

APPROVED

MINUTES OF THE MEETING

Governing Board Southwest Florida Water Management District

Brooksville, Florida

January 29, 2008

The Governing Board of the Southwest Florida Water Management District (SWFWMD) met at 9:07 a.m. on January 29, 2008, at Brooksville headquarters. The following persons were present:

Board Members Present

Judith C. Whitehead, Chair
Neil Combee, Vice Chair
Todd Pressman, Secretary
Thomas G. Dabney, Member
Patricia M. Glass, Member
Maritza Rovira-Forino, Member
Patsy C. Symons, Member
Heidi B. McCree, Member

Staff Members Present

David L. Moore, Executive Director
William S. Bilenky, General Counsel
Lou Kavouras, Deputy Executive Director
Richard S. Owen, Deputy Executive Director
Eugene A. Schiller, Deputy Executive Director
Bruce C. Wirth, Deputy Executive Director

Recording Secretary

Annette D. Zielinski, Senior Admin. Assistant

Board Members Absent

Jennifer E. Closshey, Treasurer
Ronald E. Oakley, Member
Sallie Parks, Member

A list of others present who signed the attendance roster is filed in the permanent files of the District. Approved minutes from previous meetings can be found on the District's Web site (www.WaterMatters.org).

Public Hearing

1. Call to Order

Chair Whitehead called the meeting to order and opened the public hearing. Mr. Pressman noted a quorum was present.

2. Pledge of Allegiance and Invocation

Chair Whitehead led the Pledge of Allegiance to the Flag of the United States of America. Mr. Bilenky offered the invocation. (CD 1/Track 01 – 00:00/02:12)

Public Hearing

Chair Whitehead noted that this Governing Board meeting was not being broadcast. Public input was only taken during the meeting onsite. The Governing Board's meeting was recorded for broadcast on government access channels.

Chair Whitehead stated that anyone wishing to address the Governing Board concerning any item listed on the agenda or any item that does not appear on the agenda should fill out and submit a speaker's card. To assure that all participants have an opportunity to speak, a member of the public may submit a speaker's card to comment on one agenda item only during today's meeting. If additional time is needed or if the speaker wishes to address the Board on an issue not on today's agenda, a speaker's card may be submitted for comment at the end of the meeting during "Public Input." Chair Whitehead stated that comments would be limited to three minutes per speaker, and, when appropriate, exceptions to the three-minute limit may be

granted by the Chair. She also requested that several individuals wishing to speak on the same issue/topic designate a spokesperson.

3. **Additions/Deletions to Agenda**

According to Section 120.525(2), Florida Statutes, additions or deletions to the published agenda will only be made for "good cause" as determined by the "person designated to preside." Mr. Moore noted the items deleted from the agenda were deleted after publication of the regular agenda. (CD 1/Track 02 – 00:00/02:28)

Consent Agenda

The following items were deleted from consideration:

32. Initiation of Litigation – Surface Water Activity – Lexington Homes, Inc. (North Green Estates) – Hillsborough County
33. Initiation of Litigation – Surface Water Activity – Lexington Homes, Inc. (South Green Estates) – Hillsborough County
34. Initiation of Litigation – Surface Water Activity – Macklin Transport Company – Highlands County
35. Initiation of Litigation – WUP No. 20001782.003/.004 - Spencer Farms, Inc. (Stephens Road Farm) - Hillsborough County

General Counsel's Report

The following item was deleted from consideration:

72. Final Order – WUP No. 2004912.006 – City of Lakeland v. SWFWMD, DOAH Case No. 07-0564 – Polk County

The following item was added for consideration:

- Settlement Agreement - Southwest Florida Water Management District v. City of Weeki Wachee, et al. Fifth Judicial Circuit, Case No. H-27-CA-2004-366RT – Hernando County

4. **Employee Recognition**

Mr. Moore made presentations to the Board for the employees who had achieved milestones of 20 years or greater to specially acknowledge and commend the contributions of these individuals. The following individuals celebrated 20-year milestones: Clay Black, Senior Professional Engineer, Brooksville Regulation Department; Axel Griner, Senior GIS Analyst, Operations; Glenn Hoffmann, Senior Trades Worker, General Services Department; Malcolm Hudson, Senior Trades Worker, Operations; and Dawn Turner, Professional Engineer, Resource Projects. (CD 1/Track 02 – 00:00/10:09)

5. **Public Input for Issues Not Listed on the Published Agenda**

Mr. Mark Abbott, a resident of Port Richey, Florida, addressed the Governing Board encouraging them to promote the use of water efficient household appliances. (CD 1/Track 03 – 00:00/03:25)

Dr. Octavio Blanco, a resident of Lutz, Florida, encouraged the Governing Board to send the message to developers to make their site plans fit their property and cut down on the use of mitigation, thereby curbing the destruction of natural wetlands. (CD 1/Track 04 – 00:00/04:27)

Consent Agenda

Items 32, 33, 34, and 35 were deleted from consideration. Item 25 was moved from the Consent Agenda for discussion under the Resource Management Committee.

Regulation Committee -- Environmental Resource Permits

6. ERP No. 43007091.001 - R & D Cattle Excavation – Charlotte County
7. ERP No. 43002236.038 - City of Tampa - New Tampa Boulevard Extension from East of I-75 to Commerce Park Boulevard – Hillsborough County
8. ERP No. 43017451.003 - K-Bar Ranch – Hillsborough County

9. ERP No. 43018838.026 - Sunset Isles – Hillsborough County
10. ERP No. 43029777.004 - New Port Tampa Bay - Phase 1 Marina – Hillsborough County
11. ERP No. 43027835.000 - Country Oaks – Manatee County
12. ERP No. 43033278.000 - 4 Star Tomato, Inc. - Rutland Road Water Conservation Project – Manatee County
13. ERP No. 43033109.000 - Heath Preserve – Marion County
14. ERP No. 43023781.012 - Sunlake Development – Pasco County

Regulation Committee -- Water Use Permits

15. WUP No. 20003755.006 - Mabry Carlton Ranch/Mabry Carlton Ranch, Inc. – Sarasota County

Regulation Committee -- Other

16. **Approve Initiation of Rulemaking to Amend 40D-1.002(2), Florida Administrative Code (F.A.C.), to Delegate Action on Requests for Variances and Waivers to Chapters 40D-21, F.A.C., Water Shortage Plan, and 40D-22, F.A.C., Year-Round Water Conservation Measures**

Staff recommended to approve initiation of rulemaking to amend 40D-1.002(2), F.A.C., to delegate action on requests for variances and waivers to Chapter 40D-21, F.A.C., Water Shortage Plan, and 40D-22, F.A.C., Year-Round Water Conservation Measures, as shown in the Exhibit.

17. **Approve Initiation of Rulemaking to Amend 40D-1.659 and Chapter 40D-3, F.A.C., to Adopt Revised Well Contractor Licensing Forms, Conform District Rules to Recent Department of Environmental Protection Rule Amendments and Make Other Technical Changes**

Staff recommended to approve the initiation of rulemaking to amend Rules 40D-1.659, 40D-3.021, 40D-3.037, 40D-3.038, 40D-3.101, 40D-3.301, 40D-3.411 and 40D-3.531, F.A.C., to incorporate by reference two well construction permitting forms, conform District rules to recent Department of Environmental Protection rule amendments and make other minor technical changes.

18. **Approve Revisions to Supplemental Environmental Resource Application Forms Addressing Homeowner and Property Owner Association Documentation Requirements**

Staff recommended to approve revisions to forms and authorize staff to complete the rulemaking process to adopt the form.

19. **Approve Joint Amended Deed of Conservation Easement and Agreement for the Peace River Mitigation Bank**

Staff recommended to approve and accept the Joint Amended Deed of Conservation Easement and Agreement for the Peace River Mitigation Bank.

20. **Electrical Power Plant Site Certification – SWFWMD Agency Report on Progress Energy Florida – Crystal River Units 4 and 5 Modification of Conditions of Certification – Citrus County**

Staff recommended to approve the Agency Report and proposed revised conditions addressing water use to be submitted to the Department of Environmental Protection for Progress Energy Florida's Crystal River Unit 4 and 5 Conditions of Certification.

21. **2008 Florida Department of Transportation Mitigation Plan**

Staff recommends approval of the draft FDOT Mitigation Plan.

Resource Management Committee

22. **Approve Amendment to the Construction Agreement with Subaqueous Services, Inc. for the Lake Panasoffkee Restoration Project** *(Presented and Approved at the December 2007 Withlacoochee River Basin Board Meeting)*

Staff recommended to (1) approve compensating Subaqueous Services, Inc. \$642,902 for the dredging of an additional 454,594 cubic yards of sediment and for 12 days of additional down-time costs; (2) approve adding 131 calendar days to the project schedule; (3) approve amending the agreement with Subaqueous Services, Inc. to increase the not to exceed amount of the agreement by \$263,851, for a new agreement total of \$23,214,678; and (4) authorize the Executive Director to execute the amendment on behalf of the Governing Board.

23. **Rehabilitation and Reclamation Agreement, Sawgrass Lake Restoration Project (Presented at the June 2007 Pinellas-Anclote River Basin Board Meeting)**
Staff recommended to approve the Rehabilitation and Reclamation Agreement between the Florida Department of Environmental Protection (FDEP) and the District and authorize the Executive Director to execute the agreement.
24. **First Amendment to the Evaluation of Soil Moisture Based On-Demand Irrigation Controllers, Phase II Project (Presented at the December 2007 Pinellas-Anclote Basin Board Meeting)**
Staff recommended the Governing Board approve the first amendment with the University to increase funding by \$50,000, with the Basin's share not to exceed \$50,000; and authorize the Executive Director to sign the first amendment.
25. **Appraisal and Purchase/Sale Agreement, Lake Hancock Project, SWF Parcel No. 20-503-150** – This item was moved for discussion.
26. **Remove Crews Lake From Rule Amendments to 40D-8.624, F.A.C., and Authorize Completion of Rulemaking for Minimum and Guidance Levels Proposed for Lakes Lola, Jessamine, Pasco, Pierce, and Unnamed Number 22, also known as Loyce Lake**
Staff recommended to approve a change to the proposed rule amendments to 40D-8.624, F.A.C. to remove Crews Lake and authorize staff to complete the rulemaking for Lake Lola, Lake Jessamine, Pasco Lake, Pierce Lake, and Unnamed Lake Number 22 (also known as Loyce Lake).
27. **Continue Public Hearing Requested by Tampa Bay Water on Proposed Minimum Flows for the Fresh Water Segment of the Alafia River**
Staff recommended to continue the public hearing requested by Tampa Bay Water on the proposed Minimum Flows for the freshwater segment of the Alafia River to the February 2008 Board meeting in anticipation that the peer review report will be presented to the Board at that time and the public hearing can be conducted coincident with that presentation.

Finance & Administration Committee

28. **Board Travel**
No action required at this time.
29. **Budget Transfer Report**
Staff recommended to approve the Budget Transfer Report covering all budget transfers for December 2007.
30. **Planned Sinking Fund Transfer for Service Office Business Continuity Servers and Storage Area Networks**
Staff recommended to authorize a transfer of \$356,500 from the FY2008 Computer Renewal and Replacement Sinking Fund to the Information Resources Department for new servers in the Service Offices and a new replication server in Brooksville.

General Counsel's Report

31. **Consent Order – Surface Water Activity – Seventeenth Avenue Ybor City, LLC (Las Ybor Condominiums) – Hillsborough County**
Staff recommended to approve the proposed Consent Order and authorize the initiation of litigation against Seventeenth Avenue Ybor City, LLC to obtain compliance with the Consent Order.
32. **Initiation of Litigation – Surface Water Activity – Lexington Homes, Inc. (North Green Estates) – Hillsborough County** – This item was deleted from consideration.
33. **Initiation of Litigation – Surface Water Activity – Lexington Homes, Inc. (South Green Estates) – Hillsborough County** - This item was deleted from consideration.
34. **Initiation of Litigation – Surface Water Activity – Macklin Transport Company – Highlands County** – This item was deleted from consideration.
35. **Initiation of Litigation Consent Order – WUP No. 20001782.003/004 - Spencer Farms, Inc. (Stephens Road Farm) – Hillsborough County** – This item was deleted from consideration.
36. **Initiation of Litigation – Well Construction – License No. 9159 – Monroe Butler – Hillsborough County**

Staff recommended to authorize the initiation of litigation against Mr. Butler to take disciplinary action against his license, recover an administrative fine/civil penalty, and recover District enforcement costs, court costs and attorney's fees.

37. **Initiation of Litigation – Well Construction – License No. 9201 – Wayne Wygant – Hillsborough County**

Staff recommended to authorize the initiation of litigation against Mr. Wygant to take disciplinary action against his license, recover an administrative fine/civil penalty, and recover District enforcement costs, court costs and attorney's fees.

Executive Director's Report

38. **Approval of Minutes – December 18, 2007 Governing Board Meeting**

Staff recommended to approve the minutes as presented.

Following consideration, **Mr. Dabney moved, seconded by Mr. Combee, to approve the Consent Agenda as modified. Motion carried unanimously.** (CD 1/Track 05 – 00:00/01:37)

Ms. Rovira-Forino commended Messrs. Owen and O'Neil, and their staff for their hard work compiling the 2008 Florida Department of Transportation Mitigation Plan.

Chair Whitehead relinquished the gavel to Outreach and Planning Committee Chair Combee.

Outreach & Planning Committee

Discussion Items

39. **Florida Department of Environmental Protection Surface Water Quality Classification System**

Mr. Roy Mazur, P.E., Planning Director, introduced Mr. Eric Shaw, Program Manager, Florida Department of Environmental Protection (FDEP) who presented FDEP'S surface water quality classification system and the process/criteria for reclassification.

Mr. Shaw explained the Use Designations, Water Quality Criteria, Antidegradation Policy, and Relief Mechanisms. Some of the steps toward a successful Surface Water Reclassification include: complete rulemaking petition, public noticing and workshops, DEP review and analyses, file rule certification package with Florida Department of State, and the final Environmental Protection Agency review. In conclusion, Mr. Shaw said reclassifications are a lengthy process and somewhat rare in occurrence.

This item was presented for the Committee's information, and no action was required. (CD 1/Track 06 – 00:00/22:35)

40. **Drought Communications Update – Signage and Advertising Signage**

Mr. Michael Molligan, Director, Communications Department, said this campaign was designed to raise public awareness that the District is currently experiencing a drought and to encourage water conservation. Planning Committee Chair Combee recommended that staff consider using roadside signs like those he had seen in Atlanta to raise public awareness about the ongoing drought and the need to conserve water. District staff has developed signs that read: *It's a drought. Conserve! Learn how at WaterMatters.org.*

The District is offering the signs to local governments, utilities, and developments to be placed in their communities. The District's cost is approximately \$3,300 for 1,000 signs and stands.

Mr. Molligan said media messaging, or advertising, is one initiative the District uses to promote water resources awareness and conservation practices. The next major advertising purchase will be in February–April for \$610,000. This winter–spring campaign will include television, radio, newspaper, magazine and traditional billboard and digital

billboard advertising. Radio advertising will kickoff the campaign with more than 6,500 spots running from mid-February through April on a diverse array of stations to capture all demographics. The District's television ads will air during March and April. More than 3,800 spots will air on broadcast and cable channels. Areas outside the eight-county Tampa-St. Petersburg-Sarasota television market will be reached by advertising on cable channels.

Also during March and April, four newspaper ads will be published in each of the major circulation newspapers in the District, along with ads in two publications that serve the Hispanic audience, two publications that specialize in reaching the African-American community and one trilingual newspaper (English, Spanish and Italian).

The District is taking advantage of another new advertising opportunity that will reach all subscribers of *Time*, *Newsweek* and *U.S. News & World Report* magazines in a six-county area with one full-page, color ad in each of the publications. This effort will reach nearly 98,000 subscribers.

The winter-spring advertising campaign will cost \$610,686, with the following breakdown: television, \$266,339; radio, \$211,767; newspaper, \$72,522; magazine, \$16,742; billboards, \$43,316.

This item was presented for the Committee's information, and no action was required. (CD 1/Track 07 – 00:00/14:11)

41. **Legislative Update**

Mr. David Rathke, Director, Community and Legislative Affairs, updated the Governing Board regarding the leading Federal Legislative issues. He discussed the following topics regarding appropriations: Omnibus spending bill, \$500,000 for Peace and Myakka River Watersheds, 2008 State and Tribal Assistance Grants Request, Farm Bill, Tax Credit Bonds and Private Activity Bonds, and WaterReuse.

Mr. Rathke said the issues included some of the current State and Legislative issues: Recurring Budget Issues – Alternative Water Supplies, Land Acquisition and Management, and SWIM; Community Budget Issue Requests, Local Government Water Project Approval; and West-Central Florida Water Restoration Action Plan. Mr. Rathke reviewed the following list of Bills that have been filed: Expedited Permitting, Water Pollution Control, Springs Protection, and Aloha Utilities. The following bills are pending: Alternative Water Supplies, Reclaimed Water, and East-Central Florida Water Supply Plan. Other State Legislative Issues include: Century Commission, Interim Projects, Sunset Review, Taxation and Budget Reform Commission, and Aggregate Task Force. This item was presented for the Committee's information, and no action was required. (CD 1/Track 08 – 00:00/36:56)

42. **Strategic Plan Update Process**

Mr. Roy Mazur, Director, Planning Department, described the Strategic Planning process for Governing Board members. He said the plan will envelop a 20-year planning horizon, with a continual 5-year tactical outlook, reviewed annually, and remain nimble enough to react to a shifting environment. The focus for the FY2010 update will be on the use of Subject Matter Experts, Performance Measures, Imbedding the Strategic Plan into District Operations, and increasing organizational and outside involvement. Mr. Mazur reviewed the Strategic Planning Organizational Chart, the Strategic Planning Committees and the Schedule. (CD 1/Track 09 – 00:00/15:57)

Submit & File Report

The following item was submitted for the Committee's information, and no action was required.

43. **Status of the 2008 Consolidated Annual Report**

Ms. Kavouras commented that this report is legislatively mandated and is an actual compilation of 7 different reports. Ms. Kavouras commended Ms. Miki Renner and Ms. Paula McCleery, of the Planning Department, for their hard work in compiling these reports. (CD 1/Track 10 – 00:00/01:01)

Routine Reports

The following items were provided for the Committee's information, and no action was required.

44. **Significant Activities Report**

45. **Speakers Bureau**

Ms. Kavouras noted there have been a number of additional speeches delivered through the Speakers Bureau program. (CD 1/Track 10 – 01:01/01:20)

46. **Comprehensive Plan Amendment and Related Reviews Report**

47. **Review of Developments of Regional Impact**

Outreach and Planning Committee Chair Combee relinquished the gavel to Regulation Committee Chair Rovira-Forino.

Regulation Committee

Discussion Items

48. **Consent Item(s) Moved for Discussion**

49. **Water Shortage Actions**

Mr. Richard S. Owen, AICP, Deputy Executive Director, Resource Regulation, said the District has been coordinating with the Peace River/Manasota Regional Water Supply Authority (Authority), Englewood Water District, and Charlotte County regarding a possible emergency authorization to facilitate the temporary transfer of water from the Englewood Water District to Charlotte County Utilities, an action which would offset demand that would otherwise need to be met by withdrawals from the Authority's reservoir and ASR wellfields. It is anticipated that staff will be back to the Governing Board at its February meeting for approval of this order.

Mr. Granville Kinsman, Hydrologic Data Manager, said the District has received some good rainfall this past month, more than seven inches in some areas. The southern portion of the District, however, received slightly below normal rainfall for the month, the Peace River Basin being the most impacted. Mr. Moore said the recent rainfall has helped some but was not enough to carry us through this drought. District staff continues to monitor rainfall, ground water levels, stream flow and other drought indicators.

Mr. Owen said all five Water Management Districts participated in a statewide Drought Summit held by the DEP and the State Emergency Response Team. Mr. Moore represented our District and delivered a presentation regarding our drought management activities. Additional District staff attended and shared information with attendees on how the District communicates and encourages the heightened need for water conservation during this drought period and for long-term water supply planning.

This item was presented for the Committee's information, and no action was required. (CD 1/Track 11 – 00:00/16:53)

Committee Chair Rovira-Forino heard public comment on this item at this time.

Mr. Al Grubman, representing TOO FAR, said he and the organization he represents supports the use of drought communication signs. Mr. Grubman volunteered to take some signs back to Citrus County for their County Commissioners to use. (CD 1/Track 12 – 00:00/01:53)

50. **Approve Interagency Agreement Regarding Uniform Year-Round Water Conservation and Water Shortage Measures for Marion County**

Mr. Ken Weber, P.G., Water Use Permitting Program Director, said the District's boundaries are primarily based on Florida's hydrogeologic features, such as river basin boundaries. As a result, some local governments are located partially in the District and partially in an adjacent water management district. Western Marion County is within the District, but eastern Marion County in the St. Johns River Water Management District (SJRWMD), and the border between the two agencies being generally contiguous with the route of Interstate 75.

Subsection 373.046(6), Florida Statutes, provides that where a local government crosses water management district boundaries, the affected districts may designate a single affected district by interagency agreement to implement regulations in that area.

As previously reported, District staff and colleagues from the SJRWMD have been collaborating on an effort which will result in uniform lawn and landscape irrigation measures, both for year-round water conservation measures and for water shortage restrictions for all of unincorporated Marion County. This effort is viewed as a pilot for all five water management districts, with the results to be used to address similar situations throughout the state.

To effectuate this goal, an Interagency Agreement has been drafted. The current draft was included as an exhibit in the Governing Board packet of information. In the absence of a drought, this Agreement will allow all of unincorporated Marion County to follow the year-round water conservation measures adopted by the SJRWMD. During a drought, however, this Agreement will allow the District to declare water shortage measures for the eastern (SJRWMD) portion of the County in addition to its existing authority in the western portion. The proposed Agreement has an initial term of one year, during which time the SJRWMD and, if necessary, the District will have an opportunity to enter into rulemaking for the purpose of developing more consistent lawn and landscape irrigation measures. Such rulemaking changes may necessitate a change in the terms of the Agreement.

Staff recommended to (1) authorize the Executive Director to finalize and execute the Interagency Agreement, the draft of which is shown in the exhibit; and (2) authorize the Executive Director, after the Agreement is executed, to modify Water Shortage Order No. SWF 07-02 to expand the affected area to include the eastern portion of Marion County in accordance with the Interagency Agreement.

Following consideration, **Mr. Combee moved to approve the staff recommendation, seconded by Mr. Dabney, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 13 – 00:00/12:18 & CD 1/Track 14 – 00:00/01:39)

51. **Final Approval of Amendments to 40D-2.301(2), 40D-2.091, and 40D-2.321, F.A.C., Conditions for Issuance of Permits, and Part B, Basis of Review, of the Water User Permit Information Manual to Clarify Environmental Resource Permit and Water Use Permit (WUP) Requirements to Obtain a 20-Year WUP for Long-Term Phased Projects**

Mr. Ken Weber, Water Use Program Director, Regulation Performance Management Department, said the Governing Board authorized initiation of rulemaking to address issues concerning large-scale, multi-phase projects that require both a Water Use Permit (WUP) and an Environmental Resource Permit (ERP). It had been suggested by several in the development community that the current rules linking the two permitting programs, as well as permit duration constraints, were limiting the optimal development of alternative water supplies and conjunctive use systems.

Current rules generally do not allow water use permits to be issued until any necessary ERP applications related to the project are complete. For multi-phase projects, it is typical

to submit several ERP applications over time as the project progresses, but the current rules essentially limit the District to both reviewing the project and issuing permits one phase at a time. This approach can limit the potential of alternative water supplies and conjunctive use systems that could be more optimally planned and designed by viewing the project as a whole rather than as individual phases.

Based on public input received through meetings, correspondence, and a rulemaking workshop, staff has developed rule language that incentivizes the development of alternative water supplies/conjunctive use systems for large-scale, multi-phase projects. The proposed rules:

- (1) Allow a Conceptual ERP to fulfill the requirement that a completed ERP is precedent to issuance of the WUP;
- (2) Establish minimum requirements needed to allow WUP issuance;
- (3) Allow 20-year permits for projects developing significant alternative water sources/conjunctive use systems, including standby ground water quantities. To qualify for this incentive, at least 75% of the project's long-term (build-out) irrigation water needs would need to be satisfied by alternative water supplies/conjunctive uses. It is recognized that, where not constrained by standard rule criteria, higher ground water quantities may be required in earlier phases of a qualified project, but these quantities would diminish as alternative sources/conjunctive use systems come online over the project term.

To address the uncertainty inherent in long-term projects, the WUP would require five year compliance reports and re-evaluation of water demands and sources at submittal of each Individual ERP (construction) application. Based on information from these reports, the WUP would be modified if appropriate.

If the Board approves the rule amendments, District staff will complete the rulemaking process without further Governing Board action, unless substantive public comment is received or material substantive changes are proposed.

Staff recommended approval of amendments to 40D-2.301(2), 40D-2.091, and 40D-2.321 F.A.C., Conditions for Issuance of Permits and Part B, Basis of Review, of the Water User Permit Information Manual presented in the exhibit.

Mr. Dabney said he thought the threshold of "75% of the project's long-term irrigation water needs would need to be satisfied by alternative water supplies" was setting the standard too high. Mr. Dabney said he would like to see this widely adopted. Mr. Pressman suggested a sliding scale approach which would lessen the number of years on the permit for less than a 75% of alternative water supplies. Mr. Owen said there are developments now that would be able to meet the 75% threshold. Mr. Owen said staff is seeking Governing Board input regarding the threshold. Committee Chair Rovira-Forino suggested this scenario be studied some more and brought back to the Governing Board for consideration another time. Board members collectively brainstormed the situation at hand; coming to a consensus that this item should be discussed at the advisory committee level and directly to the industry.

Committee Chair Rovira-Forino heard public comment on this item.

Mr. Scott Coulombe, Director, Polk County Builder's Association, expressed his appreciation to the Governing Board members for leading the District in all of these important decision making processes. He believes the 75% proposed threshold is a little too high.

Mr. Steven Elias, Envisors Engineering, addressed the Board regarding the proposed rulemaking language. He suggested the District define what a "water resource problem area" is.

Mr. Charles Lee, Audubon Society, commended staff and said he believes this is moving in the right direction. He hopes that the high threshold suggested by staff will remain in the proposed rulemaking. He also suggested that high standards be set for new developments with regards to the types of vegetation and irrigation methods that will be allowed.

Committee Chair Rovira-Forino said no action would be taken on this item today; staff will bring this item back at a future meeting. (CD 1/Track 15 – 00:00/58:19)

Submit & File Reports – None

Routine Reports

The following items were provided for the Committee's information, and no action was required.

52. **Demand Management**
53. **Overpumpage Report**
54. **Southern Water Use Caution Area Quantities**
55. **Water Production Supply Summary**
56. **Public Supply Benchmarks**
57. **Resource Regulation Significant Initiatives Report**

Chair Whitehead recessed the public hearing for a short lunch break to be followed by a closed Attorney-Client Session.

At this time, an item not appearing on the published agenda was considered.

Settlement Agreement - Southwest Florida Water Management District v. City of Weeki Wachee, et al. Fifth Judicial Circuit, Case No. H-27-CA-2004-366RT – Hernando County

Immediately following the closed Attorney-Client Session session, the Governing Board met in an open meeting to consider and vote on Settlement Agreements in this matter. The first settlement agreement is between the District and the City of Weeki Wachee (Weeki Wachee Springs, LLC). Mr. Frank Miller, Attorney, described the agreement. It would dismiss all pending litigation, dismisses any claims, incorporates the agreement entered into by the City of Weeki Wachee and DEP. Some community events will continue as planned. No later than November 1, 2008 the lease between Weeki Wachee and the District terminates.

Staff recommended approval of the settlement agreement between the District and the City of Weeki Wachee, if however, closing does not take place as stipulated in the agreement, jurisdiction remains with the Court and reinstatement of the pleadings takes place. The agreement must be signed by 5:00 p.m., Friday, February 1, 2008.

The second settlement agreement is between the City of Weeki Wachee and DEP. Mr. Joseph Ward, Assistant General Counsel, described the settlement agreement. He said it dismissing all litigation, contingent on DEP receiving appropriate funds to operate the park, contingent upon Weeki Wachee receiving a wavier on the fees associated with the sovereign submerged lands lease, contingent upon DEP gaining full access to the financial records of the City of Weeki Wachee prior to closing, Weeki Wachee must maintain existing liability insurance through the closing date, and Weeki Wachee must abide by the lease with the District through the closing date., DEP must use its best efforts to retain the current employees of the attraction, and 6 residential sites must remain available.

Staff recommended that the Governing Board approve the Asset Purchase Agreement between Weeki Wachee Springs, LLC and DEP.

Following consideration, **Mr. Dabney moved, seconded by Ms. McCree, to approve the staff recommendation for both settlement agreements. Motion carried unanimously.**

Mr. Fritz Musselmann said staff is seeking Board approval to authorize Mr. Moore to enter into a lease agreement with DEP and to add a little acreage for future camping sites.

Following consideration, **Ms. McCree moved, seconded by Ms. Rovira-Forino, to approve the staff recommendation as referenced above. Motion carried unanimously.** (CD 1/Track 16 – 00:00/21:31)

Regulation Committee Chair Rovira-Forino relinquished the gavel to Resource Management Committee Chair Pressman.

Resource Management Committee

Discussion Items

58. **Consent Item(s) Moved for Discussion**

25. **Appraisal and Purchase/Sale Agreement, Lake Hancock Project, SWF Parcel No. 20-503-150**

Staff recommended to (1) accept the appraisals; and (2) approve the Purchase/Sale Agreement. Following consideration, **Mr. Dabney moved, seconded by Mr. Combee, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 17 - 00:00/0:43)

59. **Polk County Comprehensive Water Supply Plan – Funding Request**

Mr. Brian Armstrong, Manager, Water Supply and Resource Development Section, Resource Projects Department said this item is to request the Governing Board approve of an out-of-cycle funding request from Polk County to develop a Comprehensive Water Supply Plan. The County has estimated the cost to prepare the Plan at \$955,318 and is requesting the District fund half or \$477,659. The District has had recent discussions with South Florida Water Management District (SFWMD) and they have indicated a willingness to participate in the project and contribute funding. Any contribution by SFWMD would have the potential to reduce both the County and District's share.

The Polk County Comprehensive Water Supply Plan will identify viable potable water supply sources and conservation to meet the future potable and non-potable water demands of various public utility systems within Polk County. This process will include investigation of multiple water resources including conservation, reclaimed water, storm water, surface water and ground water. The Plan will address the technical, economic, environmental, jurisdictional and regulatory factors associated with development of these potential new sources. The water supply planning effort will first include identification, quantification and confirmation of the types and amounts of new water supply that can be developed, and then address aligning the sources with prospective water supply partners. Most importantly, the Plan will set forth immediate projects and strategies which materially provide new water supplies for targeted public utilities. The Plan will outline a set of real, attainable, affordable and significant water supply projects, regional in nature, to begin the transition of water supplies from traditional ground water to alternative sources. Recommendations will include project definitions, specific actions, production rates, schedules, project costs and unit water costs (operation, maintenance and debt service).

Mr. Dabney led a lengthy discussion regarding that this plan approval does not indicate that a future funding commitment is forthcoming.

Staff recommended to (1) approve the transfer of \$238,830 from the General Fund Water Supply and Resource Development Reserve funds for the Polk County Comprehensive Water Supply Plan; and (2) authorize the Executive Director to enter into an agreement with Polk County for the Comprehensive Water Supply Plan for a total cost of \$955,318, with the District's share not to exceed \$477,659, to be divided between the Governing

Board and Peace River Basin Board, contingent upon approval by the Peace River Basin Board.

Following consideration, **Mr. Dabney moved, seconded by Ms. Whitehead, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 17 - 00:43/31:09)

Submit & File Reports – None

Routine Reports

The following items were provided for the Committee's information, and no action was required.

60. **Significant Water Supply and Resource Development Projects**
61. **Watershed Management Program and Federal Emergency Management Agency Map Modernization Status Report**
62. **Florida Forever Funding Status Report**
63. **Minimum Flows and Levels Status Report**
64. **Hydrologic Conditions Status Report**
65. **Structure Operations Status Report**

Resource Management Chair Pressman relinquished the gavel to Chair Whitehead who facilitated the Finance and Administration Committee.

Finance and Administration Committee

Discussion Items

66. **Consent Item(s) Moved for Discussion**

Submit & File Report

The following item was submitted for the Committee's information, and no action was required.

67. **Treasurer's Report, Payment Register, and Contingency Reserves Report**
68. **Fiscal Year 2008 First Quarter Financial Report**

Routine Report

The following items were provided for the Committee's information, and no action was required.

69. **Management Services Status Report**
70. **Fiscal Year 2009 Budget Calendar**

Finance and Administration Committee Chair Closshey relinquished the gavel to Chair Whitehead. (CD 1/Track 18 - 00:00/01:13)

General Counsel's Report

Discussion Items

71. **Consent Item(s) Moved for Discussion**
72. **Final Order – WUP No. 2004912.006 – City of Lakeland v. SWFWMD, DOAH Case No. 07-0564 – Polk County** - This item was deleted from consideration.
73. **Overview of Compliance and Enforcement Process**

Mr. Jack Pepper, Deputy General Counsel, said at the December 2007 Governing Board meeting, during discussion of the monthly over-pumpage report, a request was made for an overview of the District's compliance and enforcement process. The purpose of this item was to provide an overview of the District's compliance and enforcement processes related to all regulatory programs.

Mr. Pepper said the term "compliance" includes the work staff routinely performs up to the point that staff accepts the permit holder's action as materially compliant; and includes

staff's identification of a material deviation and obtainment of compliance without involvement of the Office of General Counsel (OGC). Enforcement starts when a file is forwarded to the OGC. The OGC currently has 294 files, 87 percent of the files are related to surface water issues. Mr. Pepper reviewed the steps taken, using a common scenario, in which there has been a failure to submit a statement of completion and as-built drawings. Essentially two letters from Regulatory staff would be sent out before a file would be reviewed and sent forward.

After a file is received in OGC, a Notice of Violation (NOV) and proposed Consent Order are sent to the violator. The proposed Consent Order requires the payment of a penalty and may require some corrective action by the violator. If the violator does not sign the proposed Consent Order, OGC seeks authorization from the Governing Board to initiate litigation by serving the violator with an Administrative Complaint and Order (ACO). The violator has an opportunity to contest the ACO by requesting an administrative hearing before the Division of Administrative Hearings (DOAH). The District has authority, pursuant to Section 373.333(4)(c), Florida Statutes, to impose an administrative fine of up to \$5,000 per violation. Once the ACO becomes a final order, either because the violator did not request an administrative hearing or the DOAH proceedings have concluded, the District can enforce the ACO through an action in Circuit Court.

As with well construction violations, WUP and ERP enforcement activities are initiated by preparation and forwarding of an enforcement file to OGC. If the violation is purely administrative in nature (e.g., the failure to timely submit required documents) the enforcement file goes directly from the Service Office to OGC. For a few violations, specifically consumptive use of water without the required WUP, construction or alteration of surface water management system (which includes dredging and filling in wetlands) without the required ERP, and over-pumpage of WUPs the enforcement file is generally forwarded to OGC for the issuance of a proposed Consent Order without allowing the violator to resolve the compliance matter at the regulatory staff level. For violations other than the three exceptions described above, OGC staff send an NOV that allows the violator to come into compliance without executing a Consent Order and paying a penalty. If a satisfactory response to the NOV is not obtained, a proposed Consent Order is sent to the violator. The proposed Consent Order requires payment of a penalty and typically some additional corrective action such as obtaining an ERP or WUP or restoring the site where unauthorized construction took place. The proposed penalties are developed using separate penalty matrices for ERP and WUP violations and a formula that is incorporated into the WUP matrix for over-pumpage violations. The matrices and formula are utilized as guidelines or tools to help achieve equitable and consistent proposed penalties. If the violator agrees to a proposed Consent Order, it comes before the Governing Board for approval unless the violation is limited to a failure to submit documents, in which case the Consent Order is approved by the Executive Director. If staff are unable to negotiate a Consent Order, the Board is asked to authorize the initiation of litigation against the violator.

Mr. Pressman said staff has increased its efficiency with which it notifies violators; this has opened up communications between the parties. Mr. Pressman feels penalties are too low and has asked staff to continue working on comparative examples.

This item was presented for the Board's information, and no action was required. (CD 1/Track 19- 00:00/14:22)

General Counsel Bilenky said she wanted to update the Board on the Cedar Hames v. SWFWMD inverse condemnation litigation lawsuit. Mr. Joe Ward, Office of General Counsel, has been handling the case for the District. Mr. Ward said the case is pending in the Manatee County in Circuit Court. The Plaintiffs, in this case, own 8 contiguous lots in Manatee County bordering Sarasota Bay, most of lots consist of submerged lands. The Plaintiffs are claiming they have the right to fill the lots based on a 1957 deed. On May 3, 2005 the Plaintiffs applied

for an ERP to construct a single-family home on each of the 8 lots. In July 2006 the District denied the ERP application. Mr. Ward said it was notable that a permit denial does not preclude all construction just what was requested in the application. In March 2007, a lawsuit was filed against the District. The District had filed for a summary judgment, which was denied. A summary judgment filed by the Plaintiff complained that a taking had occurred by way of the permit denial. In December 2007, an order was written granting the Plaintiff's summary motion and denying the District's for a summary judgment, finding that by the District denying the permit application it had affected a taking of the lots requiring compensation. The Plaintiff is claiming these lots are worth \$5.8 million and is seeking a trail. The District is pursuing an extraordinary appeal to the District court, requesting the Appellate Court reverse the trial court's holding and granting the District's request to dismiss the case. (CD 1/Track 20 - 00:00/08:28)

Mr. Dabney requested an update on the Skyway Trap and Skeet Club, Inc. remediation. Mr. Wirth responded to the inquiry and said that DEP had recently approved the remediation plan. District consultants are designing the project which is leaning towards gathering, burying and sealing part of the waste on-site, selling any marketable recovered lead and disposing of the rest. Remediation inland of the lake and surrounding wetlands is also in the scope of work. The gun club will be responsible for installing a barrier. Mr. Bilenky added that this project will require sequential steps and continues to move forward in a positive fashion. (CD 1/Track 21 - 00:00/03:21)

Submit & File Reports – None

Routine Reports

The following items were provided for the Committee's information, and no action was required.

- 74. **Litigation Report**
- 75. **Rulemaking Update**

Reports

- 76. **Industrial Advisory Committee Liaison Report**
Ms. Kavouras said the Committee met on January 8, 2008; Ms. Closshey, who is the Board's liaison, attended that meeting. Topics discussed included: the Reclaimed Water Task Force Recommendations, the Statewide Uniform Stormwater Rule, the Lake Hancock Project, Rulemaking Updates, and a Drought Update. Ms. Closshey facilitated a discussion on how drought affects each of their industries.
- 77. **Public Supply Advisory Committee Liaison Report**
Ms. Kavouras said the Committee met on January 8, 2008. Mr. Combee, who is the Board's liaison, was unable to attend the meeting. The Committee discussed the Reclaimed Water Task Force Recommendations, the Enhanced Public Supply Water Conservation, Rulemaking, and the Drought Conditions. The Committee concentrated their time discussing, in detail, the potential of Phase IV Water Restrictions.
- 78. **Well Drillers Advisory Committee Liaison Report**
The Committee met on January 23, 2008, and Mr. Dabney is the Board's liaison. Mr. Dabney said he was unable to attend the meeting but provided an update. The Committee welcomed two new members and held officer elections. Other topics discussed included: Water Management Information System, Tampa Bay Water Coordination Update, Groundwater Contamination Arsenic Issues, U.S. Environmental Protection Agency Superfund Memorandum of Understanding, and the Ground Water Trust Seminar Summary.
- 79. **Executive Director's Report**
Mr. Moore said he did not have any new information to add at this point.

80. **Chair's Report**

Chair Whitehead said she attended the Chairs/Executive Directors meeting with the Florida Department of Environmental Protection on January 16, in Tallahassee. Topics of interest included: the Century Commission, Statewide Governor Appointments, Reuse Feasibility Guidelines, Statewide Policies for Watering Restrictions during Drought Conditions, Budgets and Cost Streamlining. Chair Whitehead said the desalination facility held an opening ceremony and the District was well represented to celebrate the milestone. Chair Whitehead said she is happy that Weeki Wachee will become a state park and is glad an agreement has been reached.

Ms. Rovira-Forino commended Mr. Molligan and other volunteers for their help on the Hillsborough River clean-up effort. Ms. McCree expressed her appreciation to Ms. Rovira-Forino for spearheading a breakfast for volunteers the day of the clean-up.

There being no further business to come before the Board, **Ms. McCree moved, seconded by Mr. Combee, to adjourn the meeting. Motion carried unanimously.**

The meeting was adjourned at 4:06 p.m. (CD 1/Track 22 - 00:00/26:37)

Attest:

Chairman

The Southwest Florida Water Management District does not discriminate upon the basis of any individual's disability status. This non-discrimination policy involves every aspect of the District's functions including one's access to, participation, employment, or treatment in its programs or activities. Anyone requiring reasonable accommodation, as provided for in the Americans with Disabilities Act, should contact the Executive Department, telephone 1-800-423-1476 (Florida only), extension 4610; TDD ONLY 1-800-231-6108 (Florida only); FAX 352-754-6874.