

APPROVED

MINUTES OF THE MEETING

Governing Board Southwest Florida Water Management District

Brooksville, Florida

September 30, 2008

The Governing Board of the Southwest Florida Water Management District (SWFWMD) met at 1:00 p.m. on September 30, 2008, at District Headquarters. The following persons were present:

Board Members Present

Neil Combee, Chair
Jennifer E. Closshey, Secretary
Ronald E. Oakley, Treasurer
Bryan Beswick, Member
Patricia M. Glass, Member
Hugh Gramling, Member
Albert G. Joerger, Member
Sallie Parks, Member
Maritza Rovira-Forino, Member
H. Paul Senft, Member
Judith C. Whitehead, 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

Todd Pressman, Vice Chair

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

Secretary Closshey called the meeting to order and opened the public hearing. Ms. Zielinski noted a quorum was present.

2. Pledge of Allegiance and Invocation

Secretary Closshey led the Pledge of Allegiance to the Flag of the United States of America. Mr. Bilenky offered the invocation. (CD 1/Track 01- 00:00/02:10)

Public Hearing

Secretary Closshey noted that this Governing Board meeting was being broadcast to the Bartow, Sarasota, and Tampa Service Offices. Public input was only taken during the meeting onsite. The Governing Board's meeting was recorded for broadcast on government access channels.

Secretary Closshey 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." Secretary Closshey 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 following items were deleted from the agenda after publication of the regular agenda.

Consent Agenda

The following item was deleted from consideration:

16. ERP No. 43015782.004 - Meadow Lakes, Phase I (*DENIAL*) – Polk County

The following item's permittee name was revised:

21. WUP No. 20009926.005 - ~~KML Citrus Development Partnership~~ R&D Cattle Ranch, LLC – Charlotte County

The following item was moved from Consent to Regulation Committee Discussion Items:

27. Approve Initiation of Rulemaking to Amend Permit Application Processing Timeframes and Establish Administrative Procedure for Denials of Incomplete Applications

Resource Management Committee

The following item was moved from Submit & File Reports to Discussion Items:

44. Lake Hancock Land Acquisition Update

4. **Oath of Office for Newly Appointed Board Member**

Ms. Kavouras administered the Oath of Office to Mr. Douglas Tharp. Mr. Tharp will serve as Co-Chair Ex Officio of the Withlacoochee River Basin Board. (CD 1/Track 02 - 00:00/03:31)

5. **District Recognition – Land Resources Volunteer Program – Take Pride in America Volunteer Appreciation Awards**

Mr. Eric Sutton, Assistant Director, Land Resources Department, recognized national awards that were given to the volunteers actively participating in the District's Land Resources Volunteer program. The Take Pride in America Program is a national partnership established by the U.S. Department of the Interior that aims to engage, support and recognize volunteers who work to improve public lands. The program consists of federal, state, and local governments; conservation, youth and recreation groups; national corporations; and organizations and individuals dedicated to instilling a sense of volunteerism and good stewardship in all public land users.

The following groups received awards:

Florida Trail Association	Group Accomplishment	2,704 hours
Withlapopka Park	Group Accomplishment	1,285 hours
Boy Scouts America	Group Accomplishment	1,055 hours

This item was presented for the Board's information, and no action was required. (CD 1/Track 04 - 00:00/05:47)

6. **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 individual celebrated a 20-year milestone: Ms. Linda DeJonge, Senior Administrative Assistant, General Counsel. The following

individual celebrated a 25-year milestone: Ms. Patty McLeod, Senior Administrative Assistant, Regulation Performance Management. The following individual is retiring after 35 years of service Mr. Herb Bryant, Software Engineer, Information Resources.

This item was presented for the Board's information, and no action was required. (CD 1/Track 4 – 00:00/07:11)

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

Dr. Octavio Blanco, a resident of Lutz, suggested the Governing Board consider revising the models used to determine ERPs. Dr. Blanco said he believes the models that are being used are event driven and do not take into consideration the dry season.

Consent Agenda

Item 16 was deleted from consideration. Item 21 had a change to the permittee name. Item 27 was moved from Consent to Regulation Committee Discussion Items.

Regulation Committee -- Environmental Resource Permits

8. ERP No. 43033683.000 - Felicia Station Subdivision – Citrus County
9. ERP No. 43022576.003 - Independence Park – Hillsborough County
10. ERP No. 43012295.005 - FDOT - US 301 - Segment B (From Erie Road to CR 675) – Manatee County
11. ERP No. 43001436.038 - Terralea – Marion County
12. ERP No. 43006666.012 - Watergrass Town Center - North and South Parcels – Pasco County
13. ERP No. 43021274.038 - Meadow Pointe - Parcels N, O and P – Pasco County
14. ERP No. 49034077.000 - Huntley - Zephyrhills Bypass – Pasco County
15. ERP No. 43031338.001 - Gandy Apartment Homes - Phase 1 – Pinellas County
- ~~16. ERP No. 43015782.004 - Meadow Lakes, Phase I (DENIAL) – Polk County~~
17. ERP No. 43022222.003 - City of Auburndale - Lake Myrtle Community Park – Polk County
18. ERP No. 43022799.002 - Highland Sand Borrow Pit (Phase 1, 2, 3A, 3B, 4A, 4B) – Polk County
19. ERP No. 43032950.000 - Fish Branch Tree Farm – Polk County
20. ERP No. 43031462.000 - Sarasota County - Englewood Interstate Connector/River Road from South of U.S. 41 to North of Center Road – Sarasota County

Regulation Committee -- Water Use Permits

21. WUP No. 20009926.005 - ~~KML Citrus Development Partnership~~ R&D Cattle Ranch, LLC – Charlotte County (Revised Name)
22. WUP No. 20013279.000 - Worlds Wood Golf Resort/World Woods Corporation – Hernando County
23. WUP No. 20002821.007 - Robert J. Flint (Trustee of Gwen Flint Trust) and Flint Properties II, LLC – Manatee/DeSoto Counties

Regulation Committee -- Other

24. **Governing Board Concurrence with Executive Director's Issuance of the First Modification to Executive Director Order No. SWF 08-024, Regarding Use by Tampa Bay Water of the Alafia River Project**
Staff recommended concurrence with issuance of the First Modification to Executive Director Order SWF 08-024, for diversion from the Alafia River to be used in Tampa Bay Water's regional surface water treatment plant.
25. **Governing Board Concurrence with Executive Director's Issuance of Executive Director Order No. SWF 08-034, Regarding Emergency Use by the Peace River/Manasota Regional Water Supply Authority of the Englewood Water District, Charlotte County and Sarasota County Interconnects**
Staff recommended concurrence with issuance of Executive Director Order No. SWF 08-034, Regarding Emergency Use by the Peace River/Manasota Regional Water Supply Authority of the Englewood Water District, Charlotte County and Sarasota County Interconnects.

26. **Approve Initiation of Rulemaking to Amend Environmental Resource Permitting Basis of Review to Revise Mitigation Bank Perpetual Maintenance Cost Estimate Requirements and Amend 40D-4.091, F.A.C., to Incorporate Revisions**
Staff recommended to approve initiation of rulemaking to amend the environmental resource permitting basis of review to revise mitigation bank perpetual maintenance cost estimate requirements, amend 40D-4.091, F.A.C., to incorporate revisions and authorize staff to complete the rulemaking process unless substantive comments are received during the process.
27. **Approve Initiation of Rulemaking to Amend Permit Application Processing Timeframes and Establish Administrative Procedure for Denials of Incomplete Applications** – This item was moved to Regulation Committee Discussion Items.

Resource Management Committee

28. **Appraisal, Purchase/Sale Agreement and Resolution Requesting Funds – Annatteliga Hammock Project, SWF Parcel No. 15-228-1295**
Staff recommended to (1) acceptance of appraisal; (2) approval of purchase/sale agreement; (3) approval of resolution requesting funds; and (4) designation of SWF Parcel No. 15-228-1295 as having been acquired for conservation purposes.
29. **Appraisals and Purchase/Sale Agreement -- Lake Hancock Project, SWF Parcel No. 20-530-175**
Staff recommended to (1) accept the appraisal; and (2) approve the Purchase/Sale Agreement.
30. **Approve Agreement with Fletcher Marine, Inc. (FMI), for the Sale of Shell Material from the Lake Panasoffkee Restoration Project**
Staff recommended to (1) approve entering into an agreement with FMI for the sale of shell material from the Project to compensate FMI for the inflated fuel and energy costs incurred from May 2006 through the end of the Project based on a credit of \$2.60 per cubic yard, and a five-year time frame for selling the material; and (2) authorize the Executive Director to execute the agreement on behalf of the Governing Board.
31. **Resolution 08-13 to Request Funds from the Fiscal Year 2008-2009 General Appropriation Act for the Tampa Bay Restoration and Myakka River Watershed Initiative**
Staff recommended to adopt Resolution 08-13 requesting \$2,000,000 from the Ecosystem Management and Restoration Trust Fund to implement the Tampa Bay Restoration and Myakka River Watershed Initiative Projects.
32. **Resolution 08-14 to Request Water Management Lands Trust Funds for Surface Water Improvement and Management (SWIM) Activities**
Staff recommended to adopt Resolution 08-14 requesting \$5.4 million from the Water Management Lands Trust Fund to implement projects in the District's SWIM Program for FY2009.
33. **Resolution 08-17 to Request Funds from the Fiscal Year 2008-2009 General Appropriation Act for the West-Central Florida Water Restoration Action Plan**
Staff recommended to adopt Resolution 08-17 requesting \$15 million from the General Revenue Fund to implement the West-Central Florida WRAP.
34. **Resolution 08-22 for Fiscal Year 2009 Projects and Reallocation of Funds Appropriated by the State in Fiscal Year 2006 and 2008 – Water Protection and Sustainability Trust Fund**
Staff recommended to adopt Resolution 08-22 which identifies the FY2009 alternative water supply projects and allocates the \$1.425 million in FY2009 WPSTF funds for those projects; and reallocates \$254,869 of FY2006 and FY2008 WPSTF funds from projects L485, L500, L652, and L840 to projects N075, N105, and L695 in FY2009.

Finance & Administration Committee

35. **Board Travel**
No action was required at this time.
36. **Budget Transfer Report**
Staff recommended to approve the Budget Transfer Report covering all budget transfers for August 2008.

37. **Fiscal Year 2008 Board Encumbrance for Florida Department of Transportation Mitigation**

Staff recommended to authorize the encumbrance of \$1,092,369 of FY2008 budgeted funds in the FDOT Mitigation Fund to be used in FY2009 for FDOT Mitigation projects.

General Counsel's Report

38. **Consent Order – Surface Water Activity - Wendy Mozdzer – Polk County**

Staff recommended to approve the proposed Consent Order and authorize the initiation of litigation against Wendy Mozdzer, if necessary to obtain compliance with the Consent Order.

Executive Director's Report

39. **Approve August 26, 2008 Governing Board Meeting Minutes**

Staff recommended approval of the minutes as presented.

Following consideration, **Ms. Whitehead moved, seconded by Ms. Rovira-Forino, to approve the Consent Agenda as amended. Motion carried unanimously.** (CD 1/Track 5 – 00:00/03:42)

Secretary Closshey relinquished the gavel to Resource Management Committee Chair Gramling.

Resource Management Committee

Discussion Items

40. **Consent Item(s) Moved for Discussion** – None

41. **Hydrologic Conditions Status Report**

Mr. Granville Kinsman, Manager, Hydrologic Data Section, presented this routine report on the general state of the District's hydrologic conditions, by comparing rainfall, surface water, and groundwater levels for the current month to comparable data from the historical record.

Mr. Kinsman said in summary that most indicators improved over last year; however, the District did not recover to pre-drought conditions. Water levels seemed to have peaked early in the season and the 8-month dry season is ahead of us. Below-normal rainfall patterns are predicted through the spring. Mr. Moore said the data collected and forecasts are the major reasons why the District will also be recommending an extension of the one day per week watering restrictions under the Regulation Committee later in today's meeting. Secretary Closshey led a discussion with staff and her fellow Board members regarding furthering the definition of what a drought is and what specific conditions define the duration of a drought period.

Secretary Closshey heard public comment at this time.

Dr. Octavio Blanco addressed the Governing Board regarding his concerns; he said he uses the lake levels as a measurement and guide to judge his ongoing concerns over the loss of wetlands. His concerns are heightened this year because he said at the end of the rainy season 8 of the 11 Pasco County Lakes are categorized in the below minimum extreme low level category. Dr. Blanco suggested the Governing Board keep a hold on the development of wetlands through stringent permitting.

This item was provided for the Committee's information, and no action was required. (CD 1/Track 5 – 03:42/29:17)

42. **Update to the Minimum Flows and Levels Priority List and Schedule**

Martin H. Kelly, Ph.D., Minimum Flows and Levels Program Director, Resource Projects Department, said the District is required to annually update its priority list and schedule for the establishment of minimum flows and levels (MFL), submit it to the Florida Department

of Environmental Protection (FDEP) for review and approval, and include the approved list in the District's consolidated annual report.

The draft "Proposed 2009 Minimum Flows and Levels Priority List and Schedule" (Priority List) was included in the Governing Board information notebook. As indicated in the Priority List, the District thus far has established a minimum flow for the freshwater segment of the Braden River, lower Hillsborough River, Sulphur Springs, Tampa Bypass Canal, the upper Hillsborough River, Crystal Spring, the upper Peace River, the middle Peace River, the upper Myakka River, and the freshwater segment of the Alafia River. The District has also established the minimum level for 103 lakes, 41 wetlands, and 17 wells (7 wells in the Northern Tampa Bay area and 10 wells in the Southern Water Use Caution Area to address saltwater intrusion).

Although not yet established, peer reviews of proposed minimum flows on the Alafia River Estuary, lower Peace River Estuary and Shell Creek, and Weeki Wachee River are now complete, and it is anticipated that minimum flows will be established on these water bodies and associated springs before the year is out. The Dona Bay (Cow Pen Slough) MFL report is currently undergoing peer review. It is anticipated that the Anclote River and lower Myakka River MFL documents will be submitted for peer review in October or November; however, these MFLs will not be adopted before the end of the calendar year and therefore, these water bodies have been moved into the 2009 timeframe. Draft MFL reports on the Manatee, Little Manatee, and Chassahowitzka Rivers are behind schedule and will not be completed until the end of the calendar year. Therefore, these water bodies have also been rescheduled for establishment in 2009.

At this time, pending completion of the public input process, only a few minor changes are recommended to the Priority List for years 2010 and 2011 as a result of requests from the Regulation Division. In 2010, a lake in Polk County has been added to the list (Crystal Lake). In 2011, three lakes located in Marion County have been added to the list (Lake Bonable, Little Bonable Lake, and Tiger Lake). No changes are proposed to the list for 2012 at this time. The addition of year 2013 to the Priority List allows staff to continue to project the schedule over five years. Since it is anticipated that MFLs will be established for all major river systems by the end of 2011, staff began prioritizing MFL development for several of the larger tributaries within the District in 2012. Staff has added to this list by proposing MFL development for two additional tributaries to the Peace River (Prairie Creek and the freshwater segment of Shell Creek) in 2013. At the request of Regulation, staff proposes adding two water bodies in north Hernando County (Tooke Lake and Whitehurst Pond) to the list as well.

Staff will distribute the draft "Proposed 2009 Minimum Flows and Levels Priority List and Schedule" for purposes of receiving public input prior to returning to the Governing Board in October for approval of the list that will be submitted to FDEP by November 15, 2008, as required by statute.

This item was presented for the Committee's information, and no action was required. (CD 1/Track 6 – 00:00/10:58)

The following item was moved from Submit & File Reports to Discussion Items.

44. **Lake Hancock Land Acquisition Update**

Mr. Fritz Musselmann, Director, Land Resources Department, said the purpose of this item is to provide the Board with a status report regarding land acquisition for the Lake Hancock Lake Level Modification Project. At its September 25, 2007 meeting, the Governing Board authorized staff to implement the Lake Hancock Lake Level Modification Project (Project), including final design, permitting and construction of necessary improvements; adopted a resolution authorizing proceedings in eminent domain, including a declaration of taking; amended the 2007 Florida Forever Work Plan to include all lands

necessary for the lake level project; and designated Florida Forever and General Fund Water Supply and Resource Development Reserves for the Project. At the Board meeting, the Board instructed staff to exhaust all negotiations prior to filing eminent domain lawsuits.

The project timeline reviewed with the Board at the September 2007 meeting indicated that Project completion, including up front land acquisition, as ending in 2011. As for the estate or interest to be acquired in each parcel, the eminent domain resolution, which accompanied the recap in the board packet, specifically identified parcels to be acquired in fee simple and through inundation/flowage easements.

The land requirements for the Project were based on unsurveyed (unverified) watershed model and permit boundaries, which was the best information available based on the level of detail associated with the requirements of the permit. Land Acquisition and Survey staffs have made every effort in expediting surveys and appraisals, and negotiating voluntary settlements by prioritizing the survey and appraisal work to focus first on affected homeowners, second on easements that have no improvements or where homes/improvements are not directly impacted, and third on parcels owned by other governmental entities.

The survey work and appraisals required for a public works project, such as the Lake Level Project, are some of the most important components of the due diligence process; and depending upon the complexity of the parcels/project, they can be some of the most time consuming components. While the surveys and the appraisals for the Lake Level Project are more complex and time consuming than that which are required in the District's traditional voluntary conservation acquisition program, it has taken more time than anticipated. To expedite the acquisition process, since September 2007, staffs have engaged three outside survey firms (two to provide boundary and topographic work and a third to provide water boundary "ordinary high water line" survey data).

Earlier this year, staff evaluated alternatives to fee acquisition (easement option) for affected homeowners based on a request from several owners in the Waterwood Subdivision via a letter to a state legislator. As a result of that request, and to maintain a consistent approach with each homeowner, staff formally advised all affected homeowners/attorneys about the easement option. The evaluation of alternatives to fee acquisition and notifying the homeowners/attorneys resulted in delays in surveys, appraisals and offers. To date none of the homeowners/attorneys have opted for easements.

Mr. Musselmann reviewed the project costs; he noted that the remaining balance in the Florida Forever funds is \$3,825,000, and the remaining funds in the Water Supply/Resource Development allocation is \$62,485,450.

Ms. Whitehead led a discussion regarding the downturn in real estate prices and how it has affected this project. Mr. Musselmann said it was a subject that the District has been very sensitive about when dealing with existing property owners; staff is recognizing this factor when negotiating with property owners because the District is taking property and it has value.

As a result of the recent completion of the ground-truthing survey work, District staff have determined that the legal descriptions, primarily for the easement parcels, in the eminent domain resolution adopted by the Board last September will need to be revised; staff plans to bring an amended resolution to the Board in October along with an updated status report.

Board members thanked Mr. Musselmann and his staff for all of their hard worked associated with this project.

This item was submitted for the Committee's information, and no action was required.
(CD 1/Track 7 – 00:00/31:15)

Submit & File Report

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

43. **Scientific Peer Review of the Proposed Minimum Flows and Levels for the Weekly Wachee River System**
44. **Lake Hancock Land Acquisition Update** – This item was moved to Discussion.

Routine Reports

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

45. **Florida Forever Funding Status Report**
46. **Minimum Flows and Levels Status Report**
47. **Structure Operations Status Report**
48. **Watershed Management Program and Federal Emergency Management Agency Map Modernization Status Report**
49. **Significant Water Supply and Resource Development Projects**

Resource Management Committee Chair Gramling relinquished the gavel to Regulation Committee Chair Parks.

Regulation Committee

Discussion Items

50. **Consent Item(s) Moved for Discussion** - Item 27 was taken out of sequence and heard last in the Discussion Items category.

27. **Approve Initiation of Rulemaking to Amend Permit Application Processing Timeframes and Establish Administrative Procedure for Denials of Incomplete Applications**

Mr. Owen said as part of the ongoing process to make District permitting procedures more efficient and conducive to electronic processing, District staff has undertaken a comprehensive review of existing timeframes and processes for agency action on Environmental Resource Permit (ERP) and Water Use Permit (WUP) applications. As permitting becomes more complex, applicant requests for time extensions in order to provide information to complete their applications have become routine. Piecemeal responses to information requests have also become a common practice, and such responses cause processing difficulties for staff who must comply with statutory timeframes for acting upon permit applications. Current rules also require that agency action to approve Individual permits, as well as all denials of Individual and General permits, must be undertaken by the Governing Board. When an incomplete permit application warrants denial, a significant amount of staff effort is necessary to prepare supporting materials for the Governing Board. However, this staff effort is often negated by the applicant withdrawing the application prior to Governing Board consideration. The review of existing permitting timeframes and permit issuance and denial processes has revealed several areas where improvements can be made.

Ms. Martha A. Moore, Senior Attorney, Office of General Counsel, said a recent study of WUP and ERP processing conducted by the Office of Inspector General confirmed that, although only a small fraction of the overall number of permits issued are Individual permits, these permits, in the aggregate, account for most of the regulated activities in the District, based upon acreage (ERPs) or withdrawal quantities (WUPs). The processing of Individual permit applications for approval by the Governing Board entails greater staff effort and longer processing timeframes compared to General permits which are issued by staff. Based upon

recommendations of the Office of Inspector General, in April 2008 the Governing Board approved the initiation of rulemaking to expand the delegation of authority to the Executive Director to act upon Individual permits. Accordingly, staff has developed specific thresholds for Individual permits to be issued by staff and what permits should require Governing Board action. These proposals have been circulated among the various permitting advisory groups and committees for input.

In light of concurrent efforts relating to agency action on Individual permits, staff proposes to combine this effort with proposals to address permit application processing timeframes and application denial procedures, and proceed with one coordinated rulemaking package.

If the initiation of rulemaking to amend permit processing timeframes and establish an administrative permit denial procedure for incomplete applications is approved, staff will combine this rulemaking with the ongoing initiative to delegate permit issuance authority to staff for certain Individual permits. Staff is continuing to evaluate these proposals and plans to circulate draft rule language among the various advisory groups as appropriate and will bring back to the Governing Board for approval an integrated proposal with specific rule language.

Staff recommended approval of the initiation of rulemaking to amend permit application processing timeframes and establish an administrative procedure for denials of incomplete applications.

Committee Chair Parks heard public comment at this time.

Mr. Phil Compton, representing the Florida Regional Office of the Sierra Club, said members of the eight clubs that correlated in the Southwest Florida Water Management District, are opposed to this rulemaking trend. They believe this process would eliminate the opportunity for citizens to address the Board and encourage the Governing Board to vote against the staff recommendation.

Ms. Theresa Waldron, representing the Naturecoast Group of the Sierra Club, said she believed that 500 acres was a lot of property to let staff have permit decision making capabilities over.

Following consideration, **Ms. Closshey moved, seconded by Ms. Rovira-Forino, to approve the staff recommendation. Motion carried unanimously.**
(CD 1/Track 10 – 00:00/37:50)

51. **Consideration of Water Shortage Order No. SWF 07-02**

Mr. Richard S. Owen, Deputy Executive Director, Resource Regulation, said the District began experiencing a rainfall deficit and related drought impacts over 28 months ago. In addition to issuing numerous emergency authorizations to assist public suppliers with local water supply concerns, in accordance with its Water Shortage Plan (Rule 40D-21, Florida Administrative Code (F.A.C.)), the District took regional action on January 9, 2007 by issuing Water Shortage Order No. SWF 07-02. This Order declared once-per-week lawn watering restrictions and other modified "Phase II" (Severe Water Shortage) restrictions for the District's entire 16 county area.

The Governing Board has taken additional action to extend the original terms of Water Shortage Order No. 07-02 on four occasions. Most recently, the expiration date was extended to September 30, 2008 based on hydrologic conditions information the Governing Board received during its June 24, 2008 meeting.

Staff recommended extending Water Shortage Order No. SWF 07-02 through February 27, 2009. Unincorporated Marion County located in the St. John's River Water Management District remains included in the area encompassed by this Order.

Committee Chair Parks heard public comment at this time.

Dr. Octavio Blanco addressed the Governing Board suggesting that the District make the water restrictions more stringent such as permanent or every other week. He believes just extending the current water restrictions does not send a strong enough message to the public.

Mr. Charles Morton, representing Hernando Environmental Land Protectors, addressed the Board to encourage them to permanently implement the once per week water restrictions.

Following consideration, **Ms. Closshey moved, seconded by Mr. Oakley, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 8 – 00:00/12:16)

Ms. Closshey led a discussion regarding the potential of having one day per week water restrictions year round. Mr. Owen said that the Board could consider it; he said right now the District has the toughest watering restrictions in the state. He said the District has been striving to maintain some continuity with the remainder of the state's Water Management Districts, however, the Governing Board will have an opportunity to consider this subject again in October. Mr. Moore said ideally any further tightening of water restrictions could be done voluntarily by continuing to educate the public about skipping a week. A successful campaign would also include education and enforcement. (CD 1/Track 8 – 12:16/20:54)

52. **Approve Initiation of Rulemaking to Amend Rule 40D-4.091, F.A.C., and Chapters 4 and 7 of the Environmental Resource Permitting Basis of Review Regarding Water Quantity Criteria**

Mr. H. Clark Hull, Jr., ERP Program Director, Resource Regulation, said ERP rules are intended, in part, to prevent adverse offsite flooding impacts that might occur as a result of the construction and operation of surface water management systems. ERP Conditions for Issuance of Permits require that an applicant's proposed system will not cause adverse impacts to receiving waters and adjacent lands, adverse flooding to on-site or off-site property, or adverse impacts to existing surface water storage and conveyance capabilities.

The standards and criteria in the ERP Basis of Review are used to determine whether applicants have provided reasonable assurance of compliance with the Conditions for Issuance of Permits.

Criteria in the Basis of Review limit off-site discharge to amounts that will not cause adverse impacts. In open basins, applicants are required to limit the post-development discharge to a rate that does not exceed the pre-development discharge following the 25-year, 24-hour storm event. In closed basins, applicants are required to limit the volume of runoff in the post-development condition so that it does not exceed the pre-development volume following a 100-year storm event. Additionally, criteria in the Basis of Review allow no net encroachment into the 100-year floodplain that will adversely affect conveyance, storage, water quality or adjacent lands. The 100-year, 24-hour storm event is used as the basis for determining the 100-year floodplain. Section 7.2 of the Basis of Review instructs applicants to use the 24-hour isohyetal (rainfall distribution) maps provided in Part D of the Basis of Review for determining rainfall amounts.

In certain circumstances, use of the 25-year, 24-hour storm event and the 100-year, 24-hour storm event are not the best predictors of flood elevations when basin hydraulics cause higher flood elevations to occur following more frequent storm events than those specified in the Basis of Review. In those cases it is desirable to consider other storm events of different frequency or duration to provide reasonable assurance of compliance with the conditions of issuance.

In October 2005, staff requested and received approval to initiate rulemaking to amend the Basis of Review regarding the offsite discharge criteria (Sections 4.1 and 4.2) but not the 100-year floodplain criteria. This rulemaking was never completed. The current request is to expand the previous approval and initiate amendments to Chapters 4 and 7 of the Basis of Review in their entirety, thus resolving issues related to both floodplain protection and discharge control. This topic has been presented to the District's ERP advisory groups and the proposed revisions are based, in part, on input received from these groups. This final rule language will be provided to the advisory groups and committees. Should any substantive concerns be raised such that staff believes additional changes may be warranted, staff will return to the Board with additional changes.

Staff recommended to approve the initiation of rulemaking to amend Rule 40D-4.091, Florida Administrative Code, and Chapters 4 and 7 of the Environmental Resource Permitting Basis of Review regarding water quantity criteria and authorize staff to complete the rulemaking process unless substantive comments are received during the process.

Following consideration, **Mr. Gramling moved, seconded by Mr. Senft, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 9 – 00:00/15:36)

Submit & File Reports – None

Routine Reports

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

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

Mr. Owen said Mr. Pressman and District staff met with a group of 50 residents regarding ERP No. 43031581.000 Indian Palms Estates in Sarasota County. He said at the end of their workshop the residents seemed to have a better understanding of District's role in this issue. Mr. Pressman wrote staff a letter expressing his gratitude for their hard work and complimented their actions in this matter. (CD 1/Track 11– 00:00/01:26)

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

Outreach and Planning Committee

Discussion Item

58. **Progress Energy's Proposed Levy County Nuclear Facility**
Ms. Rosemary Fagler, Community Relations Manager, Progress Energy, said over the past several years, Progress Energy Florida has been evaluating options for the expansion of the use of alternative fuels for the production of electric power supply. One project under consideration is the development of a new nuclear power plant in Florida. The company has named a site in Levy County as the "preferred location" for the plant

and residents have responded with considerable interest in the building the plant in their county.

In December 2006, Progress Energy announced the Rayonier Timber site located north of the town of Inglis in Levy County as the preferred site for two proposed nuclear reactors. Since that time, Progress Energy has purchased the Rayonier property as well as additional land and is engaged in planning the future energy complex. The year 2008 brought significant milestones associated with regulatory filings for the approval to build and operate the proposed nuclear plant and supporting facilities. Significant public outreach efforts have begun and the company continues to inform and engage the surrounding communities about this project.

Board members engaged Ms. Fagler in a discussion about permitting, milestones, plant construction, and community outreach for the proposed nuclear power plant planned for Levy County. Mr. Moore said looking forward to the future water managers and planners envision locating seawater desalination plants next to nuclear power plants. Committee Chair Rovira-Forino requested that Ms. Fagler help promote vendor diversity throughout the state when there is an opportunity.

This item was presented for the Committee's information, and no action was required. (CD 1/Track 12 – 00:00/45:24)

Submit & File Reports – None

Routine Reports

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

59. **Comprehensive Plan Amendment and Related Reviews Report**
60. **Development of Regional Impact Activity Report**
61. **Speakers Bureau**
62. **Significant Activities Report**

Outreach and Planning Committee Chair Rovira-Forino relinquished the gavel to Finance and Administration Committee Chair Oakley.

Finance and Administration Committee

Discussion Items

63. **Consent Item(s) Moved for Discussion** - None

64. **Fiscal Year 2009 Budget Update**

Committee Chair Oakley said after the first public hearing, the District received a letter from Governor Crist dated September 16, approving the District's budget with one change. Governor Crist has directed all five water management districts to use budgeted funds proposed for salary increases for expediting projects, as a means to provide economic stimulus. Copies of Governor Crist's letter were distributed to all Governing Board members. Chair Oakley said the second and final public budget hearing on the fiscal year 2009 budget would be held at 5:01 PM today.

Ms. Linda R. Pilcher, Assistant Director, Finance Department, provided a final status report to the Governing Board on the FY2009 budget and requested approval of the reallocation of budgeted dollars proposed for salary increases to projects.

Staff recommended the Governing Board approve redirection of budgeted dollars associated with proposed merit increases to the list of identified projects for inclusion in the final District budget to be presented for adoption at the final public hearing. Individual projects selected to receive Basin dollars are to be ratified by the respective Basin Boards in October 2008 at their next meeting.

Board members expressed their appreciation to staff for continuing to perform their duties and support the District despite the redirection of their annual salary increases to projects this year.

Following consideration, **Ms. Rovira-Forino moved, seconded by Mr. Senft, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 13 – 00:00/09:40)

Submit & File Report

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

65. **Treasurer's Report, Payment Register, and Contingency Reserves Report**

Mr. Schiller noted an additional return of \$193,000 from the SBA Fund B, he said the District has kept its interest in Fund A. He said overall the District's investments are in good shape.

Routine Report

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

66. **Management Services Status Report**

Finance and Administrative Committee Chair Oakley relinquished the gavel to Chair Combee. (Track 14 – 00:00/03:20)

General Counsel's Report

Discussion Items

67. **Consent Item(s) Moved for Discussion** - None

68. **Final Order – ERP No. 44024788.007 - Octavio Blanco v. GPG, Inc. and SWFWMD, DOAH Case No. 08-3053 – Pasco County**

Mr. Jason Smith, Staff Attorney, said that on April 28, 2008 the District issued a notice of proposed agency action for approval of Environmental Resource Permit (ERP) Application No. 43024788.007, submitted by GPG, Inc. (GPG). The application is for modification of a previously issued permit, ERP No. 43024788.004, to authorize the construction of a 1.67-acre commercial outparcel (the Project). The Project is located in Pasco County, northeast of the intersection of the Suncoast Parkway and State Road 54.

On June 10, 2008, Dr. Octavio Blanco (Blanco) filed a timely Request for Administrative Hearing with the District. The request was then referred to the Division of Administrative Hearings for administrative proceedings. On July 23, 2008, GPG filed a Motion to Dismiss and for Fees and Costs arguing that Blanco is legally barred from re-litigating matters decided in previous administrative proceedings. Blanco filed a response to GPG's motion on August 26, 2008.

On September 3, the Administrative Law Judge (ALJ) issued a Recommended Order of Dismissal. The ALJ ruled that Blanco is attempting to re-litigate issues previously determined or raise issues after the time for doing so has passed and recommends that the District dismiss his Request for Administrative Hearing with prejudice.

Pursuant to Section 120.57(1)(I), Florida Statutes (F.S.), an agency may adopt an ALJ's recommended order as the final order of the agency. This section also provides that an agency may not reject or modify findings of fact in a recommended order unless "the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of the law." This means that if the Board decides to reject a finding of fact in the recommended order, it will have to do so based upon a review of the transcript of the administrative hearing and the exhibits admitted into evidence at the hearing.

Dr. Blanco addressed the Governing Board regarding his position on wetland "B12", which is that he believes it has never had a fair chance in court because it was permitted under another proposal and not taken back for reconsideration when the piece was made a part of another project.

Ms. Margaret Craig, Attorney, Bricklemyer, Smolker and Bolves, representing GPG, Inc. addressed the Governing Board on behalf of her client. Ms. Craig said the permit that GPG, Inc. obtained was for an outparcel of a commercial development and would not affect Dr. Blanco's property.

Staff recommended approval of the Final Order which (1) adopts the recommended order; (2) rejects the exceptions filed by Dr. Blanco because they were untimely; and (3) issues the general construction permit.

Following consideration, **Ms. Rovira-Forino moved, seconded by Mr. Senft, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 15 – 00:00/10:11)

69. **Final Order – Administrative Complaint and Order - SWFWMD v. Jose Aristizabal and Liliana Urrea Aristizabal - DOAH Case No. 07-3207 – Highlands County**

Mr. Joseph J. Ward, Assistant General Counsel, said in December 2003, Jose Fernando Aristizabal applied for a Water Use Permit (WUP) for irrigation of a proposed tree nursery that he planned to construct on 30 acres of property located on Miller Avenue near Lake Placid in Highlands County (the "Property"). The Property is owned by Mr. Aristizabal and his wife, Liliana Urrea Aristizabal. As part of the application process, District staff conducted a site visit to the property, at which time staff observed a centrally located wetland approximately 10-12 acres in size. Mr. Aristizabal showed District staff where he intended to construct the tree nursery and a proposed irrigation pond. Because the proposed design would involve wetland dredging and filling, District staff advised Mr. Aristizabal that an Environmental Resource Permit (ERP) would also be required. Mr. Aristizabal subsequently withdrew his WUP application. On June 24, 2005, the District issued a Notice of Violation to Respondents concerning the unauthorized construction of a new or alteration of an existing surface water management system on the Property.

After multiple efforts to resolve the matter proved fruitless, the District served an Administrative Complaint and Order (ACO) on the Aristizabals in June, 2007. On July 3, 2007, the Aristizabals filed a timely petition for formal administrative hearing with the District. The District subsequently referred the petition to the Division of Administrative Hearings (DOAH) for formal administrative proceedings. A final hearing was held in July, 2008.

On August 14, 2008, the District filed with DOAH its proposed recommended order, requesting that the assigned Administrative Law Judge (ALJ): (1) find that the Aristizabals dredged and filled wetlands, and constructed and altered a surface water management system, without an ERP; and (2) order the Aristizabals to obtain an ERP and perform any necessary mitigation of wetland impacts resulting from their activities.

On August 21, 2008, the ALJ issued his recommended order. The ALJ recommends that the District enter a Final Order requiring the Aristizabals to apply for the necessary ERP and restore the wetlands adversely impacted by their activities. The recommended order, the transcript of the hearing, and the exhibits admitted into evidence are being made available to the Governing Board. Pursuant to the uniform rules of procedure, the parties are permitted to file written exceptions to the findings of fact and conclusions of law contained in the ALJ's Recommended Order; however, no written exceptions to the Recommended Order have been filed by the Aristizabals or the District in this matter.

A proposed final order was included in the Board packet. If the staff recommendation is followed, it will not be necessary for the Board to review the entire record from the hearing, because the proposed final order adopts the recommended order in its entirety and does not reject or modify any findings of fact.

Staff recommended approval of the proposed final order that adopts the recommended order entered by the Administrative Law Judge requiring the Aristizabals to obtain an ERP and mitigate the wetland impacts resulting from their activities.

Following consideration, **Ms. Rovira-Forino moved, seconded by Mr. Oakley, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 16 – 00:00/05:57)

Submit & File Reports – None

Routine Reports

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

- 70. **Litigation Report**
- 71. **Rulemaking Update**

Chair Combee recessed the public hearing at 5:01 p.m. to convene the Final FY2009 Budget Hearing of the Governing Board. (CD 1/Track 17 – 00:00/00:31) (CD 1/Track 18 – Contains the Audio from the Final Budget Hearing)

The meeting reconvened at 5:18 p.m. for the conclusion of the regular monthly meeting.

Reports

72. **Green Industry Advisory Committee Liaison Report**

The Committee met on August 28, 2008, and Mr. Senft is the Board's liaison. Mr. Senft was unable to attend that meeting he presented some of the Committee's topics: Reclassification of Alafia River and Tampa Bypass Canal, Hydrologic Conditions, and Year-Round Water Restrictions.

73. **Agricultural Advisory Committee Liaison Report**

The Committee met on August 28, 2008, and Mr. Gramling is the Board's liaison. He said the Board received presentations on the following: Reclassification of Alafia River and Tampa Bypass Canal, Year-Round Water Conservation Measures, and ERP Mitigation Rule Revisions and Fee Adjustments.

74. **Environmental Advisory Committee Liaison Report**

The Committee met on September 8, 2008, and Mr. Beswick is the Board's liaison. Mr. Beswick said the Committee discussed Year-Round Water Restrictions.

75. **Tampa Bay Estuary Program Policy Board Liaison Report**

The Committee met on August 22, 2008, and Ms. Parks is the Board's liaison. Ms. Parks said she was involved in a lively discussion regarding nitrogen based fertilizers.

76. **Executive Director's Report**

Mr. Moore said the Water Congress was a big success with great attendance by those who are involved in water management throughout the state. Mr. Moore thanked the Governing Board members for their participation.

77. **Chair's Report**

a. **Performance Evaluations of the Executive Director and Inspector General – Process Overview**

Ms. Elaine M. Kuligofski, Director, Human Resources and Risk Management Department, presented an overview of the Governing Board performance appraisal process as described in Board Policy 710-2.

In accordance with this policy, the performance appraisal process begins when the Executive Director and Inspector General each submit statements of accomplishments for the past year and proposed performance objectives for the upcoming year to the Governing Board. A packet including these accomplishments, as well as other forms, documents and instructions needed by the Board to complete the performance appraisals, were provided to each Board member for their review and use.

Staff recommended to adopt the proposed 2008 schedule for development, evaluation and adoption of performance appraisals for the Executive Director and Inspector General.

Following consideration, **Ms. Parks moved, seconded by Mr. Gramling, to approve the staff recommendation. Motion carried unanimously.**

Following consideration, **Ms. Rovira-Forino moved, seconded by Mr. Oakley, to select Elaine Kuligofski to assist the Governing Board with development of the 2008 performance appraisals for the Executive Director and Inspector General. Motion carried unanimously.** (CD 1/Track 19 – 00:00/21:23)

b. **Other**

Chair Combee welcomed Mr. Tharp and said the Board looks forward to working with him.

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

The meeting was adjourned at 5:40 p.m.

Attest:

Chairman