

A brief review of the relationship between the Miccosukee Tribe of Southern Florida and the many facets of the Everglades restoration project

In 1934 “haphazard” watershed manipulations in the Southern Everglades region of Florida were scrutinized and brought to light by a number of activists, a willing congressman and the Florida Audubon society. They lobbied to restore what they thought to be an incredibly valuable wetland: an area that would eventually become the Everglades National Park. Since 1848 the area had been heavily drained to support a burgeoning agricultural industry and skyrocketing urban development (National Research Council, 2003). But complications in water management due to the lack of knowledge managers initially had of wetlands ecology resulted in the wide scale degradation of the ecosystem and a consequent restoration effort that some say is the largest in history (Perry, 2008). Florida’s growing population in the decades to follow spurred an increased demand for water and generated political activity from a slew of actors vying for different interests. These include the Miccosukee Tribe of Florida, the South Florida Water Management District and the Army Corps of Engineers, as well as the state and federal governments. Relations between the Miccosukee Tribe and the abovementioned players are characterized by an abundance of lawsuits concerning water quality, tribe sovereignty and concern for the native biota. Different motivations and the wide range of economic and political power of all players have resulted in a political tug of war that has progressed very slowly and resulted in only marginal restorative success since the park’s inception. The question I am trying to answer is whether or not the Miccosukee tribe, because of its lesser political clout as a minority, is being shortchanged in the fight for the Everglades. I want to assess the tradeoff environmental agencies are willing to make between environmental and social responsibility.

In terms of species and hydrological structure, the Everglades historically exhibited a sort of patchwork pattern (McCormick, *et al*, 2008). It was characterized by alternating saw grass as the dominant flora and a network of ridges and deep water sloughs flowing from North to South. This flow resulted in a mosaic of ponds, saw grass marshes, hardwood hammocks and forested uplands whose hydrological

conditions were and still are linked to often unpredictable weather patterns (Perry, 2008). These include periods of high rainfall and drought as well as El Nino and La Nina events. In the late 1800s these factors combined with Florida's flat landscape and porous geology made water management a formidable challenge (Perry, 2008). It continued to be a major challenge until about 1948, about a year after the establishment and dedication of Everglades National Park, when the federal government funded the Central and South Florida Project (C & SF) to manage water by building canals, levees, pump stations and a glut of control structures and storage areas, the organization's main aim being flood control. The project was proposed by the US Army Corps of Engineers who had come onto the scene after a year long drought from 1947 to 1948. The project systematically diverted most of the rainfall in the area to the Gulf of Mexico or the Atlantic Ocean. By 1970, about 50% of the historic Everglades had been eliminated and the historic flow pattern had been interrupted by canals, levees and the Everglades Agricultural Area-an expanse that covered 27% of the historic everglades area and was used to justify the C & SF project (Duke University Wetland Center). A cascade of consequences followed these management decisions: hydro patterns were interrupted, certain areas became too wet or too dry to support native faunal and floral communities, estuaries became both more and less saline than they have been historically and contaminants began to create hypereutrophic conditions across Everglades waters (Perry, 2008).

Aside from the ecological effects of diverting water flows and consequently disrupting natural hydro patterns, the C&SF's support of large scale agriculture had many adverse effects on water quality. One of the main culprits in the water degradation affair was the sugar industry. The water draining off cane fields originally flowed into Lake Okeechobee polluting it with nitrogen and phosphorus from fertilizer. In 1989, the SFWMD decided that rather than pump this runoff into the Lake, because it is the primary source of South Florida's water, it would behoove them to pump it into the Southern end of the Everglades system (New York Times, 1989), which though not the primary source, is still a major source of water for South Floridians. In addition to the nitrogen and phosphorous runoff from the EAA, mercury and chemical pesticides were being pumped into the Everglades water system from other agricultural activities. As a result, the US government took the SFWMD to court for violating Florida's clean water standards. The stark situation the wetlands found itself in both ecologically and economically- as a primary water source-generated a milieu of interests and a milieu of actors fighting to serve those interests. During the

EAA battle, one New York Times writer noted that, “The water district and the Army Corps of Engineers too often act as if their only mission were to provide enough water for the area’s people and its farms without due regard to the purity that’s needed for survival of a precious natural environment,” and perhaps, I would add for the survival of a native tribe.

Although the Miccosukee tribe was given rights to the land south of the Peace River in 1845, it was not until the early 1960s that it was recognized by the federal government (Park, Miami New Times 1996). Consequently, despite the fact that the Army Corps of Engineers began digging canals to the Gulf and Atlantic Coasts in Miccosukee hunting territories in 1920, the tribe had no voice with which to protest these actions until 1962. And Protest they did. As mentioned before, in 1988, the tribe sued the state of Florida for failing to enforce water quality standards. The state of Florida agreed to dedicate a number of acres of land to storm water treatment areas and to meet water quality deadlines for phosphorus concentrations. In 1994, the Everglades Forever Act (EFA) changed the water quality standards for the park. It enacted the settlement provisions of federal-state water-quality litigation and provided funding for the state to push the Everglades cleanup. But the new standards were not recognized by the state of Florida and as a result, the tribe sued the Environmental Protection Agency in 1995 under the Clean Water Act. In 1998, after many remands and appeals, the Miccosukee tribe won the case (National Research Council, 2003). But where this series of law suits left off, another one picked up. 1998 was also the year the S-9 lawsuits began. The Tribe sued the SFWMD for back-pumping pollutants into the Everglades Protection Area from its S-9 pumps. Later the tribe also sued the SFWMD for their S-2, 3, and 4 pumps alleging that these pumps were also discharging polluted water into Lake Okeechobee (Peer.org 2009).

The Miccosukee tribe has more often than not achieved their proposed water quality amendments but the process is often slow and the outcomes poorly enforced. If the tribe had not taken legal action in many of these suits, many times, agencies would continue ignoring the mandates. By taking a closer look into the S-9 case, we can see how despite every actors’ ostensible interest in preserving the integrity of the Everglades ecosystem, the motivations for continuing or discontinuing a practice are more complicated and consequently, often defended on shoddy rationale. The S-9 case, like most of the abovementioned cases, was characterized by and fought solely on the basis of semantics. The Clean Water Act dictates that a National Pollution discharge Elimination System (NPDES) permit is necessary for any entity to legally

discharge pollution from a point source into navigable waters (Carden, 2004). The court was faced with discerning whether pumping already polluted water could be considered “an addition of pollutants to navigable waters from a point source.” While the court ultimately decided in favor of the tribe, Kristin Carden, in her Harvard Environmental Law review on the issue, argues that the government’s failure to even mention S-9’s implications for environmental justice exhibits a failure to support not only environmental justice but also cultural pluralism. “The Miccosukee case is a stark example of a situation where a state government is doing exactly what environmental justice deplors: it is dumping polluted water into an area for the benefit of the majority at the expense of a minority.”

Aside from water quality cases, of which there are many, the Miccosukee tribe has also displayed an ostensible interest in preserving biodiversity. In 2005, the tribe filed a suit against the U.S. Fish and Wildlife Service, arguing that their efforts to save the Cape Sable created unfavorable conditions for the Kite Hawk. The tribe’s motivations here, however need to be questioned because although a decrease in the Kite population did accompany the implementation of the Army Corps’ Interim Plan (one to keep water below 6 feet above sea level in certain areas), it was tribal land that was subjected to a water backup. And if the tribe’s motivations are generated not solely by preserving the Kite Hawk, but also by a desire not to have flooded land, what does that mean for the politics of the ongoing Everglades restoration project? Which is more morally pressing, a noble desire to save an endangered species or a desire for the right of sovereignty over one’s own land (*Miccosukee Tribe of Indians of Florida v. U.S. Fish and Wildlife Service, et. al*)?

Most recently, the tribe has tried repeatedly to halt two projects: the building of the Tamiami trail bridge over the Everglades and the U.S. sugar deal. While ENP superintendent Dan Kimball assures skeptics that the bridging of the Tamiami trail- which as of now effectively acts as a dam, blocking North to South water flows- would allow managers to raise water level enough to double the current flow of water in the area, the Miccosukee tribe remains unconvinced. They suspect that this project will simply squander money from the projects currently underway and will effectively be “a bridge to nowhere.” Says Dexter Lehtinen, attorney for the tribe, “The park service wants that bridge, they don’t give a damn what happens to the Indians. And by the way, what happens to the Indians is what happens to the rest of the Everglades.” (Spinner, Herald Tribune 2009) The tribe feels similarly toward the U.S. sugar deal, maybe with good

reason. The tribe felt it necessary ask the federal government to force water managers to finish building a reservoir intended for Everglades restoration. Shortly before Governor Charlie Crist announced that the state would buy out U.S. Sugar's holdings, work on the project came to a halt. The Miccosukee tribe reacted in the same way it has to such situations in the past: by indignantly expressing concern at the state's apparent attention deficit disorder. "It's stopping restoration. These guys make promises and it's always about what they are doing 10 years from now. It's not what they are doing now. They move on and the Everglades keep dying," said Dexter Lehtinen (Reid, Sun Sentinel 2009). The State argues that buying the land will provide for more restoration possibilities in the future, even if it does require borrowing money and ultimately waiting idly before any real work can begin. Everglades National Park board member Michael Collins thinks the decision unwise, "The acquisition in and of itself accomplishe[s none of the pending plans.] This is not a deal that is in the absolute best interest for the Everglades." (Reid, Sun sentinel 2009[2]). Construction is set to begin in November. Whose interests this endeavor will ultimately serve remains to be seen, but it is certainly not those of the Miccosukee tribe. I believe that the cases I have emphasize the relevance of my question. Is the minority being shorthanded at the expense of a stronger majority and what does that mean for the restoration of the Everglades?

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