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Weighing the Protection of Endangered Species vs. Entire Ecosystems  
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**Restoring America's Everglades: A National Imperative**

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“Perhaps even in this last hour, in a new relation of usefulness and beauty, the vast, magnificent, subtle and unique region of the Everglades may not be utterly lost.” Marjory Stoneman Douglas<sup>1</sup>

The Everglades<sup>2</sup> is a world-renowned ecosystem and America's premiere wetland wilderness. The Everglades ecosystem begins in the Kissimmee River Valley, and continues through Lake Okeechobee, the Everglades Protection Area, and finally to Florida Bay and the Keys.<sup>3</sup> It is a Ramsar Wetland of International Importance<sup>4</sup>, an International Biosphere Reserve<sup>5</sup>, and a World Heritage Site<sup>6</sup>. “There is no other place else like [it] in the world. But the Everglades [is] dying.”<sup>7</sup> “We must act now, and act aggressively, if we are to save this special place.”<sup>8</sup>

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<sup>1</sup> U.S. ARMY CORPS OF ENGINEERS AND SOUTH FLORIDA WATER MANAGEMENT DISTRICT, OVERVIEW – CENTRAL AND SOUTHERN FLORIDA PROJECT COMPREHENSIVE REVIEW STUDY 28 (October 1998) [Hereinafter OVERVIEW]. (Marjory Stoneman Douglas authored “The Everglades: River of Grass,” and was a pioneer activist for the Everglades.)

<sup>2</sup> Everglades is singular. [“My decision to treat the Everglades as singular because it is the name of one physiographic region. . . (Actually, [Marjory Stoneman Douglas] now agrees that singular is appropriate.)”] THOMAS LODGE, THE EVERGLADES HANDBOOK 9-10 (1998).

<sup>3</sup> GOV.'S COMM'N FOR A SUSTAINABLE SOUTH FLA., INITIAL REPORT page # (Oct. 1995) [hereinafter INITIAL REPORT].

<sup>4</sup> The Convention on Wetlands, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. There are presently 116 parties to the convention, with 1005 wetland sites, designated for inclusion in the Ramsar list of Wetlands of International Importance. The Everglades was designated on June 4, 1987. Everglades Nat'l Park, *A Park for the World* (visited December 20, 1999) <<http://www.nps.gov/ever/presskit/heritage.htm>>.

<sup>5</sup> International Biosphere Reserves are a project of the Man and the Biosphere program of the United Nations Education, Scientific and Cultural Organization (UNESCO). Reserves are protected samples of the world's major ecosystem types. These sites are standards against which we can measure human impact on our environment and predict its probable effects. There are now ever 190 reserves in 50 countries. Established for its biological values, Everglades National Park was added to this world list on October 26, 1976. *Id.*

<sup>6</sup> Convention on World Heritage, nov. 23, 1972, 27 UST 37. World Heritage Sites are also designated by UNESCO under the Convention Concerning the Protection of the World Cultural and Natural Heritage. By the World Heritage Convention's 25<sup>th</sup> anniversary in 1997, nearly 150 nations had ratified the agreement and placed more than 500 sites on the World Heritage List. Everglades National Park became a World Heritage Site on October 26, 1979. *Id.*

<sup>7</sup> Letter from Joseph W. Westphal, Assistant Secretary of the Army (Civil Works), to Vice President Albert Gore (July 1, 1999).

<sup>8</sup> *Hearing on Restoration of the Everglades and South Florida Ecosystem Before the The Subcomm. on Water Resources & Environment of the House Comm. on Trans. and Infrastructure*, 106<sup>th</sup> Cong. (2000) (Statement of Dr.

“[T]he Everglades . . . provide not only habitat for a rich abundance of animal life but also serve other important functions. Inland fresh water marshes reduce the danger of floods by collecting rainwater runoff, storing it, and releasing it over long periods of time. The effects of droughts are often offset by the quantity of water that is stored as groundwater or in shallow marshes during the normal wet seasons. Wetlands clean water by removing organic and inorganic nutrients and toxic materials from water that flows across them. Fresh water wetlands release water into aquifers for storage. The Everglades wetlands play key roles in forming rich soils for agriculture, in maintaining major commercial and sport fisheries, and in support the state’s all-important tourism industry.”<sup>9</sup>

More than fifty years ago, the Everglades was ditched and diked in a massive civil works project known as the Central and Southern Florida Flood Control Project (“C&SF Project”).<sup>10</sup> The C&SF Project was initiated following massive loss of life from devastating hurricanes in the late 1940s.<sup>11</sup> The Project had the unintended consequence of nearly destroying South Florida’s natural infrastructure.<sup>12</sup> The spatial extent of the Everglades has been reduced by fifty percent, and water flows to the remaining Everglades have been reduced by seventy percent.<sup>13</sup> Furthermore, this highly degraded system is home to 68 endangered species.<sup>14</sup> As a result of the recognition of this extreme degradation, Congress initiated the C&SF Project Comprehensive Review Study (“C&SF Project Restudy”), for the purpose of restoring the Everglades.<sup>15</sup> This study resulted in the Comprehensive Everglades Restoration Plan (“CERP”).

The plan’s primary objectives are to establish the proper quantity, quality, timing, and distribution of water throughout the Everglades system.<sup>16</sup> The three keys to Everglades restoration are storing water to increase the amount available, reducing water pollution from agricultural and urban runoff, and reconnecting this segmented ecosystem. It is important to note, however, “the restored Everglades of the future – made possible by the recommended plan – will be different from any former version of the Everglades.”<sup>17</sup>

Everglades restoration is arguably the largest ecosystem restoration project in history.<sup>18</sup> According to the CERP, it will cost more than \$8 billion, and take more than 20 years.<sup>19</sup> It is a

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Joseph W. Westphal, Assistant Secretary of the Army for Civil Works)  
<<http://www.house.gov/transportation/water/03-01-00/westphal.html>>.

<sup>9</sup> OVERVIEW, *supra* note 1, at 6.

<sup>10</sup> Although some localized drainage projects began earlier in the century, the comprehensive federal drainage project began in 1948.

<sup>11</sup> OVERVIEW, *supra* note 1, at 8.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> U.S. Army Corps of Engineers, *Why Restore the Everglades?* (last modified Mar, 3, 2000)  
<[http://www.evergladesplan.org./Why%20Rest\\_1.htm](http://www.evergladesplan.org./Why%20Rest_1.htm)>.

<sup>14</sup> *Id.*

<sup>15</sup> S. 640, 104<sup>th</sup> Cong. (1996) (enacted) (Water Resources Development Act of 1996) [Hereinafter WRDA 1996].

<sup>16</sup> The CERP recommends the following modifications to the C&SF Project: (1) developing surface water storage reservoirs, (2) creating water preserve areas, (3) managing Lake Okeechobee as an ecological resource, (4) improving water deliveries to the estuaries, (5) developing underground water storage, (6) developing treatment wetlands, (7) sending water to the Everglades in a way that mimics nature, (8) removing barriers to sheetflow, (9) storing water in quarries, (10) reusing wastewater, (11) improving water deliveries to Biscayne Bay, and (12) improving fresh water deliveries to Florida Bay. OVERVIEW, *supra* note 9, at 16-17.

<sup>17</sup> OVERVIEW, *supra* note 1, at 18.

<sup>18</sup> *Supra* note 8.

<sup>19</sup> OVERVIEW, *supra* note 1, at 20.

partnership between the State of Florida and the United States of America, including a 50/50 cost share agreement through the Water Resources Development Act of 1996.<sup>20</sup>

By many accounts, Everglades restoration is well worth the investment. South Florida's sole source of drinking water, the Biscayne Aquifer, is fed by the Everglades, making this ecosystem essential to a healthy, sustainable economy, and overall quality of life.<sup>21</sup> Additionally, the Everglades has the highest biological diversity value in the continental United States, making the Everglades a top tourist destination, helping to fuel a \$20 billion tourism industry.<sup>22</sup> "[T]his [\$8 billion] investment is overshadowed by the benefits to Florida and to our nation of a restored ecosystem and a sustainable economy."<sup>23</sup>

The CERP has broad-based support. Plans are underway to implement this massive public works project. Tremendous effort has already been invested in this project. Federal, tribal, state, and local partners worked together for more than three years to develop the CERP.<sup>24</sup> Restoration has begun with the initiation of several projects, including the acquisition of thousands of acres of land. Implementation of the restoration plan is to be based on the "principle of achieving environmental restoration as soon as possible."<sup>25</sup> There is every indication that Everglades restoration will be a reality in our lifetime.

Once restored, however, what will prevent the future degradation of this national treasure? To combat this future threat, the Everglades must be protected from the potentially devastating demands of growing urban populations. We must maintain a balance in use of water, and share in adversity during water shortages.<sup>26</sup> Once a balance is struck, it must be maintained. There must be assurances that, once restored, the Everglades will not be sacrificed to shortsighted, short-term solutions to the foreseeable problems of competing water needs and inequitable allocation.<sup>27</sup>

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<sup>20</sup> WRDA 1996, *supra* note 13.

<sup>21</sup> Greater Miami Chamber of Commerce and Environmental Economics Council, *In South Florida, the Environment is the Economy* 3 (June 1999)

(on file with Audubon of Florida, Everglades Conservation Office)

(<<http://www.audubon.org/campaign/er/library/economy/>>).

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> This project has recently been renamed. Previously, the project has been known as the Central and Southern Florida Project Comprehensive Review Study, abbreviated as the "Restudy."

<sup>25</sup> U.S. ARMY CORPS OF ENGINEERS AND SOUTH FLORIDA WATER MANAGEMENT DISTRICT, THE PLAN TO RESTORE AMERICA'S EVERGLADES, COMPREHENSIVE PLAN PRINCIPLES AND GUIDELINES (last modified Mar. 03, 2000)

(<[http://www.evergladesplan.org/cp\\_guiding%20princ.htm](http://www.evergladesplan.org/cp_guiding%20princ.htm)>).

<sup>26</sup> Discussed *infra* Part IV(2)(D). "In the event that there is a shortage or excess in water for existing storage, all systems should share in the adversity resulting from the imbalance in storage. However, the Restudy should provide sufficient facilities that protect natural systems such that natural systems will not have to accept a water storage adversity in either wet or dry periods that would cause significant harm to native vegetative or faunal communities, nor should water user groups have to accept adversity that significantly impacts human health and safety." GOV.'S COMM'N FOR A SUSTAINABLE SOUTH FLA., INTERIM REPORT 7 (August 11, 1998). *See also*, INITIAL REPORT, *supra* note 3, at 60.

<sup>27</sup> There are three primary legal systems governing water allocation in America; riparian rights, prior appropriation, and hybrid systems. Under riparian rights systems, landowners bordering waterways, or riparians, are permitted to use water in a reasonable way relative to all other users - new and old - proportionally. The riparian doctrine is most prevalent in eastern states. Western states are dominated by the prior appropriation doctrine, which is dependent on water usage, rather than land ownership. Under this doctrine, a water right is established by putting water to beneficial use and continuing that use, as well as complying with statutory requirements. Hybrid systems were established in states that originally followed riparian rights, but later converted to a system of appropriation combined with existing riparian rights. Florida is such a riparian hybrid state.