

## MEMORANDUM

**TO:** Governing Board Members

**FROM:** Sheryl G. Wood, General Counsel

**DATE:** February 22, 2010

**SUBJECT: Action Required**

Authorization to file suit—

Big Island Excavating, Inc., William McDaniel, Jr. and all other appropriate parties to enforce the terms of a Consent Agreement (Order No. SFWMD 2009 003 CO WU)

### **Background**

This is a request for authorization to file suit against Big Island Excavating, Inc., William McDaniel, Jr. and all other appropriate parties to enforce the terms of a Consent Agreement entered into as a result of Big Island Excavating, Inc./William McDaniel, Jr. dewatering without a permit at a mining operation in Collier County, Florida. The Consent Agreement was approved by the Governing Board on January 13, 2009 and required payment of \$36,200 (\$34,200 in civil penalties and \$2,000 in staff costs). Half of the payment was due within 6 months of execution of the agreement and the other half of the payment was due within 12 months of execution of the Agreement. On September 10, 2009 a “Notice of Violation/Non-compliance Order” letter was sent to William McDaniel, Jr./Big Island Excavating, Inc. for failure to comply with the terms of the Consent Agreement/Order. Despite follow up by District staff, to date, Big Island Excavating, Inc. has failed to pay any monies whatsoever owed to the District under the terms of the Consent Agreement/Order.

### **How this helps meet the District’s 10 year Strategic Plan**

This effort directly supports the District’s Regulatory mission.

### **Funding Source**

This litigation will be handled by the District’s Office of Counsel. Any costs associated with this litigation will be paid from budgeted ad valorem funds.

### **This Board item impacts what areas of the District, both resource areas and geography?**

The original violation occurred in Collier County and impacts the District’s Regulatory program.

### **What concerns could this Board item raise?**

If this matter is not resolved, the violation of the District’s Consent Order would continue.

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**Why should the Governing Board approve this item?**

The Governing Board should approve this item to enforce and/or remedy the non-compliance with District Order No. SFWMD 2009 003 CO WU.

If you have any questions, please call me at ext. 6976, or Robert Panse at ext. 6279.

SGWRGP