

WALK-ON # 2

ATY

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20051797

1. ACTION REQUESTED/PURPOSE: Receive further input relative to legal options available to the County concerning freshwater discharges from Lake Okeechobee to the Caloosahatchee River and provide further direction to both legal and administrative staff on how to proceed.

2. WHAT ACTION ACCOMPLISHES: Apprises the Board of legal options and their viability, and provides further direction to staff.

3. MANAGEMENT RECOMMENDATION: Consider legal options and their timing, and provide further direction to staff.

4. Departmental Category: CW

WO # 2

5. Meeting Date:

12-20-2005

6. Agenda:

7. Requirement/Purpose: (specify)

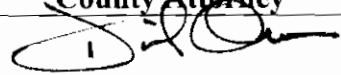
8. Request Initiated:

<input type="checkbox"/> Consent
<input checked="" type="checkbox"/> Administrative
<input type="checkbox"/> Appeals
<input type="checkbox"/> Public
<input type="checkbox"/> Walk-On

<input checked="" type="checkbox"/> Statute	CH. 373, F.S.
<input type="checkbox"/> Ordinance	
<input type="checkbox"/> Admin. Code	
<input type="checkbox"/> Other	

Commissioner	
Department	County Attorney
Division	
By:	David M. Owen County Attorney

9. Background:



At its regular meeting of November 29, 2005, the Board directed legal staff to research and present legal options with respect to the discharges from Lake Okeechobee to the Caloosahatchee River and to engage outside counsel for assistance in the analyses.

Legal options, observations and suggestions are now being presented to the Board for its consideration and further direction to both legal and administrative staff on how to continue to proceed at this time is being requested.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
				<i>[Signature]</i> 12/12/05	RK 12/15	12/15/05	12/15/05	12/15/05	MS 12/15/05

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

Continuance as per D. Owen Jan 11/06
TC Jan. 31, 2006.

RECEIVED BY COUNTY ADMIN:
12-15-05
11:32
COUNTY ADMIN FORWARDED TO:
12/15/05
4:30

CO. ATTY. 12/15/05
FORWARDED TO CO. ADMIN.
10:30 AM

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: December 19, 2005

TO: Board of County Commissioners

FROM: 

David M. Owen
County Attorney

RE: WALK-ON ITEM #2, REGULAR MEETING OF DECEMBER 20, 2005

Commissioners;

I am respectfully requesting a continuance of the above matter with respect to any potentially viable legal actions that may be brought against the South Florida Water Management District, the U.S. Army Corps of Engineers or both from their actions in lowering Lake Okeechobee, to your meeting of Tuesday, January 31, 2006. I will submit a new bluesheet for that meeting.

Although the impacts to Lee County from the discharges are readily apparent; from the legal perspective, this is a very complex matter involving two large regulatory agencies with numerous state and federal laws, rules, policies and procedures coming into play.

Additionally, and as of this writing, we have not yet had an opportunity to get any substantive input from outside counsel, which I would like to have prior to giving any opinions from this office as to the viability of theories for possible lawsuits. Mr. Guest of Earth Justice, in particular, is beginning a trial in Miami on January 9, 2006 involving similar matters which will take up most of his time for much of that month. I feel that Mr. Guest's input is highly desirable at this time given his level of involvement in similar cases and the Board's prior direction.

This is one of those instances where more due diligence rather than less, is both necessary and appropriate prior to my opining as to what avenues for legal action are open to the Board in this matter. Your indulgence, understanding and approval will be appreciated.

DMO/dm

xc: Donald D. Stilwell, County Manager
John J. Renner, Chief Assistant County Attorney, Litigation Section
Wayne Daltry, Director, Smart Growth
James Lavender, Director, Public Works Administration
Roland Ottolini, P.E., Director, Natural Resources
Lisa Pierce, Supervisor, Minutes Department
Elizabeth Walker, Director, Public Resources
Richard DeSalvo, Public Resources