

Statement of Chairman Colley Billie, Miccosukee Tribe of Indians of Florida
Public Witness Hearing on Native American Issues
House Interior Appropriations Subcommittee
March 27, 2012

My name is Colley Billie, and I am the Chairman of the Miccosukee Tribe of Indians of Florida (Tribe). Thank you for holding this important hearing and for providing me the opportunity to testify. My testimony focuses on the Tribe's priorities on restoration to protect the Florida Everglades and our traditional ways of life. We have always sought to honor and protect our environment through responsible land stewardship. The Everglades have been our home for hundreds of years and our commitment to its restoration is unwavering because we have the most at stake. The Tribe supported the original Comprehensive Everglades Restoration Plan (CERP) and continues to support its overall goals.

Over the past decade, Interior appropriations bills, especially House Interior appropriations bills and accompanying committee reports, contained significant funding for Everglades restoration and provisions directing/urging relevant agencies – the National Park Service (NPS), Fish & Wildlife Service, EPA, and the Army Corps of Engineers (Corps) -- to develop effective restoration plans. The FY09 Omnibus Appropriations Act (FY09 Omnibus) stated at least \$1.3 billion has been appropriated for Everglades projects at the Department of the Interior.

We support the Committee's overall goals of restoring the Everglades, especially provisions in the committee reports accompanying the FY04 and FY07 House Interior Appropriations bills prioritizing the need to drastically improve water quality in the Everglades, including the need to adequately develop storm water treatment areas to treat contaminated water from the Everglades agricultural areas before allowing it to flow onto tribal lands and other parts of the Everglades. As stated in Committee Report 110-187 accompanying the FY08 House Interior Appropriations bill, "the Committee appreciates the progress that has been made to restore the Everglades but it remains critical to hold all parties accountable for the environmental goals, which are the ultimate justification for the public's investment and support. Without clean water, the Everglades will be irretrievably altered, and its unique habitat will continue to be degraded." We also strongly support language in Committee Report 108-195 accompanying the FY04 House Interior Appropriations bill stating, "the Committee believes that future Federal funding for Everglades restoration should be tied to specific progress to improve water quality" before providing funding for modified waters deliveries projects.

Despite huge sums of money spent on Everglades projects, we see a disjointed approach where federal agencies and the state of Florida have differing goals and objectives, resulting in decisions that negatively impact us. In particular, the NPS portion of the FY09 Omnibus directed the Corps to construct one mile of bridging on the eastern portion of the Tamiami Trail (Trail) (US 41) adjacent to our tribal lands. This one mile of skyway bridging – solely for environmental purposes, not for transportation purposes -- is currently being constructed for at least \$81 million with funds from NPS and the Corps. This project is a modified waters deliveries project, which was not part of the original CERP. Further, the FY12 Omnibus Appropriations Act (FY12 Omnibus) recently authorized an additional 5.5 miles of Trail bridging in the NPS portion of the Act. The estimated cost for this is at least \$310 million. The

Tribe strongly opposes this bridging. It is destroying our traditional ways of life and our tribal culturally sensitive and archeological resources. Also, it will not do what its proponents claim.

The President's FY13 budget requests \$8 million for road improvements on the Trail. It does not appear that the Administration has requested FY13 funds for further bridging. As the Committee moves forward in drafting its FY13 Interior appropriations bill, we respectfully request that it consider the Tribe's perspectives on bridging of the Trail and its significant negative impacts on us as well as to thoroughly review the merits of this bridging to determine if it is worth the steep price tag. When construction first started on the Trail in 1915, it caused irreparable harm to our land in the Everglades, impacting our traditional way of life. The bridging of the Trail is another chapter in the manipulation of the Everglades that strains the Miccosukee culture.

Further, it is clear that Everglades restoration will never be accomplished if the waters flowing from Lake Okeechobee and the farmlands to the north are not treated for high levels of contamination. The polluted water has a devastating, irreversible effect on the Everglades ecosystem. To restore the Everglades, funding should be targeted toward cleaning the polluted water. Inexplicably, it seems that large amounts of funding are spent on projects surrounding Everglades restoration rather than on the necessary treatment and storage systems required to improve the water quality. Everglades restoration requires a commitment to restore all areas of the Everglades and is predicated on the availability of clean water. No federal, state or tribal sponsors of the CERP agrees to accept the polluted water.

Waters entering tribal lands (Miccosukee Federal Reservation, Designated Outstanding Miccosukee Waters, and the Miccosukee Leased Lands (held under a perpetual lease)) and the northern boundary of Water Conservation Area 3A (WCA 3A) have phosphorus levels up to 10 times greater than that found to be protective of the ecosystem. The tribal lands comprise the majority of WCA 3A and are essentially being used as a repository for contaminated water. WCA 3A is directly to the north of the Trail and Everglades National Park (ENP). Large volumes of this polluted water are dumped onto tribal lands, and the contaminated water is forever altering the ecosystem and our traditional ways of life.

Skyway Bridging of the Tamiami Trail is Unnecessary and Wasteful

The Corps and NPS are bridging the one mile of the Trail over our strong objections. The bridging will negatively impact our tribal lands and destroy areas of significant cultural, historical, and archeological value. NPS seeks to construct an additional 5.5-miles of bridging and elevate the remainder of 10.7 miles of the Trail at a cost of at least \$310 million in an attempt to increase water flow into ENP. However, water delivery structures already exist that would allow water to flow into ENP. Culverts were installed to convey water under the Trail, and they would allow water to flow into ENP if they were simply maintained and used as intended. Experts have determined that sufficient water flow under the Trail to ENP would occur by clearing the vegetation, sediment, and garbage that has built up on the downstream side of the culverts and the downstream side of the larger S-12 water control structures. Opening these restricted flow-ways and adding swales when necessary to convey the water is an effective and economical solution that can and should be immediately implemented to improve the hydrology on tribal lands and in ENP.

On November 13, 2008, a federal judge issued a temporary injunction halting construction of the proposed 1-mile “*bridge to nowhere*” until proper regulatory safeguards and due process was followed. However, a provision was included in the 2009 Omnibus directing the Corps to immediately construct one mile of bridging on the eastern portion of the Trail. In December 2010, NPS issued a Final Environmental Impact Statement (FEIS) recommending an alternative selection for 5.5-miles of additional skyway bridging along with elevated roads for the balance of 10.7 miles of the Tamiami Trail, estimated to cost approximately \$310 million. Section 107 of Title I, Division E, of the 2012 Omnibus authorized NPS to construct the additional 5.5 miles of skyway bridging and elevated Trail.

The scope of the bridging project is large, far exceeding the footprint of the current Trail. For some, this bridge project has become a symbol of Everglades Restoration. Bridging advocates claim that the bridge will allow water to flow “freely” from Lake Okeechobee in the north to Florida Bay located hundreds of miles to the south, through tribal lands, to restore the historic River of Grass. However, the water from Lake Okeechobee is diverted to the Atlantic Ocean and the Gulf of Mexico by a complex canal and levy system created over the past century. The waters discharged from Lake Okeechobee are laden with pollution. The most recent data for the 2011 South Florida Environmental Report shows that the total phosphorus concentrations in the lake were 118 ppb and had a five-year average of 172 ppb. Before the goal of redirecting Lake Okeechobee to flow south through tribal lands to the Park can be accomplished, water quality treatment and storage solutions must be implemented.

The Park states it wants to build the additional 5.5-miles of skyway bridges and raise significant sections of the Trail to increase the flow volume into the Northeast Shark River Slough. The entire plan is based upon conceptualized “unconstrained flows” between the WCA’s and the Park. However, this plan is flawed given there are no plans to remove the levee (L-29 levee) that runs parallel to the Trail where the bridging is being constructed and currently being proposed; therefore, water will always remain blocked from moving southward. Further, given the water quality constraints that exist in the system, “unconstrained flows” cannot exist until the water meets the appropriate 10-ppb discharge limit. Otherwise, tribal lands and WCA 3A will be used as a water treatment area, sacrificing tribal lands. It is inconsistent with Everglades restoration to re-hydrate areas with polluted water.

The Tribe strongly urges the immediate implementation of a culvert and swale approach for alleviating the persistent flooding of tribal Lands, conveying water under the Trail, and increasing water deliveries to ENP. Under the culvert and swale approach, the focus would be on clearing existing culverts, adding additional culverts if determined to be necessary, and clearing the large swale areas south of the existing culverts and gates. The culvert and swale approach would save millions of dollars of taxpayer money and would deliver the same amount of water to ENP as the current proposal. Experts have concluded that this approach would provide effective improvements in hydrology and be cost-effective.

In 2009, ENP commissioned a professor from the University of Miami to evaluate the effectiveness of culverts and culverts in combination with swales to increase flows from the WCA’s to ENP. The 2010 University of Miami study concluded that the culvert-swale option would be just as effective as moving water under the Trail. The culvert-swale approach is one

method for effectively clearing the accumulation of sediment, vegetation, and detritus downstream of the Trail culverts.

Further, the U.S. Geological Survey did a study in 2005 on Flamingo Road, the main road through ENP spanning 60 kilometers with 177 culverts. The study's objective was to determine the effectiveness of culverts on water flow southward into Florida Bay. It found the road "*did not adversely affect the flow of freshwater into Florida Bay*" and that it helped "*retain flow*" between basins and that the culverts "*provid[ed] a beneficial water supply to Florida Bay.*" There are culverts along U.S. 75, Loop Road in Big Cypress National Preserve, and ENP. If culverts work here, then logic dictates that this approach can be effective to convey water under the Trail. Given that culverts are effective, coupled with the rapidly deteriorating state of the Everglades, a full-scale culvert-swale project should move forward immediately on the Trail.

Restoration of the Everglades Will Never Occur Unless Water Quality is Improved

The fresh water of the Everglades is severely impacted by the population demands of Florida (creating pressure for water supplies) and the contamination of surface waters from urban sources and agricultural operations. Water quality in many areas of the Everglades does not meet the U.S. EPA-approved Miccosukee water quality standards or the state of Florida's standards. Moreover, NPS and the Corps recognize that the water entering the northern reaches must be treated for nutrient pollution prior to being redirected into the Everglades. Otherwise, plant and animal life in the ecosystem will be negatively impacted. However, these days, we hear that there is little funding to develop the necessary treatment and storage systems required to treat the water. The Tribe is very concerned about the irreversible negative effects that polluted waters are having on the Everglades, including tribal lands. It does not make sense to build expensive and expansive bridges for the stated purpose of increasing water flow into ENP when the water must first be significantly cleaned up before allowing it be redirected to ENP unless there is the true intention to violate water quality standards and federal trust responsibilities by utilizing tribal lands as a *de-facto* stormwater treatment area.

Much of the water flowing into the tribal lands and WCA 3A originates from the L-28 canal system and discharges from the S-140 and S-190 water control structures. The L-28 Interceptor Canal terminates on the Federal Reservation as an open point source. Discharges from this canal can exceed 100 ppb, 10 times the limit that has been scientifically determined to be protective of the ecosystem. The L-28 Canal discharges through the S-140 pump station directly onto tribal lands. The large water volume discharging from the S-140 pump station has an average phosphorus concentration of 55 ppb. Recent data from the 2011 South Florida Environmental Report shows that the combined discharge from the L-28 canal system comprise nearly 30% of the total phosphorus load discharged into WCA 3A. Addressing the contamination in the L-28 canal system must be a top priority for there to be true restoration and to ensure that our homelands, culture, and traditions are protected and preserved.

Closing

Our way of life is inextricably tied to the Everglades. We are committed to restoring our homelands and, therefore, want to ensure the objective of restoring the entire Everglades is met. There is much room for improvement. We hope that we can work together so that our way of life is preserved and that the Everglades can remain a national treasure for future generations.