

WALK ON #2

CHZ

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20061019

1. ACTION REQUESTED/PURPOSE: Authorization to comment on draft EPA Rule on transfer of water.
2. WHAT ACTION ACCOMPLISHES: The Board's standing upon this item is maintained.
3. MANAGEMENT RECOMMENDATION: Forward Comments

4. Departmental Category: SFWMD.

5. Meeting Date: August 1, 2006

6. Agenda:
- Consent
 - Administrative
 - Appeals
 - Public
 - Walk-On

7. Requirement/Purpose: (specify)
- Statute
 - Ordinance
 - Admin. Code
 - Other
- Formal comments

8. Request Initiated:
Commissioner _____
Department County Attorney, Smart Growth, Public Works
Division _____
By: *[Signature]*

Background: This item was reviewed June 27th since the deadline for comment was during the Board recess. However, the deadline for comment was moved to August 7th. Consequently staff has prepared the attached comments to be submitted to EPA.

In summary, staff recommends Lee County BoCC provide comment to the EPA to preserve standing.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>[Signature]</i>	N/A			<i>[Signature]</i>	N/A				<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

1. We are an affected party regulated (or deregulated) by this rule. We are a resource management agency and transfer through either stormwater or utility water from one watershed to another. Our existing and proposed actions directly address maintaining or improving water quality of the receiving waters. Specifically, our stormwater movement does not involve the agency adding pollutants to the water conveyed, but the receiving waters quality does deteriorate without our remedial action.

2. We are an affected party by the actions of other agencies covered by this rule. More generally we are affected by upstream managers, and, more specifically, the USACOE and SFWMD through their operational and capital roles as the Federal and local sponsor of the Central and South Florida Flood Control Project, as updated. Specific works include the Lake Okeechobee transfer/discharges of water to the artificially connected Caloosahatchee River through C-43, and the redirected flow of the Everglades Agricultural Area from the south instead to the Caloosahatchee River to the west through S-4. Given the location of Lee County, we cannot remedy through treatment the volume of water we are receiving through transfers, for the Federal Interest in part represented by the four National Wildlife Refuges located in Lee County.

3. The Clean Water Act has to be looked at as a whole in regard to its legislative intent that the nation's waters are to be fishable, swimmable, and drinkable. When in the local, state, or national interest it is necessary to transfer water between basins to meet a public purpose, the need for water does not automatically or forever eliminate the need to regulate the transfer to the extent necessary to meet other public purposes. That said, pollutants should be addressed at their source, not by imposing unnecessary permits upon local and state agencies that must manage water for multiple purposes.

4. Transfers are through conveyances, and the discharges of those conveyances are a clear "point." The "point" is where the contaminants are introduced into the system. Whether the source of the contaminant is unknown to the transfer agent is irrelevant, it is known to the receiving water body.

5. The deterioration of water quality through the transfer of water in South Florida is well documented. Alternative watershed tools, such as TMDLs, point source permits, and Best Management Practices have been established and should be should be fully utilized before establishing rules that could pre-empt the state's existing authority to address water quality problems.

6. Looking at the Clean Water Act requires a holistic approach. Looking at achieving the objectives of the Clean Water Act also requires a holistic approach to achieve them. Providing an exemption to primary vehicles that contribute to the current water quality issues, should be granted only after demonstrated compliance with existing local, regional and state rules.