

# APPROVED

## MINUTES OF THE MEETING

### Governing Board Southwest Florida Water Management District

Brooksville, Florida

December 16, 2008

The Governing Board of the Southwest Florida Water Management District (SWFWMD) met at 9:00 a.m. on December 16, 2008, at Brooksville Headquarters. The following persons were present:

#### Board Members Present

Neil Combee, Chair  
Todd Pressman, Vice Chair  
Jennifer E. Closshey, Secretary  
Ronald E. Oakley, Treasurer  
Bryan Beswick, Member  
Hugh Gramling, Member  
Albert G. Joerger, Member  
Sallie Parks, Member  
H. Paul Senft, Member  
Douglas B. Tharp, 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

Patricia M. Glass, Member  
Maritza Rovira-Forino, 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](http://www.WaterMatters.org)).

## Public Hearing

### 1. Call to Order

Chair Combee called the meeting to order and opened the public hearing. Ms. Closshey noted a quorum was present. (CD 1/Track 01 - 00:00/03:07)

### 2. Pledge of Allegiance and Invocation

Chair Combee led the Pledge of Allegiance to the Flag of the United States of America. Mr. Bilenky offered the invocation. (CD 1/Track 02- 00:00/00:41)

## Public Hearing

Chair Combee 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.

Chair Combee 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 Combee 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. He 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. (CD 1/Track 03 - 00:00/04:30)

**Consent Agenda**

*The following item is deleted from consideration:*

9. ERP No. 44030783.001 - Bayou Pass Phase 3 (*DENIAL*) – Hillsborough County

*The following item is added for consideration under Regulation Committee -- Other:*

- Governing Board Concurrence with Executive Director's Issuance of First Modification to Executive Director Order No. SWF 08-043 Regarding Increased Use of the Tampa Bypass Canal

**Resource Management Committee**

*The following item has a revised recommendation deleting Blue Sink Watershed from today's action:*

27. Authorize Submission of the Preliminary Flood Insurance Rate Maps for the Oman Quarry/Indian Creek, and Powell, ~~and Blue Sink Watersheds~~ to the Federal Emergency Management Agency

*The following item is deleted from consideration:*

44. Review of Analytical Process for Water Shortage Actions and Public Dissemination of Information

4. **Employee Recognition**

Mr. Moore made presentations to the Board for all employees who have achieved milestones of 20 years or greater and those retiring from the District, to specially acknowledge and commend the contributions of these individuals. The following individuals were celebrating their 20 year milestones: Mr. August Fox, Senior Land Management Specialist, Land Resources; Ms. Lisa Henningsen, Staff Environmental Scientist, Resource Projects; Ms. Margit Crowell, Senior Hydrologist, Operations; and Mr. Steve Saxon, Field Technician Supervisor, Operations. The following individual is celebrating their 30 year milestone: Ms. LuAnne Stout, Administrative Coordinator, Executive. The following individuals will be retiring: Ms. Denise Tenuto, Environmental Coordinator, Resource Projects; Ms. Judith Montemurro, Enterprise Architect Resource Specialist, Information Resources; and Mr. Fritz Musselmann, Director, Land Resources.

The District also welcomes and congratulates new members of its management team and provides the Board the opportunity to welcome these new members of management. Mr. Lloyd Roberts, Director, General Services Department, introduced Mr. Earl Rich, Document Service Manager, General Service Department.

The Shining Star recognition program acknowledges employees who go above and beyond their duties at the District by volunteering personal time or donating money to benefit their community. One Shining Star Award winner is chosen each quarter from nominations submitted by their co-workers. Ms. Lisann Morris was the Shining Star recipient for October - December 2008. Ms. Morris was recognized for her volunteerism at the Florida Aquarium; she has given over 500 hours of her time to the Aquarium's Husbandry Department. She also champions the Susan Komen Foundation – Breast

Cancer Cure, recently raising money and participating in the October 31, 2008 three-day walk-a-thon.

Board members expressed their appreciation and congratulated all the individuals recognized today. This item was presented for the Board's information, and no action was required. (CD 1/Track 04 - 00:00/44:14)

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

No person(s) came forward to speak at this time.

## Consent Agenda

Item 9 was deleted from consideration. Mr. Beswick declared a voting conflict on Item 17 and will abstain from voting. Item 27 has a revised recommendation deleting Blue Sink Watershed from action. One item was added under the Regulation Committee – Other: Governing Board Concurrence with Executive Director's Issuance of First Modification to Executive Director Order No. SWF 08-043 Regarding Increased Use of the Tampa Bypass Canal, which will be heard during the Regulation Committee portion of the agenda.

### Regulation Committee -- Environmental Resource Permits

6. ERP No. 43034196.000 - Legacy Lake Borrow Pit – Charlotte County
7. ERP No. 43013044.006 - FDOT - SR 35 (US 17) from DeSoto County Line to SW Collins – DeSoto County
8. ERP No. 43020690.009 - .... FDOT - I-4/Lee Roy Selmon Expressway Interchange (South of 7<sup>th</sup> Avenue) – Hillsborough County
9. ~~ERP No. 44030783.001 – Bayou Pass Phase 3 (**DENIAL**) – Hillsborough County~~
10. ERP No. 43001436.040 - On Top of the World - South Branch – Marion County
11. ERP No. 43015544.003 - Gulf Landings Boat Docks, Tracts 40B, 40C and 50C – Pasco County
12. ERP No. 43027830.001 - Main Street Landing Boat Docks – Pasco County
13. ERP No. 43033500.001 - .FDOT-SR 39 (Buchman Hwy) at Hillsborough River Temporary Detour Bridge – Pasco County
14. ERP No. 43031900.002 - EVWR/CSXT Rail Terminal Facility – Polk County
15. ERP No. 43032386.000 - Dawn View Estates – Polk County
16. ERP No. 43033931.000 - Ridgeview Place (**DENIAL**) – Polk County

### Regulation Committee -- Water Use Permits

17. WUP No. 20006765.010 - L. D. Hancock Marital Trust/Hancock Grove – DeSoto County
18. WUP No. 20003837.011 - Falkner Farms/Falkner Farms – Manatee County
19. WUP No. 20002981.015 - City of Clearwater – Pinellas County
20. WUP No. 20004912.007 - City of Lakeland – Polk County
21. WUP No. 20005393.008 - City of Venice – Sarasota County

### Regulation Committee -- Other

22. **Approve Exchange of Conservation Easement Areas – Lake Jovita East Pointe Townhomes – Pasco County**  
Staff recommended to (1) authorize the Governing Board to execute the Conservation Easement and Release document to facilitate the transaction; and (2) approve the exchange of the CE areas.
23. **Approve for Adoption Final Changes to Amendments to 40D-1.659 and 40D-2.091, Florida Administrative Code (F.A.C.), to Incorporate Changes to Chapters 5 and 6 of the Basis of Review in Response to the Joint Administrative Procedures Committee**  
Staff recommended adoption of the changes to the flow meter accuracy verification rule provisions as set forth in the exhibit.
24. **Electrical Power Plant Site Certification – SWFWMD Agency Report on Progress Energy Florida – Levy Nuclear Units 1 & 2 – Main Site and Associated Facilities – Levy County**

Staff recommended to approve the agency report and proposed conditions addressing the main site and associated facilities for the Progress Energy Florida Levy County Nuclear Power Plant – Units 1 & 2, to be submitted to the Department of Environmental Protection.

#### Resource Management Committee

25. **Approve Initiation of Rulemaking to Amend 40D-8.624, F.A.C., to Add Minimum and Guidance Levels for Lake Anoka in Highlands County**  
Staff recommended to approve the initiation of rulemaking to amend Rule 40D-8.624, F.A.C., to delete previously adopted guidance level and add new guidance and minimum levels as shown in the Exhibit.
26. **Approve Initiation of Rulemaking to Amend 40D-8.041, F.A.C., to Establish Minimum Flows for Weeki Wachee River System**  
Staff recommended to (1) accept the MFL report entitled, "Weeki Wachee River System Recommended Minimum Flows and Levels" dated October 30, 2008; and (2) approve Initiation of Rulemaking to Amend Rule 40D-8.041, Florida Administrative Code, to Establish Minimum Flows for the Weeki Wachee River System.
27. **Authorize Submission of the Preliminary Flood Insurance Rate Maps for the Oman Quarry/Indian Creek, and Powell Watersheds to the Federal Emergency Management Agency**  
Staff recommended authorization to submit the preliminary FIRM panels for the Oman Quarry/Indian Creek, and Powell watersheds in Hernando County to FEMA.
28. **Appraisals and Purchase/Sale Agreement – Lake Hancock Project, SWF Parcel No. 20 503-151**  
Staff recommended to (1) accept the appraisals; and (2) approve the Purchase/Sale Agreement.
29. **Temporary Construction Easement to Florida Department of Transportation for State Road 39 – Hillsborough River Corridor, SWF Parcel Number 13-444-109X**  
Staff recommended to approve the appraised value \$3,400, of the easement and convey a Temporary Construction Easement to the Florida Department of Transportation for SWF Parcel No. 13-444-109X.
30. **Supplemental Utility Easement to Progress Energy Florida, Inc. for Additional Service to the Withlacoochee River Electric Cooperative Tampa Downs Substation – Cypress Creek Preserve, SWF Parcel Number 13-500-390X**  
Staff recommended approval to convey a Supplemental Utility Easement to Progress Energy Florida, Inc. for SWF Parcel No. 13-500-390X subject to the terms and conditions stated herein.
31. **Facilitating Agricultural Resource Management Systems (FARMS) Program**
  - a. **FLM, Inc. Prairie River Ranch Grove Phase II – DeSoto County**  
Staff recommended to (1) approve the FLM Inc. Prairie River Ranch, Phase II FARMS project for a not-to-exceed project reimbursement of \$330,000, with \$82,500 provided by the Peace River Basin Board, \$82,500 provided by the Governing Board, and \$165,000 provided from State Appropriations; (2) authorize the transfer of \$82,500 from fund 020 H017 Peace River Basin Board FARMS funds, \$82,500 from fund 010 H017 Governing Board FARMS funds, and \$16,650 from the 2005 State Appropriations and \$148,350 from the 2009 State Appropriations allocated to fund 010 H017 FARMS funds, to the H505 FLM, Inc. Prairie River Ranch Phase II FARMS project fund; and (3) authorize the Executive Director to execute the agreement.
  - b. **CFI USA, Inc. Venus II Grove – Manatee County**  
Staff recommended to (1) approve the CFI USA, Inc. Venus II Grove FARMS Project for a not-to-exceed project reimbursement of \$150,000, with \$37,500 provided by the Manasota Basin Board, \$37,500 provided by the Governing Board, and \$75,000 provided from State Appropriations; (2) authorize the transfer of \$37,500 from fund 021 H017 Manasota Basin Board FARMS funds, \$37,500 from fund 010 H017 Governing Board FARMS funds, and \$75,000 from the 2005 State Appropriations allocated to fund 021 H017 FARMS funds, to the H532 CFI USA, Inc. Venus II Grove FARMS project fund; and (3) authorize the Executive Director to execute the agreement.

**Finance & Administration Committee**

32. **Board Travel**  
No action was required at this time.
33. **Budget Transfer Report**  
Request approval of the Budget Transfer Report covering all budget transfers for November 2008.
34. **District Strategic Systems Network and Server Upgrades**  
Staff recommended approval of the transfer of \$240,000 from General Fund Contingency Reserves to the Information Resources Department for the purchase of identified network and server upgrades that support District strategic systems, digital orthophotographs and topographic LiDAR mapping data.

**General Counsel's Report**

35. **Consent Order – WUP No. 208639.010 - Timber Pines Community Association, Inc. – Hernando County**  
Staff recommended approval of the proposed Consent Order and authorize the initiation of litigation against Timber Pines to obtain compliance with the Consent Order.
36. **Initiation of Litigation – Surface Water Activity - Edward A. Mariani – Manatee County**  
Staff recommended authorizing the initiation of litigation against Edward A. Mariani and any other appropriate parties to obtain compliance, a monetary penalty, and recovery of District enforcement costs, litigation costs and attorney's fees.
37. **Initiation of Litigation – Surface Water Activity - Lexington Homes, Inc. (North Green Estates and South Green Estates) – Hillsborough County**  
Staff recommended authorizing the initiation of litigation against Lexington Homes, Inc. and any other appropriate parties to obtain compliance, a monetary penalty, and recovery of District enforcement costs, court costs, and attorney's fees.
38. **Initiation of Litigation – ERP No. 46029649.001- Memorial Townhomes, LLC (Memorial Townhomes) – Hillsborough County**  
Staff recommended authorizing the initiation of litigation against Memorial Townhomes, LLC and any other appropriate parties to obtain compliance, a monetary penalty, and recovery of District enforcement costs, court costs, and attorney's fees.
39. **Initiation of Litigation – ERP No. 44007115.006 - Regency Oaks Preserve, Inc. – Manatee County**  
Staff recommended authorizing the initiation of litigation against Regency Oaks Preserve, Inc. to obtain compliance and to recover an administrative fine/civil penalty for as-built deviations, District enforcement costs, court costs, and attorney's fees.
40. **Settlement Agreement – Lance H. Ham et al. v. City of Plant City, Hillsborough County, and SWFWMD, 13th Judicial Circuit Case No. 05-CA-9419 – Hillsborough County**  
Staff recommended approval of the proposed Settlement Agreement pursuant to which SWFWMD will contribute \$75,000 towards settlement, the City will contribute \$75,000, the County will contribute \$50,000, and PEC will contribute \$25,000.

**Executive Director's Report**

41. **Approval of Minutes – November 18, 2008 Governing Board Meeting**  
Staff recommended approval of the minutes as presented.

Following consideration, **Ms. Parks moved, seconded by Mr. Senft, to approve the Consent Agenda as amended. Motion carried unanimously.** (CD 1/Track 5 – 00:00/01:29)

Following consideration, **Ms. Closshey moved, seconded by Mr. Gramling, to approve the Consent Agenda Item 17. Motion carried, and Mr. Beswick abstained from voting.** (CD 1/Track 5 – 01:29/01:58)

Chair Combee relinquished the gavel to Resource Management Committee Chair Gramling.

## Resource Management Committee

### *Discussion Items*

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

43. **Hydrologic Conditions Status Report**

Mr. Granville Kinsman, Manager, Hydrologic Data Section, presented the information 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. Provisional regional rainfall totals for the month (as of November 23) were below-normal in all regions of the District. Provisional streamflow (as of November 24) decreased in all three regions of the District compared to the previous month. Streamflow was below-normal in all three regions of the District, based on regional index rivers. Provisional groundwater data (as of November 24) indicate levels in the Floridan/Intermediate aquifer decreased and were below the normal range of historic values in all three regions of the District compared to the previous month.

Mr. Kinsman concluded the report by stating that general overall conditions continue to decline; that a drier-than-normal forecast is predicted through spring; Tampa Bay-area surface water supply resources are limited and declining; and water supply impacts may spread this winter and spring. (CD 1/Track 6 – 00:00/10:15)

Committee Chair Gramling said the remainder of the Resource Management Committee agenda items would be heard following the Outreach and Planning Committee. Committee Chair Gramling relinquished the gavel to Regulation Committee Chair Parks.

## Regulation Committee

Item 53 was heard first to accommodate members of the audience wishing to address the Governing Board.

### *Discussion Items*

53. **Implementation of Water Shortage Order No. SWF 08-044 – Modified Phase III Extreme Water Shortage Declaration**

Mr. Owen said District staff has been coordinating extensively with Tampa Bay Water and its six member governments regarding drought response mechanisms. On October 15, 2008, Tampa Bay Water transmitted a letter requesting that the District declare a Phase III Extreme Water Shortage event in accordance with Rule 40D-21, the District's Water Shortage Plan. Based on declining hydrologic conditions and concerns about low storage for public supply in the area, the Governing Board issued Modified Phase III restrictions and other response mechanisms for select water uses in all incorporated and unincorporated portions of Hillsborough, Pasco and Pinellas counties. Water Shortage Order No. SWF 08-044 essentially modifies the existing water shortage restrictions in those counties, tightening the provisions for fountains and certain lawn and landscape irrigation practices. This Order also requires public suppliers to take additional action, including increased restriction enforcement.

Staff provided additional information regarding the implementation of Water Shortage Order No. SWF 08-044, including ongoing outreach by the District and actions being undertaken by Tampa Bay Water and its member governments.

The District and local governments have received significant concerns from the public regarding how the Order prohibits sod renovation activities. This provision has had unanticipated impacts on the industry in the Tampa Bay region. A meeting with sod industry representatives was held December 10. Based upon input received at this meeting and from the member governments, staff is recommending changes to this

provision. First, remove prohibition on sod renovation and revise sod establishment period for the first 15 days irrigation is allowed any day, and for the next 15 days irrigation would be allowed for even addresses on Tuesday, Thursday and Saturday and for odd addresses on Wednesday, Friday and Sunday. Mr. Gramling noted that the representatives from the sod industry were well organized and represented.

Staff recommended approval of the First Modification to Water Shortage Order SWF No. 08-044.

Ms. Closshey stated that she was for provisions that prohibited sod renovation activities but later regretted that stance after reading letters from industry leaders. Mr. Senft said he wanted to thank staff and the industry leaders for the professional way they both handled this conflict.

Regulation Committee Chair Parks heard public comment at this time.

Mr. Mac Carraway, President, SMR Farms, from the Manasota and Sarasota county areas, said he also serves on the Agricultural Advisory Committee and the Manasota Basin Board. Mr. Carraway thanked staff for their professionalism and the resolution to this situation. Mr. Carraway said it was a challenging time for growers; they are trying to develop new turf grasses that are not as water dependent.

Ms. Betsy McGill, Executive Director, Florida Sod Growers Cooperative, addressed the Governing Board to express the industry's gratefulness in the way in which their concerns were handled.

Following consideration, **Ms. Closshey moved, seconded by Mr. Senft, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 7 – 00:00/25:09)

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

The following item was added under the Consent Agenda for consideration and then subsequently moved to the Discussion agenda.

**Governing Board Concurrence with Executive Director's Issuance of First Modification to Executive Director Order No. SWF 08-043 Regarding Increased Use of the Tampa Bypass Canal**

Ms. Whitehead asked if Tampa Bay Water (TBW) had plans to help educate the public with further ways to cut down on water use. Mr. Owen said TBW is trying to encourage greater conservation and they are looking at all available sources. Mr. Moore said he and Governing Board members have been and will continue to meet with TBW to emphasize the importance of demand management.

Staff recommended concurrence with issuance of the First Modification to Executive Director Order SWF 08-043, for use of the Tampa Bypass Canal to augment the Hillsborough River Reservoir. Following consideration, **Mr. Combee moved, seconded by Mr. Gramling, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 8 – 00:00/04:02)

52. **Approve for Adoption Proposed Amendments to Chapter 40D-22, F.A.C., Year-Round Water Conservation Measures, In Accordance with Interdistrict Consistency Initiative**

Mr. Owen said the current adopted version of the Southwest Florida Water Management District's Year-Round Water Conservation Measures (Rule 40D-22) went into effect in September 2003.

During its meeting on October 28, 2008 this District's Governing Board discussed the proposed rule amendments. These amendments, as presented, contained the following fundamental lawn and landscape irrigation concepts that are consistent with the interdistrict consistency effort: (1) a maximum of twice-per-week watering with specified days for residential properties, (2) a separate twice-per-week watering schedule for nonresidential properties, and (3) uniform allowable watering hours for all property types and sources of water, including reclaimed water. Other consistency-related changes in the proposed amendments included: modification of the establishment period allowance for new plant material, clarification regarding what constitutes one complete irrigation application, clarification regarding the need to improve the efficiency of reclaimed water, and a provision for review of a local government's proposed ordinance containing different year-round measures prior to approval of the ordinance by the applicable city council or county commission. During its meeting, this District's Governing Board heard from representatives of two reclaimed water providers who both expressed concern about limiting irrigation using reclaimed water to before 10:00 am or after 4:00 pm.

In response to input from individual reclaimed water providers and professional associations that represent the industry, both the St. Johns River Water Management District (SJRWMD) and South Florida Water Management District (SFWMD) districts have modified their proposed rules so as to remove all provisions regarding irrigation using reclaimed water. In an effort to be consistent with the other districts, and in recognition of the input the Board received at the October meeting, District staff recommends removing all potential changes to the provisions related to reclaimed water from consideration at this time.

Regulation Committee Chair Parks heard public comment at this time.

Mr. Joseph Richards, Assistant County Attorney, Pasco County, thanked staff for addressing the county's concern and removal of the preapproval of any county ordinance(s) that may be more restrictive than the District's.

Mr. Tim Atkinson, Attorney, representing numerous clients regarding water use and reclaimed water use. Mr. Atkinson said he was in favor of the staff recommendation to remove all potential changes to the provisions related to reclaimed water from consideration at this time. Moving forward in the rulemaking process, he said he believes rulemaking of reclaimed water as a consumptive use is both unnecessary and without a basis. He said he looks forward to working with DEP and District staff to avoid litigation on this issue.

Ms. Jan McLean, Attorney, City of Tampa, thanked the Governing Board and staff for listening and taking action on the City's concerns with the use of reclaimed water. The issue of leaving the rulemaking process open to see and assess what happens with the other water management districts is of concern. Ms. McLean asked the Governing Board to be the leader and direct staff to close the rulemaking and move this process forward.

Mr. Eric Olsen, Attorney, Hopping, Green and Sams Law Firm, representing the Florida Environment Utility Council, said they support staff's recommendation today to delete reclaimed water from the rule. Mr. Olsen said the council is also working with DEP and the other water management districts to promote the use of reclaimed water; so far consensus on issues has not been met, however, Mr. Olsen encouraged the Governing Board to direct District staff to participate in these meetings.

Mr. Joerger pointed out that the creation of homogeneous regulation for reclaimed water may not be necessary since it is not available or used the same throughout the state. Mr. Owen said that was a very good point. He said the District can look at this rulemaking as a standard above which there can be additional requirements. Mr. Owen said there are



two major points to remember. One is that the District encourages the use of plants that require no more than twice a week irrigation to survive, and studies have shown that practice is applicable to most places in Florida. Second, that the District promotes the efficient use of water no matter what the source is whether or not it is limited or a potable source.

Staff recommended to (1) approve the amendments shown in the exhibit and as previously described regarding 40D-22.401; and (2) authorize staff to complete the adoption process for these amendments after any challenges to the SJRWMD or the SFWMD year round conservation rules are resolved and no changes to the approved amendments are warranted. Following consideration, **Mr. Gramling moved, seconded by Mr. Oakley, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 8 – 04:02/27:45)

54. **Approve for Adoption Proposed Amendments to Sections 1.7.23, 3.2.7 and 3.3.1.5 of the Environmental Resource Permit (ERP) Basis of Review (BOR) as well as Appendix 5 of the ERP BOR to Maintain Protection for the Bald Eagle**

Mr. H. Clark Hull, Jr., ERP Program Director, said the District's ERP rules afford protection to aquatic and wetland dependent wildlife species that have been classified by the Florida Fish and Wildlife Conservation Commission (FWC) as endangered, threatened or a species of special concern. This includes protecting the existing nesting and denning habitat for such species because these habitats serve a critical role in these species' life cycles.

The FWC at its meeting on April 9, 2008 removed the Bald Eagle from Florida's list of wildlife species that are classified as threatened. To ensure that a stable or increasing population of Bald Eagles is maintained throughout Florida, the FWC also approved Bald Eagle Management Guidelines, incorporated by reference into new rules for non-listed nongame birds that are specific to the Bald Eagle (68A-16.002, F.A.C.). These guidelines acknowledge the need for continued protection of nesting habitat and that implementation will require the cooperation of local, state, and federal governmental agencies, non-governmental organizations, business, agricultural and forestry interests, universities, and the public. Additionally, although the Bald Eagle is no longer classified as threatened in Florida, protection is continued under the Bald and Golden Eagle Protection Act (Eagle Act), a federal law.

Recognizing the importance of Bald Eagle nesting to its survival, and the continuing protections afforded the Bald Eagle by the Eagle Act, the water management districts have proposed that the nesting habitat of Bald Eagles continue to be protected under their ERP rules. To accomplish this goal, this Governing Board at its meeting on June 24, 2008 authorized staff to initiate rulemaking and approved draft rule language. The draft rule language was presented to the public at a rule development workshop held jointly with the SJRWMD and SFWMD on July 24, 2008, to the District's Environmental Advisory Committee on September 8, 2008 and the ERP Advisory Groups on October 22, 2008 and November 6, 14 and 20, 2008. Staff is proposing revisions to the draft rule language in response to comments received as a result of these presentations.

Staff recommended to approve additional revisions to the proposed rule language and authorize staff to complete the rule making process. Following consideration, **Mr. Oakley moved, seconded by Mr. Senft, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 9 – 00:00/09:45)

**Submit & File Reports** – None

### ***Routine Reports***

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

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

Regulation Committee Chair Parks relinquished the gavel to Outreach and Planning Committee Vice Chair Whitehead.

## **Outreach and Planning Committee**

### ***Discussion Items***

60. **Merger of the Northwest Hillsborough and Hillsborough River Basins**

Ms. Kavouras said the Governing Board conceptually approved moving forward with plans to merge the Northwest Hillsborough and Hillsborough River Basins at their meeting on November 18, 2008, postponing final approval for a month to allow time for Board member and citizen input. The merger contained the following terms: millage rate of 0.2421 (the lower of the two Basins) is recommended; currently seated Board members will retain membership; current projects and programs will remain in place; final approval will be requested on December 16, 2008; and effective date will be January 1, 2009.

On November 19, 2008, a letter was received from Pablo Diaz, Director of Appointments in the Office of the Governor. The letter states they have no objection to a merger at this time. On December 9, 2008 the Northwest Hillsborough Basin Board met to discuss the anticipated merger. All comments and concerns raised by the Basin Board members and citizens were addressed at this meeting. Staff took the additional time to expand the noticing of the merger, assurance was provided to the Basin Board members that none of the currently seated Basin Board members would lose their seats, and Board officers will take turns presiding over meetings until the next election of officers in April 2009. Staff also reviewed the Basin Board's current budget and the Board was satisfied with designating the Basin's stormwater reserves for the City of Tampa. Additionally, Basin Board members reached consensus on their strategic basin priorities.

Staff recommended to (1) adopt Resolution No. 08-30 to modify Basin boundaries merging the Northwest Hillsborough Basin with the Hillsborough River Basin, effective January 1, 2009; and (2) authorize the initiation of rulemaking to make the necessary adjustments to the Basin legal descriptions contained in Chapter 40D-1.107, Florida Administrative Code, and to complete rulemaking in the absence of public objection. Following consideration, **Mr. Gramling moved, seconded by Mr. Oakley, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 10 – 00:00/11:29)

61. **Florida Power & Light's Clean Energy Story**

Ms. Rae Dowling, Area Manager, External Affairs, Florida Power & Light (FPL), said FPL is the largest investor-owned electric utility in Florida, serving more than 4.4 million customer accounts. It is one of the largest and fastest growing electric utilities in the United States, and is the nation's leading utility in customer energy-efficiency programs. The FPL Group is a growing and diversified company investing in clean energy, which includes nuclear, wind, solar and water to meet our energy needs today and tomorrow.

FPL is expanding its current nuclear fleet in South Miami-Dade County and St. Lucie County. In the next five years, the company will upgrade the plants and increase emissions free power generation. FPL is also the nation's leader in wind energy generation, operating 56 wind farms in 16 states. A recent FPL project located within the

District coverage area is a solar facility in DeSoto County. It will be the world's largest solar photovoltaic facility and will power 8,700 homes.

This item was presented for the Committee's information, and no action was required. (CD 1/Track 11 – 00:00/24:37)

62. **Legislative Update**

Mr. David Rathke, Director, Community and Legislative Affairs Department (CLA) said staff have been developing a draft legislative package for 2008 - 2009. This year brings many challenges.

Both the House and Senate have announced their committee structures and membership. As with any change in leadership there are many changes to the committees this year. For example, the Senate now has "Steering Committees" which will help determine floor action on controversial bills.

The Special Session to address the state's budget will be held January 5-16, 2009. Issues to watch include the state budget, economic development, and the sunset review. The Sunset Review of the water management districts is ongoing and the legislature will be evaluating numerous water management programs during this process in an effort to streamline and create more efficient government.

The Century Commission just approved recommendations, and after analyzing the recommendations, staff is suggesting the District support three of them. (1) Set a per capita target or goal for water use and quantifiable best management water practices and provide a stable funding base for the Conserve Florida program directed by Sect. 373.227, F.S., including the statewide water conservation clearinghouse for public water supply. (2) Support regional partnerships, incentives and cooperative approaches to addressing long-term water sustainability for Florida. The water management districts, the FDEP and local governments should aggressively identify opportunities and develop incentives for establishing multi-jurisdictional utility arrangements or water supply authorities and engage in other areas where such partnerships should be beneficial and cost effective to the public. (3) Reinstate the annual state funding for alternative water supply development and water quality improvement (i.e., SB 444 funding to be matched by water management districts and local governments/ utilities).

Staff recommended to support the three Century Commission recommendations as presented. Following consideration, **Ms. Parks moved, seconded by Mr. Combee, to approve the staff recommendation. Mr. Gramling moved with an amended motion to add a fourth Century Commission recommendation that concerns irrigation standards. The Governing Board unanimously voted to accept the amended motion. Ms. Parks moved, seconded by Mr. Combee, to approve the amended motion that adds irrigation standards to the other three Century Commission recommendations. Motion carried unanimously.** (CD 1/Track 12 – 00:00/24:46)

Outreach and Planning Committee Vice Chair Whitehead said Mr. Moore's radio advertising campaign was coming to an end, but there is a need to keep public awareness high; therefore, staff is seeking approval to expend \$200,000 on an additional advertising campaign to educate the public regarding outdoor water conservation. Following consideration, **Mr. Combee moved, seconded by Mr. Oakley, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 12 – 24:46/33:46)

**Submit & File Reports** – None

### ***Routine Reports***

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

63. **Comprehensive Plan Amendment and Related Reviews**
64. **Development of Regional Impact Activities**
65. **Speakers Bureau**
66. **Significant Activities**

Chair Combee recessed the public hearing for a lunch break.

Following the lunch break, Chair Combee relinquished the gavel to Resource Management Committee Chair Gramling to complete the remaining items from the Committee.

### **Resource Management Committee**

44. **Review of Analytical Process for Water Shortage Actions and Public Dissemination of Information**

This item was deleted from consideration.

45. **Long-Range Water Supply and Water Resource Development Funding Plan Update**

Mr. Schiller said this is an action item to provide policy direction on a five-part motion associated with funding associated with the District's Long-Range Water Supply and Water Resource Development (WSRD) Funding Plan.

At the October Governing Board meeting, staff presented the annual update of the Plan. The presentation provided an estimated revenue outlook of the Governing Board and eight Basin Boards relative to their ability to meet projected funding requests for alternative water supply and resource development projects through the years 2025.

Staff was asked to extend projections through the year 2030. It was concluded that the District's General Fund should continue to have an estimated \$30 million available each year through 2030 to address WSRD.

The Board discussed the assumptions and conclusions of the analysis and approved a five part motion, and requested staff to address it at a future meeting. That motion is as follows:

- (1) Evaluate and consider changing the percentage of funding between the Governing Board and Basin Boards for WSRD projects. Also consider including in this those shared projects associated with data collection, analysis and recovery related to minimum flows and levels, water supply technical studies and other water supply planning efforts, and other programs.
- (2) Consider and evaluate having the Governing Board participate in funding programs currently fully funded by the Basin Boards, such as conservation related research.
- (3) What are the expectations of the Governing Board of those Basin Boards that can't meet expected levels of funding for approved WSRD projects.
- (4) Look at different ways of evaluating projects and consider having a different percentage of match between the District, as a whole, and a cooperator for all cooperative funding initiative projects based on project priority.
- (5) Provide an overview of the statutory requirements and legislative intent in setting millage rates for the Governing Board and Basins, as relates to their respective duties and responsibilities directing project funding.

In response to the motion, staff has conducted a comprehensive predictive analysis of the District's service budget through the year 2030. In addition to that, staff re-evaluated the project costs and implementation schedule for those projects currently included in the Plan. Mr. Schiller reviewed the General and Revenue Assumptions and said there have been several significant changes to the demand projections used in the October

presentation as a result of market conditions and refinement of ongoing water supply master plans being conducted by Tampa Bay Water, Peace River/Manasota Regional Water Supply Authority and Polk County. The current data indicates a reduction in the overall alternative source quantities needed over the planning horizon, which was extended to 2030, and an overall shift or delay in bringing those quantities on to the middle and latter years. This latest information is believed to be a more realistic projection of future demands and project needs.

Mr. Schiller said the staff recommendation addresses parts 1, 2 and 3 of the motion by summarizing key elements of the budgetary and project analysis and shows how these assumptions realign the potential funding vs. estimated project costs (graphs) for the Governing Board and Basins Boards. Part 4 and 5 of the motion are policy and general information.

Staff recommended:

- (1) Governing Board, based on statutory division of taxing authority, to continue funding major regional water supply and water resource development projects:
  - Governing Board and Basin Boards to continue to provide matching funds to cooperators equal to 50 percent of eligible project costs, subject to funding availability.
  - District General Fund and Basins to jointly fund the District's 50 percent project cost share on a 50/50 basis, subject to Basin priorities and funding availability.
- (2) District's General Fund fund 100 percent of those project costs currently funded in whole or in part by the Basins that are in support of regulatory functions such as data collection, minimum flows and levels, water supply technical studies, water supply planning efforts, water resource programs, and conservation research studies.

Mr. Gramling requested fellow Board members to ask that their Basin Boards contribute any savings that they generate by this policy be contributed to future water supply projects.

Following consideration, **Mr. Combee moved, seconded by Mr. Oakley, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 13 – 00:00/30:45)

***Submit & File Reports*** – None

***Routine Reports***

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

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

Resource Management Committee Chair Gramling relinquished the gavel to Finance and Administration Committee Chair Oakley.

**Finance and Administration Committee**

***Discussion Items***

67. **Consent Item(s) Moved for Discussion** – None
68. **Fiscal Year 2010 Budget Development Process**  
Board members did not require a presentation of this item. Staff recommended to accept the planned FY2010 Budget Development Process as described in the memorandum and

attachments. Following consideration, **Ms. Closshey moved, seconded by Mr. Gramling, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 14 – 00:00/01:20)

69. **Strategic Systems and Water Management Information System Initiative Semi-Annual Update**

Mr. Terry Redman, Director, Information Resources Department, provided the Governing Board with the semi-annual update on *Information Resources Department's Five-Year Technology Plan, Fiscal Years 2009-2013*, with emphasis on the status of the Water Management Information System (WMIS) initiative, the key component of this plan.

Mr. Redman discussed the following projects during the presentational update: Water Management Information System (WMIS), Project Information Management System (PIMS), Enterprise Content Management (ECM), Land Resources Information System (LaRIS), the Human Resources Information System (HRIS), Microsoft Exchange as a replacement for Lotus Notes Email and Unified Communications. Additionally, a short presentation on the District's Green IT initiative was provided.

The WMIS update included a discussion of a revised schedule to remove the IBM Mainframe Computer in February 2010, which is eight months earlier than originally estimated. The latest WMIS increment, released in November 2008, provided Water Use Permitting Generals, compliance tracking and additional enhancements to the Resource Data component. It was installed on schedule. Well Construction Permitting, Water Use Permitting Small General and Resource Data capabilities were made available to the public in earlier releases.

This item was presented for the Committee's information, and no action was required. (CD 1/Track 15 – 00:00/16:13)

Mr. Schiller reported that all but \$12.2 million of the SBA funds will be released on December 23, 2008. He said this is very good news compared to last year when the District had \$280 million tied up in the SBA funds. (CD 1/Track 16 – 00:00/02:13)

**Submit & File Reports** – None

**Routine Reports**

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

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

71. **Management Services Significant Activities**

Finance and Administration Chair Oakley relinquished the gavel to Chair Combee.

## **General Counsel's Report**

**Discussion Items**

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

73. **Final Order – Blanco v. NNP-Bexley, Ltd. and SWFWMD, DOAH Case No. 08-1972 – Pasco County**

Mr. Jack R. Pepper, Deputy General Counsel, said on February 22, 2008 the District issued a Notice of Proposed Agency Action for approval of Environmental Resource Permit (ERP) Application No. 43013740.004, submitted by NNP-Bexley, Ltd. (NNP-Bexley). The application was for authorization to construct a surface water management system to serve a 1716.80-acre residential development and associated improvements (the Project). The Project is located in Pasco County, northeast of the intersection of the Suncoast Parkway and State Road 54.

On March 19, 2008, Dr. Octavio Blanco (Blanco) filed a Petition for Formal Administrative Hearing with the District. On March 25, 2008, the District issued ERP No. 43013740.004. On April 9, 2008, Blanco filed an Amended Petition for Administrative Hearing. The Petition was then referred to the Division of Administrative Hearings for a formal administrative proceeding.

On November 17, 2008, the Administrative Law Judge (ALJ) issued a Recommended Order. The ALJ recommends the District enter a Final Order issuing ERP No. 43013740.004 to NNP-Bexley. Additionally, the ALJ specifically found that Dr. Blanco participated in the administrative hearing process for an improper purpose therefore entitling NNP-Bexley and the District to an award of costs and attorneys fees pursuant to Section 120.595, Florida Statutes (F.S.). No exceptions to the ALJ's Recommended Order have been filed and deadline for filing exceptions has passed.

Staff recommended approval of the proposed Final Order that adopts the Recommended Order entered by the Administrative Law Judge and issues ERP No. 43013740.004. Following consideration, **Ms. Parks moved, seconded by Ms. Closshey, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 17 – 00:00/03:20)

**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. **Environmental Advisory Committee Liaison Report**  
Mr. Beswick reported that the Environmental Advisory Committee met on December 8, 2008, at the Tampa Service Office. He said Ms. Kavouras announced that there would be two upcoming workshops in January. He said the Committee received a report on the Orthophoto Program.
77. **Basin Board Land Resources Committee Liaison Report**  
Mr. Eric Sutton, Assistant Land Resources Director, Land Resources Department, said the Committee met on December 3, 2008, in Jacksonville. The main topics covered were: accomplishments, challenges, risk analysis, and feedback loops.
78. **Executive Director's Report**  
Mr. Moore said this coming Friday is the next quarterly meeting with the Executive Directors and Secretary Sole. The following topics are expected to be discussed: the statewide stormwater rules, streamlining of the Environmental Resource Permit process, reclaimed water use issues among the different Districts, and DEP's Climate Plan.

Ms. Closshey asked when the Board would be receiving another report regarding per capita use. Mr. Owen responded to her question and said that staff is still working on the Enhanced Water Conservation Rule; he estimated that staff would be ready to report back in the February/March timeframe.

Mr. Moore said staff continues to work with TBW on the requirement of additional enforcement in Phase III of the Water Shortage Order. The Emergency Order to take the Tampa Bypass Canal down from 10 feet to 9 feet will provide additional supplies. Staff members continue to coordinate with TBW to look for additional sources to help get through the drought this spring. There will be a Joint Workshop of the Governing Board and Tampa Bay Water on January 26, 2009.

Mr. Bilenky said on December 29, 2008 the District anticipates making the major payment to TBW for the Desalination Plant of \$42.5 million. They have met the second milestone in the performance objectives of 12.5 mgd annual average for a 12-month period. They have actually produced 20 mgd annual average for that period. The remaining balance of capital costs are \$21.25 million which are to be paid after four consecutive months of 25 mgd have been achieved. Then the payment of the accrued interest will be paid when Tampa Bay Water achieves another 20 mgd annual average production for 12 consecutive months whereupon all of the financial agreements will have been satisfied.

The Polk County Water Supply Plan is being presented to the Polk County Commissioners tomorrow. Mr. Moore said he thinks they have a successful plan that identifies future sources.

Citrus County was significantly over their permitted quantities; staff has been working with them on a Consent Order. They have implemented rates structures and enforcement, resulting in a 35 percent drop in water use. (CD 1/Track 18 – 00:00/16:43)

79. **Chair's Report**

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

Ms. Elaine M. Kuligofski, Director, Human Resources and Risk Management, said Governing Board Members received their performance appraisal packets at the October 2008 Board Meeting and have submitted their performance comments and recommendations for improvement and professional development. These have been incorporated into draft 2008 performance appraisals for the Executive Director and Inspector General. Board members also received and reviewed the proposed 2009 Goals and Objectives for the Executive Director and Inspector General.

Staff recommended to (1) approve the 2008 performance appraisals of the Executive Director and Inspector General and authorize them to be finalized; (2) authorize the Governing Board Chairman to sign the final, approved appraisals and deliver them to the employees on behalf of the Governing Board; and (3) approve the 2009 Goals & Objectives for the Executive Director and Inspector General.

Chair Combee directed staff to draft a letter to the Legislature for his signature regarding Mr. Moore's confirmation. Mr. Gramling suggested that the letter should request that Mr. Moore's confirmation be considered early in the session.

Following consideration, **Ms. Closshey moved, seconded by Mr. Oakley, to approve the staff recommendation. Motion carried unanimously.** (CD 1/Track 19 – 00:00/12:08)

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

The meeting was adjourned at 2:32 p.m.



