



South Florida Water Management District

GOVERNING BOARD MEETING MINUTES

November 10, 2010

9:00 AM

Florida Gulf Coast University, Student Union Ballroom
10501 FGCU Blvd., South
Ft. Myers, FL 33965

Members Present:

Sandy Batchelor

Charles Dauray

Glenn Waldman

Members Absent:

Shannon Estenoz

Eric Buermann, Chair

Jerry Montgomery

Joe Collins

Kevin Powers

1. Call to Order - Eric Buermann, Chairman, Governing Board

Chair Buermann called the meeting to order at 9:06 a.m.

A song "Roll on Caloosahatchee" by Mike Jurgensen was played in honor of the Caloosahatchee River.

2. Pledge of Allegiance - Eric Buermann, Chairman, Governing Board

Charles Dauray led the group in the Pledge of Allegiance.

Chair Buermann recognized Veteran's Day and all those who have served in the Armed Forces. He also announced it was the 235th birthday for the U.S. Marine Corps.

3. Welcoming Remarks - Dr. Joseph Shepard, Vice President for Administrative Services and Finance, Florida Gulf Coast University

Dr. Joseph Shepard, Vice President for the Administrative Services and Finance, Florida Gulf Coast University, welcomed the Board, staff and public to the University. He thanked the District for finding a balance between man and nature.

4. Local Governmental Officials - Introductions by Phil Flood, Director, Lower West Coast Service Center

Phil Flood, Director, Lower West Coast Service Center, introduced the local government officials.

Ben Nelson, Bonita Springs Mayor, thanked the Board for their partnership and praised the excellent District staff.

Mick Denham, Vice Mayor, Sanibel, welcomed the Board to southwest Florida and commented on the importance of the health of the Caloosahatchee River for the economy of southwest Florida.

Ray Judah, Lee County Commissioner, welcomed the Board to southwest Florida. He said Lee County is proud to be under the District's jurisdiction. He provided a powerpoint presentation on the problems and challenges of the Caloosahatchee River and Estuary.

There was also a Google Earth Flyover tour presentation of the Caloosahatchee River and Estuary.

5. Big Cypress Basin Board Update - John Sorey, Big Cypress Basin Board Member

Mr. Dauray commented on clean water supply for the world's population in order to sustain human life and overcoming the challenges that southwest Florida faces. Mr. Dauray introduced Mr. Noah Standridge, Big Cypress Basin Board member.

Noah Standridge, Big Cypress Basin Board, provided an update on the Big Cypress Basin Board's activities.

6. Agenda Addendum - Annette Carter, Director, Office of Governing Board & Executive Services

Annette Carter, Director, Office of Governing Board & Executive Services read into the record:

Section 120.525, Florida Statutes, allows the District to change the published agenda for good cause shown, as determined by the presiding officer. The Chairman has determined good cause exists. These changes are being made in order to permit the Governing Board to accomplish necessary public business at this meeting and to reflect the items on the agenda that have been deleted, revised, added or postponed. These changes have been listed in the Addendum available to the public at the entrance to this meeting room and provided to the Governing Board.

Ms. Carter also announced that Item 30 has a different funding source. The funding source is reflected in the revised resolution which the Governing Board members have and is also available with the District Clerk.

7. Abstentions by Board Members from items on the Agenda

Kevin Powers read into the record:

Chairman and Fellow Governing Board members:

You should have before you copies of Form 8B Memorandum of Voting Conflicts for County, Municipal, and other Local Public Officers filed with the District Clerk on November 9, 2010. The Memorandum references Agenda Items Numbered 31, 32, and 40 upon which I will be participating in Governing Board discussion and upon which I will abstain from voting. Florida Statutes, Chapter 112.3143, permits appointed officials to participate in a matter even though they have a conflict if they meet statutorily defined disclosure requirements. Florida Statutes, Chapter 112.3143, requires that I now read publically the Memorandum of Voting Conflict filed with the District Clerk on November 9, 2010. I will abstain from voting on Agenda Items numbered 31, 32, and 40 as there is the potential for a future special private gain to Indiantown Realty Corporation, to whom I am retained. Indiantown Realty Corporation has a pre-existing representation contract with Indiantown International Incorporated, an adjacent landowner to the C-44 Reservoir / Stormwater Treatment Area Project. Indiantown Realty Corporation represents Indiantown International Incorporated pursuant to this representation contract in relation to the purchase of land interests referenced in Agenda Items numbered 31, 32, and 40. Governing Board members were previously provided copies of Form 4A which I filed on October 8, 2010 concerning the contractual relationship between Indiantown Realty Corporation and Indiantown International Incorporated.

Consent Agenda

8. Public Comment on Consent Agenda

Public Comment: Carl Veaux, Sierra Club, commented on cleaning up the Caloosahatchee River with increased fertilizer ordinances.

9. Pull Items for Discussion from Consent Agenda

There were no items pulled from the Consent Agenda for discussion.

10. Board Comment on Consent Agenda

There was no Board comment on the Consent Agenda.

Regulatory Matters

11. Denials

Consent Agreements

Conservation Easement Amendments and Releases

12. Right of Way Occupancy New Permits

Right of Way Occupancy Permit Modifications

Right of Way Occupancy Permit Requests with Waiver of District Criteria

13. Waivers For Water Resources Advisory Commission (WRAC) Members pursuant to Section 112.313, Florida Statutes

Everglades Restoration and Capital Projects

14. **2010-1100** A Resolution of the Governing Board of the South Florida Water Management District approving the release of easement interests containing 1,446.1 square feet or 0.033 acres, more or less, located along Taylor Creek, over a portion of Section 15, Township 37 South, Range 35 East, Okeechobee County; providing an effective date. (Kathy Massey, ext. 6835)

16. **2010-1102** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to contract 4600000750 with the Florida Fish and Wildlife Conservation Commission for construction of the G-113 structure replacement as part of the Three Lakes Wildlife Management Area Hydrologic Restoration Project, in the amount of \$1,500,000 as reimbursement to the District, not to exceed the total project reimbursement of \$2,711,000; subject to Governing Board approval of the FY12 budget; providing an effective date. (Contract 4600000750-A03)(Christine Carlson, ext. 6143)

17. **2010-1103** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the budget needs of the Comprehensive Everglades Restoration Plan and the Northern Everglades Estuaries Program for fiscal year 2010-2011 utilizing funds from the Save Our Everglades Trust Fund; and authorizing the Executive Director or her designee to request reimbursement based on actual expenditures through September 30, 2011; providing an effective date. (John Dunnuck, ext. 6995)

18. **2010-1104** A Resolution of the Governing Board of the South Florida Water Management District authorizing an amendment to Contract Number LS040998 with Ru-Mar, Inc. for cattle grazing agricultural lease in Martin County to extend the term for fifty seven (57) months, from December 1, 2010 to August 31, 2015, and adjust the annual rent from \$34,829.88 to \$48,700.00 based on a recent appraisal of market rent and increased acreage; providing an effective date. (Contract Number LS040998-A03) (Andrea Stringer, ext. 6742)

Executive Office

19. **2010-1105** A Resolution of the Governing Board of the South Florida Water Management District authorizing the transfer of funds within the District FY2010-2011 budget as shown on the attachment hereto; providing an effective date. (Mike Smykowski, ext. 6295)

20. **2010-1106** A Resolution of the Governing Board of the South Florida Water Management District amending the FY2010-2011 budget; providing an effective date. (Mike Smykowski, ext. 6295)

21. **2010-1107** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the Adopted Budget needs for Fiscal Year 2011, utilizing funds from the Water Management Lands Trust Fund; authorizing the Executive Director or designee to request reimbursement quarterly based on actual expenditures; providing an effective date. (Mike Smykowski, ext. 6295)

Regulatory and Public Affairs

22. **2010-1108** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into an 11-month cost share agreement with the City of Miami Gardens for stormwater improvements for waters discharging into the C-8 Canal, in the amount of \$373,500, of which the District's total contribution will be \$162,500, for which FY11 ad valorem funds are budgeted; providing an effective date. (Contract No. 4600002266) (Lucia Perez, ext. 7235)
24. **2010-1109** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to Contract Number 4600002037 with the Collins Center for Public Policy for the continued support of the Lake Okeechobee Regional Initiative, to extend the term by one (1) year from February 1, 2011 to January 31, 2012 in an amount not to exceed \$100,000, which is unbudgeted and authorize a budget transfer in the amount of \$100,000 from Managerial Reserves (ad valorem funds) to the Regulatory and Public Affairs Resource Area; providing an effective date. (Contract number 4600002037-A02) (Phil Flood, ext. 7768)
25. **2010-1110** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 5 year cooperative agreement with Miami-Dade Limestone Products Association, Inc. for the implementation of water resource mitigation projects as approved by the Interagency Lake Belt Mitigation Committee at no cost to the District; providing an effective date. (Contract Number 4600002246); (Terrie Bates. ext 6952)

Operations and Maintenance

26. **2010-1111** A Resolution of the Governing Board of the South Florida Water Management District to approve the five year update of the Shingle Creek General Management Plan (2010-2015); providing an effective date. (Steve Coughlin, ext. 2603)
27. **2010-1112** A Resolution of the Governing Board of the South Florida Water Management District to approve the five year update of the Lake Marion Creek and Reedy Creek General Management Plan (2010-2015); providing an effective date. (Steve Coughlin, ext. 2603)

28. **Board Vote on Consent Agenda**

Motion made by Jerry Montgomery, seconded by Joe Collins to Approve the following item(s): 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27
Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Kevin Powers, Glenn Waldman. Motion passed.

Discussion Agenda

Everglades Restoration and Capital Projects

- 29. 2010-1113** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a five-year contract with Florida Gulf Coast University, subject to successful negotiations, for long-term oyster monitoring of *Crassostrea virginica* in Southwest Florida, in an amount not to exceed \$1,320,000 of which ad valorem funds in the amount of \$240,000 are budgeted; and the remainder is subject to Governing Board approval of the FY12-16 budgets; providing that, if negotiations are unsuccessful with Florida Gulf Coast University, the District will proceed with negotiations in ranked order until a contract has been successfully negotiated; providing an effective date. (Contract Number 4600002271) (Bahram Charkhian, ext. 2284)

Linda Lindstrom, Director, Restoration Sciences Department, presented information on the contract with Florida Gulf Coast University for long-term oyster monitoring in southwest Florida.

Motion made by Jerry Montgomery, seconded by Joe Collins to Approve the following item(s): 29

Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Kevin Powers, Glenn Waldman. Motion passed.

- 30. 2010-1114** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three-year cooperative agreement with Florida Department of Environmental Protection, for ultratrace mercury, organics, and inorganics analyses in an amount not to exceed \$1,750,000, of which \$481,745 (\$427,445 in ad valorem funds and \$54,300 in dedicated funds (Florida Bay Fund)) are budgeted; and the remainder is subject to Governing Board approval of the FY12-FY14 budgets; providing an effective date. (Contract Number 4600002270)(Mike Wright, x4523)

Linda Lindstrom, Director, Restoration Sciences Department, presented information on the 3-year cooperative agreement with FDEP for laboratory analytical services. The agreement will use the Biscayne Bay Managerial Fund in place of Florida Bay Fund.

Motion made by Jerry Montgomery, seconded by Kevin Powers to Approve the following item(s): 30

Vote called. Voting yes: Jerry Montgomery, Kevin Powers, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Glenn Waldman. Motion passed.

31. **2010-1115** A Resolution of the Governing Board of the South Florida Water Management District to approve the purchase of land interests in Martin County containing 71 acres, more or less, for the C-44 Reservoir/Stormwater Treatment Area Project, in the amount of \$2,000,000, and associated costs; for which dedicated funds (Save Our Everglades Trust Fund) and CERP ad valorem funds are budgeted; approve declaring surplus, disposal of, and removal from the asset records, any such structures and improvements deemed unnecessary for the stated purpose of the original land acquisition; providing an effective date. (Barbara Katz, ext. 6837)

Note: Kevin Powers abstained from voting on this agenda item.

Ruth Clements, Director, Land Acquisition Department, presented information on this land acquisition located in Martin County.

Motion made by Jerry Montgomery, seconded by Glenn Waldman to Approve the following item(s): 31

Vote called. Voting yes: Jerry Montgomery, Glenn Waldman, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray. Abstained: Kevin Powers. Motion passed.

32. **2010-1116** A Resolution of the Governing Board of the South Florida Water Management District requesting the release of funds from Save Our Everglades Trust Fund by the Department of Environmental Protection for the purchase of land interests containing 71 acres, more or less, in Martin County, for the C-44 Reservoir/Stormwater Treatment Area Project, in the amount of \$2,000,000 and associated costs; providing an effective date. (Barbara Katz, ext. 6837)

Note: Kevin Powers abstained from voting on this agenda item.

Ruth Clements, Director, Land Acquisition Department, presented information on this agenda item.

Motion made by Jerry Montgomery, seconded by Joe Collins to Approve the following item(s): 32

Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Glenn Waldman. Abstained: Kevin Powers. Motion passed.

Executive Office

33. **2010-1121** Consideration of the Amended Petition for Rulemaking to Amend the Caloosahatchee River Minimum Flow and Level Rule and Recovery Strategy (Rule 40E-8.221(2) and Rule 40E-8.421(2), F.A.C.) filed by Conservancy of Southwest Florida and Ralf Brookes on October 25, 2010. (Carlyn Kowalsky, ext. 6420) **(Time Certain - 1:00)**

Note: Shannon Estenoz participated via teleconference on Agenda Item 33.

Chair Buermann announced this item concerns Governing Board consideration of the Amended Petition for Rulemaking to amend the Caloosahatchee MFL Rule and recovery strategy filed by the Conservancy of Southwest Florida and Ralf Brooks.

Petitioner's Request:

Enter a final order granting the Amended Petition of the Conservancy of Southwest Florida and Ralf Brookes to amend Rule 40E-8.221(2) and Rule 40E-8.421(2), F.A.C.

Carlyn Kowalsky, Managing Attorney, presented introductory information and reported:

- Governing Board has discretion to determine when to update the MFL rule.
- District must scientifically and technically justify an MFL revision to meet rulemaking standards.
- Additional scientific and technical tasks must be completed to support an update to the MFL.

Linda Lindstrom, Director, Restoration Sciences Department, presented the proposed timeline to complete the technical tasks for Caloosahatchee MFL update and explained "harm", "significant harm" and "serious harm" under the water resource protection standard. The MFL for a waterbody is set to avoid "significant harm". The current MFL is 300 cfs.

Ms. Lindstrom reported the 450 cfs, which Ms. LaHart has referenced, is a restoration planning target for CERP to meet desired salinities for tapegrass approximately 90% of the time. She reported the petitioner's request for immediate update of the MFL rule is not possible because:

- Need to continue District's support for the C-43 Reservoir by completing the water reservation rule.
- Need to collect and analyze additional data (2-3 years) to address deficiencies identified by peer review panel in 2001.
- Need to prepare the technical report and complete independent, scientific peer review as required by rule (1 year duration).

Ms. Lindstrom then reported on the potential timeline to complete the MFL update and the potential alternatives.

Marcy LaHart, Conservancy of Southwest Florida and Ralf Brookes, provided a handout to the Board of the final review report of the Caloosahatchee Minimum Flow Peer Review Panel (September 27-29, 2000) which was submitted to the SFWMD on 11/27/00.

After describing the difference between a water reservation and an MFL, Ms. LaHart explained why the estuary needs a revised MFL:

- The C-43 water basin is not protected from additional allocation.
- Growth in the Lower West Coast Planning Area will add 197 MGD in new water demand by 2025.
- Tidal inflows are important to estuary health.
- No requirement that future uses be met by groundwater rather than surface water.
- Tributaries have been identified as potential future water supplies.
- Decisions are going to be made regarding allocation of "terminated" base water in LOSA to lessen the frequency and duration of MFL violations.
- MFLs are a factor in triggering intermediate phases of water shortage cutbacks in a drought.

Ms. LaHart concluded that 300 cfs is no longer supported based on best available information.

Public Comment: Ray Judah, Commissioner, Lee County, supports the Board granting the petition by the Conservancy of Southwest Florida to initiate rulemaking for the MFL for the Caloosahatchee River.

Public Comment: Ralf Brookes, petitioner, commented on the impacts to the economy. He supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Mark Anderson, citizen, Sanibel, has noticed a distinct decline in the water quality of the Caloosahatchee. He supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Francis Bailey, citizen, Sanibel, said she has seen the water decline in the Caloosahatchee and the economy is based on tourism and asked the Board to regulate the flows into the estuary.

Public Comment: Rick Base, citizen, Sanibel Captiva Chamber, commented on the impacts to the economy and supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: John Cassani, SW Florida Watershed Council, said 450 cfs will not prevent significant harm to the estuary. He supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Amber Crooks, citizen, commented on her concerns regarding the health of the Caloosahatchee River. She supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Marti Daultry, Riverwatch, commented on the water quality of the Caloosahatchee River and urged the Board to support initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: John DeGennaro, citizen, supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Dan DiNicola, citizen, commented on the salinity levels in the estuaries, tourism impacts, and supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Barbara England, Riverwatch, commented on the critical impacts to the Caloosahatchee River and asked the Board to expedite the rulemaking process to establish a MFL of 650 cfs for the Caloosahatchee River.

Public Comment: James English, citizen, opposes the amended petition for rulemaking because it will harm the citizens surrounding Lake Okeechobee.

Public Comment: EJ Gerald, Audubon of SW Florida, read into the record a letter from Wayne Daltry. He supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Jane Graham, Audubon of Florida, recommends allocating additional funds for staff next year to work on this project. Audubon supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Ron Hamel, Gulf Citrus Growers Assoc., commented on water management, water conservation and the concerns of water supply being allocated for agriculture. He supports staff's recommendation and opposes the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Jennifer Hecker, Conservancy of Southwest Florida, said more science should not be used when the science is already available. She supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Richard Johnson, Bailey General's Store, commented on the balance of water for the farmers, family, business and the environment. He supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Jeremy Kane, Bailey Centre Merchants, commented on impacts to tourism, and supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Tony Lapi, Twean Water Inn, commented on water quality on the Caloosahatchee River and the impacts to tourism and the economy. He supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Sarah Larsen, citizen, said the current MFL flow into the Caloosahatchee is causing significant harm and urges the Board to update the MFL rule.

Public Comment: Joan Lawrence, USDOJ, commented on the projects being delayed on the priority list and recommends alternative 2.

Public Comment: Nancy MacPhee, Lee County Visitor and Convention Bureau, commented on tourism in Lee County and the importance of the water quality in the Caloosahatchee River. She supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Tom MacVicar, Agriculture, supports staff's recommendation and opposes the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Jack Meeker, citizen, support the Conservancy of SW Florida, commented on his concerns regarding dead sea grasses and supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Allen Myers, Sanibel Captiva Chamber, commented on the need for clean beaches and clean water for the real estate market and tourism. He supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Tyler Offerman, FGCU, supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Ellen Peterson, citizen, said 300 cfs is not adequate and supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Pete Quasius, Collier Audubon, supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Bill Schrader, Business Community, commented on the tourism in Lee County and the economic impacts to the community. He supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Michael Seef, citizen, asked the Board to use the science that is available and move forward to initiate rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Sonja Smith, CASI, commented on her concerns for the Caloosahatchee River and urged the Board to initiate rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Jessica Stubbs, citizen, supports the revision of the Caloosahatchee MFL.

Public Comment: Gilda Suarez, Sanibel Captiva Chamber, urged the Board to stop the gridlock and asked them to vote with their heart and initiate rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Paul Trittek, citizen, commented on the importance of water quality in the Caloosahatchee River.

Public Comment: Rae Ann Wessel, Sanibel Captiva Conservation Foundation, commented that 450 cfs is not the restoration target for the Caloosahatchee River. She supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Michael Valiquette, PURRE Water Coalition, said the science is available and supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: William Waites, Sanibel Chamber, commented on the tourism industry and said it is heavily dependant upon the water quality of the Caloosahatchee River. He supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Ralph Woodring, citizen, asked the Board to examine everything that is presented to them. He said the Caloosahatchee River cannot wait much longer and supports the Board initiating rulemaking to amend the Caloosahatchee River MFL.

Public Comment: Christine McBride, Environmental Justice Commission, expressed her concerns over the water quality of the Caloosahatchee River and said we must protect our natural systems.

Mr. Dauray commented on the irony that everyone is concerned about improving the environment but cannot agree on the numbers for MFLs. He discussed concerns with fixing the Herbert Hoover Dike and the 300 cfs minimum flow for the Caloosahatchee Estuary. Mr. Dauray discussed the District forming a partnership with the stakeholders in southwest Florida that have a vested interest in this issue and agreeing on a number in order to achieve results for the Caloosahatchee River.

Mr. Waldman asked staff to equate the cubic feet per second (cfs) of an MFL to the million gallons a day (mgd) of a permitted user.

Steve Memberg, Regulation Department, explained that 450 cfs of a permitted user would be equivalent to citrus groves and that would be equivalent to Miami Dade County serving over 2 million residents.

Chair Buermann commented on the science that was previously used and questioned why it can't be used now. He also commented on the tidal basin inflow range from 300 cfs to 800 cfs and questioned why would it be unsustainable.

Deb Drum, Deputy Department Director, clarified the science that was done, model deficiencies, water quality issues for tapegrass, and the lack of information on other species effected by water flows. She said they are working with FDEP to partner with them in order to get the data needed for tidal basin inflows.

Ken Ammon, Deputy Executive Director, Everglades Restoration & Capital Projects, said the solution for the Caloosahatchee River is restoration. He said the District wants to develop a program to restore and keep a healthy ecosystem. He said this is why we put all our tools in the reservation and CERP process. The reservation provides the highest level of protection of "no harm". He reported without water storage, even if the MFL is modified, this change will not supply water to the estuary.

Ms. Wehle reported if the water reservation work is not completed for the C-43 reservoir, the District cannot get the funding for the construction of the project.

Mr. Montgomery expressed his understanding of the public's frustration and concerns. He said the only tangible solution is for the water reservation and the C-43 project to be completed.

Ms. Estenoz commented on the MFL, best available science, the definition of significant harm and arbitrary and capricious standards. She is skeptical that it will take five or ten years to set the standards.

Mr. Collins expressed his frustration and said the MFL will not solve the problems described today. Restoration is not happening fast enough. Starting this rulemaking is not going to create water and said the C-43 reservoir will fix this problem.

Beth Ross commented on the arbitrary and capricious stand for rule challenges, and said there has to be modeling with a certain amount of data in order to have a statistically-significant evaluation being done by the model for a preponderance of evidence.

Ms. Wehle said there are other tools to address the allocations that effect the MFL. Ms. Wehle discussed a three prong approach including an update to the Water Supply Plan, Governing Board direction on duration of permits, and criteria in the Basis of Review for new or modified permits for indirect withdrawals.

Mr. Powers thanked the public for coming and sharing their issues. He said the petitioner's request does not provide the silver bullet for this issue. He said we are dealing with limited resources but pledged to work diligently on this issue.

Motion made by Charles Dauray, seconded by Shannon Estenoz to accept the Petitioner's request to enter a final order granting the Amended Petition of the Conservancy of Southwest Florida and Ralf Brookes to amend Rule 40E-8.221(2) and Rule 40E-8.421(2), F.A.C. Vote called. Voting yes: Sandy Batchelor, Eric Buermann, Charles Dauray and Shannon Estenoz. Voting no: Kevin Powers, Joe Collins, Jerry Montgomery, Glenn Waldman. Motion failed.

Mr. Montgomery requested that staff come back with the most aggressive alternative with specificity of what can be expected and how we can move forward. He also requested an outline and discussion for the protection of water allocation in the interim period prior to the C-43 reservoir being built.

Regulatory and Public Affairs

- 34. 2010-1117** A Resolution of the Governing Board of the South Florida Water Management District authorizing entering into eleven month agreements with Alternative Water Supply Funding Program applicants for FY2011 in an amount not to exceed \$3,450,000 of which District FY2011 ad valorem funds are budgeted; delegating authority to the Executive Director to execute project funding agreements for the projects; providing an effective date. (Terrie Bates, ext. 6952)

Terrie Bates, Assistant Deputy Executive Director, Regulatory and Public Affairs, presented information on the Alternative Water Supply (AWS) funding Program.

Public Comment: Randy Brown, City of Pompano Beach, thanked the Board for funding AWS projects and said he looks forward to working with the District on continued projects.

Public Comment: Lisa Wilson-Davis, Southeast Florida Utility Council and City of Boca Raton, commented on the ocean outfalls, AWS funding and thanked the Board for funding their alternative water supply project.

Ms. Batchelor thanked Mr. Brown for his comprehensive tour of their utility plant.

Motion made by Sandy Batchelor, seconded by Joe Collins to Approve the following item(s): 34

Vote called. Voting yes: Sandy Batchelor, Joe Collins, Eric Buermann, Charles Dauray, Jerry Montgomery, Kevin Powers, Glenn Waldman. Motion passed.

- 35.** Enter an order issuing a water shortage warning for Lake Okeechobee Basin, Indian Prairie Basins, and Lake Istokpoga (Terrie Bates, ext 6952)

Terrie Bates, Assistant Deputy Executive Director, Regulation and Public Affairs, provided information on the water shortage warning for Lake Okeechobee Service Area, Indian Prairie and Lake Istokpoga.

Motion made by Charles Dauray, seconded by Jerry Montgomery to Approve the following item(s): 35

Vote called. Voting yes: Charles Dauray, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Kevin Powers, Glenn Waldman. Motion passed.

Corporate Resources

- 36. 2010-1118** A Resolution of the Governing Board of the South Florida Water Management District to authorize amending the lease with 700 S.E. Indian Street Holdings, LLC for the Martin St. Lucie Service Center office lease, and to enter into the first of two five year lease extensions in an amount not to exceed \$1,300,000 which is subject to Governing Board approval of the FY12-FY16 budgets; providing an effective date. (Contract No. 3600000709/LS050585-A01). (Carrie Hill, ext. 2506)

Carrie Hill, Assistant Deputy Executive Director, Corporate Resources, presented information on the Martin St. Lucie Service Center office lease.

Motion made by Jerry Montgomery, seconded by Glenn Waldman to Approve the following item(s): 36

Vote called. Voting yes: Jerry Montgomery, Glenn Waldman, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers. Motion passed.

- 37.** Determination by the Governing Board of the South Florida Water Management District as to whether Chemware, Inc. should be suspended or debarred pursuant to Rule 40E-7, Part II, Fla. Admin. Code. (Carrie Hill, ext. 2506)

Carrie Hill, Assistant Deputy Executive Director, Corporate Resources, presented information on this agenda item.

Motion made by Joe Collins, seconded by Jerry Montgomery to approve that the Governing Board issue an order not to suspend or debar ChemWare Inc. from doing business with the District. Vote called, Voting yes: Sandy Batchelor, Kevin Powers, Joe Collins, Charles Dauray, Eric Buermann, Jerry Montgomery, Glenn Waldman. Motion passed.

- 38.** The Governing Board of the South Florida Water Management District authorizes a settlement agreement with Chemware, Inc. regarding a contract dispute, styled Chemware, Inc. V. South Florida Water Management District, filed against the District in the 15th Judicial Circuit Court for Palm Beach County, Florida, case no. 50-2009-ca-034767. (Carrie Hill, ext. 2506)

Motion made by Glenn Waldman, seconded by Joe Collins to Approve the following item(s): 38

Vote called. Voting yes: Glenn Waldman, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Jerry Montgomery, Kevin Powers. Motion passed.

- 39.** Public Comment

- Regulatory Policy Issues

- General Public Comment

There was no public comment.

Public Hearing

Everglades Restoration and Capital Projects

- 40. 2010-1119** A Resolution of the Governing Board of the South Florida Water Management District amending the SFWMD Florida Forever Work Plan, 2010 Annual Update, contained in Chapter 6A, Volume II of the 2010 South Florida Environmental Report to add 71 acres, more or less, of land (located in Martin County) in association with the C-44 Reservoir and STA, CERP Project; providing an effective date. (Wanda Simpson, ext. 6445)

Note: Kevin Powers abstained from voting on this agenda item.

Chair Buermann opened the public hearing.

Ruth Clements, Director, Land Acquisition Department presented information on this agenda item.

Motion made by Charles Dauray, seconded by Jerry Montgomery to Approve the following item(s): 40

Vote called. Voting yes: Charles Dauray, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Kevin Powers, Glenn Waldman. Motion passed.

- 41. 2010-1120** A Resolution of the Governing Board of the South Florida Water Management District amending the SFWMD Florida Forever Work Plan, 2010 Annual Update, contained in Chapter 6A, Volume II of the 2010 South Florida Environmental Report to add 68.52 acres, more or less, in land located in Collier County in association with the Picayune Strand, CERP Project; providing an effective date. (Wanda Simpson, ext. 6445)

Chair Buermann opened the public hearing.

Ruth Clements, Director, Land Acquisition Department, presented information on this agenda item.

Motion made by Charles Dauray, seconded by Jerry Montgomery to Approve the following item(s): 41

Vote called. Voting yes: Charles Dauray, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Kevin Powers, Glenn Waldman. Motion passed.

Staff Reports

- 42. General Counsel Report - Sheryl Wood**

No report provided.

- 43. Executive Director's Report - Carol Wehle**

- Report of Permits Issued by Authority Delegated to the Executive Director from October 1 to October 31, 2010

Ms. Wehle said the Board will be having a tour of the coastal structures that could be impacted by sea level rise. Mr. Montgomery requested a long-term view (50 to 100 years) on the coastal structure revitalization.

Ms. Wehle also mentioned the Susan G. Komen auction will be held at the December Governing Board meeting.

44. Board Comment

There was no Board comment.

Attorney Client Sessions

Executive Office

45. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations 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.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, K. Burns, J. Nutt, F. Bartolone. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations 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, ext. 6976)

Chair Buermann recessed to Attorney Client Session at 11:05 a.m. He announced the meeting would reconvene at 1:00 p.m.

Chair Buermann reconvened the meeting at 1:00 p.m.

Sheryl Wood, General Counsel, requested the Board approve taking any action necessary to compel EPA's compliance with the District's Freedom of Information Act request.

Motion made by Jerry Montgomery, seconded by Joe Collins to approve staff's request. Vote called. Voting yes: Jerry Montgomery, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Kevin Powers, Glenn Waldman. Motion passed.

46. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Friends of the Everglades, Inc. and Fishermen Against Destruction of the Environment, Inc. v. South Florida Water Management District, et al., United States Supreme Court, Case No. 10-196; Miccosukee Tribe of Indians of Florida v. South Florida Water Management District, et al., United States Supreme Court, Case No. 10-252.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, J. Nutt, F. Bartolone. (Sheryl. G. Wood, ext. 6976)

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Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Friends of the Everglades, Inc. and Fishermen Against Destruction of the Environment, Inc. v. South Florida Water Management District, et al., United States Supreme Court, Case No. 10-196; Miccosukee Tribe of Indians of Florida v. South Florida Water Management District, et al., United States Supreme Court, Case No. 10-252. (Sheryl. G. Wood, ext. 6976)

Sheryl Wood, General Counsel, reported no recommendations by the Board on Agenda Item 46.

Adjournment

47. **Adjourn**

Chair Buermann adjourned the meeting at 4:05 p.m.

Motion made by Jerry Montgomery, seconded by Joe Collins to adjourn the meeting. Vote called. Voting yes: Jerry Montgomery, Joe Collins, Kevin Powers, Eric Buermann, Charles Dauray, Sandy Batchelor and Glenn Waldman. Motion passed.

Eric Buermann
Governing Board Chairman
South Florida Water Management District Governing Board

Recorded By:

Cathy Widness
Administrative Assistant Senior
Governing Board and Executive Services
SFWMD

