



**FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**  
**COMMISSIONER ADAM H. PUTNAM**

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December 9, 2011

Mr. Al Sanchez  
Camayen Cattle Co.  
15049 Conners Highway  
Okeechobee, Florida 34974

**SUBJECT: 373.406(2) Binding Determination – Camayen Cattle Co.**

Dear Mr. Sanchez:

Per your request, enclosed please find our written report on the subject referral. In short, it is the Department's opinion that the operation in question is engaged in production agriculture and that the activities on the 8 acre parcel are exempt under subsection 373.406(2), Florida Statutes; however, the activities on the 20 acre parcel are not exempt under subsection 373.406(2), Florida Statutes.

If you or your staff have any questions as you review the document, please feel free to contact me or Bill Bartnick at 850-617-1700.

Sincerely,  
**ADAM H. PUTNAM**  
**COMMISSIONER**

A handwritten signature in cursive script, appearing to read "R. J. Budell".

Richard J. Budell  
Director

Enclosure

cc: Tony Waterhouse  
Carol Forthman

**FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**  
**Office of Agricultural Water Policy**  
**1203 Governors Square Blvd., Suite 200**  
**Tallahassee, Florida 32301**

**Binding Recommendation and Opinion**  
**Florida Statute 373.406(2) Exemption Claim**  
**Rita T. Sanchez, Martin County**  
**Camayen Cattle Co., Martin County**

**FDACS Clerk No. A76168**

Pursuant to the existing *Memorandum of Agreement Regarding Binding Determinations of Exemptions Under Subsection 373.406(2), Florida Statutes*, between the South Florida Water Management District (District) and the Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy (OAWP), Mr. Alfredo Sanchez, President of Camayen Cattle Company, requested that OAWP evaluate agricultural activities located on two non-contiguous properties located in Martin County, Florida to determine whether these activities qualify for the statutory exemption. The property owned by Mrs. Rita Sanchez is an approximately eight acre parcel and is leased to Camayen Cattle Company. The property owned by Camayen Cattle Co. is approximately twenty acres. Per this request, staff has performed a site inspection and evaluated owner provided documentation and additional information received from the District and has rendered a conclusion based on the following information.

**Background:**

The Sanchez site is an approximately 8 acre parcel and the Camayen site is an approximately 20 acre parcel, both located in Section 22, Township 40 South, Range 37 East, in Martin County, north of the St. Lucie Canal. Both parcels are classified as agriculture pursuant to 2011 Martin County Property Appraiser information. Mrs. Rita Sanchez holds title to the Sanchez property, and acquired the parcel by special warranty deed on January 30, 2004. Camayen Cattle Co. holds title to the Camayen property, and acquired the parcel in 1901.

On October 13, 2011, Mr. Alfredo Sanchez received two Investigative Notices from the District, one regarding the Sanchez Property and one regarding the Camayen Property. Both notices contained the same description of activities and alleged violations including wetland impacts associated with the excavation of a U-shaped ditch; construction of a perimeter dike through wetlands; filling of wetlands; and leveling of land in wetlands. OAWP received Mr. Sanchez's written request for binding determination on October 14, 2011. OAWP requested additional information from the District on October 17, 2011 and received the additional information on October 18, 2011.

According to Mr. Sanchez, the Camayen Cattle Co has been farming these two properties to the edge of the L-47 Canal on an intermittent basis since the early 1960's. Although the properties were farmed for sugar cane in the mid to late 1960's, they were more recently farmed with various types of row crops.

Because the sites were not historically planted in their entirety each growing season, Mr. Sanchez had District personnel on both sites on May 17, 2007, to review their plans to resume planting to the edge of the L-47 Canal. Reportedly, they were given verbal approval to continue their farming operations, and planting was resumed subsequent to the site visit and has continued to the present. It is important to note that there are several farming operations (in ground nurseries, row crops, bananas, etc.) along the L-47 to the north of the Camayen and Sanchez properties that farm down to the edge of the L-47 Canal.

**Site Inspection Findings:**

On October 26 2011, a site inspection was performed by Vanessa Bessey and Clegg Hooks with the OAWP, accompanied by Mr. Alfredo Sanchez, Mr. Ralph Sanchez, and Mr. Ed Weinberg with EW Consultants, Inc., all representing Camayen Cattle Co. During this field visit, both the Camayen property and the Sanchez property were visited. As part of this investigation, all of the production areas on both parcels were investigated and digital photos were taken.

OAWP will address the alleged violations discussed in the aforementioned Investigative Notices separately for each parcel, as described below:

**Sanchez Property**

The operation currently consists of approximately 8 acres of land that has been disked and prepared for a future planting of seed sugar cane. There is a newly constructed approximately 0.28 mile long, five foot wide, U-shaped seepage irrigation ditch located on the property. The western length of the ditch is adjacent to an approximately 0.28 mile long, eight foot wide berm consisting of spoil material from the excavation of the ditch. The ditch and berm are immediately adjacent and parallel to the L-47 Canal. The site contains no wells, and the north-south lateral ditches have not yet been installed. The Camayen's plan to utilize a portable pump to transfer water to the proposed lateral irrigation ditches from the U-shaped ditch. There was standing water noted in the south west corner of the property, and adjacent wetland areas on the property to the north and south of the subject property along the western property line. The general fall of the land is towards the L-47 Canal and the seepage irrigation ditch will serve to capture drainage in addition to seepage water which will then be used for irrigation. There is no outlet or connection to the L-47 Canal.

Using GIS, OAWP estimates that the excavation of the ditch and construction of the berm has resulted in approximately 0.44 acres of wetland impacts.

**Camayen Property**

The operation currently consists of approximately 20 acres of land that has been disked and prepared for a future planting of seed sugar cane. There is a newly constructed approximately 0.98 mile long, ten foot wide, U-shaped seepage irrigation ditch located on the property. The western length of the ditch is adjacent to an approximately 0.98 mile long, fifteen foot wide berm consisting of spoil material from the excavation of the ditch. The ditch and berm are immediately adjacent and parallel to the L-47 Canal. The site contains no wells, and the north-south lateral ditches have been installed. The

Camayen's plan to utilize a portable pump to transfer water to the lateral irrigation ditches from the U-shaped ditch. There was no standing water on the property and there were adjacent wetland areas on the property to the north of the subject property on the western property line. The general fall of the land is towards the L-47 Canal and the seepage irrigation ditch will serve to capture drainage in addition to seepage water which will then be used for irrigation. There is no outlet or connection to the L-47 Canal.

Using GIS, OAWP has estimated that the excavation of the ditch and construction of the berm has resulted in approximately 2.95 acres of wetland impacts.

Because OAWP considers these non-contiguous parcels as two distinct events, the Statutory Analysis and the Conclusions are presented separately.

**Statutory Analysis:**

(a) *"Is the person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture on lands classified as agricultural pursuant to s. 193.461, F.S.?"*

**YES.** The OAWP finds that Camayen Cattle Co. is engaged in the practice of agriculture pursuant to s. 193.461 F.S., on both the Sanchez and Camayen Cattle Co. parcels.

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(b) *"Has the individual altered (or proposed to alter) the topography of the tract of land for the purposes consistent with the normal and customary practice of such occupation in the area?"*

**Sanchez Property**

**Leveling of the land**

**YES.** The OAWP finds that the preparation of the land for the planting of seed sugar cane, including leveling and disking is normal and customary based on historic planting practices on the site and similar planting practices on adjacent lands.

**Construction of ditch and berm**

**YES.** The OAWP finds that the construction of the seepage irrigation ditch and associated berm to be normal and customary for the following reason:

The size of the wetland impact meets what OAWP considers to be normal and customary. For the row crop industry, OAWP finds that wetlands can be utilized as irrigation/tailwater recovery systems as long as: (a) the impact area footprint to wetlands does not exceed ½ acre; (b) the wetland is not utilized for nesting/denning by listed species; and (c) it captures production area runoff and serves a water supply purpose, consistent with BMPs.

Using GIS, OAWP estimates that the excavation of the ditch and construction of the berm has resulted in approximately 0.44 acres of wetland impacts.

### **Camayen Property**

#### **Leveling of the land**

**YES.** The OAWP finds that the preparation of the land for the planting of seed sugar cane, including leveling and disking is normal and customary based on historic planting practices on the site and similar planting practices on adjacent lands.

#### **Construction of ditch and berm**

**NO.** The OAWP finds that the construction of the seepage irrigation ditch and associated berm would not be normal and customary for the following reason:

The size of the wetland impact exceeds what OAWP considers to be normal and customary as described above.

Using GIS, OAWP estimates that the excavation of the ditch and construction of the berm has resulted in approximately 2.95 acres of wetland impacts.

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c) *"Are the alteration(s) (or proposed alterations) for the sole and predominant purpose of impeding or diverting surface waters or adversely impacting wetlands?"*

**NO** on Sanchez Property

**YES** on Camayen Property.

**Sanchez Property Conclusion:** OAWP has determined that the installation of a 0.28 mile long, five foot wide seepage irrigation ditch with associated eight foot wide berm; and, leveling and disking of land for the planting of seed sugar cane would qualify for an exemption under subsection 373.406(2), F.S.

**Camayen Property Conclusion:** OAWP has determined that the installation of a 0.98 mile long, ten foot wide seepage ditch with associated fifteen foot wide berm would not qualify for an exemption under subsection 373.406(2), F.S., but leveling and disking of land for the planting of seed sugar cane would qualify for an exemption under subsection 373.406(2), F.S.

*Nothing herein relieves the landowner from applying for and obtaining any applicable federal, state, or local authorization.*

*A determination by the Department that an activity is not exempt from permitting does not preclude the landowner and the water management district from agreeing to modifications to the activity that would render it exempt.*

**Right to Administrative Hearing:**

If you wish to contest OAWP's action, you have the right to request an administrative hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, and to be represented by counsel or other qualified representative. Mediation is not available. Your request for hearing must contain:

1. Your name, address, and telephone number, and facsimile number (if any).
2. The name, address, telephone number, and facsimile number of your attorney or qualified representative (if any) upon whom service of pleadings and other papers shall be made.
3. A statement that you are requesting an administrative hearing and dispute the material facts alleged by OAWP, in which case you must identify the material facts that are in dispute (formal hearing), or that you request an administrative hearing and that you do not dispute the facts alleged by the OAWP (informal hearing).
4. A statement of when (date) you received this Notice and the file number of this Notice.

**Your request for a hearing must be received at the address shown on this Notice within twenty-one (21) days of receipt of this Notice.** If you fail to obtain a Release from this Notice or fail to request an administrative hearing within the twenty-one (21) day deadline you waive your right to a hearing and the binding determination will become final agency action upon filing with the agency clerk.

You may appeal the final agency action by filing: (1) a Notice of Appeal with the OAWP at the address shown in this Notice, and (2) a copy of the Notice of Appeal with the applicable district court along with the filing fee within 30 days of the action becoming final.

**Supporting Documents:**

- 1) 2011 Martin County Property Appraiser Information Cards
- 2) Site Visit Digital Photographs
- 3) FDACS 2005 Florida Vegetable and Agronomic Crops Best Management Practices Manual
- 4) Aerial, Soil, Wetland and Topographic maps prepared by OAWP
- 5) SFWMD Additional Information received October 18, 2011

Filed with the Agency Clerk and rendered this <sup>9<sup>th</sup></sup> day of December, 2011.

  
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Paul Palmiotto, Agency Clerk