

# APPROVED

## MINUTES OF THE MEETING

### GOVERNING BOARD SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

TAMPA, FLORIDA

NOVEMBER 18, 2014

The Governing Board of the Southwest Florida Water Management District (SWFWMD) met for its regular meeting at 9:00 a.m. on November 18, 2014, at the District's Tampa Service Office. The following persons were present:

#### Board Members Present

Michael A. Babb, Chair  
Randall S. Maggard, Vice Chair  
Jeffrey M. Adams, Secretary  
David W. Dunbar, Treasurer  
H. Paul Senft, Member  
Bryan Beswick, Member  
Carlos Beruff, Member (Teleconf)  
Wendy Griffin, Member  
George W. Mann, Member  
Tommy Bronson, Member  
Michael A. Moran, Member  
Ed Armstrong, Member

#### Staff Members

Robert R. Beltran, Executive Director  
Brian Armstrong, Assistant Executive Director  
David T. Rathke, Chief of Staff  
Kurt P. Fritsch, Inspector General  
Laura J. Donaldson, General Counsel  
John J. Campbell, Division Director  
Ken Frink, Division Director  
Mark A. Hammond, Division Director  
Alba E. Más, Division Director

#### Board's Administrative Support

Cara Martin, Board & Executive Services Manager  
Lori Manuel, 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](http://www.WaterMatters.org)).

#### **PUBLIC HEARING** (Audio – 00:00)

##### 1. Call to Order

Chair Michael Babb called the meeting to order and opened the public hearing. Secretary Jeff Adams noted a quorum was present.

##### 2. Pledge of Allegiance and Invocation

Secretary Adams offered the invocation. Chair Babb led the Pledge of Allegiance to the Flag of the United States of America.

Chair Babb 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 Babb 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 Babb stated that comments would be limited to three minutes per speaker, and, when appropriate, exceptions to the three-minute

limit may be granted by the chair. He also requested that several individuals wishing to speak on the same issue/topic designate a spokesperson.

3. **Additions/Deletions to Agenda**

Section 120.525, Florida Statutes, allows the District to change the published agenda for good cause shown, as determined by the presiding officer.

Mr. Beltran, Executive Director, noted the following changes requested to the agenda.

The following item was moved from consent to discussion:

***Resource Management Committee***

6. Atkins Compensation Agreement and Release for the Sawgrass Lake Restoration Project (B085)

The following items were deleted for the consent agenda for consideration:

***Finance/Outreach and Planning Committee***

8. Approval of Amendment to Agreement for Personal Services of the Executive Director of the Southwest Florida Water Management District

***General Counsel's Report***

9. Administrative, Enforcement and Litigation Activities that Require Governing Board Approval
  - a. Authorization to Initiate Litigation – Unauthorized Construction Activities – Lake Charlotte Ranch, LLC – Highlands County
10. Rulemaking
  - a. Approval of Amendments to Chapter 40D-3, F.A.C. to Incorporate Changes in DEP Rules for Water Well Contractors and Construction of Water Wells

**A motion was made to approve the amendments to the published agenda, as amended, which was seconded. The motion carried unanimously. (Audio - 4:30)**

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

Chair Babb noted at this time, the public is given an opportunity to comment on any topic not listed on the agenda.

Chair Babb stated he received a *Request to Speak* card from Mr. Chester Bradshaw. Mr. Bradshaw spoke regarding the Withlacoochee Watershed Initiative. He gave a brief history of this initiative. Mr. Bradshaw stated an advisory/steering committee should be considered to assist in prioritizing projects that would coincide with the Amendment 1 requirements.

Board Member Senft stated he will direct staff to ensure all the water bodies in the Green Swamp area have been identified and included in the Central Florida Water Initiative (CFWI).

Mr. Beltran added that CFWI is reviewing all forms of water supply and water resources and integrated approaches. Consideration always has to be given to historical alterations and present impacts.

**CONSENT AGENDA** (Audio –12:30)

Chair Babb asked that before the Board considers action on the Consent Agenda whether there is anyone in the audience who wishes to address the Board regarding an item listed on the Consent Agenda.

Chair Babb stated he received no *Request to Speak* cards for any agenda items.

**Regulation Committee**

5. **Individual Water Use Permits Referred to the Governing Board - WUP Nos. 20007502, 20011127, 20011129, 20011131, and 20011132**

Staff recommended the Board approve the proposed permits as listed above.

**Operations, Lands and Resource Monitoring**

**Resource Management Committee**

6. **Atkins Compensation Agreement and Release for the Sawgrass Lake Restoration Project (B085)**

This item was moved to Discussion.

**Finance/Outreach & Planning Committee**

7. **Budget Transfer Report**

Staff recommended the Board approve the Budget Transfer report covering all budget transfers for October 2014.

8. **Approval of Amendment to Agreement for Personal Services of the Executive Director of the Southwest Florida Water Management District**

This item was deleted from discussion.

**General Counsel's Report**

9. **Administrative, Enforcement and Litigation Activities that Require Governing Board Approval**

a. **Authorization to Initiate Litigation – Unauthorized Construction Activities – Lake Charlotte Ranch, LLC – Highlands County**

This item was deleted from discussion

b. **Approval of Revisions to Board Policy 110-7, Election of Governing Board Officers**

Staff recommended the Board approve the revisions to Board Policy 110-7, Election of Governing Board Officers, and to make corrections to scrivener's errors, if any.

c. **Approve Policy 110-11, Annual Habitat Update, Providing for the Annual Disclosure to the Counties and Municipalities within the District's Boundaries of ERP Impacted Habitat Acres and Total Habitat Acres Restored**

Staff recommended approval of Policy 110-11, Annual Habitat Update, Providing for the Annual Disclosure to the Counties and Municipalities within the District's Boundaries of ERP Impacted Habitat Acres and Total Habitat Acres Restored.

d. **Approve Partial Release of Conservation Easement and Quit Claim – Florida Department of Transportation's 118th Avenue Project – Pinellas County**

Staff recommended the Board approve and accept the Partial Release of Prior Conservation Easement and Quit Claim.

10. **Rulemaking - Deleted**

a. **Approval of Amendments to Chapter 40D-3, F.A.C. to Incorporate Changes in DEP Rules for Water Well Contractors and Construction of Water Wells**

This item was deleted

***Executive Director's Report***

**11. Approve Governing Board Meeting Minutes - October 28, 2014**

Staff recommended the Board approve the October 28, 2014 meeting minutes.

**A motion was made, seconded to approve the Consent Agenda as amended. Motion carried unanimously. (Audio – 12:38)**

**Chair Babb relinquished the gavel to Resource Management Committee Chair Senft, who called the Committee meeting to order.**

***Resource Management Committee***

***Discussion***

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

**6. Atkins Compensation Agreement and Release for the Sawgrass Lake Restoration Project (B085)**

Staff recommended the Board approve the Agreement and Release with Atkins to receive compensation in the amount of \$210,000 for required corrective work.

Vice Chair Maggard expressed his discontentment with the contractor's actions.

Board Member Senft commented there is professional coverage in contracts called "Errors and Omissions" which would require a lawsuit to assist in making a determination.

Mr. Hammond, Director of Resource Management Division, stated the District met with the contractor and felt the negotiations were done in good faith. He indicated the District's recommendation for compensation is considered fair. Staff is continuing to look at ways to mitigate these types of situations to avoid issues similar to this in the future. Discussion ensued.

Dr. Don Polman, representative from Atkins, expressed acknowledgement and appreciation to the District staff that worked on this issue. He stated that Atkins would like to continue a positive relationship with the District.

**A motion was made, seconded to approve staff recommendation. Motion carried with one objection. (Audio – 29:31/32:41)**

**13. FARMS - Premier Citrus, LLC - Sun Pure Groves (H713), DeSoto County**

Staff recommended the Board: 1) Approve the Premier Citrus, LLC - Sun Pure Groves project for a not-to-exceed project reimbursement of \$796,350 with \$796,350 provided by the Governing Board; 2) Authorize the transfer of \$796,350 from fund 010 H017 Governing Board FARMS Fund to the H713 Premier Citrus, LLC - Sun Pure Groves project fund; 3) Authorize the Assistant Executive Director to sign the agreement.

Board Member Beswick recused himself from voting due to a conflict of interest.

**A motion was made, seconded to approve staff recommendation. Motion carried unanimously. (Audio – 33:25)**

**Submit & File Reports - None**

**Routine Reports**

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

14. **Minimum Flows and Levels Status Report**
15. **Significant Water Resource and Development Projects**

**Committee Chair Senft adjourned the Committee meeting, and relinquished the gavel to Operations Lands and Resource Monitoring Committee Chair Maggard, who called the Committee meeting to order.**

**Operations, Lands and Resource Monitoring**

**Discussion**

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

17. **Hydrologic Conditions Status Report**

Mr. Granville Kinsman, Hydrologic Data Manager, provided a presentation on the hydrologic conditions. He indicated hydrologic conditions are normal for this time of year. Rainfall for October was lower than normal in some areas, however the trend for twelve month rainfall is at the long-term annual average. The groundwater levels have declined, but still above the median for the month. Mr. Kinsman stated there are declines in lakes across the District, but river flow is still healthy. Mr. Kinsman stated the Florida Department of Environmental Protection (FDEP) has given approval to begin refilling the Bill Young Reservoir. The climate forecast was not available at this time, but colder than normal temperatures are forecast for the next three months with above normal rainfall and expected to continue into the spring. He indicated hydrologic indicators are seasonally normal and the forecast is for increased rainfall through the winter and the spring.

Board Member Mann commented there was a segment on "60 Minutes", that may be of interest, it outlined how satellites are being used to measure aquifer levels.

18. **Consideration to Surplus – Annutteliga Hammock, Hernando County**

Mr. Ken Frink, P.E, Director of Operations, Lands and Resource Monitoring Division, provided a historic overview to the Board regarding Annutteliga Hammock which included the location and District holdings, other agencies involved, location of proposed fire station, process outlined for moving forward with input from the Board. Mr. Frink clarified this is not a surplus, a different statute has to be followed because the District is a government agency.

Board Member Griffin commended staff's efforts related to this project. She requested that emphasis be given to Hernando County (County) to ensure this project fits into the consolidation plan.

Board Member Senft asked if there have been discussions with the County regarding the accommodation for the use of impervious surfaces. Mr. Frink responded in the negative, but it can be entered into the negotiations.

Board Member Griffin added discussions with the County needs to include the use of high efficiency septic tanks and the offset of any pollution that may occur at the fire station.

Mr. Charles Lee, Director of Advocacy from Audubon Florida, expressed concerns as related to this project. He stated that the Division of State Lands 2015 Work Plan has an analysis of this project. The Audubon recommends the District coordinate this project with the Division of State Lands.

Committee Chair Maggard stated it would be advantageous to coordinate with the Division of State Lands.

Board Member Senft asked if this can be done concurrently with the County. Mr. Frink responded in the affirmative.

Board Member Griffin stated her understanding is this project is not in the County budget. Mr. Frink responded the purchase of the property is in the County Budget, but unsure of the construction costs.

***Submit & File Reports - None***

***Routine Reports***

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

19. **Structure Operations**

20. **Significant Activities**

**Committee Chair Maggard adjourned the Committee meeting, and relinquished the gavel to the Finance/Outreach & Planning Committee Chair Dunbar, who called the Committee meeting to order.**

***Finance/Outreach & Planning Committee***

***Discussion***

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

***Submit & File Reports - None***

***Routine Reports***

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

22. **Treasurer's Report and Payment Register**

23. **Monthly Financial Statement**

24. **Monthly Cash Balances by Fiscal Year**

25. **Comprehensive Plan Amendments and Related Reviews**

26. **Development of Regional Impact Activity Report**

27. **Significant Activities**

Committee Chair Dunbar commended staff efforts that are outlined in outreach efforts indicated in pages 167 through 174.

Mr. David Rathke, Chief of Staff, provided information regarding Amendment One. This information included the following: 10 of 16 counties passed this amendment by over 70%; it will be a substantial funding source for the District; there is an option for some funding to be used for things not in the District's core mission; there will be implementation legislation filed in the upcoming sessions; and it is still unclear as to the fiscal ramifications associated with the implementation of this amendment.

Mr. Beltran stated this District will play a leadership role in implementing this amendment, as the District frequently does.

**Committee Chair Dunbar adjourned the Committee meeting, and relinquished the gavel to the Resource Regulation Committee Chair Moran, who called the Committee meeting to order.**

## **Regulation Committee**

### **Discussion**

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

29. **Denials Referred to the Governing Board** - None

30. **Overview of Compliance and Enforcement Processes**

Ms. Alba Más, P.E., Director of Regulation Division, and Ms. Laura Donaldson, General Counsel, provided a presentation on the overview of compliance and enforcement processes. This presentation included: types of compliance issues; the compliance process; compliance results; legal authority; well construction violations; water use violations; environmental resource violations; and penalty matrices.

Treasurer Dunbar questioned the yearly number of well construction permits that are processed, as indicated in the presentation (5,050). Ms. Más confirmed that is an accurate number and does not include the delegated counties.

Chair Babb asked if there was a historical data that outlines the successes of compliance. Ms. Más responded that Ms. Donaldson would respond to the backlog of compliance.

Vice Chair Maggard commented on the positive changes in the compliance process he has experienced. He asked about the average amount of time, which can go up to six months, that is given to applicants out of compliance. Ms. Más confirmed that permit holders are given a reasonable amount of time.

Secretary Adams commented on the high percentage of ERP permit holders that require a second letter. Board Member Beruff asked if there is a better way to address projects that have no activity. Ms. Más responded it will be looked into.

Ms. Donaldson outlined the process for compliance, this included: time frame considered before violations are sent to legal; creation of a Legal Action Request; amendment of FDEP rules; well construction violations; water use permit violations; environmental resource permits; consistency in pursuing violations; penalty matrices and the formulas associated with it. She provided an example when the determination can be made to aggravate or mitigate a situation. She stated that the Board must approve all consent orders except for those associated with well construction Consent Orders. She stated that a monthly report has been created, in house, to allow the Office of General Counsel to stay apprised of violations.

Board Member Dunbar asked about the status of a past violation case that involved a race track. Ms. Donaldson responded with the current information regarding that violation. No consent order has been entered into. District staff is working with the person.

Board Member Armstrong commented positively on the opportunities that are given by the District to violators to allow for an opportunity of resolution and the level of enforcement that should be pursued. Board Member Maggard agreed. Board Member Senft commended Ms. Donaldson.

***Submit & File Reports*** - None

### ***Routine Reports***

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

31. **Overpumpage Report**

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

**Committee Chair Moran adjourned the Committee meeting, and relinquished the gavel to Chairman Babb.**

**General Counsel's Report (Audio  
Discussion**

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

**34. Initiation of Litigation – Well Construction Violations – Unauthorized Well Construction – Tony Holt – Hillsborough County**

Staff recommended the Board authorize the initiation of litigation against well contractor, Tony Holt, to obtain compliance with Florida Statutes and District rules, and seek assessment of administrative penalties and other corrective actions, and District litigation costs and attorney's fees.

Ms. Marti Moore, Assistant General Counsel, presented information on the initiation of litigation for Mr. Tony Holt. She gave a history of the violation. Ms. Moore commented that several factors were considered, those included there being no intentional violation and no resource harm. Mr. Holt was offered an opportunity to resolve this issue without an administrative hearing. No response was received from Mr. Holt.

Mr. Holt addressed the Board and provided an explanation of the violation. He expressed there were extenuating circumstances, he believed this was not an intentional violation and is contesting the consent order.

Ms. Moore outlined the process that applied to this violation. The Health Department performs site inspections in Hillsborough County. The Health Department failed to issue Mr. Holt a permit. The District did try, unsuccessfully, to communicate with the Hillsborough County Health Department.

Board Member Maggard asked if Mr. Holt's concern is for the fines or the points against his license. Mr. Holt responded with a history of his interaction with Hillsborough County regarding this permit. He responded his concern is that his license will be suspended.

Board Member Moran asked for clarification that the Hillsborough County did not respond to his application. Mr. Holt responded that Hillsborough County lost the initial application, however, his check was cashed.

Board Member Armstrong asked Mr. Holt if there is a history of past violations. Mr. Holt responded in the affirmative.

Board Member Adams expressed his concerns regarding the explanations Mr. Holt provided.

Ms. Donaldson commented that when the initial violation was issued, staff met with Mr. Holt and a revised consent order was issued, which lowered the fine and the points against his license. However, no response was received from Mr. Holt. The lack of communication from Mr. Holt prompted the request for litigation. Discussion ensued that included the number of points currently against Mr. Holt's license and the possible results of the additional points based on this violation. The recommendation offered by the District would not involve any suspension of his license. A Board member asked how many points Mr. Holt currently has against his license. Ms. Moore responded 31.75 points. Board Members asked if Mr. Holt would accept the terms of the revised consent order. Mr. Holt expressed affirmation.

Ms. Donaldson stated, even though Mr. Holt has accepted this offer, she would like the Board to approve the initiation of litigation to avoid having to return if the offer fails. Some discussion ensued. A Board Member asked how common violations are among well drillers.



Mr. David Arnold, Well Construction Manager responded there are currently 270 licensed well drillers in this district and the majority have very few violations. A Board member asked if there have been any suspensions. Mr. Arnold responded there have been no suspensions in the past 12 months. A Board Member asked if the well is currently operating. Mr. Arnold responded in the affirmative. A Board Member asked if based on the guidelines, at 24 points a license can be suspended and asked if Mr. Holt's license has been suspended previously. Ms. Moore responded affirmatively that Mr. Holt's license could be suspended, however he has not had a prior suspension, just prohibition. A Board Member asked if probation was a proper response to this violation. Ms. Donaldson responded that Mr. Holt drills quality wells. His violations are more on the administrative side so the suggested punishment is appropriate. A Board Member asked if the existing points runs in perpetuity. Ms. Moore responded they are on a 36-month cycle. Discussion ensued.

**A motion was made, seconded to approve to authorize the initiation of litigation if necessary. Motion carried unanimously. (Audio - 2:03)**

***Submit & File Reports - None***

***Routine Reports***

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

**35. Litigation Report - November 2014**

Ms. Donaldson provided a correction in the report. She stated that the 33 enforcement cases indicated closed is incorrect. New data would have to be provided. She added there are seven current cases for agency action.

**36. Rulemaking Update - November 2014**

***Committee/Liaison Reports***

**37. Well Driller's Advisory Committee Report**

**38. Industrial & Public Supply Advisory Committee Report**

Board Member Senft thanked Mr. Warren Hogg for his services as chair, indicating a new chair has been elected.

**39. Other Committee/Liaison Reports**

Chair Babb provided an update on the Springs Coast Steering Committee. There was a meeting on November 5. The Committee is currently focusing on the Rainbow River and Crystal River.

***Executive Director Report***

**40. Executive Director's Report - None**

***Chair's Report***

**41. Employee Milestones**

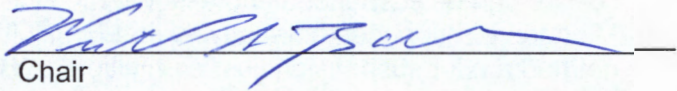
Chair Babb noted staff employees who have reached five-year increments in service to the District. He recognized staff members who have reached 20-year and 25-year milestones, and thanked them for their service. This item was provided for the Board's information, and no action was required.

**42. Other**

Chair Babb stated the next board meeting is scheduled for December 16 in the Tampa office, the meeting on January 27 will be in the Tampa office and the meeting on February 24 will be in the Sarasota office.

There being no further business to come before the Board, a motion was made and seconded to adjourn the meeting. Motion carried. (Audio 2:16)

The meeting was adjourned at 11:16 p.m.

  
Chair

Attest:

