



South Florida Water Management District

GOVERNING BOARD MONTHLY MEETING AGENDA

This meeting is open to the public

June 12, 2014

9:00 AM

Osceola County Commission Chambers
1 Courthouse Square
Kissimmee, FL 34741

FINAL REVISED 06/10/2014 4:39 PM

Pursuant to Section 373.079(7), Florida Statutes, all or part of this meeting may be conducted by means of communications media technology in order to permit maximum participation of Governing Board members.

The Governing Board may take official action at this meeting on any item appearing on this agenda and on any item that is added to this agenda as a result of a change to the agenda approved by the presiding officer of the meeting pursuant to Section 120.525, Florida Statutes. The order of items appearing on the agenda is subject to change during the meeting and is at the discretion of the presiding officer. Public Comment will be taken after each presentation and before any Governing Board action(s) except for Governing Board hearings that involve the issuance of final orders based on recommended Orders received from the Florida Division of Administrative Hearings.

1. Call to Order - Dan O'Keefe, Chairman, Governing Board
2. Pledge of Allegiance - Dan O'Keefe, Chairman, Governing Board
3. Local Governmental Officials - Presented by Dan O'Keefe, Chairman
4. Employee Recognitions - Presented by Blake Guillory, Executive Director
- June Team of the Month: Great Leak Team of 2014
5. Agenda Revisions - Jacki McGorty, District Clerk
6. Abstentions by Board Members from items on the Agenda

7. Water Resources Advisory Commission (WRAC) Report - Jim Moran, Chair

Consent Agenda

Members of the public wishing to address the Governing Board are to complete a Public Comment Card and submit the card to the front desk attendant. You will be called by the Board Chair or designee to speak. If you want to request that an item be removed from the Consent Agenda and be discussed by the Governing Board, please advise the Governing Board when you are called upon to speak. Governing Board directives limit comments from the public to 3 minutes unless otherwise determined by the Governing Board Chair. Your comments will be considered by the Governing Board prior to adoption of the Consent Agenda.

*Unless otherwise determined by the Chair, Board action on pulled Consent Agenda items will occur at or after 9:00 a.m. on Thursday. Regulatory items pulled from the Consent Agenda for discussion will be heard during the Discussion Agenda. **Unless otherwise noted, all Consent Agenda items are recommended for approval.***

8. Public Comment on Consent Agenda
9. Pull Items for Discussion from Consent Agenda
10. Board Comment on Consent Agenda
11. Approval of the Minutes for the May 15, 2014, Regular Business Meeting held in West Palm Beach, Florida
12. Waivers for Water Resource Advisory Commission (WRAC) members pursuant to Section 112.313, Florida Statutes
13. Regulatory Consent Items
 - Consent Orders
 - **WCI Communities, Inc; Baywinds (Lee County)** - Settlement of an enforcement action regarding non-compliance with permit conditions due to unpermitted works within a conservation easement area.
 - **Adventist Health System Sunbelt, Inc; Florida Hospital Kissimmee - C E P Addition (Osceola County)** - Settlement of an enforcement action regarding non-compliance with permit conditions due to failure to comply with the District's Best Management Practices.
 - **Osceola County; Osceola Parkway Phase II Roadway Widening (Osceola County)** - Settlement of an enforcement action regarding non-compliance with permit conditions due to failure to comply with the District's Best Management Practices.
 - **Secured Holdings, Inc; Quantum Park Master System Lot 17 & 17A (Palm Beach County)** - Settlement of an enforcement action regarding unpermitted works.
 - **Unico Development Corporation; Indian Road Warehouses (Palm Beach County)** - Settlement of an enforcement action regarding non-compliance with permit conditions and unauthorized fill of a lake bank.
 - Conservation Easements, Amendments and Releases
 - **Wilton Land Company, LLC, Hammock Park Commerce Center**

(AKA Rattlesnake Crossing) (Collier County) - Staff recommends the approval of a request for an increase in the conservation easement area from a 1.95 acre preserve area to a 5.98 acre preserve area (5.54 acres of wetlands and 0.44 acres of uplands) within a development known as Hammock Park Commerce Center located in Naples, Collier County, Florida. The original Application Number is 010418-13 and the Environmental Resource Permit Number is 11-02130-P.

The conservation easement reflects the addition of 4.03-acres associated with the Army Corps of Engineers Permit (SAJ-1999-4926). The additional preserve area is adjacent to the original 1.95-acre preserve area required by the District. The larger preserve provides additional wildlife habitat and provides a more contiguous buffer to the adjacent offsite undeveloped land to the North.

- **Wellington Preserve Corporation, Wellington Preserve (Palm Beach County)** - Staff recommends the approval of a request for the decrease in the stormwater quality easement area from 5.0000 acres to 0.0258 acres which is a portion of Lot 17 within a development known as Wellington Preserve located in Wellington, Palm Beach County, Florida. The original Application Number is 030417-5 and the Environmental Resource Permit Number is 50-00548-S-96. This easement, Second Amendment to Termination of Easement and Amended and Restated Stormwater Quality Protection Easement originated February 15, 2005 for the purpose of reserving area for the construction of an alum chemical system. The proposed reduction in area is based on the Applicant's submittal of research and innovations in stormwater chemical treatments. The proposed alum chemical treatment system will utilize two existing 7.48-acre wet detention ponds as settling ponds instead of constructing a separate settling pond within the 5-acre limits of Lot 17.

14. Right of Way Regulatory Consent Items - **SUPPORTING DOCUMENTS MODIFIED**

- Consent Order
 - Staff recommends the approval to execute a Consent Order between the South Florida Water Management District and Mr. Frank Cote involving the settlement of enforcement actions and the removal of unauthorized encroachments within the District's L-14 canal right of way in Palm Beach County.
- Relaxation of Standards as Allowed Under District Rule 40E-6.011(9) F.A.C.
 - Staff recommends that the Governing Board waive, for future Right of Way Occupancy Permit Applications, the requirement contained in District Rules which specifies that an encumbered 40 foot wide strip of right of way as measured from the top of bank landward, is needed in order for the District to perform its routine operations and maintenance activities. The area under consideration is located along the north and south rights of way of C-17 from Prosperity Farms Road to the Intracoastal Waterway. Staff's recommendation is based on the fact that this reach of the C-17 Canal has limited overbank right of way (varies in width), has been encumbered with encroachments for many years, is located downstream of the District's Water

Control Structure S-44 and is inaccessible by the West Palm Beach Field Station for routine land-based maintenance activities.

- Staff recommends that the Governing Board waive, for future Right of Way Occupancy Permit Applications, the requirement contained in District Rules which specifies that an encumbered 40 foot wide strip of right of way as measured from the top of bank landward, is needed in order for the District to perform its routine operations and maintenance activities. The area under consideration is located along the south right of way of C-100 from SW 132nd Avenue to approximately SW 127th Avenue. Staff's recommendation is based on the fact that this reach of the District's C-100 Canal has less than 10 feet of overbank right of way, has been encumbered with encroachments for many years and is inaccessible by the Miami Field Station for routine land-based maintenance activities.
- Staff recommends that the Governing Board waive, for future Right of Way Occupancy Permit Applications, the requirement contained in District Rules which specifies that an encumbered 40 foot wide strip of right of way as measured from the top of bank landward, is needed in order for the District to perform its routine operations and maintenance activities. The area under consideration is located along the north and south rights of way of Green Canal from I-75 to its easterly terminus at 41st Terrace Southwest. Staff's recommendation is based on the fact that this reach of District's Green Canal has approximately 10-15 feet of overbank right of way, has been encumbered with encroachments for many years and is inaccessible by the Big Cypress Basin Field Station for routine land-based maintenance activities.
- Right of Way Occupancy Permit Request with Waiver of District Criteria
 - Staff recommends approval of a request by **Broward County Parks and Recreation Division** (Application Number 14-0425-1M) for issuance of a Modification to Right of Way Occupancy Permit No. 12086 and waiver of criteria for the proposed installation of a cross-fence within the north right of way of C-11 located easterly of US 441/SR 7. The request for waiver, which governs the placement of permanent/semi-permanent above-ground facilities within 40 feet of the top of the canal bank located within Works or Lands of the District, is based on 'substantial hardship.' The Broward County Sheriff's Office has requested the County's help in restricting access east of US 441/SR 7 to reduce vagrancy and other on-going conflicts. Location: Palm Beach County, Section 25, Township 50 South, Range 41 East.

15. **Resolution No. 2014 - 0601** Approve release of canal, road and mineral reservations, and issuance of non-use commitments. (OMC, Kathy Massey, ext. 6835)

Summary

The District has jurisdiction over certain reserved rights to construct canal and road right of ways, and mineral rights, together with the right of ingress, egress and exploration. Applications requesting releases of these reservations are routinely received from landowners, attorneys, title companies and lending institutions, who consider the reservations to be title defects. Applications are reviewed by appropriate District staff and applicable local governmental agencies to determine that there is no present or future need for the reservations.

Staff Recommendation

Staff recommends approval of the following:

- Release of Trustees canal reservations for Jorge L. Rodriguez and Ramon A. Rodriguez (File No. 4-14-5) for 9.93 acres in Miami-Dade County
- Release of Trustees canal reservations for Oscar's Nursery, Inc. (File No. 4-14-6) for 4.81 acres in Miami-Dade County
- Release of District canal reservations and issuance of non-use commitment for Marietta Emily Schiltz (File Nos. 18572, 18573 and NUC 1639) for 9.45 acres in Palm Beach County
- Release of District canal and road reservations, and issuance of non-use commitment for Carter Botanicals, Inc. (File Nos. 18575, 18576 and NUC 1647) for 17.89 acres in Palm Beach County
- Release of District canal reservations for G.L. Homes of Palm Beach Associates, Ltd. (File No. 18579) for 25.76 acres in Palm Beach County
- Release of District canal reservations and issuance of non-use commitment for Woodwind 2007, LLC (File Nos. 18582, 18583 and NUC 1649) for 33.53 acres in Palm Beach County
- Release of District and Trustees canal reservations, and issuance of non-use commitment for Arquimedes Rafi and Isely Amila Rafi (File Nos. 18584, NUC 1651 and 4-14-3) for 4.73 acres in Palm Beach County
- Release of District canal, road and mineral reservations for Kenia R. Alfonso and Jorge R. Alfonso (File No. 18588) for 0.92 acres in Palm Beach County
- Release of Trustees canal reservations for Triple A Enterprises, LLC (File No. 9-13-3) for 944.76 acres in Hendry County
- Release of Trustees canal reservations for Alan Kornbluh, Trustee (File No. 4-14-4) for 12.59 acres in Miami-Dade County

16. **Resolution No. 2014 - 0602** Approve the issuance of a Quitclaim Deed regarding a parcel adjacent to the C-103 right of way containing 0.22 acres, more or less, in Section 36, Township 56 South, Range 38 East, Miami-Dade County. (OMC, Marcy Zehnder, ext. 6694)

Summary

Miami-Dade County, the underlying fee title owner, has requested that the District issue a Quitclaim Deed to Miami-Dade County for certain lands located adjacent to the C-103 right of way in Section 36, Township 56 South, Range 38 East, containing 0.22 acres, more or less. The deed is requested by the county to clarify in the public records that the District has no interest in the property.

Staff Recommendation

Staff recommends approving the issuance of a Quitclaim Deed regarding a parcel adjacent to the C-103 right of way containing 0.22 acres, more or less, in Section 36, Township 56 South, Range 38 East, Miami-Dade County.

17. **Resolution No. 2014 - 0603** Approve the release of a portion of a canal easement encumbering 23.192 acres, more or less, located in several Sections in Township 50 South, Range 40 and 41 East, Broward County, North New River Canal Project to the Trustees of the Internal Improvement Trust Fund at no cost. (OMC, Kathy Massey, ext. 6835)

Summary

The release is required pursuant to District Right of Way Occupancy Permit No. 13383, issued for corridor improvements between I-75 East to State Road 7 consisting of canal improvements with dredging, bulkhead, revetments, sound walls,

ramp bridges, culverts and other associated appurtenances within the North and South right of ways of the North New River Canal.

Staff Recommendation

Staff recommends approval of a release of a portion of a canal right of way easement located in several Sections in Township 50 South, Range 40 and 41 East, between I-75 East to State Road 7, Broward County.

18. **Resolution No. 2014 - 0604** Authorize an amendment to an existing easement from the Board of Trustees of the Internal Improvement Trust Fund of Florida in favor of the District for 496.90 acres, more or less, in connection with the C-4 Emergency Detention Basin Project. (OMC, Ray Palmer, ext. 2246)

Summary

For purposes of the C-4 Emergency Detention Basin Project (the "Project"), the District acquired an easement (the "Easement") from the Board of Trustees of the Internal Improvement Trust Fund of Florida ("TIITF") with respect to the real property (the "Premises"), as shown on the location map attached hereto and made a part hereof as Exhibit "A". The Easement contemplated that the Premises would be leased for private mining purposes and included rights of the TIITF as the owner, under certain circumstances, to dictate the District's use of the Premises for the Project and to terminate the District's easement rights. Since the TIITF is considering the proposed conveyance of the Premises to a private mining entity, to assure the continued use of the easement in connection with the operation of the Project, the TIITF and the District will enter into an amendment to the Easement (the "Amendment") to remove the termination rights and to alter the provisions that may adversely affect the District's easement rights in connection with the owner's use of the Premises.

Staff Recommendation

Staff recommends approval of the amendment.

19. **Resolution No. 2014 - 0605** Consenting to Amendment No. 2 to an Intergovernmental Agreement between the State of Florida, the U.S. Department of the Army and the U.S. Department of the Interior for establishing and funding an Independent Scientific Review Panel to review progress made through implementation of the Comprehensive Everglades Restoration Plan, which consent shall authorize the District to provide the State's 50% cost-share required by the Intergovernmental Agreement through the CERP Design Agreement dated May 12, 2000; providing an effective date. (EPC, Temperince Morgan, ext. 6987)

Summary

The Water Resources Development Act of 2000 requires that the Secretary of the Army, the Secretary of the Interior and the Governor establish an independent scientific review panel to: 1) review the progress made through implementation of the Comprehensive Everglades Restoration Plan (CERP) toward achieving the natural system restoration goals of CERP; and 2) submit a biennial report to Congress on their findings. The Programmatic Regulations required that no later than June 14, 2004, the Department of the Army, Department of Interior and the State enter into a five-year agreement with the National Academy of Sciences (NAS) to convene the review panel. The Programmatic Regulations also required that the State's 50%

cost-share be accounted for in the CERP Design Agreement between the SFWMD and the Army.

This proposed Amendment to the Intergovernmental Agreement would extend the Agreement for another five years to June 14, 2019. The final not-to-exceed budget for the five-year extension covered by Amendment No. 2 is \$1,925,000 where the District's 50% cost-share total is \$962,500 for the five year period.

Staff Recommendation

Staff recommends that the Governing Board consent to Amendment No. 2 to the Intergovernmental Agreement between the State of Florida, the U.S. Department of the Army and the U.S. Department of the Interior to continue funding an independent scientific panel to review restoration progress made through implementation of CERP.

- 20. **Resolution No. 2014 - 0606** Approving the July 1, 2014 Regulatory Plan attached as Appendix A, and authorizing staff to submit to the Office of Fiscal Accountability and Regulatory Reform, in accordance with Executive Order 11-211, and to the Speaker of the House, President of the Senate and Joint Administrative Procedures Committee, in accordance with Section 120.74(3), Florida Statutes, effective immediately. (OC, Doug MacLaughlin, ext. 2153)

Summary

Section 120.74(3), Florida Statutes, requires each agency, beginning in 2012, and no later than July 1 of each year, to file with the President of the Senate, the Speaker of the House of Representatives, and the Joint Administrative Procedures Committee a regulatory plan identifying and describing each rule the agency proposes to adopt for the 12-month period beginning on the July 1 reporting date and ending on the subsequent June 30, excluding emergency rules. The Governor's Executive Order 11-211 requires each agency serving under the pleasure of the Governor to submit to the Office of Fiscal Accountability and Regulatory Reform (OFARR) by July 1 of each year, an annual regulatory plan that identifies and describes each rule the agency expects to begin promulgating during the next twelve-month period. OFARR has provided all agencies with a detailed form that, when completed, constitutes the agency's regulatory plan.

Staff Recommendation

Staff recommends approving the July 1, 2014 Annual Regulatory Plan, and authorizing staff to submit the July 1, 2014 Annual Regulatory Plan to the OFARR, in accordance with Executive Order 11-211, and to the Speaker of the House, President of the Senate, and Joint Administrative Procedures Committee, in accordance with Section 120.74(3), F.S., effective immediately.

- 21. Authorize Publication of Notice of Rule Development for reservation of water needed to protect fish and wildlife for the Kissimmee River Restoration Project. (WR, Don Medellin, ext. 6340)

Summary

The Kissimmee River Restoration Project is a joint partnership between the District and U.S. Army Corps of Engineers (USACE). The project will restore over 40 square miles of river/floodplain ecosystem including 43 miles of meandering river channel and 27,000 acres of wetlands. An integral component of the restoration is the protection from allocation of water needed for fish and wildlife. The water identified

for the natural system will be protected through a water reservation as authorized by Florida law.

Staff Recommendation

Authorize publication of a Notice of Rule Development in the Florida Administrative Register to adopt new rules in Chapter 40E-10, F.A.C., and amend Chapter 40E-2, F.A.C., including the Applicant's Handbook for Water Use Permit Applications, regarding reservation of water needed to protect fish and wildlife in the Kissimmee River, its floodplain, and the Upper Chain of Lakes and associated implementation rules.

22. **Resolution No. 2014 - 0607** Authorizing the official ranking of firms and authorize the District to enter into a three-year contract with Hazen and Sawyer, P.C. and Entrix, Inc. DBA Cardno Entrix, the top two ranked firms selected for Preparation of Statements of Estimated Regulatory Costs (SERC), subject to successful negotiations, in an amount not to exceed \$300,000 available for both contracts for SERC services, subject to Governing Board approval of the FY15-FY17 budgets. (WR, Terrie Bates, ext. 6952)

Summary

Statements of Estimated Regulatory Costs (SERC) are required to support the District's rulemaking activities pursuant to Section 120.541, Florida Statutes (F.S.). The current SERC three-year work order contracts expire on August 24, 2014 and September 30, 2014. This Resolution requests authorization from the Governing Board to enter into contract negotiations with the two highest ranked consultants, Hazen & Sawyer and Cardno Entrix, to have these firms in place before the current contracts expire. The SERC work order contract is for a three-year period and allows the District to use these two contractors if needed to ensure that sufficient resources are available, to avoid potential conflicts of interest, and to meet demand should rulemaking activities increase. The Water Supply Bureau's Lead Economist also completes SERCs to support rulemaking activities. The total not to exceed contract amount is \$300,000 for the three-year term. The proposed contract amount considers likely future demand and the division of labor between internal District and outside consultant resources.

Staff Recommendation

Staff recommends the Governing Board allow contract negotiations to proceed so that the District can successfully renew the contract and have SERC preparation consultant resources in place to support District rulemaking activities.

23. **Resolution No. 2014 - 0608** Authorizing the ranking of short listed firms and entering into a three-year contract with two (2) one-year renewal options with Superior Service Management, Inc., subject to negotiations for Janitorial Services at the Field Operations Center in an amount not to exceed \$231,012 for which \$22,372 in ad valorem funds are budgeted in FY14 and the remainder is subject to Governing Board approval of the FY15 – FY17 budgets; providing an effective date. (Contract Number 4600003061) (AS, Michael Hiscock, ext. 2526)

Summary

This request is to enter into a three-year contract with two (2) one-year renewal options with Superior Service Management, Inc., for Field Operations Center (FOC)

janitorial services in an amount not to exceed \$231,012. The present janitorial contract expires June 30, 2014. Superior Service Management, Inc. will provide professional janitorial services to maintain a clean and effective working environment for employees located at the FOC. Services include providing all labor, equipment, and supplies necessary to perform specified janitorial duties. Janitorial services have been traditionally outsourced by the District and as such the District does not have the positions or staff trained to provide these services.

Staff Recommendation

Staff recommends approval of this item.

24. Board Vote on Consent Agenda
25. General Public Comment
26. Board Comment

Discussion Agenda

27. Technical Reports
 - A) Water Conditions Report - Jeff Kivett, Division Director, Operations, Engineering & Construction Division (ext. 2680)
 - B) Ecological Conditions Report - Terrie Bates, Division Director, Water Resources Division (ext. 6952)
28. Overview of District Flood Control Operations and Wet Season Readiness - Karen Estock, Division Director, Field Operations and Land Management Division (ext. 2680 and 6282)
29. Lake Okeechobee Regulation Schedule; Middle and Upper Subband Flexibility - Jeff Kivett, Division Director, Operations, Engineering and Construction (ext. 2680)

Summary

The purpose of this item is to discuss the scope and schedule for an investigation of the flexibility in the middle and upper bands of the 2008 Lake Okeechobee Regulation Schedule (LORS 2008). The presentation will provide an outline of the goals and team that will design and evaluate release guidance ideas that achieve better performance within the authorization of LORS 2008.

Staff Recommendation

This item is for information only. No action is required.

30. **Resolution No. 2014 - 0609** Allowing the Governing Board's ranking of Respondents for the Dispersed Water Management Program Northern Everglades - Payment for Environmental Services solicitation number 6000000518, as approved in Resolution number 2013-0708, to be extended until December 31, 2014 pending the receipt of funds from the State of Florida. (EPC, Beth Lewis, ext. 6343) - **ITEM REVISED**

Summary

District staff will provide an update of the Dispersed Water Management (DWM) Program activities. In addition, staff is requesting that the Governing Board allow, through a resolution, the ranking of respondents to Solicitation Number 6000000518 regarding the DWM Program Northern Everglades Payment for Environmental Service to remain in place until December 31, 2014 pending the receipt of funds from the State of Florida to be used for additional projects.

At the July 11, 2013 Governing Board meeting the Board approved Resolution No. 2013-0708 authorizing staff to begin negotiations in ranked order with Respondents to Solicitation Number 6000000518 for Northern Everglades Payment for Environmental Services contracts. The existing funding available was not anticipated to allow more than the first two respondents to receive contracts pending negotiations. Consistent with the District's procurement policy, the Board decided to keep the solicitation and the rankings open for one year pending additional funding sources.

As a result of the 2014 Florida legislative session, it is anticipated that additional

funding from the State of Florida will be available for the Solicitation after July 1, 2014. Negotiations with respondents in ranked order will require several months. Therefore, staff is requesting that the ranking of respondents remains open until December 31, 2014.

Staff Recommendation

Staff recommends approval or a resolution extending the date by which the Governing Board's ranking of proposals for Solicitation Number 6000000518 for the Dispersed Water Management Northern Everglades Payment for Environmental Services Program can be used as the basis of a contract until December 31, 2014.

31. Lobbyist Registration Update - Dan DeLisi, Chief of Staff (ext. 6232)
32. FY15 Tentative Budget Update - Doug Bergstrom, Division Director, Administrative Services Division (ext. 6214)
33. Approval of Inspector General's Audit Reports - Tim Beirnes, Inspector General (ext. 6398)

Summary

The following audit reports are completed:

- Audit of Fleet Maintenance Operations
- Audit of City of Everglades City Grant Agreement
The Audit and Finance Committee Charter provides for the Board's review and approval of audit reports.

Staff Recommendation

Inspector General recommends approval of the two audit reports.

34. General Public Comment

Public Hearing

35. Adopt amendments to Rule 40E-4.091, F.A.C., and the incorporated “Environmental Resource Permit Applicant’s Handbook Volume II: For Use within the Geographic Limits of the South Florida Water Management District,” with changes based on comments received, to incorporate by reference the “Procedure for Environmental Resource Permit Water Quality Evaluations for Applications Involving Discharges to Outstanding Florida Waters and Water Bodies that Do Not Meet State Water Quality Standards.” (OC, Susan Martin, ext. 6251) - *ITEM REVISED*

Summary

Staff is proposing to adopt the Procedure for Environmental Resource Permit (ERP) Water Quality Evaluations for Applications Involving Discharges to Outstanding Florida Waters (OFW) and Water Bodies that Do Not Meet State Water Quality Standards. This procedure will incorporate into rule the substance of the existing “impaired waters memo,” which was initially issued in 2004 and revised in 2009 and 2013. Applicants are assisted by this procedure in providing reasonable assurances to demonstrate that discharges will not degrade an OFW or will not contribute additional causative pollutants to an impaired water body. This procedure will be included in a new Appendix E to ERP Applicant’s Handbook Volume II (Volume II). This incorporation will not create new standards or change the existing ERP application process.

Recommendation

Adopt amendments with changes to Rule 40E-4.091, F.A.C., and the incorporated “Environmental Resource Permit Applicant’s Handbook Volume II: For Use within the Geographic Limits of the South Florida Water Management District,” to incorporate by reference the “Procedure for Environmental Resource Permit Water Quality Evaluations for Applications Involving Discharges to Outstanding Florida Waters and Water Bodies that Do Not Meet State Water Quality Standards.”

Staff Reports

36. Monthly Financial Report - Doug Bergstrom, Division Director, Administrative Services Division
37. General Counsel's Report - Ed Artau
38. Executive Director's Report - Blake Guillory
Report on permits issued by authority delegated to the Executive Director from May 1-31, 2014
39. Board Comment

Attorney Client Sessions

40. Attorney Client Session - USA - *ITEM DELETED*

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), 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 F. Barber, S. Batchelor, M. Hutchcraft, J. Moran, D. O’Keefe, J. Portuondo, K. Powers, G. Waldman; Executive Director B. Guillory; District attorneys E. Artau, K. Burns, C. Kowalsky, D. MacLaughlin. (Ed Artau, ext. 6431)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2013), 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. (Ed Artau, ext. 6431)

41. Adjourn

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RIGHT OF WAY OCCUPANCY CONSENT AGENDA FOR GOVERNING BOARD APPROVAL June 12, 2014

PAGES

- I CONSENT ORDER:** 2
- A voluntary contractual agreement between the District and a party in dispute which legally binds the parties to the terms and conditions contained in the agreement. Normally used as a vehicle to outline the terms and conditions regarding settlement of an enforcement action.
- II RELAXATION OF STANDARDS AS ALLOWED UNDER DISTRICT RULE 40E-6.011(9) F.A.C.:** 3-5
- Governing Board reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities and relaxation of the restrictions in Zones 2, 3, 4 and 5 may be allowed, such determination shall be at the sole discretion of the District and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further the District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area.
- III RIGHT OF WAY OCCUPANCY PERMIT REQUEST WITH WAIVER OF DISTRICT CRITERIA:** 6
- Governing Board action is required on petitions received requesting a waiver of District criteria. Section 120.542, F.S. and Rule 28-104.002, F.A.C., requires agencies to grant variances and waivers to their own rules when a person subject to the rules files a petition and demonstrates that he or she can achieve, or has achieved, the purpose of the underlying statute by other means and when application of rule would create a substantial hardship or would violate principles of fairness. A "substantial hardship" is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. A "waiver" is defined as an agency decision not to apply all or part of a rule to the person subject to the rule.

CONSENT ORDER:

1. Execute a Consent Order entered into between SFWMD and Mr. Frank Cote involving the settlement of enforcement actions and his removal of the unauthorized encroachments within the District's L-14 canal right of way. Palm Beach County.

RELAXATION OF STANDARDS AS ALLOWED UNDER DISTRICT RULE 40E-6.011(9) F.A.C.:

2. It is the recommendation of the staff of Operations, Maintenance and Construction Division that the Governing Board waive, for future Right of Way Occupancy Permit Applications, the requirement contained in District Rules which specifies that an unencumbered 40 foot wide strip of right of way as measured from the top of bank landward, is needed in order for the District to perform its routine operations and maintenance activities. However, the District's rights of way vary in width and this requirement is not practical in all areas. The area under consideration is located along the north and south rights of way of C-17 from Prosperity Farms Road to the Intracoastal Waterway.

Staff's recommendation is based on the fact that this reach of the C-17 Canal has limited overbank right of way (varies in width), has been encumbered with encroachments for many years, is located downstream of the District's Water Control Structure S-44 and is inaccessible by the West Palm Beach Field Station for routine land-based maintenance activities.

District Rule 40E-6.011(9), F.A.C. (Policy and Purpose) asserts that "the District reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities such determination shall be at the sole discretion of the District and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further, the District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area."

The waiver specifically excludes the adjacent owners whose properties lie adjacent to the District's required 100' long staging areas located upstream and downstream of all four quadrants of pile-supported bridge and utility crossings. Applications for encroachments within these specified staging areas when submitted shall be handled on an individual basis.

Further, the establishment of areas covered by Rule 40E-6.011(9), F.A.C. will be applied to all future applicants in the geographical area specified above.

(Easement)

RELAXATION OF STANDARDS AS ALLOWED UNDER DISTRICT RULE 40E-6.011(9) F.A.C.:

3. It is the recommendation of the staff of Operations, Maintenance and Construction Division that the Governing Board waive, for future Right of Way Occupancy Permit Applications, the requirement contained in District Rules which specifies that an unencumbered 40 foot wide strip of right of way as measured from the top of bank landward, is needed in order for the District to perform its routine operations and maintenance activities. However, the District's rights of way vary in width and this requirement is not practical in all areas. The area under consideration is located along the south right of way of C-100 from SW 132nd Avenue to approximately SW 127th Avenue.

Staff's recommendation is based on the fact that this reach of the District's C-100 Canal has less than 10 feet of overbank right of way, has been encumbered with encroachments for many years and is inaccessible by the Miami Field Station for routine land-based maintenance activities.

District Rule 40E-6.011(9), F.A.C. (Policy and Purpose) states that "the District reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities such determination shall be at the sole discretion of the District and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further, the District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area."

The waiver specifically excludes the adjacent owners whose properties lie adjacent to the District's required 100' long staging areas located upstream and downstream of all four quadrants of pile-supported bridge utility crossings. Applications for encroachments within these specified staging areas when submitted shall be handled on an individual basis.

Further, the establishment of areas covered by Rule 40E-6.011(9), F.A.C. shall be applied to all future applicants in the geographical area specified above.

(Fee)

RELAXATION OF STANDARDS AS ALLOWED UNDER DISTRICT RULE 40E-6.011(9) F.A.C.:

4. It is the recommendation of the staff of Operations, Maintenance and Construction Division that the Governing Board waive, for future Right of Way Occupancy Permit Applications, the requirement contained in District Rules which specifies that an unencumbered 40 foot wide strip of right of way as measured from the top of bank landward, is needed in order for the District to perform its routine operations and maintenance activities. However, the District's rights of way vary in width and this requirement is not practical in all areas. The area under consideration is located along the north and south rights of way of Green Canal from I-75 to its easterly terminus at 41st Terrace Southwest.

Staff's recommendation is based on the fact that this reach of the District's Green Canal has approximately 10-15 feet of overbank right of way, has been encumbered with encroachments for many years and is inaccessible by the Big Cypress Basin Field Station for routine land-based maintenance activities.

District Rule 40E-6.011(9), F.A.C. (Policy and Purpose) states that "the District reserves sole authority to make a determination that portions of the District's rights of way are inaccessible for routine maintenance activities due to a variety of physical limitations. While a determination that a certain segment of right of way is presently unusable for routine land-based maintenance activities such determination shall be at the sole discretion of the District and does not obviate the need for individuals with proposed or existing facilities within these areas to obtain permits from the District. Further, the District reserves the right to enter these areas to conduct emergency operations or to require the removal of any encroachments that are inconsistent with these rules at such time as maintenance access is perfected through the area."

The waiver specifically excludes the adjacent owners whose properties lie adjacent to the District's required 100' long staging areas located upstream and downstream of all four quadrants of pile-supported bridge utility crossings. Applications for encroachments within these specified staging areas when submitted shall be handled on an individual basis.

Further, the establishment of areas covered by Rule 40E-6.011(9), F.A.C. shall be applied to all future applicants in the geographical area specified above.

(Agreement)

RIGHT OF WAY OCCUPANCY PERMIT REQUEST WITH WAIVER OF DISTRICT CRITERIA:

5. Consideration of a request by **Broward County Parks and Recreation Division**, (Application Number 14-0425-1M, Permit Modification Number 12086) for issuance of a Modification to Right of Way Occupancy Permit Number 12086 and waiver of the District's criteria for the proposed installation of a cross-fence within the north right of way of C-11 located easterly of US441/SR7. Location: Broward County, Section 25, Township 50 South, Range 41 East.

The applicant's request for Waiver of the District's criteria which governs the placement of permanent/semi-permanent above-ground facilities within 40 feet of the top of the canal bank within Works and Lands of the District is based on "substantial hardship". The applicant asserts that the Broward County Sheriff's Office has requested the County's help in restricting access east of US 441/SR 7 to reduce vagrancy and other on-going conflicts. The area is heavily wooded and has become a nuisance to both the County and Law Enforcement.

Broward County Parks and Recreation currently maintains the area due to an existing permitted canoe launching ramp and has agreed to install a vehicular access gate if required by the District.

The District's Field Operations and Land Management Division had determined that the proposed cross-fence will not significantly interfere with the District's ability to perform necessary construction, alteration, operation and maintenance activities, so the purposed of the underlying statue will be achieved.

The applicant's petition has been reviewed by the Office of Counsel for compliance with the applicable legal requirements. Pursuant to Section 120.542(6), F.S. notice of the petition was provided to the Department of State and was published in *Volume 40, Number 85* of the *Florida Administrative Register* on *May 1, 2014*. No public comments were received.

Therefore, staff recommends **approval** of the issuance of Right of Way Occupancy Permit Modification Number 12086 and **approval** of the petition for Waiver of the District's criteria which governs the placement of permanent/semi-permanent above-ground facilities within 40 feet of the top of the canal bank within Works and Lands of the District.
(Easement)

MEMORANDUM

TO: Governing Board Members

FROM: Temperince Morgan, Division Director

DATE: June 12, 2014

SUBJECT: Extension of DWM NE-PES Solicitation Rankings until December 31, 2014

Summary

District staff will provide an update of the Dispersed Water Management (DWM) Program activities. In addition, staff is requesting that the Governing Board allow, through a resolution, the ranking of respondents to Solicitation Number 6000000518 regarding the DWM Program Northern Everglades Payment for Environmental Service to remain in place until December 31, 2014 pending the receipt of funds from the State of Florida to be used for additional projects.

At the July 11, 2013 Governing Board meeting the Board approved Resolution No. 2013-0708 authorizing staff to begin negotiations in ranked order with Respondent to Solicitation Number 6000000518 for Northern Everglades Payment for Environmental Services contracts. The existing funding available was not anticipated to allow more than the first two respondents to receive contracts pending negotiations. Consistent with the District's procurement policy, the Board decided to keep the solicitation and the rankings open for one year pending additional funding sources.

As a result of the 2014 Florida legislative session, it is anticipated that additional funding from the State of Florida will be available for the Solicitation after July 1, 2014. Negotiations with respondents in ranked order will require several months. Therefore, staff is requesting that the ranking of respondents remains open until December 31, 2014.

Staff Recommendation

Approval of a resolution extending the date by which the Governing Board's ranking of proposals for Solicitation Number 6000000518 for the Dispersed Water Management Northern Everglades Payment for Environmental Services Program can be used as the basis of a contract until December 31, 2014.

Core Mission and Strategic Priorities

Additional storage and nutrient reduction is a primary goal of the Northern Everglades and Estuaries planning initiatives. The DWM Program Northern Everglades Payment for Environmental Services solicitation is a unique method of providing additional storage and nutrient reduction in the Northern Everglades watersheds and has been included in the Lake Okeechobee, St. Lucie River Estuary, and Caloosahatchee River Estuary Protection Plans.

Funding Source

Funding for the solicitation contracts will be from a State of Florida legislative appropriation.

Staff Contact

Beth Lewis, Office Chief, Office of State Policy & Coordination
561-682-6343 / belewis@sfwmd.gov

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Resolution No. 2014 - 0609

A Resolution of the Governing Board of the South Florida Water Management District allowing the Governing Board's ranking of Respondents for the Dispersed Water Management Program Northern Everglades - Payment for Environmental Services solicitation number 6000000518, as approved in Resolution number 2013-0708, to be extended until December 31, 2014 pending the receipt of funds from the State of Florida; providing an effective date.

WHEREAS, the District Governing Board ranked the proposals for solicitation number 6000000518 at its regular meeting in July, 2013 as set forth in Resolution number 2013-0708; and

WHEREAS, at its meeting in August, 2013, the Governing Board decided to extend the date by which the ranking could be used as a basis of a contract until the District received additional funding; and

WHEREAS, the District anticipates that additional funding from the State of Florida will be available for solicitation number 6000000518 after July 1, 2014; and

WHEREAS, negotiations with respondents in ranked order will require several months; and

WHEREAS, the Governing Board of the South Florida Water Management District deems it necessary, appropriate and in the public interest to allow the ranking of respondent's to solicitation number 6000000518 to remain in place until December 31, 2014 pending the receipt of funds from the State of Florida;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT:

Section 1. The Governing Board of the South Florida Water Management District hereby extends the date by which the Governing Board's ranking of proposals for Solicitation Number 6000000518 for the Dispersed Water Management Northern Everglades Payment for Environmental Services Program can be used as the basis of a contract until December 31, 2014.

Section 2. A copy Resolution No. 2013-0708 establishing the ranking of proposals for solicitation number 6000000518 is attached hereto and made a part hereof.

Section 3. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 12th day of June, 2014.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD
By:

Chairman

Attest:

Legal form approved:
By:

District Clerk/Secretary

Office of Counsel

Print name:

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

RESOLUTION NO. 2013- 0708 corrected

A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT TO AUTHORIZE STAFF TO ENTER INTO NEGOTIATIONS WITH RESPONDENTS IN RANKED ORDER (ATTACHMENT A) FOR THE DISPERSED WATER MANAGEMENT PROGRAM NORTHERN EVERGLADES – PAYMENT FOR ENVIRONMENTAL SERVICES SOLICITATION NUMBER 6000000518 FOR UP TO 10 YEAR CONTRACTS FOR THE PURPOSE OF PROVIDING WATER RETENTION SERVICES AND SUBJECT TO GOVERNING BOARD APPROVAL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Governing Board of the South Florida Water Management District deems it necessary, appropriate, and in the public interest to authorize entering into negotiations with respondents in ranked order for the Dispersed Water Management Program Northern Everglades – Payment for Environmental Services Solicitation; **now therefore**

BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT:

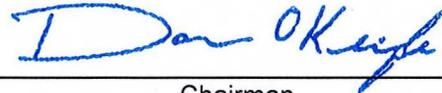
Section 1. The Governing Board of the South Florida Water Management District hereby approves entering into negotiations with respondents in ranked order according to the evaluation for the referenced solicitation 6000000518.

Section 2. This resolution shall take effect immediately upon adoption, or if applicable, after review by the Office of Fiscal Accountability and Regulatory Reform.

PASSED and ADOPTED this 11th day of July, 2013.

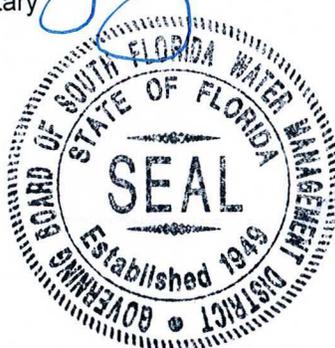
SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD

By:



Chairman

ATTEST:


District Clerk/Secretary

Approved as to form:

By:



Office of Counsel

Print name:

Frank Mendez

ATTACHMENT A

Final Ranking Report for RFP 6000000518
Northern Everglades Payment for Environmental Services

Vendor Name	Rank
Blue Head Ranch, LLC	1
Mudge Ranch	2
Babcock Property holdings, LLC	3
Bull Hammock Ranch, LTD	4
Rafter T Realty, Inc.	5
Adams - Russakis Ranches	6
Archbold Expeditions	7
Alico, Inc.	8
Lazy JP, Inc.	9
Clemons Okeechobee, LLC (Oak Creek)	10
Corona Holdings XIV, LLC	11
Clemons Okeechobee, LLC (Unit 1)	12
Two Hombres, LLC	13
Abington Holding, LTD, Inc. (Triple A Ranch)	14
Arnold Ranches	15
Reedy Creek Estates	16
Daniel & Marcia Chandler	17
Larry "Dusty" Davis, Jr. (Davis Cattle)	18
101 Ranch, Inc.	18

MEMORANDUM

TO: Governing Board Members

FROM: Sharon M. Trost, P.G., AICP, Director, Regulation Division

DATE: June 12, 2014

SUBJECT: Rule Adoption to Incorporate the "impaired waters" memorandum

Summary

Staff is proposing to adopt the Procedure for Environmental Resource Permit (ERP) Water Quality Evaluations for Applications Involving Discharges to Outstanding Florida Waters (OFW) and Water Bodies that Do Not Meet State Water Quality Standards. This procedure will incorporate into rule the substance of the existing "impaired waters memo", which was initially issued in 2004 and revised in 2009 and 2013. Applicants are assisted by this procedure in providing reasonable assurances to demonstrate that discharges will not degrade an OFW or will not contribute additional causative pollutants to an impaired water body. This procedure will be included in a new Appendix E to ERP Applicant's Handbook Volume II (Volume II). This incorporation will not create new standards or change the existing ERP application process.

Recommendation

Adopt amendments with changes to Rule 40E-4.091, F.A.C., and the incorporated "Environmental Resource Permit Applicant's Handbook Volume II: For Use within the Geographic Limits of the South Florida Water Management District," to incorporate by reference the "Procedure for Environmental Resource Permit Water Quality Evaluations for Applications Involving Discharges to Outstanding Florida Waters and Water Bodies that Do Not Meet State Water Quality Standards."

Additional Background

Existing provisions of Florida Statute and the statewide ERP rules require additional reasonable assurances for projects proposing to discharge to an OFW or water body that does not meet state water quality standards. The District issued an "impaired waters" memorandum in 2004 (revised in 2009 and 2013) to assist applicants and District staff in the application of these rules when the application includes a discharge to an impaired water body or an OFW. The memorandum is currently included as a Design Aid within Volume II and has been provided to applicants, as guidance, to describe the types of additional measures that may be considered, on a project by project basis, as necessary to provide reasonable assurance that the discharges will meet existing rule requirements.

This rulemaking will incorporate an updated version of the Memorandum by reference into Volume II. This means that the Memorandum will be a rule of the District.

While the incorporation of the "impaired waters" memorandum into Volume II will mean that it will be a rule, criteria flexibility will be maintained. Pursuant to Rule 1.1, Volume II: "an applicant may propose alternative designs to those provided in this Volume for consideration by the Agency." If this is done, additional reasonable assurances will be required to demonstrate that the alternative design meets the conditions for issuance of an environmental resource permit.

Workshops were held in November 2013 in Ft. Myers, Kissimmee and West Palm Beach, and this item was presented to the Water Resources Advisory Commission on March 6, 2014 and June 5, 2014.

The District received comments from the Joint Administrative Procedures Committee (JAPC), Department of Environmental Protection (DEP), Conservancy of Southwest Florida (Conservancy), Save the Manatee Club, Southwest Florida Watershed Council, and Florida Chapter of the American Society of Landscape Architects (Landscape Architects). Comments from JAPC, DEP, Landscape Architects, and one comment from the Conservancy, have been incorporated into the final rule text. Copies of the Notice of Change and final rule text are attached hereto.

Core Mission and Strategic Priorities

This item supports the core mission by assisting applicants and District staff in providing the necessary reasonable assurances to demonstrate that a discharge will not degrade an OFW or will not contribute to the violation of an impaired water body.

Funding Source

There is no funding associated with this rule.

Staff Contact:

Dan Waters, Regulation Service Center Administrator - Lower West Coast; Phone: (239) 338-2929 ext. 7763

Susan Roeder Martin, Sr. Specialist Attorney, Office of Counsel; Phone: (561) 682-6251

FINAL RULE TEXT – NOTICE OF PROPOSED RULE WITH CHANGES:

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference herein:

(a) “Environmental Resource Permit Applicant’s Handbook, Volume II: For Use Within the Geographic Limits of the South Florida Water Management District, _____ ~~October 1, 2013,~~” ([hyperlink](#)), which incorporates the following forms or materials by reference:

1. through 5. No change.

(b) through (e) No change.

(2) No change.

Rulemaking Authority 373.044, 373.103(8), 373.113, ~~373.171~~, 373.413, 373.418, 373.4131, 373.441, ~~704.06~~ FS. Law Implemented 373.046, 373.413, 373.4131, ~~373.4135, 373.4137, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, 373.441, 668.003, 668.004, 668.50, 695.26, 704.06~~ FS. History–New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01, 6-26-02, 6-26-02, 4-6-03, 4-14-03, 9-16-03, 12-7-04, 2-12-06, 10-1-06, 11-20-06, 1-23-07, 7-1-07, 7-22-07, 11-11-09, 7-1-10, 7-4-10, 12-15-11, 5-20-12, 10-1-13, _____.

The proposed Volume II including Appendix E is available online at www.sfwmd.gov/rules, and selecting “Impaired Waters.”: An excerpt of the proposed changes to Volume II, is as follows:

PART IV STORMWATER QUALITY

4.1 through 4.1.3 No change.

4.1.4 Projects Discharging to Impaired Waters or to Outstanding Florida Waters

Systems discharging to a waterbody that has been identified as impaired by the Department of Environmental Protection pursuant to Section 403.067, F.S., or to an Outstanding Florida Water, shall be designed in accordance with the procedures in Appendix E.

APPENDIX E

Procedure for Environmental Resource Permit Water Quality Evaluations for Applications Involving Discharges to Outstanding Florida Waters and Water Bodies that Do Not Meet State Water Quality Standards

This procedure shall be utilized in coordination with the “Environmental Resource Permit Applicant’s Handbook Volume I: General and Procedural” (Volume I), incorporated by reference in Rule 62-330.010, F.A.C., and “Environmental Resource Permit Applicant’s Handbook Volume II: For Use within the South Florida Water Management District” (District) (Volume II), incorporated by reference in Rule 40E-4.091, F.A.C. This procedure pertains to the application of existing District rules in the evaluation of permit applications for projects which

discharge to Outstanding Florida Waters (OFWs) and water bodies that do not meet State water quality standards identified on the State's "Verified List" of impaired waters or water bodies that have a State adopted Total Maximum Daily Load (TMDL) (impaired water bodies).

"Impaired Water Bodies"

Chapter 62-303, Florida Administrative Code (F.A.C.), describes impaired water bodies. Water bodies that have been assessed and determined to be impaired by the Department of Environmental Protection (DEP) due to pollutant discharges are included on the "Verified List" adopted by DEP Secretarial Order. Water bodies on the "Verified List" can be determined from DEP's web site at: <http://www.dep.state.fl.us/water/watersheds/assessment/a-lists.htm>.

Relationship Between "Impaired Waters" and District Water Quality Rules

Chapter 62-303, F.A.C., does not limit the applicability of existing environmental resource permit (ERP) rules and other criteria under other provisions of Florida law. Consequently, the District implements its existing rules to ensure non-degradation of OFWs and prevent further degradation of impaired water bodies.

This procedure highlights the requirements in the existing District ERP rules to meet water quality criteria. This procedure also provides additional measures which shall be considered, on a project by project basis, as necessary to provide reasonable assurance that new activities regulated pursuant to Part IV of Chapter 373, Florida Statutes (F.S.) will not degrade an OFW or will not contribute additional causative pollutants to an impaired water body.

Existing ERP Water Quality Requirements and Evaluation

The design requirements in Section 4, Stormwater Quality, of Volume II are applied in conjunction with the water quality requirements in Section 8, Criteria for Evaluation and Section 10, Environmental Criteria, Volume I.

State surface water quality standards are outlined in Chapter 62-302, F.A.C., and require that reasonable assurances be provided to ensure that proposed discharges do not cause or contribute to violations of State water quality standards. As a part of the review of ERP applications, the District evaluates whether discharges from a project will be directed to an OFW or a water body that has been identified as impaired pursuant Chapter 62-303, F.A.C. If a proposed project discharges to an OFW or an impaired water body, the District will require that additional protective measures be incorporated into the project's design and operation to provide reasonable assurance that the proposed discharge will not cause or contribute to violations of State water quality standards. The additional protective measures shall include a site-specific pollutant loading analysis and an additional 50% water quality treatment volume above the amounts required pursuant to Section 4.2.1, Volume II. Best management practices (BMPs), source controls or protective measures shall be considered as discussed below.

Section 4.1, Volume II requires that "projects shall be designed and operated so that off-site discharges will meet State water quality standards." Section 4.1.3, Volume II, states that

“systems which have a direct discharge to an OFW, must provide an additional fifty percent of the required treatment.” Section 4.9.1, Volume II specifies a more detailed evaluation by the District staff for new developments which outfall to sensitive receiving waters. Such sensitive receiving waters include all OFWs as well as other water bodies specifically named in this rule.

Section 10.2.4, Volume I states:

An applicant must provide reasonable assurance that the regulated activity will not violate water quality standards.

Reasonable assurance regarding water quality must be provided both for the short term and the long term The following requirements are in addition to the water quality requirements found in Sections 8.2.3 and 8.3 through 8.3.3.

In cases where a project will discharge to a water body that does not meet standards, Section 10.2.4.5, Volume I requires that:

The applicant must demonstrate that the proposed activity will not contribute to the existing violation.

Section 10.2.4.5, Volume I also states, “If the proposed activity will contribute to the existing violation, mitigation may be proposed as described in subsection 10.3.1.4 (Volume I).”

In addition, where the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, Section 373.414(1)(b)3, F.S., states that the Governing Board shall:

consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

Required Analysis

The applicant must submit the following for each project:

Construction Phase Pollution Prevention Plan

A Stormwater Pollution Prevention Plan for construction activities resulting in greater than 1 acre of land clearing, soil disturbance, excavation, or deposition of dredge material. The plan shall be prepared in accordance with recognized design practices and shall identify the potential sources of pollution that shall reasonably be expected to affect the quality of stormwater discharge associated with the construction activity.

Operation Phase Pollution Prevention Plan

A Post-construction Pollution Prevention Plan to be submitted as part of the permit application, which provides details of controls and practices to be implemented after construction is completed to reduce or eliminate the generation and accumulation of potential stormwater runoff contaminants at or near their source. A Post-construction Pollution Prevention Plan shall include plans for surface water management system operation and maintenance, nutrient and pesticide management, solid waste management, and/or animal/livestock waste storage and disposal, if applicable. Records of maintenance, operation and inspection shall be kept by the permittee and shall be available for inspection and copying by the District staff upon request.

Site-Specific Water Quality Evaluation

In order to demonstrate that the proposed activities will not contribute to an existing impairment of a water body, will not degrade an OFW, or will provide a “net improvement,” an applicant shall provide reasonable assurance based on site-specific information to demonstrate that discharges of the parameter or parameters which have caused the impairment do not have the potential to cause or contribute to water quality violations in the basin. This demonstration shall be accomplished through the use of a site-specific water quality evaluation.

Additional Source Controls, BMPs and Other Protective Measures

In addition to the extra 50% water quality treatment volume for discharges to OFWs or impaired water bodies, a site-specific water quality analysis is required. Before submitting an application, the applicant shall perform an initial site-specific water quality analysis. The initial analysis must demonstrate that the proposed project’s stormwater management system will not degrade an OFW or will provide a net improvement in an impaired water body for any parameters which are impaired. If the site-specific water quality analysis does not demonstrate that an OFW will not be degraded or a net improvement will occur in an impaired water body, then additional protective measures are required. These protective measures shall consist of source controls, BMPs or other protective measures. The applicant must then submit a site-specific water quality analysis to the District that demonstrates that an OFW will not be degraded or that a net improvement will occur in an impaired water body of any parameter which is impaired.

Listed below are typical source and structural controls commonly incorporated into proposed project stormwater designs and site specific water quality analysis as a part of the evaluation of whether an applicant has provided reasonable assurance to demonstrate that a proposed activity will not degrade an OFW, or in the case of an impaired water body, will not contribute to a violation of the impaired parameter. Such evaluation must take into consideration the particular water quality parameter which is not being met in the water body and whether the proposed project will contribute to the continued violation. The listed additional protective measures are not considered exhaustive. The District will consider other protective measures proposed by the applicant which include the necessary detailed documentation to demonstrate reasonable assurance that water quality standards will not be violated during construction and during long term operation. A combination of protective measures must be based on the proposed project, receiving water body, and specific pollutant(s) causing or contributing to the impairment of the receiving water body. Examples of protective measures are:

Increased Hydraulic Residence Time

Increased average wet season hydraulic residence time of wet detention ponds to at least 21 days using a maximum depth of 12 feet from the control elevation to calculate the residence time.

Pollutant Source Controls

Source controls typically include reduced turf coverage; native landscape plantings; stormwater harvesting and recycling; rooftop runoff management and recycling; pervious pavement; and vegetated non-turf buffers around detention/retention ponds.

Conveyance and Pretreatment BMPs

Stormwater conveyance and pretreatment BMPs typically include filter strips; vegetated stormwater inlets; vegetated swales; sediment trap structures such as baffle boxes; and dry retention or detention pretreatment.

Water Quality Treatment Enhancement

Stormwater treatment system enhancements typically include the use of on-site created wetlands in a treatment train as a polishing cell after primary treatment; detention ponds with littoral berms, settling basins or phyto-zones within the detention areas; planted wetland filter marshes just upstream of project outfall structures; detention ponds with increased effective treatment time by use of internal levees and/or berms and/or location of inflow and outflow structures to increase the flow path distance.

Treatment Efficiency of BMPs in Series

If a stormwater treatment system is designed in series as part of a BMP treatment train to increase the pollutant removal efficiency of the overall system, the treatment efficiencies of BMPs in series must account for the reduced loading transferred to subsequent downstream treatment devices as well as irreducible concentrations of certain pollutants. After treatment occurs in the first system, a load reduction occurs, which is a function of the type of treatment provided. After migrating through the initial treatment system, the remaining load consists of pollutant mass which was not removed in the initial system. This mass is then acted upon by the second treatment system with an efficiency associated with the particular type of BMP used until the irreducible concentration level is met.

Attention must be paid to the treatment efficiency used for each downstream BMP to account for the diminishing “treatability” of stormwater as concentrations are reduced.

Water Quality Mitigation

In cases where ambient water quality does not meet State water quality standards and it is determined that the proposed activity will contribute to the violation (e.g., the water body is impaired for nutrients and the proposed project will discharge an increased nutrient load), Section 373.414(1)(b)3, F.S., and the Section 10.3.1.4. Volume I include provisions for water quality mitigation that will cause a net improvement. Water quality mitigation can be accomplished in a variety of ways. The typical concept is to provide net improvement through implementation of a water quality treatment system or retrofit of an area that currently discharges untreated stormwater runoff to the same receiving body as the proposed project. The type of land use, runoff rates, removal efficiencies and the pollutants expected from the mitigation area all must be compared to the proposed activity to assure the proposed mitigation is sufficient to cause a net improvement in the receiving water. Any areas used for off-site treatment must include a perpetual easement for this purpose, over the off-site treatment area, which cannot be amended, altered, released or revoked without the prior written consent of the District.

Water Quality Monitoring

Section 4.9.1(b), Volume II of the Environmental Resource Permit Applicant's Handbook Volume II for Use within the Geographic Limits of the South Florida Water District, incorporated by reference in Rule 40E-4.091, F.A.C., contains the rule on water quality monitoring.

Notice of Change/Withdrawal

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NO.: RULE TITLE:

[40E-4.091](#): Publications, Rules and Interagency Agreements Incorporated by Reference

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 40 No. 87, May 5, 2014 issue of the Florida Administrative Register.

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference herein:

(a) “Environmental Resource Permit Applicant’s Handbook, Volume II For Use Within the Geographic Limits of the South Florida Water Management District, _____ ~~October 1, 2013,~~” ([hyperlink](#)), which incorporates the following forms or materials by reference:

1. through 5. No change.

(b) through (e) No change.

(2) No change.

Rulemaking Authority 373.044, 373.103, 373.113, 373.413, 373.418, 373.4131, 373.441, FS. Law Implemented 373.046, 373.413, 373.4131, 373.414, 373.4142, 373.416, 373.418, 373.426, 373.441, FS. History–New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01, 6-26-02, 6-26-02, 4-6-03, 4-14-03, 9-16-03, 12-7-04, 2-12-06, 10-1-06, 11-20-06, 1-23-07, 7-1-07, 7-22-07, 11-11-09, 7-1-10, 7-4-10, 12-15-11, 5-20-12, 10-1-13, _____.

The proposed Volume II including Appendix E is available online at www.sfwmd.gov/rules, and selecting “Impaired Waters.” An excerpt of the proposed changes to Volume II is as follows:

PART IV STORMWATER QUALITY

4.1 through 4.1.3 No change.

4.1.4 Projects Discharging to Impaired Waters or to Outstanding Florida Waters

Systems discharging to a waterbody that has been identified as impaired by the Department of Environmental Protection pursuant to Section 403.067, F.S. ~~under Chapter 62-303, F.A.C.~~, or to an Outstanding Florida Water, shall be designed in accordance with the procedures in Appendix E.

APPENDIX E

Procedure for Environmental Resource Permit Water Quality Evaluations for Applications Involving Discharges to Outstanding Florida Waters and Water Bodies that Do Not Meet State Water Quality Standards

This procedure shall be utilized in coordination with the “Environmental Resource Permit Applicant’s Handbook Volume I: General and Procedural” (Volume I), incorporated by reference in Rule 62-330.010 F.A.C., and “Environmental Resource Permit Applicant’s Handbook Volume II: For Use within the South Florida Water Management District” (District) (Volume II), incorporated by reference in Rule 40E-4.091, F.A.C. This procedure pertains to the application of existing District rules in the evaluation of permit applications for projects which discharge to Outstanding Florida Waters (OFWs) and water bodies that do not meet State water quality standards identified on the State’s “Verified List” of impaired waters or water bodies that have a State adopted Total Maximum Daily Load (TMDL) (impaired water bodies).

“Impaired Water Bodies”

No Change

Relationship Between “Impaired Waters” and District Water Quality Rules

No Change

Existing ERP Water Quality Requirements and Evaluation

No Change

Required Analysis

The applicant must submit the following for each project:

Construction Phase Pollution Prevention Plan

A Stormwater Pollution Prevention Plan for construction activities resulting in greater than 1 acre of land clearing, soil disturbance, excavation, or deposition of dredge material. The plan shall be prepared in accordance with recognized design engineering practices and shall identify the potential sources of pollution that shall reasonably be expected to affect the quality of stormwater discharge associated with the construction activity.

Operation Phase Pollution Prevention Plan

No Change

Site-Specific Water Quality Evaluation

No Change

Additional Source Controls, BMPs and Other Protective Measures

No Change

Water Quality Treatment Enhancement

No Change

Treatment Efficiency of BMPs in Series

If a stormwater treatment system is designed in series as part of a BMP treatment train to increase the pollutant removal efficiency of the overall system, the treatment efficiencies of BMPs in series must account for the reduced loading transferred to subsequent downstream treatment devices as well as irreducible concentrations of certain pollutants. After treatment occurs in the first system, a load reduction occurs, which is a function of the type of treatment provided. After migrating through the initial treatment system, the remaining load consists of pollutant mass which was not removed in the initial system. This mass is then acted upon by the second treatment system with an

efficiency associated with the particular type of BMP used until the irreducible concentration level is met.

~~When treatment systems are used in series, and a continuous model of the treatment systems is not used, the efficiency of the overall treatment train shall be calculated using the following equation:~~

$$\textit{Treatment Train Efficiency} = \textit{Eff}_1 + [(1 - \textit{Eff}_1) \times \textit{Eff}_2]$$

Attention must be paid to the treatment efficiency used for each downstream BMP to account for the diminishing “treatability” of stormwater as concentrations are reduced.

Water Quality Mitigation

No Change

Water Quality Monitoring

~~Section 4.9.1(b), Volume II of the Environmental Resource Permit Applicant’s Handbook Volume II for Use within the Geographic Limits of the South Florida Water District, incorporated by reference in Rule 40E-4.091, F.A.C., contains the rule on water quality monitoring. states that “new projects entailing a more intensified land use, such as industrial parks, and planning to discharge to a sensitive receiving water, directly or indirectly, shall be required to institute a water quality monitoring program if the applicant is unable to provide adequate assurances (by such means as routing drainage of areas where polluting materials would be located away from the stormwater management system); developing restrictive covenants, or similar documents, which would have the effect of prohibiting polluting materials on the project site or proposing other methods of assurance) that degradation of the receiving body water quality will not occur.” Based on the fact that permits are not typically issued without an applicant providing the reasonable assurances discussed in Section 4.9.1, Volume II and the District’s long term experience with current water management system designs, the District has not routinely required permit level water quality monitoring.~~