



South Florida Water Management District

GOVERNING BOARD MEETING MINUTES

December 14, 2006

9:00 AM

District Headquarters - B-1 Auditorium

3301 Gun Club Road

West Palm Beach, FL 33406

Members Present:

Irela Bagué, Vice-Chair

Miya Burt-Stewart

Alice Carlson

Michael Collins

Nicolás Gutiérrez

Lennart Lindahl

Kevin McCarty, Chair

Malcolm Wade

Members Absent:

Harkley Thornton

1. **Call to Order** - Kevin McCarty, Chair, Governing Board

Chair McCarty called the meeting to order at 9:17 am.

2. **Pledge of Allegiance** - Kevin McCarty, Chair, Governing Board

George Horne, Deputy Executive Director, led the group in the pledge of allegiance.

3. **Welcome to the Districts Race for the Cure fundraising events to support the Komen Breast Cancer Foundation** - Alice Carlson, Honorary Co-Chair

Alice Carlson, Governing Board member, announced that today is "Think Pink Day". She reported on the fundraising events in support of the Susan G. Komen Breast Cancer Foundation.

4. **Recognition of Leslie G. Bromwell, Sc.D., P.E. of BCI and Arijeet Art Sengupta, P.E., P.G. Lead Engineer, Dam Safety Section, Engineering & Construction Department, for extraordinary efforts to support the Districts outreach following the release of Report of Expert Review Panel, Technical Evaluation of Herbert Hoover Dike, Lake Okeechobee, Florida.** - Carol Wehle, Executive Director

Carol Wehle, Executive Director, presented a Certificate of Appreciation to Leslie G. Bromwell, Sc.D., P.E. of BCI, and Arijeet (Art) Sengupta, P.E. P.G. Lead Engineer, Engineering and Construction, for their extraordinary efforts in support of the District's outreach following the release of the Herbert Hoover Dike Technical Evaluation report.

Ms. Wehle also presented a Certificate of Appreciation to George Horne for his efforts in moving this initiative forward.

5. Presentation of the Southern Florida Wetland Stamp Pane - Richard Barber, Officer In Charge, West Palm Beach Post Office

Ms. Wehle introduced Richard Barber, Officer in Charge, United States Post Office, West Palm Beach.

Mr. Barber presented the Southern Florida Wetland Stamp Pane to the District. Mr. Barber recognized John Zahina, Senior Environmental Scientist, for his photo of the vanilla orchid located in the bottom right corner of the stamp pane.

6. Recognition of Max Mayfield, Director, Tropical Prediction Center/National Hurricane Center - Olivia McLean, CEM, Director, Emergency and Security Management

Olivia McClean, Director, Emergency and Security Management, presented a Proclamation to Max Mayfield, Director, Tropical Prediction Center/National Hurricane Center.

7. Employee Recognition

Ms. Wehle recognized two December Good Samaritan Awards, the December Team of the Month, the December Employee of the Month, the November Employee of the Month, the November Team of the Month. Ms. Wehle also recognized two 25-year service awards and one 35-year award.

Chair McCarty also presented Carol Wehle with her five-year anniversary pin.

8. Agenda Addendum

Jacki McGorty, District Clerk, read into the record the agenda addendum. Copies of the addendum were made available to the public. In addition, Agenda Item 19 has also been deleted from the agenda.

9. Abstentions by Board Members from items on the Agenda

Mr. Wade, Ms. Carlson and Mr. Collins announced their abstentions.

10. Public Comment on Consent Agenda

Public Comment: Rosa Durando, representing Audubon of Florida, Lake Worth, provided public comment on the Isla Verde of Wellington, Item 13 on the Consent Agenda. She wanted to speak with staff to discuss this agenda item and also provided comment on off-site storage of water.

11. Board Comment on Consent Agenda

There was no Board comment on the Consent Agenda.

12. Pull Items for Discussion from Governing Board Meeting Agenda

No items were pulled from the Consent Agenda for discussion.

Consent Agenda

Water Resources

13. Water Use Permit Applications

Surface Water Management Permit Applications (includes Conservation Easements)

Environmental Resource Permit Applications (includes Conservation Easements)

Denials

Environmental Resource Permit Extensions

Consent Agreements

Page 1 No 4 Leisureville Community Association (WU): **Removed** from agenda

Page 2 No 2 Collier Grove (WU): **Postponed** to February Board

Page 2 No 3 Forest Glen of Naples (WU): **Postponed** to January Board

Page 3 No 7 Saddlebrook Lakes (ERP): **Postponed** to January Board

Page 5 No 1 Butler Oaks Farm (WU): **Postponed** to January Board

Page 5 No 2 Happy Trails Ranch Estates (SWM): **Postponed** to January Board

Page 6 No 3 Shadow Wood Preserve (WU): **Postponed** to January Board

Page 8 No 1 Golfstream Turf (WU): **Postponed** to February Board

Page 9 No 1 Champion Lakes (SWM): **Postponed** to January Board

Page 10 No 1 Hudson Lake Ranches (ERP): **Postponed** to January Board

Page 13 No 4 Seminole Water Treatment Plant (WU): **Removed** from agenda

Page 17 No 1 Duke Grove (WU Denial): **Removed** from agenda

Page 18 No 1 CYNWYD Investments Farm (WU Denial): **Removed** from agenda

14. Right of Way Occupancy New Permits
 Right of Way Occupancy Permit Modifications
 Right of Way Permit Requests with Waiver of District Criteria
15. Concurrence with the Granting of Temporary Variances from Water Shortage Restrictions Imposed within the Indian Prairie Basin (Scott Burns, ext. 6817)
17. **2006-1200** A Resolution of the Governing Board of the South Florida Water Management District accepting the Five-Year Water Resource Development Work Program pursuant to Section 373.536(6)(a)(4), Florida Statutes (John Mulliken, ext. 6649)
18. **2006-1201** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to contract 3600001201 with Archbold Expeditions for the Beef Cattle Best Management Practice (BMP) Optimization Project, to extend the term by 2 years from December 31, 2006 to December 31, 2008, and to increase funding in the total amount of \$380,955, of which the District's total contribution is \$183,641, for which \$85,000 in dedicated funds (Lake Okeechobee Trust Fund) is budgeted, and the remainder is subject to Governing Board approval of the FY08 budget; providing an effective date. (Contract Number 3600001201-A02) (Odi Villapando, ext. 2936)
20. Authorize publication of the Notice of Rulemaking to update references to the "Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., and the Aquaculture General Permits under Section 403.814, F.S., between the South Florida Water Management District and the Department of Environmental Protection" to reflect the amended agreement.(Anita Bain, ext 6866 or Susan Martin, ext 6251)
- CERP**
22. **2006-1204** A Resolution of the Governing Board of the South Florida Water Management District Approving Staff Recommendations For Releases of District Canal, Mineral and Road Reservations, Releases of Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.) Canal Reservations, and Issuance of Non-Use Commitments; Providing An Effective Date. (V. Rada X6836)
23. **2006-1205** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to contract C-13491 with Treasure Coast Groves, LLC to provide payment in the amount of \$82,042.20 for land clearing and site preparation activities conducted by Lessee in connection with the C-23/C-24 construction project, and approve a budget transfer of CERP Ad Valorem Funds from Contractual Services to Capital Projects; providing an effective date. (Contract Number C-13491-A08)

24. **2006-1206** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to contract C-13492 with Brothers Four LLC to provide payment in the amount of \$90,628.80 for land clearing and site preparation activities conducted by Lessee in connection with the C-23/C-24 construction project, and approve a budget transfer of CERP Ad Valorem Funds from Contractual Services to Capital Projects; providing an effective date. (Contract Number C-13492-A08)

25. **2006-1207** A Resolution of the Governing Board of the South Florida Water Management District approving the purchase of land interests containing 5 acres, more or less, in Lee County, Southern Corkscrew Regional Ecosystem Watershed Project ("CRITICAL CREW Project") in the amount of \$250,000, together with statutory costs and attorneys' fees in the total amount of \$80,197.50, and associated costs; and approve a budget transfer of Wetlands Mitigation Trust Funds from CREW land to Southern CREW CERP; providing an effective date. (T. Hanaway, x6668)

26. **2006-1208** A Resolution of the Governing Board of the South Florida Water Management District to approve the acquisition of land interests containing 0.70 acres, more or less, and a restrictive covenant with respect to lands containing 15.54 acres, more or less, for the Kissimmee Chain of Lakes Project, in Polk County, in the amount of \$453,875, of which \$433,508 is for a Cost To Cure to implement engineering solutions, together with statutory costs and attorney's fees in the total amount of \$84,811.59, and associated costs for which ad valorem funds are budgeted; providing an effective date. (B. Schaeffer, x2985)

27. **2006-1209** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 65 day contract with Overland Construction Co., the lowest responsive and responsible bidder, for the C-44 Reservoir/STA Project Site Preparation - Phase I Project that includes the removal and burning of 1,590 acres of citrus trees within the citrus grove properties, Parcels 1 and 2, in the amount of \$510,190, which is budgeted, and authorize a budget transfer from managerial reserves in the amount of \$510,190 to the C-44 Reservoir/STA Project; providing an effective date. (Contract Number 4600000559)

28. **2006-1210** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 33-month cost share agreement with the U.S. Fish and Wildlife Service, Ten Thousand Islands National Wildlife Refuge for assessing wading birds in the Picayune Strand in the total amount of \$180,800 of which the District's total contribution is \$165,800 in dedicated funds (Comprehensive Everglades Restoration Plan Funds) of which \$50,000 are budgeted and the remainder is subject to Governing Board approval of the FY08-FY09 budgets; providing an effective date. (Contract number 4600000558)

29. **2006-1211** A Resolution of the Governing Board of the South Florida Water Management District authorizing the Executive Director to send a letter to the Secretary of the Florida Department of Environmental Protection in support of (1) the proposed Agreement on Interim Restoration Goals for the Comprehensive Everglades Restoration Plan to be entered into by the United States Army Corps of Engineers, the United States Department of the Interior, and the State of Florida, and (2) the proposed Agreement on Interim Targets for the Comprehensive Everglades Restoration Plan to be entered into by the United States Army Corps of Engineers and the State of Florida; providing an effective date. (P. Warner, ext. 4047)

Executive Office

32. Authorize publication of the Notice of Rule Development in the Florida Administrative Weekly (FAW) for amendments to rule Chapter 40E-1 and revisions to Chapter 40E-61 Florida Administrative Code, the Lake Okeechobee (LOK) Works of the District (WOD) to clarify the District's statutory responsibilities in the administration of this program under the Lake Okeechobee Protection Act.

Project Sponsor: Benita Whalen, 863-462-5260, ext. 3014

33. **2006-1214** A Resolution of the Governing Board of the South Florida Water Management District determining that the off-site phosphorus discharge concentration limitations as initially specified in Lake Okeechobee Works of the District permits issued pursuant to Ch. 40E-61, F.A.C., are insufficient to enable the District to fulfill its responsibility to improve and protect the water quality of Lake Okeechobee and directing District staff to revise and lower the discharge limitations applicable to Lake Okeechobee WOD permit limits in accordance with Rule 40E-61.381(2)(c), F.A.C.

Project Sponsor: Benita Whalen, 863-462-5260, ext. 3014

34. **2006-1215** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 1 year cost share agreement with the City of Fort Pierce for Moore's Creek Retrofit Phases 3 & 4, in the total amount of \$1,149,000, of which the District's total contribution of \$574,500 in dedicated funds (State Appropriations) is budgeted in Reserves, and authorize a budget transfer from Managerial Reserves to the Martin/St. Lucie Service Center; providing an effective date. (Contract Number 4600000493) (Kathy LaMartina, ext. 3603)

35. **2006-1216** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to cost share agreement C-10282 with St. Lucie County for bank stabilization associated with a FIND grant in an amount not-to-exceed \$267,000, as reimbursement to the District and to retroactively extend the term of the contract to September 1, 2007, for which dedicated external grant funds from FIND are budgeted; providing an effective date. (Contract Number 3600000002) (Kathy LaMartina, ext. 3603)

36. **2006-1217** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 15 month cost share agreement with the National Oceanic and Atmospheric Administration/National Marine Fisheries Service for St. Lucie Fish Health as an Indicator of Environmental Quality, in the total amount of \$570,000, of which the District's total contribution is \$285,000 for which \$114,000 of dedicated funds (State Appropriations) are budgeted and the remainder is subject to Governing Board approval of the FY2008 budget, and authorize a budget transfer in the amount of \$144,000 from Managerial Reserves to the Martin/St. Lucie Service Center; providing an effective date. (Contract Number 4600000547) (Kathy LaMartina, ext. 3603)
37. **2006-1240** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a cooperative agreement with the City of West Park for the completion of a Stormwater Master Plan, in the total amount of \$200,000 for which ad-valorem funds are budgeted, providing an effective date. (Contract Number 4600000522) (Jose Lopez, ext. 4980)
38. **2006-1218** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a cost share agreement with the City of Weston for stormwater improvements for waters discharging into the North New River Canal, in the total amount of \$2,225,000; of which the District's total contribution will be \$1,000,000 in dedicated funds (State Appropriation), and authorize a budget transfer from Reserves to the Broward Service Center, providing an effective date. (Contract Number 4600000520) (Jose Lopez, ext. 4980)
39. **2006-1219** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 3 year lease agreement with options for two 1 year renewals with Poinciana Professional Park for the Big Cypress Basin Service Center office lease and authorize a Waiver of Competition as an exception to the general standards of competition for office spaces in the total amount of \$648,000, of which \$192,000, dedicated funds (Big Cypress Basin) are budgeted; and the remainder is subject to Governing Board approval of the FY08 and FY09 budgets; providing an effective date. (Contract No.4600000511) (Clarence Tears x 7601)
40. **2006-1220** A Resolution of the Governing Board of the South Florida Water Management District to authorize a 26 month cost share agreement with the Village of Palmetto Bay for Sub Basin #5 Stormwater System Improvements in the amount of \$500,000 for which the District's total contribution is \$375,000, of which \$125,000 in Ad Valorem funds is budgeted and the remainder is subject to Governing Board approval of the FY2008 budget; providing an effective date. (Contract Number 4600000545)(Evan Skornick x7290)
41. **2006-1221** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into an 18 month agreement with the City of West Miami for Stormwater System Improvements in the amount of \$450,000 of which \$225,000 of dedicated funds (State Appropriations) are budgeted and the remainder is subject to Governing Board approval of the FY2008 budget; providing an effective date (Contract Number 4600000549)(Evan Skornick x7290).

42. **2006-1222** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into an 18 month agreement with the City of North Miami for a Citywide Sanitary Sewer Rehabilitation Project in the amount of \$400,000 of which \$200,000 in dedicated funds (State Appropriations) are budgeted and the remainder is subject to Governing Board approval of the FY2008 budget; providing an effective date. (Contract Number 4600000548)(Evan Skornick x7290)
43. **2006-1223** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 1 year cost share agreement with the City of Marco Island for Stormwater Drainage System Improvements, Existing Outfalls Replacement, and Inlet Retrofit-2007 project, in the total amount of \$1,700,000, of which the District's total contribution of \$550,000 in dedicated funds (Big Cypress Basin) is budgeted, providing an effective date. (Contract No. 4600000521) (Ke Feng, ext. 7609)
44. **2006-1224** A Resolution of the Governing Board of the South Florida Water Management District authorizing an amendment to contract OT050031/3600001302 with Gary Goforth, Inc., for expert witness services regarding environmental engineering matters, with no change in terms, for a not to exceed amount of \$100,000.00 for which dedicated funds (Everglades Trust Fund) are budgeted; providing an effective date. (Kirk Burns, x6546)
45. **2006-1225** A Resolution Of The Governing Board of the South Florida Water Management District approving the Agency Report to the Legislative Sunset Advisory Committee, as required by House Bill 1123; providing an effective date. Garrett Wallace X6371
46. **2006-1226** A Resolution of the Governing Board of the South Florida Water Management District approving the Districts support of Community Based Issues Requests in the 2007 Florida Legislative Session; providing an effective date. Garrett Wallace X6371
47. **2006-1227** A Resolution of the Governing Board of the South Florida Water Management District expressing concern about the appropriate roles of the South Florida Ecosystem Task Force, Working Group, and Science Coordination Group and their relationship to the Districts role and financial capability in implementing the Comprehensive Everglades Restoration Plan and further directing the Districts Executive Director and designees to convey this concern to the groups.

Corporate Resources

48. **2006-1228** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a two year contract with the option to renew for a third year with Van Dee Services, Inc., the lowest responsive and responsible bidder, to provide black/white/color copying services at Headquarters in the amount of \$702,000, of which \$234,000 of ad valorem funds are budgeted in FY07, and the remainder is subject to Governing Board approval of the FY08-09 budgets; providing an effective date. (Contract Number 4600000560)(Project Manager: Jim Mandolfo x6072)

49. **2006-1229** A Resolution of the Governing Board of the South Florida Water Management District authorizing the transfer of funds within the District Budget as shown on the attachment hereto; providing an effective date

Project Sponsor: Doug Bergstrom, ext. 6214

Operations and Maintenance

50. **2006-1230** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 300 day contract with Southeastern Communication Service, Inc., the lowest responsive and responsible bidder, for the Kissimmee Field Station, Phase 1 Microwave Tower & Site Preparation, in the amount of \$826,650, for which ad valorem funds are budgeted; providing an effective date. (Contract Number 4600000517) (Les Wood, ext. 6295)
51. **2006-1231** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 120 day contract with GlobeTec Construction LLC, the lowest responsive and responsible bidder, for the C-25 Canal Bank Repairs, in the amount of \$639,000 for which ad valorem funds are budgeted; providing an effective date. (Contract Number 4600000546) (Jose Guardiario, ext. 2594)
52. **2006-1232** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 180 day contract with GlobeTec Construction, LLC, the lowest responsive and responsible bidder, for the L-12 Canal Bank Repairs, in the amount of \$683,500 for which ad valorem funds are budgeted; providing an effective date. (Contract Number 4600000530) (Jose Guardiario, ext. 2594)

53. Board Vote on Consent Agenda

Motion made by Michael Collins, seconded by Nicolás Gutiérrez to Approve the following item(s): 13, 14, 15, 17, 18, 20, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

Vote called. Voting yes: Michael Collins, Nicolás Gutiérrez, Miya Burt-Stewart, Alice Carlson, Lennart Lindahl, Kevin McCarty. Not present: Irela Bagué, Malcolm Wade. Motion passed.

Workshop Agenda

CERP

76. **Acceler8 Update** - Tommy Strowd, Assistant Deputy Executive Director, CERP, Paul E. Dumars, Sr., Chief Financial Officer (This item was #12 on the Workshop and was moved to the regular Governing Board meeting on Thursday. This item will be heard with staff reports.)

Tommy Strowd, Assistant Deputy Executive Director, Acceler8, presented information on this agenda item. Mr. Strowd reported on the construction update, STA expansion, Phase I.

Max Day, Chief Consulting Engineer, Acceler8, provided a brief overview and funding of the 12 projects. He reported on the design and expansion projects.

Mr. Lindahl provided comment and commended staff on the work accomplished with these projects.

Mr. Strowd reported on the 9 County Coalition meeting which was held on December 9, 2006. He provided information on the issues raised at this meeting.

Mr. Wade provided comment on the 9 County Coalition meeting and reported on the issues regarding the flow way report. Mr. Wade said the report may be used in a lawsuit against the USACE for the St. Lucie discharges. Mr. Wade made recommendations to Ms. Wehle and Office of Counsel to get together with the USACE and staff and to prepare for the next 9 County Coalition meeting.

Discussion Agenda

Water Resources

- 54.** Final order of the Governing Board of the South Florida Water Management District approving the 2006-2007 update of the Kissimmee Basin Water Supply Plan for 2025 in compliance with section 373.0361, F.S. (John Mulliken, ext. 6649)

John Mulliken, Division Director, Water Supply Planning, presented information on the Kissimmee Basin Water Supply Plan. He reported on the planning region and the plan update components. Mr. Mulliken reported on the Alternative Water Supply projects in the plan.

Motion made by Lennart Lindahl, seconded by Irela Bagué to Approve the following item(s): 54

Vote called. Voting yes: Lennart Lindahl, Irela Bagué, Miya Burt-Stewart, Alice Carlson, Kevin McCarty, Malcolm Wade. Not present: Michael Collins, Nicolás Gutiérrez. Motion passed.

- 55.** **2006-1233** A Resolution of the Governing Board of the South Florida Water Management District accepting revisions to the "Long Term Plan for Achieving Water Quality Goals (Long Term Plan)" and directing staff to amend the permit application submitted to the Florida Department of Environmental Protection in December 2003, pursuant to Section 10 of the Everglades Forever Act, Section 373.4592, Florida Statutes (2003), incorporating those revisions to the Long Term Plan; providing an effective date. (Tracey Piccone, ext. 6495)

Tracey Piccone, Chief Consulting Engineer, STA Management Division, presented information on this agenda item. She reported on the background of the Long Term Plan and the revisions to it. She reported on the implementation of the EAA conveyance and regional treatment project (ECART), integration with the L-8 CERP project, increase source controls funding and the installation of manatee barriers.

Public Comment: Rosa Durando representing Audubon of Florida, Lake Worth, provided public comment on monitoring and the L-8 Marsh. Ms. Durando had concerns about the Sand Center Canal.

Motion made by Michael Collins, seconded by Nicolás Gutiérrez to Approve the following item(s): 55

Vote called. Voting yes: Michael Collins, Nicolás Gutiérrez, Miya Burt-Stewart, Lennart Lindahl, Kevin McCarty. Abstained: Malcolm Wade. Not present: Irela Bagué, Alice Carlson. Motion passed.

- 56.** Approve Environmental Resource Permit Application Number 050607-23 for construction of a 26.61 acre upland parcel for development of a county park facility known as Lakes by the Bay - Park site in Miami-Dade County (Anthony Waterhouse, ext. 6867 or Matt Morrison, ext. 3718)

Robert Brown, Department Director, Environmental Resource Regulation, presented information on this agenda item.

Motion made by Michael Collins, seconded by Lennart Lindahl to Approve the following item(s): 56

Vote called. Voting yes: Michael Collins, Lennart Lindahl, Miya Burt-Stewart, Nicolás Gutiérrez, Kevin McCarty, Malcolm Wade. Not present: Irela Bagué, Alice Carlson. Motion passed.

- 21.** **2006-1203** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 1,215 day contract with Lucas Marine Construction, LLC, the lowest responsive and responsible bidder, for the Installation of Horizontal Submerged Pumps-Lake Okeechobee Forward Pumping, in the amount of \$698,900, for which dedicated funds (Lake Okeechobee Trust Fund) are budgeted; providing an effective date. (Contract #4600000577) (Don Nuelle, ext. 6743)

Don Nuelle, Senior Supervising Engineer, Lake Okeechobee Division, presented information on this agenda item.

Mr. Neulle provided information on the forward pumps and explained how they are tested before they are purchased. There are a total of 14 pumps.

Mr. Nuelle reported on the forward pumping schedule and the costs of the installations.

Motion made by Alice Carlson, seconded by Lennart Lindahl to Approve the following item(s): 21

Vote called. Voting yes: Alice Carlson, Lennart Lindahl, Miya Burt-Stewart, Michael Collins, Kevin McCarty. Not present: Irela Bagué, Nicolás Gutiérrez, Malcolm Wade. Motion passed.

- 74.** Enter an emergency order concerning District operation of by-pass structures located on the C-40, C-41, L-59, and L-60 canals in the Indian Prairie Water Use Basin (Terrie Bates, ext. 6952)

Terrie Bates, Assistant Deputy Executive Director, Water Resources provided information on this agenda item.

Motion made by Lennart Lindahl, seconded by Michael Collins to Approve the following item(s): 74

Vote called. Voting yes: Lennart Lindahl, Michael Collins, Miya Burt-Stewart, Nicolás Gutiérrez, Kevin McCarty, Malcolm Wade. Not present: Irela Bagué, Alice Carlson. Motion passed.

75. Extend the term of a temporary Water Use permit for Orange County Utilities (South Water Service Area) to meet the interim demands of the existing population while the renewal of permit 48-00134-W (Application Number 030319-12) is being finalized. The temporary permit will expire on January 12, 2007 unless renewed by the Governing Board.(Robert Moresi ext 6603)

Chip Merriam, Deputy Executive Director, Water Resources, provided information on this agenda item.

Motion made by Lennart Lindahl, seconded by Miya Burt-Stewart to Approve the following item(s): 75

Vote called. Voting yes: Lennart Lindahl, Miya Burt-Stewart, Michael Collins, Kevin McCarty, Malcolm Wade. Not present: Irela Bagué, Alice Carlson, Nicolás Gutiérrez. Motion passed.

Executive Office

58. **2006-1235** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to contract 4600000371 with Natural Resource Conservation Service (NRCS) for North Fork New River (NFNR) canal bank debris removal and repair of canal banks damaged by Hurricane Wilma, to increase the amount of the project by \$300,000 to a total amount of \$2,000,000 with 75% (\$1,500,000) eligible to be reimbursed to the District bringing the District's total contribution to \$500,000, and authorize a budget transfer in the amount of \$75,000 from Managerial Reserves to the Broward Service Center; providing an effective date. (Contract Number 4600000371-A01) (Jose Lopez, ext. 4980)

Ernie Barnett, Director, Office of Policy and Legislation, provided information on this agenda item. Mr. Barnett said this will be a 75/25 percent federal match.

Motion made by Miya Burt-Stewart, seconded by Michael Collins to Approve the following item(s): 58

Vote called. Voting yes: Miya Burt-Stewart, Michael Collins, Lennart Lindahl, Kevin McCarty, Malcolm Wade. Not present: Irela Bagué, Alice Carlson, Nicolás Gutiérrez. Motion passed.

59. Consideration of (1) Administrative Law Judge J. L. Johnston's Recommended Order, and (2) timely filed Exceptions to the Recommended Order and Responses thereto, if any, in DOAH Case No. 06-0805, Captiva Civic Assn. et al. v. South Florida Water Management District & Plantation Development, Ltd., regarding modification of an Environmental Resource Permit for a project known as Harbour Pointe at South Seas Resort.

Sheryl Wood, General Counsel, x6976; Santiago Echemendia, Board Counsel; Susan Martin, for SFWMD Staff; Richard Grosso, Esq. for Petitioners; Lisa Interlandi, Esq. for Petitioners; Robert Hartsell, Esq. for Petitioners; Matthew Uhle, Esq. for Petitioners; Gary Davis, for Intervenor; Kenneth Oertel, Esq. for Respondent Plantation Development; and Gavin Burgess, Esq. for Respondent Plantation Development

Amanda Quirke, Tew-Cardenas, presented information on this agenda item. Ms. Quirke provided the outline of the presentation and the name of the parties included in this permit application. Ms. Quirke reported on the background of this application and the modifications to it after negotiations with the District.

Ms. Quirke reported on the proposed mitigation in this case and on ALJ's key findings which included ERP criteria, the elimination and reduction, and mitigation.

Richard Grosso, Esq., representing the Petitioners, provided comment on the exceptions. He reported on elimination and reduction rule of wetlands.

Ken Oertel, Esq., representing Respondent Plantation Development Ltd., provided the rebuttal. Mr. Oertel reported on ALJ "findings of Fact and Conclusions of Law" ruled in Applicant's favor.

Susan Martin, Sr. Specialist Attorney, Office of Counsel, provided information on the statewide rule on reduction and elimination of wetland and other surface water impacts. Ms. Martin reported on the standard of review for conclusions of law.

Mr. Grosso provided a rebuttal and said the applicant is trying to make a legal issue out of one that does not exist.

Amanda Quirke provided Board Counsel's recommendations:

- Findings of Fact 71, 74 and 76 modified as provided in the proposed Order
- Conclusions of Law 111, 112, and 116 are rejected to the extent that the ALJ applied the incorrect standard of whether impacts were reduced or eliminated "to the extent practicable"
- Remand to the ALJ to apply the correct standard whether PDL has implemented "practicable design modifications" to reduce and eliminate adverse impacts (BOR 4.2.1.1)

Mr. Collins said he doesn't think the applicant needs to re-apply for this permit and that they need to address the unresolved issues.

Mr. Gutiérrez made a motion to support Board Counsel's recommendations inclusive on a ruling on the exceptions.

Mr. Wade provided comment on conflicting case law and requested we go back to ALJ for his interpretation of this case.

Motion made by Nicolás Gutiérrez, seconded by Michael Collins to Approve the following item(s): 59

Vote called. Voting yes: Nicolás Gutiérrez, Michael Collins, Irela Bagué, Miya Burt-Stewart, Alice Carlson, Lennart Lindahl, Kevin McCarty, Malcolm Wade. Motion passed.

- 73. 2006-1241** A Resolution of the Governing Board of the South Florida Water Management District to authorize an Offer of Judgment for \$9,366,550.00 plus statutory attorneys fees and interest and experts fees and costs for a condemnation action involving approximately 45.14 Acres (Tract No. W9-201-005 Norman Superstein, Trustee) in the East Coast Buffer Project, Broward Water Preserve Area, Cell 11 in the action styled South Florida Water Management District v. Norman Superstein, Trustee, et al., filed In the Circuit of the Seventeenth Judicial Circuit in and for Broward County, Florida, Case No. 04-000254 CACE 14; providing an effective date. (Bob Panse, x6279)

Robert Panse, Sr. Supervising Attorney, presented information on this agenda item.

Motion made by Lennart Lindahl, seconded by Michael Collins to Approve the following item(s): 73

Vote called. Voting yes: Lennart Lindahl, Michael Collins, Miya Burt-Stewart, Nicolás Gutiérrez, Kevin McCarty, Malcolm Wade. Not present: Irela Bagué, Alice Carlson. Motion passed.

Operations and Maintenance

- 60. 2006-1236** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to IA060726 with the United States Department of Agriculture (USDA) Natural Resource Conservation Services (NRCS) for repairs to canal and levee banks damaged by Hurricane Wilma in the amount of \$1,100,000, for which \$500,000 in ad valorem funds and \$600,000 in dedicated funds (Everglades Trust Fund) are budgeted, of which \$825,000 will be reimbursed to the District; providing an effective date. (Contract Number IA060726-A02/4600000295) (Jose Guardiario, ext. 2594)

Cled Weldon, Department Director, Construction and Engineering, presented information on this agenda item.

Motion made by Malcolm Wade, seconded by Lennart Lindahl to Approve the following item(s): 60

Vote called. Voting yes: Malcolm Wade, Lennart Lindahl, Miya Burt-Stewart, Alice Carlson, Nicolás Gutiérrez, Kevin McCarty. Not present: Irela Bagué, Michael Collins. Motion passed.

- 61. 2006-1237** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 210 day contract with H&J Contracting, Inc., the lowest responsive and responsible bidder, for the STA-1W Public Use Facility, in the amount of \$1,849,210, for which dedicated funds (Everglades Trust Fund) are budgeted; providing an effective date. (Contract Number 4600000556) (Jose Guardiario, ext. 2594)

Cled Weldon, Department Director, Construction and Engineering, provided information on this agenda item.

Motion made by Lennart Lindahl, seconded by Nicolás Gutiérrez to Approve the following item(s): 61

Vote called. Voting yes: Lennart Lindahl, Nicolás Gutiérrez, Miya Burt-Stewart, Alice Carlson, Kevin McCarty, Malcolm Wade. Not present: Irela Bagué, Michael Collins. Motion passed.

- 62. 2006-1238** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 150 day contract with American Earth Movers, Inc., the lowest responsive and responsible bidder, for the STA-2 Hurricane Wilma Levee Repairs in the amount of \$1,248,000, for which dedicated funds (Everglades Trust Fund) are budgeted; providing an effective date. (Contract Number 4600000576) (Jose Guardiario, ext. 2594)

Cled Weldon, Department Director, Construction and Engineering, presented information on this agenda item.

Motion made by Michael Collins, seconded by Lennart Lindahl to Approve the following item(s): 62

Vote called. Voting yes: Michael Collins, Lennart Lindahl, Irela Bagué, Miya Burt-Stewart, Alice Carlson, Nicolás Gutiérrez, Kevin McCarty, Malcolm Wade. Motion passed.

63. Public Comment

Jim Harvey, representing the Village of Wellington, provided public comment on Acme Basin B.

Public Hearing

CERP

64. 2006-1239 Open Public Hearing

A Resolution of the Governing Board of the South Florida Water Management District adopting the SFWMD Florida Forever Work Plan, 2007 Annual Update, contained in Chapter 6, Volume II, of the South Florida Environmental Report; providing an effective date. (W. Simpson, x6445)

Close Public Hearing

Chair McCarty opened the public hearing.

Wanda Simpson, Lead Ecosystem Restoration Representative, Real Estate, provided information on the Florida Forever Workplan.

Chair McCarty closed the public hearing.

Motion made by Malcolm Wade, seconded by Nicolás Gutiérrez to Approve the following item(s): 64

Vote called. Voting yes: Malcolm Wade, Nicolás Gutiérrez, Miya Burt-Stewart, Alice Carlson, Lennart Lindahl, Kevin McCarty. Not present: Irela Bagué, Michael Collins. Motion passed.

Staff Reports

77. Lake Okeechobee Conditions Report - Susan Gray (This item was #16 on the Workshop and was moved to the regular Governing Board meeting on Thursday. This item will be heard with staff reports.)

Susan Gray, Deputy Department Director, Watershed Management, presented information on Lake Okeechobee's conditions report. Dr. Gray reported on Lake Okeechobee's phosphorus level, the submerged plants, and the position analysis.

65. Office of Policy and Legislation Update - Ernie Barnett

Ernie Barnett, Director of Office of Policy and Legislation, reported the Water Resource Development Act (WRDA) did not pass. Mr. Barnett said there is a lot of momentum going into the 110th Congress. Mr. Barnett said there will be strong support from Congress regarding the Herbert Hoover Dike land acquisition. Mr. Barnett also provided information on the State level. Mr. Barnett reported staff are working to get State and Tribal Grants.

Ms. Wehle provided comment on WRDA. Ms. Wehle said it is significantly impacting the ability of the SFWMD to move ahead on Everglades Restoration in an equal partnership with the Federal Government. No other year is more critical than this one (with the new administration) in sending a message to the Federal Government: If they want to be our partner, we need to see a little more than what we have in the past seven years.

Ms. Wehle said on the local level, there is a great partnership on the day-to-day protection of the Everglades. The only revenue that will be available for the construction of projects for Everglades Restoration is from the Federal Government. If that doesn't occur, then Everglades Restoration could come to a halt. Ms. Wehle said the District is going to continue 100 percent with our commitment with land acquisition. She said the State will continue with Everglades funding that we use for land acquisition. Ms. Wehle said we need to start thinking about what happens if the revenue doesn't come in for any other construction projects in Everglades Restoration.

Mr. Collins provided comment about the programmatic compliance.

Mr. Lindahl said even if funding is authorized through WRDA, we need to find out when these projects will become reality. Mr. Lindahl said we need to decide what is reality with regard to future partnership and whether anything is going to happen.

66. Calendar Update - Jacki McGorty

Jacki McGorty, District Clerk, provided an update on the District's public calendar.

67. General Counsel Report - Sheryl Wood

Sheryl Wood, General Counsel, provided an update on the General Counsel Report. Ms. Wood provided information on a rule pertaining to water reservations.

68. Executive Director's Report - Carol Wehle

Ms. Wehle reported the general engineering RFPs were issued on December 7, 2006. She reminded staff and Governing Board members of the blackout time during the solicitation period, the evaluation period, and award process period. No one can speak with vendors inquiring about these RFPs.

Mr. Collins had a concern about the firms that did not meet the SBE/minority program.

Ms. Wehle provided additional information pertaining to this issue.

Ms. Wehle also reported on the District-wide rainfall over a 24 hour period. Mr. Horne also presented information on the District-wide rainfall during the last few hours.

Ms. Wehle wished everyone Happy Holidays.

69. Board Comment

Mr. Wade provided comment on the concerns regarding the people out in the Glades area. He spoke on the leadership from the USACE and the partnership between District staff and the USACE to again meet with the public. Mr. Wade also praised staff from the Environmental Resource Assessment for their "fish" material which was sent out.

Mr. Lindahl wished everyone Happy Holidays. He provided thoughts for Governor Jeb Bush.

Mr. Collins also praised Governor Bush and his support for the agency in regard to Everglades Restoration.

Ms. Carlson wished everyone Happy Holidays! Ms. Carlson thanked everyone who donated gifts for the auction. She also thanked Terrie Bates for her efforts with the auction.

Chair McCarty also praised Governor Bush. He wished the staff Happy Holidays!

Ms. Bagué praised Governor Bush in Spanish. She wished everyone a Happy Holiday Season.

78. Status Report on the Update to the Lower East Coast Regional Water Supply Plan - John Mulliken, Director, Water Supply Planning Division (This item was #9 on the Workshop Agenda and was moved to the regular Governing Board meeting on Thursday. This item will be heard with Item 54.)

John Mulliken, Division Director, Water Supply Planning, presented information on this agenda item. Mr. Mulliken reported on population growth and water supply needed for the Lower East coast region. Mr. Mulliken reported on how this water supply will be met and provided information on alternative water supplies in this region.

Mr. Mulliken said he plans to bring this back to the Board in February 2007 for a vote on the plan.

Mr. Lindahl provided comment regarding population projection.

Ms. Bagué provided comment and said to continue to send the message for the population projection be done correctly the first time.

Mr. Collins provided comment on the 18-month permit.

Public Comment: Patrick Hayes representing Martin County Soil and Water, provided public comment on this agenda item. He spoke on alternative water supply plans, MFLs and reservations.

Closed Door Agenda

Executive Office

70. Closed-Door Session

Attorney-client session pursuant to Fla. Stat. Section 286.011(8)(2005) to discuss strategy related to litigation expenditures in Friends of the Everglades, Inc. and Fishermen against destruction of the Environment, Inc. v. South Florida Water Management District, et al., U.S. District Court for the Southern District of Florida, Case No. 02-80309-CV-ALTONAGA/Turnoff; Miccosukee Tribe of Indians of Florida v. South Florida Water Management, et al., U.S. District Court for the Southern District of Florida, Miami Division, Case No. 98-6056-CIV-LENARD/KLEIN; and Friends of the Everglades v. South Florida Water Management District, U. S. District Court For the Southern District of Florida, Miami Division, Case No. 98-6057-CIV-LENARD/KLEIN.

Sheryl G. Wood, General Counsel, Office of Counsel, x6976

Action Items (if any) Stemming from Closed Sessions

Attorney-client session pursuant to Fla. Stat. Section 286.011(8)(2005) to discuss strategy related to litigation expenditures in Friends of the Everglades, Inc. and Fishermen Against Destruction of the Environment, Inc. v. South Florida Water Management District, et al., U.S. District Court for the Southern District of Florida, Case No. 02-80309-CV-ALTONAGA/Turnoff; Miccosukee Tribe of Indians of Florida v. South Florida Water Management, et al., U.S. District Court for the Southern District of Florida, Miami Division, Case No. 98-6056-CIV-LENARD/KLEIN; and Friends of the Everglades v. South Florida Water Management District, U.S. District Court For the Southern District of Florida, Miami Division, Case No. 98-6057-CIV-LENARD/KLEIN.

Sheryl G. Wood, General Counsel, Office of Counsel, x6976

Chair McCarty announced that the Governing Board would adjourn to Closed Door Session at 1:00 pm and would reconvene in approximately one hour.

Chair McCarty reconvened the meeting at 1:52 pm.

Sheryl Wood, General Counsel, reported no action be taken.

71. Closed-Door Session

Attorney-client session pursuant to Fla. Stat. Section 286.011(8)(2005) to discuss strategy related to litigation expenditures in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno.

Sheryl G. Wood, General Counsel, Office of Counsel, x6976

Action Items (if any) Stemming from Closed Session

Attorney-client session pursuant to Fla. Stat. Section 286.011(8)(2005) to discuss strategy related to litigation expenditures in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno.

Sheryl G. Wood, General Counsel, Office of Counsel, x6976

This item was discussed at the December Governing Board Workshop on December 13, 2006.

Chair McCarty reported no action be taken.

Adjournment

72. Adjourn

Chair McCarty adjourned the meeting at 1:55 pm.

Kevin McCarty
Chairman
South Florida Water Management District Governing Board

Cathy Widness
Administrative Assistant Senior
Governing Board and Executive Services
South Florida Water Management District