

September 1998

## Jurgens, Gray - mediation - 1998-09-16

Audubon Lake Okeechobee Watershed Campaign Office

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**Kissimmee Prairie Sanctuary  
Memorandum**

**2 Page FAX**

To: J. A. Jurgens

From: Paul N. Gray

9-16-98

Subject: Mediation

I am concerned that not enough groundwork is being laid in preparation for the mediation on October 1. Specifically, I talked with Lefty Durando's engineer, Brian McMahon, yesterday to see if he and the SFWMD had discussed alternative drainage plans to the Carlton Flowway. Brian said he has done no work on alternative plans (he said all planning actually was on "hold"), and that the SFWMD has not contacted him about any alternative plans. When I talked with the Federal attorneys, I emphasized that Audubon's culverts are designed to handle a 3 square mile area, and Lefty's plans cover 8.5 square miles of drainage. Without a good plan to fix Lefty's problem, we cannot fix ours. Those attorneys talked with the SFWMD yesterday and perhaps they know if there is a plan for Lefty's drainage.

I also have had no feedback from the SFWMD regarding the 101 Ranch ERP petition. Until we know what the SFWMD intends to do to address our main concerns, i.e., will Audubon be guaranteed adequate drainage as part of the 101 ERP; what SFWMD intends to do about previous unpermitted work on 101 Ranch; how SFWMD will address our claim of inaccurate wetland delineations; and, if SFWMD will modify the mitigation assignment to something more appropriate. Some of these issues appear subject to mediation, but others, such as the unpermitted works that must be restored or mitigated, seem out of the realm of negotiation (enforcement action).

The Federal and State actions are related, yet separate issues, and I am unsure how they relate in mediation. Brian McMahon said he could make some calculations about approximate culverts sizes and locations to solve Lefty's drainage needs, but would need a few days notice to prepare them. Right now he has no guidance on possible configurations to base calculations on. It seems to me that we cannot make much progress if we do not know what we are talking about. For two years we attempted mediation with no progress at all (nothing happened until we went to court), partly because we did not have specific plans to discuss.

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J. A. Jurgens

I think the key to addressing these concerns is the SFWMD. Before the mediation begins, we must know exactly what their intentions are to deal with Lefty's drainage needs. The downstream landowners must know exactly what the SFWMD wants to do as well, so they can decide if it is acceptable to them. Audubon must know exactly what the SFWMD is doing in response to all 4 issues raised about the 101 Ranch ERP (above).

As you can tell, I am very nervous that the mediation process will not help. We do not have a specific plan to mediate about. The SFWMD has not shown consistent intentions or actions for the past two years (almost three years now). 101 Ranch has not bargained in good faith in the past.

Can we get some pre-mediation guidance from the SFWMD on these issues? I would be glad to sit down with them, any where, any time, to see where they are. Please let me know.