

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: February 24, 2010

SUBJECT: Action Required
Authorization to file suit—
Hendry Turf, LLC. and all other appropriate parties.

Background

This matter involves non-compliance with a District Water Use Permit, including failure to report water use data since January 2005, and operating without a valid water use permit since the expiration of the previous permit.

Hendry Turf, LLC (“Hendry Turf”) owns and operates a 159.8-acre project known as Section 15 Farm in Hendry County. Hendry Turf was issued Water Use Permit No. 26-00688-W in April 2002 for the withdrawal of surface water from the Miami Canal via the Manley Canal. In June 2008, Hendry Turf was notified that it was in non-compliance with the permit for failure to submit water use pumpage reports. Subsequently, Notices of Non-Compliance, Notices of Violation, a proposed Consent Agreement and a Pre-Litigation Demand Letter were sent to Hendry Turf in an attempt to bring them into compliance.

On February 23, 2009, Hendry Turf submitted a water use renewal permit application to the District. Requests for Additional Information (“RAI”) were sent in March 2009 and August 2009. This application was denied for lack of completeness. The Order denying the permit was signed by the Governing Board in November, 2009.

As of the date of this memorandum, the District’s attempts to resolve this matter have been unsuccessful, with no meaningful response from Hendry Turf. Hendry Turf continues to use water without a permit.

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

This action will enforce the provisions of the District’s statutes and rules. This effort directly supports the Regulatory Program in Water Resources.

Funding Source

This litigation will be handled by the District’s Office of Counsel.

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

The subject property is located in Hendry County and the District seeks recovery related to non-compliance with permit conditions.

What concerns could this Board item raise?

This suit seeks enforcement of the provisions of the District's statutes and rules.

Why should the Governing Board approve this item?

The Governing Board should approve this item to enforce the District's statutes and rules, and to take appropriate action against all responsible parties.

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

SGW/jdb