

APPROVED

MINUTES OF THE MEETING

GOVERNING BOARD SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

SARASOTA, FLORIDA

MARCH 27, 2012

The Governing Board of the Southwest Florida Water Management District (SWFWMD) met for its regular meeting at 9:30 a.m. on March 27, 2012, at the District's Sarasota Service Office. The following persons were present:

Board Members Present

H. Paul Senft, Chair
Hugh Gramling, Vice Chair
Douglas B. Tharp, Secretary
Albert G. Joerger, Treasurer
Michael A. Babb, Member
Carlos Beruff, Member
Bryan K. Beswick, Member
Jennifer E. Closshey, Member
Neil Combee, Member
Randall S. Maggard, Member
Todd Pressman, Member

Staff Members

Blake C. Guillory, Executive Director
Laura J. Donaldson, General Counsel
Robert R. Beltran, Assistant Executive Director
David T. Rathke, Chief of Staff
Kurt P. Fritsch, Division Director
Mark A. Hammond, Division Director
Michael L. Holtkamp, Division Director
Alba E. Más, Division Director

Board Member(s) Absent

Jeffrey M. Adams, Member
Judith C. Whitehead, Member

Board's Administrative Support

LuAnne Stout, Administrative Coordinator
Linda De Jonge, Senior Administrative Assistant

A list of others present who signed the attendance roster is filed in the permanent records of the District. This meeting was available for viewing through internet streaming. Approved minutes from previous meetings can be found on the District's Web site (www.WaterMatters.org).

PUBLIC HEARING (Video – 00:00)

1. **Call to Order**

Chair Senft called the meeting to order and opened the public hearing. Mr. Tharp noted a quorum was present. (Track 1 – 00:00/00:16)

2. **Pledge of Allegiance and Invocation**

Chair Senft led the Pledge of Allegiance to the Flag of the United States of America. Mr. Rathke offered the invocation. (Track 1 – 00:16/01:00)

Public Hearing

Chair Senft introduced each member of the Governing Board. He noted that the Board's meeting was recorded for broadcast on government access channels, and public input was only taken during the meeting onsite.

Chair Senft 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 agenda items only during today's meeting. 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 during "Public Input." Chair Senft 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. (Track 1 – 01:00/02:22; Track 2 – 00:00/02:28)

3. **Additions/Deletions to Agenda**

Mr. Guillory noted for the record that there are no changes to the meeting's agenda.

4. **Request Recess for a Closed Attorney-Client Session**

Pursuant to Section 286.011(8), Florida Statutes, Ms. Donaldson said staff requests the Board hold a closed attorney-client session at 11:30 a.m. to discuss strategy related to eminent domain litigation for the acquisition of remaining parcels for the Lake Hancock Lake Level Modification Project. She noted that the session has been properly noticed.

Ms. Closshey moved, seconded by Mr. Maggard, to approve staff's request to recess for closed attorney-client session. Motion carried unanimously. (Track 2 – 02:28/03:30)

At this time, the order of consideration was altered slightly.

57. **Chair's Report**

a. **Executive Director Reappointment**

Chair Senft noted that, by the close of the 2012 Legislative Session, the Senate had only completed eight confirmations of appointments which had been made last year. Specifically, the District's Executive Director and five Board members were not confirmed. According to legal counsel, the Board members and Executive Director may continue in their current roles for the next 45 days. In order to continue to serve beyond 45 days, they must be reappointed and subsequently confirmed next session.

Mr. Gramling moved, seconded by Ms. Closshey, to reappoint Mr. Guillory as the District's Executive Director under the terms and conditions of the existing contract. Motion carried unanimously. (Track 2 – 03:30/05:20)

5. **Employee Recognition**

Mr. Hammond recognized Mr. Eric DeHaven for his 25 years of service and briefly reviewed positions held at the District. Ms. Más recognized Mr. Brian Starford for 25 years of service and Mr. Randy Till for 30 years of service, noting past positions each has held. Mr. Guillory introduced the District's new Assistant Executive Director, Robert Beltran. (Track 2 – 05:20/06:18; Track 3 – 00:00/10:18)

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

Chair Senft noted that one speaker card was submitted.

Mr. Kevin Love, resident of Brooksville, said he supports the formation of a recreational advisory committee as requested by the public at the Board's last meeting.

Chair Senft said the scope of the committee needs to be refined and defined which will occur over the next few months. (Track 4 – 00:00/03:34)

CONSENT AGENDA (Video – 23:10)

Mr. Beruff requested Item 14 be moved to Discussion Items on the General Counsel's Report.

Regulation Committee

7. **Individual Water Use Permits**

a. **WUP No. 20011536.009 – John Falkner Classie Growers, LLC / Northgate Farms (Manatee County)**

Staff recommended approving the proposed permit included in the Board's meeting materials.

b. **WUP No. 20012294.003 – Lake Strawberry Dependent District (Hillsborough County)**

Staff recommended approving the proposed permit included in the Board's meeting materials.

8. **Automatic Meter Reading (AMR) Pilot Project – Fourth Amendment (P416)**

Staff recommended approving the fourth amendment to the existing agreement.

Resource Management Committee

9. **City of North Port Myakkahatchee Creek Water Treatment Plant Riverbank Filtration and Reverse Osmosis Reliability Project – First Amendment (N082)**

Staff recommended approving the no-cost first amendment to the agreement.

Outreach & Planning Committee

10. **Water Conservation Month Proclamation**

Staff recommended executing a resolution declaring April 2012 as "Water Conservation Month."

Finance & Administration Committee

11. **Budget Transfer Report**

Staff recommended approving the Budget Transfer Report covering all budget transfers for February 2012.

12. **Revise Board Policy 130-9, Fund Balance, and Adopt Resolution Committing Fund Balance for an Economic Stabilization Fund**

Staff recommended revising Board Policy 130-9, Fund Balance, and adopting Resolution No. 12-04, Committing Fund Balance for an Economic Stabilization Fund in compliance with Board Policy 130-9.

13. **Accept Land Donation – Peace Creek Canal Project, SWF Parcel No. 20-696-172P**

Staff recommended accepting the easement donation.

General Counsel's Report

14. **Settlement Agreement – SWFWMD v. Lake Hancock Partners, LLLP, OW Hancock, LLLP, & RB Hancock, LLLP (Parcel Nos. 20-503-118-P and 20-503-108-P)**

This item was moved to Discussion Items.

15. **Settlement Agreement – SWFWMD v. William H. Stanton, Jr., and Brandy Lee Stanton (Parcel Nos. 20-503-209-P and 20-503-210-P)**

Staff recommended approving the settlement agreement whereby the District will pay the owners \$650,000 for the easement necessary for implementation of the Project.

16. **Settlement Agreement – ERP No. 44005168.003 - The Kell Group, Ltd. (Lakes of Wellington – Phase 2) – Hillsborough County**

Staff recommended ratifying the Settlement Agreement and Joint Motion for Consent Final Judgment.

17. **Initiation of Litigation – ERP No. 44024714.000 - Copper Ridge Master Association – Polk County**

Staff recommended authorizing the initiation of litigation to obtain compliance and recover fees.

18. **Surplus of the Bartow Service Office**

Staff recommended that the Board determine that the Bartow Service Office is no longer needed for District purposes, is no longer needed for conservation purposes, and is surplus property.

Executive Director's Report

19. **Approve Governing Board Minutes**

- a. Regional Cooperative Funding Public Meeting – Northern Region – February 7, 2012
- b. Regional Cooperative Funding Public Meeting – Tampa Bay Region – February 9, 2012
- c. Regional Cooperative Funding Public Meeting – Heartland Region – February 13, 2012
- d. Regional Cooperative Funding Public Meeting – Southern Region – February 15, 2012
- e. Monthly Meeting – February 28, 2012

Staff recommended approving the minutes as presented.

Mr. Gramling moved, seconded by Ms. Closshey, to approve the Consent Agenda as amended. Motion carried unanimously. (Track 5 – 00:00/00:52)

Chair Senft relinquished the gavel to Regulation Committee Chair Beswick who called the meeting to order.

REGULATION COMMITTEE (Video – 24:00)

Discussion Items

20. **Consent Item(s) Moved for Discussion** – None
21. **Denials Referred to the Governing Board** – None

Submit & File Reports – None

Routine Reports

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

22. **Southern Water Use Caution Area Quantities**
23. **Overpumpage Report**
24. **E-Permitting Metrics: Online vs. Paper Applications**
25. **Individual Permits Issued by District Staff**
26. **Resource Regulation Significant Initiatives**

Resource Regulation Committee Chair Beswick adjourned the Committee meeting and relinquished the gavel to Operations & Land Management Committee Chair Babb who called the meeting to order. (Track 6 – 00:00/00:37)

OPERATIONS & LAND MANAGEMENT COMMITTEE (Video – 24:55)

Discussion Item

27. **Hydrologic Conditions Status Report**
Mr. Granville Kinsman, Manager, Hydrologic Data Section, said February historically marks the fifth month of the eight-month dry season (October-May) and provisional rainfall totals for the month show accumulations in the below-normal to low-normal range in all regions of the District. Analysis of dry-season rainfall shows October through February totals to be below the historic mean in all regions of the District. The provisional 12-month rainfall deficit improved during February, ending the month approximately 6.03 inches below the long-term historical average, while the 24-month deficit worsened to 10.34 inches below the long-term average. Flow on the District's major river systems has fallen to extremely low levels, further limiting their use as water supply sources. Groundwater levels are well below normal in the northern and southern regions, and are continuing to fall. The risk of wildfire throughout the District has increased. (Track 7 – 00:00/08:30)

This item was presented for the Committee's information, and no action was required.

Submit & File Report

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

28. **Surplus Lands Assessment Update**
29. **Flying Eagle Youth Center Update**

Routine Reports

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

30. **Structure Operations**
31. **Significant Activities**

Resource Regulation Committee Chair Babb adjourned the Committee meeting and relinquished the gavel to Resource Management Committee Chair Gramling who called the meeting to order. (Track 7 – 08:30/09:00)

RESOURCE MANAGEMENT COMMITTEE (Video – 34:00)

Discussion Items

32. **Consent Item(s) Moved for Discussion** – None
33. **Peace River Manasota Regional Water Supply Authority Update**
Mr. Pat Lehman, Executive Director of the Peace River Manasota Regional Water Supply Authority, provided an update regarding the status of its water supply activities and vision for the future. (Track 8 – 00:00/19:13)

This item was presented for the Committee's information, and no action was required.

Submit & File Reports – None

Routine Reports

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

34. **Minimum Flows and Levels**
35. **Watershed Management Program and Federal Emergency Management Agency Map Modernization**
36. **Significant Water Supply and Resource Development Projects**

Resource Management Committee Chair Gramling adjourned the Committee meeting. (Track 8 – 19:13/19:24)

Ms. Closshey requested an update on the Aquifer Storage and Recovery project (arsenic and testing) at a future meeting. (Track 9 – 00:00/01:00)

Mr. Gramling relinquished the gavel to Outreach and Planning Committee Vice Chair Closshey who called the meeting to order. (Track 9 – 01:00/01:24)

OUTREACH & PLANNING COMMITTEE (Video – 53:30)

Discussion Items

37. **Consent Item(s) Moved for Discussion** – None
38. **Legislative Wrap-Up**
Ms. Colleen Thayer, Bureau Chief, Public Affairs, provided an update on the 2012 Legislative Session. Several bills related to water management were debated this year. These included but were not limited to streamlining of environmental resource permitting, 30-year consumptive use permits for alternative water supply, Department of Transportation mitigation, conceptual permits for urban redevelopment, interagency coordination, numeric nutrient criteria, and reclaimed water, as well as conforming

legislation related to the current cap on ad valorem revenue that can be collected by the water management districts. (Track 10 – 00:00/04:00)

Ms. Thayer reviewed the reclaimed water legislation. Regarding reclaimed water projects, Ms. Donaldson provided the offset provision to be included in cooperative funding agreements for protection of taxpayer monies. Discussion ensued. (Track 10 – 04:00/12:10)

Ms. Thayer continued reviewing legislation affecting the District. (Track 10 – 12:10/22:43)

This item was presented for the Committee's information, and no action was required.

39. **Fiscal Year 2012-13 Cooperative Funding Process Update** (Video – 77:00)

Ms. Lou Kavouras, Bureau Chief, Board and Executive Services, reviewed the process for Fiscal Year 2012-13 applications evaluation and ranking by staff following the February public meetings. A summary of the staff rankings, along with detailed write ups and recommendations for each project, have been compiled by region, distributed to the Governing Board members and posted on the District's website. The objective of the April meetings is for each sub-committee to finalize project rankings for recommendation to the full Governing Board in May. Committee Chair Closshey requested including a chart comparing cost per gallon. (Track 11 – 00:00/09:11)

Mr. Fritsch briefly reviewed the current revenues, expenditures and encumbrances. He said staff has reviewed 651 ongoing projects and categorized them. He noted there are 177 annual and ongoing projects. Mr. Fritsch said there are some projects that are part of this year's current budget, and there is a group of 218 projects, representing \$202 million, that are active and moving forward. He said another group of 144 projects needs further scrutiny. Mr. Fritsch advised that staff is asking for direction from the Board to submit letters of request to every local government cooperator involved with the 144 projects and ask for written representations that there is a timeline for the project's construction, billings and completion; and most importantly, that funding is in place. (Track 12 – 00:00/08:58)

In response to Mr. Tharp's questions, Mr. Fritsch said the 144 projects represent \$118 million. Mr. Hammond said these 144 projects are being reviewed to ensure the project is moving forward. He said if there are multi-year projects, there may be a few projects that cooperators may have submitted requests through the cooperative funding process. Mr. Guillory noted staff is continuing to review the 144 projects and some of those may not go forward which will affect the balance forward amount. (Track 12 – 08:58/12:55)

Mr. Beruff moved, seconded by Mr. Maggard, to authorize staff to submit letters of request to local government cooperators asking for written representations of the project timelines and funding. (Track 12 – 12:44/13:25)

Discussion ensued regarding ongoing and budgeted projects, and proposed cooperative funding projects.

Motion carried unanimously. (Track 12 – 13:25/17:35)

Submit & File Reports – None

Routine Reports

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

40. **Comprehensive Plan Amendment and Related Reviews**
41. **Development of Regional Impact Activity Report**
42. **Significant Activities**

Outreach and Planning Committee Vice Chair Closshey adjourned the Committee meeting and relinquished the gavel to Finance and Administration Committee Chair Joerger who called the meeting to order. (Track 12 – 17:35/18:25)

FINANCE & ADMINISTRATION COMMITTEE (Video – 105:00)

Discussion Items

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

44. **Comprehensive Annual Financial Report**

Mr. Daryl Pokrana, Bureau Chief, Finance, said the District is required by Section 218.39, Florida Statutes, to have an annual financial audit of its accounts and records performed by an independent certified public accountant, licensed in the State of Florida, and made in accordance with generally accepted auditing standards, Florida Statutes, and Rules of the Auditor General promulgated pursuant to Section 11.45. He said staff recommends accepting the District's Comprehensive Annual Financial Report, and the Management Letter for fiscal year ended September 30, 2011.

Ms. Lori Nissen, representing KPMG, provided a brief presentation of the Comprehensive Annual Financial Report, including the Single Audits pursuant to OMB Circular A-133 and Chapter 10.550, Rules of the Auditor General, and the Management Letter for fiscal year ended September 30, 2011, which was distributed prior to the meeting. Ms. Nissen communicated to the Board certain matters related to the conduct of the audit as required by auditing standards.

Mr. Tharp moved, seconded by Committee Chair Joerger, to accept the District's Comprehensive Annual Financial Report, and the Management Letter for fiscal year ended September 30, 2011. Motion carried unanimously. (Track 13 – 00:00/12:50)

Submit & File Reports – None

Routine Reports

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

45. **Treasurer's Report, Payment Register and Contingency Funds Report**
46. **Monthly Financial Statement**
47. **Monthly Cash Balances by Fiscal Year**

Finance and Administration Committee Chair Joerger adjourned the Committee meeting and relinquished the gavel to Chair Senft. (Track 13 – 12:50/13:05)

GENERAL COUNSEL'S REPORT (Video – 117:55)

Ms. Donaldson noted that the closed session cannot begin until the court reporter arrives. She suggested staff present Item 49 at this time. (Item 13 – 13:05/13:57)

Discussion Items

49. Compliance and Enforcement Process Overview

Ms. Donaldson noted that compliance and enforcement matters generally involve activities that require a permit but are done without first obtaining a permit or activities that violate the terms or conditions of a permit, order or rule provision. Mr. Chris Pettit, Senior Attorney, Office of General Counsel, provided an overview of the process. (Track 14 – 00:00/08:50)

Chair Senft said, when Ms. Donaldson joined the District, there were approximately 300 cases. He noted she has reduced the number of cases to about 100. (Track 14 – 08:50/11:10)

This item was presented for the Board's information, and no action was required.

Ms. Donaldson advised that the court reporter has arrived. She noted internet streaming and all recording equipment will be turned off and the room cleared. (Track 14 – 11:10/12:39, Video – 131:10)

The Board recessed the meeting at 11:45 a.m. to provide for a closed attorney-client session attended by Board members, Mr. Guillory, Ms. Donaldson, and Richard V. Neill, Jr., Esquire. The purpose of the closed attorney-client session pursuant to Section 286.011(8), Florida Statutes, was to discuss strategy related to eminent domain litigation for the acquisition of remaining parcels for the Lake Hancock Lake Level Modification Project. The meeting was not open to the public. Pursuant to Florida Law, the entire attorney-client session shall be recorded by a certified court reporter; no portion of the session shall be off the record. A copy of the transcript will be made part of the public record at the conclusion of the litigation.

Chair Senft closed the session and reconvened the meeting at approximately 1:04 p.m.

GENERAL COUNSEL'S REPORT (Video – 131:10)

48. Consent Item(s) Moved for Discussion

14. Settlement Agreement – SWFWMD v. Lake Hancock Partners, LLLP, OW Hancock, LLLP, & RB Hancock, LLLP (Parcel Nos. 20-503-118-P and 20-503-108-P)

On January 9, 2012, the District sent notice to the property owners that it intended to commence new eminent domain proceedings as to the property upon completion of statutorily required pre-suit negotiations. The District offered \$656,950 to the property owners for the easement sought, while the owners made a compensation claim of \$5,828,770. The District appraised the property at \$12,500 per acre with an easement impact on value of 25 percent, while the owners valued the property at \$52,500 per acre with a 95-percent impact on value from the easement. The parties attended a pre-suit mediation on March 2, 2012. As a result of the mediation, the parties arrived at a contingent settlement, subject to approval by the Department of Environmental Protection and the District's Governing Board, whereby the District will pay the owners \$2,300,000 for the easement.

Mr. Combee moved, seconded by Ms. Closshey, to approve the settlement agreement in the amount of \$2,300,000. Motion carried unanimously. (Track 15 – 00:00/01:10)

Submit & File Report

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

50. **Numeric Nutrient Criteria Litigation Update**

Routine Reports

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

51. **Litigation Report**
52. **Rulemaking Update** (Track 15 – 01:10/02:25)

COMMITTEE/LIAISON REPORTS (Video – 134:00)

53. **Joint Agriculture/Green Industry Advisory Committees Meeting**
Mr. Gramling briefly highlighted topics presented at the March 15, 2012 meeting. During the joint meeting, Ms. Más addressed concerns about access to regulatory staff.
54. **Tampa Bay Regional Planning Council Meeting**
Mr. Pressman briefly highlighted topics presented at the March 12, 2012 meeting.
55. **Other Liaison Reports** – None (Track 15 – 02:25/04:55)

EXECUTIVE DIRECTOR'S REPORT (Video – 136:10)

56. **Executive Director's Report**
- Mr. Guillory reminded the Board that next month will be the workshop session for bureau presentations. (Track 15 – 04:55/05:35)

CHAIR'S REPORT (Video – 137:05)

57. **Chair's Report**
- a. **Executive Director Reappointment**
During the Public Hearing and Meeting portion of the agenda, the Board approved reappointing Mr. Guillory as the District's Executive Director under the terms and conditions of the existing contract.
- b. **Appointment of Inspector General**
Mr. Combee moved, seconded by Mr. Gramling, to approve the appointment of Mr. Bob Dunne, currently the Acting Inspector General, to serve in the position of Inspector General until his retirement on October 1, 2012. Motion carried unanimously.

Mr. Combee moved, seconded by Mr. Beruff, to authorize recruitment for a new Assistant Inspector General and, ultimately, a new Inspector General upon Mr. Dunne's retirement and to allow for seamless transition of the Inspector General's Annual Audit Plan and other assigned responsibilities. Motion carried unanimously. (Track 15 – 05:35/07:32)

c. **Other** – None

There being no further business to come before the Board, Chair Senft recessed the public hearing at 1:08 p.m. and adjourned the meeting until the next regularly scheduled meeting. (Track 15 – 07:32/07:54, Video – 139:28)