

7-1-1971

Jetport: Planning and Politics in the Big Cypress Swamp

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COMMENTS

JETPORT: PLANNING AND POLITICS IN THE BIG CYPRESS SWAMP*

MARTIN KESSLER AND LARRY TEPLY**

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I. INTRODUCTION

The last decade has witnessed a growing public concern over harm inflicted on the environment by man. This concern has been translated into legal mandates that require public officials to consider environmental effects of the activities they undertake, license or fund.¹ As a result, decision making processes are being called upon as never before to resolve complex scientific questions with inherent policy implications.

Whether existing institutions are suited to make such determinations may be questioned, especially when scientific data is uncertain or when any decision will be a choice between competing needs of society. One of the first examples of this new problem was the planning of the Everglades Jetport, located just north of Everglades National Park in the Big Cypress Swamp. In order to preserve the unique Everglades wilderness, the conservation movement forced abandonment of a 13 million dollar training airport, intended to later become a major international airport.

* Research for this comment was supported by the Committee on Legal Issues in Health Care, Duke University School of Law, under a grant from the National Science Foundation for the purpose of stimulating law review research on topics with the general theme, "Scientific Uncertainty and Technology Assessment."

The authors wish to express their appreciation to Professor Joseph Little of the University of Florida College of Law for his helpful comments.

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1. See, e.g., Wild and Scenic Rivers Act of 1968, 16 U.S.C. §§ 1271-87 (1970); Water Quality Improvement Act of 1970, 33 U.S.C. §§ 1151-75 (1970); National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-47 (1970); Environmental Quality Improvement Act of 1970, 42 U.S.C. §§ 4371-74 (1970); Airport and Airway Development Act of 1970, 49 U.S.C. §§ 1701-42 (1970); FLA. CONST. art. 2, § 7; Environmental Protection Act, 2 Ill. Legis. Serv. 536 (1970); N.Y. Environmental Conservation L. §§ 1-129 (McKinney 1970).

This article, through interviews with participants and searches of agency files, has reconstructed the events of the jetport dispute to reveal the administrative problems in the solution of environmental issues. The approach is realistic inasmuch as it considers not only formal decision making machinery, but also the total context in which such decisions are made—with input from scientists, politicians, pressure groups and the press. The inquiry focuses on the capability of the present decisional system to reach rational results in environmental questions.

II. THE COMPETING VALUES

The jetport involved a conflict of two competing aspects of the public interest: The need of the community to expand its transportation system, and the need of the public to protect the valuable resources represented by the Everglades. In the past, society's primary measure of progress has been the degree of expansion and development, as expressed in terms of trade, industry and agriculture. This development has often been sanctioned by society at the expense of its natural heritage. However, the new awareness of the results of urban expansion and commercial development on the nation's environment, as in the case of the Everglades Jetport, has led to a reevaluation and reordering of society's measures of progress.²

In 1934, Congress enacted legislation which authorized establishment of Everglades National Park "for the benefit and enjoyment of the people."³ It was officially dedicated in 1947⁴ and attracted over 1,250,000 visitors in 1968.⁵ Located at the southernmost tip of Florida, the Park consists of 1.4 million acres of a unique and complicated ecosystem.⁶ Within its boundaries exist hundreds of species of plants, fish,

2. In most cases, the preservation of the environment flows from a failure to develop, but this entails a cost which is often placed on a small segment of society. The monetary benefits which result from developments such as the Everglades Jetport primarily accrue to the locality and to a lesser extent, to the adjoining region and the nation. In contrast, preservation of the environment affects a large segment of the whole society and in a diffused way. This aspect of the South Florida environmental problem is thus merely one example of an issue which sooner or later must be faced by the nation as a whole: how are the diffused but general costs to society to be balanced against local, usually monetary benefits to a small segment of the society? U.S. DEPT. OF INTERIOR, ENVIRONMENTAL IMPACT OF THE BIG CYPRESS SWAMP JETPORT 150-51 (1969) [hereinafter cited as the LEOPOLD REPORT].

3. Act of May 30, 1934, ch. 371, § 1, 48 Stat. 816, as amended, 16 U.S.C. § 410 (1970).

4. 12 Fed. Reg. 4189 (1947).

5. *Hearings on the Water Supply, the Environmental, and Jet Airport Problems of Everglades National Park Before Senate Comm. on Interior and Insular Affairs*, 91st Cong., 1st Sess. 136 (1969) [hereinafter cited as *Interior Committee Hearings*].

6. *Interior Committee Hearings*, *supra* note 5, at 5. The Park contains the only tropical marsh vegetation in the United States. NATIONAL ACADEMY OF SCIENCES—NATIONAL ACADEMY OF ENGINEERING, ENVIRONMENTAL PROBLEMS IN SOUTH FLORIDA: REPORT OF THE ENVIRONMENTAL STUDIES GROUP TO THE ENVIRONMENTAL STUDIES BOARD OF THE NATIONAL ACADEMY OF SCIENCES—NATIONAL ACADEMY OF ENGINEERING, PART II 21 (1970) [hereinafter cited as the NATIONAL ACADEMY STUDY]. See generally M. DOUGLAS, *THE EVERGLADES: RIVER OF GRASS* (1947); W. ROBERTSON, *EVERGLADES—THE PARK STORY* (1969); C. TEBEAU, *MAN IN THE EVERGLADES* (1968).

animals and birds, including twenty-two species of fish and wildlife on the rare and endangered list.⁷ Apart from its intrinsic value as a complex wilderness, the Park serves as a natural scientific laboratory for ecological studies and provides recreational and educational resources.⁸ The natural functioning of the Everglades directly supports the marine fisheries of at least the upper third of the Florida Keys which contribute several million dollars annually to the region's economy.⁹ It also recharges South Florida's aquifers which provide a reservoir of water for the coastal populations and prevents the ocean's salt water from contaminating the coastal water supplies.¹⁰

Historically, Everglades National Park relied on a slow moving, flat sheet of water gradually flowing south from Lake Okeechobee.¹¹ The region between the northern park boundary and the lake served as a huge watershed for the Park.¹² However, the free flow of water into the Park has been interrupted by the construction of dikes and canals for flood control.¹³ As a result, a state agency, the Central and Southern Florida

7. *Interior Committee Hearings*, *supra* note 5, at 5. The unusual concentration of birds in the Park is considered to be one of its special attractions. These birds include the limpkin, the anhinga, the roseate spoonbill, egrets and other herons including the nearly extinct great white heron, the wood ibis (which is the only North American stork), the bald eagle (which is the national bird and now very rare), and many others. NATIONAL ACADEMY STUDY, *supra* note 6, at 21.

8. NATIONAL ACADEMY STUDY, *supra* note 6, at 20-22.

9. The Torguas-Sanibel pink shrimp fishery alone contributes several million dollars. Other species of shellfish and finfish dependent upon the Everglades contribute another three million dollars annually in commercial fisheries operations. Shrimp are smaller and the harvest declines each year following freshwater shortages in the Park. They are directly dependent upon the proper degree of freshness or brackishness in the estuaries of the Park during their migratory life cycle. *Interior Committee Hearings*, *supra* note 5, at 162.

10. Salt water, which is 2.5 percent more dense than fresh water, intrudes inland into an aquifer until it reaches a line at which the water table has risen to a height of 2.5 feet above sea level. The seawater literally pushes the fresh water back along a surface where the two come in contact. Below any point on land, the boundary between the fresh and salt water occurs at a depth at which the fresh water depth is 2.5 percent greater than the depth below sea level. Thus, it is essential that the water table near the coast be high to prevent salt water intrusions, as evidenced early in this century when extensive inland drainage was undertaken on the east coast of South Florida. NATIONAL ACADEMY STUDY, *supra* note 6, at 39-41.

11. The drop in elevation from Lake Okeechobee to the sea, a distance of about 100 miles, is only 15 feet. Consequently, the water drops less than two inches per mile, traveling an almost imperceptible rate of 1,000 to 1,500 feet per day. *Interior Committee Hearings*, *supra* note 5, at 5.

12. Harte & Socolow, *The Everglades: Wilderness Versus Rampant Land Development in South Florida*, 1 ENVIRONMENTAL AFFAIRS 140, 143 (1971).

13. The State of Florida received some twenty million acres of swamp and overflowed lands, including the Everglades, under the provisions of the Federal Swamp and Overflow Lands Act of 1850. In 1851, the Florida Legislature passed an act accepting the federal grant and providing for a board of internal improvement. In 1855, the Florida Legislature created the Trustees of the Internal Improvement Fund, whose responsibility was the drainage and reclamation of swamp and overflowed lands. By 1905, it was apparent that efforts to drain and reclaim the lands, under jurisdiction of the Trustees, were ineffectual. In the same year, the Florida Legislature passed a new act creating the Everglades Drainage District. In 1926 and again in 1928, severe hurricanes passed over Lake Okeechobee. The poorly constructed levees failed to withstand the wind tides which resulted in immense volumes of water being

Flood Control District, now controls the entry of a major portion of the Park's water supply.¹⁴ The only unrestricted natural flow remaining is from the privately-owned, but undeveloped, Big Cypress Swamp.¹⁵ The jetport was located in the swamp about 36 miles west of Miami and six miles north of the Park.¹⁶

By 1968, operations at Miami International Airport had exceeded its theoretical capacity.¹⁷ Expansion of the airport was uneconomical because it is surrounded almost completely by urban development.¹⁸ Since 35 to 42 percent of the total operations at Miami International were training flights, construction of a 10,500-foot runway at the jetport site was planned in order to relieve Miami International of these flights and allow for expansion in the volume of commercial flights.¹⁹

The Dade County Port Authority envisioned the training facility as the first of three stages in the development of a major regional airport.²⁰ The second stage would have provided for cargo handling.²¹ The full

swept into the Everglades farming area causing extensive damage. Over 2,300 residents in areas adjacent to the lake were killed. As a result, the first federal water control programs were initiated. In 1947, the year the Park was established, an unusually wet season and two wet hurricanes combined once again to inundate the Everglades, fill Lake Okeechobee, and cause sixty million dollars of damage. This flood led to the development of a comprehensive plan for water control and to the creation of the Central and Southern Florida Flood Control District in 1948. NATIONAL ACADEMY STUDY, *supra* note 6, at 10-12; LEOPOLD REPORT, *supra* note 2, at 59-64.

14. The Flood Control District releases water from Lake Okeechobee to the Park through water conservation areas. The estimated minimum annual park requirement is 315,000 acre-feet. But the present regulation schedule fails to meet the Park's needs because a wide variation in annual releases has occurred and a minimum monthly flow required to preserve its unique ecology has not been maintained. *Interior Committee Hearings*, *supra* note 5, at 24.

15. The Big Cypress Basin accounts for more than half of the surface water that flows into the Park. LEOPOLD REPORT *supra* note 2, at 19. See also Robinson, *Tortious Water Use in the Big Cypress Swamp*, 25 U. MIAMI L. REV. 690 (1971).

16. *Interior Committee Hearings*, *supra* note 5, at 3.

17. H. LAMBERTON, ENVIRONMENTAL PLANNING AND THE DADE-COLLIER AIRPORT 1 (1969) [hereinafter cited as LAMBERTON] (Lamberton is a partner in Howard, Needles, Tammen & Bergendorff, the consulting firm of the Dade County Port Authority for planning the Everglades Jetport).

18. In contrast to the high land values near Miami International, the jetport site was acquired from 2,400 owners for 3.4 million dollars, less than \$150 per acre. *Interior Committee Hearings*, *supra* note 5 at 191. Land sales in the area immediately west of Miami International in 1970-71 ranged from a low of \$3,200 per acre to a high of \$17,000 per acre. Interview with Norman Arnold, Howard, Needles, Tammen & Bergendorff, in Miami, October 22, 1971.

19. DADE COUNTY PORT AUTHORITY, FISCAL YEAR 1968 ANNUAL REPORT 16 (1968). Since 1968, the number of training flights has had to be diminished because of public objections to excessive nighttime noise, which forced the restriction of training flights to daylight hours, and the higher priority of other types of traffic. The training facility was planned to be operated on a 24-hour basis. *Interior Committee Hearings*, *supra* note 5, at 93; LAMBERTON, *supra* note 17, at 1.

20. See DADE COUNTY PORT AUTHORITY, THE DADE-COLLIER AIRPORT STORY 7-10 (1969). During the initial training stage, no ground services other than those required in emergency situations were planned. *Id.*

21. In 1968, Miami International handled about 169,000 tons of air cargo, and by 1980 the area's cargo tonnage is forecasted by the Port Authority to be about 745,000 tons.

development of the jetport in the Big Cypress Swamp contemplated the construction of an immense \$200 million dollar complex²² capable of handling 50 million passengers annually.²³ Its land area, 39 square miles, would have been larger than the combined land area of the four largest airports in the United States.²⁴ In order to provide adequate transportation to the remote site, the development of a 1000-foot wide transportation corridor was planned. This corridor would have been capable of handling tracked air cushion vehicles traveling at speeds of 150 to 250 miles per hour.²⁵

The jetport would have served as the SST airport for the southeastern United States, providing service across the Atlantic and to other parts of the world,²⁶ and would have contributed significantly to Miami's economy. One hundred thousand or more persons would have been employed at the jetport.²⁷ Surrounding development alone would have added an estimated \$100 million dollars to the area's economy.²⁸

While the public had a legitimate interest in the preservation of the Everglades, it also had, on the other hand, a pressing need for improvement of its transportation system. As urban areas push outward and as

Interior Committee Hearings, supra note 5, at 9. See *A Dictionary of Miami Aviation Facts*, THE MIAMIAN 31 (Aug. 1970). The demand for air cargo operations at the new site would introduce the first significant need for an improved ground access system connecting the jetport with Metropolitan Miami and the West Coast of Florida. DADE COUNTY PORT AUTHORITY, THE DADE-COLLIER AIRPORT STORY 9 (1969).

22. Interview with Robert F. Bacon, Chief, System Planning Division, Airports Service, FAA, in Washington, D.C., April 15, 1971.

23. *Id.* Estimates of the jetport's size varied considerably during the jetport controversy. For example, the Los Angeles Times carried an article on October 9, 1968 entitled "Miami Goes to Swamp for Spacious Airport—Official Says Everglades Give Plenty of Room 'Right into Time of Space Ships'" in which the Port Authority Director stated that the jetport would have facilities to handle 150 million passengers yearly. Throughout the planning of the jetport the Director frequently puffed up the size of the jetport while much more realistic statements seem to have been made by the Deputy Director of the Port Authority. The Director optimistically predicted in this article: "That five years from now the hotels will be there. A large city will grow up around this jetport. We think it will have aircraft manufacturing plants and even an air college." *Interior Committee Hearings, supra* note 5, at 190-91.

24. DADE COUNTY PORT AUTHORITY, FISCAL 1968 ANNUAL REPORT 16 (1968). These airports were San Francisco, Washington International, John F. Kennedy, and Los Angeles. The jetport site is larger than the land area of the entire City of Miami.

25. On January 31, 1969, the Miami Herald carried an article entitled "Jetport to Get Speedy Train" in which Florida Governor Claude Kirk announced that Miami was likely to receive a demonstration grant eventually involving a \$200 million dollar system. The article stated that track air cushion vehicles would connect Miami with the planned jetport in the Everglades. Miami Herald, January 31, 1969, at 1-C, col. 3. On March 16, 1969, the Federal Railroad Administration announced the beginning of an engineering study for this system by TRW Systems Group. TRW's final report was due on December 1, 1969. Federal Railroad Administration News Release (March 16, 1969). In addition to the high speed transit system, an extension of Interstate 75 south from Tampa to Naples on the west coast and then east past the jetport site to Miami on the east coast was planned. LEOPOLD REPORT, *supra* note 2, at 49-51.

26. Miami Herald, March 21, 1968, at 23-A, col. 1.

27. LEOPOLD REPORT, *supra* note 2, at 70.

28. Miami Herald, July 19, 1967, at 1-B, col. 6.

larger jets and jetports increasingly need to be located far from developed areas, the likelihood of conflicts between transportation and environmental interests grows.²⁹ Possible environmental effects of the proposed jetport upon the delicate ecological balance of the Everglades³⁰ consisted of four broad categories: (1) noise pollution affecting both the surrounding wildlife and Park visitors; (2) water pollution resulting from sewage, fuel dumps, spillages, and detergents; (3) air pollution from the exhaust of aircraft landings and take-offs; and, (4) drainage which would result in the diversion of water from its natural cycle of flow.³¹ The magnitude of these possible effects would depend, of course, upon the nature of the operations conducted at the jetport site. The development of the area around the jetport would significantly intensify these problems.³²

III. THE LEGAL-REGULATORY FRAMEWORK

The allocation of governmental responsibility established natural sponsors for these competing environmental and transportation values. The advancement of aviation was entrusted to the Dade County Port Authority and the Federal Aviation Administration (FAA), while the interests of the Everglades region were protected primarily by the Department of Interior and the Central and Southern Florida Flood Control District.

The Dade County Port Authority was established pursuant to the "Port Authority Act, chapter 22963, Laws of Florida, 1945," which permits counties with populations in excess of 260,000 to establish port authorities with the power to operate numerous types of facilities, including airports.³³ The Dade County Commissioners are the Port Authority, but a professional staff oversees the daily management of its work. The responsibility of the Port Authority is extensive. In 1969 it had assets of over 300 million dollars and supervisory control over five airports.³⁴

29. As stated by the Port Authority, every major hub area in the country needs to expand its airport facilities and, in every case, available sites leave the possibility of harming either the environment or developed areas by noise pollution. DADE COUNTY PORT AUTHORITY, *THE DADE-COLLIER AIRPORT STORY* 3 (1969).

30. A commercial jetport would produce considerable amounts of waste effluents from associated human activities, detergent washdown of aircraft, and pesticide controls at the jetport. When such effluents are released into lakes and swamps, the nutrients become overabundant. As a result, less desirable planktonic algae increase in relation to the more desirable epiphytic algae. This alteration of water quality and microflora, in turn, would cause a change in the unique species composition of plants and animals in the Everglades. LEOPOLD REPORT, *supra* note 2, at 73.

31. NATIONAL ACADEMY STUDY, *supra* note 6, at 23-47. The interruption of the natural cycle of water flow would have a devastating effect on the ecology of the Everglades. Periodic flooding allows surges in plant and animal life during the wet season and concentration of water-dependent life into more restricted pools as water disappears. A long-term evolution of many species whose ways of life are uniquely adapted to the timing of the water flow has consequently occurred. *Id.* at 21.

32. *Id.* at 23.

33. DADE COUNTY PORT AUTHORITY, *THE DADE COLLIER AIRPORT STORY* 14 (1969).

34. *Id.*

The involvement of the FAA in airport regulation takes two forms. First, the FAA designates, pursuant to 49 U.S.C. section 1348, air space within which aircraft operating under instrument landing conditions are subject to the direction of control towers.³⁵ These designations are made "in order to insure the safety of aircraft and the efficient utilization of such air space."³⁶ Second, the FAA grants funds under the Federal Aid Airport Program (FAAP).³⁷ While the FAA does not license airports as such, its regulatory authority over the use of air space gives it effective control of airports since the operation of an airport would be impractical if a designation of air space were refused.³⁸

There were two stages in the airport designation procedure during the jetport controversy. The first was an informal non-rulemaking procedure in which "interested parties" were notified of the pending designation and objections could be made to the area FAA office. Interested parties were defined by the FAA as the aviation community. Notice was given by mail rather than by publication.³⁹ The second stage was a formal rulemaking procedure in which a notice of proposed rulemaking was published in the *Federal Register*. Interested persons could submit material to be included in the record for consideration by the decision maker, meet informally with the FAA officials, or make presentations if a public hearing were held.⁴⁰

It is unclear whether the FAA had the authority to refuse an air space designation for reasons unrelated to safety and efficient utilization of air space.⁴¹ The FAA during the jetport controversy took the position

35. O. GRAY, ENVIRONMENTAL LAW: CASES AND MATERIALS 1020 (1970) [hereinafter cited as GRAY]. See 49 U.S.C. § 1348 (1970).

36. 49 U.S.C. § 1348 (1970).

37. Federal Aid Airport Program, 49 U.S.C. §§ 1101-19 (1970); Interview with Ray Peach, Asst. Chief, Airports Service, Miami Area Office, FAA, in Miami, March 24, 1971. Grants totaling \$663,000 were made under FAAP for the jetport. Letter from Robert F. Bacon, Chief, System Planning Division, Airports Service, FAA, March 21, 1969 (form letter). The FAAP program has now been replaced by the Airport and Airway Development Act of 1970, 49 U.S.C. §§ 1701-42 (1970).

38. Interview, *supra* note 22.

39. Interview with John Graffius, Chief, Air Traffic Control, Miami Area Office, FAA, in Miami, April 16, 1971.

40. Interview with John Graffius, Chief, Air Traffic Control, Miami Area Office, FAA, in Miami, March 25, 1971. See 14 C.F.R. § 151.65(a)-(d) (1971).

41. The argument has been made that the Department of Transportation Act of 1967, 49 U.S.C. § 1653(f), as amended in 1968, requires the Federal Aviation Administration, which has been in the Department of Transportation since April 11, 1967, to consider environmental questions in granting air space designations. The Act reads:

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges and historic sites.

49 U.S.C. § 1653(f) (1970). This section is commonly referred to as "4(f)" and continues: [t]he Secretary shall not approve any program or project which requires use of any publicly owned land from a public park, recreation area, or wildlife or waterfowl refuge of National, State, or local significance . . . unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm . . . resulting from such use.

49 U.S.C. § 1653(f) (1970). It has been argued that overflights from the jetport at the Everglades National Park and at Conservation Area No. 3 adjacent to the jetport constitute

that it lacked such authority.⁴² FAA regulations appear to support this view.⁴³ The FAA's discretion to consider environment factors is clearer under the Federal Aid Airport Program. If federal funds are to be expended, the airport site and the development thereon must be approved by the FAA.⁴⁴ Further, FAA regulations required that FAAP grants be made only if a site is reasonably consistent with the existing plans of public agencies for development of the area in which the airport is located. Fair consideration must also have been given to the interests of the communities in or near the project's location.⁴⁵ In practice, non-safety criteria have been used in FAAP site approvals.⁴⁶

such a use of publicly owned land. Thus, a designation of air space could not be made without the above quoted findings. See Opinion of B. Meyer, Associate Solicitor, Parks and Recreation, to the Solicitor, Department of Interior, May 29, 1969 (reprinted in *Interior Committee Hearings*, *supra* note 5, at 129). However, there are two weaknesses in this argument. First, it was not inevitable that overflights would occur (although they presently are permitted under the Jetport Pact). Second, the concept that overflights constitute a use of land, although finding some support in *Griggs v. Allegheny County*, 369 U.S. 84 (1962) and *United States v. Causby*, 328 U.S. 256 (1946), is not a strong argument. An objection to the designation of air space was filed with the FAA by the National Audubon Society on the basis of 4(f), because no 4(f) finding had been made by the Secretary of Transportation as to the then pending designation. The FAA ruled that these objections were not germane to the designation of air space. 35 Fed. Reg. 1220 (1970). The process of appeal failed to reach Washington because the jetport controversy was settled politically first. See generally *Comment, Port Noise Complaint*, 6 HARV. CIVIL RIGHTS L. REV. 61 (1970); Note, *Wrongs and Rights in Superterraneous Airspace: Causby and the Courts*, 9 WM. & MARY L. REV. 460 (1967).

42. Interview with Ray Peach, Asst. Chief, Airports Service, Miami Area Office, FAA in Miami, March 25, 1971.

43. 14 C.F.R. §§ 157.5 and 77.11 (1971). It is possible that § 101 of the National Environment Policy Act of 1969, 42 U.S.C. §§ 4321-47 (1970), may provide a legal basis for refusing designations of air space where environmental harm would result from such an airport.

44. Interview, *supra* note 42.

45. 14 C.F.R. § 151.39(a)(4) and (5) (1971). Since the passage of the National Environmental Policy Act, FAA regulations have been promulgated requiring consideration of environmental impact. FAA Order 5050.2. BOB Circular A-98 and the Airport and Airway Development Act of 1970 now provide for airport master planning.

46. Interview, *supra* note 22. Although the FAAP Act details a procedure for objections from the public to an airport and for hearings, 49 U.S.C. §§ 1101-19 (1970), opponents of the jetport did not make any objections prior to the grant. In the period before the grant was made, the opponents were unorganized and did not have an attorney. They later were represented by counsel who worked without compensation. Interview with Joe Browder, Washington Director, Friends of the Earth, in Washington, D.C., April 14, 1971. The fact that the environmentalists did not object at the earlier time is indicative of the FAA's failure to encourage popular participation. In discussing a similar lack of encouragement of active public participation in regard to the Federal Communication Commission, one commentator has pointed out that:

In "rulemaking" proceedings, the public rarely learns of the proposals. Virtually all the Commission does to notify the general public of its regulatory powers is to distribute "Public Notices" of its decisions and proposed rulemaking proceedings. . . . The Commission then relies upon communications lawyers, the trade press, and the *Federal Register* to bring the information to the public's attention. Thus, many groups substantially affected by the Commission's decisions never learn of its proposals, nor of the fact that they might participate.

Johnson, *A New Fidelity to the Regulatory Ideal*, 59 GEO. L.J. 865, 880 (1971). See gen-

The FAA functions as a decentralized organization.⁴⁷ The eight regional offices, as well as the area offices reporting to them, direct field operations within their geographic boundaries and have considerable responsibility. Most project decisions, often involving millions of dollars, are made at the local level, subject to approval at the regional level.⁴⁸ This type of organization contrasts with that of the Department of Interior in which major decisions are made in Washington. Some have pointed to this organizational difference as a reason for the failure of the two involved federal agencies to come to terms with the jetport problem at an early date. Correspondence at the time indicates a flow of reports through the Interior bureaucracy from the field to regional and Washington officials who then dealt with high-ranking FAA officials. The FAA officials in turn referred the matter back to local FAA officials. This process did not keep up with the rapidly changing facts in the jetport site search. It has also been stated that the local FAA officials assumed that members of the National Park Service had equivalent authority. In fact the Park representatives in meetings with the FAA were reluctant to take any strong stand of opposition to the jetport because of a lack of authority.⁴⁹

The protection of the interests of the Everglades National Park was entrusted to the Department of the Interior. In the Act creating the Park, a mandate was given to the National Park Service to maintain the Park's wilderness state.⁵⁰ The Department of Interior, however, was ill-equipped to carry it out. While the FAA and the Dade County Port Authority had the power to do great harm to the Park, the Department of Interior lacked any regulatory power to protect it.

During the jetport controversy, the Bureau of Sport Fisheries and Wildlife, the Geological Survey, the Federal Water Quality Administration, the Bureau of Outdoor Recreation, and primarily the National Park Service were involved on behalf of the Department of Interior. The Bureau of Outdoor Recreation had been delegated by the Secretary of Interior the overall responsibility of coordination with the Department of Transportation under section 4(f) of the Department of Transporta-

erally Hanes, *Citizen Participation and Its Impact Upon Prompt and Responsible Administrative Action*, 24 Sw. L.J. 731 (1970).

47. GOVERNMENT ORGANIZATION MANUAL 381 (1971).

48. Interview with Washington FAA staff, in Washington, D.C., February 27, 1971.

49. Interview with Oscar Gray, former Acting Director of the Office of Environment Impact, Department of Transportation, in Washington, D.C., April 22, 1971; Interview with Manuel Morris, Chief, Division of Water Resources, Department of Interior, in Washington, D.C., April 23, 1971.

50. Act of May 30, 1934, ch. 371, § 1, 48 Stat. 817, *as amended*, 16 U.S.C. § 410(c) (1970). Congressional intent to preserve the natural character of the nation's National Parks is stated in the act which created the National Park Service in 1916. The Park Service was charged with conserving "the scenery and the natural and historic objects and the wildlife therein and [with providing for] the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Act of Aug. 25, 1916, ch. 408, § 1, 39 Stat. 535, *as amended*, 16 U.S.C. § 1 (1970).

tion Act of 1967, a responsibility that was in fact unfulfilled during the jetport planning process.⁵¹ In carrying out this delegated authority, the Bureau of Outdoor Recreation was required to consult and coordinate with the numerous Interior agencies and bureaus.⁵² Officials in the National Park Service, however, were unaware of the Bureau of Outdoor Recreation's delegated coordination role during the initial planning of the jetport, even though this fact had been published in the *Federal Register*.⁵³

Conservationists have criticized the Bureau of Outdoor Recreation for its weak advocacy of the Park's interests after it did become involved in the jetport controversy.⁵⁴ They have pointed out that the Bureau of Outdoor Recreation, whose regional office was located in Atlanta, lacked both an immediate understanding of the problems of the National Park Service and a vested interest in the Park comparable to that of the National Park Service.⁵⁵ Furthermore, through the administration of financial assistance to the states under the Land and Water Conservation Fund Act of 1965,⁵⁶ the Bureau of Outdoor Recreation, according to both conservationists and National Park Service officials, has developed a strong tendency toward accommodation when dealing with state governmental units.⁵⁷

The National Park Service itself has traditionally kept a "low profile" in respect to the community surrounding a national park or forest and has generally avoided political involvement.⁵⁸ Its approach has been one of caution, always questioning its authority to act and refraining from objecting outside its jurisdiction, unless statutory authority for objecting existed.⁵⁹ However, because of the awakening of the nation to

51. 32 Fed. Reg. 15066 (1967). For an explanation of the coordination requirements of § 4(f) of the Department of Transportation Act of 1967, see note 41 *supra*.

52. 32 Fed. Reg. 15066 (1967). The Bureau of Outdoor Recreation was created on April 2, 1962, and has the responsibility for promoting coordination and development of effective programs relating to outdoor recreation. In performing these responsibilities, the Bureau reports to the Secretary of Interior through the Assistant Secretary for Public Land Management. The Bureau has no active management responsibilities itself. U.S. DEPT. OF INTERIOR, AMERICA'S DEPARTMENT OF NATURAL RESOURCES 26-27 (1969).

53. Interview with Manuel Morris, Chief, Division of Water Resources, in Washington, D.C., February 23, 1971.

54. Interview with Joe Browder, Washington Director, Friends of the Earth, in Washington, D.C., February 22, 1971.

55. *Id.* For example, after a field trip to Florida in the fall of 1968, L.G. Henricksen, Recreation Realty Coordinator for the Atlanta Office of the Bureau of Outdoor Recreation, stated:

The conservation and other allied interests must bear in mind that the jetport will become a reality. Since this is a fact of life, reason dictates that much negotiation must result in order to achieve the best position possible.

Memorandum from L.G. Henricksen to Assistant Regional Director Durand, Atlanta Office, Bureau of Outdoor Recreation, October 15, 1968.

56. 16 U.S.C. §§ 460l-4 to 460l-11 (1970).

57. Interview, *supra* note 53 and note 54.

58. Interview, *supra* note 53.

59. *Id.*

environmental issues, the National Park Service is presently becoming more militant in defending its interests.⁶⁰

A state entity, the Central and Southern Florida Flood Control District, is indirectly involved in the protection of Everglades National Park's interests. It operates three water-conservation areas in South Florida, one of which is located directly east of the jetport site.⁶¹ The Flood Control District is empowered by state statute to grant permits for release of water into the Flood Control District and manages the release of water from the District into the Park.⁶² It has demonstrated a strong resistance to development of any kind within its water conservation areas.⁶³

It should be remembered that government agencies do not function in a vacuum, but, rather, in a larger context of particular publics who are interested in their activities and share common interests. In the case of the Port Authority and the FAA, the public was the airlines and the business community of Miami; in the case of the National Park Service the public was the conservationists.⁶⁴ Throughout the period of jetport planning and development, these private interests took part in the decisionmaking process and were to critically affect the project's outcome.

IV. PLANNING THE JETPORT

The Port Authority foresaw and sought ways to relieve the growing demand on Miami International as early as 1952.⁶⁵ For ten years following 1957, a far-ranging site study was conducted.⁶⁶ Early in 1966, a consideration of sites in the Everglades region began.⁶⁷

60. Interview, *supra* note 54.

61. GRAY, *supra* note 35, at 1008.

62. FLA. STAT. §§ 378.01(3), 378.16(2), 378.17(1)-(2) (1969).

63. *Interior Committee Hearings*, *supra* note 5, at 67.

64. This so-called "subgovernment phenomenon" grows around any specialized private interest-government relationship. In a recent article, Nicholas Johnson has pointed out that: policymaking by agencies is dominated by . . . a coalescence of lobbyists, specialty lawyers, trade associations, trade press, congressional subcommittee staff members and . . . personnel who cluster around each of the regulated industries The problem likely does not involve sinister collaboration to undermine the effectiveness of regulatory control, but is instead much more subtle. It causes an industry orientation on the part of many and honest agency members, as well as agency staffs.

Johnson, *A New Fidelity to the Regulatory Ideal*, 59 GEO. L.J. 865 (1971).

65. LAMBERTON, *supra* note 17, at 2.

66. B. SHEPARD, A JETPORT REPORT: SOME FACTS TO FACE 2-3 (1970) [hereinafter cited as SHEPARD]. In 1957, the Dade County Port Authority initiated a study of site possibilities for an airport to relieve Miami International Airport of training flights. The two year study recommended "that planning be continued for a major future airfield, either in the bay area south of Biscayne Key, or in the Everglades, to provide for training and future scheduled flights as the need arises." LAMBERTON, *supra* note 17, at 3. This recommendation is significant in two respects. It shows that nine years before the construction of the Everglades Jetport, the Port Authority was considering a commercial airport in the Everglades as well as a training facility. Not until very late in the planning process was there any consideration of the environmental effects that either a training or commercial operation would have on the

Throughout this period the decision making proceeded *ex parte* between the Port Authority, FAA and the airlines. Factors considered in the site selection included existing air traffic demands, community noise impact, cost of land, political feasibility and economic benefit to Miami. Although the press covered the site search, there was no procedure by which the public or other governmental agencies could participate at this stage.

Early in 1967, the six principal Miami airlines proposed a site 23 miles west of Miami International Airport in Conservation Area No. 3 of the Flood Control District.⁶⁸ Consideration of this site terminated when the Port Authority could not reach an agreement with Broward County, into which the jetport would have extended.⁶⁹ The Chairman of the Flood Control District had also requested that this site not be used.⁷⁰ This site brought the first manifestation of concern from the Everglades National Park. Reacting to newspaper reports, the Park Superintendent sent a memorandum to the Regional Director of the Park Service, stating that his primary concerns were noise and low-flying aircraft.⁷¹ The following month the Park Superintendent wrote the Director of the Dade County Port Authority expressing the same concerns. That letter was never answered.⁷²

By April 1967, the Port Authority's attention had shifted to several sites in Monroe County, west of Dade County.⁷³ The Park Superintendent, by chance, attended a social function at which a Dade County Commissioner was also present and learned that within a day or two the Monroe County Commissioners would vote on approval of a site adjoining the Park. The next day the Park Superintendent called the Director of the Port Authority and arranged a meeting. At that meeting, the Director produced a map showing a number of possible locations. The reaction of the Park representatives was that the farther away the airport would be from the Park the better. After the meeting, the Superintendent wired the Monroe Commissioners asking them to delay a decision because of possible harm to the Park.⁷⁴ In addition, the Superintendent

Park. Throughout the period of the site studies, the Port Authority conferred with the Federal Aviation Administration, the Air Transport Association (the trade association of the airlines), and the airlines themselves, but not with any agencies concerned with the Everglades or environmental interests.

67. LAMBERTON, *supra* note 17, at 3. In addition to one located in the Bahamas, seven other sites located throughout Florida were rejected for various reasons. Some had limited air space capacity and were in areas of already heavy air traffic. Some were too close to residential areas and others were located too far from Miami to be feasible. *Id.* at 4.

68. *Id.* at 6.

69. Interview, *supra* note 54.

70. LAMBERTON, *supra* note 17, at 6.

71. Letter from Roger Allin, Superintendent, Everglades National Park, to the Regional Director, Southeast Region, National Park Service, February 9, 1967.

72. Interview, *supra* note 53.

73. LAMBERTON, *supra* note 17, at 6.

74. Interview, *supra* note 53.

sent a letter to the Port Authority Director urging consideration of Homestead Air Force Base and a site in Collier County. The Superintendent stated that, while the problem of industrial and domestic pollution that comes with a facility of the kind proposed could possibly be objectionable to the Park, "our principal concern is the intrusion and noise of low-flying aircraft and of the resulting disturbance to Park visitors and wildlife. . . ."⁷⁵ The Park Superintendent did not perceive at this point the issues of water pollution or of surrounding development which were later to become crucial.

At about this time negotiations with the Monroe County Commissioners failed and the Port Authority shifted its attention to Collier County, northwest of Dade County.⁷⁶ Collier County has some development on its Gulf shore, but inland it is mostly underdeveloped swamp-land.⁷⁷ An agreement was eventually reached through the mediation of the Greater Miami Chamber of Commerce.⁷⁸

A short time after the Port Authority began looking at the Collier County sites, the Regional Director of the National Park Service (Southeast Region, Richmond, Va.), in a letter to the FAA's Atlanta Regional Office, expressed concern about one of the Monroe sites. In response to his request for additional information, the Regional Director was advised that consideration of this site had been deferred in favor of a site near the one suggested in the Park Superintendent's letter.⁷⁹ The acting Regional Director of the Park Service replied:

75. The Superintendent's letter also stated:

We again urge that consideration be given to locating such a facility away from the National Park as requested in our letter of March 21. . . . The specter of SST operations capability in the very near future which might make this a major regional airport with a further increase in overflights is even more alarming to us. . . .

We suggest that further exploration of the feasibility of the location several miles north in Collier County about T52 R33 be undertaken. . . . We further request a more thorough examination of aircraft effects upon other resource uses. May we suggest there may be a need for public hearings before a contract for construction is let.

Letter from Roger Allin, Superintendent, Everglades National Park, to Allan Stewart, Director, Dade County Port Authority, May 2, 1967.

This letter became a focal point of later debate, with Jetport supporters claiming it was a Park recommendation of the jetport site which was located near the one mentioned in the letter. A more accurate statement would be that consideration of the site was suggested.

76. Miami Herald, July 19, 1967, at 1-B, col. 6. Monroe County had wanted to trade an airport site for Dade County's offshore island city of Islandia.

77. *National Academy Study*, *supra* note 6, at 60.

78. Interview, *supra* note 54. In this interview, Joe Browder stated that he, acting in the capacity of Vice President of the local National Audubon Society, talked to the Port Authority Director about the Collier sites. The Director reacted with a hostile and indifferent attitude. The Deputy Director, however, convinced him that conservation considerations would be taken into account step by step through the planning process and that the Park would be protected. The Deputy Director also stated that he had investigated the problems of the Flood Control District with the Park and didn't want to get bogged down as it had.

79. Letter from the Regional Director, National Park Service, to FAA Atlanta Regional Office, May 31, 1967; Letter from J.D. Braman, Assistant Secretary for Urban Systems and Environment, Department of Transportation, to Senator Henry M. Jackson, June 27, 1969, in the *Interior Committee Hearings*, *supra* note 5, at 39.

advice that an alternative site in the vicinity of [the Superintendent's suggested site] is under advisement is very heartening to us. We sincerely appreciate the consideration being given to the Park in this regard.⁸⁰

Throughout this period, the Port Authority effectively excluded the Department of Interior from the site selection process by giving it little information. Departmental correspondence, which did not keep pace as the airport site jumped from one location to another, points up Interior's isolation. Despite later claims of coordination with the Park, it appears that the Park was forced to rely on newspaper reports of sites being considered. The actual selection was apparently based on technical, economic, and political considerations (including the Port Authority's ability to reach an agreement with another county), having little to do with the Park's wishes.

In November 1967, the Dade County Port Authority selected the final site. It was located north of the Tamiami Trail about thirty-six miles west of Miami and six miles north of the Everglades National Park, straddling the Dade-Collier boundary, with two-thirds of it in Collier County.⁸¹ In reply to an inquiry from the Director of the National Park Service, the acting Director of the FAA stated that:

[I]n conjunction with our review of [a request for federal aid] and prior to its approval we will consult the National Park Service officials at the local level. . . . We understand such consultation has already taken place between the Port Authority and the Park Superintendent.⁸²

In February 1968, the Port Authority made an application to the FAA which requested that the training airport be included in the National Airports Plan and that a grant be given them under the Federal Aid Airport Program (FAAP).⁸³ After concluding its own site selection process which resulted in the Everglades Jetport Site, the Port Authority began a process of consultation. It was later to point to this process as evidence that it had consulted various conservation agencies and had obtained their approval of the site.⁸⁴ A Port Authority consultant wrote of the process:

[I]t is difficult to see, how any public agency, not having the wisdom of hindsight, could be expected to have done more to establish its legal and civic right to proceed with a project.⁸⁵

80. Letter from Acting Regional Director of the National Park Service to the FAA Atlanta Regional Office, June 8, 1967, in *Interior Committee Hearings*, *supra* note 5, at 39.

81. LAMBERTON, *supra* note 17, at 6.

82. Letter from D.D. Thomas, Acting Administrator, Federal Aviation Administration, to H.L. Bill, Acting Director, National Park Service, December 20, 1967.

83. LAMBERTON, *supra* note 17, at 6.

84. *Interior Committee Hearings*, *supra* note 5, at 96 (Statement of William W. Gibbs, General Counsel, Dade County Port Authority).

85. LAMBERTON, *supra* note 17, at 9.

In February 1968, the Deputy Director of the Port Authority met with the heads of the Florida Board of Conservation, the Florida Game and Fresh Water Fish Commission and the Central and Southern Florida Flood Control District. He informed them of the Port Authority's plans for construction of the training airport and requested their approval.⁸⁶ The replies of the heads of these various agencies expressed no objection.⁸⁷ However, since the agencies were not fully advised of possible further development into a commercial airport,⁸⁸ their evaluations were restricted to a training airport with limited support facilities. In the opinion of one state official, "the Port Authority brilliantly piecemealed us [by obtaining comments from each state agency separately]. . . . We had no idea of the size of the project or of their time frame."⁸⁹

The Port Authority, through its consulting engineers, then conducted a series of meetings with representatives of the National Park Service, the Central and Southern Florida Flood Control District, and the state conservation agencies to discuss such matters as runway alignment, flight patterns, the danger of bird strikes, and water runoff from the airport.⁹⁰ According to one participant, the meetings were informal and

86. This consultation was required by the Federal Aid Airport Program. See 14 C.F.R. § 151.39(a) (2), (4), and (5) (1971).

87. See, e.g., Letter from Randolph Hodges, Director, Florida Board of Conservation to the Director of the Dade County Port Authority, February 21, 1968. This letter stated: My staff and I have reviewed this site in regard to the jurisdictional areas for which this agency is responsible and it has been determined that the proposed site is acceptable and meets the conservation standards of our department.

88. Interview, *supra* note 54; See, e.g., Letter from Game and Fresh Water Fish Commission to the Director, Dade County Port Authority, March 6, 1968, which stated:

This is particularly true based on the facts presented to us wherein only a small portion [of the 39 miles] would be used for the construction of two runways while the major portion would be left in its native state. . . . One concern we did have related to the possibility of Conservation Area 3 becoming contaminated by fuel discharges from departing jets, but I understand you have already informed one of our representatives that there is no problem here.

Later commenting on this process, an official of the Florida Game and Fresh Water Fish Commission wrote:

We were first told that the area would be used as a jet training facility to relieve pressure from the Miami International Airport. The next thing we knew they were proposing to move all of Miami International to the Big Cypress and construct 6 mile long runways to accommodate the new SST jets. They also released plans for six launching pads for future inter-planetary commercial traffic. Before any of the comments could be worked up by our agency . . . they began construction on the one existing runway.

Letter from the Florida Game and Fresh Water Fish Commission to David C. Brennan, U. FLA. L. REV., November 19, 1969.

89. Interview with Nathaniel Reed, Assistant Secretary of the Interior, in Washington, D.C., May 19, 1971.

90. *Interior Committee Hearings*, *supra* note 5, at 96. The first consultation on March 27, 1968, was a tour of the site by an engineering technician from the Everglades Park and a wildlife biologist from the Bureau of Sports Fisheries and Wildlife of the Department of Interior. It was later argued that "[e]ach gentleman gave the impression that the site was suitable to Park authorities, with each offering his future services for ensuring the airport's environmental compatibility." Letter from J.D. Braman, Assistant Secretary for Urban Systems and Environment, Department of Transportation, to Senator Henry M. Jackson, June 27, 1969, reprinted in the *Interior Committee Hearings*, *supra* note 5, at 39. The Park's

their purpose was to inform the Port Authority's engineering consultants of the environmental problems facing the jetport.⁹¹ Park representatives raised the problems of noise, water supply and quality, and harm to wildlife from planes striking bird flocks and other wildlife. The engineers were unable to solve some of the problems.⁹² For example, even tertiary treatment of the water runoff would leave phosphate and nitrate residues. These residues would cause water in the Park to become overrich, thus changing the type of algae in the water and upsetting the food chain.⁹³ While the meetings progressed, preparations for acquiring the site and starting construction went forward.⁹⁴

Some have since questioned why the Park representatives did not take a stronger position of opposition to the jetport at this time.⁹⁵ James D. Braman, Assistant Secretary for Urban Systems and Environment in the Department of Transportation, later argued that prior to approval of the grant, almost two years of "periodic coordination . . . had transpired without producing a positive position opposing the airport's construction."⁹⁶ Rather, the FAA "possessed the distinct impression that a train-

observer was neither a trained ecologist nor a biologist. The other observer prepared a report limited to effects on game animals and did not consider other possible damage. The purpose of the trip was merely fact-finding. Interview, *supra* note 53.

In April 1968, a meeting was held to review three preliminary master plans for the airport and to discuss the impact of alternative flight patterns over the Park. The Park's representative stated that the Park could coexist with a single runway airport aligned east-west. He further stated that the plans for removal of water southward were acceptable but that pollution must be avoided. The Park's representative was a ranger-pilot and had no training as a biologist. *Interior Committee Hearings, supra* note 5, at 39; Interview, *supra* note 53.

On June 12, 1968, another meeting was held to discuss drainage from the airport. Two Park representatives, including one biologist, were present. They stated that the Park would like to have all of the jetport's water runoff. *Interior Committee Hearings, supra* note 5, at 39. A memorandum from a Park representative indicates the discussion was limited to design of drainage facilities associated with the training and transition airport. Memorandum from Ranger-pilot Ralph Miele to Superintendent, Everglades National Park, June 17, 1968. The total ecology of the area was the subject of a meeting on June 20, 1968. *Interior Committee Hearings, supra* note 5, at 39. This time the Park's delegation included three scientists. The discussion at the meeting, however, centered on operational details such as whether trees on the site should be topped or removed and what kind of fence would be needed to keep animals off the runway. Memorandum from William Robertson, Research Biologist, National Park Service, to the Superintendent, Everglades National Park, June 24, 1968.

91. Interview with Ralph Miele, Ranger-pilot, National Park Service, in Miami, July 27, 1971.

92. *Id.*

93. See notes 30 and 31 *supra*.

94. See notes 99 and 100 *infra* and accompanying text.

95. Interview with Oscar Gray, former Acting Director of the Office of Environmental Impact, Department of Transportation, in Washington, D.C., February 25, 1971.

96. Letter from J.D. Braman, Assistant Secretary for Urban Systems and Environment, Department of Transportation, to Senator Henry M. Jackson, June 27, 1969 (reprinted in the *Interior Committee Hearings, supra* note 5, at 39); Cf. Memorandum from William Robertson, Research Biologist, National Park Service, to Superintendent, Everglades National Park, June 24, 1968, in which one of the Park representatives wrote:

I felt that the engineering representatives weren't willing to say much except about the initial development, two training runways with minimum support facilities. . . .

ing and transition airport at the selected site . . . could . . . coexist with the Park's environment."⁹⁷ One Interior official explained the Park Service's reluctance to object strongly to the jetport during this period: the Park Service had a habit common to government bureaucracy, of narrowly interpreting its own authority to act. Where, as in the case of the jetport, it had no legal power to stop a project, the Park Service believed it had no right to actively object to it. The jetport was being built outside the Park boundaries on another agency's property. The most the Park Service thought it could do was to quietly seek an accommodation.⁹⁸

V. ORIGIN OF PUBLIC OPPOSITION

During July and August of 1968, condemnation proceedings were initiated for the Dade-Collier tract.⁹⁹ On September 18, 1968, the Port Authority broke ground at the site.¹⁰⁰ In early November 1968, the first public criticism occurred.¹⁰¹ Ironically, it was not directed at the jetport itself, but, rather, at the location of Interstate 75, which was being considered as the access route to the jetport. On October 31, 1968, the

How the jetport area and its environs develop is likely to be vitally important to the Park, but in my opinion the operation at the above level of detail is no proper concern of ours. . . . I think we need a thorough discussion of the entire project with lead time enough to have some chance to redirect plans that could damage the Park. . . . I must confess as well that the thought crossed my mind that this may have been a meeting for meeting's sake. Something to point to in case of later criticism.

But if any of the concerns in this memorandum were raised at the meeting, they were not reflected in the minutes prepared by the Port Authority's consulting firm. See Memorandum from V.J. Knezevich of Howard, Needles, Tamman & Bergendoff to the File, June 20, 1968 (minutes).

97. Letter from J.D. Braman, Assistant Secretary for Urban Systems and Environment, Department of Transportation, to Senator Henry M. Jackson, June 27, 1969 (reprinted in the *Interior Committee Hearings*, *supra* note 5, at 39). The lack of machinery to identify significant environmental issues utilized in the planning of the jetport directly influenced the development of Section 102 of the National Environmental Policy Act of 1969. Interview, *supra* note 95. Section 102 requires all agencies of the Federal Government, when making recommendations or reports on proposals for legislation or other major federal actions significantly affecting the quality of the human environment, to include a detailed, interdisciplinary statement on 1) the environmental impact of the proposed action; 2) any alternatives; and 3) comments of appropriate federal agencies. Environmental Policy Act of 1969, 42 U.S.C. § 4332(A) and (B), (1970).

98. Interview, *supra* note 53. The Port Authority, on the other hand, may have genuinely desired to avoid harm to the Everglades. However, it does not seem that this willingness included the possibility of abandoning the site that had been so painstakingly selected. It may well be that the Port Authority did not understand the complex and delicate ecosystem into which it was placing its airport. It also seems that Port Authority officials had a limited concept of environmental protection. When they said "conservation," one observer noted, they were thinking of game, fish and animals, not whole systems of which man is a part. Interview, *supra* note 95.

99. *Interior Committee Hearings*, *supra* note 5, at 94.

100. Governor Kirk at the ceremony saluted "this tremendous accomplishment" and urged "all citizens to take commensurate pride in this undertaking that will prove to be the first supersonic jetport in the entire world." SHEPARD, *supra* note 66, at 5.

101. Letter from Robert Padrick to Richard Judy, November 5, 1968.

Chairman of the Central and Southern Florida Flood Control District, Robert Padrick, who had previously concurred in the jetport site, attended a meeting at the State Road Department in Fort Lauderdale, where he was confronted with "a plan which would route a limited access highway through the middle of the airport property and thence eastward through our Conservation Area . . . thereby doing precisely that to which we are most opposed."¹⁰² On November 5, 1968, Padrick sent letters to more than one hundred "conservation-minded" citizens, requesting their support to defeat this "abominable proposal."¹⁰³

The Port Authority promptly issued assurances that it would neither sponsor nor promote any transportation corridor which did not meet with the approval of the Flood Control District and others concerned with conservation. The Deputy Director of the Port Authority, in a letter to Padrick, stated that the Authority was not responsible for the proposed location.¹⁰⁴ But in a reply to one of Padrick's protest letters, the Commissioner of the State Road Department stated that the meeting in Fort Lauderdale was the first time the State Road Department had been consulted to "review alignments proposed by the Port Authority."¹⁰⁵ These contrasting versions of responsibility for the proposed route of the interstate highway cast doubt upon the Port Authority's credibility and served as an impetus for the organization of conservation interests.¹⁰⁶

On December 13, 1968, representatives of the Flood Control District,

102. Miami Herald, November 12, 1968, at 2-B, col. 1.

103. Letter from Robert Padrick to conservationists, November 5, 1968, in the *Interior Committee Hearings*, *supra* note 5, at 87-88.

104. Letter from Richard Judy to Robert Padrick, November 8, 1968; *See also* Miami News November 22, 1968, at 10-A, col. 3, which states:

The Dade County Port Authority wants it known that conservationists are among its favorite people.

. . . . [T]he Port Authority's deputy director sent us a volume of material which demonstrated that the Authority has been clearing its moves with the FCD, the Everglades National Park and other conservation-minded agencies for many months.

. . . . Judy, who is as diplomatic as he is efficient, made it clear that he simply wants to clarify the issue

Padrick's concern is understandable, [the deputy director] said, since 'the history of government only tells the story of neglect for conservation in the construction of the public projects.'

But that's history, Judy said. The Port Authority's commitment to conservation is a matter of record.

105. Letter from Jay Brown, Commissioner of State Road Department, to Robert Padrick, November 13, 1968.

106. Interview, *supra* note 54. In a later letter to Jay Brown, dated December 12, 1968, the Deputy Director explained that Jay Brown had been invited to attend a meeting in Miami on March 28, 1968, at which time the transportation corridor concept had been introduced. Brown had been unable to attend the meeting, but the Port Authority had informed the State Road Department staff of its plans. The map used by Judy at the Fort Lauderdale meeting had been based, according to Judy, upon an earlier map prepared by the State Road Department showing Interstate 75 passing through the jetport site. Judy's map also showed an alternate location following U.S. 41, known locally as the Tamiami Trail.

the State of Florida, the Department of Interior, the Corps of Engineers and conservation organizations met to discuss the jetport situation. Padrick indicated that the Flood Control District was no longer fearful of a direct invasion by the airport or the highway. However, Chairman Padrick was still concerned about the effect on water quality and quantity likely to result from the jetport's development and consequent residential, commercial and industrial development. His concern was echoed by others present.¹⁰⁷ The group agreed that they should insist upon a comprehensive study of the socio-environmental problems posed by the jetport, including alternatives and a plan for minimizing impacts.¹⁰⁸

On February 28, 1969, the Port Authority held a public meeting to answer 119 questions prepared by these state and federal agencies and conservation representatives.¹⁰⁹ These questions concerned the jetport's planning; development and operation; drainage, water supply and water quality; water, air and noise pollution; wildlife and recreation; regional comprehensive planning; surface transportation and waste disposal.¹¹⁰ Over 200 persons, including interested citizens, attended this meeting. The Port Authority presented prepared answers which were often general in nature, providing little concrete or useful information.¹¹¹ The discussion at the meeting centered upon the fact that little or no planning had been done or was being done either to determine the impact of the jetport on the environment, or to provide for orderly development of the area surrounding the jetport.¹¹² The state and federal representatives, as well as the conservationists, were generally dissatisfied with the Port Authority's response.¹¹³ The Eastern Representative of the Sierra Club, Gary Soucie, warned ominously that conservation organizations would

107. Memorandum from Roger Pegues, Staff Assistant, National Park Service, Washington Office, to the Everglades Task Force, December 20, 1968.

108. *Id.* At this meeting a "minor split" occurred between those who felt that the jetport was probably inevitable so that the group should limit its efforts to mitigating the damages and those who felt that the group could block or move the jetport.

109. *Interior Committee Hearings*, *supra* note 5, at 69. The Southeast Regional Bureau of Outdoor Recreation collected and prepared the final set of study problems and questions which were turned over to Padrick, who, in turn, officially transmitted them to the Port Authority late in January 1969. LAMBERTON, *supra* note 17, at 11. In order to "force the Authority into meaningful discussion and pave the way for the study and planning program," the Flood Control District had informed the Port Authority that plans for the jetport which included drainage and/or withdrawal of water in association with the works of the District would be subject to the District's approval. Letter from Robert Padrick to Chuck Hall, Mayor, Metropolitan Dade County, December 24, 1968.

110. *Interior Committee Hearings*, *supra* note 5, at 69-79.

111. LAMBERTON, *supra* note 17, at 11-12. The crowd at this meeting seemed to be divided between friends of the conservationists and friends of the Chamber of Commerce. Interview, *supra* note 54. Numerous questions were answered by the phrases "study in progress," "currently under study," or "the problem is beyond the jurisdiction of the Authority."

112. See *Interior Committee Hearings*, *supra* note 5, at 70-79.

113. Memo, Meeting Concerning Planning to Preserve Environment in Areas Affected by the Proposed-Southern Florida Jetport, Miami Springs, Florida, February 28, 1969. Interview, *supra* note 54.

respond unfavorably to the answers given at the meeting. He predicted that the airport would not be finished because of the intense campaign that would be waged against it unless adequate study and restraints for the protection of the Everglades National Park were undertaken.¹¹⁴

Two major institutional decisions resulted from this meeting. First, the Department of Interior proposed that an inter-agency, inter-governmental committee be established to represent all those concerned with the possible environmental effects of the jetport.¹¹⁵ Second, it was decided that steps should be taken to establish a regional unit to supervise development of the jetport and the surrounding area.¹¹⁶ During the spring of 1969, these proposals were put into effect.¹¹⁷ The inter-agency, inter-governmental committee was formed to define studies that were needed and to function in an advisory capacity to the regional planning council.¹¹⁸ These arrangements, however, failed to achieve a solution and were superseded by the organization of the private conservation groups which placed the issue into the national political arena.

VI. THE JETPORT BECOMES A NATIONAL ISSUE

The local conservationists who represented various private conservation organizations, such as the Sierra Club and the National Audubon Society, developed a mistrust of the Port Authority after the inconsistent response to Padrick's protest letters by the Port Authority and the State Road Department.¹¹⁹ The Port Authority's credibility was questioned even more after the public meeting on February 28, 1969, which the conservationists interpreted as showing a lack of environmental planning on the part of the Port Authority. The apparent lack of environmental planning alarmed many conservationists because it appeared that the

114. *Id.*

115. Summary, Jetport Meeting, February 28, 1969.

116. Memorandum from Gary Radtke, U.S. Public Health Service, Consultant to the National Park Service, to the National Park Service, February 28, 1969.

117. As a result of this meeting, the State Planning Director arranged and chaired meetings between Dade, Collier and Monroe Counties (the three counties surrounding the jetport site) to discuss the feasibility of a regional planning council. It was determined that a regional planning council could be organized under Florida law which authorizes two or more counties and municipalities to create regional planning councils, composed of two representatives appointed by each county commission and municipal body desiring representation. See FLA. STAT. §§ 160.01, 160.02 (1969). Further representation is established according to the population within the boundaries of the government unit. FLA. STAT. § 160.01(1) (1969). Regional councils are empowered to advise and to cooperate with local government units, to expend funds for study and planning, and to hold public meetings and forums where helpful. Their powers are strictly advisory to the counties. FLA. STAT. § 160.02 (1969).

118. On April 30, 1969, a meeting was held at which seven main items of study were considered and six study committees were established. The Department of Interior had representation on all of these committees. Deputy Director of the Dade County Port Authority Richard Judy was to be the Chairman of the committee studying the environmental control of the area. Letter from J. M. Frazier, Acting Miami Area Manager, FAA, to Senator William B. Saxbe, May 6, 1969.

119. Interview, *supra* note 54.

Port Authority was rapidly proceeding toward construction of a commercial airport at the training airport site.¹²⁰

The local conservation representatives alerted their national organizations early in 1969.¹²¹ They also turned to the news media.¹²² Throughout the controversy, the media were supplied with provocative news items aimed at mobilizing widespread public support.¹²³ This move was to prove to be the decisive factor in the jetport controversy.

At first, the Port Authority laughed the conservationists off as "butterfly chasers."¹²⁴ In an interview, the Deputy Director stated, "regardless of what the environmental plan might dictate, however, '[w]e're going to build the jetport. . . .'"¹²⁵ He also predicted that "the forces that come to play will destroy the conservationists."¹²⁶ On April 14, 1969, the Port Authority Director predicted a new city was bound to rise up around the jetport site despite any efforts to stop it.¹²⁷

Representatives of the National Parks Association, National Audubon Society, Wilderness Society, Nature Conservancy, Wildlife Management Institute, Sierra Club and Citizens Committee on Natural Resources met in Washington during April 1969, and organized a united

120. See, e.g., note 25 *supra*.

121. Interview with Judy Wilson, Local Representative, National Audubon Society, in Miami, February 5, 1971.

122. Interview, *supra* note 54.

123. On January 11, 1969, the New York Times carried the first of numerous articles to appear in the next year, a special feature headline, "The Everglades: Will Man Turn a Refuge into a Wasteland?" and an accompanying article which was sharply critical of the jetport. The January 19 Washington Star carried a special article entitled "Massive Airport Invading Florida's 'Glades.'" LAMBERTON, *supra* note 17, at 10. The January 1969 issue of the National Parks Magazine carried a very critical article which began the conservationists' appeal for political pressure on the part of the general public. The article suggested that interested readers write then President-elect Nixon "if you think that nonsense like the giant jetport in the Everglades should stop. . . ." This article was couched in emotional terms with the apparent intent of arousing public indignation. It stated:

One of the latest in the passing parade of environmental follies . . . is the new jetport . . . [it] starts out as a training field; its future, in the eyes of its promoters, is to be the biggest transcontinental and international jetport, perhaps, in the world. . . . Having invested vast efforts and millions of dollars on a famous national park, we now turn our engineering powers against our own environmental treasures. . . . The Conservation Areas established to store water for myriad social and ecological purposes will now begin to fill with rock, sand and gravel.

Folly in Florida, 43 NATIONAL PARKS MAGAZINE 2 (January 1969).

124. Interview, *supra* note 121.

125. *Interior Committee Hearings*, *supra* note 5, at 180.

126. *Id.*

127. *Interior Committee Hearings*, *supra* note 5, at 179. These statements and the issuance of reports on the position of the Dade County Port Authority, especially *The Dade-Collier Airport Story: Update I*, eventually led to the Port Authority's passing a resolution warning its staff about its actions. On October 23, 1969, the Miami Herald carried the following story:

The Metro Commission vowed Wednesday to gag the Port Authority staff, if necessary, to keep them from issuing any more statements on the proposed Everglades Jetport without commission approval. . . . 'There are indications that the administrative staff at times thinks the Port Authority is unnecessary,' agreed Mayor Chuck Hall.

Miami Herald, Oct. 23, 1969, B-1, col. 8.

campaign.¹²⁸ By the end of April, the "Everglades Coalition" consisted of nineteen national conservation societies and had already acted on the federal level to protest the jetport.¹²⁹ On April 17, 1969, the Coalition sent a joint letter to the Secretary of Transportation, John Volpe, which requested the Secretary act to protect the Park. Further, the letter warned that: "[the Coalition] publish[es] a number of powerful monthly magazines . . . which will be devoted constantly toward public education on this issue until the matter is resolved favorably to environmental protection."¹³⁰ The Coalition also made private contacts within the Interior Department and the Congress.¹³¹ Addressing the National Audubon Society Annual Convention on April 26, 1969, Senator Henry M. Jackson, Chairman of the Senate Interior and Insular Affairs Committee, announced that the Senate Interior Committee would conduct hearings in early June on the jetport problem.¹³² As the controversy developed, a behind-the-scenes alliance between the conservationists and concerned civil servants came about. This alliance consisted primarily of an exchange of information and internal lobbying.¹³³

Reacting to the growing strength of the conservationists, the Greater Miami Chamber of Commerce issued a statement which described the efforts of national conservation groups to stop development of the jetport as "limited in vision" and based on "incomplete information."¹³⁴ It stated that the community cannot stand idly by and let groups not directly involved bring national pressure on the Department of Transportation to kill a project that is of paramount importance to the economy of South Florida.¹³⁵ On May 14, 1969, the Port Authority passed a resolution stating that the Everglades Jetport site would be used only for a

128. Interview, *supra* note 54.

129. *Id.*

130. Letter from the Everglades Coalition to the Secretary of Transportation, John A. Volpe, April 17, 1969.

131. Interview, *supra* note 54. For a good discussion of the methods used by the conservationists, see generally Heard, *Washington Pressures-Friends of the Earth Give Environmental Interests An Activist Voice*, 32 NATIONAL JOURNAL 1711 (1970).

132. Address by Senator Henry M. Jackson, National Audubon Society Annual Convention, April 26, 1969.

133. For example, Interior officials persuaded the Solicitor's Office to release a memorandum a few days before the Interior Committee Hearings which gave the opinion that Section 4(f) of the Department of Transportation Act applied to the jetport designation of airspace. In fact, much of the legal research that went into the document came not from the Solicitor's Office, but from concerned civil servants in the Park Service. It is understood that this blurring of the lines between lobbyists and public officials is common to all government agencies. Interview, *supra* note 53. Also, the conservationists helped prepare the Senate Interior Committee for its hearings. This included a chronological history of the project as well as arguments against it. It is understood that there is a great deal of lobbyist activity involved in Congressional hearings which is not reflected in the record. Often questions asked by Congressmen have been supplied by lobbyists or by interested government officials. Interview, *supra* note 54.

134. Greater Miami Chamber of Commerce, Press Release (April 25, 1969).

135. *Id.*

training facility and that an environmental plan would have to be developed before the jetport could be used as a commercial facility.¹³⁶

On May 15, 1969, the Washington Post, in an article entitled "Clash Seen Over Jetport Plan," stated that a "head-on collision may be building up between the Departments of Transportation and Interior" over the proposed Everglades Jetport.¹³⁷ This collision between the interests of the Department of Transportation and the Department of Interior was avoided, at least temporarily, by the announcement, on June 2, 1969, that a six-man joint committee had been appointed to facilitate the coordination of environmental and scientific studies concerning the jetport. In addition, Dr. Luna Leopold, senior scientist with the U.S. Geological Survey, was to direct the preparation of a scientific report concerning the jetport.¹³⁸

VII. THE STUDIES

During the summer of 1969, Dr. Leopold directed an *ad hoc* Department of Interior study team which produced a 155-page report, commonly referred to as the "Leopold Report," entitled "Environmental Impact of the Big Cypress Swamp Jetport."¹³⁹ The Leopold Report con-

136. Resolution of the Dade County Port Authority, May 14, 1969.

137. *Interior Committee Hearings*, *supra* note 5, at 3. The statements of Russell Train and James Braman indicate that both Departments were to have taken an active role in this and other studies related to the Everglades Jetport problem. The conservationists lobbied during April and May to get the Bureau of Outdoor Recreation relieved of its normal responsibilities in the jetport controversy. Interview, *supra* note 54; see text at note 54 *supra*.

138. *Interior Committee Hearings*, *supra* note 5, at 4.

139. Interview with Dr. Leopold, Senior Scientist, U.S. Geological Survey, Department of Interior, in Washington, D.C., April 22, 1971. The group consisted primarily of three physical scientist-engineers, four biologists, two social scientist-economists and two technicians. Time expended on preparation of the *Leopold Report* was about three months, including one week for formation of the problem and planning, two months for collection of information and one month for writing and editing. About 4½ professional man-months were spent on the study with an estimated cost of \$12,000. It was "intended to generate a base of information for internal use, to support policy-making, and for the general information of the public and concerned groups." *Hearings on Technology Assessment Before a Subcomm. of the House Comm. on Science and Astronautics*, 91st Cong., 1st Sess., 1, 298 (1969) [hereinafter cited as *Technology Assessment Hearings*]. Art Marshall of the Vero Beach office of the Bureau of Sport Fisheries and Wildlife served as the field coordinator and was primarily responsible for the report's preparation. Interview, *supra* note 53.

The *Leopold Report* was to be a joint effort of the Departments of Interior and Transportation, but the Department of Transportation had only a very limited role in its preparation. The original plan was to collaborate and, in the event of disagreement, to present the positions of both Departments. Dr. Leopold organized his Interior study team which began work in South Florida in early summer, 1969. The Department of Transportation representatives were to begin work on their contributions which mostly pertained to the areas of their own expertise. The Department of Transportation did not submit its materials by the report's August 15th deadline and was not included. Consequently, Dr. Leopold struck the Department of Transportation's name from the report, making it exclusively an Interior report. Dr. Leopold attributes the eventual outcome of the controversy to the fact that the Department of Transportation had no counter-report to offer in opposition to the *Leopold Report*. Interview, *supra* note 139. Asked why the FAA's material

cluded that the development of the jetport and its attendant facilities at its proposed location would lead to land drainage and development for agriculture, industry, transportation and services in the Big Cypress Swamp. This type of development would "inexorably destroy the South Florida ecosystem and thus the Everglades National Park."¹⁴⁰ Even the training airport was considered to be "intolerable" because it would inevitably serve as a beacon for intensive land development in surrounding areas.¹⁴¹

Three alternatives for future action were envisioned by the Report: (1) proceed with staged, full-development of the jetport; (2) proceed with final development and use of the training facility only, obtaining an alternative site for expansion and permitting no new or improved surface access to the site; or, (3) obtain an alternative site capable of handling the training operation as well as the fully developed commercial facility, with the training activities at the present site being abandoned and transferred to the new site when appropriate.¹⁴² The scientists viewed the staged full-development of jetport, regardless of efforts for land-use regulation, as resulting in the destruction of the ecosystem. The second alternative use of the training facility, with no further expansion at the site, would not preclude eventual development of surrounding land but could, according to the study team, "reduce pressures for development and secure time for the formation of sufficient public interest in environmental conservation to achieve effective planning and land-use regulation."¹⁴³ The last of the alternatives, the abandonment of the site with a transfer of the training operations to a new site, according to the report, would inhibit the forces tending toward development in Big Cypress Swamp and would give an impetus to development of effective land-use regulation.¹⁴⁴

While the Leopold Report was being prepared, another scientific evaluation was being undertaken during the summer of 1969. This evaluation was sponsored by the Environmental Studies Board of the National Academy of Sciences and the National Academy of Engineering. The study was part of a larger effort by the Board to examine the institutional base for dealing with the environment and managing environmental problems.¹⁴⁵ The project as a whole was supported by the American Conservation Foundation, the Ford Foundation, the W. H. Kel-

was not submitted to the White House independently, an FAA official replied that the decision was based not on scientific studies, but on politics. Interview, *supra* note 22.

140. *Leopold Report*, *supra* note 2, at 1. Land-use regulation was deemed ineffective to prevent this result. *Id.* at 153.

141. *Id.* at 152.

142. *Id.* at 1-2.

143. *Id.* at 1.

144. *Id.* at 2.

145. This project by the Environmental Studies Board resulted in a two-part work: INSTITUTIONS FOR THE EFFECTIVE MANAGEMENT OF THE ENVIRONMENT and ENVIRONMENTAL PROBLEMS IN SOUTH FLORIDA.

logg Foundation and the Rockefeller Foundation.¹⁴⁶ Professors Marvin L. Goldberger of Princeton and Gordon J. F. MacDonald of the University of California at Santa Barbara, both physicists, headed the summer study group which consisted of 12 full-time members, 14 part-time members, and 34 observers, mostly from academic fields.¹⁴⁷ After a field trip to Florida by a study committee, the larger group met at Stanford University during the month of August. Presentations were made to the group by most of the parties connected with the controversy.¹⁴⁸

The National Academy Study attempted to anticipate the effect of a proposed jetport on water conservation, ecology, disease and public health, air and noise pollution, recreation and general conservation policy in South Florida. The emphasis was placed on water management.¹⁴⁹ The Study concluded that the training airport operations would not appear to pose a severe problem if various safeguards were instituted.¹⁵⁰ However, the commercial airport, in their opinion, would raise more serious problems. The Study stated that the full environmental impact of the commercial airport was not known. The study group recommended further studies and regional planning prior to the initiation of a commercial jetport and associated transportation corridors at any site.

The Study's most specific conclusion was that a large portion of the Big Cypress Swamp should be maintained as a natural water conservation area.¹⁵¹ The National Academy Study viewed inland development of Collier County as the most serious environmental threat to the Everglades.¹⁵² Such a development would adversely affect the quality and quantity of water flowing into the Everglades. Although it did not reach the specific conclusion that this development could not be controlled under existing circumstances and realities, the Study concluded that zoning, limited access and other controls "do not appear to offer a real

146. *Technology Assessment Hearings*, *supra* note 139, at 298.

147. GRAY, *supra* note 35, at 1010. The breakdown of the full and parttime members of the group along professional lines was: 12 physical scientists-oceanographers-engineers, 5 biologists/ecologists, 6 social scientists/economists, and 2 lawyers, with an Executive Director. *Technology Assessment Hearings*, *supra* note 139, at 298.

148. Interview with Dr. MacDonald, Secretary, Council of Environmental Quality, in Washington, D.C., February 26, 1971.

149. *Id.*

150. These safeguards include

control of flight patterns to avoid low passes over the Everglades, efforts to minimize pollution about the training airport site, and zoning and other regulations in the surrounding areas to discourage new residential and commercial activities. . . . However, to the extent the training airport represents the first step toward a full development of the surrounding regions, its further development should await fuller study of how to safeguard the Everglades Park and other areas of South Florida.

NATIONAL ACADEMY STUDY, *supra* note 6, at 4.

151. *Id.* at 2. Professor Goldberger stated that most of the members of the study group would have preferred to see the jetport be built elsewhere, but the group lacked time to explore other site possibilities. Nueller, *Everglades Jetport: Academy Prepares a Model*, 104 SCIENCE 202 (1969).

152. NATIONAL ACADEMY STUDY, *supra* note 6, at 5.

prospect of preventing a very serious challenge to the survival of the Park, so long as the Big Cypress remains in private ownership."¹⁵³

While the Leopold Report and the National Academy Study were being prepared, the Dade County Board of Commissioners retained the Overview Corporation, headed by former Secretary of Interior Stewart Udall, "to develop a balanced plan keyed to the overall future of South Florida."¹⁵⁴ The Overview Report, entitled "Beyond the Impasse The Dade Jetport and the South Florida Environment," appeared on December 10, 1969.¹⁵⁵ The Overview Report was essentially a consulting plan, and did not include an original scientific study.¹⁵⁶

In contrast to the Leopold Report, which had viewed the planning procedures and their application to be "presently not sufficiently uniform, sophisticated, effective, or enforceable to provide any optimism that use of the jetport . . . would procede [sic] without concomitant land development,"¹⁵⁷ the Overview Report proposed a new approach to airport planning. Under this approach the jetport would become an airport engineered to be pollution-free, a "clean enclave," connected with metropolitan population centers by a rapid transit system.¹⁵⁸ It thus took a much more optimistic view of the current feasibility of comprehensive planning and the capability of scientific knowledge to develop a "clean" airport.¹⁵⁹ Coupled with a proposal for a rapid-transit system linking the airport with Miami, was a plan for an "environmental surcharge" on rapid

153. *Id.* at 5-6. One of the environmental problems discussed in the *National Academy Study* and not in the other studies was the medical problem involved in the development of an international airport in a tropical region. A few passengers each year would be incubating malaria, dengue fever, filariasis or possibly, yellow fever. If one or two cases were discovered at the jetport site, a massive mosquito control effort would doubtless be undertaken, possibly extending deep into the Park. Such an action would have extremely devastating effects on the environment. NATIONAL ACADEMY STUDY, *supra* note 6, at 24, 26.

154. GRAY, *supra* note 35, at 1011.

155. OVERVIEW CORP., BEYOND THE IMPASSE: THE DADE JETPORT AND THE SOUTH FLORIDA ENVIRONMENT 6 (1969) [hereinafter cited as OVERVIEW REPORT]. The cost of this study was \$75,000. Interview with Stewart Udall, in Washington, D.C., February 24, 1971.

156. Interview with Stewart Udall, in Washington, D.C., February 24, 1971.

157. LEOPOLD REPORT, *supra* note 2, at 152.

158. OVERVIEW REPORT, *supra* note 155. The Report concluded:

[A] conventional airport, with its supporting build-up of housing, industry and ground transportation corridors would be unacceptable in terms of its costs to regional environmental values. . . . Relocating the airport site will not, in itself, save the Everglades. . . . [T]he real threat to the Big Cypress is posed . . . by the multiplicity of private land-owners in the area who—jetport or no jetport—have every right and every intention to develop their lands profitably.

Id. at 30.

159. Dr. Marshall, Field Coordinator for the *Leopold Report*, stated in an interview that no one has yet defined or explained how this could be accomplished. Interview with Arthur Marshall, in Miami, March 23, 1971. The *National Academy Study* did not foresee the practical availability of the necessary technology in the near future. NATIONAL ACADEMY STUDY, *supra* note 6, at 23. Even if the clean enclave concept is scientifically feasible, it is questionable whether a "clean enclave" airport could resist pressures for development indefinitely.

transit users which would be used for the purchase of private holdings in the Big Cypress Swamp.¹⁶⁰ The Overview Report, however, did not offer a detailed plan, but was only a starting point for further research.

The more pessimistic view of the Leopold Report seems to have been influenced, at least in part, by the authors' view of the Port Authority's past performance in environmental planning. Furthermore, when this Report was written, the authors were faced with the reality of actual construction being underway without any concomitant environmental plan.

The Leopold Report was sponsored by a partisan interest, the Department of Interior. Arthur Marshall of the Vero Beach office of the Bureau of Sport Fisheries, who was field coordinator of the Interior study team, had been involved in the submission of the list of environmental planning questions to the Port Authority earlier that year. Also, Marshall had personally presented the proposal for the inter-agency, inter-governmental committee at the February 28, 1969, meeting with the Port Authority.¹⁶¹ His background and interest are important because the normal procedure of review, amendment, and check-off at several intermediate levels was not followed. Rather, the Report went directly from the study team to the office of the Secretary.¹⁶²

Since the state of scientific knowledge about the complex Everglades ecosystem is comparatively primitive,¹⁶³ a certain amount of subjectivity in evaluation is possible. The representation of a partisan interest is an important factor which affects the point of view adopted by a report as well as the degree of optimism reflected by it in areas of discretionary leeway.¹⁶⁴ A private organization such as Overview is certainly in an especially difficult position when hired by a partisan. Under such circumstances, there is a strong possibility of pressure for a particular result which may lead to a direct or indirect effect upon its conclusions.

A study such as that sponsored by the Environmental Studies Board of the National Academy of Sciences has the advantage of not being connected directly with a participant in the controversy. In addition, such a study provides the potential of using a highly-qualified study team that could not be gathered under any other auspices nor at a comparable

160. OVERVIEW REPORT, *supra* note 155, at 41-42.

161. See text at note 115 *supra*.

162. Interview, *supra* note 54.

163. In the Everglades, there are 2,000 different species. Man never has had and probably never will have resources to fully know about all of these species and to coordinate the knowledge. To that extent, judgments about these species and the Everglades are subjective. Interview, *supra* note 159.

164. The National Academy of Public Administration points out that technology assessment in the Executive Branch suffers from two major drawbacks: (1) the assessments usually are incomplete or promotionally biased, and (2) their conclusions are not consistently conveyed to officials who can and should act upon them. NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, A SYSTEM FOR TECHNOLOGY ASSESSMENT FOR THE EXECUTIVE BRANCH (Report to the House Comm. on Science and Astronautics, 1969).

low cost to the public. This approach can bring together a great variety of viewpoints and insights.¹⁶⁵

VIII. RESOLUTION OF THE CONTROVERSY

Throughout June, July, August, and September 1969, the Everglades Jetport received continuous newspaper and national magazine attention, which was heavily in opposition to the jetport.¹⁶⁶ By September, protest mail to Governor Claude Kirk of Florida was running 50 to 1 against the jetport.¹⁶⁷ On September 10, 1969, in opening remarks made by Secretary of Transportation, John A. Volpe, at a joint news conference with Secretary of Interior, Walter L. Hickel, and Florida Governor Claude Kirk, Secretary Volpe stated:

We believe a training facility . . . can with proper safeguards be utilized without having an adverse impact on the ecology of the Everglades. However, the question of a commercial airport at that location is very doubtful and needs much further study. . . . [A]n acceptable solution must be found including the seeking of alternative sites.¹⁶⁸

This decision to oppose a commercial airport but to permit a training facility was made by the White House.¹⁶⁹

The National Academy Report and the Leopold Report were released in mid-September.¹⁷⁰ Reacting strongly against the Leopold Report, Miami Mayor Steve Clark charged the release of the Leopold Report by Secretary Hickel as a "purely political decision" and blamed Governor Kirk who, at that time, was suggesting a Palm Beach site for the jetport.¹⁷¹ The Port Authority alleged that substantial changes were made in the circulated draft of the Leopold Report.¹⁷² This charge was emphatically denied by its authors.¹⁷³

165. *Technology Assessment Hearings*, *supra* note 139, at 295.

166. LAMBERTON, *supra* note 17, at 16. The conservationists fed material to the news media. A letter from Gary Soucie of the Sierra Club to Manuel Morris of the Department of Interior stated that *Time Magazine* would run a story when the conservationists had some "hard news leads" if *Time* was given the leads a few days before the newspapers. Similar arrangements were made with several other national magazines.

167. Orlando Sentinel, September 10, 1969, § A, at 2, col. 2.

168. Department of Transportation News Release, September 10, 1969.

169. See note 185 *infra*.

170. LAMBERTON, *supra* note 17, at 16-17 (1969).

171. Florida Times Union, September 19, 1969, § B, at 2, col. 1.

172. Memorandum from Richard Judy, Deputy Director, Dade County Port Authority, to Mayor Chuck Hall, September 8, 1969. In this letter the Deputy Director stated:

The rumors recognized by CBS News, WTVJ News and the Office of the Governor and others had no foundation at the time they were originated. It is our belief that they were originated as the last ditch stand to force rewriting of the "Dr. Leopold Report" conclusions which we have good reason to believe were not negative to our approach to developing the Dade/Collier site. We also have good reason to believe that the U.S. Academy of Science report as originally drafted was positive in the conclusions. . . .

173. There is much suspicion on the part of the jetport proponents and some in the

On October 13, 1969, Senators Gaylord Nelson, Clifford Case, Phillip Hart and Henry Jackson sent a request to Secretary Volpe to delay the opening of the training airport, scheduled for November 15, 1969, until the necessary studies were completed and sound environmental decisions made.¹⁷⁴ In reply, however, Secretary Volpe outlined the safeguards under which the training airport would be allowed to open. He stated that the available studies dealing with this project indicated that a training facility could be operated without harm to the Park if appropriate safeguards were instituted. These safeguards included maintenance of the historic water flow, water pollution control, wildlife, level of jet air pollution, land use development control, control of overflights and establishment of an environmental monitoring program.¹⁷⁵

A meeting between Secretary Volpe, Secretary Hickel and Governor Kirk was planned for the week of November 17, to review the progress made by the departments on the environmental problems posed by the jetport and the conditions under which the training facility could be operated.¹⁷⁶ As a result of this meeting, Secretary Volpe requested that the Port Authority voluntarily postpone the opening of the training airport.¹⁷⁷ On November 25, 1969, Secretary Volpe, Under Secretary of Interior Russell Train, members of the Florida Congressional delegation, Governor Kirk and representatives of the Port Authority met in Washington.¹⁷⁸ Negotiation by an ad hoc committee of the Port Authority and representatives of the two federal departments, of a formal agreement for operation of the training facility was announced.¹⁷⁹ The need for money from the federal government may have been a partial motivation for the Port Authority's entry into this agreement.¹⁸⁰ The Port Au-

Department of Transportation that the conclusions of the report were being rewritten during this period. The authors of the report deny this charge. (Interviews with Dr. Leopold, Manuel Morris and Art Marshall). The final report was submitted to Under-Secretary Russell Train on August 15, 1969. Over a month passed before its release. Interior officials explained this delay as being due to administrative disagreement among Interior agencies over the wording of a letter of transmittal. In addition, there were negotiations with Transportation, possibly on the content of the joint press release of September 10, 1969. Interview, *supra* note 58; Interview, *supra* note 139.

174. Letter from Senators Gaylord Nelson, Clifford Case, Philip Hart and Henry Jackson to Secretary of Transportation, John A. Volpe, October 13, 1969.

175. Letter from Secretary of Transportation, John A. Volpe, to Senators Gaylord Nelson, Clifford Case, Philip Hart and Henry Jackson, October 29, 1969.

176. Department of Transportation, News Release (November 25, 1969).

177. SHEPARD, *supra* note 66, at 8.

178. Department of Transportation News Release, Nov. 25, 1969.

179. SHEPARD, *supra* note 66, at 8.

180. Congressman Yates of Illinois on November 18, 1969, proposed, and the House in a non-record vote approved, a new section 309 of the Department of Transportation and Related Agencies Appropriation Act, 1971, which stated that none of the funds under this Act shall be available for the planning and execution of programs for the construction of any airport in the State of Florida. On December 17, 1969, this bill was discussed on the floor of the U.S. Senate. Senator Holland of Florida led a successful effort to change this restriction to areas lying south of the Okeechobee Waterway. This became Section 310. See SHEPARD, *supra* note 66, at 11.

thority's primary motivation, however, appears to have been political. It had a continuing need to deal with the Federal Government that made it impossible to defy the Administration.¹⁸¹

On the recommendation of this ad hoc committee, the Port Authority approved the agreement known as the "Everglades Jetport Pact." It was signed in Miami on January 16, 1970, by Mayor Chuck Hall for the Port Authority, Secretary Hickel for the Department of Interior, Secretary Volpe for the Department of Transportation and Governor Kirk for the State of Florida.¹⁸² Collier County was intended to be a fifth party but Collier County did not sign.¹⁸³ The Jetport Pact was a three-year agreement providing that the Port Authority make a new comprehensive site selection study on the basis of site selection criteria provided by the federal government. The Pact also provided that the federal government would monitor training operations to determine their environmental effects, conduct an environmental study of the region, recommend a land-use plan for the Big Cypress Swamp, and supply the Port Authority with reasonable criteria for site selection.¹⁸⁴

In a statement on January 15, 1970, President Nixon declared:

The agreement governing future airport construction in the South Florida area is an outstanding victory for conservation. Airport facilities already constructed on the site near the Everglades National Park will be used as temporary training facilities only. The training operation itself will proceed under exacting environmental safeguards, and will be shut down as soon as an acceptable alternative site is available. . . . We have learned that the development of major facilities, such as a regional airport, may have widespread environmental and social consequences that cannot wisely be left entirely to local initiative and local decision.¹⁸⁵

181. Interview, *supra* note 54.

182. GRAY, *supra* note 35, at 1037.

183. *Id.*

184. SHEPARD, *supra* note 66, at 9-10. As of this writing, a site selection committee composed of representatives from the Department of Interior, Department of Transportation, FAA, State of Florida and the Dade County Port Authority are considering several sites in South Florida. Interview, *supra* note 54. The site on which the training runway was constructed is not being actively considered. Although many of the jetport opponents feel this site is a dead issue, the Department of Transportation on January 15, 1971, urged the White House to permit the site to be considered as a location for the commercial facility. The White House refused. Letter from Joe Browder, Washington Director, Friends of the Earth, to the Co-Chairman of the Everglades Coalition, January 23, 1971. With the passage of time and a change in administrations, however, the federal position may change. Some feel the Dade County Port Authority is deliberately slowing down the site search with this in mind. Interview with Dan Paul, Attorney for the Everglades Coalition, in Miami, March 22, 1971.

185. Statement by the President, January 15, 1970. The decision to stop the jetport was made by President Nixon personally. (Source requested anonymity). It has been difficult to ascertain exactly the nature of White House involvement but the following are such facts as could be determined: The controversy came to the President's attention through the press. He asked aide John Erlichman to find out the facts about the controversy. Erlichman

IX. CONCLUSIONS

The jetport controversy exemplifies problems encountered by institutions in assessing and coping with environmental issues. Decisions on such projects as the jetport inherently involve determinations of social priorities as well as assessments of harm. Institutional arrangements which, for example, entrust a decision to a single purpose, mission-oriented agency, can predetermine the weight to be given different interests by the decisional process. Also, the inputs to a decision can be controlled by the nature of the forum. There will be more and different inputs if the forum is exposed to public debate than if a decision is made through *ex parte* agency processes. The role of the scientific and technical expert is central in environmental decisions. However, the expert's role may also be that of an adversary. Many scientific judgments may cloak tacit policy decisions. These problems must be recognized and efforts must be made to devise new institutional arrangements for the wise management of man's limited resources.

A. *The Mission-Oriented Agency*

A mission-oriented agency is ill-equipped to balance competing interests. Usually, it is charged by statute with the furtherance of particular programs or technology. Pressure from higher officials and Congress induces the agency to show results. An agency frequently identifies its particular mission with the national interest.¹⁸⁶ By education and value

sent a memorandum to the Department of Interior in the spring of 1969, about the time the Leopold Report was initiated. It is unclear if Erlichman's memo was a cause of the study being undertaken. Interview with John Whitaker, White House Aide, in Washington, D.C., April 24, 1971.

During the summer some lobbying occurred at the White House level. Several airlines called Presidential Aide John Whitaker, but did not exert their full influence. There were also some discussions between Whitaker and the Everglades Coalition. Interview with John Whitaker, White House Aide, in Washington, D.C., April 24, 1971.

President Nixon discussed the Jetport with Secretaries Volpe and Hickel on several occasions. Interview with John Whitaker, White House Aide, in Washington, D.C., April 24, 1971. In early September 1969, John Erlichman decided that a commercial airport at that site was unacceptable. Secretary Volpe appealed Erlichman's decision to the President who upheld Erlichman. (Source requested anonymity). Shortly after this, the Secretaries jointly announced that a commercial airport at that site was doubtful.

In November 1969, the decision was made at the White House level that the training airport would be moved as well. It was on these terms that an agreement with Dade County was reached for the temporary operation of the training airport. Interview with Nathaniel Reed, Assistant Secretary of Interior, in Washington, D.C., May 20, 1971.

Opinions vary on the use made at the White House of the scientific studies, the *Leopold Report* and the *National Academy Report*. Some say they were the basis for the decisions. Interview, *supra*, note 139. Others say that the decision was purely political. Interview with Dan Paul, Attorney for the Everglades Coalition, in Miami, March 22, 1971. It would seem, however, that the studies and the political struggle are not really separable. The studies were part of the public debate and influenced public opinion. At the same time, politics may have played a role in shaping the studies. See text, *supra* at notes 161-165 and *infra* at notes 198-201.

186. Loevinger, *The Administrative Agency as a Paradigm of Government—A Survey of the Administrative Process*, 40 IND. L.J. 287, 308 (1965).

orientation, the agency's personnel, *e.g.*, the FAA engineer and the Park Service biologist, will have difficulty understanding the problems and viewpoints of other interests.¹⁸⁷ The particular public with which it regularly deals often reinforces this bias. Thus, government agencies become identified with private interests—the so-called “subgovernment” phenomenon.¹⁸⁸ Often, as in the jetport controversy, the line between lobbyist and government official blurs as the two seek to achieve some common policy objective.¹⁸⁹ The jetport dispute was a conflict between two such subgovernments—the FAA, Port Authority, airlines and Miami commercial community aligned against the Department of Interior and conservationists.

One writer has appropriately observed of the agency view:

Each regulatory agency has been given a limited jurisdiction on the theory that it deals with a complex subject that requires a technical expertise. Specialization permits the establishment of a staff of technical experts and the development of an institutional expertise. It is sometimes overlooked, however, that technical expertise carries no greater political insight or social wisdom; and indeed, in many cases the specialization that leads to technical expertise may result in less insight and wisdom than is possessed by a less specialized executive, judge, or legislator.¹⁹⁰

Recent environmental legislation does not confront the problem of agency bias. For example, the National Environmental Policy Act of 1969 requires the environmental impact of government actions to be considered, but leaves the final decision with the specialized agency.¹⁹¹

B. *Decision by Controversy*

The jetport dispute was ended by a form of public participation in which the press played up the threat to the Park, interested pressure groups met with high federal officials, and protest letters poured in.¹⁹² The attention of high federal officials was not drawn to the jetport problem until the public controversy began.¹⁹³ The decision of the White House may have been directly influenced by the public outcry.

187. Interviews with both FAA personnel and Interior officials reveal even now an inability to understand the problems and viewpoint of other agencies and officials.

188. See Johnson, *A New Fidelity to the Regulatory Ideal*, 59 GEO. L.J. 869 (1971). Johnson discusses the close regulator-regulated relationship that often develops around government-private interest contacts of long duration. This relation sometimes leads to the “deferred bribe,” *i.e.*, the private job given the government official on retirement. *Id.*

189. See notes 64 and 133 *supra*.

190. Loevinger, *supra* note 186, at 309.

191. See National Environment Policy Act of 1969, 42 U.S.C. § 4321, § 4331-§ 4335, § 4341-§ 4347 (1970).

192. Shortly before Governor Kirk came out against the Jetport, his mail was running 50 to 1 against the project. See note 167 *supra*.

193. The former Director of the Office of Environmental Impact of the Department of

However, the desirability of solving environmental problems through public controversy may be questioned. First, public attention is likely to be attracted only by the more dramatic and visible issues. In the jetport dispute, the underlying problem of private ownership of the Big Cypress, which continues to leave the Everglades vulnerable to the same dangers that the jetport was thought to represent, went largely unnoticed in the public clamor over the airport.¹⁹⁴ Second, public controversy is ill-adapted to the consideration of subtle issues. Thus, alternatives such as permitting the developers to use the site if they first produced a protective plan acceptable to all interests and the Overview proposal for a clean enclave airport and an environmental surcharge—were not given consideration.¹⁹⁵

It should also be remembered that the public that writes protest letters is only part of the general public. In fact, much of the affected public, *e.g.*, consumers who would pay higher air travel rates in order to pay for the more expensive, environmentally-engineered airports, is silent.

Writing about an analogous situation, a former member of the Federal Trade Commission has stated:

A central problem is that by over-reacting to the individual complaints of private citizens, investigations have been initiated without regard for priorities. As a result, expensive projects of limited importance have been authorized, while other, more important violations, may go unchallenged.¹⁹⁶

There are, on the other hand, advantages to public input in decision-making. The agency may be informed by interested elements of the public and thereby be enabled to make a better decision. In the formation of value judgments, exposure to public preferences may be a desirable influence on decision-makers.¹⁹⁷

Perhaps the opinions of interested members of the public should be one factor considered by the decision-makers, in addition to opinions of interested agencies and expert opinions from government, academic and private sources. Rational planning requires structures that can bring all these inputs to bear.

C. *The Scientist and Policy Making*

Scientists and scientific data are central to assessments of ecological hazards. In the jetport dispute scientific data was often used by partisans

Transportation criticized the DOI bureaucracy for failing to communicate the full extent of the problem to the upper levels of their departments. Interview, *supra* note 95, at 1. Inter-departmental correspondence raised the problems of noise and overflights, but not the larger problems of pollution and interference with water flow. See text at notes 71-75 *supra*. Secretary Udall was never informed of the jetport problem. Interview, *supra* note 167.

194. See note 158 *supra*.

195. *Id.*

196. Hanes, *Citizen Participation and Its Impact Upon Prompt and Responsible Administrative Action*, 24 Sw. L.J. 731, 738 (1970).

197. *Id.* at 736.

to support previously adopted positions. For example, in the months preceding the end of the controversy, the staffs of both the Interior and Transportation Departments leaked conflicting scientific studies to the press against the instructions of the Secretaries.¹⁹⁸

Three full-scale assessments of the jetport were undertaken. As noted above, the scientists writing the Leopold Report were Interior officials on record against the jetport. The Overview study used only one ecologist and was under contract to the Dade County Commission. Of the three reports, only the National Academy Study did not represent a vested interest. The conclusions of each study reflected its sponsorship: the Leopold Report (Interior) recommended against either a commercial or training facility at that site; the Overview study (Dade County) recommended building a clean enclave airport on state land ten miles northeast; the National Academy study (private foundations) recommended further investigation of effects before using the site for a commercial airport. The National Academy, however, considered a training airport with proper safeguards to be acceptable.

An examination of the three studies indicates the following three points: First, all agreed that the development of the Big Cypress Swamp would have a disastrous effect on the Everglades water flow in quantity, quality and timing. However, the inevitability of this threat depended on an assumption that only the Leopold Report was willing to make, *i.e.*, that local government would not control or prevent that development. Second, as to direct pollution from the airport, the Leopold Report determined that there was no known technology for treating all the pollution causes. The Overview Study took the position that the technology existed or could be developed. Third, certain other hazards, such as bird-strikes and air-pollution from jets, depended on speculative statistical data. The Leopold Report concluded that there was danger of harm. The National Academy and Overview Reports discounted both hazards.¹⁹⁹

Thus, the issues considered by the scientists, although technical, were in part, speculative. To the extent that the scientists were also advocates for a particular result, their judgment as to speculative issues may have been influenced. In addition, there were unstated value judgments. For example, the statement that the airport should be built because a clean enclave could be engineered subsumed the judgment that the burden of a failure of technology or society to provide such an enclave should fall on the environmental interests rather than on the developers.

In order to facilitate rational environmental decisions, sources of scientific assessment without vested interests in the outcome of the disputes are needed. The National Academy has recommended a National Laboratory for Environmental Science to conduct systematic research on the environment as a whole and maintain a capability of rapidly deploy-

198. Interview, *supra* note 89.

199. See section VII *supra*.

ing a field force of scientists and technicians to analyze environmental crises. The laboratory would be contractor-operated and funded by several agencies in order to avoid bureaucratic restraints and the problem of agency bias. It would also have the flexibility to tap research talent from private, governmental and university sources.²⁰⁰

A separate Institute for Environmental Studies was proposed to consider broad policy issues. The Institute would undertake long-range planning and study the social, political, economic, administrative, legislative and other factors that influence environmental decisions. It would be funded primarily by private sources, *i.e.*, foundations, conservation groups and industry.²⁰¹

D. *Governmental Design*

Law allocates power and can do so by silence as well as by express grant. Thus, the relative absence of regulation of land development in the Big Cypress leaves land-use decisions to private owners.²⁰² Federal air space regulations that limit agency discretion to considerations of safety and efficient use²⁰³ in effect require approval of airports whose location may harm an infinite number of other values. A federal mandate to the Park Service to preserve the wilderness character of the Park,²⁰⁴ without any enforcement power to protect the Everglades hydrological system outside Park boundaries, made the mandate meaningless. The absence of effective federal or state regulation gave special interests that were local and economic in nature (in this case, the Dade County Port Authority) the power to dispose of interests that were national and non-monetary in character, or that accrued to other groups of people (tourists, nature lovers, future generations, shrimp and fishing industries and future water consumers).²⁰⁵ The Port Authority, the agency with dispositive power in this situation, was answerable to certain other interests such as the aviation industry, Miami commercial interests, and bondholders.²⁰⁶

It seems essential that procedures be devised that can accommodate the conflicting interests. Public participation in decision-making is one way of injecting non-mission inputs into the decisional process.

Requirements for adjudications or rulemaking procedures under the Administrative Procedure Act might be the vehicle for balancing the

200. See generally REPORT OF THE ENVIRONMENTAL STUDIES BOARD OF THE NATIONAL ACADEMY OF SCIENCES-NATIONAL ACADEMY OF ENGINEERING, INSTITUTIONS FOR EFFECTIVE MANAGEMENT OF THE ENVIRONMENT, Part I, 43 (1970).

201. *Id.* at 17.

202. See text at note 152, *supra*; See also Robinson, *Tortious Water Use In Big Cypress Swamp*, 25 U. MIAMI L. REV. 690 (1971).

203. See note 43 *supra*.

204. See note 50 *supra*.

205. See notes 2-10 *supra* and accompanying text.

206. See text at note 64 *supra*.

competing interests.²⁰⁷ The hearing examiner should preferably not be a part of the mission-oriented agency, lest agency bias affect his decision.²⁰⁸ One writer has cautioned that expedited hearing procedures will be necessary to keep extended hearings from effectively defeating an agency's mission.²⁰⁹ Another problem with public participation is that individual members of the public may be unable to match the financial resources of project backers. For this purpose, a Federal Counsel has been proposed to represent at least some of the public objectors.²¹⁰ This concept has merit in that, selectively used, it could develop a body of agency policy and law to guide future decisions.

Long-range resource-use planning may be the best solution because it would occur before a particular controversy had developed to polarize opinion and limit options. Some have advocated use of consultative procedures in which federal, state and local agencies, regional councils, industries and environmental groups would be involved.²¹¹ An amalgam of these varied interests might be the proper vehicle for making resource-use planning decisions. Such planning might entail inventorying available land and resources, considering environmental value and estimated future community needs (for power, agricultural, industry, etc.) and classifying land according to its appropriate use.²¹² This approach—regional zoning—would cut across narrow jurisdictional lines of counties and cities, and would reflect a broad range of affected interests other than merely local ones. These planning organs could also consider such problems as population control policies or water priorities that are beyond the jurisdictions of single-purpose agencies and, yet, may be inseparable from individual project decisions.

207. Miller, *Ecology and the Administrative Process*, 23 ADMIN. L. REV. 59, 61 (1970); Hanes, *supra* note 196, at 741.

208. Loevinger, *supra* note 186, at 308.

209. Hanes, *supra* note 196, at 738.

210. Miller, *supra* note 207, at 62.

211. Hanes, *supra* note 196, at 740.

212. LAMBERTON, *supra* note 17, at 34. The author calls for (1) inventory of natural environment; (2) forecasts of socio-economic demand; (3) evaluation of costs; (4) decision and establishment of criteria; and (5) enactment of legislative financing and implementation [to acquire land or impose land-use controls].