

SPECIAL MEETING - WATER ISSUES AT BABCOCK RANCH

BOARD OF COUNTY COMMISSIONERS

MARCH 23, 2006

A special 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 Thomas G. Moore and Commissioners Thomas C. D'Aprile, Adam Cummings, Matthew D. DeBoer and Sara J. Devos. Also in attendance were County Administrator Bruce D. Loucks, County Attorney Janette S. Knowlton, Chief Deputy Board Services Tommy Q. White, and Deputy Clerk Karen S. Mitchell. The meeting was called to order at **2:07 P.M.** followed by the Pledge of Allegiance to the Flag.

I. Presentations on Water Issues at Babcock Ranch

DEP - Colleen Castille

- Eva Armstrong

South Florida Water Management District - Carol Wehle

Southwest Florida Water Management District - David Moore

Colleen Castille, Department of Environmental Protection (DEP), said today's issue is about water and the water permitting process, commented on the background of DEP's involvement in Babcock Ranch through the sale by Mr. Kitson of 73,000 acres, and on the contract and management agreement to continue management and to keep the ranch as a working ranch for what they hope will be perpetuity. Ms. Castille said the process in place for consumptive use permitting which is protective of the environment would guide the County and the developers through the process of water, and hopefully the presentations will explain the state of water and permitting processes today. David Moore, SWFWMD, gave a presentation on the regional water supply planning efforts they've undertaken which paralleled the material and detailed the following: Florida's Water Management Districts; Conceptual Map Showing Areas of Resource Concern; Long Term Changes in the Potentiometric Surface of the Upper Floridan Aquifer; Extent of the Saltwater Interface in the Highly Permeable Zone of the Upper Floridan Aquifer; Peace River Polk County; Generalized Potentiometric Surface of the Upper Floridan Aquifer along the Peace River; Lake Lotela - Highlands County; Increased Efficiency in Water Use Through Education,

Retrofits, Reclaimed, BMPs, Etc.; Alternative Supplies: Surface Water, Sea Water, Rainfall Capture, Shallow Aquifers, Reclaimed Water Credits, Storm, etc.; Southern Water Use Caution Area (SWUCA) - Land/Water Use Transitions - Urban; Southern Water Use Caution Area (SWUCA) - Land/Water Use Transitions - Agricultural; SWUCA: Estimated Ground-Water Use; Peace River Manasota Regional Water Authority - Charlotte, DeSoto, Manatee & Sarasota Counties - Additional Public Supply Water Needs 2025; Peace River Manasota Regional Water Supply Authority; and Cooperative Funding. Carol Wehle, SFWMD, gave a slide presentation which paralleled the material and detailed the following: District Map (showing the actual location of Babcock Ranch and the actual boundary between SWFWMD and SFWMD); Existing Charlotte County Projections; Proposed Babcock Development; Proposed Babcock Development Source Proposals; Existing Charlotte County Projections in SFWMD Portion of County; Existing Charlotte County Projections in SFWMD Portion of County; Lower West Coast Conceptual Cross-Section Aquifers (NW to SE); Water Table Aquifer; Lower West Coast Conceptual Cross-Section Aquifers (NW to SE); Lower Tamiami Aquifer; Lower West Coast Conceptual Cross-Section Aquifers (NW to SE); Sandstone Aquifer; Lower West Coast Conceptual Cross-Section Aquifers (NW to SE); Mid-Hawthorn Aquifer; Lower West Coast Conceptual Cross-Section Aquifers (NW to SE); Water-level elevations from the past 25 years at L-742; Water-level elevations from the past 25 years at L-581; What it Takes to Get a Permit; "Interdistrict Transfer" - Across District and County Boundaries (groundwater only); Same County - Across District Boundaries (groundwater only); and Interdistrict Transfer of Surface Waters. Ms. Castille said around the state the Water Management Districts (WMDs) have been working together to create regional coalitions for getting water for a whole region, Senate Bill 444 actually encouraged that, SWFWMD was a model that we followed, and summarized the WMDs are here to help for future water management. **Commissioner Devos** voiced concern on the process when applying for water in that they must first exhaust all other sources. Ms. Wehle explained the process criteria SFWMD uses. Mr. Moore reviewed the standard test of reasonableness used regarding alternative water supplies. **(Discussion ensued regarding the permitting process, exhausting available water sources, growth versus water demands, Peace River expansion, need for a regional water district, interdistrict transfers, ground water withdrawals, project cost funding resulting from SB 444, and funding and permitting**

possibilities.) **Commissioner Devos** referred to the contract with Mr. Kitson and requested clarification on the following: Any proprietary use granted by the trustees to Charlotte County as provided for in paragraph 33(d) or otherwise for the placement of water wells on the property and the transport of water from such wells across the property shall require consideration to be paid by Charlotte County to Trustees. Eva Armstrong explained it's actually an easement fee that would be paid by the Corporation (i.e., Kitson) to the Trustees for transfer of water across the property because the Trustees get a payment for commercial use of their properties, so this would be an easement fee to cross the Trustees' property to be paid to the ranch, and it would be negotiated at that time. **Chairman Moore** asked the normal length of time for a consumptive use permit. Ms. Wehle said two years. **Chairman Moore** stated he accepted SFWMD's approach that Charlotte County/Babcock Ranch water had to stay in Charlotte County, commented on the state land purchase agreement for Babcock Ranch, said he felt they were ready to do the necessary studies to prove Babcock Ranch really has sufficient sustainable water supplies, and opined the two reasons they were all here today was the possibility of getting water for Charlotte County and the preservation of 74,000 acres both of which were good for the people. **Chairman Moore** said there seems to be the question does the Charlotte County interest in Babcock Ranch and it's water alter it's membership or focus in the PRMRWSA, and the answer is no it does not. **Chairman Moore** noted the County was currently working on a three-way agreement with the Water Authority (WA) and the City of Punta Gorda for regional interconnects, he was proud of what they're trying to accomplish, said he looked forward to SWFWMD's and the WA's initiatives to capture surface waters, and thanked everyone for being here today. **Chairman Moore** summarized on April 4, 2006 this Board has to make a decision but he's not sure if he accomplished what he wanted with this workshop which was for the other Board members to walk away feeling confident they can earn the right to that water. **Commissioner Devos** read the following from the sales agreement, "Charlotte County further agrees if either Kitson or Town & County cannot obtain enough from Charlotte County portion of Area 6 to be able to deliver in a timely manner the quantity and quality of water necessary to serve all of the users during the development of, and at build-out of the new communities in Area 6, Charlotte County will provide (if they obtain the consumptive use permit) sufficient water at bulk rates to Kitson." **Commissioner Devos**

said she could live with that except it's not in her district, we're SWFWMD, you all can't give me a guarantee or anything even close to that, yet it's okay for Charlotte County to provide the water to an area that's outside of our district but it's not okay for Charlotte County to obtain water from this property because it's in a different district, and there's something inherently wrong this. Ms. Castille responded not only is it okay, it's perfectly legal for an interdistrict transfer within a county to provide water from one side of the district to another district. **Commissioner Devos** said she understood that but why in this agreement were they coming to Charlotte County for that. Ms. Castille explained paragraph 33 deals with water all on the SWFWMD side of the line; and Kitson, Babcock and Charlotte County were getting water from that side of the line, so it's not for Charlotte County on the SWFWMD side of the line to provide water for Kitson on the SWFWMD side of the line. **Commissioner Devos** said clearly in this contract it's okay for us to provide the water if the water's not there but we can't get any reasonable assurances that we can access water if we show a need, and there's just something wrong with that. **Commissioner DeBoer** agreed the Commissioner has a good point. Ms. Wehle stated Charlotte County would have the ability without an interdistrict transfer or without the quasi interdistrict transfer, if the County developed water on the Babcock property as a utility you could sell it to Kitson and it would all be within the same WMD. **Commissioner Devos** stated no that's not what this says. Ms. Castille explained the legal construct of the contract has to deal with the water that comes from Babcock property only, so this contract cannot bind Charlotte County for water. **Commissioner Devos** said the bottom line is that we can't get reasonable assurances from SWFWMD that if we jump through all the appropriate hoops we can expect to be blessed with the water but if it ends up that there's not enough for this development then it's okay for Charlotte County to provide it. **Commissioner Cummings** stated the point is our getting water is conditioned but Mr. Kitson's getting it is not, and if he can't get it then we have to find a way to get it. Ms. Wehle said the permitting process is not such that anybody could provide reasonable assurance that you could get a permit, just as if somebody came in to get a building permit from Charlotte County you could not give them reasonable assurance that they could get a building permit unless they gave you plan. **Commissioner Devos** said we could give them reasonable assurance if they jumped through the appropriate hoops. Ms. Wehle responded for an environmental

resource permit or for a consumptive use permit, any applicant that meets all their criteria has a reasonable assurance they will get a permit. Ms. Castille added that over and above that, she can commit to the Board that if it's the right thing to do and we at DEP can support it that it's not affecting the environment, we will help. **Commissioner Devos** asked if she can have a reasonable assurance that both SFWMD and SWFWMD will cooperate on this and she doesn't have to worry whether they have exhausted all reasonable resources. Mr. Moore responded SFWMD was committed to cooperating with Charlotte County to address regional water supply issues and looking at a reasonable standard, not an unreasonable standard. **Commissioner Devos** opined that's really ambiguous, **Commissioner DeBoer** explained very well why we're apprehensive, said what she's hearing is that she can have a reasonable comfort level that if we have a need we can access water from Babcock Ranch, and asked if that was correct. Ms. Wehle reiterated, if you meet all of the criteria in our permitting process, you get a permit, and she's not even saying reasonable assurance, she's saying whether it's an environmental resource permit or a consumptive use permit, if you meet all of our permitting criteria, you get a permit. **Commissioner D'Aprile** said he has to agree with **Commissioner Devos**, if this had been stated at the beginning this meeting wouldn't have been necessary, what he's been asking from day one was if we meet the criteria we will get water, that's very simple so he didn't understand why it was so difficult to come up with that statement, this is what he's been waiting to hear, although they have to be very careful he's assured now that if they meet all the requirements it was definite they will receive water for their particular needs, and it should be used primarily for residential rather than saleable and only for Charlotte County. **Commissioner Devos** said going back to her having a reasonable assurance the one criteria that has to be resolved goes back to SWFWMD, she's having a very difficult time imagining SWFWMD would ever admit they can't find us water, so even as we're sitting here she knows there's an out already just with that, and before they conclude today she would like to get the assurance that she doesn't have to worry what 'exhausting all resources' are. Ms. Castille stated Mr. Moore can't say you don't have to worry about an element in the rules, it's got to be something they take into account and added the costs on the people is an element that also comes into play. **Commissioner Devos** reiterated one of the criteria is that they've exhausted all resources. Ms. Castille interrupted and clarified it's all

'reasonable' resources. **Commissioner Devos** asked then can she expect to have a reasonable assurance that if everything is there and they have the need, that you'll give it your blessing. Ms. Castille reiterated Mr. Moore can't say that. **Commissioner Devos** said she's gotten an assurance from SFWMD so why can't she get the same from SWFWMD. Mr. Moore responded he can give the same commitment for SWFWMD that Ms. Wehle gave for SFWMD, that if the permit is submitted and it meets all permitting standards the permit will be issued but he can't prejudge a permit by guaranteeing a specific criteria will be met. Mr. Moore added what he can do, since the goals of the County and SWFWMD are the same regarding the preservation of a large tract of land, is give the Commissioner a commitment that SWFWMD will work with Charlotte County as a partner to work through the issue of developing the water supply in a reasonable manner. Janette S. Knowlton, County Attorney, pointed out what Ms. Wehle said is nothing more than what's in the statute, there's three or four criteria they go through, if you meet that then it 'shall' be issued, so she didn't know if the Board was getting any more assurance than what the Florida Statute provides for because the devil is always in the detail and it comes in to their discretion in how they apply those factors, whether we can meet the demonstrated need, she thought that's where the Board was looking for the reasonable assurance and she didn't know if they can give it. **Commissioner DeBoer** stated the conversation today has highlighted a healthy skepticism much of which he felt was well founded, he felt there was some conflict between the policies which has left Charlotte County in the position of expending it's own local tax dollars to start looking for our own water supply, a truly functional water authority where all the resources are incorporated into a regional water authority is the answer to all of this, and he felt using a combination of the water sources discussed in the presentations that are well managed and properly used would provide a huge source of potable water in excess of our needs as well as protect the environment and open the state lands to year-round recreation for all the residents of Florida. **Commissioner DeBoer** stated he didn't see how the Board can guarantee a source of water to Mr. Kitson under the current circumstances and restrictions that don't allow Charlotte County to put wells on that property and produce and sell water to Mr. Kitson, and because of that we would have to come back over to the SWFWMD to find a water source to meet that commitment, so we may have another revision to that development order that everything would have to go back to

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ground zero if that's not possible. **Commissioner DeBoer** opined this was a good, healthy discussion but the skepticism is valid.

MEETING ADJOURNED: 4:06 P.M.

Signature on file in Commission Minutes

Thomas G. Moore
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**

/ksm