

LAKE BELT MITIGATION COMMITTEE

ANNUAL REPORT FOR 2002

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
2002 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.

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>.

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."

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 credits 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 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)

Bob Howard, Alternate

Miami-Dade County Department of Environmental Resources Management (DERM)

Carlos Espinosa

Jean Evoy, Alternate

Florida Fish and Wildlife Conservation Commission (FWCC)

Stephen Lau

U.S. Army Corps of Engineers (USACOE)

Bob Barron

John Studt, Alternate

U.S. Environmental Protection Agency (USEPA)

Veronica Fasselt

Richard Harvey, Alternate

U.S. Fish and Wildlife Service (USFWS)

Jeff Weller

Linda Ferrell, Alternate

Non-Voting Members:

Rock Mining Coalition

Tom MacVicar

Jeff Rosenfeld, Alternate

IV. Committee Administration

Accounting - On December 31, 2002, the balance (including interest) in the rock miner's mitigation trust fund was \$7,471,465. During 2002, \$2,436,950 was transferred to the trust fund from the Florida Department of Revenue and \$174,384 was earned as interest. The balance in the trust fund as of December 31, 2001 was \$4,638,997. Appendix B shows the cash receipts and interest earned by the Lake Belt Trust Fund for the year ending 2002.

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, and for 2003 the fee is 5.80 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
TOTAL	\$7,051,308	\$420,157	\$7,471,465

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

Expenditures – During 2002 no funds were expended from the Lake Belt Mitigation Trust Fund. The Committee has identified approximately 97 acres of land purchase contracts signed in 2002 that qualify for mitigation purchases within the Pennsuco.

In 2003 the Committee will use a 50 / 50 split between Developers funding and Miners funding for land acquisition costs within the Pennsuco (see Land Acquisition discussion below). This funding split will result in approximately \$126,950.00 being expended from the Lake Belt Trust Fund to purchase 48.5 acres of Pennsuco lands.

V. Land Acquisitions

To date the Pennsuco wetlands have been the focus of the Lake Belt mitigation planning process. In addition, the District has accepted mitigation funds from developer permits for land acquisition, restoration and long-term management in the Pennsuco area since 1995. In mid-2002, the District determined that land acquisition opportunities in Pennsuco were becoming limited and it ceased accepting developer mitigation funds from new applicants as of July 31, 2002. To maintain equity between developer mitigation funds and the Lake Belt mitigation funds, the Committee agreed to equally distribute available mitigation lands based on the developer permits issued to date and the funds in the Lake Belt mitigation fund as of July 31, 2002.

The Committee also agreed to apportion all new acquisition equally between the developer mitigation fund and the Lake Belt mitigation fund. When the developer mitigation fund is depleted, only the Lake Belt funds will be used for mitigation in the Pennsuco. An exception to this apportionment would be the miner owned land in the Pennsuco. If this land is purchased for mitigation, it will be funded exclusively with Lake Belt funds.

2002 Purchases

There were 6.81 acres of mitigation land purchased in 2002, with an additional 90 acres with signed contracts scheduled to close in 2003. Appendix D provides a schedule of these contracted sales.

The contracted cost of these 97 acres is \$253,900.00, resulting in an average cost of \$2,600.00 per acre. This land is to be purchased equally from two separate funding sources. The first source is the Lake Belt Mitigation Trust Fund established to collect fees from rock miners for mitigation, including the purchase of lands within the Pennsuco area. The second source of funding is the permitting fees paid by non-rock miners or developers as a result of the issuance of an Environmental Resource Permit, which authorizes mitigation within the Pennsuco service area.

Land Acquisition – Funding Source Reimbursements

The Florida Statute governing the acquisition of mitigation lands from miners mitigation fees, states: “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.”

At the July Committee meeting, 814 acres of previous land acquisitions within Pennsuco, funded with P2000 funds, were identified as appropriate for reimbursement with Lake Belt mitigation funds. The Committee determined that the potential funding swap would be split equally between the developer mitigation fund and the Lake Belt mitigation fund. Thus a total of 407 acres could potentially be credited towards mitigation, pending approval of the funding reimbursement by the Governing Board. It is anticipated the funding swap would occur in 2003.

City National Lawsuit

At the present time, there are 1,249 acres of land acquired by the District under a “quick take” within the Pennsuco area. The acquisition is currently involved in litigation and is scheduled for a court hearing date in March 2003. It is anticipated that the acquisition costs will significantly exceed initial cost estimates to purchase mitigation lands. As a result, the funding for this purchase may come from a combination of funding including miners, developers and other sources.

Future Land Acquisitions – Cost Discussions

The legislatively established fee per ton was based on estimates for funding the purchase, restoration and maintenance of mitigation lands in the Pennsuco. The original projections were developed in 1999. Since those original projections, land values in the Pennsuco have increased.

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.

V. Land Restoration and Maintenance

During 2002 no funds were expended from the Lake Belt Mitigation Trust Fund for the restoration and maintenance of mitigations lands. However, during 2002 developer mitigation funds were expended to provide initial and follow up aerial and ground treatments for melaleuca control on approximately 5,700 acres. Projections for 2003 call for a continuation of both aerial and ground treatments on these lands until the seed source is brought under control and ecological success is attained. Future restoration expenditures will be identified by funding source and expensed from the related fund.

As a mitigation option, the Committee is currently evaluating the potential for restoring lands previously purchased in Pennsuco with other funding sources, but which currently have no source of funding for restoration or long-term management.

VI. Permitting

Permit Status

New permits are required for mining additional lands under the Lake Belt Plan from the Miami-Dade County Department of Environmental Management (DERM), the Florida Department of Environmental Protection (DEP), and the U.S. Army Corps of Engineers (USACE).

In April 2002, the USACE issued new permits for mining operations within the Lake Belt Service area. These permits have extensive mitigation requirements and require the purchase of offsetting mitigation land as wetlands are impacted as a result of mining activities. Similar permits for mining activities in the Lake Belt were also issued by DEP in 2001 and 2002.

The U.S. Army Corps of Engineers (USACOE) issued a total of ten permits for mining operations within the Miami-Dade Lake Belt Area. The Corps permits require that “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 in the Lake Belt Area.” Final compensatory mitigation may be re-assessed based on periodic reviews. The Corps requires comparison between ecological functions lost through mining and those gained through land acquisition, preservation and enhancement. If the Corps determines that “the sum projected cumulative units of ecological lift will be less than the sum projected units of loss at the expiration of the Lake Belt mining permits,” then additional mitigation may be required.

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)

APPENDIX D – 2002 Schedule of Land Contracts Signed
(See Attachment)