

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl G. Wood, General Counsel

DATE: December 1, 2009

SUBJECT: Action Required
Authorization to file suit—
John Seth Louthan and all other appropriate parties – For Eviction,
damages and remedies in Martin County.

Background

This matter involves the non-payment of rent to the District and Martin County property taxes, both of which are a material breach of the terms and conditions of the Lease Agreement between the District and John Seth Louthan.

The District signed a five (5) year lease agreement with John Seth Louthan effective September 1, 2005, for beef grazing on Parcel B (approximately 7193 acres) on the property formerly known as Allapattah Ranch in Martin County.

An objective of leasing the land is to obtain assistance in stewardship and maintenance of the lands by utilizing live stock as a tool in the maintenance of grass pasture and native range.

The District sent Cure Notice letters to Mr. Louthan requesting payment of the rent and Martin County property taxes during 2006, 2007 and 2008. Mr. Louthan failed to pay the 2008 property taxes as required by the lease and a Cure Notice was sent to Mr. Louthan on June 18, 2009. As a result, the District was required to draw from the Standby Letter of Credit and pay the taxes.

The District sent an invoice to Mr. Louthan on August 10, 2009 requesting payment of the annual rent due September 1, 2009. A Cure Notice letter was sent on September 10, 2009, notifying Mr. Louthan that he was in breach of the terms and conditions of the lease agreement. Mr. Louthan failed to respond and failed to pay the rent. As a result of the non-payment, the District again drew from the Standby Letter of Credit established at Riverside Bank.

On October 28, 2009, a termination letter was sent to Mr. Louthan, terminating the lease immediately. The District gave Mr. Louthan 2 additional weeks from receipt of the letter to remove the cattle and vacate the leased premises.

As of the date of this memorandum, Mr.Louthan has not indicated an intent to remove the cattle which still remain on the property.

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?

The subject property is located in Martin County and impacts stewardship and maintenance of the lands utilized by live stock as a tool for maintaining grass pasture and native range. Failure to pay the District rent adversely impacts District revenue..

What concerns could this Board item raise?

The failure to evict Mr. Louthan and effectuate removal of the cattle can establish an undesirable precedent and would result in an unfair competitive advantage and use of public land by a private individual without appropriate compensation.

Why should the Governing Board approve this item?

The Governing Board should approve this item to enforce the District’s lease provisions, prevent future breaches and damages, avoid unfair competitive advantage and use of public land by a private individual without appropriate compensation.