

FINAL

**MINUTES OF THE MEETING
of the
HARRIS CHAIN OF LAKES RESTORATION COUNCIL**

September 5, 2014

The regular meeting of the Harris Chain of Lakes Restoration Council (Council) was held at 9:05 a.m. on September 5, 2014 at the Lake County Board of County Commissioner Chambers, 315 West Main Street, Tavares, Florida.

Members Present

Skip Goerner, Chairman
Robert (Bob) Johnson, Vice Chairman
Don Nicholson
Sid Grow
Keith Truenow, Secretary

Members Absent

Hugh (Dave) Davis II
Dr. Ed Schlein
Lloyd Woosley

1. CALL TO ORDER

Chairman Goerner called the meeting to order at 9:05 a.m.

2. INVOCATION AND PLEDGE OF ALLEGIANCE

Councilman Nicholson gave the invocation. The Pledge of Allegiance followed.

3. COUNCIL ROLL CALL; REMINDER FOR OTHERS TO SIGN IN

Chairman Goerner called the roll. Council members Woosley, Davis and Schlein were absent.

4. APPROVAL OF MINUTES

The Council approved with amendments the August 1, 2014 meeting minutes. Secretary Truenow, Kraig McLane, St. Johns River Water Management District (SJRWMD) and Mike Perry, Lake County Water Authority agree not to amend the final minutes of the Technical Advisory Group to include the water-lettuce topic since it is discussed in the Council meeting minutes.

5. PUBLIC COMMENTS

Chairman Goerner recognized Richard Royal, former Council member, and thanked him for attending.

Larry Beasley, retired A. Duda and Sons, Inc reported no known evidence of toxaphene poisoning at Zellwood and that the United States Fish and Wildlife Service (USFWS) would not allow him or the farmers to sample dead birds from the incident at Zellwood. He encouraged the Council and SJRWMD to flood areas of Duda to a depth of approximately thirty inches. He commended farmers on the appropriate use of pesticides.

Linda Bystrak stated concern for the synergistic effects of pesticides.

6. PRESENTATIONS / ACTIONS

A. Vice Chairman Johnson prefaced the scheduled presentation by reiterating facts regarding the bird kill incident in the Zellwood muck area in 1998 and 1999. He explained that growers and the Audubon Society collected dead birds for analysis, but the USFWS confiscated the dead birds. He reported that farmers have flooded the fields at Zellwood for many years with no bird kill incidents and questions some of the conclusions reached by the USFWS. He believes that the rules and regulations imposed by the USFWS due to the bird kill created problems and unnecessary expense in the absence of a definitive scientific conclusion. Vice Chairman Johnson introduced Carlton Layne, retired United States Environmental Protection Agency (EPA) Region IV Chief Investigator for Pesticides and National EPA expert for Pesticides with 30 years experience. Mr. Layne investigated the bird kill incident at Zellwood and currently is the Executive Director of the Aquatic Ecosystem Restoration Foundation.

Mr. Layne gave a presentation on the anatomy of a pesticide investigation. He stated that the regulation of pesticides is due to possible adverse effects on human health, the environment, and the consumer protection aspect of the EPA whose mission is to protect human health and the environment. The United States Supreme Court ruled that pesticides are a regulated industry. He discussed the Insecticide Control Act of 1910, the 1947 Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Federal Environmental Pesticide Control Act of 1972, the 1978 amendments to FIFRA, the Food Quality Protection Act of 1996, and Section 12(a)(2)(G) of the FIFRA. Section 12(a) (2) (G) of the FIFRA states that it shall be unlawful for any person to use any registered pesticide in a manner that is inconsistent with its labeling. EPA's enforcement options are criminal and civil/administrative. The evidence determines the enforcement option used in an investigation. Criminal prosecution requires the proof to be beyond a reasonable doubt. Civil and administrative enforcement actions require a preponderance of the evidence. The amount of a civil penalty imposed by EPA is \$7,500 per offense and \$10,000 per offense by the Florida Department of Agriculture and Consumer Services. The penalty for a criminal offense is one year in jail per count and or a \$25,000 - 50,000 fine. The statute of limitations for violation of a pesticide law is five years. The elements of proof include identification of a person, individual, company or corporation, an EPA registered pesticide, and use of an EPA registered pesticide that is contrary to the accepted directions for use.

Mr. Layne explained that the Apopka investigation involved farmland that was in use since the late 1940s, background levels of organochlorines – particularly toxaphene, hundreds of dead pelicans and other piscivores, no fish kill, and last known use of toxaphene in the mid-1980s. The mission was not to determine what was killing the pelicans. Mr. Layne's mission was to explore possible violations. He discussed pesticide crimes involving misuse, violation of a cancellation order, and illegal disposal. The basic elements of proof for pesticide misuse were not present because more than five years had lapsed (statute of limitation) and toxaphene was no longer a registered pesticide. He also mentioned possible violations of the Clean Water Act, and the Resource Conservation and Recovery Act. The investigation included interviews, examination of toxicity data, review of sampling results that occurred prior to the watering event, coordination with the Oversight Committee (EPA), identification of unknowns and the collection of evidence. Limited access to the area and the inability to sample dead birds were impediments. The investigation found no violation of federal pesticide law, the Clean Water Act, or the RCRA and the incident was inconsistent with toxaphene-related bird kills. Mr. Layne and the EPA Oversight Committee concluded that the bird deaths were likely due to disease. Mr. Layne reported that it was a bad

situation in that science did not rule the day. The USFWS requested a thorough review of the investigation by EPA's Criminal Investigation Division; they found that the evidence supported the conclusion and the action (no action was taken). Chairman Goerner questioned a study that linked the deaths of the pelicans to New Castle disease. Mr. Layne recalled inconsistent findings regarding toxaphene poisoning and that fish are more sensitive to toxaphene than pelicans. If he could change anything in the investigation, Mr. Layne would change the attitude of the USFWS and their lack of cooperation. In regards to flooding or restoration, Vice Chairman Johnson stated concern that persons will blame any other bird deaths on pesticides when it is very probable that the cause is New Castle disease or botulism. Mr. Layne recommended sampling prior to future flooding and review of USFWS's migratory bird act.

Mike Coveney, Environmental Scientist, SJRWMD was asked by Chairman Goerner if he wanted to make any remarks concerning the bird mortality and subsequent work. Mr. Coveney reported similar frustration due to the inability to examine or sample dead birds from the incident. SJRWMD decided to focus on ecologically safe and successful restoration of the farmland rather than a forensic study of the bird mortality. He reported that the southern portion of Duda has been shallowly flooded since 2004 and almost all of the North Shore lands are currently flooded. SJRWMD received permission from the USFWS because they presented a scientifically sound gradual progress of reflooding. SJRWMD gridded the entire farm area (i.e., Duda and the former Zellwood water control district) and did a random stratified sampling of that grid network. SJRWMD analyzed approximately 1,200 samples for organo-chlorine pesticides and other potential contaminants. This provided a picture of the spatial distribution of contaminants on the site. Staff built five mesocosms. The mesocosms were flooded at different levels and for seven years staff monitored pesticide residues in those fish. From those data, they developed biota sediment accumulation factors. That proved to be a very successful model to predict the bioaccumulation of pesticide residues by fish from soils on various parts of the North Shore Restoration Area (NSRA). SJRWMD vetted the process through an expert committee of national experts. The Natural Resources Conservation Service (NRCS) were a partner in funding this work. NRCS and the SJRWMD presented the model and soil data results to the USFWS; they granted SJRWMD permission to flood Duda in 2004.

Mr. Coveney explained that the data showed that if parts of the fields in the former Zellwood district were flooded without some sort of mitigation, the concentrations in fish would be hazardous to fish eating birds. As a result, SJRWMD contracted for deep plowing of approximately 4,000 acres in the highly contaminated areas and sampled afterwards. SJRWMD did not pay the contractor unless there was a sixty percent reduction in DDE (contaminant of greatest concern at that point). SJRWMD gradually flooded the properties and, afterwards, monitored the fish for at least one year. In the mesocosms, they found that bioaccumulation of the pesticides is two to five times greater in the deeper systems compared to the shallow systems; this is, presumably, due to the vegetative community rather than water depth. Given this, the USFWS allowed shallow reflooding. The Duda property has been shallowly reflooded at a depth of approximately two feet. Vice Chairman Johnson stated that during his two years on the Council, SJRWMD's staff reported no sampling following the deep plowing. Mr. Coveney apologized for the misinformation and verified long term sampling that began after the bird kill incident.

- B.** William T. Haller, University of Florida, Institute of Food and Agricultural Sciences (UF/IFAS) gave a presentation on water lettuce (*Pistia stratiotes* L.). He stated that water-lettuce is all over the world and its origin is unknown. Mr. Haller explained that a memo, received by the Council on

(5/15/14), from the Florida Fish and Wildlife Conservation Commission (FWC) precipitated his attendance; the memo contains numerous errors. He explained that making water-lettuce a native plant is not going to stop its control. Water-lettuce is not controlled because it is an exotic species. There is no evidence of water-lettuce resistance to any herbicides and is not an environmentally friendly means of hydrilla control. Water-lettuce is not a favorite food of the manatee; they prefer a diversity of aquatic and even ocean vegetation. Water-lettuce does not act as a sponge to absorb nutrients different from water hyacinths or essentially any other plants. Cattle do not prefer water lettuce; they tried to separate water lettuce from grain. Rats, starved for 48 hrs, did not eat water lettuce; both cases (cattle and rats) are likely due to odor. Pigs did consume water lettuce. He stated that removal of *Pistia stratiotes* L. from the exotic species list would not reduce the control efforts in the State of Florida. The reason for control is due to its prolific growth and negative impacts on the aquatic environment. He recommends continuation of FWC's program for invasive plant control in Florida at the current pace.

- C. Steve Fitzgibbons, SJRWMD presented the 2014 Annual Report draft review. Chairman Goerner stated that the executive summary has to take care of most of the annual report and understands that members of the legislature do not read it. He agrees to a change in the report format - a notation on the cover page regarding the executive summary, adding a placeholder for recommended changes in Council enabling language to the legislation, and a new section for fisheries or public access. Vice Chairman Johnson stated a recent question by Senator Hayes about the Harris Bayou Project is and suggested additional information on this in the annual report. Chairman Goerner wants more information on water level management. He asked Rolly Fulton, SJRWMD for estimates of evapotranspiration losses from the NSRA and the effect of different plant composition on evapotranspiration.

7. COUNCIL & AGENCY QUESTIONS & ANSWERS

Chairman Goerner introduced John Stump a Professional Geologist with valuable experience in hydrogeology. He explained that Mr. Stump applied for the vacant Council position, previously held by Rick Powers, but the legislation requires an engineering degree. Chairman Goerner stated that two of the current Council members are engineers and that the Chairman of the legislative delegation does not believe that he has the ability to appoint Mr. Stump to fill the respective vacancy or to serve as an Ex officio member. Chairman Goerner recalled that Bob Kaiser, Engineer and prior Council member, initially served as an ex-officio member. Chairman Goerner wants to add more general terms to the legislation related to the vacancy requirements. He wants to change the legislation such that a member would be replaced if he or she were not going to perform the duties that were volunteered for. Mr. Stump approached the Council, discussed his experience, and expressed his desire to volunteer. Council member Nicholson made a motion to accept Mr. Stump as an ex- officio (editorial – non-voting) board member. Council member seconded the motion and the motion passed with a unanimous vote.

Chairman Goerner referenced the United States Army Corps of Engineers (USACE) manual and concern for inconsistencies in it and information provided by the SJRWMD. Kraig McLane agreed to send Mr. Stump and Chairman Grow an electronic copy of the USACE's manual. Vice Chairman Johnson asked for the reason for flooding the NSRA. Mr. Coveney, SJRWMD explained that impounding water, rather than continually pumping it off, reduces nutrient loading to the lake and has an increase in aquatic habitat as an additional benefit. Mr. Coveney agreed to provide additional information on the pesticide assessments and soil inversion done on the NSRA to the Council, Mr. Beasley and Mr. Stump.

Chris Ferraro, Florida Department of Environmental Protection (DEP) reported that DEP has not received an application for the Goose Prairie Peat Mine and that EPA has not taken action on the federal numeric nutrient criteria. She stated that DEP held a public workshop on estuary criteria, the beginning of public workshops on water quality credit training regarding total maximum daily loads (TMDL), and that phase II of DEP's basin action management plan is focused on nutrients and additional projects for Trout Lake, Lake Carlton, Lake Harris, Lake Yale, and Palatlahaha River.

8. COUNCIL MEMBER COMMENTS

A. Comments

B. Discussion of Next Scheduled Meeting:

Presentations from Nathalie Visscher, FWC on vegetation, and Steve Fitzgibbons, SJRWMD on the annual report are scheduled for the next meeting on October 3, 2014. Chairman Goerner postponed a presentation by DEP on an Upper Ocklawaha TMDL and Basin Action Management Plan.

9. ADJOURNMENT

The meeting adjourned at 12:26 p.m.