps Volunteer in Fiji, working on community development projects with artisanal fishing villages. He has also been a mentor mediator and trainer for community dispute resolution centers and was self-employed providing mediation and facilitation services in the Seattle area.

Mike has a B.A. *cum laude* in Psychology from Williams College and a M.M.A. from the University of Washington's School of Marine Affairs, where he was supported by a Sea Grant Fellowship. He is on the Board of Directors of The Coastal Society and is an active member of the Environmental and Public Policy Sector of the Association for Conflict Resolution.

### Analee Mayes

Analee Mayes is the President of Consensus Builders, Inc., a firm specializing in facilitation, dispute resolution, public participation and strategic planning. Over the last two decades of change in Florida, Ms. Mayes' practice has evolved from land use and environmental planning to public outreach, facilitation, and mediation. She helps clients solve problems, accommodate diverse interests, and address significant policy questions related to water, transportation, land use, economic development, utilities, and the environment.

Projects Ms. Mayes has worked on include a consensus-building process that resulted in the signing of an agreement to restructure the regional water authority in Tampa Bay and end the “Water Wars.” She was also the first planner to bring citizens’ committees into the siting process for electric utilities in Florida. In 1997, she received the fourth annual “Excellence in Conflict Resolution” award from the Florida Conflict Resolution Consortium.

She is a graduate of the University of North Carolina at Chapel Hill and the University of Florida. She has completed Supreme Court–approved training in mediation, as well as other courses in public participation and collaborative problem solving. She was certified as a planner in 1983. She is a member of the Association for Conflict Resolution (ACR), the International Association for Public Participation, the Environmental and Land Use Law Section of the Florida Bar (associate), the Board of Directors of the Council for Sustainable Florida, and Leadership Florida Class XVI.

### **Carlos Alvarez**

Carlos Alvarez is an attorney whose practice has been mainly in the areas of federal and state environmental and land use litigation and administrative law for the past 27 years. He was a professor of law at Southern Methodist University and a partner for 15 years in the Tallahassee law firm of Hopping Boyd Green and Sams before he left to follow personal interests including a practice in alternative dispute resolutions.

In his practice Mr. Alvarez has represented a wide variety of clients in complex environmental and land use cases including, for example, Florida Power & Light Co. and Georgia Power Co., environmental and neighborhood groups and governmental bodies. He has been involved as a mediator, arbitrator or other alternative dispute resolution formats with, among others, Hillsborough County, the Florida Department of Environmental Protection, City of Naples, City of Key West, City of Destin, Tampa Bay Water, Walton County, Okaloosa County and numerous private clients ranging from neighborhood groups and environmental groups to business entities. He was also selected to be a mediator for the State Agency Dispute Resolution Pilot Project and has been a special master pursuant to the Florida Land Use and Environmental Resolution Act. He has completed Florida Supreme Court training in mediation and is a Supreme Court certified circuit court mediator. For the last five years his professional practice has been almost exclusively directed to alternative dispute resolution and mainly in the areas of environmental and land use disputes.

Mr. Alvarez received his undergraduate degree in 1972 from the University of Florida with high honors and his juris doctor degree with honors from Duke Law School in 1975. He was a professor of law at Southern Methodist University School of Law where he taught in the areas of environmental law, real property law and regulated industries. He has an AV lawyer rating (highest rating) from Martindale-Hubbell. He is a member of the Florida Bar, the Environmental and Land Use section, and the Administrative Law section of the Florida Bar. He was appointed by Governor Chiles as Chairman of the Florida Election Commission from 1994 to 1998 and was also appointed to the Second Judicial Circuit Nominating Commission. He was selected to the Verizon Academic All-American Hall of Fame in 1989.

**ONCE AGAIN, THE INSTITUTE THANKS ALL  
THOSE WHO CONTRIBUTED THEIR TIME AND  
SHARED THEIR CANDID PERSPECTIVES  
DURING THE INTERVIEW PROCESS.  
WITHOUT YOUR TIME AND EFFORT, THIS  
ASSESSMENT WOULD NOT HAVE BEEN  
POSSIBLE.**