

Lee County Board Of County Commissioners

Blue Sheet No. 20070776

Agenda Item Summary

1. ACTION REQUESTED/PURPOSE: Delay payment of the second installment under the Grant Agreement between the Sierra Club (National) and the Board of County Commissioners. The purpose of the Grant Agreement is to fund the Sierra Club's challenge to federal permit actions concerning the Ona Phosphate Mine in Hardee County. Because federal action is delayed pending the outcome of the challenge to the state permits, the Sierra Club does not need the second installment of the Grant funds at this time.

2. FUNDING SOURCE: N/A

3. WHAT ACTION ACCOMPLISHES: Delays payment of the second installment under the Grant Agreement. That installment of \$50,000 would have been due June 17, 2007.

4. MANAGEMENT RECOMMENDATION: Direct staff to delay payment of the second installment under the Grant Agreement.

5. Departmental Category: County Attorney AIZA		6. Meeting Date: June 5, 2007
7. Agenda:	8. Requirement/Purpose: (specify)	9. Request Initiated:
<input type="checkbox"/> Consent	<input type="checkbox"/> Statute	Commissioner _____
<input checked="" type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	Department County Attorney
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	Division Litigation
<input type="checkbox"/> Public	<input type="checkbox"/> Other	By: Susan M. Henderson
<input type="checkbox"/> Walk-On		Assistant County Attorney

10. Background:

For the past four years, both state and federal permits have been sought by phosphate companies (now: Mosaic Phosphate Company) for the construction and operation of the Ona Phosphate Mine in Hardee County.

On December 5, 2006, the Board of County Commissioners executed a \$150,000 Grant Agreement with the Sierra Club to fund the Sierra Club's challenge to the U.S. Army Corps of Engineers' issuance of the permit under Section 404 of the Clean Water Act and final Environmental Impact Statement ("EIS") for the Ona Phosphate Mine. The first two bi-monthly reports, documenting the Sierra Club's activities to date under the Grant Agreement, are attached. The second installment of \$50,000 would have been due June 17, 2007.

11. Review for Scheduling:

Dept. Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
				_____	Analyst	Risk	Grants	Mgr.	
					RKs/21	MP 5/21/07	SM/07	_____	<i>[Handwritten Signature]</i>

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

CO. ATTY.
FORWARDED
TO CO. ADMIN.
5-18-07

RECEIVED BY
COUNTY ADMIN.
5/18/07
10 AM
COUNTY ADMIN
FORWARDED TO:
5/22/07
9:45 AM

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Bluesheet #_20070776

Subject: Delay payment of the second installment under the Grant Agreement between the Sierra Club (National) and the Board of County Commissioners. The purpose of the Grant Agreement is to fund the Sierra Club's challenge to federal permit actions concerning the Ona Phosphate Mine in Hardee County. Because federal action is delayed pending the outcome of the challenge to the state permits, the Sierra Club is not currently in need of the Grant funds.

The issuance of the state permits has been challenged, and that challenge is ongoing. While the state challenge is being litigated, the issuance of the federal permit, as well as the final EIS, is being held in abeyance. The Sierra Club's preparation for challenging those federal actions is likewise being held in abeyance and the Sierra Club does not need the second installment of the Grant funds at this time.

When federal activity resumes, the County Attorney's Office will request release of the second and third installments of the Grant funds to the Sierra Club *via* separate "bluesheets."

The Sierra Club has been contacted and concurs with this Management Recommendation.

Attachments: Sierra Club 3/06/07 letter
Sierra Club 5/11/07 letter



SIERRA
CLUB
FOUNDED 1892

2007 MAR 12 AM 7:08
RECEIVED BY
LEE CO. ATTORNEY

March 6, 2007

David M. Owen
Lee County Attorney
2115 Second Street, 6th Floor
P.O. Box 398
Fort Meyers, FL 33902-0398

Re: Ona Mine Federal Permitting

Dear Mr. Owen:

Sierra Club has received the first \$ 50,000 pursuant to the Grant Agreement with Lee County regarding the Ona Mine Federal Permit. This letter is to provide a status update on Sierra Club's services in keeping with the Agreement.

Enclosed you will find attorneys' time records that provide a detailed description of time spent and services rendered by Sierra Club attorneys through March 5, 2007. As you will see, our work has entailed an analysis of the Preliminary FEIS and the permit application; obtaining opinions and comments from expert economists, hydrologists and wildlife biologists; and performing legal research for public comments and potential legal challenges to the permit under the National Environmental Policy Act and Clean Water Act § 404. Throughout this process we have coordinated our efforts with the local environmental groups, Charlotte County, and the attorneys representing Charlotte County in the challenge to the State administrative action. The total time for services rendered for the three Sierra Club attorneys reflected in the time sheets (Gallagher, Huber and Isherwood) is 418.1 hours (x \$ 300/hr = \$ 125,430.00).

Since the December 5, 2006 execution of the Grant Agreement, my time has been spent primarily on the substantive analysis and review of the State administrative proceedings and rulings, particularly Charlotte County's offer of proof on flow issues. Since that proof was not allowed at the State hearings, the upcoming public comment process before the U.S. Army Corps of Engineers is critical to having this information considered by the permitting authorities. Related to the flow issues, I have been gathering information on the various studies underway on the Peace River, and I have been working with another potential expert on the cumulative impact of the mines on the Charlotte Harbor estuary. The total time for services rendered since execution of the Grant Agreement is 25.5 hours (x \$ 300/hr = \$ 7,650.00). This analysis and preparation will continue and we expect it to increase considerably as soon as the FEIS, Record of Decision and CWA § 404 permit are issued.

David M. Owen
March 6, 2007
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Meanwhile, we have been in contact with the U.S. Army Corps of Engineers regarding the status of the permit, and they report no change. The permit is still under review and the final FEIS could issue at any time. At that point there would be a 30 day public comment period to be followed by the Record of Decision and final permit. There is no word on our request for public hearings on the permit.

Thank you for your attention to this matter, and if there is any more information you would like, please do not hesitate to contact me.

Very truly yours,


Eric E. Huber

cc: Susan Henderson (via email)
Pat Gallagher (via email)

Enclosures: Attorneys' Time Records through March 5, 2007

CL-0089 Lit-FL-Mosaic Phosphate Mine Attorney Fees

EmpName	Week of	Descrip	Hours	Value
HUBER, ERIC E.	10/16/2006	10/19 conf. w/ PG and review EIS, 404 application	10	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	10/30/2006	10/30 review EIS	5	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	10/30/2006	11/2 multiple calls to clients	1	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/6/2006	11/6 arranging multiple meetings on Fla. trip; emails to and from CF	1	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/6/2006	11/7 conf. w/ law clerk on research to do; emails to and from clients	0.7	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/6/2006	11/8 analysis of DEP orders, ALJ orders	8	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/6/2006	11/9 analysis of public comments; legal reseach; tele. conf. w/ Lee Co. Atty.	8	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/6/2006	11/10 review 404 application; legal research on claims	4	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/13/2006	11/15 prep for visit with all clients, county attorneys	3	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/13/2006	11/19 travel to Fla.	6	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/20/2006	11/20 meeting with Chip Fletcher; meeting with Fla. Sierra Club Office; travel to Port Charlotte	8	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/20/2006	11/21 meeting w/ Sierra Club local activists; travel to and from meeting w/ Charlotte Co. attorney	6	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	11/20/2006	11/22 travel to and from Ft. Meyers and meeting w/ Lee Co. attorney	6	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	1/22/2007	1/26 conf. w/ paralegal on research on status of Peace River and Charlotte Harbor on 303(d) list; emails to and from local activists on status of 404 application	0.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	1/29/2007	1/29 Legal research on potential claims; factual research on effect on estuary	1	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	1/29/2007	2/1 Substantive analysis and review of DOAH admin record re: cumulative impacts.	3.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	1/29/2007	1/31 Analysis of 404 application; public comments of counties; review of DOAH expert testimony; review of DOAH transcript on offers of proof; analysis of EIS flow date; legal research, review of COE Regs; EPA regs; COE guidance docs, email to SC	6	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/5/2007	2/9 r/r memo from paralegal on status of 303(d) impaired waters; corr. to COE on mailing list; conf. w/ paralegal on COE communications	0.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/5/2007	2/6 Email to and from expert economist on status, revised project; r/r technical paper on Peace River flows from potential experts (Dunson and Travis)	2	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/5/2007	2/7 Analysis of flow reports, data	2	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/5/2007	2/5 Legal research on COE, EPA regs	2.5	CL0089 - Lit-FL-Mosaic Phosphate Mine

CL-0089 Lit-FL-Mosaic Phosphate Mine Attorney Fees

HUBER, ERIC E.	2/12/2007	2/14 Analysis of EIS; emails to potential expert on flow issues; email to local activists; potential local counsel; to attorneys in 1990s successful challenge to phosphate mine; emails from potential experts	2	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/12/2007	2/12 multiple emails w/ clients on FDEP cumulative impact study; legal research on EPA regulations; analysis of flow materials on Charlotte Harbor, Peace River water quality data	3	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/19/2007	2/20 analysis of flow data; tele call to potential expert; tele conf. w/ atty heading earlier Ona site litigation in 1993; tele conf. w/ potential local counsel	1.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/19/2007	2/22 calls to and from potential flow expert	0.3	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/19/2007	2/23 conf. w/ expert Ernst Peebles on effects on estuary	0.7	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/26/2007	2/26 analysis of cumulative impact data; review contract w/ Co. and email to PG on same; emails to and from local SC group	1	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	2/26/2007	3/1 corr. to expert; conf. w/ paralegal	0.3	CL0089 - Lit-FL-Mosaic Phosphate Mine
HUBER, ERIC E.	3/5/2007	3/5 drafting status report; review/revise atty time	1	CL0089 - Lit-FL-Mosaic Phosphate Mine
		Total Hours for Eric E. Huber	94.5	
		Hourly Rate	x \$300	
		Total Fees for Eric E. Huber	\$28,350	
EmpName	Week of	Descrip	Hours	Value
GALLAGHER, PATRICK	12/5/2005	Review DEP proceeding documents; telephone with county attorneys	28	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	12/12/2005	Review DEP documents; research NEPA and 404 issues; telephone with regional staff and county attorneys	14	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	12/19/2005	Review and research draft and preliminary final EIS	20	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	1/2/2006	Review EIS documents and prepare comment strategies	14	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	1/9/2006	Draft Correspondence to army Corps re SEIS; correspondence with coalition members re same; research same; review FEIS draft;	11.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	1/16/2006	Review Preliminary FEIS; correpondence with wetlands law expert; correspondence with J. Cooper and C. Fletcher; draft outline of issues for FEIS comment	15	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	1/23/2006	Review preliminary FEIS and draft outline of issues; conference call with coalition	9.5	CL0089 - Lit-FL-Mosaic Phosphate Mine

CL-0089 Lit-FL-Mosaic Phosphate Mine Attorney Fees

GALLAGHER, PATRICK	1/30/2006	Revise letter re SEIS; draft outline of FEIS comment issues; review record documents on hydrology and wetlands; research Clean Water Act section 404 issues	18	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	2/6/2006	Research Clean Water Act alternatives claim; correspondence re same; draft Coprs FOIA; draft internal memo and fact sheet; telephone with C Fletcher re FEIS strategy	16	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	2/27/2006	Correspondence re Altman mine; review DEP orders; research COE permit schedule; telephone w/ J. Thomas	6.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	3/6/2006	Research section 404 comments and possible economist experts	2.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	3/13/2006	Research and telephone with potential resource economists; review Altman documents;	7	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	3/20/2006	Correspondence and document review re Altman mine; telephone with potential resource economists; draft letter re Altman mine; review and meeting re cumulative impacts memo;	11	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	3/27/2006	Edit, finalize and file Altman comments; telephone and correspondence re same; telephone with expert economist on Ona mine; prepare and review documents re economic analysis	12	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	4/17/2006	Telephone with M. Kavanagh re 404 notice; review permit application documents	5.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	4/24/2006	Research and draft letter re Ona 404 permit; work with economist expert to obtain expert comments; correspondence re same	14	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	6/5/2006	Develop economic analysis approach; telephone with experts; correspond with staff and chapter;	6.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	8/7/2006	Telephone and coorespondence re Lee Cty request	2.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	8/21/2006	Prepare presentation to Lee County; correspondence and telephone re same	4.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	8/28/2006	Telephone and correspondence re Lee County meeting; draft fact sheet re litigation; correspondence with reclamation expert	6.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	9/11/2006	Travel to Florida; attend hearings and meetings re proposed Ona Mine	55	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	9/18/2006	Correspondence and telephone wioth counsel and local activists re Charlotte and Lee County issues; research FOIA issues and permitting issues	7	CL0089 - Lit-FL-Mosaic Phosphate Mine

CL-0089 Lit-FL-Mosaic Phosphate Mine Attorney Fees

GALLAGHER, PATRICK	9/25/2006	Correspondence and telephone re Lee County grant; research FOIA issues;	7	CL0089 - Lit-FL-Mosaic Phosphate Mine
GALLAGHER, PATRICK	10/23/2006	Contacts with wetlands experts; review and revise Lee Cty contract; contacts with clients; attend to FOIA;	11	CL0089 - Lit-FL-Mosaic Phosphate Mine
ISHERWOOD, AARON S.	1/2/2006	1/2: 2.5, 1/3: 0.8, 1/4: 2.9 (review portions of DEIS re project, envtl setting, fish and wildlife and T&E resources, impacts to those resources)	6.2	CL0089 - Lit-FL-Mosaic Phosphate Mine
ISHERWOOD, AARON S.	1/9/2006	1/9: 1.9 (review DEIS sections re wildlife and wildlife-related resources); 1/11: 2.4 (begin preparing notes on DEIS and FEIS wildlife comments)	4.3	CL0089 - Lit-FL-Mosaic Phosphate Mine
ISHERWOOD, AARON S.	1/23/2006	1/25: 0.7 (review and take notes on DEIS comments re wildlife); 1/26: 1.1 (same; consult w/ S. Narayan re ESA issues); 1/27: 2.7 (CFC P.Gallagher, local activists and attys re legal strategy)	4.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
ISHERWOOD, AARON S.	2/6/2006	2/7: conf call with Chip Fletcher, P. gallagher re legal strategy and experts	1	CL0089 - Lit-FL-Mosaic Phosphate Mine
ISHERWOOD, AARON S.	2/13/2006	2/17/06: mtg w/ legal intern to discuss her rsc	0.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
ISHERWOOD, AARON S.	2/20/2006	2/24: mtgs w/ legal intern re her rsc and efforts to identify wildlife experts	0.5	CL0089 - Lit-FL-Mosaic Phosphate Mine
ISHERWOOD, AARON S.	2/27/2006	3/1: tew w/ Prof. Morrison (caracara expert) and follow-up conversations with legal intern	1	CL0089 - Lit-FL-Mosaic Phosphate Mine
ISHERWOOD, AARON S.	3/20/2006	TN w/ potential panther, wildlife expert; prepare for call and discuss with intern after call	1.1	CL0089 - Lit-FL-Mosaic Phosphate Mine
		Total Hours for Aaron Isherwood and Patrick Gallagher	323.6	
		Hourly Rate	x \$300	
		Total Fees for Aaron Isherwood and Patrick Gallagher	\$97,080	