

**BOARD OF COUNTY COMMISSIONERS - SPECIAL MEETING**

**JULY 29, 2008**

A meeting of the Board of County Commissioners was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman D'Aprile, Commissioner Cummings, Commissioner Duffy, Commissioner Loftus, and Commissioner Moore. Also in attendance were County Administrator Baltz, County Attorney Knowlton, and Deputy Clerk Manley. The following members were absent: None.

(Chief Deputy White Board Services White was present for this portion of the meeting.)

The meeting was called to order at 5:01 PM, followed by the Pledge of Allegiance.

**Changes to the Agenda:**

**Addition #1:** Requested by County Attorney's Office - Approve a Supplemental Resolution regarding Utility Bonds

**COMMISSIONER LOFTUS MOVED TO APPROVE CHANGES TO THE AGENDA, SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

Chief Deputy Board Services White explained the item is related to the County's Utility Bond refunding that was approved on July 8, 2008 and is scheduled to close tomorrow, indicated after final review the Bank's Council discovered items that needed to be included in the documents, advised this resolution will allow the Chairman to sign the documents at closing, and noted the Bond Council was in attendance and able to answer any questions.

**COMMISSIONER LOFTUS MOVED TO APPROVE A SUPPLEMENTAL RESOLUTION REGARDING UTILITY BONDS (RESOLUTION 2008-091), SECONDED BY COMMISSIONER MOORE.**

**Motion Carried 5:0.**

*(Chief Deputy was not present for the remainder of the meeting.)*

*(Note: Public Comments taken first out of order of the Agenda)*

## **2. Public Comment**

*Jim Cooper spoke related to the possible challenge to the Environmental Resource Permit (ERP), noted two counties are about to approve it, mentioned Attorney de la Parte will provide additional information, agreed the watershed is a priority and of aquatic importance, and opined we should approve it if the Environmental Protection Agency (EPA) recommends it.*

*Percy Angelo stated she reviewed the memos related to this item, said the protections are insufficient, and urged the Board to join their neighbors and appeal the South Fort Meade Mine Permits.*

*Ruth Bromberg said she supports the comments made by Percy Angelo and Jim Cooper, recommended strongly considering what the EPA has to say; and stated the need for a cumulative environmental impact study.*

*Kathleen Rohier put into the record a draft letter addressed to the Corp of Engineers and described her view in detail.*

## **1. Presentation by Special Counsel Ed de la Parte**

*Attorney Knowlton summarized a timeline of what has happened to date, stated their extension request was denied and the deadline is August 1st, noted she has circulated related memorandums, mentioned representatives from Mosaic and the Water Authority were present to answer questions, and introduced Attorney de la Parte.*

**Chairman D'Aprile** first read a statement made by Sarasota Commissioner Staub dated today at 11:55 AM and commented Sarasota County is not ready to respond since they have not received complete information from the Department of Environmental Protection (DEP) and Mosaic since 2006.

Special Council, Attorney de la Parte, provided copies of the South Fort Meade Mine Map #1; described the location and indicated it is a 10,856 acre mine in Hardee County; advised Mosaic plans to mine approximately 7,756 acres of the South Fort Meade mine; noted approximately 7,004 acres are uplands and 751 acres are wetlands and other surface waters; mentioned Mosaic's mitigation intent; requested variances; and discussed permit applications and documents. Attorney de la Parte indicated the Legislature passed Senate Bill 1294 in late May; explained its impacts; commented on the dates Mosaic filed variances; provided initial deadlines; and explained on July 10, 2008, Charlotte, Lee, Sarasota, and the Water Authority requested an extension to allow experts the time to further examine; said Charlotte County also raised its own allegations in that motion; noted receipt of a letter from Mr. Mack, General Council for Mosaic; provided detail related to responses; commented on paragraph 5 of Mosaic's response related to denial of request for a long term extension; and advised the following day DEP entered an order rejecting the request for a long term extension but did grant a 10 day extension to August 1st for a deadline to file a petition for hearing if the parties wished to do so.

Attorney de la Parte explained after denial and since all 4 counties had filed an extension, the Attorney's arranged a conference call, noted Lee County agreed to share in the cost of conducting expert evaluations, said he offered to compile the expert information, and advised he submitted the final memo to all four parties on July 28, 2008. Attorney de la Parte indicated he had requested the experts review the phosphate compact, look for conflicts, examine issues raised in the 2006 letters to determine if those issues were addressed and to reasonably make certain that there would be no adverse impacts to the Basin.

Attorney de la Parte announced they found issues in conflict with the compact; mentioned paragraph 4 and explained it in detail; pointed out paragraph 7 which noted areas that prohibit mining; said they do not have the GIS files to determine exact locations, but stated it appears some would fall within the forbidden areas; expressed concern with paragraph 6 which adopts Exhibit C; said they did not have time to compare so he can not advise if the standards are being met; noted they also did not have time to determine if the enhanced standards would be met for the 3 clay settling areas; and indicated their analysis found at least two items that are in conflict with the compact that this Board approved.

Attorney de la Parte reviewed five major concerns they had asked the experts to address in letters to the Army Corp of Engineers, discussed each in detail, mentioned evidence presented, and commented on the experts conclusions.

Attorney de la Parte said in the opinion of he and the experts, there are elements of this project that are inconsistent with the phosphate compact the Commissioners approved, stated the need for modifications to the permit to make it consistent, and noted the experts uniformly agree that the information they reviewed does not provide reasonable assurance that the Peace River Basin will not be adversely affected.

Attorney de la Parte provided two options, said one of the options available is to do nothing, let the permits take affect, and explained the problems that would be related to that choice. Attorney de la Parte then noted the second option is to file a petition for an administrative hearing, confirmed it does not commit to litigation, advised it would allow at least 3 months to resolve the phosphate compact issues if Mosaic evokes the Statute, added if Mosaic does not evoke the 3 month period, you might have 4 months to resolve the issues, commented that if there is no meeting of the minds during the petition period regarding certain items, the County could let others who have petitioned for hearing take the lead and just participate to protect County interest, and finally explained it is also your option to drop the challenge and withdraw the petition at any time until the administrative hearing.

### 3. Discussion and Direction

**Commissioner Moore** commented that the compact is a work in progress, said the Board approved the compact in principal, opined the compact offers better protocols than we have from the federal and state government, indicated he does not want to spend more money on the phosphate issue, and said other counties can do as they wish. **Commissioner Loftus** appreciated the comments, but stated his understanding was that Attorney de la Parte had been receiving documentation from Mosaic all along. Attorney de la Parte strongly disagreed, explained written public request is required, and said once they were advised the application was complete they submitted the request. **Commissioner Loftus** recalled discussions with Mosaic related to paragraph 4 and 7, said they indicated they would abide if the County moved forward with the compact, and agreed the County could not afford to spend additional money now.

**Commissioner Duffy** said further litigation could not be justified, indicated other counties could continue to fund it as they see fit. **Commissioner Cummings** asked what it costs to file a challenge. Attorney de la Parte advised \$2,000-\$3,000. **Commissioner Cummings** suggested they gain 3 months by submitting the petition, said Mosaic can adjust the permit to meet the compact, explained the County could then drop the challenge, allow Mosaic to put the promised items in place, and spoke in favor of spending the money to file the challenge to guarantee the compact is implemented.

**Chairman D'Aprile** said they can not approve any additional spending, asked if they could further negotiate the two items that would need to be changed. Attorney de la Parte advised they were interested in two additional items as well. **Chairman D'Aprile** asked how much water was reduced from the phosphate industry. Attorney de la Parte responded in great detail.

**Commissioner Loftus** asked if Mosaic attendees could respond. **Commissioner Cummings** advised if Mosaic spoke, staff would have final comments, and opined citizens who arrived late should be allowed to speak. **Chairman D'Aprile** said he just received a written request and would allow Susan Kovacs to speak.

Ms. Kovacs talked about the price of uranium, questioned if Mosaic would be allowed to mine uranium in the future, agreed with **Commissioner Cummings** related to filing the challenge, and expressed the need to investigate mining and cancer rates in Harbour Heights because she believes they used to mine uranium and phosphate in that area.

Charles Covax agreed with **Commissioner Cummings**, said the Board should not allow the permit to go through without guarantees, said concessions should be put in writing first, and urged the Board to stand their ground.

**RECESS: 6:20 PM - 6:30 PM**

**Chairman D'Aprile** requested that Mr. David Townsend speak on behalf of Mosaic. Mr. Townsend advised they had only received Attorney de la Parte's memorandum today; said they had not prepared a formal presentation but would speak on some issues; stated publicly that they would conform to the terms of the compact and would honor that; noted no signed compact at this point; explained the South Fort Meade permit meets the current requirements; advised if Mosaic is challenged they will respond in a legal means, but hopes to meet in a more productive way to reach an agreement; noted their efforts to meet an agreement with Lee and Sarasota Counties; indicated not knowing the reasons why they choose not to join in the compact; commended Charlotte County for their leadership; apologized for Attorney de la Parte not receiving all the information; recalled Attorney de la Parte's 93 page comment letter to the Army Corp of Engineers; offered to go through the letter point by point; and opined it should suffice to say there are matters included that are incorrect.

**Chairman D'Aprile** expressed confusion; discussed what had transpired over the years; noted the compact was to be the beginning of a solution; said the original estimated litigation costs were \$2 Million; noted that cost is now over \$13 Million; indicated he is uncomfortable spending more money when he believes an agreement could be met through negotiations; commended **Commissioner Cummings** for his involvement and knowledge; expressed the importance of communication; opined this is the beginning, not the end; and asked for an explanation on why the County was unable to sue Mosaic if something went wrong.

Mr. Townsend said arbitration would replace litigation, noted it would not prevent the parties from going to the regulatory agencies, advised it would just stop the challenges to the permits, and mentioned the need for good faith on both sides.

Doug Manson, General Council of the Water Authority said he has reviewed all of the information, is taking a presentation to his Board tomorrow, and explained they would decide whether to file a challenge or exercise another option. **Commissioner Cummings** asked if this issue could set a precedence for the Water Authority standing to challenge future issues and if there were concerns if the Authority were to abstain from participating whether it would affect future arguments of standing in permit applications. Attorney Manson opined the standing is clear since this permit is directly on the Peace River, could potentially impact down streams if there were mining impacts and opined as a policy matter, if the Water Authority decided not to file, it would not affect their standing position on filing for future mines.

**Commissioner Duffy** asked if there was any negative affect to the water quantity or quality since the Horse Creek Stewardship Program, asked if the Authority was monitoring it, and asked if the Water Authority would benefit from the compact. Attorney Manson answered there had been no affect to the water, explained the monitoring system, advised the monitor would trigger the trigger levels, and said he would recommend the compact to his Board today. **Commissioner Cummings** asked if the trigger levels had ever been exceeded. Attorney Manson explained there were some trends that started going up but it had not continued, and noted it was a one time thing. **Commissioner Cummings** stated that was not his recollection of the reports and noted Charlotte County did not approve Horse Creek Stewardship Program because of their experts opinions. **Commissioner Loftus** advised the Stewardship Program is already in the compact and believes it is Mosaic's intent to work with us in the future.

**Commissioner Cummings** asked if our Legal Department could file a challenge at no additional cost. Attorney Knowlton indicated they had filed an in-house petition in the past, noted the only cost involved would be staff time, and recommended the use of experts. **Commissioner Loftus** spoke against filing the challenge, recommended moving forward with the compact, was in

favor of meeting with the experts to address the concerns, and moved to bypass the challenge and work toward revising the compact.

**Commissioner Duffy** said the Stewardship Program is due to be reviewed with Dr. Janicki this Friday. **Commissioner Cummings** recalled Dr. Janicki was opposed to the Stewardship Program stating it was not sufficient. **Commissioner Duffy** said Dr. Janicki was in favor of the compact and other related issues and opined they should wait and hear what he has to say.

**COMMISSIONER LOFTUS MOVED TO BYPASS LITIGATION AND NEGOTIATE WITH MOSAIC TO MOVE FORWARD TO MUTUALLY REVISE THE COMPACT AS SOON AS POSSIBLE, SECONDED BY COMMISSIONER MOORE**

**Commissioner Cummings** summarized the events; said when we requested an extension; Mosaic responded by trying to prevent us the time to review; noted good faith is one sided, pointed out the fact that this is an estuary that generates \$1 Billion per year in income; said it would cost Mosaic nothing to delay the permit until we have the compact signed; indicated the petition could be filed in-house at no additional cost; opined we need to have the protections built-in place first; repeated when we asked for more time, Mosaic shut us down and did not act in good faith; indicated this Board should be representing the people who elected them, not special interest groups such as Phosphate Mining; and opined this Board has completely lost its way. **Commissioner Duffy** respectfully disagreed with **Commissioner Cummings** and opined the Board is doing right by the citizens.

**Chairman D'Aprile** believes we represented the citizens by spending \$13 Million to fight phosphate and protect the estuary; said he senses from our Attorney that we are not qualified to proceed with the challenge; indicated he sees no difference between filing the petition and negotiating to come up with an immediate solution; commented that he just wants to know that we have done all possible to assure the phosphate industry has complied with the agreement; stated we can not justify spending any more money on this fight; opined the need for Mosaic to cooperate with the County to get this compact signed; and called for the vote.

**Motion Carried 4:1. Commissioner Cummings opposing.**

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July 29, 2008

ADJOURNED: 6:55 PM

Signature on file in Commission Minutes  
Chairman

ATTEST:

BARBARA T. SCOTT, CLERK  
OF THE CIRCUIT COURT AND  
EX-OFFICIO TO THE BOARD  
OF COUNTY COMMISSIONERS

By: Signature on file in Commission Minutes  
Deputy Clerk

JL