

Statement of Chairman Colley Billie, Miccosukee Tribe of Indians of Florida
Public Witness Hearing on Native American Issues
House Interior Appropriations Subcommittee
April 7, 2014

My name is Colley Billie, and I am the Chairman of the Miccosukee Tribe of Indians of Florida (Tribe). Thank you for the opportunity to testify on a critical issue to the Miccosukee people – our home, the Everglades. My testimony focuses on the Tribe’s priorities for Everglades restoration and the protection of our traditional ways of life.

The Tribe strongly supports a comprehensive approach to restoration that focuses on improving water quality throughout the Everglades before it is too late and before the Everglades are forever damaged. I want to thank the Subcommittee for taking an important step in the FY14 Omnibus Appropriations (FY14 Omnibus) (P.L. 113-76) Explanatory Statement by urging the Department of Interior (DOI) to work with the Tribe on the water quality of the L-28 canal system that dead ends on the Tribe’s Federal Reservation (Reservation) in the Everglades and dumps water that can exceed 10 times the US EPA approved standard for phosphorous in the Everglades. The Tribe asks for the Committee’s continued support to direct the Department toward finding solutions for the L-28 canal system that will benefit the whole Everglades ecosystem.

However, the Tribe strongly opposes the National Park Service’s (NPS) continued efforts to construct a series of massive skyway bridges on the Tamiami Trail (Trail) including the currently proposed 2.6-mile bridge that will cost \$193M because: (1) the bridges will not be permitted to operate as designed due to flooding and water quality concerns; and (2) there already exists a series of culverts and gates that could effectively deliver water, especially during high water seasons such as last year, if properly maintained at a fraction of the cost. At a minimum, NPS should be held to the requirements of the FY14 Omnibus with respect to securing all the necessary funding for the project before being allowed to move forward with bridging.

For hundreds of years, the Everglades have been our home. The Everglades was our refuge as we evaded removal to the west. For generations, the land and the waters of the Everglades have sustained our people. We have always sought to honor and protect our environment through responsible stewardship of the land. However, after years of environmental degradation caused by others, our way of life has been irreversibly affected. Because we are the people most impacted by the health of the Everglades, the Tribe has fully supported restoration efforts of the Everglades. The Tribe was deeply engaged in the development of the Comprehensive Everglades Restoration Plan (CERP) and supported its passage by Congress as part of the Water Resources Development Act (WRDA) of 2000. We have always advocated for true restoration of the Everglades through a holistic approach focused on improving the quality of the water first.

While Congress has devoted significant financial resources to Everglades restoration, efforts have been piece-meal and have lacked coordination or follow through to completion, leaving many projects uncompleted even after millions of dollars have been spent on them. For example, water quality in the Western Everglades, including the L-28 canal system on the Reservation, has not been addressed in any meaningful way. Instead, projects that do not address

water quality and are not even part of the original Comprehensive Everglades Restoration Plan (CERP) have moved forward in a seemingly arbitrary way.

One such project is the skyway bridging of the Tamiami Trail. Over the last decade, there have been multiple plans and attempts to build bridges on the Trail. The Tribe has witnessed a constantly changing array of alternatives that has culminated with appropriations bills authorizing bridging projects and circumventing proper regulatory and legislative procedure. The FY09 Omnibus Appropriations Act (P.L. 111-8) included a provision directing the Army Corps of Engineers to begin construction of a one-mile bridge “notwithstanding any other provision of law” so that NEPA no longer applied. The FY12 Omnibus Appropriations Act (P.L. 112-74) authorized NPS to construct an additional 5.5 miles of skyway bridging. With the one-mile bridge completed last year, the NPS requested \$30M in FY14 “as a one-time contribution” to begin construction of a new 2.6-mile bridge that is estimated to cost \$193M to be completed in 2020. The FY14 Omnibus provided \$7.5M for the 2.6-mile bridge. In addition, the Subcommittee wisely included language in the bill requiring, “That a contract for the Tamiami Trail Project may not be awarded until sufficient Federal funds and written commitments from non-Federal entities are available to cover the total estimated cost of the contract...”

Now, the FY15 NPS budget request indicates that they are not seeking any discretionary funds for the construction of the bridge; instead, the Administration proposes the creation of a new transportation program called the “Nationally Significant Federal Lands and Tribal Transportation Projects Program” to help fund its bridging projects on the Tamiami Trail. However, the NPS budget request also states that, if this program is not authorized or the program not funded, then NPS would “defer up to \$30M in projects, if needed, to cover 50 percent of the cost of contract payments due” for the bridge. This would seem to be a violation of the FY14 Omnibus requirement to secure all funding for the construction of the bridge before entering into any contracts for the construction of the bridge. Perhaps because NPS seeks this funding through a different account or perhaps because NPS will be transferring the funding directly to the state of Florida (State) so that the State may enter into construction contracts, NPS does not believe that it must comply with the language in the FY14 Omnibus. However, the Miccosukee Tribe strongly believes that this requirement should be adhered to before the federal government is on the hook for another \$100M in total funding for the bridging by deferring more projects. **The Tribe requests that the Subcommittee work with the Appropriations Committee to restate and enforce the FY14 Omnibus requirement for NPS to secure all funding before construction regardless of the funding source, methods, or accounting used.**

Skyway Bridging Must Stop

In March of last year, the first 1-mile of bridging on the Tamiami Trail was opened, and several months later water began to flow under the bridge from the L-29 canal (parallel to the Tamiami Trail) into Everglades National Park (Park). (Although built to increase “ecological connectivity”, the bridge does not actually connect the Park to the Water Conservation Areas to the north, but rather to a canal.) In addition, the Tamiami Trail road was raised to accommodate an 8.5-foot stage of the L-29 canal. Yet, the State will not permit the water level in the L-29 canal to be raised to 8.5 feet because there is no operational plan or consistency with the federal Coastal Zone Management Act (CZMA) due to effects of downstream flooding and the potential for water quality violations.

The 2008 Limited Reevaluation Report (LRR) and the Tamiami Trail Next Steps Project (TTNS) cited the need for several flowage easements on privately held property within the Park that would be considerably affected by increased water flow, including significant Florida Power & Light (FP&L) holdings. The Park had hoped to resolve these issues before the first bridge was completed but has failed to resolve these issues or negotiate the required flowage easements with FP&L and other private landowners. Building a second and larger bridge before resolving the realty issues is irresponsible.

In addition to the potential flooding of privately owned lands along Tamiami Trail and within the Park, significant flooding concerns for communities in western Dade county remain due to the seepage of water brought on by the increased volume of water in North East Shark River Slough. Seepage management projects that are designed to prevent the eastward seepage of water out of the Park are not yet completed and are untested. Without effective seepage management, a significant amount of water flowing under the 1-mile bridge will be lost through seepage out of the Park. Under the best case scenario, water is lost to the L-31N canal on the eastern side of the Park and then has to be pumped back into the L-29 canal and ultimately into the Park again in a circular flow pattern. That is not restoration; instead, this is wasted effort. The effectiveness of the 1-mile bridge and the ability of the seepage management projects to provide flood protection should be evaluated before building other costly bridges.

Most significantly, the Florida Department of Environmental Protection (FDEP) will not authorize an operational plan to raise the level of the canal due to water quality violation concerns. The 1991 Everglades Settlement Agreement entered into by the United States and Florida established water quality standards for water flowing into the Park that sets a phosphorous limit on the water flowing into the Park through a formula based in part on the quantity of water flowing into the Park. Already, water flows exceeded the phosphorous limit in September 2012 and are routinely barely meeting the limit. Given the current state of water quality in Water Conservation Area 3A, including the Tribe's land, the FDEP cannot be assured that increased water flows will not result in water quality violations. Building another bridge in an attempt to increase water flows will not solve this problem. In fact, the State has recently requested that they be granted a waiver on the water quality standards or that these standards be reexamined because they know that increased water flows will result in water quality violations.

Without the ability to actually move more water, the water continues to stack up on the Tribe's lands in WCA 3A, damaging the tree islands and significantly affecting the wildlife and cultural resources of the Tribe. With its focus on bridging, the Park has neglected the existing culverts and gates that are underneath the Tamiami Trail that would convey a significant amount of water into the Park if they were simply cleared of downstream vegetation and swales added where necessary. The swales would help produce the natural sheet flow by widely distributing the water. A 2010 study by the University of Miami commissioned by the Park to evaluate the effectiveness of clearing the culverts and adding swales concluded that this approach would be highly effective at moving water under the Trail at a fraction of the cost with some culverts, seeing water flow increases of 840%. Already, culverts are used widely throughout the Everglades on many roads to effectively convey water. In addition, the culverts are already a fully permitted water delivery structure that needs no additional operational plan. **The Tribe**

asks the Subcommittee to direct the Park to clear the unnatural and dense vegetation downstream of the culverts and gates and add swales where necessary to increase the flow of water into the Park and alleviate the high water levels affecting the Tribe's land.

True Restoration of the Everglades Begins With Improving Water Quality

Everglades restoration will never be accomplished unless there is a comprehensive solution for cleaning up the contaminated water. While progress has been made in the Eastern and Central Flow Paths, the Western Everglades, including the L-28 canal system on the Reservation, has been largely ignored. With discharges of water with phosphorous that has averaged 60 ppb over the last 5 years and can exceed 100 ppb – 10 times greater than the protective standard, the L-28 canal system has had devastating impacts on the ecosystem of tribal lands, WCA3A, and the broader Everglades. Recent data from the 2014 South Florida Environmental Report shows that the discharge from the L-28 canal system comprises nearly 37.5% of the total phosphorus load discharged into WCA 3A. As that water flows south through tribal lands and WCA 3A, the water is slowly cleaned. Essentially, tribal lands are being used as a *de facto* Stormwater Treatment Area (STA) to clean and store water for the Park. However, DOI has as much if not more responsibility to the Tribe to clean the water on our lands in the Everglades as it does to the Park. To restore the Everglades, efforts should be targeted toward cleaning all of the polluted water before it enters the Everglades.

Recently, as a result of litigation initiated by the Tribe, EPA and the State entered into a “Framework Agreement” (Agreement) to address water quality issues in the Everglades. This Agreement calls for a number of projects, including the expansion of STAs and the creation of Flow Equalization Basins (FEBs). While the Tribe is encouraged by the potential success of these projects, the Agreement does nothing to address poor water quality in the L-28 canal system in the Western Everglades. Similarly, while the Central Everglades Planning Project (CEPP) includes an FEB storage component and firm water quality commitments, the CEPP does little to address poor water quality in the L-28 canal system.

Addressing contamination in the L-28 canal system must be a top priority for true restoration of the Everglades and to ensure that our homelands, culture, and traditions are protected. The Tribe believes that all options for resolving this must be considered; and, because the L-28 canal system directly impacts the Reservation, any final resolution must be consistent with the Tribe's policies and way of life. The Tribe thanks the Subcommittee for taking the important step to include language in the Explanatory Statement of the FY14 Omnibus urging DOI to work with the Tribe on the water quality of the L-28 canal system. **The Tribe asks that the Subcommittee continue to support efforts to cleanup the L-28 canal system by directing the DOI to work with the Miccosukee Tribe to develop solutions to the poor water quality of the L-28 canal system.**

Conclusion

As the people who live in the Everglades, the Miccosukee Tribe is committed to its full restoration. We are deeply concerned that precious resources that should be spent on cleaning the water now before it is too late are being spent on costly and ineffective projects that ultimately will not help achieve restoration of the Everglades.