

APPROVED

MINUTES OF THE MEETING

GOVERNING BOARD
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

BROOKSVILLE, FLORIDA

NOVEMBER 17, 2009

The Governing Board of the Southwest Florida Water Management District (SWFWMD) met for its regular meeting at 9:06 a.m. on November 17, 2009, at the District's headquarters in Brooksville. The following persons were present:

Board Members Present

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

Staff Members

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

Board's Recording Secretary

LuAnne Stout, Administrative Coordinator
Tahla Paige, Senior Administrative Assistant

Board Member(s) Absent

Todd Pressman, Chair
Carlos Beruff, Member

A list of others present who signed the attendance roster is filed in the permanent files 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

1. **Call to Order**

Vice Chair Oakley called the meeting to order and opened the public hearing. Mr. Gramling noted a quorum was present.

2. **Pledge of Allegiance and Invocation**

Vice Chair Oakley led the Pledge of Allegiance to the Flag of the United States of America. Mr. Bilenky offered the invocation.

(Ms. Rovira-Forino entered the meeting.)

Public Hearing

Vice Chair Oakley introduced each member of the Governing Board and said that Chair Pressman is not able to attend the meeting due to public hearing scheduling conflicts. He noted that the Board's meeting was recorded for broadcast on government access channels. Public input was only taken during the meeting onsite.

Vice Chair Oakley 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." Vice Chair Oakley 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. (CD 1/Track 1 – 00:00/04:55)

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 item that was deleted from the agenda after publication of the regular agenda.

Consent Agenda – General Counsel's Report

The following item is deleted from consideration:

- 14. Initiation of Litigation – Well Construction - License No. 9354 - David Howard – Hillsborough County

Vice Chair Oakley said that, hearing no objection to the deleted item, he accepted the change to the meeting agenda.

4. District Recognition – RESPECT of Florida Award for Customer of the Year for Services

Mr. Schiller said the District received the Customer of the Year for Services Award during the RESPECT of Florida annual meeting held on September 16, 2009. RESPECT of Florida facilitates the placement of individuals with disabilities in competitive employment. The Award is based on customer support in assisting Florida citizens with disabilities, the interaction with the service crew, and the handling of issues that reflect a partnership. Mr. Schiller introduced Mr. John Massler who is a project manager for RESPECT of Florida and is located in Tallahassee. Mr. Massler thanked the Board for allowing him the opportunity to present the award. He provided a brief overview of RESPECT of Florida and said working with the District has been a tremendous partnership. This item was presented for the Board's information, and no action was required. (CD 1/Track 1 – 04:55/08:15)

5. Employee Recognition

Mr. Moore presented to the Board employees who have achieved milestones of 20 years or greater. He specially acknowledged and commended the contributions of the following individuals who chose to be recognized before the Board:

MILESTONE	EMPLOYEE	TITLE	DEPARTMENT	OFFICE
40 Years	Grady Vance	Aquatic Plant Mgt. Supervisor	Operations	Brooksville
25 Years	Mark Rials	Chemistry Laboratory Manager	Res. Data & Restoration	Brooksville
	George Smith	Sr. Heavy Equipment Operator	Operations	Brooksville
20 Years	Jim Catarouch	Tradesworker	Operations	Brooksville
	Lela Clark	GIS Technician	Operations	Brooksville

Mr. Moore noted that Mr. Vance is the District's second employee to reach 40 years.

6. **Public Input for Issues Not Listed on the Published Agenda** – None
(CD 1/Track 1 – 08:15/19:07)

Consent Agenda

Item 14 was deleted from consideration.

Resource Management Committee

7. **Appraisals and Purchase/Sale Agreement – Lake Hancock Project, SWF Parcel No. 20-503-208P**

Staff recommended to accept the appraisal and approve the Purchase/Sale Agreement.

Finance & Administration Committee

8. **Board Travel**

No action was required at this time.

9. **Budget Transfer Report**

Staff recommended to request approval of the Budget Transfer Report covering all budget transfers for October 2009.

General Counsel's Report

10. **Consent Order – Surface Water Activity - Batista and Evelyn Madonia – Polk County**

Staff recommended to approve the proposed Consent Order and authorize the initiation of litigation against Batista and Evelyn Madonia if it becomes necessary to obtain compliance with the Consent Order.

11. **Consent Order – WUP No. 20010923.000 - Spruce Creek Golf, LLC – Sumter County**

Staff recommended to approve the proposed Consent Order and authorize the initiation of litigation against Spruce Creek Golf, LLC, to obtain compliance with the Consent Order.

12. **Initiation of Litigation – Well Construction - License No. 2215 - Tony Holt – Hillsborough County**

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

13. **Initiation of Litigation – Well Construction - License No. 9297 - Jason Green – Hillsborough County**

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

14. **Initiation of Litigation – Well Construction - License No. 9354 - David Howard – Hillsborough County** – This item was deleted from consideration.

Executive Director's Report

15. **Approve Governing Board Minutes**

- a. **October 29, 2009 Joint Workshop with the Peace River Manasota Regional Water Supply Authority**

- b. **October 29, 2009 Regular Monthly Meeting**

Staff recommended to approve the minutes as presented.

Following consideration, **Ms. Parks moved, seconded by Ms. Rovira-Forino, to approve the Consent Agenda as amended. Motion carried unanimously.** (CD 1/Track 1 – 19:07/Track 2 – 00:24)

Vice Chair Oakley relinquished the gavel to Regulation Committee Chair Senft.

Regulation Committee

Committee Chair Senft noted that two speaker cards were submitted for Item 18.

Discussion Items

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

17. **Status of Rulemaking to Implement the Second Phase of the Northern Tampa Bay Recovery Strategy**

Mr. Owen provided introductory remarks regarding the District's position today. He said the Partnership Agreement with the West Coast Regional Water Supply Authority (aka Tampa Bay Water (TBW)) and its member governments was one of the most significant milestones for this organization. It has been looked at subsequently as a model for other communities to follow where a water management district brought to bear all of the tools available to address resource concerns. The Partnership Agreement was entered into in 1998 and expires at the end of 2010. The current Partnership Agreement is in place due to the efforts of the Governing Board members who existed at that point in time who said let's break out of this continual mode of litigation and look at bringing solutions to the table. It was the first application of the New Water Sources Initiative (NWSI) funds that had just a few years prior been approved with the Governing Board contributing up to \$10 million a year in alternative water supply development, and matched by the Basin Boards and local cooperators. The Partnership Agreement took that funding opportunity to use it for water supply problems in the Tampa Bay area.

Mr. Owen briefly reviewed the names of former Governing Board members and local officials who were key players in bringing to fruition the Partnership Agreement. He noted that Ms. Parks was on the Pinellas County Commission and subsequently on the TBW Board in 1998.

Mr. Owen said what the Partnership Agreement did was unprecedented in the District, state and most likely the nation in terms of looking at a public water supply infrastructure, recognizing that it was exceeding the regulatory limits and agreeing to develop alternative resources so that the reductions in wellfield withdrawals could occur. It has been successful and TBW has brought production from the consolidated wellfield down to or below 90 million gallons per day (mgd). Currently, TBW has a temporary exceedance that is projected to come back down under the 90 mgd by December 2009 which is tremendous news but only recently achieved. The whole concept has been to have a sustained period of time at or below 90 mgd to understand what level of recovery in the water levels will be attained and how will that result in changes to the ecology.

Mr. Owen said the rules being presented today enable another 10-year period to look at what will be achieved with what has been accomplished to date, as well as additional measures to be implemented over the coming 10 years. The District needs to look at production during dry periods and during wet and average periods of rainfall to better understand what the 90 mgd will achieve. Augmentation of certain lakes and wetlands needs to continue, ditch blocks or other ways to rectify past drainage that was contributing to impacts needs to be investigated, and other potential tools may be required. The rules will take the essential components of the regulatory part of the Partnership Agreement and move them forward through 2020.

Mr. Owen noted this District has contributed or set aside funds up to \$183 million for alternative water supply development to develop a minimum of 85 mgd so that wellfield production would be reduced. Although not an original component of the Partnership Agreement, the District contributed \$26 million to acquire the land for the C.W. "Bill" Young Reservoir. In total, TBW, using District funds and its own resources, has spent in excess of \$750 million in development of these new sources and interconnecting new sources and wellfields to optimize recovery operations. Also under the Partnership Agreement, the District has continued to contribute up to \$9 million a year for conservation and reclaimed water development to all local governments in the three-county area. The Partnership Agreement had identified a goal of achieving 17 mgd in conservation and reclaimed water offset. TBW estimates it has achieved 26 mgd which is a tremendous success story and that continues on as well. The last major component of the District's monetary contributions under the Partnership Agreement is the desalination plant, all of which has not yet been transferred to TBW. TBW has until the end of 2010 to meet the performance

test of producing 25 mgd for four months, and there is also another test to meet before receiving the interest earnings being held potentially for TBW's use.

Mr. Owen said the rule focuses primarily on TBW and the 11 interconnected, consolidated wellfields. The current recovery strategy is to achieve 90 mgd on a 12-month running average, and to have a plan which distributes those withdrawals within each wellfield and among the 11 wellfields to optimize recovery of water levels and the ecology in the area. A data collection program will monitor achievements in water levels and in the ecology. The recovery strategy includes a continuation of these and other tools—be it ditch blocks, augmentation or other mechanisms—and conservation initiatives.

Mr. Owen said it is tremendous that TBW and its member governments continue to work in that vein of seeing the opportunity as the District does to further conservation and have that contribute to the solutions. The District does address other users in the area and for existing permittees each is considered on a case-by-case basis to determine how they individually can contribute to the recovery. For new use requests, the constraints in this area are significantly limiting. The District essentially is not allowing for new impacts on those same water bodies. An additional component of the rule addresses the known fact that TBW must do renovation activities to the reservoir which is a two-year time period. Recognizing it will be drained for renovation activities during which if there are below normal rainfall conditions, TBW may not have sufficient surface water to use during that time period and will therefore exceed the 90 mgd. A provision is included, called the exception period, which is a maximum of three years during which, if necessary and subject to District approval, staff would authorize TBW's exception period where the 90 mgd is not applicable.

Ms. Whitehead said the real major issue is just a series of circumstances with the ongoing drought and issues with the reservoir and desalination plant. Mr. Owen said there have not been sufficient years of production at 90 mgd to measure what that achieves under different hydrologic conditions. He said staff will review the substance of the rules being recommended to govern the second phase of recovery. Mr. Owen said today is the opportunity for staff to seek Board input and answer questions, and ask any third parties to present any outstanding concerns. (CD 1/Track 2 – 00:24/14:39)

Mr. Ken Weber, Water Use Permitting Program Director, Strategic Program Office, elaborated on the seven key points of the proposed rules mentioned by Mr. Owen in his portion of the discussion. The first key point is reissuance of the Consolidated Permit at a quantity of 90 mgd for 10 years. The location of the 11 Central System wellfields that are included in the Consolidated Permit and their relationship to the other sources in Tampa Bay Water's regional system was noted. The general area of surface impacts caused by Central System wellfields withdrawals as of 1998 was shown, noting that the expectation is that the area will be considerably smaller at a sustained pumpage at or below 90 mgd. The reduction of total pumpage from the 11 wellfields was a major achievement brought about by the Partnership Agreement and the Phase 1 Recovery rules.

The second key point discussed was continued use of the Operations Plan to manage the 11 wellfields in a way that minimizes environmental impacts. The relationship of pumpage to lowered aquifer levels, and thus to impacts on wetlands and lakes, was presented. The Operations Plan uses control points located among the wellfields to rotate pumpage to where water levels are highest, so that the pumpage impacts can be minimized.

The third key point is continued data collection and analysis. Mr. Weber said that this point is essential for assessing the recovery of environmental systems at a sustained pumpage rate of 90 mgd. This will be uniquely valuable in the Cypress Bridge Wellfield area, as this is the only portion of the area where pumpage has increased over the last 12 years. He said it was imperative that environmental impacts not be allowed to occur in this area.

The next key point discussed was the need to continue to evaluate and implement mitigation methods to address impacts that will not be alleviated solely through the reduction of pumpage. It is expected that there will be areas with environmental impacts remaining even at the 90 mgd level, and mitigation will be needed. Mr. Weber noted that several methods were being used and studied, including augmentation with reclaimed water and groundwater, and restoration of historical drainage characteristics.

The fifth key point iterated was the continuation of the expansive water conservation activities that have been very successful in reducing water demands in the northern Tampa Bay area. Mr. Weber demonstrated the large demand reduction for the City of St. Petersburg, the increase in reclaimed water used to offset potable water demand, and the substantial decrease in per capita use rates among Pasco, Pinellas and Hillsborough counties over the last decade. He pointed out that the Partnership Plan goal of a reduction of 17 mgd in potable water demand through water conservation by 2010 and an estimated 26 mgd has been achieved.

The next key point of the proposed rules is to continue the limitation of further impacts within the area. Mr. Weber pointed to language in the proposed rules that limit new withdrawals of groundwater to uses that further the recovery strategy objectives.

(Mr. Combee entered the meeting.)

Mr. Weber stated the final key point is to address the potential need, should it become necessary, to allow the Consolidated Permit pumpage to exceed 90 mgd when the reservoir is being repaired, if that should become necessary. He explained that the proposed rules state that such an allowance would be conditionally permitted during a "reservoir renovation period" as defined in the rule. The reservoir renovation period begins when all of the following occur: District determines hydrologic factors exist that contribute to a water supply deficit, the reservoir cannot produce and is under repair, other sources cannot make up loss of supply, and TBW and its members have complied with all water shortage or emergency orders. During the exception period, TBW and its members must maximize alternative supplies and comply with all District Orders. The reservoir renovation period ends when maximum of 36 months have passed or reservoir storage at or above 11 billion gallons (whichever time period is shorter). The District notifies TBW of the beginning and ending points, TBW must minimize the exception period, and compliance with 90 mgd on a 12-month running average is required within 12 months of renovation period end. The reservoir renovation exception period addresses the potential for temporary exceedance of 90 mgd while reservoir repairs underway only if there is significant drought and other sources cannot make up reservoir loss. Mr. Weber noted that Tampa Bay Water was able to operate at or below 90 mgd in 2003 and 2004 prior to the reservoir coming online; therefore, the exception should not be needed unless hydrologic conditions are at or slightly worse than during that period. (CD 1/Track 3 – 00:00/19:55)

Discussion ensued regarding the exception period, reservoir renovation, pumpage, expectations set with orders, and workshop feedback. Mr. Senft noted that the 36-month period is consecutive and not to be broken up into nonsequential periods. Mr. Gramling asked whether an upper limit should be imposed during the exception period. Mr. Weber responded that, based on the experience with the recent drought, it did not seem to be necessary to state an upper limit in the rule. Ms. Whitehead inquired as to how the District will know TBW is doing everything possible to avoid needing the exception. Mr. Moore stated staff will compare the efforts to what was done during this recent drought. If TBW is not doing everything that can be done, it may be in violation. He stated concern that, if a maximum value was set, it may lead to an expectation that this number could be pumped. Ms. Closshey stated her concern about a maximum limitation and said she understood Mr. Moore's point. She also noted that reuse of reclaimed water as a source should be

maximized, and that the Board may want to evaluate changes to the water shortage rules. Mr. Owen responded that staff is undertaking a re-evaluation but noted that the water conservation achieved during the recent event was substantial and very successful. Ms. Rovira-Forino asked whether TBW needed to request the exception and whether that would extend the permit length. Mr. Owen stated that the purpose of placing this information in rule was for Board action on these issues because the permit will be issued by staff. He said TBW would have to request the exception, and an extension would not extend the permit term. Ms. Rovira-Forino asked what kind of feedback was received from the member governments at the workshops. Mr. Weber stated that the members did not engage as much as TBW but, based on the meetings, District staff anticipate their agreement. Mr. Owen stated that TBW took the lead at the meetings and staff does not know for certain whether the member governments have any outstanding issues, but if they did staff expected them to be raised today. (CD 1/Track 3 – 19:55/47:00)

Ms. Jan McLean, representing the City of Tampa, said the City appreciates the extensive interaction with District and TBW staffs regarding these rules, and its representatives attended the workshops. She noted that the City raised a concern on the exception period. The City received a report from its consultant yesterday which is being reviewed by City staff and may or may not raise issues for the City. (CD 1/Track 3 – 47:00/48:26)

Discussion ensued. Mr. Gramling stated that he agreed with the staff position to not set a maximum value is the most conservative and appropriate, and that he appreciated staff's efforts. Ms. Parks stated that she was pleased with the progress that has been made during the recovery period, and that the staffs and elected officials involved have accomplished a remarkable achievement. Committee Chair Senft said this item will be brought before the Board for action at the December 15, 2009 meeting. (CD 1/Track 3 – 48:26/52:49)

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

18. **Public Hearing – Requested by City of Tampa Regarding Its Objections to Proposed 20-Year Water Use Permit Rule Amendments**

Mr. Owen said that the City of Tampa and Peace River Manasota Regional Water Supply Authority have expressed concerns. He noted the City of Tampa requested this public hearing. Following meetings and based on negotiations with the Authority, a revised staff recommendation will be presented which meets the District's objectives and addresses the Authority's concerns. Mr. Owen said staff is requesting concurrence to come back next month and review the specific rule language with the Board. He said there are no changes recommended at this time, unless the Board directs otherwise, regarding the City of Tampa's concern which were separate and distinct from the Authority's concerns.

Ms. Karen Lloyd, Assistant General Counsel, noted that in July 2009, the Governing Board approved for adoption rule amendments to restructure the District's permit duration rule to be more consistent with the durations given by the St. Johns River and South Florida Water Management Districts (WMDs), and to provide incentives for applicants who undertake extraordinary water conservation and reclaimed water reuse efforts. A copy of the proposed rules as approved by the Governing Board was provided in the Board's meeting information.

Chapter 373.236, Florida Statutes (F.S.), states 20-year permits may be issued, if requested, and there is reasonable assurance that conditions for permit issuance will continue to be met. Most basic of conditions for issuance are reasonable-beneficial use, will not interfere with existing uses, and consistent with the public interest. Specifically, 20-year permits would be issued when requested by the applicant and all conditions for issuance have been met including at least one of the following new 20-year permit conditions:

- (a) Source is alternative water supplies (AWS) (existing rule).
- (b) At least 75 percent of total water needs met by AWS within 10 years.
- (c) Compliance per capita rate less than 110 gallons per day (gpd) within 10 years.
- (d) At least 75 percent of reclaimed water reused at a minimum of 75 percent efficiency within 10 years.
- (e) Agricultural project with approved Facilitating Agricultural Resource Management Systems (FARMS) application that offsets 50 percent of supply and improves flow/water quality where needed.
- (f) Permit is a Small General.
- (g) Pre-existing adverse impacts will be addressed within 10 years.

Compliance reports are required at year 10 and 15 to confirm permits continue to meet existing District rules. In addition, when requested by an applicant, it is proposed to issue 20-year permits for Small General Permits (those for less than 100,000 gpd annual average), because these permits have a minimal adverse impact on the water resources. Permits that do not qualify for 20-year duration are proposed to be issued for 10 years; however, the rule continues to allow for different permit durations based on individual circumstances.

Ms. Lloyd said, in August 2009, notice of intent to adopt the rules was published. In September 2009, staff received comments from the Authority, and the City of Tampa requested a public hearing before Board and submitted language as lower cost regulatory alternative. Pursuant to section 120.54(3)(c), F.S., the City of Tampa is being given the opportunity at this Governing Board meeting to present evidence and argument on this issue. District staff met with the City in October 2009 but was not able to resolve its issues. District staff met with the Authority in November 2009 and was able to resolve the issue. The Authority will address the Board at this public hearing about its comments and to request that regional water supply authorities be exempted from the following provision in the proposed rules:

40D-2.322 20 Year Permit Requirements

(3) For 20 year General and Individual Public Supply Permits, if the actual population growth in the tenth year of the permit is less than 90 percent of what was predicted for the preceding 10 year period, the permitted quantities shall be reduced consistent with the actual growth rate experienced unless the projected population for the final year of the permit has not changed by more than 10% based on the District's BEBR medium based GIS model or equivalent methodology or non-population based factors such as large industrial or other uses are demonstrated to require the allocated quantity.

The City of Tampa objects to the provision that requires the 10-year and 15-year compliance reports to demonstrate continuing compliance with existing District rules as being inconsistent with the statutory provisions regarding compliance reports. As described above, this provision is important to ensure that permits issued for 20 years will not fall behind in utilizing current water conservation practices or other best management practices that are adopted by rule.

The City of Tampa's lower cost regulatory alternative consists of a request that the District delete the extraordinary conservation conditions approved by the Board (listed above) and that the District delete "existing District rules" and substitute "the rules in effect at the time of permit issuance" from the compliance report provision. The effect of this would be to limit 20-year permits to the conservation (and other) criteria in rule at the time of permit issuance, with the result that improvements in water conservation over the ensuing 20 years could not be required. The City's proposed alternatives did not include a statement as required by section 120.541, F.S., explaining how these alternatives substantially accomplish the objectives of the law being implemented. The City stated only that the

statute doesn't require these conditions and the rule should be changed to restate the statutory provisions.

The District is authorized to implement, interpret and prescribe laws or policies set forth in Chapter 373, F.S., through adoption of rules. The District is not limited to adoption of restatements of statutes in adopting its rules. The District's charge includes ensuring that permits be based upon reasonable-beneficial use and water availability. Allowing permits that do not recognize advances in conservation over a 20-year permit term does not fulfill this charge.

Ms. Lloyd noted Florida rulemaking statutes state that an affected person may request a public hearing to present evidence and argument on the issues under consideration. The Board's options after the hearing are to modify the proposed rule as requested at the public hearing, modify the proposed rule in another manner, or make no changes to the proposed rule. The affected person's options after Board action are do nothing (rulemaking proceeds to completion) or file a petition for an administrative hearing before Department of Administrative Hearings. Florida rulemaking statutes state the substantially affected person may submit a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. If a proposal is submitted, the District must determine whether proposal meets requirements; if it does not, the District may reject the proposal; if it does, the District must prepare a statement of estimated regulatory costs; and either adopt the alternative or give a statement of reasons for rejecting the alternative. (CD 1/Track 4 – 00:00/10:44)

Committee Chair Senft said the Board will hear first from Ms. Jan McLean, representing the City of Tampa, and she will be allowed 15 minutes to present the issue. Then Mr. Doug Manson, representing the Authority, will speak to the Board. Committee Chair Senft said staff will provide comment and restate the recommendation; the public hearing will be closed and then the Board will consider the issues.

Ms. Jan McLean, assistant city attorney for the City of Tampa, said the City appreciates the time the Board is providing. The City requested a public hearing regarding the proposed rules regarding Chapter 40D-2.322, Florida Administrative Code (F.A.C.), about the 20-year permit duration. The City submitted a lower cost regulatory alternative for two specific rules that had been addressed. The first is additional conditions for a permit to be able to be eligible for a 20-year permit. The City's suggestion is to delete the conditions and comply with the language of the statute. Regarding 20-year compliance, there currently exist five-year compliance reports while the District's proposed rule recommends a 10-year and 15-year compliance report. The District's proposed rule said the permittee would submit a compliance report at the 10-year and 15-year mark and it would be reviewed in conjunction with the existing District rules—that is the rules that were in existence at the time the compliance report is submitted. The City suggested that the District revise its rules to be compliant with the statute which says more specifically that the compliance reports would be reviewed in conjunction with the conditions for issuance at the time the permit was issued. The City received an email that the District had rejected the lower cost regulatory alternative based on the position that the City had not complied with the statutory provisions of Chapter 120, F.S., by including a statement of how the lower cost regulatory alternative would meet the underlying statutory provisions for both the conditions to be eligible for the 20-year permit and for the compliance report. The City finds itself in disagreement with the District in that decision with regard to rejecting the City's request for lower cost regulatory alternative.

Ms. McLean said she will concentrate on the section of the proposed rule on compliance reports. She emphasized that compliance is that the permittee submits the report to demonstrate that the permit is compliant with the permit conditions under which the permit was issued. If the District intends to go forward and say that a permittee has to submit a

report at 10 years and 15 years instead of the minimum of five years, the permittee would have to be compliant with rules that would have been adopted after their permit was issued. The example used here is for every evolving technology for water conservation. One must continue to move forward in water conservation; however, the proposed rule is not limited to that particular issue of a permit. Chapter 373.171, F.S., says that “no rule or order shall require modification of an existing use or disposition of water in a district unless it is shown that the use or disposition proposed to be modified is detrimental to other water users or water resources of the state.” If the District is going forward in its proposed rule, it would be modifying the use of the permittee without demonstrating that the permittee is no longer using that water in a reasonable-beneficial manner, does not interfere with existing users and is in the public interest. In other words, the District would have adopted rules in the interim and would then modify the permit and not demonstrated that the water use is no longer meeting the three-part test. Chapter 373.236(4), F.S., was amended in 1997 and the legislative staff analysis says “that it is anticipated that the permittee would be complying with the permit conditions given to the permit at the time of issuance.” The City contends the District’s proposed rule is in contravention of that statute where it is saying that the permittee has to meet existing District rules at the time of the compliance report. In comparison, the St. Johns River WMD applicant’s handbook has specific language saying “the report shall contain sufficient information, maintain reasonable assurance that the permittee’s use of water will continue for the remaining duration of the permit...to meet the conditions for permit issues set forth in the district rules that existed at the time the permit was issued for 20 years by the district.” The South Florida WMD Basis of Review is not as direct as St. Johns River WMD but also mimics the language of the statute with regard to the conditions for issuance that the compliance report will continue to meet the conditions for issuance of the permit. For comparison, regulated entities listen to all three major WMDs and recent rulemaking introductions say that the purpose is to be consistent with the other WMDs.

Ms. McLean noted the City participated in all the public workshops, and submitted written comments and offered verbal comments. The City met with staff who are always congenial, and willing to listen and work with the City. The City found itself in the position of having to request this public hearing because the City feels strongly it has to have the ability to rely on the permit conditions that it was provided in order for the City to plan and finance evolving conservation techniques or whatever conditions that have been put on the permit. If this is the District’s position, then the City has to be ready in any moment in time over those five years to react to newly adopted rules—it does not place the City in the position to be able to rely on the permit issued. The City’s permit is a 20-year permit and it requires five-year reports. The proposed rule offers a 10-year and 15-year compliance report but the proposed rule would also apply to newer or renewal permits. The City wants to be able to assure itself on the next renewal permit that it would be able to rely on the statutory provisions that are provided to it. (CD 1/Track 4 – 10:44/23:52)

Discussion ensued with Board members asking about compliance report forms and conditions, WMDs program implementation, and rule interpretation. (CD 1/Track 4 – 23:52/33:31)

Mr. Doug Manson, attorney for the Authority, thanked the District’s staff for working with the Authority to make the changes and consider the Authority’s unique circumstances and issues with water supply entities that bond far into the future. (CD 1/Track 4 – 33:31/33:57)

Mr. Owen said he appreciated the Authority’s participation in the District’s rulemaking. He reminded the Board that this District has adopted rules, and in certain rules it is explicitly stated that certain provisions affect not only new applications but existing permits. Permits are modified by rule through an extensive process to ensure the stakeholders, including all the permittees who would be impacted by the rule changes, are knowledgeable of what is being proposed and given the opportunity to participate. Most recently that would include

the rules affecting the Southern Water Use Caution Area (WUCA), Northern Tampa Bay WUCA, per capita that were revised Districtwide and extended in the northern part of the District, and enhanced water conservation. All of those had certain provisions that said not only are new applications affected but existing water use permits are affected. For instance, in the northern part of the District before amending per capita rules, there was no rule requirement limit of a maximum of 150 gallons per person per day. A number of the affected permittees spoke to this Board—The Villages, On Top of the World, and several others that engaged extensively in negotiations. One of the outcomes was that some of those communities are currently so high in their per capita rates it will take a substantial amount of time to come into compliance. Those communities were given a 10-year timeframe and have to report annually to the District in an annual water use report on their actual per capita rates, population served, etc.

Mr. Owen said, in his opinion, it would make no sense to have a 20-year permit in that area and say, even though the permit was amended through this rulemaking effort, only report on compliance with the rules that existed at the time the permit was issued. The District relies on all the statutory provisions that give the District authority, not just the specific components Ms. McLean has recommended. The District has required compliance reports for years long before the recent statutory provisions for 20-year permits were added in the compliance reports. In the past year to two, private agricultural landowners saw opportunities to contribute to water resource development, and the Legislature added another provision where up to 50-year permits could be issued for those circumstances. The specific language was the compliance report would be against the rules that exist at the time the compliance report must be submitted. In terms of legislative intent, this is changing over time and it only makes good public policy sense that if new information is available, it would be incorporated into the rules and permits amended. Based on that, reports would show how they comply with all the rules that apply to the permit, not just the rules that existed at the time the permit was issued. (CD 1/Track 4 – 33:57/38:22)

Mr. Moore noted that there has not been any case law that speaks to this to date. Mr. Bilenky said this particular issue has not gone before the courts yet.

Ms. McLean said the District has adopted rules that have been applied across the board to all permits. Permittees acquiesced but that does not mean it is correct or accurate that it is within the statutory provisions. Recently, under Chapter 373.236, F.S., it addressed alternative water supplies and, for those people who have a significant contribution of land in order to use that as a basis for water supply, they could get a longer term permit and comply with the conditions of issuance at the time of the existing rules because there was no confines under which that water use could be identified. The Legislature found that this particular use should be identified to be reviewed under the existing District rules as opposed to the ones in the previous subsection regarding a 20-year permit that had been issued conditions of issuance and coming into compliance with those conditions of issuance. Ms. McLean requested the Governing Board to take a position on the staff's recommendation rejecting the lower cost regulatory alternative on the two particular rules that the City had submitted its request for a Statement of Economic Regulatory Costs. (CD 1/Track 4 – 38:22/41:10)

Mr. Owen said the issues brought before the Board by Ms. McLean are the same issues that have been discussed without resolution. The City's two concerns are all the incentive-based components of the rule, and 10-year and 15-year compliance reports against the rules that exist at the time the reports are submitted. Staff feels the District has the statutory authority.

For the Authority, Mr. Owen said staff recommends returning back next month with changes in respect to its concern. Ms. Lloyd said the staff recommendation is to authorize staff to revise language to address the Authority's issue in respect to unrealized population

growth. The current rule provides that, if population growth does not match at 10 years what was projected initially when permitted, allow language to be altered so the applicant may demonstrate why the District should not reduce the permit because the growth has not occurred.

Discussion ensued regarding rulemaking changes to permit criteria and modifications.

Committee Chair Senft said staff recommends rejecting the City of Tampa's submittal of a lower cost regulatory alternative on the grounds that it fails to meet statutory requirements of setting forth how its alternative substantially accomplishes the objectives of the law being implemented. Also, the Board approve the rules as recommended by staff subject to discussions with the Authority at the Board's December meeting.

Mr. Joerger expressed his support of staff's recommendation. He noted that the regulatory processes entail tremendous public interactions; having a 20-year permit enables long-term planning, but new ideas occur and it seems reasonable to apply new rules to permits. In response to Mr. Gramling's question, Mr. Owen said if a permit cannot comply at year 10 or 15, then the permittee may request a rule variance to acknowledge meeting the intent but not the strict requirements of that rule. Mr. Gramling said his concern is that a permittee is not able to anticipate future costs and they in good faith took out a 20-year permit. He said the District may be creating a scenario that automatically puts a permittee out of compliance. Ms. Lloyd said this is not applicable to existing permits. She said there is a provision that says that these rules apply to new applications, renewals and if there is a substantial modification of a permit that is essentially a new permit.

In response to Ms. Closshey's inquiry, Ms. McLean said she submitted one document addressing two rules and two suggested revisions for the lower cost regulatory alternative. She said the District is addressing it as one submission and therefore rejecting both. She said she addressed the first suggested revision by deleting language and the second one did suggest alternative language to comply with the statute. Ms. McLean said, on September 18, 2009, the City submitted a request for hearing and lower cost regulatory alternative for two rules: proposed rules 40D-2.321(1)a-f regarding 20-year permit conditions and 40D-3.222(2) suggested deleting "existing district rules" and substitute "the rules in effect at the time of permit issuance." (CD 1/Track 4 – 41:10/55:50)

Committee Chair Senft closed the public hearing for the Board to begin its discussion.

For the purpose of discussion, **Mr. Gramling moved, seconded by Mr. Joerger, to approve the staff recommendation to (1) authorize staff to revise language to address unrealized population growth, and (2) reject the City of Tampa's lower cost regulatory alternative because it does not accomplish the objectives of the law being implemented and is not shown to be lower cost.**

Ms. Closshey requested Mr. Bilenky to provide a recommendation to the Board. Mr. Bilenky said the first issue he needs to address is the issue that granting a permit is not a contract. He said the District does not exchange consideration and will often impose conditions upon a permit that are not acceptable to the permittee. The District can deny a permit but, philosophically, the District likes to work with permittees to reach agreement to minimize the challenges that may follow a permit denial. It is permission granted by the District to use the waters of the state for beneficial purposes under certain restrictions and conditions imposed by the District.

Mr. Bilenky said Ms. McLean references Chapter 373.171, F.S., which is a statute not in the consumptive use Part of the statutes which are in Part II. Chapter 373.171, F.S., is in Part I regarding general rules that govern rulemaking. The Governing Board has the ability to adopt rules or issue orders affecting the use of water as conditions warrant, and

would seem to permit the District to change its rules as conditions and environment warrant.

Mr. Bilenky said the 20-year statutory provision is a later act of the Legislature being adopted later than Chapter 373.171 in 1998; the latest changes reflect that the Legislature had that chapter in mind when it adopted the 20-year statutory provisions. The statute basically says that, when necessary to maintain reasonable assurances, conditions for issuance of a 20-year permit can continue to be met by the Governing Board or Department in addition to any conditions required pursuant to another statute in Part 2 of the Chapter 373.219 which has language saying an agency can condition these permits into the future as long as they are not harmful to the water resources of the area. Contemplating a 20-year permit as a living document that can be changed over time is cognizant within the statutes. The rule was tailored so as not to take away permit conditions that were originally granted to the City of Tampa, in this case in that the Rule operates prospectively. District staff specially represented that to the City in numerous meetings. This rule does not affect the City's permit but it will when the City returns for renewal since it may be faced with additional conditions.

Mr. Bilenky noted, when reviewing the language of the three major WMDS, they are not in exact compliance with how the City believes the statute works. St. Johns River WMD is restricted to the conditions at the time of issuance; however, in its compliance report, permittees are required to file a report as if they were coming in for a new permit at that time. South Florida WMD's language states that reports include conditions of issuance plus all subsequent changes, such as conservation efforts are to be included in the report. The weight of the authority seems to support staff's recommendation today and, if put to the test, the District should prevail in its interpretation of the statute. (CD 1/Track 4 – 00:55:50/01:03:20)

In response to Mr. Tharp's question, Ms. Lloyd said there is a standard permit condition that states when the District updates its rules, the permit will be subject. The City of Tampa's permit includes two conditions: (1) when the District adopts new per capita rules, the permit is subject to them; and (2) when the District adopts new water conservation rules, the permit is subject. In response to Mr. Beswick's question, Ms. Lloyd said as part of the rulemaking process, water use permittees who are affected by the rule are noticed of changes.

Mr. Moore said the City of Tampa has submitted its concerns to the Joint Administrative Procedures Committee (JAPC) who will review the District's action and provide an opinion to the City's submittal. Once that opinion is rendered, it will be brought back to the Board for further discussion. Ms. Lloyd noted the City will have a window of 21 days from this action to request an administrative hearing which may happen before the JAPC opinion is received.

Committee Chair Senft called the question. Motion carried unanimously.
(CD 1/Track 4 – 01:03:20/01:06:22)

19. **Initiation and Approval of Rulemaking to Revise District Rule for Providing Emergency Authorizations for Activities Regulated Under Part IV of Chapter 373, Florida Statutes, and to Adopt Emergency Field Authorization Form**

Mr. Owen said staff requests initiation of rulemaking and approval of amendments to Rules 40D-1.1021, and 40D-1.659, Florida Administrative Code (F.A.C.), to revise the requirements for obtaining emergency authorizations to conduct activities regulated under Part IV, Chapter 373, Florida Statutes (F.S.), and to adopt an emergency field authorization form. These amendments are proposed to provide a more effective and efficient process for obtaining emergency authorizations.

Mr. Owen said District staff has been working with Pasco County for several years on flooding problems, particularly in the west part of the County. In certain rainfall events, the County has found it necessary to mitigate flooding activities to homes or businesses. These activities might include pumping water from one area to another, opening culverts and other actions. Under the District's current rules, if those activities require a permit, the County needs to have a permit application in-house. County staff has brought to the District's attention how impractical that is in certain circumstances. At the County's request, this emergency field authorization form would allow for an opportunity for certain activities that do not lend themselves to an environmental resource permit (ERP) to be authorized literally in the field if necessary by a staff person. Then subsequently there would be a requirement that the County needs to apply for an ERP if it is going to leave those in place. If an ERP is not needed, the County can simply return it to the conditions that existed prior to the mitigation actions in a certain time frame.

If authorization to initiate rulemaking is approved, staff will proceed with the rulemaking process for adoption of the applicable amendments without further Governing Board action unless there are substantive public comments or proposed changes, in which case the rule amendments will be brought back to the Board for further action.

Staff recommended to authorize initiation and approval of rulemaking to revise District Rules 40D-1.1021 and 40D-1.659, F.A.C., to revise the requirements for obtaining Emergency Authorizations to conduct activities regulated under Part IV of Chapter 373, F.S., and to adopt an Emergency Field Authorization Form. Following consideration, **Mr. Tharp moved, seconded by Mr. Oakley, to approve the staff recommendation as presented.**

Mr. Combee said that, as a former county commissioner, he applauds staff for their effort in assisting municipalities during emergency events. Vice Chair Oakley was in agreement and noted this will assist Pasco County in taking action right away.

Committee Chair Senft called the question. Motion carried unanimously.
(CD 1/Track 5 – 00:00/03:44)

20. **Denials Referred to the Governing Board**

There were no requests for applications or petitions to be referred to the Governing Board for final action.

Submit & File Report

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

21. **Individual Permits Issued by District Staff**

Mr. Owen noted that, on page 52 of the Board's Regulation Committee information, the permittee name is Doe Hill Citrus and the correct permit number is 20013370.000.

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**

Mr. Owen referred to page 56 of the Board's Regulation Committee information, regarding the Citrus County Water Use Resources Department permit. He said Citrus County purchased utilities from the Florida Government Utility Authority several years ago. The utilities were in overpumpage at that time and the District entered into a consent order with the County that required certain actions. The County went forward with the actions and the District thought the utilities were in compliance. There was a discrepancy in the reporting of meter data that meant the utilities did not come into compliance with the permitted quantities. The County brought this to the District's attention and staff is working with the County to address the overpumpage. Over the next two to three months, the District's legal department will have a proposed consent order for the Board's

consideration. Mr. Moore said one of the remedies the County is considering, is to implement a conservation program and includes increased enforcement and conservation-oriented rate structures. When this matter went to the County Commission, local citizens voiced their concerns that the 150 gallons per day (gpd) per person is not fair and they should not be treated like the Tampa Bay area communities since they are single-family homes and not condominiums. Messrs. Tharp, Moore and Owen met with the some of the utility directors and the county administrator; and this matter will be brought before the Commission on December 1. Staff made the point that, if the per capita rule was based on condominiums, the rate would not be 150 but maybe 70 or 80. The reason 150 is used is because the District recognizes that the utilities serve primarily just single-family homes. Local citizens are also concerned about the level of enforcement. The District sent a staff team out on a Saturday and Sunday, and in a two-day period staff found nearly 200 people violating water restrictions. This information was passed onto the county administrator and utility director. The District believes it is a reasonable goal to give the northern part of the District 10 years to come in compliance with 150 gpd per capita. (CD 1/Track 5 – 03:44/08:40)

24. **Resource Regulation Significant Initiatives**

- Mr. Owen noted, that on page 61 of the Board's Regulation Committee information, a number of new categories have been added under Compliance Activities.
- Mr. Owen said that Tampa Bay Water has petitioned the Florida Department of Environmental Protection (FDEP) to reclassify the Alafia River and Tampa Bypass Canal (TBC) to Class I Waterbodies. He said the District has been concerned with reclassification of the Tampa Bypass Canal which was originally constructed as a flood protection facility and whether reclassification would interfere with the use and maintenance of the TBC as a flood protection facility. Several FDEP staff members from Tallahassee met with District staff, and the conclusion is there should not be any impact on the continued use and maintenance of the TBC. Staff put into writing the District's understanding to the FDEP and requested a confirmation in writing. Therefore, the District will not have a position on the reclassification.
- Mr. Pepper said, in regard to the consent order with Tampa Bay Water, the District received a formal project proposal in lieu of payment of penalties. Staff has concerns in that the proposal calls for TBW to do an analysis from its existing database of Florida-friendly landscaping versus traditional landscaping in terms of irrigated quantities, use, etc. The major concern is that it may be duplicative of a study the District is undertaking. TBW staff has expressed a willingness to participate in the District's existing study. Staff will formally respond to the project proposal to provide a scope of how TBW can participate. (CD 1/Track 5 – 08:40/12:21)

Committee Chair Senft relinquished the gavel to Resource Management Committee Chair Joerger.

Resource Management Committee

Discussion Items

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

26. **Hydrologic Conditions Status Report**

Mr. Granville Kinsman, Manager, Hydrologic Data Section, provided 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. October historically marks the first month of the eight-month dry season, and provisional rainfall totals as of October 27 have been below-normal in the northern and southern regions. Rainfall during the month has been scattered, regionally variable and mainly associated with several cold fronts moving over the Florida peninsula. The provisional 12-month Districtwide rainfall deficit increased during October, ending the month approximately 7.0 inches below the long-term average. The 24-month and 36-month cumulative rainfall deficits are approximately 11.4 and 20.3 inches, respectively.

Most hydrologic indicators throughout the District declined during October. Lake levels in the Northern, Polk Uplands and Lake Wales Ridge regions of the District remained at below-normal levels, while lake levels in the Tampa Bay region, which had moved into the normal range in September, dropped back into below-normal conditions. Streamflow on the District's major rivers dropped into below-normal conditions, while groundwater conditions were at below-normal to low-normal conditions. The dry season runs from October through May, and further declines are expected through this period.

Current NOAA climate forecasts continue to predict above-normal rainfall conditions for the District during November 2009 through May 2010, due to El Niño conditions in the Pacific Ocean. Above normal rainfall during the dry season would improve overall hydrologic conditions, lessen or eliminate resource-related impacts during the coming dry season, and will be needed to fully recover from the multi-year drought. (CD 1/Track 6 – 00:00/08:00)

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

27. **Facilitating Agricultural Resource Management Systems (FARMS) – Memorandum of Agreement with Charlotte County for the Implementation of FARMS Projects**

Mr. Eric C. DeHaven, P.G., Director, Resource Data and Restoration Department, said staff is requesting approval to enter into a Memorandum of Agreement with Charlotte County to remove County Environmental Impact Statement (EIS) requirements pertaining to surface and ground water resources, and promote communication on FARMS Program projects which involve tailwater recovery pond excavations. The District's FARMS Program, developed by the District and the Florida Department of Agriculture and Consumer Services in 2003, is a public/private agricultural Best Management Practice (BMP) cost-share reimbursement program. The District's emphasis through the FARMS Program is on reductions in Upper Floridan aquifer withdrawals that will improve groundwater conditions as documented in the Southern Water Use Caution Area (SWUCA) Recovery Strategy.

In 2006 and 2007, Charlotte County revised its excavation and earthmoving code to better regulate an increasing number of earthmoving permit requests. The revisions to the County ordinance included a new category of excavations, classified as Group IV, defined in the ordinance as *“the excavation and off-site transport of material for agricultural purposes in accordance with a Qualified Agricultural Assistance Program.”* This classification was created to streamline the County permitting process for District FARMS Program projects, recognizing that these projects provide significant benefit to the water resources of Charlotte County. The County ordinance still requires an environmental impact statement (EIS) to be completed on Group IV excavation projects; however, several of the EIS components overlap activities performed by District staff in authorizing construction of FARMS projects.

Following several meetings with District staff, County staff determined that District authorizations, including permits and exemptions, will suffice for the Charlotte County EIS requirements pertaining to surface and ground water resources for tailwater recovery pond excavations associated with District FARMS Projects. In order to ensure that FARMS projects involving excavations are properly installed, operated and maintained by participating growers, District and County staff have agreed to communicate on the application, permitting, construction and operation of these projects that will include, at a minimum, bi-annual meetings, appropriate permit review, and periodic site visits.

Since Charlotte County does not plan to revise its excavation and earthmoving code in the near future, District and County staff have proposed to memorialize this agreement through a Memorandum of Agreement between the two entities. The proposed agreement will not require additional funding. It is anticipated that this agreement will further

streamline the permitting process resulting in reduced costs to FARMS applicants and an increase in the number of FARMS projects completed. This, in turn, will improve water resource conditions, especially as applied to water quality improvement as documented in the Shell and Prairie Creek Watershed Management Plan, and reduction in groundwater pumping as documented in the SWUCA Recovery Strategy. There are currently 19 FARMS Projects in Charlotte County and 12 use surface/tail water reservoirs (nine operational). The projected offset of groundwater pumping is 3.55 million gallons per day.

Staff recommended to approve the Memorandum of Agreement between the Southwest Florida Water Management District and Charlotte County to remove County Environmental Impact Statement requirements pertaining to surface and ground water resources and promote communication on FARMS Program projects involving tailwater recovery pond excavations, and authorize the Executive Director to execute the agreement. Following consideration, **Mr. Combee moved, seconded by Ms. Rovira-Forino, to approve the staff recommendation as presented. Motion carried unanimously.** (CD 1/Track 6 – 08:00/20:51)

The meeting was recessed at 12:15 p.m. to provide a lunch break. The meeting reconvened at 12:50 p.m. without Ms. Closshey and Mr. Senft who left during the break.

28. Regional Observation and Monitor-Well Program (ROMP) Status Update

Mr. Eric DeHaven, P.G., Director, Resource Data and Restoration Department, provided an overview of the Regional Observation and Monitor-Well Program (ROMP) and presented the ROMP Work Plan 2009-2013. The ROMP was established in 1974 to construct the District's hydrologic conditions regional well network and provide baseline data on aquifer level, hydraulics, and water quality. These wells are the backbone of the District's groundwater hydrologic conditions reporting and are designed for long-term monitoring of groundwater levels, general water quality monitoring and movement of the saltwater/freshwater interface. The ROMP constructs monitor and test wells in each aquifer encountered at a site, delineates flow zones, conducts hydraulic and water quality profiles with depth, and performs deep exploratory drilling. Aquifer tests data collected by the ROMP are an essential part of all groundwater models and resource evaluations conducted by the Resource Regulation and Resource Projects Departments. Approximately 220 ROMP sites and additional groundwater investigation projects have been completed since the program's inception. In recent years, the program has an increased emphasis on aquifer testing and well construction in the northern regions of the District, the aquifer characteristics of the Lower Floridan aquifers, and additional special project work such as arsenic investigations for Aquifer Storage and Recovery, and Minimum Flows and Levels support. Ongoing support of issues within the District's designated Water Use Caution Areas is also provided.

The ROMP Work Plan 2009-2013 identifies the well sites and data collection requirements of the District. These well construction and data collection requirements represent the priority well and hydrogeologic data needs of both the Resource Regulation and the Resource Management Divisions as follows:

- Hydrologic Conditions Reporting
- District Groundwater Flow and Saltwater Intrusion Modeling
 - District-Wide Regulatory Model
 - Northern District Model
 - Integrated Model of the Peace River Basin
- Regulatory
 - Minimum Flows and Levels Establishment
 - Recovery Monitoring
 - Saltwater Intrusion Monitoring
 - Alternative Source Investigations (Lower Floridan aquifers)

- Water Resource Management Studies
 - Northern District Water Resource Assessment Project
 - Northern Tampa Bay Phase II
 - Upper Floridan aquifer/Withlacoochee River Interaction
 - Arsenic issue related to Aquifer Storage & Recovery
 - Interaction Between the Upper Floridan Aquifer and Lake Panasoffkee
 - Marion County Water Resource Assessment

The work plan provides detailed information on the coring, well construction, and aquifer testing requirements by fiscal year over the five-year planning period. The work plan also summarizes supporting projects being conducted by the ROMP staff as well as existing sites (mainly older sites) that require additional well construction or data collection work.

In response to Mr. Combee's question, Mr. DeHaven said the work is performed by District staff since it is more cost effective to ensure specifications are met. Mr. Moore said the District has had requests to completely privatize this operation and extensive analyses have been performed. He said the District's core operation is recognized as the premiere operation in Florida and the Southeast. The Well Drillers Advisory Committee recommended the District continue to perform this work to ensure a level of expertise to oversee operations. Mr. Moore said about two-thirds of the program are done by contractors and one-third by District staff. In response to Mr. Combee's question, Mr. DeHaven said work may be rescheduled when special project works occur, such as land purchases with wells needing to be abandoned and plugged. Mr. DeHaven said the work plan identifies the staff, financial and equipment resource requirements necessary to execute the work plan. (CD 1/Track 7 – 00:00/25:00)

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.

29. **Florida Forever Funding**
30. **Minimum Flows and Levels**
31. **Structure Operations**
32. **Watershed Management Program and Federal Emergency Management Agency Map Modernization**
33. **Significant Water Supply and Resource Development Projects**
(CD 1/Track 7 – 25:00/25:27)

Resource Management Committee Chair Joerger relinquished the gavel to Outreach and Planning Committee Chair Tharp.

Outreach and Planning Committee

Discussion Items

34. **“Get Outside!” November 7 Serenova Tract Event Highlights**
Mr. Michael Molligan, Director, Communications Department, provided an overview of highlights of “Get Outside!” Day held on November 7, 2009, at Starkey Wilderness Preserve's Serenova Tract in Pasco County. In preparation for the first event at the Serenova Tract, more than 10,000 invitations were mailed to nearby homeowners associations, churches and schools. The event was also promoted by District staff from Community and Legislative Affairs, Executive and Planning departments, Pasco County Parks and Recreation, and Pasco County and Pinellas County offices of tourism. More than 200 vehicles were counted at the event, not including those belonging to working

staff and vendors, with an estimated attendance of greater than 400 people. The November 7 event consisted of family-friendly activities which included a guided nature hike, scavenger hunt, native plant raffle, pet a pony, fishing education, "What Doesn't Belong?" game, leaf rubbings, water quality testing, aquatic plants and bugs identification, and a "Get Outside!" pledge. More than 240 attendees signed the pledge. Educational displays included land management equipment, a campground setup, fossils and artifacts. Event expenses total \$4,205 and include security, portable toilet and washing station rental, traffic control, promotional items, and hike guides. A review of the event survey results was provided.

Future events are scheduled for the Green Swamp Wilderness Preserve's Hampton Tract in Polk County on February 27, 2010, and Deep Creek in DeSoto County on April 10, 2010. (CD 1/Track 8 – 00:00/10:44)

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

35. **"Skip a Week" Campaign**

Mr. Michael Molligan, Director, Communications Department, provided an overview of how social research was used to guide the development of the District's November–February "Skip a Week" ads. In FY2009, the District implemented a comprehensive research plan to enhance evaluation and to provide information staff can use to design future public service advertising campaigns. As part of that plan, pre-surveys and post-surveys were used to evaluate the FY2009 campaign. In planning the FY2010 campaign, staff incorporated several insights from the survey results:

- Using a consistent tag line to tie all messages together. "Florida's Water: It's Worth Saving" has been selected for the FY2010 campaign.
- Integrating messages throughout existing District programs, events, materials and mediums to extend exposure.
- Promoting skipping a week of irrigation in the winter as "normal," easy and quick.

The final component of the media research plan was qualitative research designed to help staff develop the ads for the upcoming "Skip a Week" campaign. Based on previous research, staff developed four ad concepts. After scripts were finalized for each, draft ads were filmed using District staff as actors. These drafts were tested with four focus groups during August in the District headquarters and service offices. The four draft ads all promoted watering only every other week in the cooler months of December through February. Focus groups consistently selected the ad featuring a man reassuring his neighbor that skipping a week of irrigation in the winter was not only easier, but also healthier for the lawn. This ad, featuring neighbors Tom and Stan, was seen as the most effective in promoting skipping a week of irrigation in the winter. Participants said they related to the neighbors sharing information about lawn maintenance. Many recalled having similar conversations with their own neighbors. Protecting their lawns from pests and disease also resonated strongly with focus group participants. The ad gave them permission to relax and take a break from laboring over their lawns. In addition to promoting water conservation, this spot gave the audience direct benefits and immediate gratification.

Using the results from the focus groups, staff built final ads around the Tom and Stan characters. The first Tom and Stan ad was very closely related to the draft ad favored by the focus group participants. The ad emphasized that skipping a week of watering in the winter can protect lawns from pests and disease. District research has consistently shown that people tend to "set and forget" their timers and that many do not understand how to set their timers to skip a week. The second ad focuses on Tom showing Stan how easy it is to turn off his irrigation timer during the weeks he wants to skip and turn back on when he wants to irrigate. This ad illustrated that skipping a week of irrigation is as easy as turning off your timer. Two staff members also appeared in the commercial. A short

animated segment was added to emphasize the pests-and-disease message. A sample of the ads was shown to the Board members.

The FY2010 "Skip a Week" media buy will run November 16, 2009 through February 14, 2010. This integrated campaign includes ads in television, radio, newspaper, electronic billboards and online media. Two 30-second commercials will run on 17 television stations beginning November 30 and continuing throughout the campaign time frame, with a two-week hiatus during the Christmas/New Year's holiday season. Almost 15,000 radio spots will run during the length of the campaign on a total of 25 broadcast stations and 12 streaming online stations. There will be biweekly advertisements in 12 newspapers located within the District with a combined circulation of more than 900,000 readers. In addition, "Skip a Week" ads will be shown on 12 electronic billboards during the month of January and featured on six radio station web sites. The integrated messages for all these ads include informing residents that overwatering can cause pests and disease and encouraging them to turn off their irrigation systems to skip a week of watering during the winter.

To maximize campaign results, the District will extend the campaign from late November through the end of February by integrating the message through a variety of other outreach efforts including special events, the District's web site, media relations and social media efforts such as Facebook and Twitter. The District will also work with existing partners to promote the "Skip a Week" message to a broader audience. The costs for the "Skip a Week" campaign include approximately \$40,000 in ad development and \$716,000 in purchased ad space, leaving approximately \$146,000 for additional advertising contingencies.

In response to questions by Ms. Parks and Ms. Closshey, Mr. Molligan estimated that the District web site has 35,000 to 40,000 hits per month and there is a link to sites in the Spanish language. The number of unique visitors to the District's web site was later updated to the Board to be greater 50,000 per month. In response to Mr. Tharp's question regarding how the campaign is evaluated, Mr. Molligan said staff analyzes the frequency a site is visited in relation to the current media campaigns, the reach and frequency of the campaign, and results from pre- and post-campaign surveys regarding recall and awareness. For the Board's information, he said the first printing of 10,000 Recreation Guides has been sent or given out, and a second printing is being ordered. (CD 1/Track 8 – 10:44/28:07)

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

36. **Legislative Update**

Mr. David Rathke, Director, Community and Legislative Affairs (CLA) Department, provided an update on federal and state legislative issues. He noted the guiding principles staff are following in federal issues (support data collection and analysis, monitor regulatory reforms, and advocate for funding) and state issues (pursue gains in efficiency, support regulatory incentives, and advocate for funding).

On the federal side, Mr. Rathke said the District supports lifting the funding cap on private activity bonds, the use of tax credit bonds to help fund alternative water supply development, and funding for the West Central Florida Water Restoration Action Plan. Staff is also evaluating other projects for potential funding which include Private Activity Bonds, Clean Renewable Water Supply Tax Credit Bonds, and Water Resources Development Act. He noted the budget priorities are Federal Emergency Management Agency, National Estuaries, U. S. Geological Survey and Water Resources Assessment Projects.

Mr. Rathke reviewed issues associated with the current state budget including projections for the coming year, legislation that could have potential impacts to the District, interim project recommendations, and new committee structures. Proposed legislative initiatives

the District supports are cleaning up some language from legislation passed last year regarding Basin Boards; electronic notification of District rulemaking rather than newspaper advertising; online permitting; accepting routine maintenance responsibility for the Peace Creek Drainage Canal; consistency of conservation efforts of counties split between Districts during water shortage declarations, funding for the West-Central Florida Water Restoration Action Plan; and restoration of state funding for land acquisition, management, restoration and alternative water supply development.

Messrs. Moore and Wirth provided a brief update on activities with the Peace Creek Drainage Canal.

Mr. Rathke noted that budgeting for state-funded programs is based on the scenario of being dependant on documentary stamp revenues, no funding in FY2009-FY2010, and tax reform. State budget priorities include funding of the Water Management Lands Trust Fund, Florida Forever funding, Water Protection and Sustainability Trust Fund, and Water Resources Assessment Projects. Other state issues include delegation of permits, local sources, statements of economic regulatory costs, springs, statewide water board, and stormwater.

Ms. Whitehead and Mr. Joerger noted that former Governor Bob Martinez has a website for citizens to pledge their support for Florida Forever—www.supportfloridaforever.org. (CD 1/Track 9 – 00:00/10:44)

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

Submit & File Report – None

Routine Reports

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

37. **Comprehensive Plan Amendment and Related Reviews**
38. **Development of Regional Impact Reviews**
39. **Speakers Bureau**
40. **Significant Activities**

In response to an earlier question from the Board, Ms. Kavouras noted that the number of website hits is 54,059 for September and 53,935 for October. In March and April, the number rose to almost 100,000 each month due to drought messaging. Since the Board's last meeting, the Communications, Community & Legislative Affairs (CLA) and Planning Departments have been busy. CLA staff held a workshop on the Phase III Water Shortage implementation for utilities in the southern part of the District, CLA staff held cooperative funding workshops, Communication staff facilitated five Florida-friendly landscaping workshops for homeowner associations, and staff held a Florida Water StarSM Gold event to certify seven homes in the Wimauma area which Ms. Rovira-Forino attended. In response to Ms. Parks' question, Mr. Molligan provided a brief overview of the workshops with the homeowner associations.

(CD 1/Track 9 – 10:44/19:00)

Outreach and Planning Committee Chair Tharp relinquished the gavel to Finance and Administration Committee Chair Parks.

Finance and Administration Committee

Discussion Items

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

Submit & File Report

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

42. **October 2009 Interim Report on Workforce and Vendor Diversity**

Committee Chair Parks said the program is doing well. Ms. Rovira-Forino said the District's program is aggressive and positive, as well as the procurement initiatives being outstanding. She commended Finance Department staff for making a mark in the economy for all the District areas served. She noted that, every year, the District incrementally increases the amount of procurement dollars going to diverse vendors. Mr. Schiller said almost 30 percent of the District's disposal contractual expenditures is for minority and small business. (CD 1/Track 10 – 00:00/02:18)

Routine Reports

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

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

44. **Management Services Significant Activities**

Mr. Schiller said that Fiscal Year 2009 is now officially over. He said audits are occurring now and the Board will probably receive the financial audit in March 2010. Mr. Schiller noted that the State Board of Administration has paid out another \$140,000 to the District, leaving approximately \$10.5 million in the fund. He said that the December Board meeting is important since the Fiscal Year 2011 budget assumptions will be presented with an update of the long-range funding plan through 2030.

Mr. Combee said he was late to the meeting due to assisting a friend with a matter before the Polk County Commission. He said he urged the Commission to look at ways to help with the local economy. He said this Board has talked about expediting expenditures that were planned, but he did not remember receiving an update on how successful that has been. Committee Chair Parks said that information would be appropriate for inclusion in the report next month with the long-range funding plan. Mr. Schiller said the District has been expediting all its internal projects and is tracking expenditures with cooperators. He noted approximately \$300 million is going into the economy for 2010 and the majority is outsourced locally. Mr. Combee voiced his concern that the District should be using its funds to assist the contractors and vendors of the District, and not holding money which could help the economy. (CD 1/Track 10 – 02:18/07:41)

Finance and Administration Committee Chair Parks relinquished the gavel to Vice Chair Oakley.

General Counsel's Report

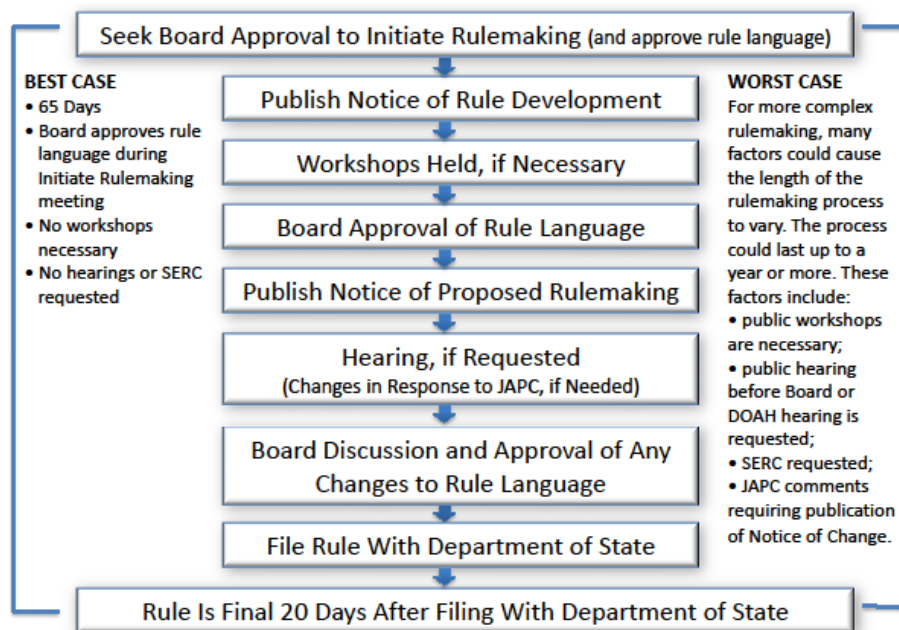
Discussion Items

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

46. **Rulemaking Process Overview**

Mr. Bilenky noted that Sections 373.044, 373.113, and 373.171, Florida Statutes (F.S.), authorize the District to adopt rules pursuant to Sections 120.536(1) and 120.54, F.S., to implement the provisions of Chapter 373, F.S. Chapter 120, F.S., sets forth the administrative requirements for the rulemaking process. The length of time to complete the process may vary depending on the complexity of the rule.

Using a graphic flowchart, Mr. Bilenky presented the steps of the rulemaking. He discussed the length of time it takes to complete the process by showing the least complex rulemaking process and a representation of a more complex rulemaking. The graphic will be used at subsequent Board meetings when a proposed rule discussion is on the agenda to show where the rule is in the process.



In response to Mr. Tharp's questions, Mr. Bilenky said an applicant has the opportunity to comment when initiating rulemaking. He said any interested party can request to speak before the Board, but most times applicants meet with staff to work out language concerns. Mr. Bilenky said the advantage of requesting a public hearing is to create a record for perhaps challenging the adoption of the rule. In response to Ms. Rovira-Forino's question, Mr. Bilenky said typically the Joint Administrative Procedures Committee (JAPC) will write the District a letter saying the information filed has been reviewed and District has or does not have jurisdiction to do something. If JAPC says the District does not have jurisdiction, staff would respond to the letter pointing out the legal arguments. The next step would probably be the Division of Administrative Hearings. (CD 1/Track 11 – 00:00/04:44 – Track 12 – 00:00/12:20)

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

Regarding the numeric criteria case, Mr. Bilenky said he sent the Board members an email outlining the outcome from the federal judge. He said the judge's order says there has not been a substantive decision made at this point by the Environmental Protection Agency (EPA) which would be reviewable by the federal court. The legal argument is that the EPA has not exhausted its legal remedies at this point and should not be in court. When the EPA promulgates numeric criteria, then interested parties may have an interest to be reviewed and there are administrative processes available at that time.

Submit & File Reports – None

Routine Reports

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

- 47. Litigation Report
- 48. Rulemaking Update
(CD 1/Track 12 – 12:20/13:46)

Executive Director's Report

49. Executive Director's Report

- Mr. Moore provided additional information from last month's meeting. He said, in regards to the \$19 million pipeline, mediation is occurring between the Peace River Manasota Regional Water Supply Authority and Charlotte County.
- Mr. Moore said the construction management contract for the Lake Hancock Outfall Treatment Project is moving forward with the consulting firm of URS which is independently reviewing the costs. The report is expected on November 20 and staff will be meeting with URS on November 24 to review the report. Staff will provide a report at the December Board meeting.
- Mr. Moore said, in regard to the climate change issue discussed at the November Board meeting, the District has been involved at a statewide level with the Florida Department of Environmental Protection (FDEP) and the other water management districts which produced the "Framework for Action." That report called for a senior level task force representative and Mr. Schiller is the District's representative to provide support to the Task Force. Staff is reviewing information from international and national experts. Staff has been aggressive with the District's carbon and energy plan, and reviewing what can be done to address saltwater intrusion, FEMA mapping, etc. Mr. Schiller will provide information to the FDEP which will be the District's contribution to the statewide effort.
- Mr. Moore said there has been a meeting of the St. Johns River and Suwannee River Water Management Districts (WMDs) and this District regarding the Heart of Florida Alliance which is Alachua and Marion counties, and the cities of Ocala and Gainesville. District staffs have met with all the commissions and local mayors regarding water resource issues in the northern part of the District and adjoining districts. Staff is also involved in the MyRegion.org discussions in the Orlando area. One issue that has emerged is conservation and suggesting all permits moving forward should only have potable water for indoor use and no water issued to a municipality for any potable outdoor irrigation. Another issue is development of rules for competing applications. The District tries to ensure that there will be adequate supply for all competing uses and the environment. For Alachua and Marion counties, local sources is a responsibility criteria to do all that can be done locally before borrowing another county's water.
- Mr. Moore said the Board members have heard comments about a statewide water board or water czar. The Board already knows the value of the quarterly meetings of the FDEP Secretary and the WMD Governing Board Chairs and Executive Directors. He said he does not see a need for a state water czar when issues are dealt with best on a regional level.
- Mr. Moore said minimum flows and levels have been set for the Alafia River and the preliminary draft report has been received. Once the report is finalized, the Peace River Manasota Regional Water Supply Authority may request most of the water in the lower Peace River. Tampa Bay Water has indicated it may submit a permit for the water.
- Mr. Moore noted another issue is local governments not having the money for their share of cooperative funding projects. A request has been sent to the City of Tampa regarding its intention toward projects which may need to be delayed.
- Mr. Moore said FEMA mapping is an issue due to the negative impact it may have on citizens in these depressed economic times and some people have suggested delaying implementation. The District's intent is to move forward and not slow down the process since accurate information is needed.
- Mr. Moore said the largest solar energy facility was completed in DeSoto County which requires no water use. (CD 1/Track 13 – 00:00/11:18)

Committee/Liaison Reports

50. Basin Board Education Committee Meeting

Ms. Rovira-Forino provided an overview of the Basin Board Education Committee meeting held on November 4, 2009. The meeting included presentations on the Fiscal Year 2010

Community Education Grants, "Get Outside!" campaign update, youth events focusing on District lands, outreach meetings to homeowners associations regarding Senate Bill 2080, and use of research to develop the District's November–February "Skip a Week" campaign. The next meeting is scheduled for March 3, 2010, at the Tampa Service Office.

51. **Joint Green Industry and Agricultural Advisory Committee Meeting**

Messrs. Beswick and Tharp attended the joint meeting held on November 5, 2009. The meeting included presentations on the hydrologic conditions/drought update and water shortage restrictions, mitigation of water withdrawal impacts through permanent retirement of used permitted quantities (land use transition), rulemaking update, demonstration of WMIS for online crop reporting and online meter reading, IFAS research projects, FEMA map modernization, legislative preview, and "Get Outside!" campaign. The next individual meetings are scheduled for February 25, 2010 in the District's Tampa Service Office. (CD 1/Track 14 – 00:00/04:47)

Vice Chair Oakley suggested scheduling a time for the advisory committee members to come before the Governing Board for recognition. Ms. Kavouras noted that there are six advisory committees comprised of over 123 members and two Basin Board committees. She said, in the past, the chairs and vice chairs have been invited to meet with the Governing Board members. Vice Chair Oakley requested staff to discuss this matter with Chair Pressman.

Chair's Report

52. **Chair's Report**

The Board's next meeting is December 15 in the TECO Center at Nature's Classroom in Thonotosassa. There will a joint workshop of the Governing Board with the Basin Boards at 9 a.m. followed by the monthly meeting at 12:30 p.m.

There being no further business to come before the Board, Vice Chair Oakley adjourned the meeting. (CD 1/Track 14 – 04:47/07:30)

The meeting was adjourned at 2:45 p.m.