

1 al., filed in the 20th Circuit Court for Lee County, Florida, Case No. 04-CA-
2 1657.

3
4 **Section 2.** A copy of the settlement agreement is attached hereto and made a part
5 hereof.

6 **Section 3.** Approve a budget transfer of Florida Forever Trust Funds from Managerial
7 Reserves within the Biscayne Bay Coastal Wetlands – CERP Project to S.
8 CREW/Imperial River Flowway – CERP Project.
9

10 **Section 4.** This resolution shall take effect immediately upon adoption.

11
12 **PASSED** and **ADOPTED** this _____ day of _____, 2009.
13

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD

By:

Chair Person

ATTEST:

District Clerk

Approved as to legal form:

By:

Office of Counsel

14
15
16 **TRANSFER FROM**

| <u>Dollars</u> | <u>Fund</u> | <u>Funds Center</u> | <u>Funded Program</u> | <u>Commitment Item</u> |
|----------------|-------------|---------------------|-----------------------|------------------------|
| \$216,849 | 404000 | 999999899 | P128 | 590020 |

19
20 **TRANSFER TO**

| <u>Dollars</u> | <u>Fund</u> | <u>Funds Center</u> | <u>Funded Program</u> | <u>Commitment Item</u> |
|----------------|-------------|---------------------|-----------------------|------------------------|
| \$91,840 | 404000 | 3514144000 | PB04 | 580020 |
| \$111,750 | 404000 | 3514144000 | PB04 | 580022 |
| \$13,259 | 404000 | 3514144000 | PB04 | 580027 |

25
26
27
28 _____
Budget Approval

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT,

Petitioner

RICHARD H. CAPEN, JR., et al.,

Respondents.

CASE NO.: 04-CA-1657

TRACT NOS.: 003-782
003-783

**STIPULATION FOR FINAL JUDGMENT AND ATTACHED STIPULATED
FINAL JUDGMENT FOR TRACT NOS. 003-782 and 003-783**

The Petitioner, **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, (hereinafter "SFWMD" or "District" or "Petitioner"), by and through its undersigned attorney, and the Respondents, **KENT MANLEY, TRUSTEE, FERNANDO CARDENAS, INNOCENCIO DELOS REYES, WALLACE RAMIREZ and MIGUEL CHAVEZ** (hereinafter "Respondents"), by and through their undersigned attorney, hereby stipulate and agree as follows, subject to the approval of the Governing Board of the District at its meeting scheduled to take place on or about April 9, 2009, or as soon thereafter as the Governing Board can consider the matter, wherein the undersigned will recommend approval by the Governing Board:

1. On or about June 24, 2004, an Order of Taking was entered in the above referenced case pertaining to numerous tracts, including Tract Nos. 003-782 and 003-783.
2. On or about January 14, 2005, the District filed its Notice of Deposit and in fact deposited on said date the total sum of Three Hundred Fourteen Thousand Four

Hundred Dollars (\$314,400.00), (consisting of Sixty Five Thousand Four Hundred Dollars (\$65,400.00) for the interests in Tract No. 003-782 and Two Hundred Forty Nine Thousand Dollars (\$249,000.00) for the interests in Tract No. 003-783), whereby fee simple title and all interests in Respondents' properties vested in the District. Respondents have already partially withdrawn some of said funds less taxes owed the Tax Collector and/or any applicable liens.

3. The District and Respondents hereby stipulate and agree that a valuation trial with respect to Respondents' tracts and property interests is no longer necessary. Respondents waive any and all rights to a valuation trial/hearing by way of the parties full, complete and final settlement of this matter, and this agreement by Respondents for the Court to enter the Stipulated Final Judgment set forth below. The District and Respondents further agree that the total compensation paid by the District is full, just, and reasonable for all parties concerned, including Kent Manley, Trustee, the trust for which he is trustee, and the mobile home owners, or those claiming any interest in mobile homes and/or any improvements and/or personal property located on or at the subject property known as tract nos. 003-782 and 003-783, including Fernando Cardenas, Innocencio Delos Reyes, Wallace Ramirez and Miguel Chavez. The parties agree that this Stipulation may be executed in counterparts.

4. The District and Respondents agree to a total settlement amount of FIVE HUNDRED THIRTY TWO THOUSAND DOLLARS (\$532,000.00) for all of the Respondents' land, structures, improvements, mobile homes, prejudgment or other interest claims, real or personal property of any kind, other property interests or claims of any type, including, but not limited to, mining interests, fill dirt, aggregate, minerals, earth materials,

mining business claims, and/or any other damages and/or claims involving Tract Nos. 003-782 and 003-783. Accordingly, the District shall pay the Respondents the additional sum of TWO HUNDRED SEVENTEEN THOUSAND SIX HUNDRED DOLLARS (\$217,600.00) (after deducting the \$314,400.00 previously paid into the Court Registry after the entry of the Order of Taking from the agreed total settlement amount of \$532,000.00).

5. In addition, Respondents and undersigned Counsel agree that the District shall pay Respondents' statutory attorneys' fees in the amount of ONE HUNDRED ELEVEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$111,750.00) as full and final payment of any and all attorneys' fees and THIRTEEN THOUSAND TWO HUNDRED FIFTY EIGHT AND 92/100 DOLLARS (\$13,258.92) as full and final payment of any and all of Respondent's experts' fees and costs in this matter.

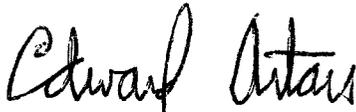
6. The District shall deposit the balance due in the total sum of THREE HUNDRED FORTY TWO THOUSAND SIX HUNDRED EIGHT AND 92/100 DOLLARS (\$342,608.92) which is inclusive of all claims for land, improvements, structures, mobile homes, prejudgment or other interest claims, real or personal property of any kind, other property interests or claims of any type, including, but not limited to, mining interests, fill dirt, aggregate, minerals, earth materials, mining business claims, and/or any other damages and/or claims involving Tract Nos. 003-782 and 003-783, as well as any claims for attorneys' fees, experts' fees and costs, or any other claims, pursuant to paragraph four(4) and five (5) above, with the Court Registry within twenty (20) days of the entry of the attached Stipulated Final Judgment as and for full and final payment as set forth above. The Respondents, by and through their counsel, shall thereafter withdraw said funds, less taxes owed the tax collector and/or any applicable liens, for proper payment and

disbursement by Respondents' attorney, Kenneth R. Johnson, to Respondents and Respondents' attorneys according to their remaining respective interests.

7. The Respondents, by and through their undersigned counsel, stipulate and represent as a material condition of this stipulation that they have not assigned any rights concerning the property and/or compensation for their property interest, other than to each other, and that there are no claims and/or liens by, because, or resulting from them against tract nos. 003-782 and 003-783, and that they are the only parties having any interest or claim in or to the property known as Tract Nos. 003-782 and 003-783, and the improvements and mobile homes or other property interests located thereupon, and that Respondents' remaining respective interests in the settlement proceeds pursuant to this stipulation have been resolved among Respondents to each Respondents' satisfaction. The Respondents, by and through their undersigned counsel, waive any and all claims against the District as to Tract Nos. 003-782 and 003-783, (including the State of Florida, the U.S. Department of Interior, the U.S. Army Corps of Engineers, and any of their and the District's employees, agents, legal representatives, attorneys, Governing Board Members, and their successor and assigns), including but not limited to claims for land, improvements, structures, mobile homes, prejudgment or other interest claims, real or personal property of any kind, other property interests or claims of any type, including, but not limited to, mining interests, fill dirt, aggregate, minerals, earth materials, mining business claims, and/or any other damages and/or claims involving Tract Nos. 003-782 and 003-783, as well as any claims for attorneys' fees, experts' fees and costs, or any other claims, and any claims by any of the Respondents or any other individuals or entities for apportionment, including any claims for attorneys' fees, expert witness fees, or costs

attributable or related to apportionment, and fully hold harmless, release, and indemnify the District and the above-referenced included governmental parties from any and all such claims. The parties agree to submit the attached Stipulated Final Judgment for entry by the Court after approval by the District's Governing Board.

Agreed to this 30th day of March, 2009.



Edward Artau
Florida Bar No.: 764353
SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
Office of Counsel
3301 Gun Club Road, MSC 1410
West Palm Beach, FL 33406
(561) 682-6431 / Fax (561) 682-6276



Kenneth R. Johnson
Florida Bar No.: 0833451
Goodlette Coleman & Johnson
As Counsel for and on behalf of Respondents
Kent Manley, Trustee, Fernando Cardenas,
Innocencio Delos Reyes, Wallace Ramirez and
Miguel Chavez
4001 Tamiami Trail, Suite 300
Naples, FL 34103
(239) 435-3535 / Fax (239) 435-1218

STIPULATED FINAL JUDGMENT FOR TRACT NOS. 003-782 and 003-783

This matter having come before the Court upon the foregoing Stipulation for Final Judgment for Tract Nos.: 003-782 and 003-783 entered between the Petitioner, SOUTH FLORIDA WATER MANAGEMENT DISTRICT, (hereinafter "SFWMD" or "District" or "Petitioner"), and the Respondents, KENT MANLEY, TRUSTEE, FERNANDO CARDENAS, INNOCENCIO DELOS REYES, WALLACE RAMIREZ and MIGUEL CHAVEZ (hereinafter "Respondents"), by and through their duly authorized attorneys, and this Court otherwise being fully advised of the premises therein and finding that the compensation to be paid by District is full, just and reasonable for all parties concerned, it is hereby:

1. CONSIDERED, ORDERED and ADJUDGED, that the Stipulation for Final Judgment for Tract Nos.: 003-782 and 003-783 has been entered into freely and voluntarily by the District and all Respondents and necessary parties, and is adopted and approved by this Court in its entirety and the parties are ordered to comply with the terms therein.

2. The Respondents, shall recover from Petitioner the total sum of FIVE HUNDRED THIRTY TWO THOUSAND DOLLARS (\$532,000.00), \$314,400.00 of which has been previously paid into the Court Registry by the District and partially withdrawn from the Court Registry by the Respondents, less any taxes owed the tax collector, and/or any applicable liens, leaving a balance due, as payable pursuant to paragraph 3, below, of \$217,600.00 in full and final compensation for Tract Nos.: 003-782 and 003-783 (See Composite Exhibits "A" for legal descriptions), and for damages resulting to the remainder, if any, if less than the entire property taken, and for all damages and claims of any nature as set forth in paragraph 3, below, including, but not limited to, prejudgment or other

interest claims, improvements, mobile homes, and any other property claims, and shall recover, as payable pursuant to paragraph 4, below, the amount of ONE HUNDRED TWENTY FIVE THOUSAND EIGHT AND 92/100 DOLLARS (\$125,008.92), which constitutes the combined total amount of statutory attorney's fees in the amount of ONE HUNDRED ELEVEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$111,750.00), and expert fees and costs in the amount of THIRTEEN THOUSAND TWO HUNDRED FIFTY EIGHT AND 92/100 DOLLARS (\$13,258.92), as full and final compensation for all of the Respondents' and Respondents' attorneys' claims for attorneys' fees, expert fees and costs of any kind.

3. ORDERED that within twenty (20) days from receipt of this stipulated Final Judgment, the Petitioner, SOUTH FLORIDA WATER MANAGEMENT DISTRICT, as set forth above, shall deposit into the Registry of the Court, for proper payment and disbursement by Respondents' attorney, Kenneth R. Johnson, to Respondents according to Respondents' remaining respective interests, Two Hundred Seventeen Thousand Six Hundred Dollars (\$217,600.00), in full payment of the balance (after deducting the \$314,400.00 previously paid into the Court Registry by the District from the \$532,000.00 settlement amount), for all land, improvements, structures, mobile homes, prejudgment or other interest claims, real or personal property of any kind, other property interests or claims of any type, including, but not limited to, mining interests, fill dirt, aggregate, minerals, earth materials, mining business claims, and/or any other damages and/or claims involving tract nos. 003-782 and 003-783, or any other claims, in this matter, without which let execution issue.

4. ORDERED that Petitioner, SOUTH WATER MANAGEMENT DISTRICT, as set forth above, shall also deposit into the Registry of the Court, within twenty (20) days from receipt of this Stipulated Final Judgment, One Hundred Twenty Five Thousand Eight and 92/100 Dollars (\$125,008.92), in full payment of all of Respondents' and Respondents' attorneys' claims for attorney fees, expert witness fees and costs of any kind, without which let execution issue.

5. The Clerk of the Circuit Court/Registry is hereby directed to mail a check payable to "GOODLETTE COLEMAN & JOHNSON", c/o Kenneth R. Johnson, Goodlette Coleman & Johnson, 4001 Tamiami Trail, suite 300, Naples, FL 34103, for the total sum ordered pursuant to paragraphs 3 and 4, above, in the amount of Three Hundred Forty Two Thousand Six Hundred Eight and 92/100 Dollars (\$342,608.92), less taxes owed the tax collector pursuant to the Court's prior Order on the Lee County Tax Collector's Motion for Payment of Taxes entered on June 24, 2004 in this case, or any taxes otherwise due and payable, and /or any applicable liens, if any, without further motion or order of the Court, for proper payment and disbursement by Respondents' attorney, Kenneth R. Johnson, to Respondents and Respondents' attorneys, according to their remaining respective interests.

The Clerk of the Circuit Court/Registry is hereby also directed to mail a check payable to "GOODLETTE COLEMAN & JOHNSON", c/o Kenneth R. Johnson, Goodlette Coleman & Johnson, 4001 Tamiami Trail, suite 300, Naples, FL 34103, for any previously existing balance from the deposits made for Tract Nos. 003-782 and 003-783 on or about January 14, 2005, less any unpaid taxes owed the tax collector, pursuant to the Court's prior Order on the Lee County Tax Collector's Motion for Payment of Taxes entered on

June 24, 2004 in this case, or any taxes otherwise due and payable, and /or any applicable liens, if any, without further motion or order of the Court, for proper payment and disbursement by Respondents' attorney, Kenneth R. Johnson, to Respondents and Respondents' attorneys, according to their remaining respective interests.

It is further ORDERED and ADJUDGED that the District's fee simple title and ownership interest, including but not limited to all previous right, title and interest of the Respondents specified in the Petition in Eminent Domain and the Amended Petition in Eminent Domain, to the properties (Tract Nos. 003-782 and 003-783), more fully described in the attached and incorporated Composite Exhibits "A", as well as to any improvements, mobile homes, personal property and other property interests thereupon, all of which vested in the District pursuant to the Order of Taking and deposit of money heretofore made, is hereby granted, approved, ratified and confirmed.

Done and Ordered in Chambers in Lee County, Fort Myers, Florida, this _____ day of _____, 2009.

Circuit Court Judge

Copies furnished to:

Edward Artau, South Florida Water Management District, 3301 Gun Club Road – MSC 1410, West Palm Beach, FL 33406

Kenneth R. Johnson, counsel for Respondents, Goodlette Coleman & Johnson, 4001 Tamiami Trail, suite 300, Naples, FL 34103

Cathy Curtis – Tax Collector, Lee County, 2480 Thompson Street, Fort Myers, FL 33901

First Union National Bank, n/k/a Wachovia, 5801 Pelican Bay Blvd, Naples, FL 33940

Anne Dalton, Esq., counsel for Lee County Tax Collector, P.O. Box 850, Fort Myers, FL 33902-0850

Iris G. Hernandez, Esq., counsel for Bank of America, c/o/ Spear & Hoffman, P.A., 708 South Dixie Highway, Coral Gables, FL 33146

TIIF, c/o Dept. of Environmental Protection, Gary L. Heiser, Asst. General Counsel, Office of General Counsel – Mail Stat. 35, 3900 Commonwealth Blvd., Room 628, Tallahassee, FL 32399-3000

Bob Duncan, Collier Resources Co., 2600 Golden Gate Parkway, Suite 112, Naples, FL 34105-3227

U.S. Capital Energy Inc., c/o CT Corporation System, Registered Agent, 1200 S. Pine Island Road, Plantation, FL 33324

Exhibit "A"
Tract No. 09-003-782

The West half of the Southwest quarter of the Southwest quarter of the Southeast quarter, excepting the West 20 feet thereof reserved for canal easement, and the North and South 25 reserved for county road right of way. All lying and being in Section 35, Township 47 South, Range 26 East, Lee County, Florida.

Containing 5.0 acres per Lee County Tax Rolls.

CREW\Manley
ORB 1254, Pg 88

R:\Legals\crew\003-782.lgl
February 13, 1997

Exhibit "A"
Tract No. 09-003-783

The East half of the Southeast quarter of the Southeast quarter of the Southwest quarter,
Section 35, Township 47 South, Range 26 East, Lee County, Florida.

LESS the East 20.00 feet thereof, reserved for canal easement AND the North and South
25.00 reserved for county road right of way.

Containing 5.00 acres, more or less, per Lee County Tax Rolls.

CREW\Manley
Folio 4726350000001008
ORB 1170, Pg 697

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February 13, 1997
Revised: November 28, 2000

