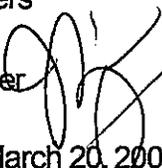




MEMORANDUM

DATE: March 19, 2007

TO: Sanibel City Councilmembers

FROM: Judie Zimomra, City Manager 

SUBJECT: Supplemental Material for March 20, 2007 City Council Meeting

Please find attached the following supplemental material for the March 20, 2007 Council Meeting:

- Agenda Item 11(b) – Resolution 07-023 has been amended
- Mayor letter dated March 15, 2007
- Draft handout for Councilmembers to utilize at the Florida League of Cities Legislative Days

JAZ/cm

Xc: Ken Cuyler, City Attorney
Pamela Smith, City Clerk

**CITY OF SANIBEL
RESOLUTION 07-023**

A RESOLUTION OF THE CITY OF SANIBEL, FLORIDA, EXPRESSING SUPPORT FOR HOUSE BILL 0535 AND SENATE BILL 1474, WHICH EXPAND THE LAKE OKEECHOBEE PROTECTION PROGRAM TO INCLUDE PROTECTION OF THE CALOOSAHATCHEE AND ST. LUCIE RIVERS AND THEIR ESTUARIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Caloosahatchee and St. Lucie Rivers and their estuaries provide significant economic value and are critical water resources of the state, and freshwater discharges are the primary causes of adverse impacts on these rivers and estuaries; and

WHEREAS, House Bill 0535, sponsored by Representative Trudi Williams, was filed in the Florida Legislature on January 3, 2007, and Senate Bill 1474, sponsored by Senator Burt Saunders, was filed in the Florida Legislature on February 9, 2007, and propose amendments to the Lake Okeechobee Protection Program to include the Caloosahatchee and St. Lucie Rivers and their estuaries; and

WHEREAS, the City Council of the City of Sanibel, Florida, supports the passage of House Bill 0535 and Senate Bill 1474 which include the Caloosahatchee and St. Lucie Rivers and their estuaries in the Lake Okeechobee Protection Plan and establish an Estuary Protection Program to identify the adverse hydrologic and water quality impacts within the Caloosahatchee and St. Lucie Rivers and their estuaries; and

WHEREAS, for the foregoing reasons, the City Council urges the Florida Legislature to pass House Bill 0535 and Senate Bill 1474; and

WHEREAS, the City of Sanibel finds that this Resolution should be forwarded to the Florida Legislature for its consideration as the merits of House Bill 0535 and Senate Bill 1474 are debated;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sanibel, Florida:

SECTION 1. The City Council of the City of Sanibel, Florida, declares its support for House Bill 0535 and Senate Bill 1474, both of which are attached hereto and incorporated herein by reference, and urges the Florida Legislature to pass House Bill 0535 and Senate Bill 1474.

SECTION 2. The Sanibel City Council would further respectfully recommend the following:

- a. Funding should be identified for land acquisition for water storage to improve water quality throughout the estuaries.
- b. Funding should be identified to acquire land for a filter marsh or other water quality treatment component for the C-43 reservoir to improve water quality prior to discharging it to the Caloosahatchee Estuary.

- c. That no emergency shall be declared by the water management district with respect to discharges by or through CS&F Project control structures S-77 or S-80 (a) for any purpose other than to protect the public health and safety from a structural failure of the Herbert Hoover Dike, and (b) prior to the utilization to the maximum extent practicable of all available SFWMD designated lands for temporary emergency storage of excess Lake Okeechobee water. For purposes of this provision, the phrase “maximum extent practicable” shall mean for any declaration prior to January 31, 2009, the diversion of excess Lake Okeechobee water to SFWMD designated lands with a storage capacity totaling no less than 200,000 acre-feet and, for any declaration on or after February 1, 2009, the diversion of excess Lake Okeechobee water to SFWMD designated lands with a storage capacity totaling no less than 450,000 acre-feet.
- d. Include the following specific monitoring and assessment measures:
 - (i) Develop freshwater flow database to record the relative volumes of basin flows and Lake releases that reach the Estuaries under varying climatological and Lake release conditions;
 - (ii) Quantitative documentation of the baseline water quality conditions of the Estuaries drawing on all existing sources of water quality data, including the extensive DBHYDRO database maintained by the SFWMD;
 - (iii) Hydrodynamic modeling of the Estuaries to better assess and predict the salinity impact of expected basin discharges in conjunction with Lake Okeechobee releases;
 - (iv) Sediment transport modeling and water quality impact assessment of anticipated basin discharges and Lake Okeechobee releases;
 - (v) Develop a comprehensive water quality monitoring program sufficient to provide the data necessary for modeling analysis of the Estuaries; and
 - (vi) Develop a record of the real extent and the amount of nuisance algae observed on shorelines in and around the Estuaries in order to better assess factors contributing to changes in these blooms and to better evaluate effective corrective measures.
- e. Establishment of a Caloosahatchee / St. Lucie River Estuary Research and Water Quality / Habitat Monitoring Program.

- f. A directive to the SFWMD for the review and strengthening of Environmental Resource Permit water quality and water quantity criteria.
- g. A directive to the State Department of Environmental Protection to expedite the development and adoption of TMDLs (water quality standards) for the Caloosahatchee River and Estuary.
- h. Creation of an Annual Progress Report that tracks progress and results.
- i. Creation of a two-phase Estuary Construction Project program that would provide for short term stop-gap projects in phase one.
- j. Development of specific goals and objectives for the Caloosahatchee Estuary Protection Plan.

SECTION 3. The Sanibel City Council hereby directs that this Resolution be forwarded immediately to both houses of the Florida Legislature.

SECTION 4. This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the City Council of the City of Sanibel, Florida, this 20th day of March, 2007.

AUTHENTICATION:

Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM: *Kenneth B. Cuyler*
Kenneth B. Cuyler, City Attorney

3/19/07
Date

Vote of Council Members:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date filed with City Clerk: _____



City of Sanibel

800 Dunlop Road
Sanibel, Florida 33957-4096

AREA CODE - 239

CITY COUNCIL	472-4135
ADMINISTRATIVE	472-3700
BUILDING	472-4555
EMERGENCY MANAGEMENT	472-3111
FINANCE	472-9615
LEGAL	472-4359
PARKS & RECREATION	472-9075
PLANNING	472-4136
POLICE	472-3111
PUBLIC WORKS	472-6397
UTILITIES	472-1008

March 15, 2007

Via Federal Express & E-Mail

Jerry Brooks, Deputy Director
Water Resources Management Division
Florida Department of Environmental Protection
2600 Blair Stone Road M.S. 3500
Tallahassee, FL 32399

RE: Draft Lake Okeechobee Protection Act Permit No. 0174552-001-GL; and Proposed 2007 Amendments to Lake Okeechobee Protection Act

Dear Jerry:

Thank you for taking the time to meet on Wednesday to discuss the draft Lake Okeechobee Protection Act ("LOPA") permit for S-77 as well as the legislative initiative to expand the Act into the Northern Everglades and Estuaries Protection Program. The City of Sanibel is vitally interested in both of these developments.

I found the discussion very helpful in better understanding your viewpoint on these two items; I appreciate your willingness to better understand how the unfortunate impacts on Sanibel's water quality both at the National Wildlife Refuge and at our beaches, have left Sanibel with no choice other than to seek ways to improve the regulatory effectiveness. In a part of Florida where our environment is our economy, it's critical that we fix the problem.

It seemed clear from our discussion on Wednesday that further exchanges concerning the S-77 permit are appropriate. I believe we have the capacity to find common ground. I appreciate the further extension of 30 days that you have authorized in order to allow those discussions to continue, and I will work with you to see that that additional time is put to good use.

Today, however, I am writing to address the legislative initiative. You invited us to provide specifics on the suggestions pertaining to broadening the revisions to LOPA in order to better meet the needs of the estuaries. The purpose of this letter is to provide that further detail—in hope that you will find these useful as DEP insertions into the legislation in time for the current bill deliberations.

As we discussed, these suggestions fall into three categories:

- 1) First, protecting the estuaries from Lake O releases that exceed the biologists' caps for protecting the marine ecology necessary to the Federal Refuges and necessary to the vitality of the waters used by those who fish and by those whose decision to live and work near pristine waters provide us a thriving economy.
- 2) Second, providing the data needed for ongoing assessment of estuary conditions in order to make ongoing corrections that benefit the health of these waters.
- 3) Third, appropriate Water Quality Targets for Estuary Plans could benefit the Caloosahatchee and St. Lucie estuaries if the factors considered are broadened.

Protecting the Estuaries from Excess Releases could be strengthened by both a more focused definition of the Scope of Declared Emergencies and by facilitating SFWMD efforts to expand emergency water storage sites.

Emergencies that will authorize diversions that impair water quality in the Estuaries should be defined as the protection of the communities around Lake Okeechobee from a breach in the Herbert Hoover Dike. Needs less urgent than this, however, cannot be recognized as "emergencies" of the kind that are sufficient to authorize destruction of the Estuaries. This limitation should be acknowledged in the statutory language.

Since one must, obviously, find a place for excess water in high water emergencies, it is appropriate for the statute to recognize and assist the efforts of the SFWMD in this respect. Discharges above biologically-acceptable levels should not be authorized until and unless full advantage has been taken of the temporary emergency water storage areas that the SFWMD has been developing over the last year. The SFWMD Executive Director has committed publicly to providing 450,000 acre feet of "storage/disposal of excess surface water" in the near future, and has some 200,000 acre feet of emergency water storage available with conveyance and containment for use in wet season 2007.

The SFWMD Board unanimously passed a resolution on January 11, 2007 indicating to the Army Corps its willingness to have excess water included in their Lake O Regulation Schedule (LORS). The SFWMD O&M staff (George Horne) has the list of both storage areas that can be available in 2007 emergencies and the schedule of added properties that will become available between 2007 and 2010. The Corps has acknowledged the inclusion of this added storage area in its "Operational Guidance." It is only reasonable to limit a declaration of emergency that authorizes the destruction of ecologically and economically critical resources in the Estuaries to cases in which discharges must occur even after these hard-won emergency storage areas have been fully utilized. Proposed language implementing these two limitations on emergency declarations with regard to S-77 and S-80 is attached for the Department's consideration.

To facilitate the SFWMD in expanding their water storage inventory over the next three to five years, it would be helpful to include in legislation incentives for owners to sell or lease land to the SFWMD for this purpose. I do not have specific suggestions in this area, but perhaps you do. I know that Virginia provides tax credits for landowners willing to allocate land for conservation and New Hampshire has something similar. Of course, one needs to manage this in ways that do not hurt the revenue strapped inland counties; but there must be a way to provide such incentive. Does Florida have now a similar legislative provision elsewhere that might be transferable for use in this situation?

Monitoring and Assessment of the conditions in the Estuaries is an important addition for this piece of legislation. While the proposed legislation appropriately calls for some monitoring and assessment of water quality conditions in the Estuaries, it is important that that work be performed at a level of detail and with tools of sufficient sophistication to allow the Department, the SFWMD and other stakeholders to track the progress expected in these sensitive waters. In this regard, we have two specific suggestions.

First, this legislation could follow your model for the original LOPA's focus on phosphorous levels in the ecosystem, by expansion of the program to include the Estuaries. This requires consideration of a broader range of pollutants and pollution. Variations in nitrogen, total suspended solids (and the corollary metrics of turbidity and light transmissivity) and in the salinity of these estuarine waters are all important contributors to the achievement or degradation of water quality. We would ask that the Department consider making this expanded focus even clearer by specifying that the parameters to be tracked include at least those enumerated here.

Second, the nature of the monitoring and assessment to be accomplished must be equal to the task of confirming that the new Estuary Protection Plans are achieving their stated purposes. Given the complex environment of these estuaries, it seems prudent to specify at least the basic elements of such a program. We suggest the following specific monitoring and assessment measures in the amended statute:

1. Develop freshwater flow database to record the relative volumes of basin flows and Lake releases that reach the Estuaries under varying climatological and Lake release conditions;
2. Quantitative documentation of the baseline water quality conditions of the Estuaries drawing on all existing sources of water quality data, including the extensive DBHYDRO database maintained by the SFWMD;
3. Hydrodynamic modeling of the Estuaries to better assess and predict the salinity impact of expected basin discharges in conjunction with Lake Okeechobee releases;
4. Sediment transport modeling and water quality impact assessment of anticipated basin discharges and Lake Okeechobee releases;
5. Develop a comprehensive water quality monitoring program sufficient to provide the data necessary for modeling analysis of the Estuaries, and;
6. Develop a record of the real extent and the amount of nuisance algae observed on shorelines in and around the Estuaries in order to better assess factors contributing to changes in these blooms and to better evaluate effective corrective measures.

These specific requirements and the expanded list of pollutants and pollution to be evaluated could be inserted in several locations in the proposed legislation, including in a description of an expanded Lake Okeechobee Watershed Research and Water Quality Monitoring Program at 373.4595(3)(d), or as a part of the specification of the contents of the Annual Progress Report at 373.4595(8).

Appropriate Water Quality Targets for Estuary Plans could benefit the estuaries by some expansion of requirements. We appreciate the increased emphasis in the proposed legislation on TMDLs; however, because TMDLs are developed only for pollutants that cause a water body to be listed as impaired, measuring the impacts of fresh water discharges into an estuarine environment, and pollutants of concern that may not have triggered the listing of individual water bodies would not be addressed in a traditional TMDL analysis. We therefore hope you will appreciate the need for the above list of added types of analysis to truly protect the estuaries environments and economies.

Our suggestion is that the amended Act specify that beginning in FY'08 along with TMDL evaluations there be evaluations including allocations for all pollutants and pollution of concern, including nitrogen, total suspended solids, and salinity (in the form of an allocation for fresh water inflow that produces biologically-acceptable salinity envelopes in the Estuaries).

I appreciate the opportunity to discuss these matters with you this past week, and look forward to hearing your reaction to these proposed enhancements of the pending legislation.

Knowing that this legislation may be moving very quickly, I pledge my full efforts to respond to any questions that you may have in a timely manner and to work with you to secure passage of the best possible package of protections for the Caloosahatchee and St. Lucie Estuaries. Thank you for your leadership in building on the initial legislation to meet today's new situations.

Sincerely,



Carla Brooks Johnston, Mayor
City of Sanibel, Florida

Attachment

cc: Sanibel City Council
Judith A. Zimomra, City Manager
Kenneth B. Cuyler, City Attorney
Dr. Rob Loflin, Natural Resources Director
Richard S. Davis, Esq., Beveridge & Diamond

(5) RESTRICTIONS ON WATER DIVERSIONS.--The South Florida Water Management District shall not divert waters to the St. Lucie River, the Indian River estuary, the Caloosahatchee River or its estuary, or the Everglades National Park, in such a way that the state water quality standards are violated, that the nutrients in such diverted waters adversely affect indigenous vegetation communities or wildlife, or that fresh waters diverted to the St. Lucie River or the Caloosahatchee or Indian River estuaries adversely affect the estuarine vegetation or wildlife, unless the receiving waters will biologically benefit by the diversion. However, diversion is permitted when an emergency is declared by the water management district, if the Secretary of Environmental Protection concurs; provided, however, that no such emergency shall be declared with respect to discharges by or through CS&F Project control structures S-77 or S-80 (a) for any purpose other than to protect the public health and safety from a structural failure of the Herbert Hoover Dike, and (b) prior to the utilization to the maximum extent practicable of all available SFWMD designated-lands for temporary emergency storage of excess Lake Okeechobee water. For the purpose of this subsection (5), the phrase "maximum extent practicable" shall mean, for any declaration prior to January 31, 2009, the diversion of excess Lake Okeechobee water to SFWMD designated lands with a storage capacity totaling no less than 200,000 acre-feet, and, for any declaration on or after February 1, 2009, the diversion of excess Lake Okeechobee water to SFWMD designated lands with a storage capacity totaling no less than 450,000 acre-feet.



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2007 ALGAE DEPOSITS RENDER SANIBEL BEACHES UNUSABLE



- **FLORIDA'S ECONOMY IS OUR ENVIRONMENT**
- **EXCESS FERTILIZER AND FAILING SEPTIC SYSTEMS CREATE HIGH NITROGEN LEVELS IN FLORIDA'S WATERS**
- **EXCESS NITROGEN FEEDS ALGAE**
- **ALGAE IS KILLING OUR ENVIRONMENT AND OUR ECONOMY**
- **FOR MORE INFORMATION REGARDING THE DEVASTATION CAUSED BY POLLUTED WATERS ON FLORIDA'S ECONOMY GO TO THE CITY OF SANIBEL'S WEBSITE: SANIBELH2OMATTERS.COM.**

DRAFT