



**TO:** Finance Committee (FC)  
**FROM:** Executive Director's Office (EDO)  
**SUBJECT:** Whooping Crane Stopover Site Research Project Agreement – Contract Language Issue  
**DATE:** January 21, 2013

**Discussion Topic**

As per Governance Committee (GC) direction (December 4, 2012), the EDO developed and negotiated a draft Agreement for the Whooping Crane Stopover Site Evaluation Research Project with the USGS. That draft Agreement is included in your January 22, 2013, Meeting Packet as Document #08 and was developed using standard Program language. The version in your meeting packet was negotiated with the USGS and at the time the meeting packet was distributed the USGS indicated support for the Agreement.

On January 21, 2013, the EDO received an e-mail from the USGS requesting a change in paragraph 7B of the Agreement. Two versions of the language are provided below:

***Original language, in the draft contract:***

7B. Authority to Publish. It is understood that the results of this work shall be available to the USGS for publication and use in connection with related work. Use of this work for publication and related work by the USGS must be conducted with prior authorization and full coordination with the Program's Technical Point of Contact. The Program reserves the right to have data analysis methods, results, and conclusions peer reviewed by an Independent Science Advisory Panel prior to publication. In the event Program and/or Program Independent Scientific Advisory Panel reviews find the data analysis methods, results, or conclusions are not supported by the data, the USGS shall not have the authority to publish until such conditions are addressed to the satisfaction of the Program. If Program and/or Program Independent Scientific Advisory Panel reviews find methods, results, and conclusions are supported by the data, the USGS shall have full authority to publish.

***Proposed new language from the USGS:***

7B. Authority to Publish. It is understood that the results of this work shall be available to the USGS for publication and use in connection with related work. Use of this work by the USGS for publication must be conducted with prior authorization and full coordination with the Program's Technical Point of Contact; specifically, the Program reserves the right to have manuscripts intended for publication peer reviewed and the USGS will reconcile peer review comments with the highest level of scientific integrity in accordance with USGS policy [outlined in section 500.25-Scientific Integrity of the USGS manual].

**EDO Request and FC Action**

The EDO requests the FC determine whether to accept the revised language. The EDO believes several points should be considered:

- This Agreement was drafted using standard Program contracting language. All previous contracts, including those with the USGS (for example, the tern and plover monitoring agreement), include the original language above.
- The original language ensures the Program remains in control of data and associated conclusions for which the Program paid.
- The proposed USGS language would elevate the agency to a unique category of contractor that would give control of data and associated conclusions to the contractor rather than leaving it with the Program. This could lead to future contractors also requiring similar control.



- In developing agreements with the USGS over time, there continues to be an elevated effort to seek changes to standard Program contracting language. The EDO believes all Program contractors should be bound by the same contracting rules and expectations.
- The EDO believes the language change increases the prospect of the Program and a Program contractor drawing different conclusions about the results of a project in regard to Program goals, objectives, Big Questions, and hypotheses.
- The project and its data are important to the Program, as discussed with the GC during the December 2012 GC meeting. If the FC declines the revised language and if in turn the USGS declines to accept the original language, this project could still be conducted utilizing a RFP and competitive selection process.