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Friends of Perdido Bay
10738 Lillian Highway
Pensacola, FL 32506
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Tidings

The Newsletter of the Friends of Perdido Bay

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Jackie Lane -Editor

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Have a Wonderful Holiday Season and looking forward to a new year

As Friends of Perdido Bay begins its 24th season, we just wanted to wish all our members a joyous and blessed holiday season. We also want to thank you all for your support . Your support has kept Friends of Perdido Bay going and able to fight our battles in and out of court. We also have had some funds to do testing in our bay and publish this newsletter. Some of that data is posted on our website, www.friendsofperdidobay.com. We look forward to a new year. As we look into our crystal ball, some significant changes may occur in matters affecting Perdido Bay this year. We hope they are for the better. But your involvement in the matters of Perdido Bay is very important. Without a voice, small as it may be, Perdido Bay would be a lost bay.

In a Big Rush

After years of stalling and dragging their feet, the Florida DEP and the paper mill in Cantonment Florida are in a big rush to build the pipeline to the Rainwater wetlands. For years, IP has operated on administratively continued permits. The federal permit was supposed to expire in 1988 and the state permit should have expired in 1995. A 1989 Consent Order ordered the paper mill to come into compliance in 1994. Expiration dates came and went with out any consequence. No fines were assessed and the bay just got worse. The environmental agencies including the EPA seem to ignore Dr. Livingston's research which was finding that life in Perdido Bay was scarcer than ever up to 2007 when Dr. Livingston was fired by IP. Throughout our battles over the 24 years, we continually heard testimony from scientists that Perdido Bay was the most polluted bay in Florida. Nothing was done. Environmental agencies ignored the problem. Perdido Bay residents continued to experience a degraded and polluted bay. Even the trial attorneys seemed to turn a blind eye.

The rush to do something about the deteriorating bay and the *in limbo* situation seemed to start in 2009. In 2008, the Florida DEP again issued a notice that they intended to give IP a new

permit for the same project which had been turned down at an administrative hearing in 2007. There are legal doctrines called “res judicata” and “collateral estoppel” which are supposed to prevent the same issues from being raised again by the same parties in a legal dispute. In his 2007 order, the secretary of the DEP said that IP had not shown that they could meet Florida’s antidegradation rule and not harm the wetlands. IP was denied a permit to operate. A stay was granted so IP could continue to operate until they appealed this ruling. In 2010, the appeal was dismissed. But in the meantime, IP applied for the same permit. The issues raised in the second hearing should have been barred by collateral estoppel. IP was successful in barring our evidence and testimony claiming it was collateral estoppel, but the judge allowed IP’s testimony. This is like fighting with both hands tied behind your back. In May, 2009, one month before the hearing began, the issues changed substantially when several of the permitting documents were withdrawn and replaced with new permitting documents. We asked for a continuance of the hearing. The judge denied our continuance and off we went to a hearing the next month. We lost that hearing and it is now in the appeals court.

In the meantime, IP has begun construction of the 10-mile, 42" pipeline to the Rainwater wetlands. This pipeline has the capacity to carry up to 38 million gallons a day of effluent into the Perdido watershed. They have begun constructing the berms in the wetlands. The speed at which IP is doing this project amazes me. Why after dragging their feet for 15 years is IP in such a hurry to build the pipeline? IP hasn’t even waited for the appeals process before beginning construction. If the Appellate Court rules against IP and reverses the second decision in favor of the first, will IP take the pipeline out? IP has answered some of these questions. IP’s attorneys have written: “If the Final Order were reversed, there does not appear to be a regulatory requirement for the pipe to be “torn out”, as Lane presumes. Most likely it would remain in place for subsequent use. In a worse case scenario, IP would abandon some or all of the pipeline in place. Either leaving the pipeline in place, or removing parts of it where it may be necessary or appropriate to do so, would have negligible effects on the environment..” My question is what company would expend millions of dollars if they were only to lose it in the end. It doesn’t make sense especially after stalling for so many years and not meeting the Consent Order issued in 1989.

We are currently trying to stop the building of this pipeline by getting the appellate court to issue a stay of the new permit and Consent Order as was done after the first hearing. We also are trying to get an injunction in Circuit Court to stop the building of the pipeline.

I have begun to wonder exactly what will be transported in the pipeline. The life of the pipeline is probably going to exceed 20 to 30 years. I doubt the paper mill will stay in business that long. So after the paper mill closes, what will happen with the pipeline. Will the Rainwater wetlands be ECUA’s new wetland treatment system? Is this just a backdoor way of getting effluent moved from Escambia Bay to Perdido Bay? The existence of such a pipeline is very dangerous for Perdido Bay because its can carry so much effluent and its long term use is unknown. Perdido Bay doesn’t need more waste discharge.

Rethinking Wetland Discharge

Back in the late 1990's when ECUA proposed to upgrade the Bayou Marcus Sewage Treatment Plant and take the discharge out of Bayou Marcus Creek and put it on wetlands surrounding Perdido Bay, we supported this project. We figured the wetlands would further polish a rather clean effluent. We have begun to rethink the wisdom of this project. For starters, the flow pattern of the effluent in the wetlands is different than what we had envisioned. We

figured that ECUA's effluent would slowly drain across the wetlands and then seep into the bay along the shoreline. It doesn't. The flow of the effluent across the wetlands has cut several main channels in the wetlands. According to Steve Woods, the ECUA effluent does not seep out into the bay along the shoreline, but leaves the wetlands in several main channels which have been cut by the flow through the wetlands. One of these cuts is into the drainage ditch along Alekai Drive. So a wetland discharge is actually a discharge to surface waters via a ditch cut by the effluent. The regulators are always touting wetland discharge as a way of eliminating surface water (to a stream or bay) discharge. It is not. Also once the channel through the wetlands has formed, the regulators don't seem to care. There is no rule against a channel being cut in the wetlands "naturally".

Another problem with ECUA's Bayou Marcus wetland discharge is that ECUA keeps expanding their discharge to the wetlands. The amount of effluent permitted to be discharged went from 8 million gallons a day (MGD) to 11 MGD. Perdido Bay is already an enriched bay. More nutrient enriched water applied to the wetlands means more nutrient enriched water going into the bay.

We have the same argument against the IP-Rainwater wetlands. IP engineers have calculated that the effluent, once it is released from the pipeline, will travel through the wetlands at 0.25 feet per second. This number was calculated assuming the effluent will flow as a sheet and the flow will be redistributed by the 4 berms. Using the 0.25 feet per second and the distance the effluent has to travel (2.1 miles) to reach the tidal lakes, means that the effluent will reach Perdido Bay in 12 hours once the effluent is released from the pipeline. This is hardly enough time for any "polishing" to occur. Further, with this rate of flow, the effluent will undoubtedly cut its own channels in the wetlands which will result in a faster rate of flow than the calculated value. There are already streams in the wetlands which will be enlarged by the proposed 23 MGD of IP's effluent. The effluent will flow like a flood to Perdido Bay. This wetlands discharge is nothing more than an overland flow to Perdido Bay which is being advertised as "getting out of surface waters". Nothing could be further from the truth.

Biomass is Bad Energy

With the pulp and paper industries shutting down plants and the home building industry stalled, tree growers are wondering what to do with their forests. Burning trees (termed biomass energy) as a fuel in power-generating plants is being pushed to help the tree growers. This is a bad idea. We have learned during our dioxin studies on Perdido Bay that burning wood produces dioxin. The dioxin produced by burning wood is slightly less dangerous than the dioxin produced from the bleaching paper process using elemental chlorine. However, dioxin is still dioxin, and is a very dangerous chemical which can cause a variety of diseases (see the last newsletter). The paper mill in Cantonment Florida has been burning a mixture of wood and coal for its power supply for many years. This burning wood has produced dioxin which can be found in the sediments and animals living in Perdido Bay. The concentrations of this wood-burning dioxin are not high in the animals but the dioxin is there.

Interestingly, IP lobbied for a bill in congress to get a tax credit of up to \$25 million per year to produce energy from biomass fuels for the pulp- or paper-making plants in the U.S. The paper companies just love to get tax credits for practices which they have been using for years, like the black liquor tax. For many years, paper makers had been mixing diesel fuel with the black liquor which is left over after cooking the wood chips, and burning the mixture to produce steam. In the last months of 2008 and 2009, IP got billions of dollars in tax credits (that is money from the U.S. Treasury) for this process. I hope the paper makers do not get a bill through congress to get a tax credit for using biomass fuel. It is a boondoggle.

Burning wood is being proposed as an energy source for electric generating plants, as well. Recently we have heard that Gainesville's electricity generating plant is converting from coal to using biomass. While coal is certainly not very good source of fuel because of heavy metal contamination, switching to biomass will have a big environmental impact. But there are a lot of trees around Gainesville and a lot of powerful people who grow them. Natural gas would be a much better choice. Solar and wind would be even better.

Blackwater Plantation is Back

In January 2005, a rather large development on Blackwater River, AL came before the Baldwin County Planning Board. The concept for the development was approved, but the project was never built. The developer (a former AIG exec) is again trying to get Baldwin County to approve his project. The general meeting, which has been postponed several times, is currently scheduled for January 6, 2011 in the Robertsdale government Center beginning at 6:00 PM. If you want to go, make sure the meeting is still on by getting your name on the e-mail list. Go to the Baldwin County Planning and Zoning's website, then to ListServ and give them your e-mail address. Or you can call the planner, Nancy Macky at 251-972-8523 ext. 2833.

The development encompasses 2,224 acres south of Highway 90 in Alabama and is divided into three areas. There are 1,336 acres of either swamp or open water in the project and 888 acres of uplands. Some of the water areas include the northern part of the Lillian Swamp, Alligator Bayou, Blackwater River, Reeder Lake and numerous wetlands. In my opinion, this is a beautiful wild area. Because of the wetlands, about 50% of the development will be natural open space. 1,110 dwelling units are proposed for the three areas of the project. 150 dwelling units can be converted to about 15 acres of commercial uses, such as lodges, restaurants, gift shops, pools, laundry facilities, campgrounds. I did not see "golf course" listed as a recreational facility. There are nature trails, canoe trails, and other outdoor recreation areas. One of the big changes from the last concept is to permit the use of onsite septic tanks rather than a sewage treatment.

Most of the immediate impacts to the wetlands will occur with road building related to development. According to the planner, the Alabama Department of Transportation has some issues in regards to roads. The greatest danger to the rivers (Blackwater and Perdido) and to Perdido Bay is the nutrient rich runoff which is certain to come from the developed properties. This is not good news

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