

MEMORANDUM

TO: Governing Board Members
FROM: Sheryl G. Wood, General Counsel
DATE: October 6, 2008
SUBJECT: Action Required

Authorization to participate as amicus curiae in the matter of *Drake v. Walton County*, First District Court of Appeals for the State of Florida Case No. 1D07-3202, including further appeals.

Background

On November 21, 2008, a panel of the First Circuit Court of Appeals for Florida issued an opinion in the matter of *Drake v. Walton County*, which found the County liable under theories of inverse condemnation for diverting surface waters over the plaintiff's property. Walton County is seeking a rehearing from the three judge panel that issued the decision or, in the alternative, en banc (from the entire court). Of particular concern is the Court's apparent conclusion that a compensable "taking" can occur when the government alters managed drainage patterns even though the subject properties fall within the natural flood plain.

District staff members are concerned because the opinion confuses several principles of inverse condemnation law and, therefore, could create a risk of being exposed to additional litigation and liability for land acquisition as we proceed with restoration efforts. We agree the case should be reconsidered and, if necessary, appealed to the Supreme Court.

District staff have specialized knowledge and can provide examples of how the Court's opinion will negatively affect governmental agencies statewide.

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

Ensuring inverse condemnation law is not improperly expanded to unduly increase costs of restoration projects.

Funding Source

This litigation will be handled by the District's Office of Counsel with the potential assistance of outside counsel. Litigation costs will be funded through ad valorem funds.

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

The potential increased liability impacts broadly across the Everglades Restoration framework.

What concerns could this Board item raise?

Failure to ensure the District's interests in the subject litigation are fully protected could result in costly additional requirements.

Why should the Governing Board approve this item?

The item should be approved to ensure the subject litigation does not interfere with the District's mission and Restoration efforts.

SGW/jn