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## South Florida Water Management District

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### MINUTES GOVERNING BOARD WORKSHOP

September 8, 2010

12:00 PM

District Headquarters - B-1 Auditorium

3301 Gun Club Road

West Palm Beach, FL 33406

Members Present:

**Sandy Batchelor**

**Eric Buermann, Chair**

**Joe Collins**

**Charles Dauray**

**Shannon Estenoz**

**Jerry Montgomery**

**Kevin Powers**

**Glenn Waldman**

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

Chair Buermann called the meeting to order at 12:00 p.m.

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

**The meeting may go directly to Attorney Client Session and other agenda items will start no earlier than 1:00 PM**

Mr. Dauray led the group in the Pledge of Allegiance.

Mr. Dauray remembered those lost in the 9/11 tragedy. He requested a moment of silence at the Governing Board meeting on 9/9/10.

Chair Buermann recessed to Attorney Client Session at 12:05 p.m. He announced the meeting would reconvene in approximately 60 minutes.

Chair Buermann reconvened the meeting at 1:28 p.m.

**3. Approval of Minutes**

Approval of the Minutes for the August 11, 2010, Workshop and August 12, 2010, Regular Business meetings held in West Palm Beach, Florida

Motion made by Jerry Montgomery, seconded by Joe Collins to Approve the following item(s): 3  
Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Shannon Estenoz, Kevin Powers, Glenn Waldman.  
Motion passed.

**4. 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. The Chairman has determined good cause exists. These changes are being made in order to permit the Governing Board to accomplish necessary public business at this meeting and to reflect the items on the agenda that have been deleted, revised, added or postponed. These changes have been listed in the Addendum available to the public at the entrance to this meeting room and provided to the Governing Board.

**5. Abstentions by Board Members from items on the Workshop Agenda**

Joe Collins abstained from Agenda Item 12.

Ms. Estenoz announced two disclosures on Agenda Item 9:

1. Regarding FPL Site Certification at Turkey Point, Ms. Estenoz stated her husband represents clients in two proceedings, both federal and state. This agency has both formal and informal roles in those proceedings. There are issues related to groundwater management that may come up in the presentation.

2. Ms. Estenoz also disclosed an inactive issue on Agenda Item 9 which could come up. Her husband has litigated and/or represented clients on issues related to a property known as Atlantic Civil SDI Property and the issue of groundwater management may come up in this presentation.

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

There were no items pulled from the Consent Agenda for discussion.

Mr. Powers requested a discussion regarding the memo that was addressed to WRAC by Sheryl Wood, General Council, dated August 31, 2010, regarding WRAC members and their firms doing business with the District or subject to the regulation of the District.

**7. Comprehensive Everglades Restoration Plan 2010 Report to Congress - Kimberely Taplin, P.E., West Palm Beach Deputy Program Manager for Restoration, US Army Corps of Engineers**

Kim Taplin, West Palm Beach Deputy Program Manager for Restoration, presented an update on the Comprehensive Everglades Restoration Plan (CERP) reported to Congress.

Ms. Taplin reported on the five years of progress: Site 1 Impoundment, Picayune Strand Restoration, Indian River Lagoon South, continuation of the Kissimmee River restoration, groundbreaking and construction on Tamiami Trail and state expedited projects.

Public Comment: Rosa Durando, citizen, disputes Acme Basin B as part of the USACE's five years of progress.

Public Comment: Drew Martin, Sierra Club, complimented the USACE's accomplishments and also the purchase of the River of Grass land acquisition. His concerns are getting a sheetflow south of the Lake and also the court rulings of water quality to the Everglades.

Public Comment: Pete Quasius, Collier Audubon, supports moving forward with the C-44 Reservoir.

**8. Everglades Restoration Transition Plan** - Susan L. Conner, Chief, South Florida Section, Environmental Branch, Planning Division, US Army Corps Engineers

Susan Conner, USACE, presented information on the Everglades Restoration Transition Plan Phase 1. The objectives are to improve conditions for the Everglades Snail Kite, Wood Stork and other wading birds and their habitats in WCA-3A; to maintain nesting season requirements for the Cape Sable Seaside Sparrow; and to maintain other C&SF projects.

Ms. Conner then reported on Chapter 1, alternatives A, B, & C on plan; Chapter 2, Human Health and Safety constraint; and Chapter 3, Final Array of Alternatives. Ms. Connor also addressed the District's concerns which include water quality, water supply/storage, potential downstream impacts, ecological considerations, and effects on Lake Okeechobee and the estuaries.

Ms. Wehle thanked the USACE for their presentations and highlighted one technical issue which does affect the Consent Decree. The District has requested the USACE evaluate water quality impacts with each of their alternatives. Ms. Wehle noted this will give the agency an opportunity to review potential water quality impacts to Tamiami Trail and Everglades National Park. Ms. Wehle discussed a possible transition plan for moving water south that is needed by Everglades National Park and Florida Bay with a recovery strategy. She said this is an important public policy question needing to be discussed with the Technical Oversight Committee, the Board and the USACE.

Public Comment: Rosa Durando, citizen, commented on the USACE's objectives and her concerns with water quality and the protection of Snail Kites.

Public Comment: Drew Martin, Sierra Club, said water quality has to be a part of the modeling and hopes the USACE is considering this issue.

Public Comment: Dawn Shirreffs, National Parks Conservation Association, said we need to execute Tamiami Trail and stated the National Parks will not support any operational plan that hurts the Cape Sable Seaside Sparrow.

Public Comment: Martha Musgrove, Marshall Foundation, questioned what is the USACE going to do at the end of the IOP plan.

**9. South Miami-Dade Water Issues Coordination Update - Scott Burns, Chief Scientist, Everglades Restoration & Capital Projects (ext. 6544)**

Scott Burns, Chief Scientist, Everglades Restoration & Capital Projects, presented an update on the South Miami-Dade water issues coordination. Mr. Burns provided background activities effecting South Miami-Dade County:

- Ecosystem restoration (Everglades, Florida and Biscayne bays).
- Operations/water resource infrastructure (Water management system operations/maintenance Alternative water supply development).
- Regulatory framework to protect water supply and the natural system.

Mr. Burns then reported on the technical challenges and explained the Executive Office established the Water Issues Coordination Initiative in February 2010 to provides oversight and coordination to multiple south Miami-Dade projects. Mr. Burns reviewed the responsibilities of the Coordinator:

- Identifies issues, potential conflicts and resource needs.
- Develops solution options for senior management action.
- Works with project managers.
- Reports to senior management oversight team and to the SFWMD Deputy Executive Director.

Mr. Burns identified the Water Issues Coordination projects: FPL Turkey Point, seasonal drawdown issues, water control structures, rock mining, C-111 West Spreader Canal project, Biscayne Bay Coastal Wetlands, Biscayne Bay rulemaking. Florida Bay Research, South Miami Dade outreach, regulatory compliance, and litigation support. He reported on the progress of the FPL 5th Supplemental Agreement, FPL Unit 6 and 7 Site Certification Application, rock mining impact evaluations, CERP projects and regulatory compliance, Biscayne Bay Water Resource Rule Development, South Miami Dade Outreach, Water Control structures, and the seasonal drawdown operations.

Mr. Burns explained the seasonal lowering of gate elevations at water control structures S-21A, S-20F and S-179 up to 0.8 foot lower range, if needed, based on field conditions for planting and harvesting of agricultural crops. These begin on October 15 and go through April 15th. Mr. Burns noted that these operational changes are influenced by the amount of rainfall that occurs.

Mr. Dauray questioned the interconnection between the system and possibly holding water in the Lake instead of moving water to tide.

Ken Ammon, Deputy Executive Director, Everglades Restoration and Capital Projects, said if a canal is lowered for flood protection, water typically flows to tide.

Mr. Dauray didn't want the public to have a misconception of how the system works.

Mr. Ammon commented on past water supply planning processes and said that Biscayne National Park is starved for fresh water especially in the dry season and staff are trying to reestablish flow as part of this process.

Ms. Estenoz commented on scheduled drawdowns, land use patterns in south Dade (agriculture) and the shift to containerized types of farming. She asked if their needs changed since 1981.

Mr. Burns provided information on past trends and said there has been an increase from row crops to nursery stock.

Chair Buermann asked for an update regarding the the Seasonal Agricultural Drawdown Study which was discussed at Project & Lands Committee meeting. The first phase looking at different options and whether to conduct smaller drawdowns or starting it earlier in the season to gradually reduce the water level. The second phase was stakeholder input and collecting data and monitoring.

Mr. Burns explained what has been done over the past few months including discussions with stakeholders, monitoring, statistical analysis being done by Virginia Tech and getting a better understanding on how the system operates. He also discussed the installation of a structure in the Florida City Canal to reduce saltwater inundation.

Ms. Estenoz requested the statistical analysis be done more quickly and also requested input from Biscayne National Park regarding the installation of the structure in the Florida City Canal which would cost \$350,000.

Joan Lawrence, Department of Interior, said she would get that information and report back to the Board.

Public Comment: Jane Graham, Audubon of Florida, provided written recommendations from Audubon regarding seasonal canal drawdown in Miami-Dade County. Audubon appreciates the study but requests permanent solutions.

Public Comment: Drew Martin, Sierra Club, commented on Best Management Practices and also does not support the FPL power plant and rock mining in the Lake Belt region.

Public Comment: Joan Lawrence, Department of Interior, commented on the seasonal drawdowns and the protection of freshwater going into the Biscayne Bay. She would also like the District to maintain consistency with the USACE's 404 permits regarding rock mining.

Note: Ms. Lawrence reported that Mark Lewis of Biscayne National Park, supports the construction of the structure in the Florida City Canal.

Public Comment: Lara Reynolds, Tropical Audubon Society, focused on the timeline for agricultural drawdowns. She said there is not shared adversity with the farmers. She requested installing a structure in the Florida City canal and periodic discussions with stakeholders.

Public Comment: Kahlil Kettering, National Parks Conservation Association, said the agricultural drawdown has a detrimental impact to Biscayne National Park.

**10. Elimination and Reduction of Wetland Impacts** - Robert M. Brown, Director, Water Resource Regulation Department (ext. 6283)

Robert M. Brown, Director, Water Resource Regulation Department, presented information on the elimination and reduction of wetland impacts. Mr. Brown reported on Chapter 40E-4:

- Sets forth requirements for various types of Environmental Resource Permits.
- Incorporates by reference Basis of Review for Environmental Resource Permit Applications.

Mr. Brown explained that the Basis of Review guides the District's review process and ensures consistent review/application of Environmental Resource Permit criteria. He also reported on the wetlands and other surface waters and environmental review criteria. In the environmental review process, the first step is the consideration of elimination or reduction of impacts. If the proposed system will result in adverse impacts to the functions provided by wetlands or other surface waters, then practicable design modifications must be considered to reduce or eliminate those adverse impacts.

Public Comment: Rosa Durando, citizen, commented on allowances of destruction of wetlands. She referred to the Briger Tract.

Public Comment: Drew Martin, Sierra Club, has concerns when land is purchased for mitigation but loses that protection and becomes developed.

**11. Uniform Mitigation Assessment Method - Anita Bain, Director, Environmental Resource Permitting Division (ext. 6866)**

Anita Bain, Director, Environmental Resource Permitting Division, reported on the Uniform Mitigation Assessment Method (UMAM), and the history of mitigation. Mitigation is required when a permit applicant proposes to fill wetlands as part of a development project.

The UMAM Rule, Chapter 62-345, F.A.C., evaluates functions of all types of wetlands and includes assessment of direct and secondary impacts to the wetlands. In reviewing the uses of UMAM, Ms. Bain explained what UMAM does address and what UMAM does not address. Ms. Bain explained the UMAM scoring for the different wetland communities.

Ms. Bain reported on ongoing and recent efforts with Audubon and those elements being incorporated into the UMAM training including those that would require rule change:

- Natural water storage - track storage volume changes (depth) due to wetland loss.
- Require pre/post linear measurement & preservation of wetland/upland interface.
- Melaleuca dominated wetlands - Score Water Environment and Location/Landscape factors as if melaleuca is not present.
- Scarcity adjustment factor.

Jason Lauritsen, Audubon of Florida, provided a packet to Board members reporting on refining implementation of UMAM. Mr. Lauritsen reported on Audubon's findings:

- Rule:

General addressing of all wetland functions.

Specific mechanisms for measuring some functions.

Some functions left to best professional judgment & staff discretion.

-Implementation:

Quantification of functions not transparent.

Do track forested & herbaceous functional groups.

Do not consistently track other functional groups (Hydroperiod, Relative rarity (i.e. scarcity), wetland-upland interface, water storage).

-Results:

Impacts to certain functions are not accounted for and mitigation of those impacts is at times inadequate.

Mr. Lauritsen focused on using the existing mechanisms within the UMAM rule to improve the ability to score and track.

Brad Cornell, Audubon of Florida, summarized the recommendations including:

- Guidance memo to staff on applying rule

- Using track sheet for identifying wetland functions and impacts plus enhancing transparency.

- The importance of exotic removals and hydrologic restoration.

- Also, scoring uniqueness and scarcity.

Mr. Cornell thanked the Governing Board and District for working on this issue as there are unsustainable wetland losses in South Florida.

Ms. Wehle reported Audubon's recommendations fall into four categories:

1. If the District can implement the recommended changes, these changes be brought to WRAC for vetting among the stakeholders.

2. A guidance memo to staff cannot be done as this would be incipient agency policy and not legally appropriate.

3. Recommendation on interpretation, however, can be presented to all the water management districts through the Anti-Drift Committee.

4. Changes to rulemaking must be brought to FDEP.

Public Comment: Rosa Durando, citizen, commented on property owners taking responsibility of their own property.

Public Comment: Drew Martin, Sierra Club, questioned the scoring on flood protection and aquifer recharge.

Public Comment: Laura Reynolds, Tropical Audubon Society, applauded the Board and staff working with Audubon on this issue but thinks it is a broken system. She commented on rehydration of the wetlands.

Ms. Estenoz thanked staff and Audubon working together on these issues.

**12. Payment for Environmental Services: FY2011 Solicitation** - Benita Whalen, Deputy Director, Water Resource Regulation Department (ext. 2957)

Note: Joe Collins abstained from Agenda Item 12.

Benita Whalen, Deputy Director, Water Resource Regulation Department, provided an update on the Payment for Environment Services (PES) and reported on the proposed concepts and funding timeline.

Chair Buermann asked about liability issues under the contract.

Cathy Linton, Sr. Supervising Attorney, reported on indemnification language in the contract.

Ms. Estenoz asked about the selection process.

Ms. Whalen said there has been a wide-base of expertise for the selection committee.

Ms. Linton explained the proposal process.

Mr. Powers thanked staff for their hard work on this program.

Mr. Montgomery said this program is a work in progress. The District is trying new and different approaches for water storage and will need to be flexible and adjust the program with learning opportunities.

Public Comment: Charles Lee, Audubon, commented on the amount of money proposed for the budget and thinks more money should be allocated toward this program. He recommends Nicodemus Slough be completed.

Mr. Olliff said the program has a three-year investment for large projects and said \$2.5M is sufficient to do a large project and a few small projects for this fiscal year.

Public Comment: Pet Quasius, Collier Audubon, supports moving forward with this project and finding the funding for it.

Public Comment: Martha Musgrove, Marshall Foundation, supports the pilot projects that deal with citrus land and incorporating that in the budget.

Public Comment: Bob Ulevich, Citrus League, thanked the Board and staff for their support and looks forward to continued support with this program.

**14. Presentation of the Tentative FY2010-11 Budget - Mike Smykowski, Director, Budget Office (ext. 6295).**

This presentation was postponed until the Public Hearing Meeting at 5:15 p.m.

**15. Public Comment**

Public Comment: Joan Lawrence, Department of Interior, reported that Mark Lewis of Biscayne National Park, totally supports the construction of the structure in the Florida City canal.

**Executive Office**

**16. Attorney Client Sessions**

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.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, K. Burns, J. Nutt, F. Bartolone, and outside counsel D. Moore. (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)

Sheryl Wood, General Counsel, requested to continue the Attorney Client Session discussions on Agenda Item 16 either later today or on 9/9/10.

**17. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Friends of the Everglades, Inc. and Fishermen Against Destruction of the Environment, Inc. v. South Florida Water Management District, et al., United States Court of Appeals, Eleventh Circuit, Case No. 07-13829-HH; Miccosukee Tribe of Indians of Florida v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 98-6056-CIV-Lenard/Klein; and Friends of the Everglades v. South Florida Water Management District, United States District Court, Southern District of Florida, Case No. 98-6057-CIV-Lenard/Klein.**

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, J. Nutt, F. Bartolone. (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 Friends of the Everglades, Inc. and Fishermen Against Destruction of the Environment, Inc. v. South Florida Water Management District, et al., United States Court of Appeals, Eleventh Circuit, Case No. 07-13829-HH; Miccosukee Tribe of Indians of Florida v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 98-6056-CIV-Lenard/Klein; and Friends of the Everglades v. South Florida Water Management District, United States District Court, Southern District of Florida, Case No. 98-6057-CIV-Lenard/Klein. (Sheryl G. Wood, ext. 6976)

This item was deleted off the agenda.

18. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Miccosukee Tribe of Indians of Florida, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1817, and New Hope Sugar Company, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1818.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, F. Bartolone, K. Burns, J. Nutt, F. Bartolone. (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 Miccosukee Tribe of Indians of Florida, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1817, and New Hope Sugar Company, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1818. (Sheryl G. Wood, ext. 6976)

This item was deleted off the agenda.

19. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in B & E Ranch & Grove, LC. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-19; Chandler, et al. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-110; and Estate of Marvin Thomas, et al. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-20.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, J. Nutt, K. Williams, F. Bartolone. (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 B & E Ranch & Grove, LC. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-19; Chandler, et al. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-110; and Estate of Marvin Thomas, et al. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-20. (Sheryl G. Wood, ext. 6976)

This item was deleted off the agenda.

20. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009), to discuss strategy related to litigation expenditures and/or settlement negotiations in Black & Veatch Corp. v. South Florida Water Management District, Fifteenth Judicial Circuit, Palm Beach County, Case No. 2009-CA-31734 AH.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, Joe Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, J. Nutt, F. Mendez, R. Panse, F. Bartolone and outside counsel B. Kirwin. (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 Black & Veatch Corp. v. South Florida Water Management District, Fifteenth Judicial Circuit, Palm Beach County, Case No. 2009-CA-31734 AH.(Sheryl G. Wood, ext. 6976)

This item was deleted off the agenda.

21. **Adjourn**

Chair Buermann adjourned the meeting at 5:25 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