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## South Florida Water Management District

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### GOVERNING BOARD MEETING MINUTES

January 14, 2010

9:00 AM

Village of Key Biscayne - Village Chambers  
88 West McIntyre Street  
Key Biscayne, FL 33149

Members Present:

**Eric Buermann, Chair**

**Michael Collins**

**Joe Collins**

**Charles Dauray**

**Shannon Estenoz**

**Jerry Montgomery**

**Kevin Powers**

**Patrick Rooney**

**1. Call to Order** - Eric Buermann, Chairman, Governing Board

Chair Buermann called the meeting to order at 9:02 a.m.

Chair Buermann reported on the earthquake in Haiti. The District is starting a collection of non-perishable food, clothing, and money for the people of Haiti. These donations will be collected in the B-1 lobby.

Mr. Olliff said there has been an account established at the credit union for those wishing to make donations. Mr. Olliff also said the District is creating a leave bank for those staff who need to travel to Haiti to assist their families.

Mr. Dauray announced HopeforHaiti.org will be the contact for those wishing to make donations from the west coast of Florida.

**2. Pledge of Allegiance** - Eric Buermann, Chairman, Governing Board

Chair Buermann led the group in the Pledge of Allegiance.

**3. Local Governmental Officials and Representatives** - Introductions by Ed Hernandez, Director, Miami-Dade Regional Service Center

Ed Hernandez, Director, Miami-Dade Regional Service Center, introduced staff from the Miami-Dade Service Center.

Mr. Hernandez introduced the local government officials.

Commissioner Carlos Gimenez, Chair, Governmental Operations Committee, welcomed the Board for visiting Miami-Dade County. He reported on Miami-Dade County's revised water use permit application and the alternative water supply projects schedule.

Robert Vernon, Mayor, Key Biscayne, welcomed the Board to Key Biscayne. He thanked the Board for their support for past projects and looks forward to working with the District in the future.

Chip Iglesias, City Manager, Key Biscayne, thanked the District and the Miami Service Center for working with the City of Key Biscayne with past projects.

Ms. Estenoz commented on Crandon Park and said it may be the crown jewel of County Parks in the state of Florida.

Chair Buermann commented on Miami-Dade Consumptive Use Permit, the economic times, funding for alternative water supply projects, and Miami-Dade being well below their water use projections. He said the Agency is willing to work with Miami-Dade County on these issues.

**4. Miami-Dade's Water Use Efficiency Program - Introduction by Terrie Bates, Assistant Deputy Executive Director, Regulatory and Public Affairs, and John Renfrow, Director, Miami-Dade Water and Sewer Department**

Terrie Bates, Assistant Deputy Executive Director, introduced John Renfrow, Director, Miami-Dade Water & Sewer Department.

Mr. Renfrow reported on water conservation, reduced water demands for Miami-Dade County and the requested changes to the Consumptive Use Permit (CUP). He reported on deferring some of the projects.

Maribel Balbin, Office of Sustainability, Miami-Dade County, commented on the Miami-Dade's CUP, the County's water conservation plan, and FDEP's Conserve Florida Guide. Ms. Balbin also reported on Miami Dade County's water savings incentive program and the education and outreach programs implemented in Miami Dade County. These water conservation programs have been extremely successful in the County.

Mr. Michael Collins commended staff in Miami Dade County for their leadership regarding water conservation. He commented on the wonderful mentoring program in Miami-Dade County and thanked them for succeeding in water conservation.

**5. Agenda Addendum - Annette Carter, Director, Office of Governing Board & Executive Services**

Annette Carter, Director, Office of Governing Board & Executive Services read into the record:

Section 120.525, Florida Statutes, allows the District to change the published agenda for good cause shown, as determined by the presiding officer. Based upon that authority, the Chairman has determined that good cause exists to make certain changes to the Agenda. These changes are being made in order to permit the Governing Board to efficiently accomplish necessary public business at this meeting and to reflect the items on the agenda that have been requested or suggested to be deleted, revised, supplemented or postponed. These changes have been listed in the Governing Board Addendum available at the entrance to this meeting room.

Ms. Carter also announced Item 43 has been added to the Consent Agenda.

**6. Abstentions by Board Members from items on the Agenda**

Joe Collins announced his abstention for Discussion Agenda Item 31.

Ms. Estenoz provided a disclosure on Agenda item 27. Her husband's law firm wrote a letter four years ago to Miami Dade County related to this piece of property. Her husband does not have a current client related to matters on this parcel but in the interest of full disclosure, she is reporting this information.

**7. Project & Lands Committee Report - Pat Rooney, Chair**

Pat Rooney reported on the Project and Lands Committee meeting which was held on January 13, 2010 in Key Biscayne, Florida.

**8. Water Resource Advisory Commission (WRAC) Report - Shannon Estenoz, Chair**

Doug Yoder, WRAC member, provided the WRAC Report which was held on January 6, 2010 in West Palm Beach, Florida. Mr. Yoder reported on the WRAC members from the utility companies and the importance of water resource management.

Mr. Yoder then commented on WRAC discussions regarding adaptive protocols and the complex issues in terms of meeting needs that may not be possible to meet simultaneously.

Mr. Yoder also reported on the State law of ocean outfalls and the increased costs for the capital improvements.

Mr. Michael Collins commented on Florida Key Aqueduct Authority's CUP and the modifications to their permit due to capital improvements. He said as long as Miami Dade is in-house and in compliance, staff will work with them on changes they may need to do to their CUP.

Ms. Estenoz said this will be a continued item needing to be discussed at WRAC and the Board meetings.

Mr. Yoder also discussed the utilities using the District's modeling in connection with water use permits.

Ms. Estenoz reported there will be a WRAC/Governing Board joint meeting which will be held on February 9, 2010.

Ms. Estenoz also reported that Biscayne Bay Coastal Wetlands is an issue for WRDA 2010.

Ms. Estenoz requested that the Governing Board get informed of staff's recommendation to the USACE regarding the releases into the Caloosahatchee Estuary.

Mr. M. Collins reported on the recreational issues report and concerns from the hunters that the District may be backing off from the District policy.

Ms. Estenoz commented her interpretation of the meeting: reaffirming the recreational program is a good one.

Mr. Olliff said the focus of the meeting was taking advantage of the captive audience and that there are a large number of hunters waiting there for no-show permits. The duck hunters love the hunting but may not be aware of what the STAs are really there for.

Mr. M. Collins reported on the Policy adopted by the Board which states where it is consistent and where we can, the District will develop programs to allow public access for all compatible uses.

Mr. Joe Collins said this program has been an overwhelming success.

Ms. Wehle said she will send a letter to Nick Wiley, Director, Fish & Wildlife Commission, welcoming him and provide a brief background on the hunting in the STAs and to thank him for future-continued support.

Public Comment: Jim Murley, Miami resident, WRAC member, thanked the Board and staff for continued support for of the Miami River Commission and the protection of the Miami River.

## Consent Agenda

**9. Public Comment on Consent Agenda**

There was no public comment.

**10. Pull Items for Discussion from Consent Agenda**

Pat Rooney pulled Consent Agenda Item 15 for discussion.

**11. Board Comment on Consent Agenda**

There was no Board comment on the Consent Agenda.

**Regulatory Matters**

**12. Denials**

Consent Agreements

Conservation Easement and Releases

Water Shortage Variances

Page 1 No 1 Quatraine III (WU Denial): **Postponed**

Page 2 No 1 Gonzalez Estates (ERP Denial): **Withdrawn**

Page 6 No 1 Enclave at Rapallo Boardwalk (Conservation Easement): **Postponed** to February Board

Page 7 No 1 Vanguard Village HOA Number 15 (Water Shortage Variance): Permit Number **Corrected** to 06-05551-W

**13. Right of Way Occupancy New Permits**

**Everglades Restoration and Capital Projects**

**14. 2010-101** A Resolution of the Governing Board of the South Florida Water Management District approving Staff recommendations for releases of District canal, mineral and road reservations, releases of Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.) canal reservations, and issuance of non-use commitments; providing an effective date. (Vinola Rada, ext. 6158)

**Executive Office**

**16. 2010-103** A Resolution of the Governing Board of the South Florida Water Management District authorizing the transfer of funds within the District FY2009-2010 budget as shown on the attachment hereto; providing an effective date (Mike Smykowski, ext. 6295).

17. **2010-104** A Resolution of the Governing Board of the South Florida Water Management District to authorize District staff to intervene in the lawsuit styled U. S. Bank, N.A., as Successor Trustee v. Margaret Froggatt, Michelle Harper, and Donnie Harper, Jr., a/k/a Donnie Harper, et al., Case Number 2009 CA 0029 filed in the Circuit Court of the 19th Judicial Circuit in and for Okeechobee County or to file suit to quiet title, pursue any appropriate damages and remedies, and take all appropriate action, including the authority to settle the matter, subject to the approval of the Executive Director, against Margaret M. Froggatt, Michelle H. Harper, and Donnie Harper, Jr., and other appropriate or necessary parties, in the 19th Judicial Circuit Court in and for Okeechobee County, providing an effective date. (Keith Williams, ext. 2791)
18. **2010-105** A Resolution of the Governing Board of the South Florida Water Management District authorizing a settlement agreement for \$180,000.00, plus \$40,590.00 for statutory attorneys fees, and \$13,000.00 for experts fees and costs, for which Ad Valorem funds (Capital Projects Okeechobee) and Dedicated Funds (Florida Forever Trust Fund) are budgeted, for a condemnation action involving approximately 5 acres (Tract No. 003-779 Dorothy and Albert Rinkenback), within the designated boundaries of the Southern Corkscrew Regional Ecosystem Watershed Project (Critical Crew Project), styled South Florida Water Management District v. Richard H. Capen, et al., filed in the 20th Circuit Court for Lee County, Florida, Case No. 04-CA-1657; providing an effective date. (Ed Artau, ext. 6431)

#### **Regulatory and Public Affairs**

43. **2010-115** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into an agreement with one Fiscal Year 2010 Alternative Water Supply project in an amount not to exceed \$190,500 as shown in Exhibit A, \$95,250 originally budgeted in Fiscal Year 2008 as Dedicated funds (State Appropriation); and \$95,250 originally budgeted in Fiscal Year 2009 as Ad Valorem funds; and authorizing staff to certify forward and reallocate these funds from previous authorized alternative water supply projects as appropriate; providing an effective date. (Mark Elsner, ext. 6156)
19. **2010-106** A Resolution of the Governing Board of the South Florida Water Management District authorizing recertification of \$3,441,100 in previously approved and encumbered but unspent FY2009 state appropriations for Alternative Water Supply projects; providing an effective date. (Mark Elsner, ext. 6156)

#### **Corporate Resources**

20. **2010-107** A Resolution of the Governing Board of the South Florida Water Management District authorizing the recording of the disposition of fixed assets, during fiscal year 2009; providing an effective date. (Jon Gleason, ext. 6380)
21. Authorize publication of the Notice of Rule Development in the Florida Administrative Weekly (FAW) to add new rules to Chapter 40E-7, Part II, F.A.C., regarding the procurement of goods and services for the South Florida Water Management District. (Frank Hayden, ext. 6043)

#### **Operations and Maintenance**

- 22. 2010-108** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 270 day contract with ZFI Engineering & Construction Incorporated, the lowest responsive and responsible bidder, for the Kissimmee Boat Ramp and Day Use Facility, in the amount of \$849,532.96 for which \$820,000 is budgeted using non ad valorem funds (Capital Projects Save Our Rivers Fund) and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 4600001990) (Dan Cotter, ext. 2301)
- 23. 2010-109** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 3 year contract with the Ohio State University, subject to successful negotiations, for Assessing Nutrient Removal Efficacy and Uptake Pathways of Several Native Wetland Plant Species in the amount of \$270,000 of which ad valorem funds (Everglades Trust Fund) in the amount of \$85,000 are budgeted; and the remainder is subject to Governing Board approval of the FY11-FY12 budgets; providing that, if negotiations are unsuccessful with the Ohio State University, the District will proceed with negotiations in ranked order until a contract has been successfully negotiated; providing an effective date. (Contract Number 4600001988) (Shili Miao, ext. 6638)
- 24. Board Vote on Consent Agenda**

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 43  
Vote called. Voting yes: Shannon Estenoz, Michael Collins, Eric Buermann, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

### Discussion Agenda

#### **Everglades Restoration and Capital Projects**

- 15. 2010-102** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to contract 3600000952 with HydroMentia, Inc. for operation and maintenance of the Taylor Creek Algal Turf Scrubber® Nutrient Recovery Facility, and authorize a Sole Source Procurement as an exception to the general standards of competition, to extend the term by one year, from January 31, 2010 to January 31, 2011, in the amount of \$270,000, for which dedicated funds (Save Our Everglades Trust Fund) are available from HydroMentia, Inc. contract 4600001289 which is being terminated; providing an effective date. (Contract Number 3600000952-A04) (David Unsell, ext. 6888)

Mr. Rooney questioned the costs of the contract, the technology not working and additional funding for the study.

Tommy Strowd, Assistant Deputy Executive Director, Everglades Restoration & Capital Projects provided an explanation of the funding for last year and that there are questions needing to be answered regarding the source water that is inhibiting the productivity of the Algal Turf Scrubber system.

Ms. Estenoz reported the Legislature appropriated money for this project.

Mr. M. Collins said we are being asked to run this program and it is the District's responsibility to let the Legislature know that this technology is not working.

Mr. Dauray requested a termination date for this contract.

Ms. Estenoz requested an explanation of this project as a polishing technology.

Mr. Kevin Powers commented on budget issues for the District and the Board being responsible for taxpayers dollars.

Ms. Wehle said staff will provide a presentation to the Board on upcoming Green Technology proposals.

Mr. Joe Collins had concerns about the length of the contract and the costs for finding out what is in the source water.

Mr. Dauray said funds invested in new technologies are speculative and budget issues may have an impact on funding speculative ventures.

Mr. M. Collins suggested developing criteria that outlines District requirements and timing.

Mr. Powers commented that a Green Technology Workshop will be a good opportunity to focus on best performers and funding.

Motion made by Patrick Rooney, seconded by Jerry Montgomery to NOT approve Agenda Item 15. Vote called. Voting yes: Michael Collins, Kevin Powers, Charles Dauray, Eric Buermann, Jerry Montgomery, and Joe Collins. Not present: Shannon Estenoz. Motion passed to not approve this agenda item.

- 25. 2010-110** A Resolution of the Governing Board of the South Florida Water Management District authorizing FY10 funding in the amount of \$1,000,000 as the South Florida Water Management District's 50% cost share contribution towards the Ten Mile Creek Water Preserve Area Critical Restoration Project's remediation effort and approving a budget transfer in the amount of \$1,000,000 of ad valorem funds (Okeechobee Basin Capital Fund) from the Operations and Maintenance Resource Area, Operations and Maintenance Program to the Everglades Restoration and Capital Projects Resource Area, CERP Program; providing an effective date. (Tommy Strowd, ext. 6998)

Tommy Strowd, Assistant Deputy Executive Director, provided background information on this agenda item.

Mr. M. Collins said he doesn't feel the District has to pay for the USACE's rebuilding of this project. He said the District is committed to the original contribution.

Mr. Montgomery has concerns by agreeing to this 50/50 cost share of this report, it will set the stage for 50/50 cost share on the repairs to Ten Mile Creek. That clearly is not the District's responsibility.

Mr. Montgomery requested that the District require in the report a clarification that that the \$1M is for the report only and is not a predicate for 50/50 cost share of the remediation. This is the federal government and USACE's direct responsibility.

Mr. Ammon explained the USACE can express an intent of paying 100 percent of the costs but Congress will have to agree to it. When appropriations are requested, Office of Management & Budget (OMB) typically requires a local sponsor cost share of any money coming out of a Congressional authorization.

Mr. Michael Collins said we are having to go through this because of a series of mistakes made by the USACE.

A motion was made by Kevin Powers and seconded by Michael Collins to approve Agenda Item #25 with the following contingency: Prior to providing the \$1,000,000 cash contribution, staff will receive a written commitment from the Corps that the Ten Mile Creek Post-Authorization Change Report will clearly state that the SFWMDs contribution of \$1,000,000 to cost-share in the development of the Post-Authorization Change Report does not commit the SFWMD to cost-share on implementation of project modifications recommended by the report that are associated with remediating deficiencies in the design or construction of the existing project features. Voting called. Voting yes: Kevin Powers, Michael Collins, Charles Rooney, Eric Buermann, Jerry Montgomery, Joe Collins, Patrick Rooney. Not present for vote: Shannon Estenoz. Motion passed.

### **Executive Office**

- 26. 2010-111** A Resolution of the Governing Board of the South Florida Water Management District authorizing a settlement and authorizing the Executive Director to execute a Stipulation for Settlement and Final Judgment in furtherance of same in connection with an inverse condemnation action involving lands within the Biscayne Coastal Wetlands Project, styled Cutler Properties, LC v. South Florida Water Management District, filed in the 11th Judicial Circuit Court in and for Miami-Dade County, Florida, Case No. 08-46701 CA 5; providing an effective date. (Michael Compagno, ext. 6842) **Time Certain - 10:30 AM or as soon thereafter as possible**

Keith Rizzardi, Managing Attorney, reported on the Attorney Client Session which was held on January 13, 2010. He said settlement talks are continuing and reported there will be another Attorney Client Session.

Public Comment: Commissioner Katie Sorenson, Miami Dade County, commented on the importance of restoring Biscayne Bay and supports the land acquisition.

Public Comment: Eugene Flinn, Mayor Palmetto Bay, supports the land acquisition for the restoration of Biscayne Bay.

Public Comment: Mayor Paul Vrooman, Town of Cutler Bay, supports the land acquisition. It is essential for Biscayne Bay.

Public Comment: Councilman Tim Meerbott, Town of Cutler Bay, supports the land acquisition.

Public Comment: Barbara Condon, Cutler Properties, supports the denial of the permit and this land acquisition.

Public Comment: Ed MacDougall, Town of Cutler Bay, supports to move forward with this settlement and acquire this land.

Public Comment: Jose Gay, citizen, supports the land acquisition.

Public Comment: Fred Herling, Old Cutler Glen Homeowners Association, supports this land acquisition.

Public Comment: Kahlil Kettering, NPCA, supports the land acquisition for CERP but also commented on the fiscal responsibility by the Board.

Public Comment: Beth Kibler, Old Cutler South, commented on CERP goals and supports the land acquisition proposed.

Public Comment: Joan Lindsay, Concerned Citizens of Old Cutler, Inc. commented on the preservation of Biscayne Bay and supports the land acquisition of this property to preserve the coastal wetlands.

Public Comment: Tammy Renicker, Biscayne National Park, read into the record a letter from Mark Lewis, Superintendent of Biscayne National Park.

Public Comment: Lara Reynolds, Tropical Audubon Society, said she is looking forward to the C-111 groundbreaking. The community supports the restoration of Biscayne Bay and acquiring this parcel of land.

Public Comment: Dawn Shirreffs, Clean Water Action, supports this land acquisition.

Public Comment: George Jones, self, commented that this purchase is extremely important and urges the Board to move forward with land acquisition.

Public Comment: Eric Tullberg, Green Mobility Network, supports the preservation of the wetlands.

Public Comment: Eduardo Varano, self, supports denying this permit as it stands. He said this property is very important for possible water flow back to Biscayne Bay.

Public Comment: Matthew Whiting, self, supports this land acquisition.

Public Comment: Theresa Woody, US DOI, stated the Department of Interior supports the land acquisition.

Public Comment: Stephen Zarzecki, citizen of Cutler Bay, commented on the preservation of Biscayne Bay and supports approving this settlement.

Chair Buermann said this item is very dear to his heart having grown up in Miami and said this is not a simple decision.

Mr. Dauray reported, on the national level, the Isaac Walton League supports the preservation of Biscayne Bay Coastal Wetlands.

Ms. Estenoz said she is confident that the decision made will be good for Biscayne Bay, CERP, and work that the Agency is trying to accomplish for restoration throughout the ecosystems.

After Attorney Client Session was completed on January 14, 2010, it was announced that Agenda Item 26 and 27 have been deleted off the agenda.

A waiver was granted on Agenda Item 27 and these items will be continued at the February meeting.

**44. 2010-116**

A Resolution of the Governing Board of the South Florida Water Management District authorizing District staff to appear as amicus curiae, to intervene, to pursue any claims or defenses as appropriate, or to take other actions as appropriate, subject to the approval of the Executive Director, in a rule challenge styled Mariner Properties Development Inc and Little Pine Island Wetlands Mitigation Bank, Ltd. v. Southwest Florida Water Management District, Case No 09-6973.

Keith Rizzardi, Managing Attorney, presented information this recently-filed rule challenge. Staff are reviewing the petition. The hearing is currently set for January 25, 2010.

Motion made by Shannon Estenoz, seconded by Jerry Montgomery to Approve the following item(s): 44

Vote called. Voting yes: Shannon Estenoz, Jerry Montgomery, Eric Buermann, Joe Collins, Michael Collins, Charles Dauray, Kevin Powers, Patrick Rooney. Motion passed.

**Regulatory and Public Affairs**

**27. Deny Environmental Resource Permit Application 050406-1 for a project known as Cutler Properties, Miami-Dade County (Robert M. Brown, ext. 6283)**

After Attorney Client Session was completed on January 14, 2010, it was announced that Agenda Item 26 and 27 have been deleted off the agenda and will be continued at the February 2010 Governing Board meeting. A waiver was granted on behalf of the applicant, Howard Nelson, until February 12, 2010.

**28. 2010-112 A Resolution of the Governing Board of the South Florida Water Management District to amend a cooperative agreement with Istokpoga Marsh Watershed Improvement District and Florida Department of Agriculture and Consumer Services for the Alternative Water Storage/Disposal and Stormwater Recycling Project in an amount not to exceed \$1,515,236 in FY10, subject to the release of funding by the Florida Department of Environmental Protection, for which dedicated funds (Save our Everglades Trust Fund) are budgeted in Everglades Restoration and Capital Projects, Coastal Program, and authorize a budget transfer to Regulatory and Public Affairs, Lake Okeechobee Program, with this agreement; and an amount not to exceed \$1,107,910 in FY11, subject to Governing Board budget approval; providing an effective date (Contract Number 4600001716-A2) (Benita Whalen, ext 2957)**

Robert M. Brown, Director, Environmental Resources Regulation Department, presented information on this agenda item.

Mr. Brown provided background information on the Istokpoga Marsh Watershed Improvement District (IMWID), and the project goals between the District and IMWID.

Mr. Joe Collins said this project pre-dates the Water Management District and he commended Mr. Brown and his staff for building a strong relationship with the people of the IMWID.

Motion made by Joe Collins, seconded by Jerry Montgomery to Approve the following item(s): 28

Vote called. Voting yes: Joe Collins, Jerry Montgomery, Eric Buermann, Michael Collins, Charles Dauray, Shannon Estenoz, Kevin Powers, Patrick Rooney. Motion passed.

- 29. 2010-113** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into an amendment to the Cooperative Agreement with the City of Naples to extend the term for eight (8) months to continue the construction of the Basin V Stormwater Quality Improvements, in the total amount of \$5,300,000 for which the District's contribution will be \$1,050,000 in dedicated Big Cypress Basin funds budgeted in FY10; reviewed and recommended for approval by the Big Cypress Basin Board on October 30,2009; providing an effective date. (Contract No. 4600001679) (Max Guerra, ext. 7612)

Terrie Bates, Assistant Deputy Executive Director, Regulatory & Public Affairs, provided information on this agenda item.

Motion made by Charles Dauray, seconded by Shannon Estenoz to Approve the following item(s): 29

Vote called. Voting yes: Charles Dauray, Shannon Estenoz, Eric Buermann, Joe Collins, Jerry Montgomery, Kevin Powers, Patrick Rooney. Not present: Michael Collins. Motion passed.

**30. Public Comment**

- Regulatory Policy Issues
- General Public Comment

Public Comment: Alex Urquia, UW Florida, commented on hunting on the STAs and said it is a treasured privilege. He thanked the Board and requested more opportunities for hunting on other property.

Public Comment: Julie Hill Gabriel, Audubon, commented on Cutler property and supports staff working together on this project and other CERP projects.

Public Hearing

**Everglades Restoration and Capital Projects**

- 31. 2010-114** A Resolution of the Governing Board of the South Florida Water Management District adopting amendments to the SFWMD Florida Forever Work Plan, 2010 Annual Update, contained in Chapter 6A, Volume II of the 2010 South Florida Environmental Report; providing an effective date. (Ruth Clements, ext. 6271/Wanda Simpson, ext. 6445)

Note: Joe Collins abstained from voting on this agenda item.

Chair Buermann opened the Public Hearing.

Ruth Clements, Director, Land Acquisition Department, reported on the amendments to the Florida Forever Work Plan.

Chair Buermann closed the Public Hearing.

Motion made by Michael Collins, seconded by Shannon Estenoz to Approve the following item(s): 31

Vote called. Voting yes: Michael Collins, Shannon Estenoz, Eric Buermann, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Abstained: Joe Collins. Motion passed.

**Regulatory and Public Affairs**

32. Adopt additional changes to Chapters 40E-2, 40E-20, and 40E-24, F.A.C., to address proposed objection from the Joint Administrative Procedures Committee. (Jennifer Bokankowitz, Ext. 2258)

Chair Buermann opened the Public Hearing.

Terrie Bates, Assistant Deputy Executive Director, Regulatory and Public Affairs, provided information on the comments of the Joint Administrative Procedures Committee (JAPC). Ms. Bates then provided the proposed changes to the rule.

Public Comment: Julie Hill Gabriel, Audubon, commended Broward County for going forward with 2-days a week of landscape irrigation, and for Miami-Dade County's strides in water conservation. Audubon looks forward to continuing advocating water conservation.

Public Comment: Lisa Wilson Davis, City of Boca Raton, supports water conservation and commented on Mr. Yoder's request for keeping the water savings from conservation and said she looks forward to working together on that issue.

Public Comment: Randy Brown, Southeast Florida Utility Council, supports the changes to this rule to address JAPC's concerns. He requested the District support in ensuring local governments activities remain clearly under the District's authority for CUPs.

Public Comment: Paul Mattausch, Collier County, supports water conservation, and commented on the Collier County's reduction of water consumption. Collier County does not believe they have the legal authority to impose or enforce landscape irrigation restrictions on self-supplied landscape irrigation users that have permits issued by the District.

Beth Ross, Sr. Supervising Attorney, provided an explanation of the components of the existing rule.

Chair Buermann closed the Public Hearing.

Motion made by Shannon Estenoz, seconded by Jerry Montgomery to Approve the following item(s): 32

As amended to include 40E-24.301; 40E-24.011 and 40E-24.201.

Vote called. Voting yes: Shannon Estenoz, Jerry Montgomery, Eric Buermann, Joe Collins, Michael Collins, Charles Dauray, Kevin Powers, Patrick Rooney. Motion passed.

## Staff Reports

33. **General Counsel Report** - Sheryl Wood

Sheryl Wood, General Counsel, provided an update to the Board of the Office of Counsel activities. There were two personal injury lawsuits; one was filed, the other dismissed, and she also provided an update regarding Palm Beach Townhomes.

34. **Executive Director's Report** - Carol Wehle

- Report on Permits Issued by Authority Delegated to Executive Director from December 1 to December 31, 2009

Ms. Wehle reported on the permits issued by Authority delegated to the Executive Director from December 1st through December 31, 2009.

**35. Board Comment**

There was no Board comment.

Attorney Client Sessions

**Executive Office**

- 36.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and / or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and / or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno. (Sheryl G. Wood, ext. 6976)

Chair Buermann adjourned to Attorney Client Session at 11:55 a.m. He announced the meeting would reconvene in approximately 60 minutes.

Chair Buermann reconvened the meeting at 1:32 p.m.

Sheryl Wood, General Counsel, reported no action is required at this time for Agenda Item 36.

- 41.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009), to discuss strategy related to litigation expenditures and/or settlement negotiations in Cutler Properties, LC v. South Florida Water Management District, Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. 08-46701 CA 5. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009), to discuss strategy related to litigation expenditures and/or settlement negotiations in Cutler Properties, LC v. South Florida Water Management District, Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. 08-46701 CA 5. (Sheryl G. Wood, ext. 6976)

Sheryl Wood, General Counsel, announced there was direction from the Board. The District's attorney will discuss with Cutler Properties' attorney the Board's direction and if there are any changes, it will brought back to the Board before the end of the meetng.

Sheryl Wood, General Counsel, announced, subject to a waiver being granted by the applicant on Agenda Item 27, she suggested deleting Agenda Item 26 and 27 from agenda, asking both parties to continue the mediation process. This will be brought back as an Attorney Client Session at the February Governing Board meeting.

Howard Nelson, Attorney, representing Cutler Properties, granted a waiver of time until February 12, 2010.

## Adjournment

### **42. Adjourn**

Chair Buermann adjourned the meeting at 2:15 p.m.

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Eric Buermann  
Governing Board Chairman  
South Florida Water Management District Governing Board

Recorded By:

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Cathy Widness  
Administrative Assistant Senior  
Governing Board and Executive Services  
SFWMD

Motion made by Michael Collins, seconded by Jerry Montgomery to Approve the following item(s): 42

Vote called. Voting yes: Michael Collins, Jerry Montgomery, Eric Buermann, Joe Collins, Charles Dauray, Shannon Estenoz, Kevin Powers, Patrick Rooney. Motion passed.