

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: August 4, 2008

SUBJECT: Action Required
Authorization to file suit
Potential failure of the City of Stuart to comply with 1994 consent agreement

Background

In 1985 a contaminated plume containing trichlorethylene and acetone was discovered in groundwater under property then owned by Turbo Combuster Technology (TCT), which is near public water supply wells 1 through 15, operated by the City of Stuart (City) in Martin County.

In 1989 a Remedial Action Plan was approved by the Florida Department of Environmental Protection which involved the pulling of contaminated groundwater from the TCT site through the surficial aquifer for treatment at the City's water treatment system.

In 1994 the South Florida Water Management District (District) entered into a consent agreement with the City authorizing the City's use of wells 1 through 15 to implement TCT's remediation plan, subject to requiring the City to mitigate for any impacts to existing uses caused by the pumping.

On October 18, 2007, Continental Florida Materials, Inc., (Continental) filed with the District a Notice under Section 403.412 of the Florida Statutes, which provided notice that Continental's permitted use of water was adversely impacted by the City's pumping, and that Continental would pursue injunctive relief against the District to enforce the 1994 consent agreement to require the City to mitigate for the impacts to Continental's use of water.

District staff has met with both the City and Continental. The City's staff had initially agreed to seek approval from the City Commission to enter into a consent agreement to provide water to Continental free of charge in the amount Continental is allocated in its water use permit. Therefore the consent agreement would address the present and future impacts to Continental's water use. Continental also has on-going litigation against TCT and the City addressing alleged past damages from the City's pumping of contaminated

water. There are many factual disputes about whether Continental should receive damages for any past impacts that may have occurred, and these disputes would be best resolved in the litigation already initiated by Continental against TCT and the City. However, despite the City staff's initial agreement to seek approval in August 2008 to enter into a consent agreement with the District, the City now appears to want more time to consider their options. Therefore, it is necessary for the District to have authority to proceed with litigation to enforce the 1994 consent agreement if there is unnecessary delay by the City, and to have an appropriate position if Continental files suit against the District under Section 403.412, Florida Statutes.

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

This action fulfills the District's obligation to protect an existing water user's right to water.

Funding source

This litigation will be handled by the District's Office of Counsel. Litigation costs will be funded through ad valorem funds.

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

This action protects water users' rights in the Martin County area.

What concerns could this Board item raise

This item should not raise any concerns. Continental Florida Materials, Inc., may want the District to address alleged past impacts to its water use, but such impacts are best addressed in separate on-going litigation.

Why should the Governing Board approve this item

This item should be approved to require the City of Stuart to meet its obligations under the 1994 consent agreement that the City mitigate for any adverse impacts caused by its pumping of contaminated groundwater.

SGW/DM/pm