

## MEMORANDUM

**TO:** Governing Board Members

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

**DATE:** July 15, 2005

**SUBJECT:** Authorization to file suit for specific performance and/or breach of contract against Kevin Faircloth and Jennifer Faircloth as husband and wife.

### **Background:**

- Case Name: SFWMD v. Kevin Faircloth and Jennifer Faircloth as husband and wife
- Type of case: Specific performance and/or breach of contract
- District Project Name: Kissimmee River Restoration Project

### **History:**

Kevin Faircloth and Jennifer Faircloth, husband and wife, (the "Faircloths") jointly entered into an Agreement for Sale and Purchase with the District on December 12, 2004, obligating them to convey a perpetual flooding and inundation easement over Tract No. 19-103-700, located in Highlands County, Florida to the District. The Agreement for Sale and Purchase was approved by the District Governing Board on October 13, 2004 in Resolution No. 2004-1040. The Faircloths breached the Agreement for Sale and Purchase by failing and refusing to close on the sale to the District.

### **How this helps meet the District's 10 Year Strategic Plan:**

Acquisition by way of the Agreement for Sale and Purchase is necessary to further the completion of the Kissimmee River Restoration Project in Highlands County. More specifically, this acquisition is necessary to provide flood damage reduction and to avoid claims of involuntary condemnation due to flooding which may occur when the re-channelization of the Kissimmee River is complete.

### **Funding Source:**

Resolution 2004-1040, approved by the District Governing Board on October 13, 2004, provides for the purchase price and associated purchase costs to be funded with monies from the Florida Forever Trust Fund.

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

The inability to compel the Faircloths to sell the District a perpetual flowage and inundation easement as required by the Agreement for Sale and Purchase they voluntarily entered into with the District impacts the District's ability to certify to the United State Army Corps of Engineers ("USACE") that all interests in land needed for completion of the Kissimmee River Restoration project have been acquired. The District agreed to pay the Faircloths \$20,800.00 (24.5% over the District's appraised value of \$16,700.00) to acquire this easement. The Faircloths refused to close, citing lack of lender cooperation and rise in market value of property after to contract date. This Board item impacts Tract 19-103-700 in Pool "D" of the Kissimmee River Restoration Project located north of State Road 70, West of U.S 98 and riparian to the Kissimmee River in Highlands County, Florida.

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

Enforcement of the District's contract rights under the Agreement for Sale and Purchase is authorized by §373.083 (1), Florida Statutes and is consistent with the District's Five Year Plan of Acquisition or the Florida Forever Water Management District Work Plan, as applicable, filed with the Florida Legislature and the Department of Environmental Protection and is consistent with §§373.139, 373.1501, 373.470 and 373.59, Florida Statutes, as applicable.

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

Legal action against the Faircloths is necessary to seek specific performance of the Agreement for Sale and Purchase entered into by the Faircloths with the District, as well as any associated damages, thereby enabling completion of the certification process with the USACE and further completion of the Kissimmee River Restoration Project in Highlands County.