

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: March 24, 2009

SUBJECT: Settlement of Condemnation Action – Tract Nos. 003-782 and 003-783
KENT MANLEY, TRUSTEE, et al.

Background:

- Case Name: SFWMD v. RICHARD H. CAPEN, JR., et al., Case No.: 04-CA-1657; Tract Nos. 003-782 and 783 (10 acres); Lee County
- Type of Case: Eminent Domain
- District Project Name: Critical CREW (Corkscrew Regional Ecosystem Watershed) Project

History:

Since April of 2001 the District has been involved in numerous condemnation actions to carry out the Critical CREW Project. With regard to Tract Nos. 003-782 and 003-783, owned by Kent Manley, Trustee, the District obtained an Order of Taking on June 24, 2004, and took ownership of the tracts upon making its good faith deposit on January 14, 2005 as part of its quick take proceeding. District staff continued to pursue an amicable resolution of this matter, and as a result, an agreement was entered into addressing full settlement of all claims for compensation from the District and a jury trial will no longer be needed. Additionally, by virtue of an amicable settlement, the District avoids the expenditure of additional taxpayer dollars to not only pay the District's costs associated with litigation, but also any costs of the property owner and interested parties.

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

Acquisition and payment is necessary to further the completion of the Critical CREW Project.

Funding Source:

This settlement is funded through the Florida Forever Trust Fund requiring a budget transfer in the amount of \$216,849 from Managerial Reserves within the Biscayne Bay Coastal Wetlands – CERP Project to S. CREW/Imperial River Flowway – CERP Project. A total of \$125,760 in Florida Forever Trust funds was previously encumbered following the quick take proceeding.

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

The proposed settlement would complete acquisition of 10 acres needed for the CREW Project at a cost of \$532,000.00 (29.95% over the District's appraised value of \$409,400 [consisting of \$380,000 for land and improvements plus \$29,400 for mobile homes]). In addition, as part of this acquisition, the District is required to pay statutory attorney's fees in the amount of \$111,750.00, and expert fees and costs in the amount of \$13,258.92, for a total of \$657,008.92. The District previously deposited \$314,400.00 on January 14, 2005 as part of its quick take proceeding. The District would therefore need to make an additional deposit of \$342,608.92 upon approval.

What concerns could this Board item raise?

Terms of the settlement are consistent with previous settlements for parcels within the project and within the guidelines provided by the Governing Board.

Why should the Governing Board approve this item?

This settlement resolves all claims for compensation from the District, avoiding uncertainties associated with trial and the District's expenditure of additional funds to pay both the District's and property owner's or interested parties' additional legal costs associated with litigation.

If you have any questions, please do not hesitate to call me at Ext. 6976. (General Counsel - Sheryl G. Wood)

SGW/jrt