



# Chiquita Lock: Setting the Public Record Straight

A Summary by Calusa Waterkeeper

1. **Stormwater Detainment Obligations** - There is a prevailing perception in Cape Coral that a primary reason for the Chiquita Lock was to abate pollution from septic tanks, and that the Lock is no longer necessary since septic tanks have been replaced by conversion to sewer. This perception helps paint an incomplete picture of the intent of the court-ordered spreader systems.
  - a. **There is no mention of pollution from septic tanks in the [original Consent Order 15](#)** that was negotiated between the Florida Department of Environmental Regulation (DER; now named FDEP) and the General Acceptance Corporation (GAC) in 1977. There is also no mention of pollution from septic tanks in the modified Consent Order dated 1979, or the DER Contract WMID6 between the City of Cape Coral, dated 1985.
  - b. The purpose of the Chiquita Lock as identified in [Consent Order 15](#) **was to facilitate isolation of polluted runoff (not seepage from septic tanks) from uplands and within the city for treatment before entering state coastal waters.** The City was subsequently required to apply for a municipal stormwater permit (FDEP MS4 permit) to further treat the City's polluted stormwater. The Chiquita Lock enabled the treatment of stormwater runoff within the 700-acre southwest spreader canal system. **Without the Lock, the spreader becomes influenced by daily tidal exchange and lacks the necessary residence time to effectively treat the City's stormwater runoff.**
  - c. [In a letter dated March 29, 2000](#) from Gloria Baron, Supervisor of the Cape Coral Surface Water Management Division to Mr. Eric Livingston of FDEP, Ms. Baron stated *"It is my opinion that the requirements to provide and maintain water quality protection are still valid, and **should be enforced even more stringently now because of the extensive development that has occurred within the City, and because of the requirements of the NPDES MS4 permit.**"*
  - d. FDEP informed those petitioning the removal of the Lock in 2019, that maintaining the Lock and detaining stormwater for treatment accounts for [a reduction of over 30,000 lbs. of nitrogen](#) to the Caloosahatchee estuary annually. Thus, **removing the lock would cause the loading of 30,000 lbs. of nitrogen per year into the Caloosahatchee.**
2. **Impacts on Endangered Species - Removal of the Chiquita Lock will adversely affect protected wildlife and their critical habitat.** The [Army Corps' January 2018 public notice](#) of Cape Coral's application to remove the Chiquita Lock stated that removing the Lock "...may affect, likely to adversely affect, the smalltooth sawfish designated critical habitat." The Corps also "determined the proposed project may affect, likely to adversely affect the West Indian manatee (*Trichechus manatus*)."
3. **Mangrove Health** - In 2019, The DOAH Administrative Law Judge [concurred with the petitioner's findings of fact that removal of the Chiquita Lock would adversely affect the mangrove community in the Southwest Spreader](#), as well as present secondary adverse impacts to the property of Cape Harbour Marina. The associated mangroves represent an integral component of pollution removal within the greater spreader system and help mitigate storm surge.
4. **Boater Safety** - There are few, if any, records supporting claims that the lock is a public safety issue to boaters. The [petitioner's findings](#) stated: *"Although the United States Coast Guard monitors boater accidents in the tidal waters of the United States, Cape Coral has cited no evidence of any boating accidents at the Chiquita Boat Lock."* The [DOAH final order](#) concluded, *"The preponderance of the evidence supports a finding that the City's claims of navigational public safety concerns have less to do with navigational hazards, and more to do with inexperienced and impatient boaters."*

5. **Intent of the Lock Systems** - Some City residents think the lock should be removed because other tidal canals that have direct connection to the Caloosahatchee River don't have a lock and spreader treatment system. In addition to the removed Ceitus Boat Lift in the Northwest Spreader, at least one other area (Cat Cay Lake spreader system near Four Mile Cove) had a boat lift that functioned similar to a lock. The configuration was also meant to isolate and treat stormwater runoff before entering the Caloosahatchee River. Cape Coral removed the Cat Cay and Ceitus Boat Lifts years ago, allowing untreated stormwater to enter the Caloosahatchee River and Matlacha Pass. The lifts were apparently removed as an impediment to direct boat access. A lack of clarity and commitment between the state and the City of Cape Coral regarding the ongoing maintenance of the systems, particularly nearby mangrove "breaches," led to the decline of the systems' effectiveness. Decades of neglect and cost-cutting have led us to the present-day conditions. Removing the Chiquita Lock and function of the southwest spreader system would eliminate the remaining intended treatment component as intended by the original Consent Order 15, and represents a regressive approach by the City to remove an element of the City's MS4 stormwater permit.

## Conclusion

To reiterate several of the most important points above:

- Long running narratives within the City lack a full understanding of the history of the spreader systems, their initial design intent, as well as the primary sources that make up the City's stormwater. It bears repeating, **the Chiquita Lock was NOT put in place solely because of septic tanks.**
- There are few, if any, records supporting claims that the lock is a public safety issue to boaters.
- Removal of the Lock has been found to impact the health of the mangrove fringe as well as habitats for two federally protected species: smalltooth sawfish and manatees.
- It has been reported by FDEP that **removing the lock will introduce 30,000 lbs. of nitrogen per year into the Caloosahatchee.** State permission was granted based on mitigation credits, and then overturned due to the vigilance and commitment of citizen petitioners.

In a [January 13, 2020 executive session](#) between City Council and outside attorney Craig D. Varn, many of these truths were either avoided or misrepresented. The City's strategy on requesting a new removal permit for the Lock now appears centered around spending at least an additional \$1,500,000, to include attorney's fees, an ecological assessment (overseen directly by Mr. Varn), and a large purchase of off-site mitigation credits.

The DOAH Administrative Law Judge found that, **"...the Project will adversely affect the public interest factors associated with wetlands, fish and wildlife, and their habitat..."** Nothing the City has, or will, put forward since the ruling will change this conclusion.

It is critical to understand that a new permit request for removing the Chiquita Lock is based on finding additional ways to try and mitigate the environmental impacts with credits, rather than avoiding adverse impacts on wildlife and water quality.

## Citations and Additional Resources:

[FL Dept. of Environmental Regulation vs. GAC Properties Consent Order No. 15 \(1977\)](#)

[Chiquita Lock Stormwater Letters, Livingston/Baron \(2000\)](#)

[Calusa Waterkeeper Chiquita Lock Public Comments to FDEP 1 \(2017\)](#)

[Calusa Waterkeeper Chiquita Lock Public Comments to FDEP 2 \(2017\)](#)

[Chiquita Lock FDEP Supporting Documentation \(2017\)](#)

[U.S. Army Corps Chiquita Boat Lock Public Notice \(2018\)](#)

[Calusa Waterkeeper Chiquita Lock Public Comments to USACE \(2018\)](#)

[Chiquita Lock Petition for Administrative Hearing \(2018\)](#)

[Chiquita Lock DOAH ALJ Final Order \(2019\)](#)

[City of Cape Coral Chiquita Lock Transcript of Executive Session \(2020\)](#)

