

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020897

1. REQUESTED MOTION:

ACTION REQUESTED: That the Board of County Commissioners request, by letter to the South Florida Water Management District, the initiation of a "reservation" for the Caloosahatchee River and Estuary. A copy of the letter shall also be sent to the Army Corps of Engineers. Also give direction to County Administration to provide comment on all appropriate District/Everglades Restoration draft documents that are pertinent to achieving the water reservation.

WHY ACTION IS NECESSARY: To secure a water "reservation" from the South Florida Water Management District.

WHAT ACTION ACCOMPLISHES: Directs County Administration to prepare a letter for the Chairman's signature to request a water "reservation" from the South Florida Water Management District.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #

A1A

3. MEETING DATE:

08-13-2002

4. AGENDA:

- CONSENT ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT County Administration/Smart Growth
- C. DIVISION *Wayne Daltry*
- BY: Wayne Daltry, Smart Growth Director

7. BACKGROUND:

Upon the Board's approval of this request, a letter will be prepared for the Chairman's signature to the South Florida Water Management District asking to initiate a water reservation for the Caloosahatchee River and Estuary. The Smart Growth Director will be meeting on Aug. 8th with the Southwest Florida Regional Planning Council, the Charlotte Harbor National Estuary Protection Program and the Watershed Council to further discuss this issue. A collaborative draft letter and resolution will be forth coming after this meeting. Direction must be expedient as the reservation letter is due by the South Florida Water Management District by August 19th.

Attached is an informational issue paper prepared by the Smart Growth Director on the issue of water supply reservations for the Caloosahatchee River.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services			G County Manager
				<i>Joseph</i>	<i>P.M. 8/2/02</i>			
				<i>one 8/2/02</i>	<i>OM 8/2/02</i>	<i>Risk 8/2/02</i>	<i>GC 8/2/02</i>	<i>BDS b1 fu</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: 8/2/02
Time: 11:00AM
Forwarded To: ADMIN
8/2/02 11:15

RECEIVED BY COUNTY ADMIN. *DD*
8/1/02
COUNTY ADMIN. FORWARDED TO: *DS*
8/1/02

Water Supply Reservations For The Caloosahatchee River

Recommended Positions

- 1. The Board of County Commission immediately request by letter the initiation of a "reservation" for the Caloosahatchee River and Estuary. The letter go to the Governing Board of the South Florida Water Management District, copy to Secretary Struhs.**
- 2. The Board of County Commissioners request would indicate the need for a "pre CERP" reservation which would serve as a minimum protection baseline, and the need for CERP project additional reservations to bring protected flows up towards the desirable levels for estuary productivity.**
- 3. The Board of County Commissioners direct Administration to provide comments on all appropriate District/Everglades Restoration draft documents that are pertinent to achieving this request. Administration is further directed to participate in (or ensure County interests are represented) in all appropriate workshops and hearings that would work towards achieving this request.**

Background

The Everglades Restoration has several components. One component specifically addresses flood control, water supply, and water storage, and is known as the Comprehensive Everglades Restoration Plan. (CERP) This title is something of a misnomer, in that there are separate components for habitat, fish, wildlife, and water quality. However, it is the CERP component that is currently high profile. CERP is managed by the US Army Corps of Engineers and its local partner the South Florida Water Management District.

There is a special effort of CERP that addresses our area, and that is the Southwest Florida Feasibility Study. However, it will not be complete until 2006, and there are several Everglades Restoration efforts underway that directly address Lee County and our region.

"Disputed Territory"-The Caloosahatchee River Estuary/Charlotte Harbor

The SFWMD is the primary state participant in the Central and Southern Flood Control District, established in 1947, which had as its mission flood control of south central Florida. It also morphed and received Legislative direction to provide water supplies for southeastern Florida, as well as continue to manage water for the agricultural districts around the Lake. It is also the partner of the U.S Army Corps of Engineers which has authority over the flood control system built by the Corps.

One of the Corps "works" (maintained canals) is Canal-43, which is the structural name of the Caloosahatchee River. The River, which has been artificially connected to Lake Okeechobee, is used as a stormwater channel to dump water into the estuary when water is too plentiful (or forecasted to be too plentiful), and a large irrigation channel to move water to areas that need

water supplies when localized water resources are depleted-or when local resources are to be kept high in expectation of drought.

The problem that Lee County has begun to understand, is that with the increased urbanization on the east, expansion of agriculture in the central basin, and the newly committed demands to Everglades National Park, Lee County's estuaries are lacking any priority for supplies for environmental purposes. To restate: the immediate past policy of the SFWMD is that priority for River Flow does not come to its receiving waters. This is a fairly recent phenomenon. However, as a policy it has been "fluid."

The statement has been made that all river flow-all flow-is available for allocation to existing permits, either Consumptive Use Permits, or flood control drainage/surface water management permits. It is a "source," not a "user." (District staffer Ken Ammon, July 16, 2002, in front of the Water Resources Advisory Council) There is no there is no-storage for dry season river flow either by management or in the natural system upriver from the Franklin Locks. (Letter from District staffer Doering to Andress, June 30, 2002).

Last year a minimum flow for the river has been adopted into WMD rule, and that flow is to achieve a certain river salinity at a specific point-which is the Edison Bridge at less than 10 parts per 1000. Releases were made this drought year in order to achieve the desired levels of salinity, but violations did occur.

Demonstrating the "fluidity of policy," a Statement at a meeting in early July was made that to get the Minimum Flow and Level (MFL) (which is 300cfs) reserved for the estuary will require changes to federal law/WORDA 2000. (Ammon.) *(However, at the forum where this was clearly stated, the response was so startled that a sudden reexamination of position was offered. Discussed further below in "fluid policy")*

An Elaboration

The Everglades Restoration has a component that is to "get the water right." The "get the water right" has a name-Comprehensive Everglades Restoration Plan (or CERP). CERP is to provide water to meet all needs, so to speak, including that of the environment. And there are several projects listed in the Caloosahatchee Basin that are stated to meet needs. (The volume of need is still being argued) But the priority is to meet (1) "existing users," (2) environmental needs, and (3) growth.

There are two sticking points. The first is "what is an existing user." The second is "source shifting."

The Federal authorization has made "existing users" the first priority in Everglades Restoration. The estuaries are not considered an "existing user." Water flow to the estuaries are considered a "source" to meet "users" needs. Federal law defers to Florida Law regarding what is an "existing user." And Florida Law defines an "existing user" to be a permit. (Ross, July 16, in front of WRAC) The Caloosahatchee watershed or basin has significant outstanding permits not yet

drawing water. So it is possible, and not yet quantified, that the CERP projects will not deliver the volumes of water the estuary needs. In effect, growth needs will come first. (The equivalent would be to exempt the lots in Lehigh from paying impact fees because -even though the houses aren't there-it was expected that they would be there by the lot owner.)

If existing users get the water, in this regional system of water delivery, water is taken from anywhere to provide it. The Caloosahatchee during the dry season historically averages 500 cfs flow to the estuary-and 800 cfs is deemed ideal. (Yearly average is about 1250 cfs from basin sources-1995 base year). If existing users are deprived -anywhere in the Everglades Restoration 17000 square miles- then it may be said that Lee County doesn't have a right to expect the River to flow to the estuary.

With one exception-the Olga Water Plant. This is the only "existing user" that exists for Lee County on the Caloosahatchee River.

Lee County's Stake

Lee County has three major points of concern that are immediately apparent. The Caloosahatchee Estuary contributes \$147 million to the County/Regional economy. (District estimate.) The River provides the raw water for the 10 mgd Olga Plant-which uses only 2% of dry season average flow. (And to put things into context-the District position is that 100% of dry season flow is a source to be used elsewhere). And the River reduces salinity-and thus treatment costs-to the new Lee County 25 mgd water plant at FPL Park.

The new plant has an interesting concern. Reductions in river flow-not to mention its elimination which has periodically occurred due to drought-will drive salinity up, along with treatment costs, thus increasing costs to Lee consumers. It should be noted that the water diverted from Lee County goes to consumers-agricultural and domestic-that have not achieved the degree of conservation or lower per capita use of water that Lee County has.

These are not inconsiderable costs and needs of the County. However, there is even a broader cost-the extensive public effort in protecting the estuary from development. Over the last three decades, Lee County and its municipalities have come to the realization of the estuary's importance. Developments have been denied, land purchased, and sewerage systems reinvented. Even more is being done in the evolving stormwater initiative. This has been done in furtherance of all the Federal and State environmental acts.

During that same time, the upriver activity seems to have been the reverse. More flood discharge (not less), more water demand, and more alteration. This has been a component of the upriver counties efforts to improve their local economies, for which there is areawide sympathy.

It should be noted that Lee County is becoming more heavily engaged in stormwater management in order to meet water quality needs of the community and the permit requirements of state and federal agencies. The nature of river management (flood and drought management) will have a direct bearing on the County's ability to meet these growing needs in this part of its

jurisdiction.

Fluid Policy

It is apparent that the District is in the middle of major policy decisions. As late as July 25th, another policy shift--or re-recognition of existing policy-- became public knowledge. That policy is preserving some basic flow to estuaries outside of CERP projects. Consequently, the District will be discussing establishing "reservations" for the natural systems, including our Caloosahatchee Estuary, with a target date of 2004. They are also discussing at further length what will be the "existing user" doctrine, since District Board discretion may be applied.

(As a side note, the District is not the only State participant in "reservations." The other entity is the Florida Department of Environmental Protection.)

It was stated by District Legal Counsel at a July 25th workshop held by the Southwest Florida Watershed Council (a not for profit 501c3 corporation which includes Lee County in its area) *that participation is critical in order to get the desired results.* The recommended actions brings to a higher profile Lee County's participation.

There are several efforts in which participation will be needed in order to promote Lee County's diverse needs. Two that are most evident are:

A. Review and Comment on draft position papers being written by the District regarding what constitutes an existing user, and the basis by which pre-CERP reservations should be made.

B. Petition the Board of the South Florida Water Management District to establish natural system "reservations" for water, that begin with a baseline protection prior to CERP implementation, and build towards improved flow reduction during wet season, and improved flow reliability during the dry season. The first reservation to be pursued should be the Caloosahatchee River.