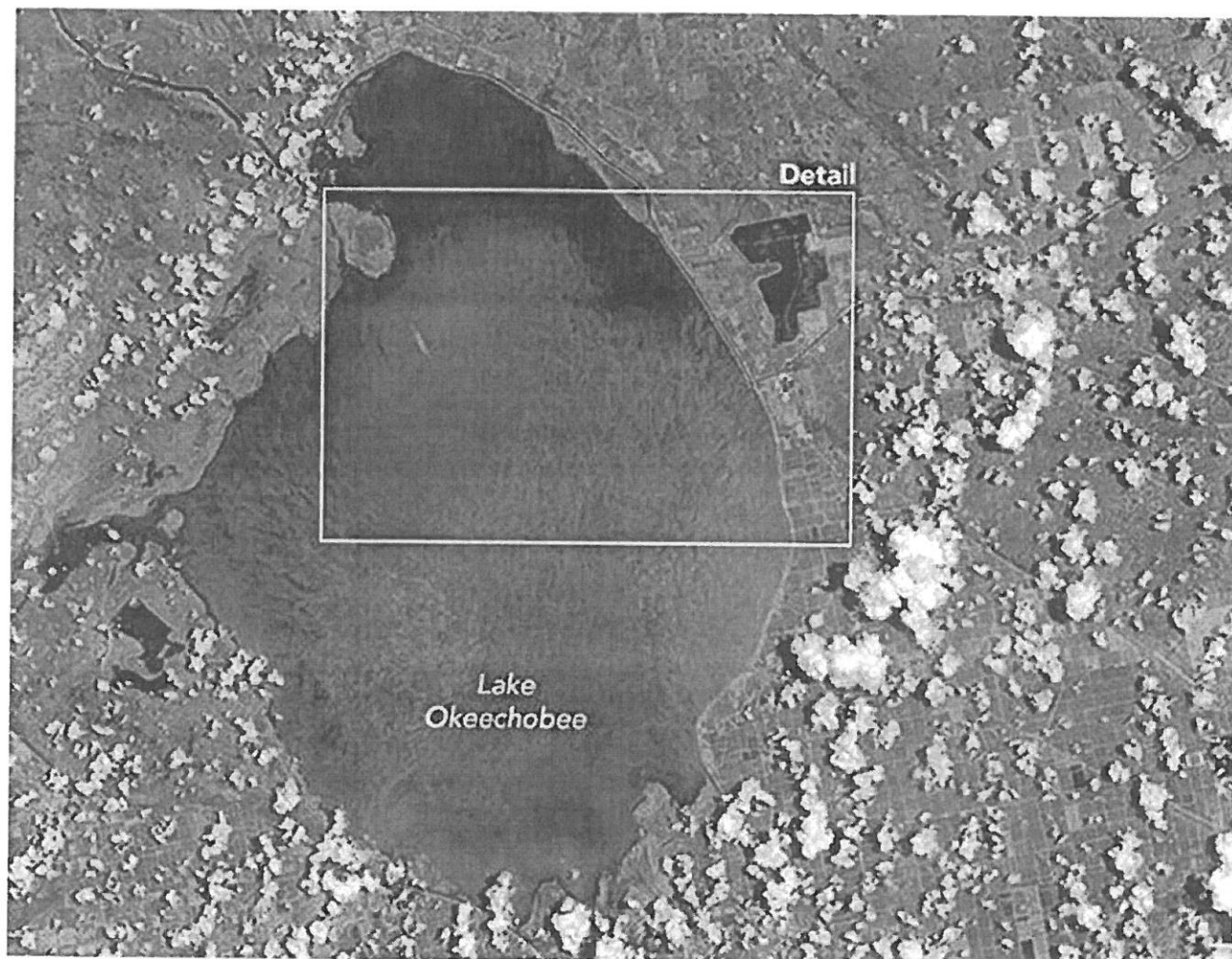


Martin County slapped with big public records fine



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BY MARY ELLEN KLAS

Herald/Times Tallahassee Bureau



A company that sued Martin County for allegedly reneging on a contract to use land to clean polluted water from Lake Okeechobee has won a major public records lawsuit accusing county commissioners of denying they conducted public business on private email accounts, delaying producing the accounts once they were discovered and, in one case, destroying the record trail.

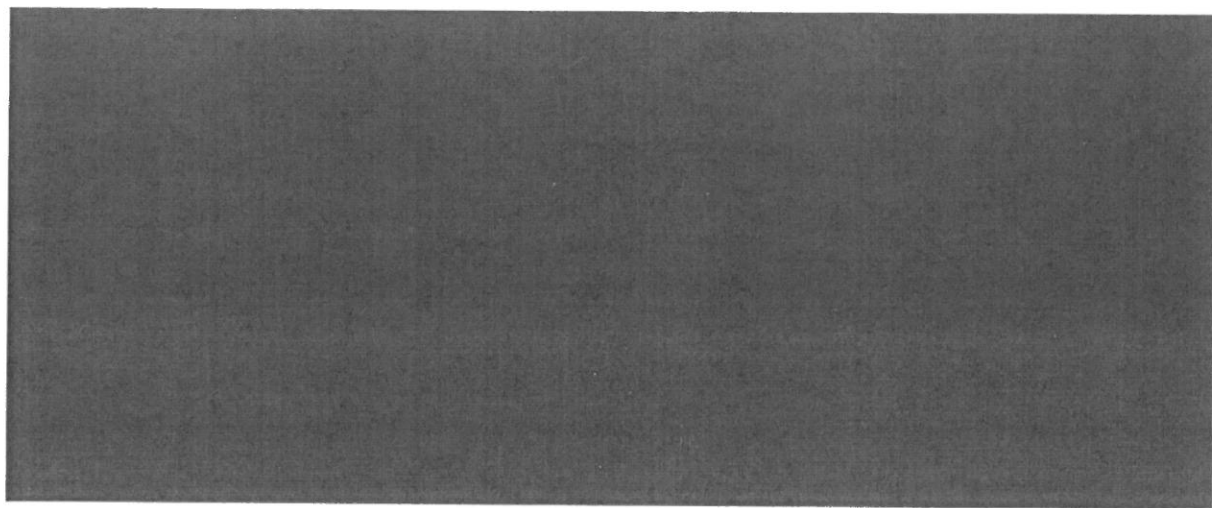
The county has agreed to pay Lake Point LLC, a company that operates a rock mine in western Martin County, more than \$371,800 in attorneys' fees and establish a new policy for how to handle public business on private email accounts.

It was a long-fought victory for the company, which originally sued in February 2013, alleging that former Martin County Commissioner and environmental advocate Maggy Hurchalla colluded with commissioners to derail the contract between the company, the county and the South Florida Water Management District. She believed the deal would destroy wetlands.

After dozens of depositions, the county and Lake Point agreed to non-binding arbitration with a court-appointed arbitrator, Howard Googe. He concluded the county and its commissioners "engaged in a pattern of violating the public records act" in an attempt to shield that they were using private email accounts to communicate with Hurchalla, and "certain commissioners failed to take public records requests seriously."

Barbara Petersen, executive director of the First Amendment Foundation, a nonprofit public records watchdog, said Martin County had once before been fined when a different set of commissioners and the county's Business Development Board were sued for violating the Sunshine Laws in 2010.





Ranch finds balance between business and environment

On Tuesday July 26 2016 Frank Wesley Williamson III, an Okeechobee rancher, has developed practices that reduces his phosphorus footprint on Lake Okeechobee and surrounding waterways though south of the lake, where a federal lawsuit set strict standards,

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“This is the second time that Martin County commissioners have intentionally attempted to thwart the public’s ability to oversee the actions of the commission and hold it accountable,” Petersen said.

“I think this rises to criminal violations, frankly, and we’re seeing this as alarming trend — cases where governmental officials are using private emails and private common devices in an attempt to avoid disclosure under the public records law.”

The case against the county and Hurchalla is still pending and, if successful, could expose the county to millions in additional fees and damages.

The Lake Point venture began as a public-private partnership that would allow Lake Point’s owners to operate a for-profit rockpit to mine and sell aggregate — a mixture of minerals —for construction projects. In exchange, Lake Point would

donate the 2,200-acre property to the district, which would use it to divert water from Lake Okeechobee or the C-44 Canal to avoid discharges into the St. Lucie Estuary.

The water on the land, which former owners had used to grow sugarcane, would be treated and then sent south into Florida Bay. The proposal is similar to a plan by Florida Senate President Joe Negron, R-Stuart, seeking to avoid the toxic algae outbreaks that have repeatedly spoiled beaches and waterways in the county.

Lake Point argued the agreement with the district gave it the right to transport and supply water; the company wanted to sell water to Palm Beach County. Martin County countered that Lake Point was not allowed to conduct a revenue-generating public water-supply project on the property.

The county canceled the contract in late 2012, after Hurchalla urged county commissioners to reject it, claiming it could destroy as much as 60 acres of wetlands. Lake Point countered that Hurchalla's claims were false, and sought copies of private emails between commissioners and Hurchalla.

Emails discovered in the case revealed that more than one commissioner used personal email accounts to conduct public business, and Lake Point sued. Judge F. Shields McManus rejected the company's request for a trial.

In March 2016, Hurchalla produced emails that the county had denied existed for two years. They showed that she had been engaged in discussions with former Commissioner Anne Scott and Commissioner Ed Fielding about canceling the contract and appeared to coach Scott to "limit the discussion" and cancel the contract. Hurchalla signed her email, "Deep Rockpit."

McManus ordered a new trial, concluding that the "newly discovered emails from a heretofore unrevealed private email account of Commissioner [Anne] Scott are direct evidence of an unlawful refusal to disclose public records. As such it will probably change the result if a new trial is granted."

The parties agreed to non-binding arbitration this month. Googe, the arbitrator, concluded that County Commissioner Sarah Heard scrubbed information and altered public records, at one point claiming her private Yahoo! account was hacked.

He also concluded that two other commissioners — Scott and Fielding — unlawfully delayed producing records for more than a year, while the county intentionally delayed producing the records or deleted records it was told to retain, which is in violation of Florida public records law.

Googe also noted that Fielding testified he took eight months to produce the emails from Hurchalla on his private account because he “was not entirely proficient in computer usage.” Googe noted “Commissioner Fielding is a highly educated person, graduating from Massachusetts Institute of Technology.”

Googe ordered Martin County to produce the records, including those sought by a subpoena of Heard’s Yahoo! emails, and to “develop a policy” for how to handle the commission’s “use of private email accounts for public business.”

The county agreed to pay the fees and agreed to produce all public records and develop a policy. But, according to documents filed Thursday, the county wants to exclude from the proposed final order any mention of the arbitrator’s findings that the county “engaged in a pattern of violating the public records act” and any mention that the new policy must address the county’s handling of private emails.

