

1 SOUTH FLORIDA WATER MANAGEMENT DISTRICT

2
3 RESOLUTION NO. 2011 - _____

4
5 A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER
6 MANAGEMENT DISTRICT REQUESTING THE RELEASE OF FUNDS IN THE AMOUNT
7 OF \$73,400.00 FROM THE FLORIDA FOREVER TRUST FUND BY THE DEPARTMENT
8 OF ENVIRONMENTAL PROTECTION FOR THE ACQUISITION OF LAND INTERESTS
9 CONTAINING 0.39 ACRES, MORE OR LESS, FOR THE KISSIMMEE RIVER
10 RESTORATION AND HEADWATERS REVITALIZATION PROJECT, IN POLK COUNTY,
11 IN THE TOTAL AMOUNT OF \$75,000.00, OF WHICH \$1,600.00 HAS BEEN PAID, AND
12 ASSOCIATED COSTS; PROVIDING AN EFFECTIVE DATE.
13

14 WHEREAS, the South Florida Water Management District has an active program underway to
15 acquire land interests for the Kissimmee River Restoration and Headwaters Revitalization Project ("Project");
16 and,

17 WHEREAS, pursuant to Section 373.139 (3)(c) Florida Statutes, the District is required to submit a
18 resolution to the Department of Environmental Protection when requesting funds from a trust fund, including
19 the Florida Forever Trust Fund; and

20 WHEREAS, in August of 2010 the Department of Environmental Protection approved and released
21 funds in the amount of \$1,600.00 in connection with the District's condemnation and perpetual flowage and
22 inundation easement acquisition by Order of Taking of 0.39 acres, more or less, for the Kissimmee River
23 Restoration and Headwaters Revitalization Project; and

24 WHEREAS, the \$1,600.00 was deposited into the court registry pending a valuation trial; and

25 WHEREAS, the District, with the full valuation trial pending, has settled the subject condemnation
26 case for a total amount of \$75,000.00.

27 NOW THEREFORE, BE IT RESOLVED by the Governing Board of the South Florida Water
28 Management District:

29 (1) It does hereby advise the Secretary of the Department of Environmental Protection of its intent
30 to settle the valuation, in connection with the condemnation and acquisition of a perpetual flowage and
31 inundation easement with respect to 0.39 acres, more or less, for the Kissimmee River Restoration and
32 Headwaters Revitalization Project in Polk County. With respect to the following land interests, the District
33 has an agreement to settle the valuation for a total price of \$75,000.00 of which \$1,600.00 has already
34 been deposited in the court registry. The lands are described in Exhibit "A" and as shown on location map
35 Exhibit "AA", which are attached hereto and made a part hereof.
36

Owner	Tract No.	Interest	Acres	Appraised Value	Purchase Price
Lynda K. Zipprer Mims	18117-007	Flowage & Inundation Easement	0.39	\$2,800	\$75,000
Totals			0.39	\$2,800	\$75,000

38 (2) The purchase price of \$75,000 for Tract No. 18117-007 exceeds the \$2,800 appraised value
39 based on the certified appraisal used to determine the value of the land interests to be purchased, taking
40 into account the value of non-cash considerations, defects in title or outstanding interests. The District
41 staff has determined that it will be cost effective and beneficial to the timely implementation of the
42 Kissimmee River Restoration and Headwaters Revitalization Project, and in the District's best interest, to
43 acquire for a purchase price of \$75,000 or \$72,200 over the approved appraised value, the 0.39 acres,
44 more or less, of land interests. District staff has also determined that acquiring these land interests
45 required by the Project for a total consideration of \$75,000 or \$72,200 over the approved appraised value
46 is in the District's best interest to avoid the risks inherent in the condemnation process.

47 Regarding condemnation risks, in two recent cases sizable jury verdicts have been returned
48 against Florida public agencies. In a 2008 case involving the Jacksonville Port Authority, the jury returned
49 a verdict of \$67.4 million or 335% over the agency's appraisal of \$20 million. A September 2010 jury
50 verdict in the amount of \$1.7 million, or 231 % over the agency's \$735,000 appraisal, was entered against
51 Southwest Florida Water Management District in Polk County. It is significant to note further that neither
52 of those jury awards addressed the statutory attorney's fee, costs or pre-judgment interest paid by the
53 agencies. Also, in a November 2007 case, the jury returned a verdict of 195% over the District's
54 appraised value. Significantly, in 2003, two condemnation juries have returned verdicts of 220% and
55 242% above the Government appraisal. In addition to the uncertainties regarding jury verdicts, the costs
56 of condemnation litigation, even if the District is the prevailing party, can increase costs significantly. For
57 example, in a condemnation case where the District received a very favorable verdict (10% over
58 appraised value), the landowner's attorney was awarded costs that are 3% of the verdict (\$340,000 on an
59 \$11 million verdict). Based on this, staff believes the settlement is in the District's best interest.

60 The District staff's settlement determination was also made based on a risk analysis where if this
61 case did proceed through a jury trial, staff has estimated that the District's costs of trial would be between
62 \$80,000 and \$90,000. In addition to those costs, pursuant to Florida Statutes, the District would be
63 obligated to pay all of the landowner's costs. Based on the risk analysis, staff believes the settlement is in
64 the District's best interest.

65 (3) The lands being acquired have been reviewed for the presence of State Sovereignty
66 submerged lands and the District has taken reasonable measures to avoid paying for sovereignty lands.

67 (4) This request for funds is consistent with the District's Five Year Plan of acquisition or the South
68 Florida Water Management District Florida Forever Work Plan, as contained in Chapter 6A, Volume II of the
69 South Florida Environmental Report, and last updated during a public hearing on January 13, 2011, and
70 filed with the Legislature and the Department of Environmental Protection.

71 (5) Acquisition of this land furthers the Florida Forever goals set forth in (1) Section 259.105
72 (4)(a) Florida Statutes (i.e. enhance the coordination and completion of land acquisition projects as
73 measured by the number of shared acquisition projects among Florida Forever funding partners and
74 partners with other funding sources, including local governments and the Federal Government), and (2)
75 Section 259.105 (4)(d) Florida Statutes (i.e. ensure that sufficient quantities of water are available to meet

76 the current and future needs of natural systems and the citizens of the state, as measured by the quantity
77 of water made available through the water resource development component of a district water supply
78 plan for which a water management district is responsible).

79 (6) The funds requested shall be used for the acquisition costs and pre-acquisition/ associated
80 costs and expenses of the described land interests.

81 (7) Since no fee interests are being acquired, the requirement that to the extent possible, the
82 land interests being acquired in fee shall be maintained in an environmentally acceptable manner is not
83 applicable.

84 (8) Should the District dispose of any or all of the interests acquired hereunder, all revenues
85 derived therefrom will be used to acquire other lands for water management, water supply and the
86 conservation and protection of water resources.

87 (9) Any evidence of environmental concerns shall be remediated, as necessary.

88 (10) Since no fee interests are being acquired, the requirement that the fee acquired lands shall be
89 managed for multiple-use purposes where compatible with the resource values of and management
90 objectives for such lands as set forth in Section 259.105(5), Florida Statutes is not applicable

91 (11) The Resolution to approve acquisition of these land interests was approved by the Governing
92 Board of the District on December 10, 2009.

93 (12) The District will utilize funds from the Florida Forever Trust Fund.

94 (13) The Executive Director or the designee of the Executive Director is hereby authorized to
95 request the release of funds for all acquisition costs and pre-acquisition/associated costs and expenses for
96 the described interests identified in this Resolution.

97 (14) This Resolution shall take effect immediately upon adoption.

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99 **PASSED and ADOPTED** this _____ day of _____, 2011.

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102 **ATTEST:**

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104 By: _____

105 District Clerk/Secretary

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110 (Corporate Seal)

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**SOUTH FLORIDA WATER MANAGEMENT DISTRICT,
BY ITS GOVERNING BOARD**

By: _____

Chair

Legal Form Approved:

By: _____

Office of Counsel