

## MEMORANDUM

**TO:** Governing Board Members

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

**DATE:** June 9, 2011

**SUBJECT: Action Required**  
Authorization to file suit—  
Henry C. Yates, Circle Y Groves, LLC, and all other appropriate parties – Enforcement Action for Properties Located in Section 20, Township 26, Range 31, Saint Cloud, Osceola County, Florida

### **Background**

This is a request to resolve a violation for the use of water without a consumptive use permit. The above-described parcels were authorized to use water through Water Use Permit No. 49-00014-W. However, the permit expired on October 30, 2008. Henry C. Yates (“Yates”) and/or Circle Y. Groves, LLC, collectively as (“Respondents”), submitted a water use permit application on March 23, 2009. The application remained outstanding until Yates was sent a Notice of Violation for failure to answer the District’s “Respond or Enforce” letter dated December 11, 2009. On March 18, 2010, the Governing Board executed a consent agreement wherein Yates agreed to obtain a water use permit within 180 days and pay a civil penalty. To date, Respondents have failed to obtain a water use permit or to pay the civil penalty, thereby breaching the Consent Agreement. On February 10, 2011, more than 689 days after the initial receipt of Yates’ water use permit application, the Governing Board denied the application after Yates was provided the opportunity to submit the requested information.

District staff conducted an inspection of the property and observed multiple groundwater withdrawal facilities on the above-described property. District staff also observed that the groves appeared to have been irrigated.

Numerous attempts have been made by District staff, including in-person meetings to complete a water use permit application, to settle this violation and to persuade the Respondents to apply for a Consumptive Use Permit, but Respondents have not done so.

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

This effort helps the District implement Part II, Chapter 373, Fla. Stat., thereby managing the water resource, requiring the proper utilization of water, and ensuring the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems.

**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. The District will seek to recover the cost of litigation from the Respondent as authorized by Section 373.136, Fla. Stat.

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

This item impacts water supply and environmental resources in Osceola County.

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

If this matter is not resolved, the unauthorized withdrawal of water could continue. Office of Counsel desires a resolution that results in the issuance of a water use permit to Respondent. However, if the Respondent refuses to obtain a water use permit in a timely manner, the District may have no other recourse than to seek an injunction from the Court.

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

The Governing Board should approve this item to resolve violations of unauthorized water use without the required permit and take appropriate action against all responsible parties.

If you have any questions, please do not hesitate to call me at extension 6976.

SGW/jdb