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OLD BUSINESS

a. Water Quality Issues

1. Reports from City Council members

i. Report on the Army Corps of Engineers public
hearing of August 08, 2007 (Vice Mayor
Johnston)

To: My Colleagues on City Council
From: Carla B. Johnston

August 10, 2007

Re: 2007-2008—Steps to Improving Water Quality around Sanibel Island

I. The problem:

The disruption of estuary stability experienced in last three years was caused largely by polluted fresh water from Lake Okeechobee that has been flushed down the Caloosahatchee into the waters surrounding Sanibel. Much of the pollution was brought from the Lake itself, although the excess rural and urban run-off has certainly contributed to the problem.

The result of this human-induced pollution is twofold: 1) High water flushes destroy significant amounts of the seagrass based habitat for fish and other estuary life. Recovery is slow. 2) Excess nitrogen contributes to a number of types of algal growth in the Refuge, the canals and in the Gulf. (The red drift algae is ultimately deposited, with each new tide, on our beaches—last winter in swaths two feet deep and four feet wide.)

II. The solution:

To solve this problem, we must both prevent the circumstances that cause it to continue and simultaneously clean up the damage if the natural cycles are too overwhelmed to manage.

III. Criteria for prioritizing work on solutions to problem:

To focus our work, we must answer three questions. 1) Who has the power to solve the problem? 2) What's required to do the jobs properly and in a timely fashion? 3) What must the government and public from Sanibel do to ensure that we accomplish our objectives?

IV. Who has the power to solve the problem?

Private property owners (both business and residential) often cause the pollution and can reduce it. But they don't always understand the scope of the problem. Sometimes they are not inclined to initiate solutions.

Government is needed to design, finance and implement solutions. Government can make laws, institute and enforce regulations, construct or removing facilities required to solve this problem.

The multiple facets of the problem coupled with our decentralized government results in making it difficult to understand who's in charge of solving what. Public frustration comes, in part, from asking the wrong agency to do a job outside its jurisdiction. Below is a list of the primary agencies critical to solving our water problem:

- 1) The **Army Corps** determines what amount of polluted water is released from Lake Okeechobee into our estuary, approves permits that increase the amount of land covered with impermeable surfaces, builds facilities that will improve or hamper our water quality.

This agency derives its power from the President and Congress. It can focus only on tasks assigned (in this case the congressionally approved Comprehensive Everglades Restoration Program (CERP). Our Jacksonville Corps reports through Atlanta and ultimately to the Assistant Secretary of the Army in Washington.

2) The **South Florida Water Management District (SFWMD)** determines how much water is needed for agriculture and human water supply. It has the power to make land which it owns or leases available for water storage. It has the power to buy real estate for use as new water treatment areas.

This agency derives its power from the Governor and the Legislature. Its focus is mandated in state laws. Its Board is appointed by the Governor. The Board hires the Executive Director.

3) The **State Department for Environmental Quality (DEP)** has the primary power to enforce the federal Clean Water Act and to initiate actions that cause removal of excess nitrogen and phosphorus from the water, the power to establish regulatory standards for pollutants (TMDLS).

This agency derives its power from state law. It is an agency serving the Governor to implement state policy. The Secretary who heads the agency is appointed by the Governor.

4) The **county and municipal governments** have the power to make ordinances that control the management of local resources and the power to initiate and implement programs within their authority.

County and local governments operate within the state laws. For example, in Florida, municipal governments have no jurisdiction over public health. That power is divided among county governments and several agencies of state government. Counties and cities control growth management and zoning that impacts pollution run-off. They can own wastewater treatment facilities.

5) The **governor and legislature** make laws to protect (or inadvertently harm) water quality. These laws are then implemented by agencies assigned that responsibility (The primary ones are listed above.) The governor also is charged with implementing some federal laws.

V. Human and financial resources are required for these agencies to do their jobs:

Three factors determine whether or not the job is done correctly. There must be adequate and specific plans for what must be done. There must be managers with the wisdom and will to address the problems—one piece at a time. There must be sufficient tax dollars available to pay for the land, labor and materials needed.

VI. Money needed to do the job:

1) The federal government has not appropriated money for its promised share of Everglades restoration (CERP)—thereby short-changing the **Army Corps'** ability to complete important projects like 'Mod Waters' (the elevating of Tamiami Trail so that

more water can flow south to the Everglades rather than down the Caloosahatchee.) Individuals (especially snow birds from across the country) can → write the President and urge him not to short-change America's Everglades. This should be done when the Water Resources Development Act (WRDA) is in the process of being authorized and when the funding is being appropriated. This year, that's likely in August and September.

2) The **SFWMD** receives tax dollars from municipalities and from the state. It has a healthy budget, although the new state law governing limits on ad valorem taxes will force a substantial cut back beginning in October 2007. There will be some new money from the new state law, but it is designated for specific kinds of new projects. In addition to this new Northern Everglades law, the state has been quite generous in funding Acceler8 (key parts of CERP funded because the federal government has paid its half as the law required them to do.)

The problem with the SFWMD is ensuring that the money is spent wisely. Little public or media attention is paid to 'watchdogging' whether SFWMD funds are spent on managing water fairly for all stakeholders. One SFWMD project that is very important to the Caloosahatchee is a stormwater treatment area for the C-43 reservoir. Individuals and local governments can → press the SFWMD Board (email addresses below) and Executive Director, Carol Wehle, now to urge that the land is purchased for a water treatment area in the coming fiscal year. The reservoir must have a treatment area attached and functioning on the day that it opens. It must not become a place to store and release more dirty water.

3) **County and municipal governments** will also be squeezed significantly by the new state tax law. The budgets could be further jeopardized by the upcoming 'save our homes' referendum in that while every dollar not collected saves the property owner; every dollar not collected means less resources to address water pollution problems.

Local officials will decide where to cut back; however not launching new programs is the easiest cut. Local water pollution solutions such as making and enforcing fertilizer ordinances, managing storm water run-off—are just beginning to be addressed and, for this reason, they often require new resources. It may be harder to appropriate funds for projects like package treatment facilities, wastewater treatment, septic run-off. For Sanibel, it means that funding for new programs like understanding how to break the cycle of red drift algae and for cleaning up the red drift algae may be squeezed.

The new state law governing ad valorem tax ceilings also rewards growth and development to increase tax base. The other side of that coin is that increasing impermeable coverage will only exacerbate the run-off problems. Development beyond carrying capacity will exacerbate the amount of algae producing nitrogen from septic, wastewater and fertilizers. Individuals and governments can → engage in ongoing efforts to increase public awareness of the impact state financial policy, as well as millage and budget decisions have on increasing as well as reducing water pollution and on financing corrections for existing water pollution problems. Preserving and correcting water quality are concepts not yet integrated into financial policy. We don't get what we don't pay for.

VII. The skill, focus and will of management to do the job:

1) The **Army Corps** has, for decades, been more part of the problem than part of the solution. However, it is *imperative* that we realize that we need the Army Corps because there is no other agency that has the legal authority, the power and the scope of responsibility to fix our major water management problems.

We must encourage and enable them to 'do the right thing.' To hope for alternative agency authority is to postpone water clean-up until decades from now when the problems will be far worse.

Much of what the Corps does or does not do on Sanibel's behalf depends on the Commander of the Jacksonville Corps office. A large part of our problem has been caused by previous commanders who rode out their three year term doing nothing. We are extremely fortunate now to have an energetic Commander, Colonel Paul Grosskruger, interested in water policy, eager to make a career mark by fixing one of the nation's more substantial problems. He's making decisions that are beginning to recognize and address the diverse needs of South Florida stakeholders.

2006 was actually the first time that the east and west estuaries (where excess water is dumped) were included in Corps Lake regulation calculations. Prior to 2006, the focus was only on the Lake—not where the Lake water went (except for meeting agriculture or drinking water needs.) The Colonel's staff is just beginning to understand what's required to replace speculation with quantitative, precise information and substantive analysis. It's the first time the Corps has begun to recognize the need to integrate biology and engineering. It's the first time that Corps leadership has even begun to listen to the needs of all stakeholders; a sea change in their understanding of their mandate. It's the first time the Corps has even entertained the possibility of adding an alternative destination (SFWMD lands) to their directive that excess water be dumped in the estuaries. It's the first pro-active efforts to bring more water to the Everglades National Park. It's the first time that policy has been issued that the Lake can be managed at 12 feet rather than higher (good for Lake health, for preventing dike breach and for preventing flushes in high water cycles.) All this is a good, but not yet sufficient response. It's a very fragile beginning of improved policy.

The Colonel is, however, half way through his 3 year posting here. The Corps protocol is to choose his replacement soon. This is no time to stop the momentum and start over with a new Commander. Governments and individuals can →immediately request that the Corps take the unprecedented step of allowing the Commander of the Jacksonville District, Col. Paul Grosskruger, to stay for a second three years. Email or fax the Asst. Secretary of the Army, John Paul Woodley, (Fax: 703-697-7401 or Kathleen.mcglynn@hqda.army.mil); Chief of Engineers, Lt. Gen. Robert Van Antwerp (Fax:202-761-1683 or Robert.l.vanantwerp.ltg@usace.army.mil); and Commander, South Atlantic Division, Brig. Gen. Joseph Schroedel, (Fax: 404-562-5002, joseph.schroedel.bg@usace.army.mil).

In addition, Sanibel should take government action and encourage the public to →request that the Corps take the following steps to improve its 2007 Lake Okeechobee Regulation Schedule and to improve its next 2010 LORSS:

- a) Incorporate the protocol now for using SFWMD owned and leased lands as an additional emergency destination for water during high water periods. To do so provides the 'plumbing' making it possible to actually use this new emergency release option. To do so using even the 150,000 acre feet of

storage currently available reduces the harm to the Caloosahatchee by 14%. Once 450,000 acre feet of storage is available, our harm is reduced by 25%. (See comments on SFWMD below.)

- b) Ensure now that the new 2007 schedule relies only on the Operational Guidance bands for flexibility because to do otherwise undercuts accountability and opens the Corps to pressures and whims.
- c) Develop the internal capacity for establishing baseline measures of the Caloosahatchee water quality now. The current drought offers the best possible opportunity for establishing such a baseline. This will enable ongoing quantifiable measurements of types of damage to the estuary that can serve as a guide for future Lake release management.
- d) Continue to encourage development of conveyance systems (flow way) for water to the south to reduce the possibility of releases to the estuary. (See Corps money needs above.)
- e) Continue to utilize the legal and technical expertise from our D.C. law firm, Beveridge and Diamond (B&D) to convey to the Corps that we know exactly what is required for a top quality Environmental Impact Statement and that we will provide this to them as a ‘tutorial’ unless we reach a point where no reasonable progress is occurring. At that point, these documents could well turn into the basis for legal action.
- f) Renew our request that water release gate at S-77 be redesigned to release from mid-point in Lake, not from bottom or top in order to minimize pollution out-flows.
- g) Provide the Corps with all human health and safety data applicable to our estuary because the Corps’ mandated priority is health and safety.

2) The **SFWMD** remains our most reluctant partner for improving our water quality. Just as Sanibel is geographically ‘out in left field’ when one views the District from the West Palm District headquarters, the Caloosahatchee and Sanibel have not even been on the District radar screen as part of Lake O water management. In 2006 we succeeded in getting their attention.

However, it takes extraordinary persistent effort to turn their promises into action. Governor Crist’s replacement of a number of Board members a few months ago appears, at this point, to be an improvement. It is crucial that the public and the government → continually write the person appointed from Lee County, Charles Dauray to let him know how best to help our estuary, our environment and our economy. Similarly, we should become frequent correspondents with all the others on the Board—congratulating fair decisions and expressing displeasure-requests for improvement when inappropriate votes are recorded. Here are the emails for the SFWMD Board. Remember that on any issue five of nine is a majority vote unless someone is absent. The Board members are listed in order of their votes for back-pumping (a process of putting dirty water into Lake Okeechobee to help agriculture at the expense of all other stakeholders). The Board stand on this item demonstrates how fragile the likelihood of votes in favor of clean water and fair treatment for all stakeholders. Here’s the vote: Opposed to back-pumping: Charles J. Dauray cdauray@sfwmd.gov; Shannon A. Estenoz sestenoz@sfwmd.gov; Melissa L. Meeker mmeeker@sfwmd.gov; Eric Buermann, Chair ebuerman@sfwmd.gov .

Supporters of back-pumping: Nicolas J. Gutierrez, Jr., Esq. Vice-Chair ngutier@sfwmd.gov ; Patrick J. Rooney, Jr., Esq. prooney@sfwmd.gov ; Harkley R. Thornton hthornt@sfwmd.gov . Abstaining because he represents U.S. Sugar: Malcolm S. Wade, Jr. mawade@sfwmd.gov . Absent but probably would support back-pumping: Michael Collins mcollins@sfwmd.gov .

Aside from strengthening the resolve and information base of the SFWMD Board, a number of activities that will be helpful to us require staff assistance. Sanibel government should → take a lead role on the below efforts at this point:

- a) The city should not just leave the discussion of content of the Estuary Protection Plan Feasibility Study (stipulated in the new state northern Everglades law) to the County and the SFWMD. A briefing from our staff is the first step. This should happen very soon. The content of this plan is important. The momentum to turn a finished plan into ‘turning dirt’ is key to wise use of funds from new law.
- b) The Council may want B&D’s legal expertise to provide added input and review to the above mentioned plan. We may also want B&D to increase attention to other SFWMD matters. Most B&D work to date has focused on the Corps and the DEP.
- c) We must ask the SFWMD come to brief us on their progress in attaining the promised 450,000 acre feet of water storage, and ask for copies of their ongoing correspondence providing the Corps with the needed containment and conveyance for these lands to be incorporated into the Corps’ Lake Regulation Schedule Operational Guidance.
- d) We should ask Ken Cuyler to maintain frequent contact with the County on their potential litigation likely to be filed if the SFWMD votes to challenge the judge on the need for Clean Water Act permits when they wish to put water from one body into another.
- e) In addition, not enough attention has been paid by stakeholders other than those concerned about water supply to the SFWMD Water Supply Management Plan and to the SFWMD rules for the Water Supply Index. These SFWMD policies influence how much water the ACE sends in what direction.
- f) It’s important to monitor carefully the back-pumping issue to advocate for agriculture to store water on their own lands and not on public lands.
- g) Ongoing pressure is important to keep focus on the SFWMD role in expanding conveyance (flow way) of water south.

3) The **Department of Environmental Quality** has, largely, been working well with the city over the past year. They are an important to the regulatory issues being addressed through the Regional Planning Council (RPC)—the gathering place for municipal and county officials from southwest Florida to develop models for solving regulatory problems—models that then are passed on to cities and counties who have the authority to make local laws. In addition, the city (through Beveridge and Diamond) and the county have been working with them to enhance the monitoring of the Caloosahatchee. A time may come when it is appropriate to do the following.

- a) Urge them to act more quickly on TMDLs (total maximum daily loads of

- pollutants in a body of water.)
- b) Urge them to pressuring the SFWMD to do its job.
 - c) Enlist their assistance in advancing the implementation of the Northern Everglades Restoration Law.
 - d) Enlist their assistance in advancing new legislation pertaining to tax credits for water farming.

4) County and municipal governments are on the front line of implementing a number of water quality projects. Both governments and citizens can be helpful here in following through on →

- 1) Completing as soon as possible the technical study of the specific causes, characteristics, regeneration and elimination of red drift algae blooms and the separate task of identifying options for eliminating the deposits on our beaches. Lee County and the City are collaborating on the technical study.
- 2) Continue work on red drift algae removal plan with renewed examination of how to manage this algae in the water before it's deposited on beaches.
- 3) Consider advancing an idea for southwest Florida delegation endorsement of filing a bill during the next state legislature's session to provide tax credits to landowners for water farming.
- 4) Find ways to coordinate the public health data in order to document actual impacts and act to solve potential health problems.
- 5) Explore how public education and outreach can engage other municipalities and counties north of the Lake to improve their water quality because it will make both their environment and their economy more attractive.

Summary—implementing solutions to Sanibel's water quality problem:

The list of tasks is long. It is important to recognize that different agencies are responsible for completing different tasks. It is also important to note that different timing is required for different tasks. To make our work manageable it is important to identify who can best take the lead role in each task deciding →

- 1) actions to be taken by City Council,
- 2) actions requiring staff attention,
- 3) actions requiring our law firm Beveridge and Diamond,
- 4) actions requiring our technical consultants on red drift algae,
- 5) actions requiring public education to be initiated through publication of our water newsletter and updating of our website—with the objective of encouraging individual voter action,
- 6) actions that can be 'jump-started' through individual Council Member involvement,
- 7) actions requiring new coordination mechanisms for assessing health impacts of pollution.
- 8) actions requiring new outreach mechanism to municipalities and counties beyond our jurisdiction
- 9) actions requiring legislative action in Tallahassee or Washington
- 10) actions requiring the assistance of our Tallahassee advisor

