

# Making it **CLEAR**

The mission of FOLA is the restoration of Lake Apopka and surrounding wetlands

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November 2003

## **A Summary Of The Memorandum of Understanding Between The St. Johns River Water Management District And The United States Government And The FOLA Position**

The Memorandum of Understanding (MOU) is in response to the deaths of numerous birds on the North Shore of Lake Apopka in the fall of 1998 through the spring of 1999 (Lake Apopka Avian Mortality Incident).

The United States (Dept. of Justice, Dept. of Interior, United States Fish and Wildlife Service) has taken the position that these deaths constituted violations of the Migratory Bird Treaty Act (MBTA), the Endangered Species Act (ESA) and/or the Bald and Golden Eagle Protection Act (BGEPA), for which the SJRWMD is criminally responsible. In this agreement, the SJRWMD (District) disputes any criminal liability. It is also the position of the U.S. that the District is liable under the Comprehensive Environmental Responses Compensation and Liability Act (CERCLA) for injury to, destruction of or loss of natural resources managed, controlled or appertaining to the U.S. The District disputes any civil liability.

As a means of mitigating charges under the Endangered Species Act, the U.S. has listed 38 major projects managed by the District, totaling 162,938 acres with requirements placed on all projects. Essentially, it requires the District to confer with the federal government on any project that may have endangered species to determine if any permit or consultation is required. It will also require the District to conduct a biological analysis to be reviewed by USFWS. While FOLA has no objections to the general actions required of the District there is concern about

long-term delays disrupting actual restoration and efficient implementation of future projects based on the time frame required to reach this point in the process of investigation. It should be noted, that these and other requirements imposed by the MOU will greatly expand the staff workloads of all agencies involved as well as an expansion of the required budgets and these should be recognized and addressed immediately. FOLA is concerned that the additional funding required to meet the requirements of the MOU will be taken from funds designated for the restoration process.

### .....Presentation Boards.....

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FOLA would like to thank Mike Malloy for all his creative efforts and hard work in creating our new presentation boards. The boards are very impressive and tell the story of Lake Apopka -- the loss of a great natural resource and the struggle to restore it to a healthy lake.

Two of the boards will be displayed at Oakland Nature Preserve as a part of their ongoing mission to educate the public about Lake Apopka. A third board will be used for presentations at schools and public events as FOLA continues to rally for the restoration of the lake.

It is members like Malloy who really can make a difference. The boards will be read by hundreds of people who visit the area and appreciated by us all.

The District has also agreed to acquire a 8,465-acre marsh in St. Johns County, a cooperative wood stork management plan between the water district and USFWS, an avian protection plan to help migratory bird species, and to host a conference on bird mortality issues. However, FOLA finds the wording of statements in the MOU to be excessively punitive and infer lack of due diligence and competence which are inaccurate and unnecessary.

The real story here is the inefficiency of big government. The toxic wastes spread on these farms for many years were legal and overseen by federal agencies who regulated the pesticide applications. After the bird deaths there was widespread blame and prosecution among agencies and it took five years to reach this stage of agreement that will

allow restoration to continue. The final Memorandum of Agreement is not only unfairly punitive to SJRWMD but has cost the taxpayers a lot of money, which could have been better spent on research. The problems are greatly over-simplified by critics who say the farms should not have been acquired but regulated -- that was tried for over forty years without success. In short FOLA is appalled by the terms of the agreement in the Memorandum of Understanding, which laid blame on the District and absolved all the federal agencies involved.

The scale and the complexity of the restoration process on Lake Apopka are unprecedented. The staff of SJRWMD has been involved in cutting edge

research and some of the results have demonstrated the devastating and far-reaching impact of agriculture on environmentally sensitive lands. These results will be used on a global scale as agricultural areas are restored. The staff at SJRWMD is to be commended for their courage and dedication to this goal. FOLA felt the devastating effects of the avian mortality and believed in the need to seek answers. Those answers should be based in science. Why did it happen and how can we prevent it from happening again? Not just on the shores of Lake Apopka but anywhere there is potential damage from pesticides. We believe that is a critical reason to keep our focus on the whole process – the restoration of Lake Apopka.

In the interest of progress with restoration plans and the realization that to undertake long-term litigation will be costly and wasteful, FOLA agreed that all parties should agree immediately to proceed. but still wishes to express concerns about the terms and charges included in the MOU. The “Agreement” passed unanimously when it came before the Board of Governors of SJRWMD at their regular meeting on October 7. Complete text of the MOU is available on the SJRWMD website at [www.sjrwmd.com](http://www.sjrwmd.com).

## **Public Meeting November 13, 2003 at 7:00 PM Winter Garden—Tanner Hall**

### **Phosphorus Limitation Rule Presents Development Problems**

A necessary rule that prohibits future discharges of phosphorus to the lake has caused difficulty for some developers. The rule states that post-development discharges cannot exceed pre-development concentrations. Treating stormwater to prevent this sometimes requires large wet-retention areas or more creative ways to treat discharges. One way is to install underdrains below retention areas to help get rid of the stormwater into the aquifer rather than discharge into the lake. The problem, however, is that these underdrains often become clogged after a few years and cleaning them out may be expensive. This situation has caused Winter Garden to impose a moratorium on the use of underdrains for at least 180 days. The intent of the rule was not to inhibit development but to prevent on-going pollution of the lake by substituting urban stormwater discharges for the agricultural ones that have been eliminated.