

BOARD OF COUNTY COMMISSIONERS - SPECIAL MEETING: PHOSPHATE

NOVEMBER 20, 2007

A meeting of the Board of County Commissioner was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Loftus, Commissioner Duffy, Commissioner Cummings, Commissioner D'Aprile, and Commissioner Moore. Also in attendance were County Attorney Knowlton, Assistant County Administrator Baltz, and Deputy Clerk Manley. The following members were absent: None. The workshop was called to order at 1:30 PM, followed by the Pledge of Allegiance.

I. Mosaic - Phosphate Mining Compact.

County Attorney Janette Knowlton explained the procedure to be followed for this meeting.

A. Presentation by County.

Attorney Edward de la Parte indicated that he would highlight important issues for the Board to consider in his presentation; introduced the County experts, Dr. Tom Janicki and Mr. Gary Wantland; and stated that they could be called upon as the meeting proceeds.

Attorney de la Parte reviewed the time line of the most recent settlement discussions and the meetings held or to be held by the City of North Port, Charlotte County Board of County Commissioners (BOCC), Sarasota County BOCC and Lee County BOCC; indicated that the initial draft prepared by Mosaic was received on July 7, 2007; that the October 7, 2007 draft was considered by the Board at its October 2007 workshop; and that the current draft of November 12, 2007 is being referred to now.

Attorney de la Parte explained that his presentation would be broken into three categories; identifying the contract provisions which remain unchanged from the prior draft, identifying the contract provisions which, in his opinion, were improved as a result of the discussions, and most of his allotted time spent on three contract issues that he believes are important and should be focused on today.

(County Administrator Bruce Loucks replaced Assistant County Administrator Roger Baltz for the remainder of the meeting.)

Attorney de la Parte reviewed the Unchanged Contract Conditions and Improved Contract Conditions per the packet material furnished; stated that the monitoring plan is still not part of the agreement; that it is to be developed 180 days following the execution of the agreement, but that a new Exhibit "D" has been prepared, which provides the framework for the monitoring plan. Attorney de la Parte explained that a new Exhibit "E" was added to the Stream Buffer Zones Conditions, which identified 12 streams with specific buffer zones; indicated that Dr. Janicki was involved in developing the compromised stream buffer zone areas and the Exhibit D" standard previously mentioned; and that Mr. Wantland was involved in developing a new Exhibit "B", which has criteria dealing with wind and rain standards for the Clay Settling Areas (CSA's.)

Attorney de la Parte indicated that the CSA Disaster Insurance provision was amended to reflect the Local Governments as additional insured; that the ability of Mosaic to substitute a parental guarantee for the insurance was deleted; but that the provision allowing Mosaic to reduce or terminate the insurance, should they not be able to obtain the insurance under the same terms and conditions as on the effective date of the agreement, is still in the agreement.

Attorney de la Parte advised that a new provision was added prohibiting new chemical plants or gypsum stacks within the Peace River and Myakka River Basins; that the Water Supply Development provision was amended clarifying that the reservoir would be donated by Mosaic at no charge to the Authority and that Mosaic would provide access to the reservoir property; and that language was added that the Authority and Mosaic would meet prior to the tenth year of the agreement to discuss possible storage options within the Myakka River Basin, but there are no specific commitments as to what those might be.

Attorney de la Parte recalled that the Manatee County Board of County Commissioners recommended that the identification of the reservoir and setting it aside be accelerated from the 20th year to the 5th or 7th year of the agreement; commented on the manner in which a bankruptcy or receivership would be handled; and advised that a provision now appears in paragraph 17 of Legal Challenge Waiver, which allows Local Governments to take emergency action in case of an eminent public health and safety emergency.

Attorney de la Parte indicated that public comment in the nature of commenting on permit applications still remains; that if this agreement is signed Local Governments must withdraw written or verbal comments made on pending permit applications and promise not to submit written or verbal comments regarding permit applications in the future, except that they would be able to discuss with regulatory agencies violations of the law or permits if they were aware of such violations; and that the limitations on what you individually as officials could state and what your employees could state was clarified and removed.

Attorney de la Parte stated that the Release of Claims was amended so that it applies only to existing claims; that the Arbitration of Dispute was modified to provide guidelines to the arbitrators being absolutely neutral; and that there be an opportunity for Local Governments to by-pass the arbitration process and seek an injunction if there was an emergency that could not be handled otherwise through the arbitration process.

Commissioner Moore inquired if we enter into the Compact and do not enter into litigation trying to block applications for permits to mining, where our obligation is if we see state laws that we believe to be weak. Attorney de la Parte explained that the agreement allows for lobbying the State Legislature and regulatory agencies to change rules and statutes. Attorney de la Parte stated that one of the three issues he would discuss is the Area Wide Environmental Impact Statement (AWEIS), the merits of having which he has previously given; pointed out that **Commissioner Moore's** question touches on whether or not individually you want to pursue an AWEIS as a Commission; and since that item would be interpreted to refer to permits issued by the Federal Government or by the Department of Environmental Protection (DEP), the limitation previously mentioned about making comments on permits may limit the ability to independently request an AWEIS, even though it is almost of a policy nature.

Commissioner Cummings requested clarification that Mosaic agreed to provide storage capacity in some form and a site for a reservoir, but not a reservoir itself. Attorney de la Parte clarified that Mosaic would provide a site on which a reservoir could be constructed by someone else, presumably the Authority. **Commissioner D'Aprile** asked if the site to be furnished would be land that had not been mined. Attorney de la Parte advised the agreement states it could be land that has been mined or not mined; and that if you want Mosaic to

provide a site that has not been mined the current draft would need to be modified.

Commissioner D'Aprile stated that there are opinion differences on the water quality of mined sites versus unmined sites; that land which has not been mined would by necessity be mined in order to create the reservoir, which creates a conflict; and indicated he would be interested in further discussion on that. Attorney de la Parte agreed there is a conflict there and explained that a revision to that provision would be required if the Board wants an absolute guarantee that the land is in a natural state and not mined.

Commissioner Cummings pointed out most lined potable water reservoirs being built are elevated because the water table is higher than the level you are trying to pump down to and the liner would be floated out; and indicated if the reservoir is lined it must be up out of the water table.

Attorney de la Parte advised that the first of three important public policy issues to be focused on is Contract Recordation; and pointed out that he previously indicated the need for a provision in the agreement requiring Mosaic to record the agreement and the obligations that are in the agreement as part of the title to the land that they seek to mine or have identified as being potentially mined. **Commissioner D'Aprile** indicated that the phosphate industry did not approve recording the agreement and requested that Attorney Knowlton comment on a possible revision.

Attorney Knowlton reported that all of the local governmental attorneys requested that the document be recorded so there is the covenant running with the land; commented on Mosaic's various concerns, including that recording the document would violate their bond covenants; and indicated that the issue has simply not been resolved. Attorney de la Parte pointed out that the agreement contains a paragraph specifically prohibiting the recordation of the document.

Attorney de la Parte commented on issues which go to risk that need to be considered in terms of the agreement: that the Compact rejects recording and the covenant running with the land; that instead Mosaic is making a promise that if it should sell the land to someone who intends to mine the property or if they assign it to a subsequent successor, that they would require that person to assume the obligations; that if Mosaic deliberately seeks to violate the provision

it would require us to sue Mosaic to enforce the agreement in order to require that to happen; that the way the Compact is currently written it does not bind persons acquiring land by bankruptcy, receivership, or other forms of involuntary transfers; and that the agreement does not bind a non-mining purchaser who sells the land to a mining company. Attorney de la Parte explained that the problem is not dealing with the current representatives, but what potentially could happen in the future when the people or companies who are not at this table are not here.

Commissioner Moore opined that it would be a monstrous flip of land to make it clear to sell. Attorney de la Parte indicated that sales could be in increments; pointed out that he has never recommended giving up the right to comment on or challenge permits in the future, which is a hefty requirement binding this Board and future Boards for the term of the agreement; that he wants to be certain at the end of the day when the agreement is signed that the Board has confidence the agreement would be there for the term and no way to avoid its obligations, and why he has always been of the opinion that the agreement should be recorded to run with the land; but stated that he is willing to go with Attorney Knowlton's suggestions.

Attorney de la Parte stated that a public records search indicates that not all parcels of mine sites which have been identified by Mosaic as their current holdings is titled in the name of Mosaic, LLC; that we have not yet asked Mosaic to provide contractual or corporate documents showing the relationship; and indicated that he is identifying this to show the importance of recording the agreement.

Attorney de la Parte stated that it may be that Mosaic has some sort of legal contract with all of the entities, and if so would have the ability to record the agreement; that if we do not record the agreement we should, at the very least, do a due diligent search of the properties that are unmined and part of the Exhibit "A" to be certain that the entity we are entering into the contract with has the necessary corporate and real estate authority to make the covenants that you believe you have in this situation; and that this must be done before entering into the agreement to be certain it would be binding.

Commissioner D'Aprile requested clarification that entities holding title according to the record search of properties to be mined would not be bound by the agreement. Attorney de la Parte advised those parcel owners would only have to abide by the agreement to the extent

that there was some side corporate or contract arrangement between Mosaic and those individuals that requires them to abide by the agreement, but that they are not parties to the agreement and he has not seen agreements or corporate documents in order to assure the Board that Mosaic can deliver compliance. Attorney Knowlton pointed out that this was a quick-item title search, which was the best that could be done under the time restraints.

Attorney de la Parte reported that the term of the contract was shortened from thirty years to fifteen years; that all of the local government attorneys were proponents of the thirty years; but the public had concerns about some of the provisions dealing with public comment being in place for thirty years. Attorney de la Parte indicated that a fifteen-year term is sufficient for Mosaic to obtain all permits without challenge or comment, but it is not sufficient for governments to realize benefits; that the benefit to the county is in the longer term; and that if the agreement goes away in fifteen years, your recourse to challenge or comment would not be an effective recourse and some of the things you were counting on, such as the buffer zones around certain streams, may not be there when they actually mine.

Attorney de la Parte explained that it was suggested to Mosaic, especially in the case of the Pine Level Mine Tract because Mosaic may not start mining there until the 12th or 15th year of the agreement, that they grant conservation easements to the buffer zones before the agreement terminates; that this was not accepted by Mosaic; and that in his opinion is a significant concern and goes to the heart of the bargain that is being developed in this particular situation.

Commissioner Duffy clarified that initially Charlotte County wanted the thirty-year agreement, that the public thought it was too long a time and too restrictive, and that Charlotte County asked for the time to be reduced to fifteen years. Attorney de la Parte explained that he, Mr. Manson, and the County's Attorneys continuously recommended that the term of the agreement be thirty years and that because of various changes to the agreement, Mosaic felt uncomfortable entering into a thirty-year agreement, proposed ten years, and agreed to a fifteen year initial term followed by a fifteen year renewal; but agreed that the public indicated concern of the thirty years.

Attorney de la Parte opined that the bargain that forms the basis for this deal is that Mosaic gets their permits up front without having to go through litigation and challenges and we get monitoring and a

process of insuring compliance with environmental standards that does not require litigation. **Commissioner Duffy** explained that she was only pointing out that Attorney de la Parte initially recommended thirty years, that there was a misunderstanding by the public, and a Commissioner from another county demanded fifteen years, which is how the discussion of fifteen years began; and after Mosaic agreed to many other standards they wanted to stay with fifteen years. **Commissioner Loftus** stated that even after it was explained to the public that it was the County who requested the thirty-year term the public did not want it for any reason, stating that it was too long for any type of agreement.

Attorney de la Parte said he cannot speak for the public, but is giving his best legal advise as to how to structure the agreement; pointed out that we did suggest that instead of changing the term that we have at least conservation easements issued for the buffer zones, which would allow the fifteen year term to remain and the buffer zones to continue. **Commissioner Duffy** inquired if DEP requires conservation easements in their individual permits. Attorney de la Parte explained that DEP requires buffer zones as part of the permitting process; that DEP does not have a rule that specifically identifies a specific buffer zone and in each permit there is negotiation between the applicant and DEP as to what areas would be preserved; and that in this agreement there is certainty.

Attorney de la Parte stated that the Compact does not directly support an Area Environmental Impact Statement (AEIS); that it is not specifically referenced in the Compact as either an AWEIS or Regional AEIS; and that the concept in paragraph I is that the AEIS issue will be re-examined upon completion of the Ona EIS after the first Mosaic local government meeting. Attorney de la Parte explained that he is uncertain the way the agreement is written that an individual local government would be able to contact the Army Corps of Engineers (Corps) or Environmental Protection Agency (EPA) to do an AEIS; that because the AWEIS is related to permitting by Mosaic it may be viewed by Mosaic as potentially being opposition and contact with those agencies may be prohibited.

Commissioner Moore inquired if a moratorium would be required. Attorney de la Parte indicated that would be the decision of the Corps; that he has never advocated that we should recommend or lobby that there be a moratorium as a way of conducting an AEIS; and stated his concerns are that the way the agreement is written

today Local Governments could not independently request an AEIS without Mosaic's approval.

Commissioner Moore requested clarification that it is simply not clear if a moratorium would be required. Attorney de la Parte stated that whether an AEIS may or may not institute a moratorium is uncertain because we do not know what the Corps would do in terms of doing an AEIS; and that whether or not you would even be able to contact the Corps to do an AEIS is also uncertain.

Commissioner Moore opined that the AEIS would be under the change of the Corps but that the actual work would be done by a third party designated by the Corps. Attorney de la Parte advised it is possible that the Corps would elect to have a third party do the AEIS for them. **Commissioner Moore** inquired if reference to AEIS is a comprehensive look at what is being done by the phosphate industry, agriculture and development. Attorney de la Parte stated that in all discussions with Mosaic it has been his understanding that it would include all the activities that would require federal permitting in the basin.

Commissioner D'Aprile requested clarification that the Corps must prepare a cumulative environmental impact statement before permitting is issued in the mining operation. Attorney de la Parte replied affirmatively and indicated that historically the approach has been on a mine-by-mine, permit-by permit basis; and commented on differences between a specific EIS that focuses on one mine versus a regional EIS that looks at several mines in the future as well as other activities.

Attorney de la Parte advised that the Compact as presently written requires approval by all Local Governments; that Lee County is not scheduled to consider the Compact until mid-December; and that it is uncertain to him Lee County will support the Compact in its current form. Attorney de la Parte opined that the Compact requires further refinement to address the recordation issue, the term issue and the AEIS issue; and recommended that Charlotte County defer final action on the matter and direct staff to re-address these three items with Mosaic and then re-schedule the meeting for approval after the Lee County Board of County Commissioner meeting.

Commissioner Duffy asked Dr. Janicki if he was comfortable with the progress made on the stream buffer zones and that it will protect the quality and quantify of our waters. Dr. Janicki commended Mosaic's

experts; stated we got some very good concessions, especially with regard to the stream buffers; that there are still agreements to be made on the monitoring; and opined the longer the term of the Compact, the better.

Commissioner Duffy asked Mr. Wantland if he was comfortable with the latest standards agreed upon regarding the clay settling areas. Mr. Wantland stated that he was very comfortable with them.

B. Presentation by Mosaic.

Attorney Mack provided a brief background of negotiations to date; indicated that an independent facilitator, consultants, and experts were brought in; that meaningful concessions were made; and that Mosaic believes the Compact to be ready for the Board's deliberation and approval today.

Attorney Mack commented on additional improvements to the Compact as a result of the continued negotiations which are beneficial to the Local Governments; pointed out that numerous additional standards Mosaic has committed to voluntarily are not required by law; that Local Governments and the Water Authority would be added as additional insured under Mosaic's insurance program up to the \$50 million limit that is in the agreement; clarified donation of the property free of cost for a future reservoir; clarified that Mosaic will not construct or build any new fertilizer manufacturing facilities or place any gypsum stacks within South County or an agreed upon area; and advised that the term of the compact was shortened to fifteen years with the parties having the right to renew it for an additional fifteen-year period.

Attorney Mack advised that the Local Governments retained the right to seek legislative and regulatory reform if deemed appropriate; that geographic limitations for future mining activities have been established; and that it is hopeful that an innovative relationship will be created with the Water Authority to address regional water concerns in this area.

Attorney Mack reported that Mosaic has agreed to provide land for a future water reservoir site; that the agreement is fully binding on successors and assigns of Mosaic; and that the key question is if the many commitments offered by Mosaic provide the Local Governments with better protection than the current approach of expensive

litigation. Attorney Mack stated that recording an instrument puts an unknowing purchaser "no notice" and that if someone is aware of the agreement in the first place recording effectively does not mean much; pointed out that paragraph 18 of the Compact provides thorough protection to the Local Governments; and highlighted some of the provisions in that section.

Attorney Mack pointed out that Mosaic is a publicly-traded company; that if Mosaic was going to make any meaningful transfer of an asset it would have disclosure obligations, and everyone in the region would know about it. Attorney Mack provided a handout sheet with a provision paragraph numbered "22", which he offered as a solution to the recording issue and reviewed its contents with the Board. Attorney Mack added to the provision that if the mining permit is modified to exclude any land to someone who is not going to mine that property, Mosaic would look for a reasonable reimbursement of the fees.

Attorney Mack explained that the overwhelming majority of the Local Governments' and Water Authority's concerns have been addressed; the Compact allows for responsible phosphate mining; Mosaic has compromised where it could to afford protections requested; the recordation issue has been addressed today; and that further concessions expected by Mosaic on the Compact at this stage are unrealistic. Attorney Mack opined that a fair review of the Compact supports the approval by this Local Government; that litigation would not gain the County more; and that this is the best alternative for Charlotte County.

Attorney Mack thanked the Commissioners for their time, attention, and diligence and indicated he hopes an agreement can be reached today. Attorney Mack commented on issues raised by Attorney de la Parte; stated that the recordation issue has been reviewed; that from Mosaic's perspective if things are going well the Compact would be renewed in fifteen years; and that with all the additional protections Mosaic has granted they do not want to be locked into a bad relationship for thirty year if it is found to be such. Attorney Mack stated when Mosaic applies for a permit it must comply with all the terms of the agreement and all restrictions would apply; that there is a notice period if Mosaic wants to modify the permit and the County has the right to jump into the process at that time to file objections; that he does not view this to be substantive; and that from Mosaic's perspective it would be kept at fifteen years.

Mr. Mack commented on the AWEIS and indicated if there is an effort and momentum behind it at some point for an AWEIS, Mosaic would be happy at that time to be at the table and talk about scope, who is involved, what would be reviewed, cost, timeframe, etc.; and stated that he views the AWEIS to be an independent issue from this Phosphate Mining Compact.

Mr. Mack addressed the issue of ownership of land; advised that Mosaic merged with IMC in 2004; that all deeds that apply to the various holdings that Mosaic owns or has the right to mine are in various names; that all of those companies are succeeded by Mosaic LLC; that Mosaic LLC is the applicable phosphate entity in the State of Florida; and that Mosaic LLC either owns or controls all of the land that was previously shown on the screen.

Commissioner Duffy inquired if the AWEIS were to evaluate all impacts to the Peace River Basin, if funding from all parties is available, and if the Corps agrees that it needs to be done, would Mosaic give its overall support. Attorney Mack replied yes, in general; explained that Mosaic would not want an AWEIS going on without its participation and opportunity to have some voice and input into the process; that Mosaic would need to be comfortable with the knowledge of who would pay for it, who would be included in the study, how long the study would take, the scope of it, who would do it, and if there would be a moratorium; and indicated that Mosaic would have an issue if there is a risk of shutting down the phosphate mining operation while an eight-year study goes on.

Commissioner D'Aprile opined it would be in the best interest of all concerned to have an AWEIS; that it would be appropriate for all counties concerned and Mosaic to contribute equal shares for the cost; that this is an important issue; and indicated that he hopes Mosaic would agree to that at some point.

C. Presentation by Water Authority.

Attorney Doug Manson stated that recordation was the only concern that he had left in the agreement; that his concerns were to issue of bankruptcy; believes what Mosaic proposes takes care of the problem; and pointed out that the Authority would be the one to sign a release of the recorded memorandum of agreement.

Attorney Manson opined that the AWEIS is important from a public standpoint, but that the best that has ever been contemplated to go into the agreement is some arrangement with Mosaic that all parties would support asking the Corps for an AWEIS, including some possible financial contributions; and stated that he would not want to give up anything from the agreement just to be able to request the Corps for the ability to do an AWEIS.

Attorney Manson commented on the purpose of doing the agreement and what we are looking for in the concepts of the Compact; indicated that there may be more options available by having the reservoir property on mined property versus unmined property; that as to water quality, Mosaic still must go back and reclaim; and that it works for the Authority to have the latitude going forward to look at innovative ways to combine Mosaic's ability as a mining company and our need for a reservoir and be able to get a better project by having it on mined land versus unmined land, but wants to be able to see what the options are.

Attorney Manson pointed out that Mosaic creates storage on their property and commented on working with Mosaic in setting up the storage so that during low flow periods the stored water could be put into the rivers and streams to increase the low flow levels of the Peace River and possibly the Myakka River for environmental enhancements. Attorney Manson indicated that concepts of the Compact is to end costly permit litigation, shift from an adversarial relationship to an open dialogue on future issues, provide an end game to protracted litigation, and define a mining boundary that limits mining for at least the next 15 years.

Attorney Manson opined that in addition to the preservation areas, one of the more valuable things in the agreement is that we now have standards in place for water quality, water quantity and the timing of flow; reviewed Section 6 - Cumulative Monitoring and Assessment Program, Section 7- 100 Year Floodplains Protection, Section 4- Dewatering Impacts to Wetlands, and Section 11 - Total Maximum Daily Loads (TMDL's) set forth in his presentation packet.

Attorney Manson reviewed Section 1 - Environmental Impact Statement set forth in his presentation packet; commented on his understanding of the language in paragraph 14; and inquired if it was Mosaic's understanding that the intent in the agreement is that we are allowed to pursue individually requesting an AWEIS under the terms of the

agreement. (An acknowledgment was given, but speaker and answer was not identifiable.) Attorney Knowlton stated that if that is the intent it should be clarified in the document.

Attorney Manson reviewed Section 20 - Future Laws, Section 10 - Future Water Supply Provided, Section 14 - Local Governments' Legal Rights, Section 17 - Alternative Dispute Resolution, Section 16 - Release of Known Claims, Section 1 - Open Forum with Mosaic, and Section 17 - Alternative Dispute Resolution, Section 24 - Term of Compact, and the Benefits section of his presentation packet; indicated that if the laws get any tougher than the agreement they become part of the agreement and we are allowed to enforce them; that in this agreement Mosaic gave up any right to protest or challenge any of the Authority's permits for water use in the Myakka or Peace River Basins; that there is a new provision that talks about the Local Governments' ability to take any legal action necessary if there is an emergency that threatens health, safety or welfare of the citizens; that the new dynamic is to work with Mosaic, provide and review information through the monitoring program, and impact the way they mine by virtue of working with them cooperatively rather than through litigation.

Commissioner Cummings inquired if Attorney Manson was still of the opinion that this would be better with the longer term. Attorney Manson replied affirmatively, but that in negotiations you sometimes get what you can. **Commissioner Cummings** inquired if the additional analysis reference in sub-paragraph D of paragraph 1 was referring to the Ona Mine exclusively and is not an implication on an AWEIS. Attorney Manson replied affirmatively; that it has no implication on the AWEIS, other than that may be what step would be taken afterwards if the Ona EIS is not considered sufficient.

Commissioner Cummings inquired if the paragraphs had been removed that were in the agreement previously that concerned the Board that it would be a way of requiring the consent of both parties in order for either party to pursue the AWEIS. Attorney Manson stated that the language was clarified; that new language was suggested in the negotiations; and that in his opinion we would not be precluded from going forward and requesting an AWEIS.

Commissioner Cummings pointed out that the EIS is not a new item; that it has been the position of the Charlotte County Board of County Commissioner for the last six years; and commented on previous

negotiations between Charlotte County and IMC. Attorney Manson agreed that it is not a new issue.

RECESS: 3:20 PM - 3:35 PM

Attorney Knowlton asked that Attorney de la Parte further address paragraph 22, the proposal on the recordation, and paragraph 14.

Attorney de la Parte explained that it was actually paragraph 23; that the paragraph would substitute for the existing paragraph 23, which is the one that prohibits recordation. Attorney de la Parte reviewed changes agreed upon by him and Attorney Manson, indicating that with those changes this provision is an acceptable recordation provision that addressed his concerns.

Attorney de la Parte indicated that he heard Attorney Mack and Mosaic saying very clearly that they do not intend by this agreement to limit individual counties requesting AEIS's, and suggested adding a clarification phrase on page 7 at the stand-alone paragraph at the end of paragraph 14 in the November 7, 2007 draft of the agreement.

Attorney de la Parte commented on adding language that Mosaic would request inclusion of the buffer zones in any permit sought by Mosaic for new mines, if the Board wanted to keep the fifteen year term but have some further assurance that the buffer zones are not going to go away at the end of fifteen years.

Commissioner Moore indicated that he had no personal problem with the comments on Section 22 or with the attorneys taking time to discuss it further; and opined that reference to the AWEIS should not be in the agreement. Attorney de la Parte explained that this provision does not obligate the counties, Mosaic, or anyone, to support an AEIS; that the word AEIS is being added to clarify that you are not prohibited from advocating in support of general, legislative or regulatory changes.

Commissioner Duffy inquired if on number 23, recommendation on line 3, the word "each" would work as well as "any." Attorney de la Parte explained that the word "each" would be fine, but that we need to be consistent in using "each" or "any" ; but asked that the word "all" be used at the end in the sentence that begins with the word "Mosaic" because there are state, federal and local permits issued.

Commissioner Duffy clarified that Attorney de la Parte means all permits for a particular mine, not all permits for all mines. Attorney de la Parte stated he means all permits for that property being released because there may be a state, federal and local permit. **Commissioner Duffy** expressed concern with including wording for an AWEIS in the agreement.

Commissioner D'Aprile stated that the Board members are not attorneys, and inquired what Attorney de la Parte's thoughts were. Attorney de la Parte advised that his recommendation is that the language be added as he suggested in order to clarify that the paragraph above it is not the one that controls on this particular item and makes it clear that an AEIS is more in the nature of a broad, regulatory or statutory change. **Commissioner D'Aprile** asked if Mosaic was comfortable with what was discussed thus far. Attorney Mack asked for a short recess to talk about the changes that have been discussed. **Commissioner D'Aprile** requested that consideration also be given to increasing the terms of the agreement from fifteen years to twenty years.

Commissioner Cummings opined there is no reason to negotiate to give up right when the person across the negotiating table said they are okay with the idea of the AEIS and indicated that he hopes the Board accepts Attorney de la Parte's counsel; and inquired if the stand-down issue still remains.

Attorney de la Parte explained that the risk involved has been substantially limited by the language allowing Local Governments to take emergency action being moved to the arbitration provision paragraph, number 17, and modified to say that nothing in this agreement would prohibit the Governments from taking emergency action to protect their interest; that case law says that once arbitrators are appointed, which is 150 days after the start of arbitration, that they also have some authority to limit action from going forward during the arbitration process; and commented on the risk for the remaining instances where the 150 days would exist, per Commissioner Cummings' inquiry.

RECESS: 4:00 PM - 4:20 PM

Attorney Knowlton advised there was revised language on paragraph 23 on the recordation provision. Attorney de la Parte reviewed changes referenced by Attorney Knowlton and changes in paragraph 14, which is the section dealing with limits on legal action and comment, and

indicated the changes are acceptable to Mosaic. Attorney de la Parte stated that two other issues were discussed but that no agreement was reached.

Attorney Mack explained why Mosaic would not agree to a longer term; stated that Mosaic fully expects the relationship to be in place and has every interest in renewing the agreement; commented on the buffer request; and indicated that there is a lot of additional analysis and detail required to accommodate this request, and submits that it is not needed.

II. Public Input.

Pete Quasious said that other parties would like to be part of this and we cannot negotiate this on the fly; that this is a work in progress; that many major concerns have been met; that people from Lee County needs to be clearly involved in this agreement; and that the vote should be delayed until the public in Lee County has the opportunity to react.

Thomas Frazier commented on the monitoring and assessment program and it being incomplete; expressed concerned that Polk County is not involved; and requested that approval be delayed until a monitoring program is on record.

Bill Dunson agreed with Mr. Frazier; that special attention should be given to the monitoring program and adverse impact; and commented on testing that has been done in some areas.

Sydney Bacchus commented on the issue of the area wide EIS and the federal permitting process; gave a summary of what is involved in a cumulative impact analysis, indicated that the applicant must pay for it, and opined that these provisions should be incorporated into the agreement; addressed the buffer zones; and agreed with those concerned that the monitoring details are not incorporated in the document.

Percy Medentz commented on the cumulative impact analysis statement and read a letter she presented.

Dorothy Senior commented on a letter she wrote to Governor Chiles fifteen years ago about phosphate; that 20,000 signatures were gathered by North Port citizens and presented for the discussion; that through ample participation the group was able to shut down the CMI; that the

public was restricted to water use but millions of gallons of water daily was being used by CMI, with a runoff of 5 million gallons of waste water, which contains radium contaminates; and advised that it takes 1700 years for radium to dissipate.

Betty Sue Carroll indicated there is no rush for a settlement with Mosaic; that phosphate is being mined in the US and sold throughout the world where there is a market; that we must protect our water and waterways; that citizens are concerned with having clean, safe water; and that a cumulative impact study should be obtained first.

Mary Jelks expressed concern with the insurance of this company; opined that phosphate is deadly; opined that we do not have adequate requirements to keep clean water; that there has been two terms nationally and in Florida of anti-environmental government; that many problems we are being forced to face have not been adequately studied; and that the signing of this agreement should be delayed.

Betsy McCallum spoke in opposition and opined that an EIS should be sought before signing an agreement with Mosaic.

Clark Keller spoke about mitigation of the land on the reservoir; indicated that we should not turn our back on Lee County; that we need to slow down; that we should not be required to surrender our legal rights; that we have the right to threaten litigation; that there is a huge body of science supporting our contentions; that we should talk with DEP about what is contained in the agreement and what would make phosphate a better industry for us to live with; and opined that we don't have to sign anything to get it.

Lawrence Martin stated that we should slow down on the negotiations; that some items in the new compact agreement are good, but some things, such as human error and extreme weather conditions, cannot be controlled; and that Attorney de la Parte's and Commissioner Cummings' recommendations should be heeded and incorporated into the agreement.

Kristi Patel opined that a cumulative impact study is needed; and commented on a recent Anderson Cooper study.

Sarah Hallenhorst addressed the issue of sheet flow in the watershed; indicated more research should be done on this before coming to a

decision on the study; and opined that the cumulative impact study is extremely important.

Karen Bennett asked why the vote must be done today according to Mosaic; stated that Lee and Sarasota Counties have indicated that the three counties should meet together to make this decision; and asked that the vote be postponed until Charlotte County meets with the other two counties.

Chris Costello indicated that the Board is receiving a recurring message to slow down and agreed that the Board should not rush into the agreement today.

Marv Medintz commented on paragraphs 23 and 29; indicated there is no substitute for recording; asked what constitutes adverse weather conditions; and opined that the agreement should be tightened down and not voted on today.

Misty Nichols spoke in opposition, read from a prepared letter, and requested that the Board not rush into this agreement.

Ruth Bromberg thanked those in attendance who came from outside Charlotte County; opined that there should be a cumulative impact study; and indicated that the agreement should not be accepted as it is.

Randee LaSalle agreed with many of the concerns raised today; stated that phosphate mining will harm the quality and quantity of our water supply, which must be preserved and protected at all cost; that she is concerned with the acts of God clause; that cleanup would then be the responsibility of Charlotte County, not Mosaic; that the Board's job is to protect the ordinary citizens; that phosphate mining harms water resources; and that the Board should listen to those who know and would see no monetary gain.

Nancy Shult of Punta Gorda agreed with what has already been said; indicated that the agreement today is a salesman's dream come true; that this company will give as little as possible and try to get as much as possible; that something is not right with the watershed now; that there should be a cumulative environmental study before agreeing to this agreement; and recommended taking a plane ride over Florida to see what is left behind after phosphate mining.

Richard Flint commended everyone for doing a good job thus far on a long, tedious, difficult task; agreed that we cannot risk damage to the river and harbor; opined that there are many details yet to be done; and that those details should be received before settling with this agreement.

Gabrielle Van Bryce read from a section of the January 2000 Peace River Cumulative Impact Study in Chapter 2 where it discussed water shed stressors; and commented on concerns with the exhibits to the compact.

Kathleen Rourke commented on giving back the 30 years; that we need a monitoring program in place; that there are many unanswered questions; and opined that the Board should slow down and do this right.

Jim Cooper opined that negotiations have come a long way, but has only just begun; reviewed areas that he believes the agreement fails the county; indicated that leaders should protect the people; and that a decision does not have to be made today.

Gail Giles spoke in opposition of signing the agreement as it stands today.

Randy Spence stated he has seen first hand the results of phosphate mining; opined that a cumulative environmental impact study is needed; that everyone must share in the financial risk; and that the Board should consider delaying this agreement until all parties concerned meet.

Don Ross complimented all involved in the negotiations; indicated that a monitoring program is needed; that some issues were resolved today; that this is a good compact; and that Charlotte County took the lead on this fight and should end it, not leaving it to another county.

Sue Reske stated that a compact of this consequence should be the result of a deliberative process, which has not been accomplished; that the joint meeting Lee County requested should be honored; that a cumulative impact study is needed; that the rights of the county to challenge impacts when those impacts are not known should not be given up; requested that a joint meeting with all counties be conducted; be certain that the recording section is sound; and not rush the agreement.

Russell Garrard stated that a good job has been done; that the parties have been litigating for six years; that time is of the essence; and that it is in the best interest of Charlotte County to approve the agreement and go forward.

RECESS: 5:50 PM - 6:00 PM

III. Board Discussion/Action.

Commissioner Cummings inquired if the clause under paragraph 14 regarding withdrawing comments affects the issue of filling in the holes with sand. Attorney de la Parte replied affirmatively and indicated that all the comments that the County submitted to the Federal agencies, including sand reclamation, would be withdrawn as formal comments to the agencies. Attorney Knowlton reminded the Board that even if they voted to approve the agreement it is not effective until Lee and Sarasota Counties and the Water Authority vote on it.

Chairman Loftus thanked **Commissioner Cummings** in taking the lead for Charlotte County in attempting to preserve its estuary system and potable water sources; and commended the environmental groups in their efforts.

Commissioner Cummings complimented the depth of talent and passion in Charlotte County and its citizens; commented on signing the agreement today versus sitting down with the other counties; stated there is no reason to rush into this; that it is not unreasonable to expect, request or demand the impact studies; that it is his job to be an advocate for Charlotte County; and opined that signing this agreement tonight does not protect the interest of those whom he has a sworn duty to uphold.

Commissioner D'Aprile read from his written comments; indicated it is time to set aside differences and move forward in a mutual benefit with some solution in order to rectify problems that have happened in the past; that he does not want to give rights away and wants to be certain future Commissioners and citizens are protected; and commended **Commissioner Duffy** in her representation of Charlotte County. **Commissioner D'Aprile** agreed that other counties were entitled to their opinion; that if the Board agreed to the compact tonight it must still be approved by the other counties and that he is willing to listen to suggestions of other counties; and commented on the additional \$25,000

exemption going on the ballot, the deficit it would create, and his concerns of where the money to litigate would then come from.

Chairman Loftus thanked the negotiating teams, staff, Commissioners and others for their time and efforts; indicated that efforts were made to include Lee County; and that he was sorry Lee County was not at the negotiating table.

Commissioner Moore stated that our job is not to stop mining; that Mosaic has the right to mine and the country needs the phosphate; that our job is to protect our county, environment, streams and citizens. **Commissioner Moore** advised he is pleased about the discussions on the cumulative impact studies and believes it will be done; indicated that he had requested that **Commissioner Cummings** reach out to Lee County; and opined that an opportunity was missed. **Commissioner Cummings** stated he talked with Lee County and they still wanted to be able to meet with us.

Commissioner Moore inquired if it would be up to Mosaic to take the deal or not if Sarasota and Charlotte Counties and the Water Authority voted for the agreement but Lee County voted against it. Attorney de la Parte explained there is a provision in the agreement that says the agreement does not go into effect until all four of the governments approve the agreement and provide notice to Mosaic; that it would not just be Mosaic's decision; and that if the agreement were to be modified at some future point, it would be his recommendation that the matter come back before the Board for reconsideration and an additional vote. Attorney Knowlton agreed and indicated that if that was the only change made it could be put back on the Consent Agenda.

Attorney Mack stated that Attorney de la Parte explained the technical verbiage on how the agreement is current constructed; but that the general intent is if two out of the three counties approve and one does not, Mosaic would then be faced with a decision as to whether or not it would be in the best interest to move forward without one of the governments.

Commissioner Moore opined that we have done a good job and are far better off with this; that he does not think he is slighting the other counties because they will vote as they see fit; and indicated that he is prepared to support the Compact.

Commissioner Duffy stated that we have all wrestled with this decision and want to do everything possible to protect the citizens, water supply and Charlotte Harbor; that she is pleased that her concerns regarding recordation and the AWEIS were alleviated; and that she believes the other counties will appreciate what we have done and the progress that has been made. **Commissioner Duffy** indicated that everyone worked hard for an amicable solution and to do everything possible to protect us; stated that she regrets that Lee County was not at the meeting, but agreed that we should take the lead tonight; and opined that it would be better if all five Commissioners were in agreement.

COMMISSIONER DUFFY MOVED TO APPROVE THE AGREEMENT AS DISCUSSED AND REVISED IN PARAGRAPH 23 AND PARAGRAPH 14 ON THE RECORD, SECONDED BY COMMISSIONER MOORE.

Commissioner Cummings pointed out that only Mr. Wantland had indicated that his issues had been addressed; that Dr. Janicki had specifically avoided answering the question; and that the issues of the AEIS raised by Attorney de la Parte were still not addressed.

Commissioner D'Aprile asked what the next step would be. Attorney de la Parte explained that the Sarasota County Commission meets November 27, 2007; that the Lee County Commission anticipates meeting in December or January; that although the Charlotte County Board may approve the agreement it should not be executed by the Chairman until all of the governments approve the agreement; that if one government does not approve it and Mosaic still wishes to go forward without one or two of the governments then the Board would have to reconsider again. Attorney Knowlton asked when the Water Authority is scheduled to meet. Attorney Manson advised it is on the agenda for December 5, 2007.

Commissioner D'Aprile agreed that it would be in the best interest for everyone if all the counties and the Water Authority agreed; that eliminating one or two counties is not what he would like to see happen; and inquired if the other counties would get copies of this modified agreement for review. Attorney de la Parte replied affirmatively; and stated that changes after meetings of the other counties would be brought back to the Charlotte County Board; and recommended that after all changes have been made and it agreed upon by all parties, that it be brought back before the Charlotte County Board for ratification.

Attorney Knowlton explained the procedure is like that of the Master Water Contract that had to go to other counties and changes brought back before the Charlotte County Board for approval. Commissioner Duffy indicated that Charlotte County took the lead and made major changes and questioned what more another county could want. Attorney de la Parte stated that the Lee County Commissioners had indicated they want a much more detailed AEIS provision, which, if Mosaic approved, would be brought back before the Charlotte County Board for review.

Attorney Mack reported Mosaic would meet with Sarasota County Commissioners next week and with Lee County Commissioners as soon as possible; that Mosaic's position would be expressed the same as has been expressed in this meeting with the Charlotte County Commission; and that changes made to the agreement would apply to all of the counties.

Motion Carried 4:1. Commissioner Cummings opposing.

ADJOURNED: 6:45 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

gm