

ATTACHMENT I

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To The House Committee on Natural Resources:

The attached report has been prepared by the Council of Civic Associations, Inc., a not-for-profit organization founded in 1996. We are affiliated with over 70 civic organizations, government liaisons and community leaders in South Florida. Our goal is to make government at all levels accountable for enforcing the laws for which they are responsible. We believe laws enacted for the benefit of all citizens are being ignored in order to benefit specific special interest groups.

The following contains excerpts from a report submitted by the Council of Civic Associations, Inc., (CCA) to the House Committee on Natural Resources on March 8, 2007. This 28-page report and attachments document the disregard for the enforcement of existing laws that has become commonplace among governmental bodies at the federal, state and local levels. It further documents the proactive marginalizing or outright silencing of governmental employees who conscientiously attempt to live up to the responsibilities of their positions.

Although the House Committee on Natural Resources May 9th hearing will focus on the implementation of the ESA, the Committee should take note that the Clean Water Act is a vital component to protecting endangered species in Florida, where there are seven endangered species, seven threatened species and 21 species of special concern that are wetland-dependent.

At the same time, the public agencies which are charged with protecting

resources are missing in action. The U.S. Environmental Protection Agency (USEPA) office in SW Florida has been closed and the West Palm Beach office has been stripped of its former authority with key staff reassigned to report to Atlanta. The Southwest Florida U.S. Fish & Wildlife Service (USFWS) ecological field office responsible for area permit review, including biological opinions has also been closed. Mr. Bubba Wade, a Sr. Vice President of U.S. Sugar, is a governing board member of the South Florida Water Management District and represents sugar interests on the Board.

As you conduct your committee's oversight activities, we would ask you to direct attention to:

1. The absence of any meaningful cumulative analysis of the scores of new developments covering thousands of acres taking place in the midst of what is universally known as some of the most sensitive wildlife habitat in the U.S., including Picayune Strand State Forest, Big Cypress National Preserve, Florida Panther National Wildlife Refuge (NWR), Ten Thousand Island NWR, Rookery Bay National Estuarine Research Reserve, J.N. Ding Darling NWR, Estero Bay Aquatic Preserve and public lands purchased with federal funding, e.g., Southern Golden Gate Estates and Fakahatchee Strand.

The slash pine forests, including hydric pine flatwoods, which are rare outside of SW Florida, have been identified as an imperiled ecosystem due to a loss of 88 percent from 1900 to 1989 (Source: Noss and Peters, 1995). Hydric pine flatwoods support 31 mammal, 139 bird, 40 reptile, 17 amphibian and 22 fish species, including 100 federally listed species, 274 migratory bird species occur in SW Florida; 175 of these are found in aquatic habitats. Of the 992 plants species found in hydric pine flatwoods, 98 species are state listed (Source: Florida Game and Fresh Water Fish Commission [Wood, 1994]).

As a FWS spokesperson stated:

“The panther represents what is left of the eco-system, a symbol of everything else that is going to disappear unless habitat is set aside.”

2. The decision of the USFWS to stop issuing jeopardy biological opinions (JBOs) for any of the myriad of proposed developments destroying the

tattered shreds of endangered species habitat in this region. The question your committee should answer is – what good is the ESA if the principal federal enforcement agency is scared to death to use it? Even the U.S. Army Corps of Engineers (USACE) Jacksonville District Chief Regulatory Office, Dr. John Hall (RET.), claimed in an e-mail that “the political pressure on FWS is evident to anyone who reads the records of their BO’s on the panther.” “In my opinion, they play politics themselves.”

Some examples include –

-A FWS field biologist was told to re-write the biological opinion for Winding Cypress [permit proposal], which is located in the middle of a swamp at the headwaters of Rookery Bay National Estuarine Reserve. He was told to write the opinion with a “positive spin,” and when he refused, it was re-written for him. The developer- a major political donor - complained to his superiors. “I was told to back off under threat of insubordination.” According to the biologist, “the compensation proposed was less than the formula used at that time projected.” In a personal e-mail, the biologist commented “A lobbyist for Van Ness Feldman, and a good friend of Jay’s (former FWS Vero Beach Ecological Services director)” intervened during the deliberations on panther habitat compensation for Winding Cypress. The FWS scientist was reassigned to another state.

- The FWS issued 58 recommendations of denial within the 1998-2001 time frame and 15 incidental taking comments. Since 2000, the FWS has issued 20 biological opinions that have permitted major destruction of panther habitat. About 16,000 acres were destroyed or degraded in 11 of these projects.

-Facing pressure from developers and Collier County leaders, FWS shrank the panther focus area last December by nearly 900,000 acres, an area roughly the size of Rhode Island. Land is vitally important for a species that requires up to 200 square miles of territory per creature. Yet, the FWS has never issued a “jeopardy biological opinion” that would halt a development in panther habitat. There have been 40 Florida panther deaths since 2000 and 11 died last year on Florida roads. This represents arguably more than 10 percent of the panther population.” (Source: *Naples Daily News*).

- The FWS is now allowing developers to partially write their own

biological opinions to - speed things up – on whether their project would doom the Florida panther to extinction (*St. Petersburg Times*).

- Naples Reserve, adjacent to the east boundary of Winding Cypress is the single project that FWS elevated to the Corps for permit denial. The Service request for denial went all the way to DC but was rejected by the Corps and the permit was issued.

-The FWS is not the lone recipient of political interference on the Winding Cypress project. The CCA was informed by a reliable source that Mr. Bob Szabo of the lobbying firm, Van Ness Feldman was brought in specifically to talk to Mr. Jimmy Palmer, regional administrator, USEPA, Atlanta, regarding the project. An e-mail, from Palmer to the West Palm Beach office, dated 9/17/2002, states: “Cool your jets and focus on the status of the matter. Bob Szabo (Van Ness Feldman – Wash. D.C.) is a friend of mine who is wired tightly into some VERY high places. He (and others) are (sic) voicing concerns about how Bruce [Boler] conducts his business.” (Note: Boler was an USEPA biologist who claimed it was permitted even though it did not meet water quality criteria at the time). Boler moved to another federal agency. He claims the developers were the ones most anxious to get rid of him because he objected to the development funded report that said wetlands create pollution.

3. A plethora of biological, hydrological or other technical objections to development projects having been reversed, suppressed, diluted or otherwise obviated for reasons completely apart from technical merits of those objections.

RECOMMENDATIONS: The following is a list of recommendations compiled by regional, state and federal regulatory sources to address some of the serious deterioration of natural resource protections in Florida:

1. Congress should request a report by an independent source, e.g., the National Academies of Science, to determine how the Nation’s only national estuary program established for preservation, the Charlotte Harbor National Estuary Program (NEP) area, had its resources so thoroughly degraded by federal actions in the ten years since it was established that it now needs a complete restoration program. EPA establishes NEPs yet during the worst of the destruction the EPA leadership remained silent.

The EPA Office of Inspector General (IG) should investigate corruption at the top and how science-based information is not reported under the current leadership structure. The IG should report on the degradation that occurred since the designation of the NEP and what management reforms at the federal level are needed to ensure a restoration plan can be initiated and successfully carried out.

2. The federal government should investigate questionable land deals for Everglades Restoration, e.g. Palm Beach Aggregates and the South Florida Water District (Source: *Palm Beach Post*).

3. Congress must authorize the formation of an independent oversight committee to review USACE projects (McCain/Feingold legislation).

4. Congress should form an independent authority to carry out the 404 wetlands program and, in so doing reduce the USACE role to that of a commenting agency. At the heart of the problem is a conflict of culture: the agency's role to find engineering solutions – weirs, canals, ditches, reservoirs – to accommodate the needs and impacts of growth while purporting to protect naturally functioning wetlands.

5. Congress must authorize the EPA to withdraw Florida's authority to issue NPDES discharge permits under Clean Water Act (CWA). In a press release dated August, 2003, Senator Joseph Lieberman states: "The Florida Department of Environmental Protection/South Florida Water Management Department permit and certification programs are not meeting CWA standards."

6. Congress must amend the Clean Water Act to add clarity and certainty. At the same time, Congress must develop independent oversight to remove political and special interest influence.

7. Congress must require that there is better, more streamlined communication between the agencies, whether they are federal or state. There is a long, unnecessary history of one agency not knowing (and not caring) what the other agency is doing. The result is that developers are able to play one agency against the other to the detriment of the environment.

8. Fundamentally, the CWA will only be effective if the regulatory agencies

decide to embark upon meaningful enforcement of the ESA and CWA. *This means that both civic and criminal enforcement must be allowed.*