

## MEMORANDUM

**TO:** Governing Board Members

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

**DATE:** November 4, 2008

**SUBJECT:** Action Required: Authorization to file an Amicus Brief

### **Background**

The St. Johns River Water Management District's (SJRWMD) rules interpreting and implementing section 373.406(2) of the Florida Statutes concerning exemptions for agricultural interests have been challenged by A. Duda and Sons, Inc. A final order upholding the validity of SJRWMD's rules was issued by the Administrative Law Judge on April 28, 2008. A. Duda and Sons, Inc. appealed this final order in the Florida Fifth District Court of Appeal. The South Florida Water Management District's (SFWMD) rules are similar to or are applied in the same manner as the SJRWMD rules being appealed. The SJRWMD legal staff has requested that SFWMD and DEP file an amicus brief in support of their position on appeal. Appellant A. Duda and Sons, Inc. is contending that the "plain meaning" of the statutory exemption prevents SJRWMD from considering Legislative intent that indicates the exemption is limited in scope.

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

This effort directly supports the District's land resources 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?**

All geographic areas of the District are potentially affected by this action, and the outcome of this appeal could impact the District's water resources by adversely impacting wetland functions, including wetland habitat and flood storage capacity.

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

This matter should not raise any concerns unless agricultural interests consider that the District's present rules concerning agriculture are not being implemented fairly.

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

The Governing Board should approve this item to support this water management district rule since the SJRWMD applies its rules regulating agriculture in a similar manner as the SFWMD. If the SJRWMD is not successful in this appeal, the exemption could be applied in a manner that could result in adverse impacts to water resources not only in the SJRWMD but throughout the state, including this District.

SGW/DM/pm