

10. **OLD BUSINESS**

a. Water Quality Issues

5. **RESOLUTION 06-089 AUTHORIZING AND SCHEDULING A BINDING REFERENDUM PERTAINING TO THE EXPENDITURE OF CITY FUNDS FOR LITIGATION RELATING TO LAKE OKEECHOBEE AND CALOOSAHATCHEE RIVER FRESHWATER RELEASES WHICH HAVE DEGRADED AND ARE DEGRADING THE WATERS ADJACENT TO SANIBEL, INCLUDING NEARBY BAYS AND ESTUARIES; CALLING FOR AND ORDERING A BINDING REFERENDUM TO BE HELD IN THE CITY OF SANIBEL TO DETERMINE WHETHER A MAJORITY OF ELECTORS PARTICIPATING IN SUCH REFERENDUM APPROVE THE USE OF CITY FUNDS TO INITIATE AND PURSUE LITIGATION WITH THE PURPOSE OF REDUCING, MINIMIZING AND ELIMINATING THE DEGRADED AND DEGRADING WATER QUALITY DIRECTLY RESULTING FROM FRESH WATER RELEASES FROM LAKE OKEECHOBEE AND THE CALOOSAHATCHEE RIVER; ESTABLISHING THE DATE OF THE ELECTION; REQUESTING THE LEE COUNTY SUPERVISOR OF ELECTIONS CONDUCT THE ELECTION IN ACCORDANCE WITH LAWS AND REGULATIONS AND CERTIFY THE RESULTS TO THE SANIBEL CITY COUNCIL; AND PROVIDING AN EFFECTIVE DATE (Councilman Brown)**

CITY OF SANIBEL

RESOLUTION NO. 06-089

A RESOLUTION AUTHORIZING AND SCHEDULING A BINDING REFERENDUM PERTAINING TO THE EXPENDITURE OF CITY FUNDS FOR LITIGATION RELATING TO LAKE OKEECHOBEE AND CALOOSAHATCHEE RIVER FRESHWATER RELEASES WHICH HAVE DEGRADED AND ARE DEGRADING THE WATERS ADJACENT TO SANIBEL, INCLUDING NEARBY BAYS AND ESTUARIES; CALLING FOR AND ORDERING A BINDING REFERENDIM TO BE HELD IN THE CITY OF SANIBEL TO DETERMINE WHETHER A MAJORITY OF ELECTORS PARTICIPATING IN SUCH REFERENDUM APPROVE THE USE OF CITY FUNDS TO INITIATE AND PURSUE LITIGATION WITH THE PURPOSE OF REDUCING, MINIMIZING AND ELIMINATING THE DEGRADED AND DEGRADING WATER QUALITY DIRECTLY RESULTING FROM FRESH WATER RELEASES FROM LAKE OKEECHOBEE AND THE CALOOSAHATCHEE RIVER; ESTABLISHING THE DATE OF THE ELECTION; REQUESTING THE LEE COUNTY SUPERVISOR OF ELECTIONS CONDUCT THE ELECTION IN ACCORDANCE WITH LAWS AND REGULATIONS AND CERTIFY THE RESULTS TO THE SANIBEL CITY COUNCIL; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council finds that the degraded and degrading water quality in the waters adjacent to the City of Sanibel, including nearby bays and estuaries, resulting from the freshwater releases from Lake Okeechobee and the Caloosahatchee River, constitute an immediate and catastrophic threat to the health, safety and welfare of the citizens of the City of Sanibel; and

WHEREAS, the City Council may determine, as a last resort, that it is necessary to initiate and pursue litigation against the South Florida Water Management District and/or the U. S. Army Corps of Engineers and any other responsible entities in order to lessen and to hopefully eliminate the critical and catastrophic degradation of such adjacent water in both the short and long term; and

WHEREAS, any such federal and/or state litigation could result in litigation costs in excess of \$1.5 million dollars and could take several years or more in the court system; and

WHEREAS, the City Council has determined that it is appropriate to seek the support and approval of a majority of electors participating in a referendum for the use of City funds to engage in litigation for the protection of City, the citizens, and the wildlife and environment of Sanibel;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sanibel, Florida that:

Section 1. The Sanibel City Council hereby calls for and orders the holding of a binding referendum (election) for the qualified electors of the City of Sanibel to decide whether a majority of the electors participating are in favor of the use and expenditure of City funds for the purpose of initiating and pursuing litigation in an effort to reduce and eliminate the degraded and degrading water quality of the waters adjacent to the City of Sanibel, including nearby bays and estuaries, as a result of the freshwater releases from Lake Okeechobee and the Caloosahatchee River. All the qualified electors residing in the City of Sanibel shall be entitled and permitted to vote in such referendum.

Section 2. The date of the referendum shall be December 5, 2006.

Section 3. The referendum shall be conducted by the Lee County Supervisor of Elections by Mail Ballot Election.

Section 4. The Lee County Supervisor of elections is requested and the City Clerk is directed to publish notice of the referendum in accordance with general or other applicable law.

Section 5. The Lee County Supervisor of Elections is requested to cause the necessary ballots to be prepared and delivered in accordance with mail ballot requirements. The form of the ballots shall be in accordance with ballot forms used by the Supervisor of Elections and shall be, in substance, as follows:

OFFICIAL BALLOT
BINDING SPECIAL REFERENDUM
CITY OF SANIBEL, LEE COUNTY, FLORIDA
USE OF CITY FUNDS FOR LITIGATION RELATING TO DEGRADED AND DEGRADING
WATER QUALITY

Do you approve the use of city funds to initiate and pursue litigation (lawsuits) in an effort to improve the degraded and degrading water quality of the waters adjacent to the City of Sanibel, and nearby bays and estuaries resulting from the freshwater releases from Lake Okeechobee and the Caloosahatchee River?

YES _____ NO _____

Section 6. The Lee County Supervisor of Elections is requested to cause the necessary absentee ballots to be prepared and make provisions for the distribution and voting of the absentee ballots.

Section 7. The Lee County Supervisor of Elections is requested to canvass the ballots and certify same and, in turn, certify the referendum results to the Sanibel City Council. The Council shall declare the results thereof, and such results shall be recorded in the minutes of the City Council at the first meeting after such certification.

Section 8. The appropriate election officials shall permit voting in the referendum only by the qualified registered electors within the precincts whose names appear on the list of qualified registered electors as furnished by the Lee County Supervisor of Elections.

Section 9. Said referendum shall otherwise be held in accordance with the election laws of the State of Florida.

Section 10. The City of Sanibel will reimburse the Lee County Supervisor of Elections for the costs of the referendum.

Section 11. Nothing in this Resolution shall be construed to preclude, and the City Council shall have full authority to, file litigation prior to December 5, 2006, under the following three scenarios:

- a. Lee County files a lawsuit relating to these matters and requests that the City enter the litigation as co-complainant;
- b. A third-party files a lawsuit with regard to these matters and the Council finds it necessary to file a lawsuit in order to protect the City's interests; or
- c. The City Council finds it necessary to file a lawsuit relating to these matters as a result of a legal filing deadline in order to challenge any action or decision of the U.S. Army Corps of Engineers, the South Florida Water Management District, or any other responsible entity.

Section 12. Effective Date.
This resolution shall become effective immediately upon adoption.

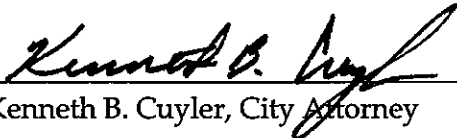
DULY PASSED AND ADOPTED by the City Council of the City of Sanibel, Florida this ____ day of _____, 2006.

AUTHENTICATION:

Carla Brooks Johnston, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM:



Kenneth B. Cuyler, City Attorney

Date 7/13/06

Vote of Councilmembers:

Johnston ___
Denham ___
Brown ___
Jennings ___
Rothman ___

Dated filed with City Clerk: _____

SEAL