



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: June 5, 2007

Subject: Action Required
Authorization to intervene or participate as amicus curiae in the matter of *Natural Resource Defense Council, et al v. Van Antwerp in Official Capacity as Commander of the U.S. Army Corp of Engineers and Geren, Acting Secretary of the Army*, United States District Court for the Southern District of Florida, Case No. 07-80444-CIV-MIDDLEBROOKS,

BACKGROUND

On May 24, 2007, the Natural Resources Defense Council, National Wildlife Federation and Sierra Club filed suit in the Southern District of Florida against Van Antwerp in Official Capacity as Commander of the U.S. Army Corp of Engineers and Geren, Acting Secretary of the Army. The suit seeks to set aside the permit issued by the Corps for the District's Everglades Agricultural Area Reservoir A-1 Acceler8 project (hereinafter "Reservoir").

The plaintiffs advance two main claims. First, they allege that the District is proceeding with the State's reservoir project without first complying with the Project Implementation Report (PIR) process or Project Cooperation Agreement (PCA) framework necessary for CERP projects approved under the Water Resources Development Act (WRDA). In doing so, the plaintiffs improperly conflate and confuse CERP with Acceler8. The reservoir is proceeding as a state project pending the potential and eventual development of related CERP projects. As such, the District is not constrained by WRDA from proceeding with its own restoration efforts.

Second, plaintiffs challenge the sufficiency of the Environmental review and impact statement required under the National Environmental Policy Act (NEPA) which was conducted by the Corps as part of its process for permitting construction of the Reservoir.

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The federal government is expected to aggressively defend the subject action. Nonetheless, the District's interests in the project are unique and of critical enough significance to its mission that participation is recommended to ensure our interests are protected. This will likely require joining the suit as an intervener party or filing briefs as an amicus curiae.

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

Ensuring lawsuits filed by special interest do not burden or delay completion of the EAA reservoir as well as related Acceler8 projects is critical to achieve the District's mission, particularly its restoration goals.

Funding Source

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

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

The subject reservoir project impacts broadly across almost all areas being a flagship Acceler8 project.

What concerns could this Board item raise?

This litigation is at an early stage. Questions or concerns should be addressed to the District's General Counsel.

Why should the Governing Board approve this item?

The item should be approved to ensure the subject litigation does not interfere with the District's mission, Acceler8 goals and completion of the EAA reservoir.

SGW/pm