

Dissent on the alleged “Findings and Conclusions” of the Ceitus EMA Stakeholder Committee

I am Phillip G. Buchanan, one of 19 stakeholders on the EMA, and I dissent from the environmental report alleged to constitute the “Findings and Conclusions” of the Stakeholder Committee as presented at the final meeting on May 17, 2010. Since the majority (11 out of 19 thus far) of the other stakeholders also do not accept either the “Findings and Conclusions” or the recommendations as set forth in this report, it does not in fact represent the work of the Committee. It also does not constitute a “Report” with “Net Environmental Benefits” as required by EMA procedures. I vote to instead reconstruct the Ceitus Barrier with a lock at the new specified location as required by the Consent Order, an action that would in fact be of considerable environmental benefit to all of Southwest Florida.

I request that this dissent as well as any other dissents (or concurrences, should they occur) be published in the preface to the “Finding and Conclusions” and any other documents held out as produced or alleged to have been adopted by the Stakeholder Group.

The purpose of the EMA is to evaluate environmental conditions in the Cape Coral area and recommend whether the recently removed Ceitus Boat Lift/Barrier should be reconstructed or whether alternative environmental actions would be of greater environmental benefit. At the very beginning of the EMA process some two years ago, the Cape Coral Government publically announced that they had the “purest water in the State of Florida” and that neither the barrier nor other environmental improvement measures are required. The proffered version of the “Findings and Conclusions” (written by Cape Coral contractors) is drawn to support those erroneous claims.

Southwest Florida, including Cape Coral, has serious environmental problems and they are mainly water related, but these problems are not documented in these “Findings and Conclusions.” This report instead concludes that the quality of water in Cape Coral is good, and offers only Cape Coral Government sampling results to support that conclusion. Other agencies, government and private, offer a wide variety of data and studies supporting the conclusion that much of the waters in Southwest Florida including Cape Coral are impaired due to pollution or disruption in the seasonal quantity and timing of water distribution--none of that appears in this report.

The Florida Department of Environmental Protection has at one time or another declared many of the major water bodies in Southwest Florida to be impaired for either nitrogen, phosphorus, fecal coliform, mercury, or other pollutants (or combinations of same), but that does not appear in this report. Those declarations were based on water sampling and studies, but they also do not appear in this report. The FDEP recently declared the three major creeks in North Cape Coral to be impaired—this report references that finding but suggests it to be mistaken.

I personally documented with numerous photographs a 2008 saltwater marine die-off at the mouth of the Cape North Spreader Canal caused by excess fresh water. Those photographs do not appear in the report. My presentation to the EMA, which included samples of the dead marine life, does not appear

in the report. The report does make a one sentence reference to the die-off, but suggests it to be an unexplained anomaly. An FDEP scientist conducted water monitoring at the time of the die-off and reported to the EMA that he had found the readings to be near zero for salinity and dissolved oxygen, but that finding also does not appear in the report.

I and others presented to the Stakeholder Group numerous photographs of a randomly chosen dozen or so examples of extreme instances of horrific foul smelling algae blooms in Cape Coral canals caused by excess nutrients. Those photographs, while shocking, should be on the cover of the report-- but they are not in the report at all. The excess nutrients derive mainly from fertilizer and pet droppings run-off from residential lots as well as leaching from septic systems, but none of that appears in the report. Southwest Florida has also been experiencing a sharply increased frequency of hazardous algae blooms derived from excess nutrients in our rivers, bays, and the Gulf, but you won't read about that in this report.

The Stakeholder Group and its committees totaled dozens of meetings, and at every meeting stakeholders, noted environmentalists, and citizens reported on the decline of our local environment. They particularly noted the loss of water clarity and adverse impacts on saltwater marine life (sea grass, oysters, fish, and birds, etc.), but none of that appears in this report.

Cape Coral has some 17,912 (seventeen thousand, nine hundred and twelve) individual on-site septic systems north of Pine Island Road, a fact not mentioned in the report. (That may be a record for any large city in the United States.) A very large percentage of the septic systems are lined up and down canals that eventually dump into the Matlacha Pass Aquatic Preserve. Cape Coral is geographically flat, and each and every septic system has a drain field that is necessarily located only a few feet (often two feet) above the surficial aquifer. The aquifer is directly connected to and generally rises and falls with the level of water in the Cape canals. How many of these septic systems work as designed is unknown because neither the Cape nor other area jurisdictions have an inspection program. However, even if they all work perfectly as designed, the cumulative affect of the leaching of nitrogen, phosphorus, and fecal chloroform from 17,912 drain fields to the area waters is disastrous. An analysis of this process and the possible remedies should occupy a large portion of the report—instead; none of this is even mentioned.

Much of Cape Coral was created by illegal dredge and fill in the 1960's-70's, and in the northwest area, much of the dredging and filling was conducted in the state-owned mangrove fringe. All of the mangroves in what is now the north Cape were destroyed, and past and current Cape building codes prevent their natural restoration by requiring the construction of vertical concrete bulkheads along all of the canals. None of that appears in the report.

Much of the report is devoted to computer-produced hydrological charts (arranged by the Cape contractor) which purport to indicate that any barrier (such as the Ceitus Barrier) between the man-made residential canal lots and the open waters of Matlacha Pass would be a bad thing. The computer producing the charts, the programs employed by the computer, and the data fed into the computer, are

all unknown to me and the other stakeholders. We have no way to examine or evaluate the reliability of the charts or their conclusions--they are not a finding or conclusion by me or the other stakeholders.

Since the "Findings and Conclusions" largely ignore area environmental problems, the recommendations that flow from those finding and conclusions are of course flawed. Twelve of the 20 stakeholders on the EMA (including me) qualified for their seat on the EMA by consent order settlement of a legal action initiated by them, and eleven of them joined to make a series of six major (and numerous minor) recommendations to the EMA that, if implemented, would constitute a suitable alternative to replacement of the Ceitus Boat Lift/Barrier. Of the six major recommendations, the Cape agreed to implement only one—a fertilizer ordnance, which they openly admit they had planned to do even without the EMA. The studies on storm water treatment areas (storage, filtration, and timed release) and septic system inspections resulted only in Cape agreement for plans to conduct more studies. The Cape steadfastly refused to even consider recommendations for restoration of mangroves in rip rap in new saltwater canal-front construction (ordnances long-standing in other jurisdictions in the area), and neither the recommendations nor the Cape response appears in the report.

The report also does not include the environment stakeholders' recommendation for a "reasonable and timely schedule" for a phased program to replace septic systems with central sewer north of Pine Island Road. The report instead includes a Cape counter-recommendation that the phrased program be delayed for the time required for the population of each section of the Cape to reach 35 to 45% septic system pre-platted density-- milestones that are generally not expected to be reached for decades. The Cape counter-recommendation was rejected by nearly all the Stakeholders, but is the only proposal included in the report.

The Cape has thus far not only refused to consider the replacement of the Ceitus Barrier, but they also reject any responsibility for the direct damages resulting from removal of the Barrier. Proposals by stakeholders that the Cape accept responsibility for removal of the siltation entering Matlacha from the now open mouth of the Spreader were rejected by the Cape, as was the recommendation for restoration of the smothered sea grasses. Even though those recommendations were accepted by every stakeholder except the Cape, they do not appear in the "Findings and Conclusions."

Of the six principle recommendations made by the eleven environmental stakeholders, only the fertilizer ordnance appears in its proposed form. The others were not even documented in the alleged "Finding and Conclusions."

According to the terms of the Settlement Agreement, Amended Consent Order, and EMA procedures, inability of the Stakeholders to agree on alternative measures requires that the Ceitus Barrier (with a lock) be reconstructed, and an escrow account already exists to pay the expenses. The Cape signed the Settlement Agreement and the Amended Consent Order, but Cape representatives have made numerous statements casting doubt on their intent to abide by the agreements.

Finally, the escrow account established v by the Consent Order to replace the Ceitus Barrier originally consisted of some \$3.5 million, largely funds provided by Lee County and FDEP. That was the 2008 informal contractor estimate for a replacement barrier and lock. The escrow account is reportedly now

down to \$3.1 million, at least partially because of unspecified amounts spent by the Cape Government contracting the EMA process facilitators and an engineering firm to “to support the EMA Committee” by drafting the “Findings and Conclusions.” The “Findings and Conclusions” proffered would not only forgive the missing \$400,000, but would also divert the remaining \$3.1 million to Cape coffers. The stakeholder committee was not involved in those or any other past or proposed future expenditures from the escrow account, and will look to the Cape Government for fund replenishment.

My dissent relates solely to the failure of the report to address and offer solutions for what we all know to be serious environmental problems. Both contractors (the facilitators and the engineering firm) were professional, efficient, and more than cordial in their work, and they gave the stakeholders plenty of opportunity to review their drafts and provide input. Even though they were not free to accept data or conclusions or recommendations not approved by the Cape representatives, they rejected them with the best of graciousness. I thank them for that. They did an excellent job under very trying circumstances.

In essence, the Cape Coral Government by this report continues to declare their belief that their water quality and related environmental conditions are good, and that no environmental remedies are advisable-- including replacement of the Ceitus Barrier. This report was written by the contractors to largely reflect and support that position. I want to make it absolutely clear that this report is not the “Findings and Conclusions” of this stakeholder, nor is it the Findings and Conclusions” of the majority of the other stakeholders.

A legal caveat is required--neither the “Findings and Conclusions” nor these dissents constitute a consensus EMA “Report” setting forth “Net Environmental Benefits” qualifying as a suitable alternative for the Ceitus Barrier as required by the terms of the Settlement Agreement or the Amended Consent Order. Consequently, the Amended Consent Order requires that the Ceitus Barrier be restored.

Respectfully submitted this 9th day of July, 2010,

Phillip G. Buchanan,
Qualified Individual Stakeholder

Signed copy mailed to:

The FCRC Consensus Center
University of Central Florida
12443 Research Parkway, Suite 402
Orlando, FL 32826-3282

Email copy provided to stakeholders and interested parties

