



Celebrating 40 years of island conservation

3333 Sanibel Captiva Road, Sanibel Island Florida 33957
Telephone 239.472.2329

December 10, 2008

Chairman Eric Buermann
Governing Board
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406

Re: US Sugar Purchase & Sale Contract

Dear Chairman Buermann:

This letter is written on behalf of the Sanibel Captiva Conservation Foundation, SCCF to express our concerns with the US Sugar (USS) Purchase and Sale contract you are reviewing and will discuss on December 16, 2008.

There has never been and likely will not be anytime soon an opportunity as significant as this for addressing the water quantity, quality, timing and distribution in south Florida. The solutions to the problems we face in the Caloosahatchee, Florida Bay and St Lucie estuaries as well as those of Lake Okeechobee and Everglades National Park are dependent upon being able to provide flow south out of Lake Okeechobee for storage and treatment. We agree that the Everglades and estuaries quite simply cannot be restored without the opportunity to reintroduce flow south out of Lake Okeechobee.

This opportunity must be weighed against the very complex contract that has been negotiated with US Sugar Corporation which the board has had less than 30 days to evaluate. The contract calls for the inspection period to continue through January 15, 2009 so we encourage the Board to take that time to address very critical issues to assure that any agreement is protective of the public's financial and public health interests and does not create an unfair competitive advantage for US Sugar Corporation by creating a taxpayer subsidized sugar company.

We are concerned with the conditions in the contract regarding contamination clean up, the lease back rental rate and free seventh year, the opportunity to take delivery of land on a more expedited schedule and stricter requirements for US Sugar regarding bmps, fertilization and water use/drainage to reduce adding to contamination.

Contamination Cleanup

The environmental assessment report contracted by the SFWMD indicates that approximately 27.5% of the contaminated land is classified as Category 3 posing a Significant Risk and approximately 20% is considered a Category 2 Moderate Risk. Contaminants found in the lands to be purchased include some of the most notorious known carcinogens and environmental toxins that persist and do not degrade in the environment. The findings include: arsenic, copper, selenium, DDE, DDD, DDT, dieldrin, and toxaphene, chlorinated pesticides and petroleum. Arsenic, a metal very toxic to humans was detected at concentrations exceeding the commercial criteria across 6,000 acres and exceeded the standard in soil samples at 47 locations with impacts to groundwater detected at 7 locations.

The contract makes a distinction between two cleanup standards; a commercial and ecological standard. The **commercial standard** is a DEP standard designed to be protective of human health as defined in Chapter 62.777 of the Florida Administrative Code. The more sensitive **ecological standards** are based on how the land will be used (i.e. as a stormwater treatment area -STA or reservoir) and are designed to be protective of the species that would be expected to use the area. The standards used are compiled in the Sediment Quality Assessment Guidelines (SQAG) that have been accepted and used by DEP the past 10 years to establish threshold and probable affects of contaminants on benthic invertebrates. For most contaminants the ecological standard is an order of magnitude or two more restrictive than the commercial standard. Arsenic is the only exception where the commercial standard is more stringent.

The contract requires USS to pay 130% of the estimated cost to clean up the contaminated land only to the commercial standards while the District would perform the clean up to a higher/cleaner level, the ecological standard. This places the majority of the financial burden on the taxpayers to clean up land contaminated by the agricultural operations. These are very serious health threats to human as well as wild populations and the contract should not shift the financial or liability burden to the taxpayers. Instead USS should be required to pay the cost to remediate these lands to the ecological standard.

Lease Provisions

The lease back provision of the contract has raised a significant concern that we share with the agricultural community. The contract allows USS to lease back land from the state at the rate of \$50 per acre annually with the seventh year free. The state's appraiser valued these leases at \$220 per acre annually which the agricultural community stated in public comment is more consistent with local market rates. We do not support the free seventh year or the significant discrepancy in the lease values. Even as a net, net value this would create unfair competition in the form of a state and taxpayers subsidy of one sugar company over the competition. Recognizing the value of the opportunity for this land to provide restoration to the Everglades and estuaries the concept of having limited access to

this land for seven years is vexing. With this purchase the District needs the flexibility to make emergency releases and have alternatives to use this land when the need arises.

BMP's

Missing from this contract is adequate regulation of the agricultural operations that will use the land. BMP's, restrictions on use of chemical herbicides, pesticides and fertilizers and the management of water use and drainage are minimum requirements that need to be addressed to assure that continued degradation does not continue.

Questions

Critical questions need to be answered prior to signing any contract.

- How much land is needed for restoration?
- Why is USS allowed to clean up contamination only to commercial standards while the District would need to clean up the land to much higher ecological standards?
- Why does the contract price the lease to USS at \$50. per acre per year when the appraisal indicated the market value is \$220 per acre?
- Why are stricter standards with BMPs, chemical product restrictions, water use and drainage not addressed in the contract?
- What is the viability of trading land with Florida Crystals to acquire a connection from USS land at the lake to flow water south to Holyland and Roetenberger?

SCCF recognizes and has worked in support of the acquisition of land south of Lake Okeechobee to provide a third outlet for water from Lake Okeechobee to relieve the estuaries and restore the Everglades. This contract is a beginning but is not sufficiently protective of the fiscal and ecological resources of the taxpayers of South Florida. We urge you to take additional time to negotiate a contract that does not subsidize one sugar company and is protective of the public's interests.

Thank you for your service and dedication.

Sincerely,



Rae Ann Wessel
Natural Resource Policy Director