

Minutes of the Second Meeting for the Caloosahatchee Watershed Working Group

Attendees included: Commissioner Tammy Hall, Tamara Pigott, Kurt Harclerode, Erin Deady, John Fumero, Matt Caldwell, Greg Rawl, Charles Dauray, Roland Ottolini, Rob Loflin, Jennifer Hecker, Wayne Daltry, Tammy Hall, Jon Iglehart, Jennifer Thera, Janet Starnes, Forrest Banks, Dan Wexler, Phil Flood, Mayor Mick Denham, Jack Meeker, Rae Ann Wessel, Janet Starnes, Brad Cornell, Marti Daltry, John Cassani & Mike Valiquette.

1. Introduction

Commissioner Hall made opening remarks to the group about the concept for originating the Caloosahatchee Watershed Working Group (“CWWG”) as a continued effort of the Tourist Development Council to bring stakeholders together and advocate for projects to improve the health of the Caloosahatchee Watershed and River. The CWWG is an effort to further watershed protection in the context of the Northern Everglades and Estuary Protection Act. Commissioner Hall stated that the purpose of the forum was to provide for an exchange of ideas to prioritize watershed projects and plans in a concerted effort.

2. Lee County Briefings in Washington D.C.

Commissioner Hall provided an overview of a series of briefings that she and Commissioner Judah attended in Washington D.C. A primary goal of the briefings was to discuss the Corps’ land crediting policy and its application to the C-43 Reservoir project for the Comprehensive Everglades Restoration Plan (“CERP”). With the recent change in Federal administration, resolution of this policy issue has been delayed and the County meetings, especially with the White House Office of Management and Budget, were an effort to finalize that policy decision so that the C-43 Reservoir project can be authorized in the next Water Resources Development Act bill. Work to finalize the list of priority projects for that bill is expected to conclude by June 2009.

The Commissioners also discussed the need to move ahead with the Modified Water Deliveries Project and complete construction of the preferred alternative for Tamiami Trail.

3. Discussion of Caloosahatchee Base Flows from Lake Okeechobee

John Fumero and Kurt Harclerode provided an overview of the recent recommendation made by the South Florida Water Management District (“SFWMD”) to cease base flow releases from Lake Okeechobee to the Caloosahatchee River and Estuary. They provided a brief background regarding implementation of the new Lake Okeechobee Regulation Schedule (which is a lower schedule) and the discretion the Corps has regarding making base flow releases in the Operational Band of the Schedule.

Kurt Harclerode discussed how the conditions in the Estuary had dramatically declined since the base flows were ceased on March 5. He discussed recent, and additional, exceedances of the established Minimum Flow and Level (“MFL”) for the Estuary.

Phil Flood of SFWMD stated that the staff advised the Governing Board that they would have to make harder water supply decisions in March and April if conditions continued to decline in the Lake. He said the SFWMD's decision was based on a system-wide overview of the ecological and hydrological conditions as they existed on March 12. He said the SFWMD was continuing to meet internally to determine the benefit of recent rains in South Florida. He said that recent correspondence regarding cutting off the base flows was being heard by the Corps, and the SFWMD, and the points raised would be discussed in the Corps' weekly operations meetings.

Charles Dauray stated that he would like to revisit the Governing Board's recommendations on the issue and potentially rescind the decision. He felt the issue warranted more time, more detail and inclusion of more representatives from the west coast.

Rae Ann Wessel stated that it was difficult to understand the SFWMD's decision given that no more water restrictions were placed into effect. She stated that the needs of the natural system had to be debated in the context of water supply and water conservation efforts. She stated that there was a need for more education on the interconnected nature of the natural system, the historical evolution of the Estuary and connection to Lake Okeechobee, the cut-off of flow from natural springs, Endangered Species Act issues and the impact to the Olga Water Treatment Plant.

Mayor Denham stated that the problem of low flow to the Caloosahatchee occurred last year and now one year later there has been very little progress in its resolution. He said there was no specified process to make the base flow decisions at the Corps in Jacksonville and at the SFWMD in West Palm Beach. He said the agencies had to do a better job of alerting stakeholders of upcoming decisions such as these.

Charles Dauray stated that there was no intentional effort to circumvent the process or prevent the public from participating. He clarified that the Governing Board's decision was not final agency action.

Phil Flood said that the Caloosahatchee base flow issue will likely be discussed at the next Governing Board meeting in April.

4. Presentation on Status of C-43 and Southwest Florida Feasibility Study

Janet Starnes of SFWMD provided a presentation on the status of both the C-43 Project for CERP and the Southwest Florida Feasibility Study ("SWFFS"). Janet's presentation can be viewed at: http://www.leewaterfacts.com/CWWG_SWFFS_Brief_Mar%202009_Final.pdf

Janet's presentation focused primarily on the SWFFS because there was no new status to report on the C-43 Project beyond what Commissioner Hall discussed in her summary of the Washington D.C. briefings with the Office of Management and Budget. The SWFFS has been ongoing since 2001 and the State and Federal project team has developed a tentatively selected plan ("TSP") for the project consisting of components for the Fakahatchee Strand, Yucca Pens

and Barron River. There is a Comprehensive Watershed Master Plan for the SWFFS and the TSP is a subset of that Plan.

The strategy for project authorization is to have the SWFFS proceed as a new national project, not part of CERP. There will be different Federal/State cost share and process requirements if the project is not part of CERP. This strategy will likely allow for a faster authorization process. Currently there is an “early” public notice to solicit comments from the public but the Draft SWFFS has not been completed or distributed for public comment.

The current schedule is to complete public the Draft SWFFS by August or September of this year, the Final SWFFS would be submitted to Corps Headquarters by November of this year and the Chief’s Report would be completed by May 2010.

Rob Loflin asked about the scope of the CERP projects to address water quality treatment before stored water is discharged back to the Caloosahatchee River. There was some group discussion about the BOMA project, but concerns were raised that the location of this project may not be the most conducive to assure water quality treatment. The group discussed the status of the Phase II for the C-43 Project and Janet reported that a Project Management Plan, defining the parameters and scope of the project, would be completed by the end of 2009. She said that first, the State and Federal project team had to determine if there was a water quality treatment need in the basin and if that is the case, where should that water quality treatment occur? Rob stated that although there may be some water quality benefit to storing the water, there was clearly a need for more water quality treatment within the greater basin.

Mayor Denham and Kurt Harclerode discussed the benefits of the C-43 Project and the need for water storage in the basin. Mayor Denham articulated the need for water quality treatment before discharging from any water storage project. John Fumero stated it was important to not lose momentum on the project because people might construe statements regarding the need for water quality as a lack of support for the C-43 Project overall. The group discussed the need to be able to discuss these positions on projects and assure that sound science is used as a basis for positions taken.

Wayne Daltry discussed the fact that the Watershed Protection Plan identified the need for significant storage in the basin. The effort to acquire land for water storage has been ongoing since the Berry Grove purchase in 1999. The group also acknowledged that permits have to be issued for water storage projects, and that as a part of State and Federal law, a CERP project cannot adversely impact water quality.

Commissioner Hall discussed the need to address the Caloosahatchee watershed in incremental steps and the C-43 Project is just one of those steps. She felt by the time the Phase II of the project was ready, appropriations for other water storage projects in the basin would just be materializing and the projects would be implemented almost concurrently. John Fumero stated that to restore the watershed, infrastructure needs to be changed and constructed first, then how that that entire infrastructure is operated concurrently would be addressed. He stated that if the C-43 Project were constructed now, there would be water available for the Caloosahatchee

Estuary which desperately needs it. He said the C-43 Project is also one strategy to meet the Total Maximum Daily Load (“TMDL”) once it is established.

5. Presentation of Jon Iglehart, Department of Environmental Protection

Jon Iglehart provided an update on the establishment of TMDLs for the Caloosahatchee. Jon’s presentation can be found at: http://www.leewaterfacts.com/TMDL_CWWG_3_23_09.pdf.

After Jon’s presentation there was some discussion about the sequencing of the TMDL with other ongoing initiatives. The discussion concentrated on the fact that the Basin Management Action Plan (“BMAP”) would be folded into the Caloosahatchee Watershed Protection Plan at its first update in 2012. One document would outline the Watershed Protection Plan as well as the implementation strategy for achieving the established TMDL.

Mayor Denham asked how the work of the regional planning council on regional stormwater management would be incorporated into the effort. Jennifer Thera from DEP responded that the work of the regional planning council is important, but it is not the significant contribution to the problem which is the nonpoint sources of nutrient loading. The SFWMD is the agency with regulatory authority over these discharges while DEP regulates the point sources. John Fumero raised the need to develop a “works of the District” type program regulating these discharges. Jennifer Hecker discussed the need to incentivize land owners to implement best management practices on their property through structural and nonstructural solutions.

John Fumero discussed the relationship between the TMDL and other specific basin rules that would provide more requirements for water quality treatment. These basin rules are being developed slightly behind the Uniform Stormwater Rule and once that larger more encompassing effort was complete the basin rules would be revisited. John stated that a White Paper was being developed on these various rule initiatives (for the CWWG) and all presentations from the meeting would be posted on the Lee County Visitor and Convention Bureau’s website.

6. Discussion on action items and priorities for the CWWG

John Fumero started the discussion on how to prioritize issues for the CWWG. Mayor Denham suggested that the group review the Resolutions passed by the Southwest Florida Regional Planning Council to provide some guidance on prioritizing issues for the group to address. Information on their efforts can be viewed at: <http://www.swfrpc.org/lwew.shtml>.

Mayor Denham stated that a priority for the group should be to openly discuss issues and trade-offs in advocating for projects. One goal discussed was that the group provides a forum to exchange information and bring that information back to the constituencies of the various members. Jennifer Hecker suggested using a “white board” to prioritize or “park” issues that the group determines need to be addressed immediately or in the longer term. She said several questions raised in the meeting need answers such as:

1. Differences between the SWFFS nitrogen targets and those being developed in the TMDL. How will this be addressed?
2. The re-delineation of the watershed basin identification numbers (“WBIDs”) needs to be addressed in the context of development of the TMDL.

She also mentioned that a River Lobby Day would be occurring on June 1st in Washington D.C. and the CWWG could help provide priorities for groups that will be a part of that event.

Commissioner Hall suggested the CWWG convene monthly and that the Visitor and Convention Bureau continue to act as a clearinghouse for the CWWG as well as a conduit for information exchange.

John Fumero reported that the meetings would be structured slightly differently from this point forward, with fewer presentations, but it was necessary to have some of those in the beginning so there was common foundation to move forward.

Mayor Denham suggested that the CWWG narrowly focus on a few issues and identify what needs to be done, what the steps are to get there and what is the process to effectuate change. He used the TMDL as an example of how to do this. John Fumero stated that he would follow up on researching the efforts of the St. John’s River Water Management District (and development of an actual BMAP) because they were slightly ahead and they could provide a model to develop an action plan for the CWWG.

Agenda items discussed for the next meeting were:

- Brief legislative update (focusing on implementation and support for the Caloosahatchee Watershed Protection Plan). This would likely be supplied via a written summary for the next meeting.
- SFWMD’s renewed effort on the basin rules (perhaps a longer term issue).
- A SFWMD water quality permitting program such as a “works of the district” rule and other water quality regulatory initiatives. This includes discussion of the St. John’s model for a Basin Management Action Plan for the TMDL.
- Discussion on Minimum Flows and Levels and Water Reservations Status.

7. Follow Up Actions

In addition to the above agenda items, the following are action items from the meeting:

1. The next meeting for the CWWG has been set for April 30, 2009 from 9:00 am to 12:00 p.m., and a call in number for those wishing to attend via teleconference will be provided. Please respond to Tammy Hall and Erin Deady regarding your availability to attend the next meeting at: DIST4@leegov.com; edeady@llw-law.com.
2. Attendees at the second meeting are requested to supply additional names to John Fumero and Tammy Hall to add for the next meeting at Jfumero@llw-law.com;

DIST4@leegov.com. This will not be the ultimate “list” of members of the group, just a small expanded version from those that attended the first meeting.

3. Any new attendees, or anyone that has not completed it yet, are requested to complete and forward the survey to Erin Deady at edeady@llw-law.com.
4. Develop a map to show 2020 acquisitions and planned restoration projects in the Caloosahatchee Watershed.
5. Finalize the summary of ongoing rulemaking initiatives including various basin environmental resource permitting rules required in the Northern Everglades and Estuary Protection Act and the Statewide Uniform Stormwater Rule.