

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: August 29, 2008

SUBJECT: 1) Settlement Agreement in Resolution of *Orange County, Florida v. South Florida Water Management District* (DOAH Case No. 08-0259) and *Orange County, Florida v. South Florida Water Management District* (DOAH Case No. 08-2624RU); and
2) Final Order Vacating Proposed Agency Action on Orange County Application No. 060516-41 and Accepting Notice of Dismissal of Petition and Notice of Withdrawal of Application

Background

On December 13, 2007, the Governing Board denied Orange County's application for a consumptive use permit (Application No. 060516-41) authorizing withdrawals of surface water from the C-29 and C-29A canals, a part of the headwaters of the Kissimmee River ("Proposed Agency Action"). On December 31, 2007, Orange County filed a Petition for Administrative Hearing ("Petition") contesting SFWMD's decision to deny its application. (DOAH Case No. 08-0259), and on June 2, 2008, Orange County filed a Petition Challenging Agency Statements of South Florida Water Management District Pursuant to Section 120.56(4), Florida Statutes ("Rule Challenge").

Orange County and the District have reached a resolution of the pending litigation under terms identified in the Settlement Agreement and Final Order, including: 1) Cost-sharing development of a Central Florida comprehensive water supply plan with other area utilities to identify sufficient alternative water supply sources to meet projected demands; 2) Orange County's voluntary dismissal of the rule challenge; 3) Accepting the withdrawal of Orange County's Petition and Permit Application; and 4) District rescinding the proposed agency action denying the Permit Application.

How this helps meet the District's 10-year Strategic Plan:

These items assist the Strategic Plan by furthering the regional development of alternative water supplies from sustainable sources identified in Central Florida. This process includes City of St. Cloud, Tohopekaliga Water Authority, Orange County, Polk County and Reedy Creek Improvement District ("STOPR Parties").

Funding Source: In order to meet the short-term and long-term needs of water suppliers within Central Florida, Orange County, St. Cloud, District, and other participating water suppliers will complete a regional comprehensive water supply plan. The District's \$500,000 share of the funding will be subject to appropriation by the District's Governing Board in the 2008-2009 fiscal year budget and encumbered in October 2008 after the adoption of the 2008-2009 budget.

This Board item impacts what areas of the District, both resource areas and geography:

This Board item impacts Water Supply Department and assists in resolution of water supply issues in Central Florida.

What concerns could this Board item raise?

This item is in conjunction with the resolution of similar litigation with City of St. Cloud (also on the September Governing Board agenda), in which the District proposed to deny St. Cloud's application for Kissimmee River water supplies. The District's cost-share of \$500,000 towards development of the Central Florida comprehensive water supply plan is pledged as part of the settlement of both lawsuits.

Why should the Governing Board approve this item?

These items further collaborative water supply planning as well as regional development of alternative water supplies from sustainable sources identified in Central Florida.

If you have any questions, please do not hesitate to call me at extension 6976 or Beth Ross at extension 6257.

SGW/EDR/jls