

LAKE BELT MITIGATION COMMITTEE

ANNUAL REPORT FOR 2003

Submitted to the

GOVERNING BOARD

Of the

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

In Accordance with Florida Statutes 373.41492(9)(a)



Lake Belt Mitigation Committee
2003 Annual Report
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I. Background

In 1999 the Florida Legislature established a mitigation fee on each ton of lime rock and sand sold from the Miami-Dade County Lake Belt Area. The purpose of this fee is to provide for the mitigation of wetland resources lost to mining activities within this area.

The Legislature found that the impact of rock mining could best be offset by the implementation of a comprehensive mitigation plan, as recommended in the 1998 Progress Report to the Florida Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee. Legislation was adopted in s. 373.4149(1) F.S., authorizing the mitigation fee and governing its use.

The mitigation fee became effective on October 1, 1999 at the initial rate of 5.00 cents for each ton of lime rock and sand sold. The fee applies to raw, processed, or manufactured limestone, cement, and concrete products. The mitigation fee is collected by the Florida Department of Revenue and deposited to a trust fund at the South Florida Water Management District (SFWMD). An interagency committee, referred to as the Lake Belt Mitigation Committee (Committee), must approve expenditures from the trust fund.

Florida Statute 373.41492 9 (a) states: “the interagency committee established in this section shall annually prepare and submit to the governing board of the South Florida Water Management District a report evaluating the mitigation costs and revenues generated by the mitigation fee.”

Additional information on the Miami-Dade County Lake Belt Plan Implementation Committee, including copies of the Plan, Annual Progress Reports and Technical Reports, is available at the web site <http://www.sfwmd.gov/org/pld/proj/lakebelt/index.html>.

II. Legislative Guidance

The proceeds of the mitigation fee must be used to conduct mitigation activities to offset the loss of value and functions of wetlands resulting from mining activities. The fees must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee and adopted under s. 373.4149, F.S.

The Lake Belt Phase I Plan, submitted to the legislature on February 1997, states: *“Mitigation for rock mining in the Lake Belt Area should occur within the Pennsuco wetlands, the Northwest Bird Drive Basin, or other areas in the Lake Belt Area or Dade County, including in mitigation banks, as determined appropriate by the permitting agencies.”* (Page 21, “Northwest Dade County Freshwater Lake Belt Plan, Making a Whole, Not Just Holes”, 1997).

Mitigation fees may be used for the purchase, enhancement, restoration, and management of wetlands and uplands, the purchase of mitigation acres from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area.

Funds may also be used to reimburse other funding sources including the Save Our Rivers Land Acquisition Program and the Internal Improvement Trust Fund. These reimbursements must be for lands acquired in areas appropriate for mitigation and to reimburse governmental agencies that exchanged land under s. 373.4149, F.S. for mitigation due to rock mining.

III. Committee Representation

The Lake Belt Mitigation Committee is authorized under s. 373.4149, F.S. Meetings are held on an as needed basis at locations determined by the committee. All meetings are open to the general public and are held under requirements of Florida Statutes Chapter 286.011.

The Lake Belt Mitigation Committee consists of following members. At the Committee's discretion, additional members may be added to represent federal regulatory, environmental, and fish and wildlife agencies.

Voting Members:

Florida Department of Environmental Protection (DEP)
Janet Llewellyn (Committee Chair)
Howard Hayes, Alternate

South Florida Water Management District (SFWMD)
Terrie Bates (Committee Vice Chair)
Anita Bain, Alternate

Miami-Dade County Department of Environmental Resources Management (DERM)
Carlos Espinosa
Susan Markley, Alternate
Mike Spinelli, Alternate

Florida Fish and Wildlife Conservation Commission (FWCC)
Stephen Lau

U.S. Army Corps of Engineers (USACOE)
John Studt
Connie Ramsey, Alternate

U.S. Environmental Protection Agency (USEPA)
Veronica Fasselt
Ron Miedema, Alternate

U.S. Fish and Wildlife Service (USFWS)
Spencer Simon
Linda Ferrell, Alternate

Non-Voting Member:

Rock Mining Coalition
Tom MacVicar
Jeff Rosenfeld, Alternate

IV. Committee Administration

Accounting - The balance in the trust fund as of December 31, 2002 was \$7,471,465. During 2003, \$2,761,957 was transferred to the trust fund from the Florida Department of Revenue and \$205,836 was earned as interest. Transfers out and approved expenditures from the Trust Fund are \$6,607,977. On December 31, 2003, the available balance (including interest) in the rock miner's mitigation trust fund was \$3,831,281. Appendix B shows the cash receipts and interest earned by the Lake Belt Trust Fund for the year ending 2003.

Appendix C shows the miner's fees remitted to the Florida Department of Revenue (DOR) for the year ending 2003. The difference between the amounts remitted on Appendix B & Appendix C reflects the timing difference between the remittance by the miners to DOR and the payment by DOR to the SFWMD.

Mitigation Fee – Fees collected are based upon costs estimated by the SFWMD staff for the acquisition, management, and perpetual maintenance of land in the Pennsuco. During 1999, an interagency team of economists calculated the rate of the fee and determined the most appropriate method for annually adjusting the fee. This approach was codified in statute.

Beginning January 1, 2001 and each January 1st thereafter, the per-ton mitigation fee is increased by 2.1 percent, plus a cost growth index specified in the statute. For 2001, the Florida Department of Revenue (DOR) calculated a mitigation fee of 5.33 cents per ton, for 2002 the fee was 5.60 cents per ton, for 2003 the fee was 5.80 cents per ton, and for 2004 the fee is 6.20 cents per ton.

Table 1. Summary - Lake Belt Mitigation Trust Fund Cash Receipts

CALENDAR YEAR	ROCK MINING MITIGATION FEES	INTEREST EARNED	TOTAL FEES & INTEREST
2000 *	\$2,386,463	\$78,162	\$2,464,625
2001	\$2,227,895	\$167,611	\$2,395,506
2002	\$2,436,950	\$174,384	\$2,611,334
2003	\$2,761,957	\$205,836	\$2,967,793
TOTAL	\$9,813,265	\$625,993	\$10,439,258

*Includes fees from mining as of Oct. 1, 1999. Initial receipt from Florida Department of Revenue to the SFWMD was in January 2000.

Expenditures & Transfers – Total expenditures approved in 2003 from the Lake Belt Mitigation Trust Fund were \$6,607,977. On November 14, 2003 the Committee authorized expenditure of \$6,478,513 from the Lake Belt Mitigation Trust Fund, effective August 2002, for the purchase of 1,027.4 acres of Lake Belt mitigation. The transfer will reimburse the SFWMD for prior purchases through the Save Our Rivers and P2000 land acquisition programs and a portion of ongoing enhancement and long-term management costs. In July, 2002 the committee authorized the SFWMD to expend up to \$6,000 per acre for acquisition of non-industry, privately owned lands within Pennsuco. Pursuant to this authorization, \$129,464 was expended by the SFWMD for purchase of 48.5 acres of Lake Belt mitigation within Pennsuco in 2003.

V. Current Land Acquisition/Mitigation Activities

The Committee has identified the following mitigation projects within Pennsuco:

- Reimbursement for 814 acres purchased by the SFWMD through the Save Our Rivers (SOR) and P2000 land acquisition programs prior to 2002
- Funding for 97 acres purchased by the SFWMD in 2002/2003
- Enhancement and long-term management of 2,716.2 acres previously acquired by the SFWMD or by the State of Florida Trustees of the Internal Improvement Trust Fund (TIITF) through the use of funds which did not include treatment/long-term management components (“other owned lands”)
- Enhancement and long-term management of 1,560 acres owned by the U.S. Army Corps of Engineers (ACOE)

The SFWMD also utilized Pennsuco as a regional off-site mitigation area (ROMA), and permitted applicants for Environmental Resource Permits to make contributions for the acquisition, enhancement, and long-term management of Pennsuco lands as compensation for permitted wetland impacts. The contributions were maintained by the SFWMD in a separate “developer mitigation trust fund”. The SFWMD ceased permitting use of the Pennsuco ROMA in August 2002.

The Committee determined that the above identified mitigation projects should be split equally between the developer mitigation fund (50%) and the Lake Belt mitigation fund (50%), until such time as the developer fund was fully utilized and all mitigation would then be credited to the Lake Belt fund.

The SFWMD has estimated an average cost of \$6,142 per acre for acquisition, enhancement, and long-term management of Pennsuco lands. The Committee determined that since the land acquisition and the enhancement/long-term management cost components were approximately equal, that each acre of enhancement/management of land previously acquired by SFWMD would receive one-half the mitigation credit.

The Committee authorized the conversion of the August 2002 Lake Belt mitigation fund balance (\$6,607,977) to 1,075.9 acres of mitigation at the established cost of \$6,142/acre. These mitigation acres were utilized for the following mitigation activities and were credited to the Lake Belt mining permits in 2002:

50% of the 814 acres of SOR/P2000 land	407.0 acres
50% of the 97 acres purchased by the District in 2002/2003	48.5
Portion of enhancement/management costs for “other owned lands”	<u>620.4</u>
TOTAL	<u>1,075.9</u> acres

Equivalent mitigation acres for the SOR/P2000 land, 2002/2003 land acquisitions, and enhancement/long-term management costs for “other owned lands” were credited to the developer mitigation fund. At the end of 2003, the developer fund was considered to be fully utilized, so that future mitigation projects would only be credited to the Lake Belt mitigation fund.

In 2003, the Committee approved a motion in which the Committee recognized that improvements and enhancements from District mitigation treatments qualify for mitigation acres. The lift earned from treatments of “other owned” and Federal lands initiated and/or ongoing in 2003 will be available for the Rock Miner’s 2003 lift reporting with the understanding that at some date in the future the Committee will transfer the money from the Lake Belt mitigation fund to the SFWMD to pay for those restoration and mitigation costs. Funds were not transferred from the Lake Belt mitigation fund in 2003 to pay for

ongoing enhancement/ long-term management costs, in order to have funds readily available for potential land acquisition activities.

The following enhancement/long-term management projects initiated and/or ongoing in 2003 were credited to the Lake Belt mining permits in 2003:

Remaining enhancement/management costs for “other owned lands”	287.2 acres
Enhancement and long-term management of U.S. ACOE land	<u>780.0</u>
TOTAL	<u>1,067.2</u> acres

Enhancement/long-term management costs of \$6,554,742 (1,067.2 acres x \$6,142/acre) will need to eventually be transferred from the Lake Belt mitigation fund to reimburse the SFWMD for the land treatment initiated in 2003.

VI. Future Land Acquisition/Mitigation Activities

On November 25, 2004, the Board of Trustees of the Internal Improvement Trust Fund (Trustees) approved an exchange of 238. 7 acres of state owned lands within the Lake Belt Area for 202.5 acres of land within the Lake Belt Area owned by Florida Rock Industries, Inc. Of the lands acquired by the Trustees from Florida Rock, 160 acres are within the Pennsuco wetlands and are appropriate for use as miner mitigation. The Trustees intend to make these 160 acres available for purchase by the Lake Belt Mitigation Committee for the appraised value of \$5,400/acre. It is expected that this purchase will be approved by the Committee and executed at a future date.

To mitigate the biological impacts from mining during the fifty year implementation of the Lake Belt Plan, it will be necessary for the Committee to investigate alternative mitigation projects in an attempt to balance the increasing land costs, the annual increase built into the fee structure, and the quantity of mitigation lands needed to offset the projected mining impacts. This investigation of alternative mitigation projects will also become necessary as the availability of willing sellers and government land swaps decrease in the Pennsuco.

In 2003, the SFWMD suggested the evaluation of land acquisition/enhancement in the Biscayne Bay Coastal wetlands (BBCW)/Model Lands area as a possible alternative. In 2004, a wetland assessment of the BBCW/Model Lands area will be scheduled so the Committee will have a better idea of potential lift from acquisition/enhancement efforts. Information will also be brought back to the Committee regarding the potential for reimbursement for previously purchased land within the BBCW/Model Lands.

Longer-term alternative mitigation projects in the Lake Belt area have also been identified by the Committee and will be further evaluated in 2004.

VII. Appendices

APPENDIX A – Florida Statutes

373.41492, F.S. Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.—

(1) The Legislature finds that the impact of mining within the rock mining supported and allowable areas of the Miami-Dade County Lake Plan adopted by s. 373.4149(1) can best be offset by the implementation of a comprehensive mitigation plan as recommended in the 1998 Progress Report to the Florida Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee. The Lake Belt Mitigation Plan consists of those provisions contained in subsections (2)-(9). The per-ton mitigation fee assessed on limestone sold from the Miami-Dade County Lake Belt Area and sections 10, 11, 13, 14, Township 52 South, Range 39 East, and sections 24, 25, 35, and 36, Township 53 South, Range 39 East, shall be used for acquiring environmentally sensitive lands and for restoration, maintenance, and other environmental purposes. It is the intent of the Legislature that the per-ton mitigation fee shall not be a revenue source for purposes other than enumerated herein. Further, the Legislature finds that the public benefit of a sustainable supply of limestone construction materials for public and private projects requires a coordinated approach to permitting activities on wetlands within Miami-Dade County in order to provide the certainty necessary to encourage substantial and continued investment in the limestone processing plant and equipment required to efficiently extract the limestone resource. It is the intent of the Legislature that the Lake Belt Mitigation Plan satisfies all local, state, and federal requirements for mining activity within the rock mining supported and allowable areas.

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt Plan, effective October 1, 1999, a mitigation fee is imposed on each ton of lime rock and sand extracted by any person who engages in the business of extracting lime rock or sand from within the Miami-Dade County Lake Belt Area and sections 10, 11, 13, 14, Township 52 South, Range 39 East, and sections 24, 25, 35, and 36, Township 53 South, Range 39 East. The mitigation fee is at the rate of 5 cents for each ton of lime rock and sand sold from within the properties where the fee applies in raw, processed, or manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other lime rock and concrete products. Any lime rock or sand that is used within the mine from which the lime rock or sand is extracted is exempt from the fee. The amount of the mitigation fee imposed under this section must be stated separately on the invoice provided to the purchaser of the lime rock or sand product from the lime rock or sand miner, or its subsidiary or affiliate, for which the mitigation fee applies. The lime rock or sand miner, or its subsidiary or affiliate, who sells the lime rock or sand product shall collect the mitigation fee and forward the proceeds of the fee to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs.

(3) The mitigation fee imposed by this section must be reported to the Department of Revenue. A form prescribed by the Department of Revenue must accompany payment of the mitigation fee. The proceeds of the fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. As used in this section, the term "proceeds of the fee" means all funds collected and received by the Department of Revenue under this section, including interest and penalties on delinquent mitigation fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the mitigation fee.

(4) (a) The Department of Revenue shall administer, collect, and enforce the mitigation fee authorized under this section in accordance with the procedures used to administer, collect, and enforce the general sales tax imposed under chapter 212. The provisions of chapter 212 with respect to the authority of the Department of Revenue to audit and make assessments, the keeping of books and records, and the interest and penalties imposed on delinquent fees apply to this section. The fee may not be included in computing estimated taxes under s. 212.11, and the dealer's credit for collecting taxes or fees provided for in s. 212.12 does not apply to the mitigation fee imposed by this section.

(b) In administering this section, the Department of Revenue may employ persons and incur expenses for which funds are appropriated by the Legislature. The Department of Revenue shall adopt rules and prescribe and publish forms necessary to administer this section. The Department of Revenue shall establish audit procedures and may assess delinquent fees.

(5) Beginning January 1, 2001, and each January 1 thereafter, the per-ton mitigation fee shall be increased by 2.1 percentage points, plus a cost growth index. The cost growth index shall be the percentage change in the weighted average of the Employment Cost Index for All Civilian Workers (ecu 10001I), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, and the percentage change in the Producer Price Index for All Commodities (WPU 00000000), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, compared to the weighted average of these indices for the previous year. The weighted average shall be calculated as 0.6 times the percentage change in the Employment Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times the percentage change in the Producer Price Index for All Commodities (WPU 00000000). If either index is discontinued, it shall be replaced by its successor index, as identified by the United States Department of Labor.

(6) (a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee and adopted under s. 373.4149. Such mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands,

the purchase of mitigation credit from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program and the Internal Improvement Trust Fund, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land under s. 373.4149 for mitigation due to rock mining.

(b) Expenditures must be approved by an interagency committee consisting of representatives from each of the following: the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Fish and Wildlife Conservation Commission. In addition, the lime rock mining industry shall select a representative to serve as a nonvoting member of the interagency committee. At the discretion of the committee, additional members may be added to represent federal regulatory, environmental, and fish and wildlife agencies.

(7) Payment of the fee imposed by this section satisfies the mitigation requirements imposed under sis. 373.403-373.439 and any applicable county ordinance for loss of the value and functions from mining of the wetlands identified as rock mining supported and allowable areas of the Miami-Dade County Lake Plan adopted by s. 373.4149(1). In addition, it is the intent of the Legislature that the payment of the mitigation fee imposed by this section satisfies all federal mitigation requirements for the wetlands mined.

(8) If a general permit by the United States Army Corps of Engineers, or an appropriate long-term permit for mining, consistent with the Miami-Dade County Lake Belt Plan, this section, and sis. 373.4149, 373.4415, and 378.4115 is not issued on or before September 30, 2000, the fee imposed by this section is suspended until revived by the Legislature.

(9) (a) The interagency committee established in this section shall annually prepare and submit to the governing board of the South Florida Water Management District a report evaluating the mitigation costs and revenues generated by the mitigation fee.

(b) No sooner than January 31, 2010, and no more frequently than every 10 years thereafter, the interagency committee shall submit to the Legislature a report recommending any needed adjustments to the mitigation fee to ensure that the revenue generated reflects the actual costs of the mitigation.

History.—s. 2, ch. 99-298; s. 23, ch. 2000-197.

373.41495, F.S. Lake Belt Mitigation Trust Fund; bonds.

(1) The Lake Belt Mitigation Trust Fund is hereby created, to be administered by the South Florida Water Management District. Funds shall be credited to the trust fund as provided in s. 373.41492, to be used for the purposes set forth therein.

(2) The South Florida Water Management District may issue revenue bonds pursuant to s. 373.584, payable from revenues from the Lake Belt Mitigation fee imposed under s. 373.41492.

(3) Net proceeds from the Lake Belt Mitigation fee and any revenue bonds issued under subsection (2) shall be deposited into the trust fund and, together with any interest earned on such moneys, shall be applied to Lake Belt mitigation projects as provided in s. 373.41492.

(4) The Lake Belt Mitigation Trust Fund is a trust fund as described in s. 19(f)(3), Art. III of the State Constitution, and therefore is not subject to termination pursuant to s. 19(f)(2), Art. III of the State Constitution. History.—ss. 1, 2, 3, 4, ch. 98-260; s. 1, ch. 99-297.

APPENDIX B - Cash Basis Statements
(See Attachment)

APPENDIX C – Miner’s Fees Remitted to DOR
(See Attachment)