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## South Florida Water Management District

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### MINUTES GOVERNING BOARD WORKSHOP

August 8, 2007

1:00 PM

District Headquarters - B-1 Auditorium

3301 Gun Club Road

West Palm Beach, FL 33406

REVISED ON AUGUST 2, 2007

Members Present:

**Eric Buermann, Chair**

**Charles Dauray**

**Shannon Estenoz**

**Nicolás Gutiérrez, Vice-Chair**

**Melissa Meeker**

**Patrick Rooney**

**Harkley Thornton**

**Malcolm Wade**

Members Absent:

**Michael Collins**

**1. Call to Order** - Eric Buermann, Chairman

Chair Buermann called the meeting to order at 1:12 pm

**2. Pledge of Allegiance** - Eric Buermann, Chairman

Chair Buermann led the group in the Pledge of Allegiance.

**3. Approval of Minutes from the last month's Governing Board Meeting**

Approval of Meeting Minutes for July 11, 2007, held in West Palm Beach, Florida.

Motion made by Nicolás Gutiérrez, seconded by Malcolm Wade to Approve the following item(s): 3

Vote called. Voting yes: Nicolás Gutiérrez, Malcolm Wade, Eric Buermann, Charles Dauray, Shannon Estenoz, Melissa Meeker, Patrick Rooney, Harkley Thornton.  
Motion passed.

**4. Agenda Addendum**

Annette Carter, Director of Governing Board and Executive Services, read into the record that there were no changes to the Agenda.

**5. Abstentions by Board Members from items on the Workshop**

Malcolm Wade abstained from item 11, Backpumping.

**6. Pull Items for Discussion from Governing Board Meeting Agenda**

Ms. Estenoz pulled the Lee County permits applications under Item 13 from the Governing Board Consent Agenda.

**7. Everglades Restoration Update - Tommy Strowd, Assistant Deputy Executive Director, Everglades Restoration Resources, Paul E. Dumars, Sr., Chief Financial Officer**

Chip Merriam, Deputy Executive Director, Water Resources, presented a film on Lake Okeechobee aerial revegetation of submerged aquatic vegetation.

Jeff Kivett, CERP Engineering Director, Everglades Restoration Resources, presented an update on the Everglades Restoration projects.

Ms. Meeker had a question on one of the slides.

Mr. Kivett answered Ms. Meeker's question.

**8. Lake Okeechobee Water Supply Issues**

**Introduction** - Carol Wehle, Executive Director

Carol Wehle, Executive Director, gave an overview regarding the Lake Okeechobee Water Supply Issues and challenges.

**9. Lake Okeechobee Operations Overview, Water Conditions and Climate Outlook - Susan Sylvester, Director, Operations and Control Department**

Susan Sylvester, Director, Operations and Control Department presented on Lake Okeechobee Operations Overview, Water Conditions and Climate Outlook.

Chair Buermann and Mr. Rooney had questions regarding the backpumping capacity of S-2 and S-4.

Ms. Sylvester answered their questions. There were additional questions regarding backpumping. Ms. Sylvester deferred to Gary Goforth's presentation.

**10. Operational Alternatives - Susan Sylvester, Director, Operations and Control Department**

- A. Alternative regulation schedules
- B. Private Land Storage
- C. Operational alternatives
- D. Backpumping

Chair Buermann called for Public Comments on item 10.

Public Comments:

Alex Larson would like for the Governing Board to look into a flowway south. Hookers Point was suggested because of a sandy bottom.

Susan Sylvester, Director, Operations and Control Department, provided a presentation on operation alternatives.

## **11. Backpumping**

- A. Procedural Considerations
- B. Water Quantity and Quality - Gary Goforth, P.E., PhD., Gary Goforth, Inc.
- C. Effects of Water Supply Backpumping on Lake Okeechobee - Susan Gray, Deputy Director, Watershed Management Department
- D. Economic Impacts to Agriculture in Lake Okeechobee Service Area - Nelson Mongiovi, Director, Division of Marketing, Florida Department of Agriculture and Consumer Services
- E. Interest Group Representatives
  - a. Environment
  - b. Agriculture
  - c. Business

## A. Procedural Considerations

Sarah Nall, Deputy General Counsel, Office of Counsel, addressed Item A: Procedural Considerations. Ms. Nall provided an overview of the Procedural Considerations for the Lake Okeechobee Water Supply Augmentation.

Mr. Dauray asked for a clarification on the Court Order on water augmentation.

Mr. Wade asked for clarification on the legal requirements for backpumping.

Ms. Nall explained the legal requirements and the court order.

Chair Buermann summarized his understanding of the order.

Mr. Wade asked that Jim Nutt, attorney litigating the case, provide clarification of the Judge's order.

Jim Nutt, Sr. Practice Expert, Office of Counsel, clarified for the Governing Board the interpretation of the Judge's Court Order. It was his understanding that the final judgment stated the District must apply for a permit for backpumping. There are no judicial restraints on how to proceed with backpumping.

Chair Buermann re-stated the point by saying that the District must apply for a permit but it was not clear whether the District must wait for a permit before starting to backpump.

Ms. Meeker asked for clarification on the LOPA permit.

Ms. Nall and Mr. Merriam addressed Ms. Meeker's concerns.

Mr. Rooney asked if we had an answer from DEP whether they will modify the permit to allow for backpumping.

Jerry Brooks, from DEP, addressed the Board. Mr. Brooks explained the conditions of the permit and the issues with emergency backpumping.

## B: Water Quantity & Quality

Gary Goforth provided a presentation on water quality for water supply augmentation including a historical perspective and current conditions. There was discussion and clarification on phosphorus and nitrogen loading during water augmentation.

## C: Effects of Water Supply Backpumping on Lake Okeechobee

Susan Gray, Deputy Director, Watershed Management Department presented information on the effects of Water Supply Backpumping on Lake Okeechobee.

## D: Economic Impacts

Nelson Mongiovi, Director, Division of Marketing, Florida Department of Agriculture and Consumer Services, presented on the economic impacts to agriculture in the Lake Okeechobee Service area.

Mr. Wade congratulated Mr. Mongiovi on an excellent presentation.

Ms. Meeker and Ms. Estenoz discussed the uncertainties and the issues with backpumping.

Chair Buermann stated that this workshop was not only about backpumping but to find solutions to help agriculture during the drought. Mr. Buermann explained the legal and permitting issues that have also complicated this situation.

Mr. Gutiérrez explained that the workshop is trying to balance all different interests and address the future water supply needs of agriculture. Backpumping is never an easy issue.

Ms. Estenoz stated that there is the need to look toward the future and start dealing with water augmentation issues.

## E: Interested Group Representatives

Dr. Richard Weiskoff provided a presentation focusing on environmental concerns.

Mr. Wade stated that Mr. Weiskoff's presentation implied that only sugar benefited from backpumping, which was unfounded. There are many agricultural users around Lake Okeechobee that will benefit from backpumping, including vegetable, citrus and others.

Chair Buermann agreed with Mr. Wade's statement.

Paul Gray from Audubon, addressed environmental impacts. He shared his time on the podium with Thomas VanLindt, from the Everglades Foundation.

Ms. Estenoz requested clarification on implementation of Phase 3 and the installation of the forward pumps.

Terrie Bates and Mr. Merriam clarified Ms. Estenoz' questions.

Ms. Wehle elaborated on the physical limitations of the forward pumps at a lake level between 7.5' and 8'.

B: Agriculture

Tom McVicar presented on the impacts to agriculture.

Ms. Estenoz and Ms. Meeker asked Mr. McVicar for clarifications on some of the slides presented.

C: Business

Lynn Topol presented on the impacts to business.

## **12. General Public Comment**

Chair Buermann stated that Public Comments will be restricted to one minute duration to try to expedite the meeting.

Public Comments:

Dan Clark, representing Cry of the Water stated support for backpumping as it will help with the pulse releases during wet times.

Stephanie Clark, representing herself, stated support for backpumping. We would like to see a building moratorium in West Broward and an Alternate Water Supply requirement for all new development.

Margaret England, representing the Caloosahatchee River Citizens Assoc. "Riverwatch", presented a copy of a petition was given to all Governing Board members which does not support backpumping because it adds pollutants to an already polluted lake.

Marty Daltry, representing the Sierra Club, does not support backpumping as it adds more pollutants to the Lake. Solutions are needed, not only for the lake, but also for the Caloosahatchee River Watershed.

John Alexander, representing Alico, Inc., stated he represent farmers from Hendry County. They support backpumping.

Jackie Cohen, representing Audubon, supports year round water restrictions and doesn't agree with backpumping for water supply. It adds pollutants to the lake.

Amber Crooks, representing the Conservancy of Southwest Florida, does not agree with backpumping; it adds pollutants to the lake. We recommend that farmers create more water conservation areas for their use during drought.

Rosa Durando, representing Audubon, does not agree with backpumping, and we ask that you manage the lake as a water resource and not a reservoir.

Sara Fain, representing National Parks Conservation Association, stated opposition to backpumping. It is in direct conflict with Everglades Restoration and it will worsen the water quality of the lake. There needs to be a long term solution.

Ted Guy yielded his time to Mark Perry.

Ron Hamel, representing Gulf Citrus Growers stated support for backpumping. We need more water in the lake.

Kurt Harclerode, representing Lee County, read a letter for the record from Lee County Commission. They disagree with backpumping as it adds more pollutants to the lake. It is counter productive to the clean up of pollutants in the lake. We recommend an increase of additional water storage areas.

Marcy LaHart, representing Everglades Foundation objected to backpumping because of the public health risk. Belle Glade, South Bay and Pahokee depend on the lake for their water supply.

Alex Larson stated her opposition to backpumping.

Chuck Locke read a letter into the record. We are not in agreement with backpumping as it adds more pollutants to the lake. We need to restore a flow south to restore the marshes.

John Marshall, representing the Arthur Marshall Foundation, does not agree with backpumping. Mr. Marshall stated concern for meeting phosphorus loads for the lake.

Drew Martin, representing the Sierra Club, does not support backpumping and proposed creating a sheetflow to the south again.

Sue Mullins, representing Florida Wildlife Federation, does not support backpumping because of the public health risk.

Wayne Nelson, representing Fisherman Against Destruction of the Environment, protested the one minute public comment and stated his disagreement with backpumping.

Mark Perry, representing Florida Oceanographic/Everglades Coalition, stated they do not support backpumping because it adds pollutants to the lake. He said "Let's not use the lake as a reservoir".

Rhonda Roff, representing Save our Creeks, does not support backpumping without an NPDES permit. We have to think about the drinking water to the communities around the lake and the risks involved.

Stella Rossi, representing herself, opposes backpumping. This Board needs to educate people on water usage and to encourage planting native vegetation.

Thorn Rumberger, representing Everglades Foundation, does not endorse backpumping and wants to explore other alternatives.

Charles Shinn, representing Florida Farm Bureau, supports backpumping. We are working on long time solutions but we need short term solutions now.

Barry Silver, representing Palm Beach County Environmental Coalition, opposes the approval of an energy plant that will use over 8.5 billion gallons of water. He asked that the Board revisit this decision.

Ed Tichenor, representing Palm Beach County Reef Rescue, opposes backpumping as it is a violation of a federal law.

Nicole Tolleson, representing herself, opposes backpumping. We need to change our way of thinking and living to help with our future. It is the future of our children.

Jason Totoiu, representing Martin County Conservation Alliance, does not support backpumping because of the impacts to the estuaries from Lake Okeechobee discharges.

Sharon Waite, representing taxpayers, supported Barry Silver on his comments.

Herb Zebuth opposes backpumping. Phosphorous is not under control yet and you should not be considering backpumping.

Chair Buermann summarized the presentations and public comments and opened the meeting to Board comments.

Ms. Estenoz stated the need to pursue other water alternatives. Water supply backpumping is not the answer because of the irrevocable damage to the lake.

Mr. Dauray asked of the Board members to take leadership and not allow any more intrusion of pollutants in the lake.

Ms. Meeker challenged the staff to come up with "out of the box" ideas beside backpumping into the lake.

Mr. Wade spoke on behalf of the agricultural interests. Mr. Wade reminded everyone that the problem is the dike. If the water levels were not lowered to protect the dike, water supply backpumping would not be an issue. Mr. Wade stated that he abstained at the beginning of the meeting but would like to see this Board vote for backpumping.

Chair Buermann asked if the water from the Miami Canal would be of a better quality for backpumping.

Ms. Wehle clarified that for backpumping from any canal, the District needs to declare an emergency and will require a permit from DEP.

Mr. Gutiérrez supported Mr. Wade's comments and recognized his knowledge with respect to the agricultural needs.

Mr. Thornton also supported the comments from Mr. Wade and encouraged the Board not to take any alternatives off the table.

The Board discussed water storage options and timing constraints.

Ms. Meeker suggested continuing the discussion at tomorrow's meeting.

Ms. Wehle suggested a time certain of 10:00 am tomorrow morning.

This item will be continued at the Governing Board meeting on Thursday.

### **Corporate Resources**

- 13. Procurement Process Overview** - Carrie Hill, Assistant Deputy Executive Director, Corporate Resources, and Frank Hayden, Director, Procurement Department

This item was postponed until Thursday.

## **Executive Office**

### **14. 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, Ext. 6976)

#### 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 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, Ext. 6976)

This item was postponed until Thursday.

### **15. 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., United States District Court, Southern District of Florida, Case No. 02-80309-CV-Altonaga/Turnoff; Miccosukee Tribe of Indians of Florida v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 98-6056-CIV-Lenard/Klein; and Friends of the Everglades v. South Florida Water Management District, United States District Court, Southern District of Florida, Case No. 98-6057-CIV-Lenard/Klein. (Sheryl G. Wood, General Counsel, Office of Counsel, Ext. 6976)

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**16. Closed Door Session**

Attorney-client session pursuant to Fla. Stat. Section 286.011(8)(2005) to discuss strategy related to litigation expenditures in Pietrucha v. South Florida Water Management District, 15th Judicial Circuit, Palm Beach County, Case No. 50-2005 CA 006879 Kelley. (Sheryl G. Wood, General Counsel, Office of Counsel, Ext. 6976)

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 Pietrucha v. South Florida Water Management District, 15th Judicial Circuit, Palm Beach County, Case No. 50-2005 CA 006879 Kelley. (Sheryl G. Wood, General Counsel, Office of Counsel, Ext. 6976)

**17. Adjourn**

Chair Buermann made a motion to adjourn the meeting at 6:30 pm, seconded by Mr. Wade. Motion passed.

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Eric Buermann  
Chairman  
South Florida Water Management District Governing Board

Recorded By:

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Sandra Gomez  
Administrative Assistant Senior  
Governing Board and Executive Services  
SFWMD

Motion made by Eric Buermann, seconded by Malcolm Wade to Approve the following item(s): 17

Vote called. Voting yes: Eric Buermann, Malcolm Wade, Charles Dauray, Shannon Estenoz, Nicolás Gutiérrez, Melissa Meeker, Patrick Rooney, Harkley Thornton.  
Motion passed.