



Dionè C. Carroll, Esq.

Phone: 786-260-0081

Fax: 866-954-0184

dione@carroll-law-offices.com

www.carroll-law-offices.com

555 NE 15th St. Suite 201 Miami, FL 33132

## TELECOPY COVER SHEET

DATE: October 6, 2009 FAX NUMBER: 239 - 965 - 3007 <sup>695</sup>

TOTAL NUMBER OF PAGES: 7 (INCLUDING COVER SHEET)

**PLEASE DELIVER DOCUMENTS PROMPTLY**

TO: Pedro Ramos and Ed Clark

FROM: Dionè C. Carroll, Esq.

### COMMENTS:

**Please see the following. Thank you for your courtesy.**

**This facsimile contains PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile at the above address via the U.S. Mail. Thank you.**

Our equipment is fully automatic. To send to us, CALL: (805) 954-0184. You will be automatically answered by our machine. You should begin to transmit when you hear our tone. If you do not receive all pages, please call the receptionist as soon as possible at (305) 807-2082.



**CARROLL**  
LAW OFFICES, P.A.

October 6, 2009

(VIA U.S. MAIL)

National Park Service  
Attention: Big Cypress National Preserve Planning Team  
Denver Service Center, Planning Division  
P.O. Box 25287  
Denver, Colorado 80225-0287

(VIA OVERNIGHT HAND DELIVERY AND FACSIMILE 239-965-3007)

Pedro M. Ramos  
Superintendent  
Big Cypress National Preserve  
33100 Tamiami Trail East  
Ochopee, FL 34141-1000

(VIA EMAIL)

**BICY\_GMP\_Planning@nps.gov**

**Re: Big Cypress National Preserve – Addition – Draft GMP/WS/ORV Plan/EIS  
(Comments regarding Draft General Management Plan / Wilderness Plan / Off-  
Road Vehicle Management Plan / Environmental Impact Statement (“Draft Plan”).**

**Dear Superintendent Ramos and Planning Team:**

I am writing to you as an attorney for the Independent Traditional Seminole Nation of Florida (the “Nation”). They live in Florida, on ancestral land, according to traditional Seminole law, in and around the Everglades and Big Cypress. Indigenous people have lived in the vicinity of the Addition Area since time immemorial. They live there still. This project proposes to interfere with access to very important traditional places and directly interfere with their ability to practice their lifestyle, traditions and religion. No one has given these impacts the hard look that is required.

The Nation has commented orally on multiple occasions, including but not limited to, comment at a meeting on or around 9/15/09 and your recent public meeting held at the Miccosukee Resort and Convention Center. Those comments are adopted and reasserted herein by reference as if set forth herein.

One important defect in the Draft Plan, reflecting a failure to evaluate significant impacts to the human environment, is its failure to even recognize the existence of the traditional indigenous people that have lived in the area but choose not to join either the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. These traditional people in the area are numerous, and

as yet, they are ignored by the Draft Plan. This constitutes a violation of the National Environmental Protection Act ("NEPA").

Attached we have provided a copy of a section of the Goss report, which discusses the people who comprise the Nation. The language included therein has been included in prior Big Cypress documents and drafts when discussing the presence of native people in Big Cypress. Language of this kind should be included in the Draft Plan before it becomes final. The current language fails to recognize at all the Nation and its people.

In addition, it would be entirely inappropriate and contrary to culture to disclose detailed information regarding sacred areas. However, it will have to suffice to say that there are traditional places where native people must be guaranteed access. This matter was addressed at some length at the 9/15/09 meeting. And, the Nation does not believe its culture and traditions have been really considered and addressed by the Draft Plan. The Nation objects to Wilderness designation because the Nation is concerned that the designation might be used to exclude traditional native people from full access to the Addition lands.

It is the goal of the Nation to protect its traditional homeland, which includes the Big Cypress Addition, and to guarantee continued access for its people. The Draft Plan does not accomplish these goals. In its present form it violates NEPA, and other state and federal laws that protect the traditional practices of native people.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, is perhaps the shortest, and yet one of the most profound, of all the federal environmental statutes. This small act's purpose is to require all federal agencies to consider the environmental consequences of major federal actions.

NEPA directs that all federal agencies must include in all "major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on . . . the environmental impact of the proposed project . . ." 42 U.S.C. 4432(C)(i)(emphasis supplied). This requirement is the genesis of what is commonly known as the environmental impact statement (EIS), and the cases that deal with whether a federal agency must prepare an EIS on a particular project are legion. The idea of NEPA was to require that certain procedural steps be taken by an agency prior to the initiation of any project to assure that the decision maker and the public would be apprised of the environmental consequences of the project. NEPA puts the human environment on equal footing with other factors government officials must consider, such as economics, defense needs, etc.

NEPA requires agencies to consider the environmental impacts to the human environment of their decisions. NEPA requires an agency to take a hard look at environmental impacts before making any decision.

NEPA and the regulations adopted thereunder by the President's Council on Environmental Quality (CEQ) are binding on all agencies. A definition of the "human environment" is found in CEQ's regulations implementing the law. 40 C.F.R. 1508 *et seq.* Those regulations note that the "human environment" is to be "interpreted comprehensively" to include the "natural and physical environment and the relationship of people with that environment." Agencies need to

address not just so-called "direct" impacts or effects, but also "aesthetic, cultural, economic, social or health" impacts, "whether direct, indirect or cumulative," 40 C.F.R. 1508.8. Clearly the impacts to indigenous people caused by this project fall squarely within the definition of impacts that must be considered. They have not been.

The apparent decision to ignore the presence of the independent indigenous people who make up the Nation and to fail to consider how this will impact them is an obvious violation of NEPA. Interference with Native traditional practices violates the American Indian Religious Freedom Act, the Religious Freedom Restoration Act and the Nation's member's rights to free exercise of their religion under the United States Constitution, including but not limited to the First Amendment and Free Exercise Clause.

In addition to these comments provided for the Nation, its people have set forth a brief statement in their own words with regard to this matter. That statement is as follows:

We the Independent Traditional Seminole Nation of Florida, know that our Nation has been directly talked to by the United States government since the United States made a treaty with the Nation of Spain and took over Florida, so, as they say. In saying that, we are the Nation that existed before that and still exists today.

So, we believe that we have all the rights to these lands that were given to us by the Creator, (God), to live on, fish, hunt, farm, and use as we see fit to our people. And, not only that, we are the reason why there are still natural areas left.

For our people, and indigenous people all over the world, we have been given by the Creator, (God), the stewardship of earth. If you destroy us by disconnecting us from the natural world, or through rights by taking them away by the stroke of pen, you are destroying the future of our next generation, as well as your own next generation too.

Please heed their warning. If you have any questions regarding the foregoing, please feel free to contact me at 305-807-2082.

Sincerely yours,



Dionè C. Carroll, Esq.

Enclosure

P.S. A one week extension of comment period was agreed to by Big Cypress National Preserve in writing prior to the expiration of the comment period, allowing these comments to be timely filed.

USUAL AND CUSTOMARY USE AND OCCUPANCY BY THE  
MICCOSUKEE AND SEMINOLE INDIANS  
IN  
BIG CYPRESS NATIONAL PRESERVE, FLORIDA

By

James A. Goss, Ph D  
Department of Sociology, Anthropology, and Social Work  
Texas Tech University  
Lubbock, Texas

A Project Supported by the Southeast Region  
National Park Service  
Atlanta, Georgia

Under Subagreement No. CA-5000-2-9025/2  
of Cooperative Agreement CA-5000-2-9016

Between  
NATIONAL PARK SERVICE  
and  
TEXAS TECH UNIVERSITY

June 1, 1995

2.4. THE TRADITIONAL SEMINOLE NATION OF FLORIDA AND  
THE "INDEPENDENTS"

The TRADITIONAL SEMINOLE NATION OF FLORIDA is a group of independent people of Miccosukee and Seminole heritage that has sought recognition as a distinct group through legal approach to the United States government. This group and other independents number probably about 200. The members of the Traditional Seminole Nation of Florida (primarily Miccosukee speakers) have steadfastly kept their autonomy and refused to affiliate with either the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida. They continue to hold that they are still the rightful owners of southern Florida soil.

The members of the Traditional Seminole Nation of Florida hold that they represent the traditional governing body of the Seminole Tribe, and that the new polities of the Seminole Tribe of Florida (established in 1957) and the Miccosukee Tribe of Indians of Florida (established in 1962) do not speak for them. They wish to make it very clear that they are not a "splinter group", as they have often been referred to by historians and anthropologists, but that they represent the oldest traditional governing body of the Seminole Nation.

They have refused to join the modern political "tribes" in their attempts to get payment for lands that were taken. The Traditional Seminole Nation of Florida continues the position that their land is not for sale and they hold that their lands in Florida have been illegally taken from them. They particularly claim that the land allocated to them under the Worth Agreement (Appendix I.E., Map 6), is still rightfully theirs.

They have refused, at great sacrifice, to be parties to the distribution of claims monies distributed by the government

after the settlement of the Seminole Claims Case (see: Appendix 1.L. Seminole Claim: Distribution of Funds). They have refused to take any funds from the government and hold that they have signed no agreement to release their claim to land for money.

The Traditional Seminole Nation holds that the members of the modern "tribal" polities have given up their rights to the rest of their Florida lands by moving to reservations and taking government payments for their lands. Of course, following this logic, it is the members of the Traditional Seminole Nation of Florida and other independents that have not joined the modern tribal polities that contend that they have the continuing claim to the rights of residence and use of resources in Big Cypress National Preserve, since they have never relinquished their claim to this land. In other words, they view the Big Cypress National Preserve statutory rights as supporting the rights that they contend they have always had. In their view, the statute gives the National Park Service the responsibility of protecting these rights.

Members of the Traditional Seminole Nation and other independents today live along the Tamiami Trail (U S 41) and near Immokallee on state land (Royal Palm Hammock and Big Cypress Bend), federal land (Big Cypress National Preserve), and on private land (through the generosity and understanding of employers and land owners). A few of the independents that live in camps in Big Cypress National Preserve along U. S. 41 have title to their land. It is this group that could be considered more traditional and will be most interested in continuing much of the old pattern of residence and lifeway under the statutory rights in the Big Cypress National Preserve.