**MEMORANDUM**

TO: Governing Board

FROM: Tom W. Brown, General Counsel

DATE: June 1, 2010

RE: Enforcement Status & Litigation Report

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## ADMINISTRATIVE MATTERS WITHIN THE DISTRICT:

### Steven Midyette (CE07-0065) – Gilchrist County

Received September 10, 2008. On March 16, 2002, the District discovered that Steven Midyette was clearing wetland vegetation within a riverine wetland slough without a permit. Mr. Midyette was notified that these activities required a permit. Mr. Midyette agreed to restore the integrity of the natural system but failed to do so. On September 5, 2007, the District discovered that Mr. Midyette was filling in wetlands and constructing a boat ramp within a riverine wetland slough without a permit. On September 7, 2007 the District issued a Notice of Violation and Stop Work Order. A consent agreement was prepared for both violations and was sent to Mr. Midyette. Mr. Midyette was ultimately given extensions until September 5, 2008 to sign and return t he consent agreement. He failed to sign. Counsel spoke to and sent a letter to Mr. Midyette in September 2008 regarding returning the signed consent agreement. Mr. Midyette advised he would do so after his attorney reviewed the same. The signed consent agreement was never received. Counsel forwarded an Administrative Complaint and Order to the District on December 8, 2008 to be signed. The Administrative Complaint and Order was filed on or about January 26, 2009. On February 25th, complaint was sent to Duval County Sheriff to serve.

Complaint was served on Defendant on March 9, 2009. Defendant filed a Petition for Hearing on March 27, 2009. On April 15, 2009, District entered an Order Dismissing Defendant's Petition for Administrative Hearing without Prejudice as the Petition was procedurally defective and gave Defendant fourteen days to file an Amended Petition for Hearing. Defendant's Amended Petition for Hearing is due to be filed with the District on or before April 28, 2009.

Defendant filed an Amended Petition for Hearing dated May 2, 2009, which was received by the District on May 4, 2009. District forwarded the same to DOAH on May 18, 2009. DOAH issued its Initial Order on May 19, 2009. District counsel responded to the Initial Order on May 27, 2009. District counsel will commence with Discovery.

As per the District, District counsel filed a Motion to continue the trial and stay further proceedings for 30 days on June 25, 2009. On June 26, 2009, DOAH granted the motion canceling the hearing set for July 30 and placing the case in abeyance. The parties are to notify DOAH of status of proceedings by July 27, 2009. District

counsel will continue to work with Defendant's counsel to resolve the matter without further court action. Since June 26, 2009, this matter has been continued four additional times for thirty days each. On October 30, 2009 District counsel spoke to Dennis Price, Defendant's engineer/expert, who advised District counsel that he is scheduled to perform his site inspection on Monday, November 2, 2009. He also indicated that he anticipates having a proposed restoration plan to the District within two weeks of his inspection. District counsel will continue to work with Defendant's counsel to resolve the matter without further court action.

On hold as per the District. District counsel filed a 6th Motion to continue the trial and stay further proceedings for another 30 days on November 25, 2009. District counsel received the proposal from Dennis Price, Defendant's engineer/expert, on November 23, 2009. District counsel is drafting a proposed consent agreement and order. District counsel will continue to try to work with Defendant's counsel to try to resolve the matter without further court action.

On hold as per the District. District counsel filed a 7th Motion to continue the trial and stay further proceedings for another 30 days on December 29, 2009. District counsel will continue to try to work with Defendant's counsel to reach an agreement upon a Consent Agreement and Order to try to resolve the matter without further court action.

The parties have tentatively agreed on a Consent Agreement and Order to bring this project into compliance and otherwise resolve all outstanding issues. On January 28, 2010 counsel filed an 8th Motion to Continue so the details of the Consent Order may be finalized.

On hold as per the District. On February 26, 2010 we filed a 9th Motion to continue the trial and stay further proceedings for another 30 days. On same date we reached agreement with Defendant's Counsel on the terms of a Consent Agreement and Order. We expect a signed agreement with Consent Order back before April's meeting.

On March 29, 2010, District Counsel sent the final revised consent agreement and Order to Defense counsel to be signed by Defendant and returned. We will continue to work with Defendant's counsel to resolve the matter without further court action.

On hold as per the District. Defendant signed the Consent Agreement and Order on March 29, 2010. DOAH entered an order relinquishing jurisdiction back to the District on March 31, 2010. District Counsel will keep in on hold/monitor status while Defendant works to restore the property. **(Same)**

**<u>Deerhaven Citgo/Gary Almond (CE09-0054-Alachua County)</u>**

Received September 17, 2009. Counsel mailed a notice of violation to Gary Almond, Almond Oil Company on September 22, 2009 regarding permit condition violations and unpermitted construction occurring on Mr. Almond's property. The notice of violation requires a response from Mr. Almond on or before October 9, 2009.
Mr. Almond contacted District staff regarding the notice of violation and is currently

working with staff toward bringing this project into compliance with District rules. This matter is on hold per District instructions and Staff will notify us if and when an agreement is reached so Counsel can prepare a Consent Order. **(Same)**

**Paul Moody (CE 10-0009-Bradford County)**

Received file from District on February 18, 2010. We have unsuccessfully negotiated with Mr. Moody in an attempt to resolve this matter. Counsel will serve Mr. Moody with a notice of violation via certified mail on or before April 1, 2010 regarding the unpermitted construction of a well by an unlicensed contractor.

Notice of violation served on Mr. Moody which requires payment of an assessed penalty and corrective action to be taken to resolve the violation by May 10, 2010.

**Mr. Moody failed to take any corrective action to resolve this matter. Therefore, Counsel will seek authority from the Governing Board to initiate litigation against Mr. Moody. The request for authorization to initiate litigation will be presented to the Board at the July meeting.**

**ADMINISTRATIVE MATTERS WITH DIVISION OF ADMINSTRATIVE HEARINGS:**

None at this time

**CIRCUIT COURT MATTERS:**

**Suwannee River Water Management District v. El Rancho No Tengo, Inc.**

On May 26, 2006, District counsel filed a complaint in circuit court for Columbia County for injunctive relief, civil penalties, and attorney's fees and costs against Defendant Corporation.

The trial on the District's action for injunctive relief was conducted on November 7, 2006, and February 7 and 8, 2007. The Court granted District's request for a temporary injunction on July 11, 2007, and converted the temporary injunction to a permanent injunction in a Final Order dated August 6, 2007.

On April 16, 2008, after hearing testimony and argument of counsel on the District's action for civil penalties, the Court entered a Judgment for Civil Penalties against Defendant in the amount of $100,000.

On April 17, 2008, an Order was entered denying Defendant's motion to stay, pending appeal, the requirement that the impoundment be immediately drained to the lowest feasible level. However, the remainder of the injunctive relief was stayed conditioned on the Defendant posting a $100,000 bond. Defendant separately appealed the injunction order and the civil penalty order. In February 2009, the First District Court of Appeal *per curiam* affirmed both orders. No bond was ever posted by Defendant and Defendant has failed to comply with any of the Court ordered permanent injunctive relief designed to ensure the integrity of the dam.

In August 2008, a Writ of Execution was issued by Columbia County Sheriff's Office

to levy on real property owned by Defendant as a means of enforcing the final order imposing the $100,000 civil penalty. Sale of the property was scheduled for November 21, 2008, however, on November 19, 2008, El Rancho No Tengo, Inc., filed for Chapter 12 Bankruptcy proceedings in the United States Bankruptcy Court, Middle District of Florida, resulting in a stay. Ultimately, Bankruptcy counsel for the District filed a Motion to Dismiss El Rancho No Tengo's Chapter 12 Case, which the bankruptcy court granted on May 14, 2009, after evidence and testimony was presented.

On March 30, 2009, based on information obtained during the bankruptcy proceeding, counsel for the District propounded upon Defendant a Second Request for Production requiring Jeffrey Hill to produce corporate tax returns and other financial information. The Defendant has failed to comply with the District's request. Consequently, District counsel filed a Motion to Compel document production, which is now scheduled to be heard on December 10, 2009 (previously set for October 13, 2009).

District staff continues to periodically monitor the water level of the impoundment and condition of the dam. District staff has taken actions necessary to maintain the lowest feasible water level several times during the past year as authorized by the Court.

An attempt to meet to try to voluntarily negotiate a settlement was made in June 2009, but failed.

On July 15, 2009, an amended motion for order to show cause why El Rancho No Tengo, Inc., should not be found in contempt of court was served on Defendant and filed with the clerk of court.

On August 28, 2009, counsel for District filed a Motion for Assessment of Appellate Attorney's Fees in the amount of $52,173.01 pursuant to law and the First District Court of Appeal's orders *per curiam* affirming the trial court's final orders and granting the District's motions for attorney's fees. Counsel for District also filed an Amended Motion for Costs and Attorneys' Fees under sections 373.129 and 373.136, *Florida Statutes,* seeking to recover its investigative and administrative costs in the amount of $49,584.91, and reasonable attorneys' fees in the amount of $159,241.55, expended in prosecuting this action in circuit court.

On October 7, 2009, Paul Smith, counsel for Defendant, filed a Motion to Withdraw and noticed it to be heard on October 13, 2009, in conjunction with the hearing on the District's motion to compel.

The following District motions were set for hearing on December 10, 2009:

- Motion for Order to Show Cause Why Defendant Should Not Be Held in Contempt;
- Amended Motion for Costs and Attorney's Fees for the trial proceedings; and

- Motion to Assess the Amount of Attorney's Fees for the appellate proceedings.

A seven (7) hour block of time was set aside on Judge Johnson's docket.

However, on October 13, 2009, Judge Johnson disqualified herself, *sua sponte*, from hearing any further matters in this cause. As a result neither the District's Motion to Compel nor Paul Smith's Motion to Withdraw as Defendant's counsel was heard on October 13, 2009.
Chief Judge, David Fina, recently reassigned this matter to Judge Greg Parker. A hearing on the District's Motion to Compel production of documents and Defendant's Counsel's Motion to Withdraw have been scheduled before Judge parker on December 10, 2009, in Columbia County. Additionally, the Motion for Order to Show Cause Why Defendant should not be held in Contempt; Amended Motion for Costs and Attorney's Fees for the trial proceedings; and the Motion to Assess the Amount of Attorney's Fees for the appellate proceedings have all been scheduled for March 26, 2010, commencing at 9:00 a.m.

Judge Parker heard a hearing on the District's Motion to Compel production of documents and Defendant's Counsel's Motion to Withdraw on December 10, 2009, in Columbia County. Judge Parker granted the District's Motion to Compel and ordered that production of the documents be held on January 11, 2010, at the Law Offices of Brannon, Brown, Haley & Bullock, P.A. ("Law Offices") The Defendant's corporate representative is to notify the District's corporate representative no later than January 4, 2010, of its acceptance or rejection of the District's offer to provide the means to transport the documents to the Law Offices and return the documents to Defendant immediately upon completion of the inspection and copying.

Judge Parker further ordered that Defendant is to reimburse the District in the amount of six-hundred and thirty-five dollars and thirty-six cents ($635.36) for attorney's fees incurred in the prosecution of the District's Motion by delivering a cashier's check or money order to the Law Offices within 10 days of the date of the executed order.

Additionally, Defendant's Counsel's Motion to Withdraw was granted. The Defendant was ordered to retain legal counsel to replace Mr. Smith. The new attorney is to serve and file a notice of appearance in this case no later than January 25, 2010. Counsel for the District has drafted and sent proposed Orders to Judge Parker for his review.

On December 28, 2009, Judge Parker issued his Order Granting Plaintiff's Motion to Compel Production of Documents. The Defendant was ordered to produce the documents at the Law Offices of Brannon, Brown, Haley & Bullock, P.A., on or before January 11, 2010, and to reimburse Plaintiff in the amount of six-hundred and thirty-five dollars and thirty-six cents ($635.36) for attorney's fees within ten (10) days of the date of the Order. On January 13, 2010, Defendant produced documents filed in its Bankruptcy proceeding (36 pages) and stated that all other documents requested were destroyed when a frozen water pipe burst two days earlier.

Additionally, Defendant failed to reimburse the District for its attorney's fees. On January 15, 2010, counsel for the District filed a Notice of Non-Payment of Attorney's Fees with the Court and requested that an Order to Show Cause be entered by the Court. Judge Parker has requested counsel for the District to submit a proposed Order to Show Cause. To date, the District has not received a notice of appearance of counsel on behalf of Defendant.

On February 10, 2010, District staff inspected Defendant's property and observed that there was a substantial amount of water impounded behind the dam and no water was coming out of the primary spillway discharge pipe. In addition, the drain gate was closed and the operating handle was missing. Staff opened the gate approximately 18 inches, but there was still little or no flow of water from the principal spillway pipe. Therefore, Staff believes that the discharge pipe is plugged.

Counsel for the District filed a Motion for Emergency Hearing on Plaintiff's Amended Motion for Order to show cause why El Rancho No Tengo, Inc. should not be held in contempt. The hearing has been scheduled before Judge Parker on March 4, 2010, in Columbia County.

Plaintiff's Motion for Assessment of appellate attorney's fees and Plaintiff's Amended Motion for costs and attorney's fees has been scheduled before Judge Parker on March 26, 2010, in Columbia County.

Defendant has failed to retain new counsel as required by the Court's order of December 28, 2009. On February 16, 2010, counsel for the District filed a Motion for Default requesting the Court find the Defendant in default and grant Plaintiff's amended motion for costs and attorney's fees for the trial proceedings, as well as costs and attorney's fees for enforcement of the Court's final judgments, including the proceedings in federal bankruptcy court.

An emergency evidentiary hearing was held on March 4, 2010, on the District's Motion for Contempt due to Defendant's failure to maintain the water level as low as feasible and apparent blockage in the principal spillway pipe preventing the impoundment from draining even after staff had again opened the gate valve. At the conclusion of the District's presentation, Judge Parker entered an emergency order finding Defendant in contempt and authorizing the District to drain the dam through pumping or any other means necessary and thereafter to breach the principal spillway in order to prevent water from being impounded behind the dam. Since March 10, 2010, the District's contractor has been pumping water out of the impoundment.

Plaintiff's Motion for Default and Amended Motion for Costs and Attorney's Fees were heard by Judge Parker on March 26, 2010. The Court found Defendant in default and awarded the District its attorney's fees and costs for the entire circuit court proceeding. An evidentiary hearing was also held to determine the amount of those fees and costs, as well as the amount of attorney's fees under the District's Motion for Assessment of Appellate Attorney's Fees. Counsel is preparing a proposed final judgment for Judge Parker's consideration.

District counsel drafted and submitted a proposed order for Judge Parker's consideration, under which the District can recover its costs and attorney's fees in this matter and the two appeals. Thereafter, counsel discovered that one of the most recent invoices attached as an exhibit was in error. We are currently preparing to submit a revised proposed order with a corrected exhibit.

**The revised proposed final order was submitted to Judge Parker who signed and distributed a final order on May 3, 2010, awarding the District its costs and attorney's fees for all of the proceedings related to this matter totaling $280,376.20.**

**On May 4, 2010, District staff performed a site visit and observed that the pond remained in a drained condition and the principal spillway pipe was unobstructed.**

**A request for Governing Board authorization to enforce this judgment together with an earlier final order that imposed a civil penalty in the amount $100,000, will be presented by staff and General Counsel at the June 8, 2010, regular meeting.**

**Breck Sloan/Beck Chrysler Dealership (CE07-0100)**

Received October 24, 2007. The dry retention pond on the property is not functioning as permitted and needs to be redesigned as a wet pond or a filter/underdrain must be designed to draw down the seasonal high water table. Counsel sent an enforcement letter on October 29, 2007 seeking an assessed penalty, administrative costs and attorneys' fees. The letter also instructed Mr. Sloan as to the permit modification that will be required in order to bring the pond into compliance. A deadline of November 14, 2007 was provided. Breck Sloan responded on November 13, 2007 and proposed a four-month monitoring plan. District staff agreed to said plan. A written report is to be submitted to District on April 7, 2008, which shall show all findings and proposed modifications. Report was not filed on April 7, 2008 with District. The penalties, administrative costs and attorney's fees were not paid and Staff has returned the file back to attorneys for enforcement. On July 30, 2008, Mr. Breck Sloan, by phone, claimed he thought the work had been done and promised immediate action. Counsel followed up with a letter to Mr. Sloan. On August 26, 2008, District staff received a call from Engineer Rudd Jones, new to the project, promising a proposal to fix the pond. Staff will follow up with him within ten (10) days. Owner given until October 15, 2008 to have plan filed with District. Owner has not contacted counsel or staff; the matter will proceed with administrative enforcement. On November 19th, Mr. Sloan's new engineer contacted District and should meet with staff and pay penalties this month. This did not happen; counsel is to file suit in Circuit Court in Bradford County. Defendant's registered agent was served on February 19, 2009.

On March 16, 2009, we filed for a Default and the Clerk entered the order on the same on March 17, 2009. Defendant filed an Answer in the wrong county on March 12, 2009. Defendant forwarded correspondence to the Bradford County clerk

referencing the error on March 18, 2009. A telephone conference was held between District counsels, Defendant, Defendant's counsel, and Defendant's engineer on March 24, 2009. Defendant's counsel advised that he would submit a proposal on behalf of the defendant as to the actions to bring the pond into compliance along with the timeframe in which to do so. No action by defendant's counsel or engineer as of April 28, 2009. We therefore are proceeding with the lawsuit that has already been filed.

Defendant's engineer has been in contact with District staff and submitted an application along with the application fee. However, Defendant failed to pay the past penalties, attorney's fees, and costs. District counsel will advise Defendant's counsel that the Defendant needs to pay the past penalties, attorney's fees, and costs by June 12, 2009. If he does so and then timely and properly completes the work thereafter, then the District will consider reducing the penalty. However, if we do not receive the past penalties, attorney's fees, and costs by June 12, 2009 we will proceed with continued enforcement proceedings. On June 10, 2009, the District met directly with Defendant's engineer and reached an agreement to resolve the violations, waive the penalties, and pay reduced attorney's fees and costs. Defendant has ninety days from the issuance of the ERP to get the project into compliance. Defendant is to pay the reduced attorney's fees and costs by July 3, 2009.

Defendant paid reduced attorney's fees and costs. Defendant has ninety days from the issuance of the ERP to bring the project into compliance. Enforcement is on hold pending completion of work. On September 17, 2009, District staff advised District counsel that everything was proceeding appropriately and to maintain the case on hold status.

On October 27, 2009, District staff advised District counsel that defendant has begun the work to bring the project into compliance and everything appears to be proceeding appropriately. Therefore, District Counsel was instructed to maintain the case on hold status.

On hold as per the District. On June 10, 2009, the District staff met directly with Defendant's engineer and reached an agreement to resolve the violations, waive the penalties, and pay reduced attorney's fees and costs. District staff advised District counsel that the Defendant paid the reduced attorney's fees and costs. Defendant has ninety days from the issuance of the ERP to bring the project into compliance. On November 25, 2009, District staff advised District counsel that Defendant is nearing completion of the work to bring the project into compliance and everything appears to be proceeding appropriately. Therefore, District Counsel was instructed to maintain the case in an "on hold" status.

On February 26, 2010, District staff advised District counsel that Defendant is nearing completion of the work to bring the project into compliance and it should be complete around March 3, 2010. Therefore, District Counsel was instructed to maintain the case in an "on hold" status.

On March 29, 2010, District staff advised District Counsel that Defendant is still working to bring the project into compliance. Therefore, District Counsel was instructed to maintain the case in an on hold status.

On hold as per District. On June 10, 2009, the District met directly with Defendant's engineer and reached an agreement to resolve the violations, waived the penalties, and pay reduced attorney's fees and costs. District staff advised District counsel that the Defendant paid the reduced attorney's fees and costs. Defendant had ninety days from the issuance of the ERP to get the project into compliance. On March 31, 2010, District staff advised District counsel that Defendant has completed the work to bring the project into compliance. Once the District confirms receipt of the properly completed as built certifications, District Counsel will prepare and send to defendant's counsel a Joint Stipulation for Dismissal of the pending circuit court action. **District staff confirmed receipt of the properly completed as built certifications. Counsel is preparing a Joint Stipulation for Dismissal of the circuit court action, which will be sent to defendant's attorney for review in the next two (2) weeks.**

**Linda Fennell/Stephen Buckles (CE06-0107)**

Received September 13, 2007. Mr. Buckles constructed a building, dock and walkway within the 75' setback and floodway of the Suwannee River without a permit. Counsel sent an enforcement letter on September 14, 2007 seeking assessed penalties, administrative costs, attorneys' fees and either removal of all unpermitted structures located within the 75' setback or complete the application process and seek a variance if there are unpermittable structures located within the 75' setback. Mr. Buckles contacted counsel on October 1, 2007 and assured his cooperation in correcting the violations. Mr. Buckles was instructed that he has until October 31, 2007 to submit a petition for variance and apply for a permit. This file will be transferred back to District for a site inspection and to oversee the permit application process. District staff is to conduct a site inspection on October 3, 2007. A site inspection was conducted on October 3, 2007 wherein District staff and Mr. Buckles discussed the violations and ways to cure the problems. It was discovered that the violations at issue encompass Mr. Buckles land as well as an adjoining landowner. Therefore, District staff is to resend Notice of Violation letters to both parties on or before December 7, 2007. District received Petition for Variance on January 23, 2008 and it is under consideration. Staff requested additional information on February 27, 2008. Mr. Buckles has until April 25, 2008 to answer. The Petition was submitted only by Mr. Buckles and it appears that there is another owner involved who is not joined in the Petition named Linda Fennell. Staff will be recommending denial of the permit application as well as Mr. Buckles' request for a variance. District acted on a Petition for Variance by denying the request on June 10, 2008. Mr. Buckles met with staff on August 11, 2008 at the District. He was given thirty (30) days to respond to three (3) different options in order to come into compliance. A staff follow-up report will be given after September 12, 2008. Negotiations with staff are at a standstill. Will most likely refer back to attorney. The Governing Board, at the November meeting denied his petition for variance and Mr. Buckles agreed to furnish staff with previously requested information. Not received as of January 5, 2009. Still seeking information from Lafayette County officials.

Attorney determined Ms. Linda Fennell is owner of property based on copies of Deeds furnished to him. On January 28th, Ms. Fennell, as owner, was sent notice of violation with requests for action. She was given ninety (90) days to comply – due on April 30, 2009. Received response from Ms. Linda Fennell on April 27, 2009, wherein she stated, "I, Linda Fennell, do not recognize that there has been any violation as alleged by any SRWM staffers. Sincerely, Linda Fennell." Recommend that Board authorize institution of Circuit Court action to enforce rules.

Board authorized institution of Circuit Court action on May 14, 2009. Counsel is preparing Circuit Court complaint to be filed in Lafayette County on or before June 9, 2009.

After further review, the question of ownership arose as to whether Stephen Buckles or Linda Fennell owned the property containing the structures in violation of District rules. Counsel deferred the matter to staff to determine the appropriate entity to pursue. District staff determined and informed Counsel on June 29, 2009, that Linda Fennell owns the land containing the structures in violation of District rules. Counsel will file a complaint in the Circuit Court of Lafayette County against Linda Fennell within ten (10) days.

July 29, 2009, a complaint was filed in the Circuit Court of Lafayette County against Linda Fennell for unpermitted structures constructed within the regulatory floodway of the Suwannee River and also within the 75 foot setback of the Suwannee River. Summons to process server 8/13/09. Process server made numerous attempts to serve Ms. Fennell; however, Ms. Fennell no longer resides on the property. Process server is to update counsel once Ms. Fennell's current location is discovered.

Process server has attempted service at Ms. Fennell's Lafayette County address on numerous attempts and at several Jacksonville area addresses believed to belong to Ms. Fennell. Despite these numerous attempts at service, the process servers have been unable to locate the whereabouts of Linda Fennell.

Process server will make one last attempt at serving Ms. Fennell and if unable to locate the whereabouts of Ms. Fennell, counsel will seek authority from the Court to have Ms. Fennell served by publication.

Complaint still out with processor who is attempting to locate Ms. Fennell at newly discovered addresses in Jacksonville.

Ms. Fennell was finally located and served on April 23, 2010. Answer to District's complaint due by May 17, 2010.

**Ms. Fennell retained an attorney who contacted Counsel and requested a two (2) week extension to file an Answer. The extension was granted and the Answer is now due on or before June 4, 2010.**

**Charlie Hicks, Jr. (CE07-0087) Madison County**

Received November 1, 2008. District discovered a violation on Mr. Hicks' property in

Madison County On September 26, 2007—which was construction of a structure in the floodway, without obtaining a works of the District permit. A notice of violation followed and several meetings with Mr. Hicks and various communications until the final contact when Mr. Hicks advised staff on October 28, 2008 to leave him alone, stating that he would not comply with any of District's requests. Counsel sent a demand letter on February 2, 2009 to Mr. Hicks, with a 30-day deadline to pay administrative costs, attorney's fees, and penalties and to take corrective action. Certified letter unclaimed and returned. Letter then served on Mr. Hicks by process server on February 26, 2009. Administrative costs increased to include service fee and deadline now is Monday, March 30, 2009 for response. No response has been received from Mr. Hicks or his counsel and staff recommends that counsel be authorized to proceed against Mr. Hicks in Circuit Court to enforce our rules.

Board authorized institution of Circuit Court action on May 14, 2009. Counsel preparing Circuit Court complaint to be filed in Madison County on or before June 5, 2009.

Counsel filed a Complaint in Circuit Court in Madison County on June 4, 2009. Charles E. Hicks, Jr. was served with the Complaint on June 24, 2009. Mr. Hicks has until July 14, 2009 to file an Answer to District's Complaint.

Mr. Hicks contacted counsel on July 8, 2009, regarding the pending litigation against him in Madison County. During the conference, counsel informed Mr. Hicks the actions required in order to bring his project into compliance with Florida law. Mr. Hicks was given until August 7, 2009, to pay the assessed penalty, administrative fees, and legal fees to date in good faith effort toward settlement of this matter. If Mr. Hicks fails to make this good faith gesture, counsel will proceed with the litigation rather than pursuing settlement.

Mr. Hicks has failed to contact counsel regarding this matter and has also failed to file an Answer to the Complaint filed in Madison County. Prior to moving the Court for a default against Mr. Hicks, counsel has given Mr. Hicks an additional two (2) weeks in which to file an Answer to the Complaint in Circuit Court. If Mr. Hicks fails to file an Answer to the Complaint in Madison County, counsel will have no choice but to seek a default against Mr. Hicks.

Mr. Hicks failed to file an answer to the complaint and a default was entered against Mr. Hicks by the court on September 14, 2009. Counsel is setting the matter for trial. We are requesting four hours for Trial.

On December 17, 2009, Counsel filed a motion for final judgment on liability and is setting the damages issue for trial.

Circuit Judge entered Final Judgment on Liability in favor of District on December 28, 2009. Counsel will now move forward with setting damages issue for trial.

Counsel filed a Motion for entry of an Order requiring Mr. Hicks to remove all unpermitted structures from within the floodway of the Withlacoochee River; the

Motion was heard on March 29, 2010. Counsel submitted a proposed Order to the Court on March 30, 2010 and is awaiting entry of an Order. Damages issue, including attorneys fees and District costs, has been set for trial on June 3, 2010.

Order entered by Court on April 5, 2010 which requires Mr. Hicks to completely remove all unpermited structures located on the property and to otherwise restore the property to predevelopment conditions or obtain a permit from the District to relocate the unpermited structure to a location on the property outside of the 75 foot setback. The Order requires Mr. Hicks to complete the remedial action within thirty days from the date of the Courts Order.

**Staff conducted a site inspection and discovered Mr. Hicks has not performed the remedial actions required by the Court's April 5, 2010 Order. Motion for Contempt filed and set to be heard by the Court on June 3, 2010.**

**Frank Soucinek/Countryside Estates (CE07-0050)**

Received July 19, 2007. Failure to submit as-built certification forms Sections A, B and C. Counsel sent an enforcement letter on August 1, 2007 seeking submission of Section C, an assessed penalty, administrative costs and attorneys' fees. As-built Section C was submitted on August 29, 2007. District staff will conduct a final site inspection to determine if there are problems to be addressed by permittee. Upon inspection by District staff, a few problems exist that must be corrected and a subsequent as-built Section C must be submitted. Counsel notified Mr. Soucinek of the corrections that are required and the necessity of a follow-up Section C by letter dated September 25, 2007. Once the problems are corrected and District approves, Section C will be resubmitted. District staff conducted a site inspection on December 27, 2007 and February 20, 2008. No work has been done to bring the project into compliance. Counsel will initiate proceedings by April 30, 2008. Counsel has had several contacts with Mr. Soucinek and believes that he is making diligent effort to correct the matter. Calculations for the change to the retention area have been furnished to the District and a permit to modify the retention area was received by the District June 4, 2008. Thereafter, staff requested additional information because the modifications were not sufficient to make a wet pond in the limited area. Mr. Soucinek's engineers contacted the District on July 23rd and are working with staff to resolve the issue. Attorney will continue to monitor. Owner agreed to remove muck and fill in with sand to make retention area functional. Will complete work as soon as area is dry enough to allow. On October 29 the retention ponds were cleaned out pursuant to the permit modification application and when the water recedes, the applicant is to complete the rest of the work. We should have a follow up report within 30 days. No work done in November. Staff to give him 30 days to clean out retention pond. Staff met with Mr. Soucinek November 21, 2008. A new engineer is coming on board and staff will follow up. As of May 27, 2009, Mr. Soucinek has failed to retain an engineer. Matter referred back to Counsel on May 20, 2009, to pursue further enforcement action. Recommend that Board authorize institution of Circuit Court action to enforce rules. Board has authorized civil action; because of pending discussions with Soucinek's contractor, staff has asked we hold up until August 10. District staff instructed counsel to proceed with filing of a complaint in Circuit Court. Complaint filed in circuit court in Columbia County on October 20,

2009. Complaint currently out with process server to be served on Frank Soucinek.

Complaint served on Frank Soucinek on November 9, 2009. At request of his attorney, we granted Soucinek until Monday December 21, 2009 to respond to complaint.

Frank Soucinek's attorney filed an answer, affirmative defenses and counterclaim/third party complaint on December 23, 2009. Counsel will file an answer to Frank Soucinek's counterclaim on or before January 12, 2010.

On January 13, 2010, Counsel filed an Answer and Affirmative Defenses to the Counter-Claim/Third Party Complaint filed by Soucinek against District and Columbia County. Also on January 13, 2010, Counsel filed a Reply to Affirmative Defenses filed by Soucinek in response to District's initial Complaint.

Third party defendant Columbia County filed its answer and affirmative defenses on February 17, 2010. Discovery is currently on going. Mediation is set in this matter to be conducted on May 6, 2010. Due to scheduling conflicts, the mediation set for May 6, 2010 has been rescheduled to June 7, 2010. **(Same)**

**Ronald Berg (CE09-0059)**

Received file from District July 29, 2009. Counsel prepared and mailed a Notice of Violation via certified mail to Ronald Berg regarding the unpermitted sea wall that was constructed on his property in Dixie County prior to him purchasing the Property. Mr. Berg was provided a deadline of September 21, 2009, in which to respond to counsel's Notice of Violation.

Mr. Berg did not respond to the notice of violation, but a Contractor requested a copy of the notice of violation and inquired about the work required to bring Mr. Berg's property into compliance. If no further action is performed towards bringing Mr. Berg's project into compliance by November 11, 2009, counsel will move forward with filing a complaint in circuit court of Dixie County.

Counsel allowed Mr. Berg an additional thirty (30) days in which to bring his project into compliance. As of December 30, 2009, Mr. Berg failed to bring his project into compliance. Therefore, counsel will seek authority from the Board at the February, 2010 meeting to initiate circuit court action against Ronald Berg.

It is recommended that the Board grant Counsel authority to initiate Circuit Court action against Ronald Berg.

Governing Board authorized initiation of litigation against Ronald Berg on March 9, 2010. Counsel is preparing complaint to be filed in Circuit Court in Dixie County on or before April 9, 2010.

Complaint filed in Dixie County Circuit Court. Summons issued by Clerk of Court and is out for service on Defendant. **Complaint was served on Mr. and Mrs. Berg. Counsel informed the Berg's attorney of the actions required to bring the**

**property into compliance. The Bergs are to submit a Works-of-the-District permit application within the next two (2) weeks. An extension for filing an Answer was granted.**

**MATTERS CURRENTLY WITH OUTSIDE COUNSEL:**

**Jeff Hill/Smithfield Estates, Phase I and Haight-Ashbury Subdivision**

**Haight-Ashbury Subdivision**: On February 25, 2008, District counsel filed a Petition to Enforce the Governing Board's Final Order in circuit court for Columbia County. A hearing on pre-trial motions was held on November 17, 2008, at which time the Court granted El Rancho No Tengo's Motion to Dismiss without any finding concerning ownership of the stormwater basin on the property; ordered the parties to mediation; and postponed ruling on the other motions. When mediation failed to occur, on March 17, 2009, a case management conference was held and upon the District and the County each agreeing to pay one-half of the Hills' cost of mediation, the Court again ordered the parties to mediation.

On June 30, 2009, formal mediation occurred and although a tentative settlement was reached, the Hills ultimately failed to agree to its terms. On August 11, 2009, an impasse was declared by the mediator.

Another case management conference was scheduled to occur on October 13, 2009, however, prior to the hearing on that date, Judge Johnson entered an order, *sua sponte*, disqualifying herself from hearing any further matters in this case.

On November 4, 2009, Chief Judge, David Fina, reassigned this matter to Judge Greg Parker. A hearing on Respondent's Amended Answer and Motion to Dismiss and on Petitioner/Districts Motion to Strike Respondent's combined "Amended Answer and Motion to Dismiss" has been scheduled for December 10, 2009, in Columbia County.

Respondent's Amended Answer and Motion to Dismiss and Petitioner/ District's Motion to Strike Respondent's combined "Amended Answer and Motion to Dismiss" was heard by Judge Parker on December 10, 2009, in Columbia County. Judge Parker granted the District's Motion to Strike and denied Jeffrey Hill's Motion to Dismiss and Motion for Rehearing. Jeffrey Hill was ordered to file an amended answer within twenty (20) days from the date of the executed order. Counsel for the District has drafted and sent a proposed Order to Judge Parker for his review.

On December 28, 2009, the Court issued its Order Denying Respondent's Motion to Dismiss and Granting Petitioner's Motion to Strike. Defendant was given twenty (20) days from the date of the order to file an amended answer to the District's petition. A case search at the Columbia County Clerk's website revealed that Defendant filed the following documents on or about January 15, 2010:

1. Respondents' Amended Answer to Petition to Enforce Agency Action;
2. Motion to Rehear Petitioner's Motion to Strike; and
3. Answer to Petition to Enforce Agency Action.

Defendant failed to serve these documents on counsel for the District, however, a copy has been obtained from the Clerk of Courts.

Counsel for the District is preparing to file a motion for judgment on the pleadings and request that a final non-evidentiary hearing be held.

**District counsel is preparing a motion for final summary judgment on the pleadings and will schedule a non-evidentiary hearing to have this motion heard by the Court. Thereafter, if the Court rules in District's favor and such ruling is not appealed, counsel will request authorization to enforce the judgment requiring Defendant, Jeffrey Hill, to complete construction on the stormwater management system in compliance with the District permit.**

**In the Smithfield Matter**: On February 25, 2008, District counsel filed a Petition to Enforce the Governing Board's Final Order in circuit court for Columbia County. A hearing on pre-trial motions was held on November 17, 2008, at which time the Court ordered the parties to mediation and postponed any rulings on the motions. When mediation failed to occur, on March 17, 2009, a case management conference was held and upon the District and the County each agreeing to pay one-half of the Hills' cost of mediation, the Court again ordered the parties to mediation.

On June 30, 2009, formal mediation occurred and although a tentative settlement was reached, the Hills ultimately failed to agree to its terms. On August 11, 2009, an impasse was declared by the mediator.

Another case management conference was scheduled to occur on October 13, 2009, however, prior to the hearing on that date, Judge Johnson entered an order, *sua sponte*, disqualifying herself from hearing any further matters in this case.

On November 4, Chief Judge, David Fina, reassigned this matter to Judge Greg Parker. A hearing on Respondent's Amended Answer and Motion to Dismiss and on Petition/District's Motion to Strike Respondent's combined "Amended Answer and Motion to Dismiss" has been scheduled for December 10, 2009, in Columbia County.

Respondent's Amended Answer and Motion to Dismiss and Petitioner/ District's Motion to Strike Respondent's combined "Amended Answer and Motion to Dismiss" was heard by Judge Parker on December 10, 2009, in Columbia County. Judge Parker granted the District's Motion to Strike and denied Jeffrey Hill's Motion to Dismiss and Motion for Rehearing. Jeffrey Hill was ordered to file an amended answer within twenty (20) days from the date of the executed Order. Counsel for the District has drafted and sent a proposed Order to Judge Parker for his review.

On December 28, 2009, the Court issued its Order Denying Respondent's Motion to Dismiss and Granting Petitioner's Motion to Strike. Defendant was given twenty (20) days from the date of the order to file an amended answer to the District's petition. A case search of the Columbia County Clerk's website revealed that Defendant has not filed an amended answer to the District's petition.

On February 1, 2010, Defendant served its Amended Answer to Petition to Enforce Agency Action and Affirmative Defenses. Counsel for the District is preparing to file a motion for judgment on the pleadings and request that a final non-evidentiary hearing be held.

**District counsel is preparing a motion for final summary judgment on the pleadings and will schedule a non-evidentiary hearing to have this motion heard by the Court. Thereafter, if the Court rules in District's favor and such ruling is not appealed, counsel will request authorization to enforce the judgment requiring Defendants, Jeffrey and Linda Hill, to complete construction on the stormwater management system in compliance with the District permit.**

**Richard Cole/Grandview Village Units 3 & 4 (CE# 06-0086)**

(The following is a summary)**:** On September 9, 2008, the Governing Board, on the basis of counsel's Motion to Dismiss, denied Respondent's Petition for Administrative Hearing and Amended Petition for Administrative Hearing with leave to file a second amended petition within 10 days. Respondent failed to file a second amended petition. Since September 2008, District staff have been trying to voluntarily resolve this matter with Respondent by using city-owned property to construct a missing ditch that was required under the permit.
A staff inspection on February 26, 2009, revealed that adequate maintenance work was completed on existing pipes, ditch, and pond, however, easements for maintenance access still need to be granted by affected lot owners to Lake City. In the meantime, Counsel for Respondent, Stephen Smith, and District counsel have been negotiating the civil penalty amount, and payment of the District's investigative costs and attorney's fees.

On June 30, 2009, counsel for the District received a letter from Mr. Smith stating that he had learned that some of the lot owners upon whose property the existing drainage ditch is located have been contacted and refuse to provide any type of an easement. Therefore, an alternative arrangement was agreed to whereby the County would give an easement along the adjoining boundary of its property to the City, the current operation and maintenance entity, so that a new drainage ditch could be constructed within that area.

On July 24, 2009, a revised, proposed consent order was sent to the Trust containing the following remedial action:

a) Within 30 days of execution of this Consent Order, Respondent must submit a draft drainage easement to the District for review and approval prior to recording, which allows for construction of a new ditch on adjacent Columbia County property, and operation and maintenance by Lake City of the portion of the stormwater management system located on County property.
b) Within 60 days of execution of this Consent Order, Respondent must construct a new drainage ditch, which complies with the permitted plans, within the immediately adjacent County easement area to replace the existing

drainage ditch.

c) Within 90 days of execution of this Consent Order, Respondent must submit certified as-built drawings for the new ditch.
d) Upon District approval of the as-built drawings, Respondent must timely complete the process to transfer the operation and maintenance permit to Lake City.

A penalty of $5000.00 and $2074.40 in administrative costs and attorney's fees was proposed; however, in the event the work is completed in a timely manner and to the satisfaction of the District, the District would agree to reassess the penalties and provide a refund in the amount of $5000.00. Once the Trust signs the consent order, it must also be approved by the Governing Board.

After further negotiations, Mr. Smith has orally agreed that the Trust will reimburse the District its costs and attorney's fees and District staff have agreed to recommend that no monetary penalty be assessed. The easement from the County to the City has been approved, executed and recorded.

Construction of the new replacement ditch by Lake City is nearly complete. Reimbursement of the District's costs and attorney's fees has not been received.

District staff expect work on the relocated ditch to soon be complete. Thereafter, counsel for District will provide Respondent with a final accounting of its costs and attorney's fees and request immediate reimbursement.

On February 3, 2010, District staff met on-site with the engineer and property owner concerning replacement of two existing culverts. It was agreed that two 24-inch culverts will be replaced with three 18-inch culverts and tied into the rest of the system. Construction should be complete in early March.

District staff has verified that the new culverts have been delivered and expect installation to be completed by mid-April.

On April 12, 2010, District received as-built engineering drawings for the relocated ditch system on County property within the City easement. On April 22, 2010, staff inspected the construction and determined that the work was completed in compliance with the permit and the as-builts. Thereafter, Counsel revised the proposed consent agreement and requested reimbursement of the District's costs and attorney's fees in the amount of $2,499.40, as previously agreed.

**On May 10, 2010, District counsel received a letter from Stephen Smith stating that Mr. Cole is unwilling to sign the proposed settlement agreement and requesting dismissal of the administrative complaint upon receipt of payment reimbursing the District for its costs and attorney's fees. After conferring with staff, District counsel offered to dismiss the administrative complaint without a signed consent order provided payment was received by May 24, 2010. To date, no payment has been received.**

**Cannon Creek Airpark ERP Violation**

On January 17, 2008, Leroy Marshall, Mark Wiencek, President of the Cannon Creek Airpark HOA, and other Board members met at the site. At the end of the site visit it was agreed that the HOA would advise District counsel shortly if there were areas that required work but were not owned or maintained by the HOA. Staff met on-site with the homeowners. Subsequently, counsel received correspondence and supporting documentation from the HOA requesting 180 days to develop a proposal. Counsel met with Staff and thereafter responded in writing agreeing to the HOA request for additional time. The District previously agreed to a July 29, 2008, deadline for the homeowners to propose a resolution. To date, no proposal has been received. Therefore, District counsel will send a letter advising that enforcement action is imminent.

District counsel spoke to officers of the Homeowner's Association by telephone on August 7, 2008, and confirmed that no progress has been made. District staff subsequently learned that Columbia County officials are working on a stormwater project that may alleviate the practical need to obtain compliance with the existing District permit, but instead would require that the permit be modified to reflect the system as constructed. Therefore, District counsel is postponing the initiation of formal enforcement action at this time.

District staff met with Greg Bailey of Bailey, Bishop & Lane who stated that he is working on the flooding problem as part of a master plan for the entire basin. In the event Mr. Bailey's plan is approved and constructed, it will also address the compliance issue under this permit. District staff will monitor the development and progress of the proposed master plan.

Concerning a separate, related system known as Cannon Creek Drainage Structure, staff has concluded that when a second permit (ERP05-0334) was issued for this same project, the first permit (4-89-0133) became void, relieving Ms. Carroll from responsibilities as the permittee and operation and maintenance ("O&M") entity for the drainage structure. The District has contacted F. C. Carroll Properties, the permittee under ERP05-0334, to have it complete the as-built forms in order that the permit can be transferred to the O&M phase/entity. **(Same)**

**Country Landings (within the Cannon Creek area) ERP Violations**

In February 2009, the District served an administrative complaint on Faye Carroll, Raymond and Stephen Austin Session, and K&M Development, L.L.C., by certified mail. On February 20, 2009, Respondents Carroll and both Sessions answered the Administrative Complaint and requested a formal administrative hearing.

Thereafter, Ray Sessions attended the March 10, 2009, Governing Board meeting, and met with Mr. David Still, who also met with Mr. Sessions at the Country Landings site prior to the March Board meeting and discussed the site work required to bring the project into compliance with the permit. Counsel for the District suggested to Respondents' counsel that the operation and maintenance issues be negotiated with the current residents/lot owners in Country Landings and approved by the District. The District agreed to postpone referring the petition to the Division of Administrative

Hearings pending renewed efforts by Respondents to voluntarily resolve this matter with the District.

Under the oversight of a District engineer, the required site work was completed in compliance with the permit, while Respondents' attorneys worked on the access easements and revising the homeowners' association documents. Bill Freeman, P.E., was retained to survey the work and provided an As-Built Survey to the District, which showed that the work was satisfactorily completed. Easements for access to the retention basin and amendments to the Declaration of Covenants were drafted by Mr. Sessions' attorney, Martin Friedman, and approved by District counsel and recorded.

Amendments to the Articles of Incorporation for the homeowners association have also been prepared by Mr. Friedman and Vicki Berman, attorney for Faye Carroll, in accordance with the District's requirements. Once the operation and maintenance documents are fully executed, recorded and filed, the permit will be transferred to the homeowners' association.

During August and September 2009, meetings and discussions between all parties and their attorneys, including the residents regarding long-term maintenance and operation issues have been held. Mr. Sessions and the residents conceptually, orally agreed to execute the legal documents needed to allow access to an undeveloped area of Cannon Creek, in exchange for control by the residents of the existing homeowners' association (HOA). Since the beginning of October 2009, draft documents have been exchanged and negotiations continued to finalize the agreement. Once amended articles for the HOA are executed and filed with the Department of State, the District will complete processing of Mrs. Carroll's request to transfer the operation and maintenance permit to the HOA.

Counsel for Defendant has recently been informed by counsel for Faye Carroll and by one of the homeowners, Mr. Brad Zoeller, that negotiations between the parties have veered off course. It appears that Mr. Ray Sessions and the residents have been unable to agree with one another concerning some ancillary issues, which is preventing the execution of amendments to the Articles of Incorporation for the Homeowners Association, which are needed before the permit for operation and maintenance can be transferred to the HOA. Unfortunately, if this matter is not voluntarily resolved, the District will be forced to pursue the administrative complaint previously executed and served.

Although the homeowners and Ray Sessions have been unable to reach agreement, based upon state law governing homeowners associations, chapter 720, Florida Statutes, and the fact that the stormwater management system has been brought into compliance with the permit, on advice of counsel District staff are preparing to recommend that the Governing Board dismiss the petition for administrative hearing and authorize transfer of the operation and maintenance permit to the Homeowners Association. These two actions should finally resolve this matter.

As a separate agenda item, District staff is recommending that the Governing Board

deny the outstanding amended petition and authorize staff to transfer the permit to Country Landings Homeowners Association at Cannon Creek for perpetual operation and maintenance of the stormwater management system. These actions will resolve this matter with the District.

On March 9, 2010, the Governing Board entered an order denying the amended petition for administrative hearing. Notice of final agency action has been sent to Petitioners. At the same meeting, the Board authorized staff to transfer the permit to the Homeowners' Association for operation and maintenance. Staff and counsel are processing the permit transfer.

Staff is processing the permit transfer to Country Landings Homeowners Association at Cannon Creek for operation and maintenance, with assistance from counsel.

**On May 5, 2010, the District transferred the Stormwater Management System Permit 4-91-00174 to Country Landings Homeowners' Association at Cannon Creek, Inc., for perpetual operation and maintenance of the stormwater management system which serves the subdivision. Therefore, this matter will be removed from next month's enforcement report.**

**Wilson Springs, Inc. Works of the District Violation CE09-0057:**

Received file from District on February 2, 2010. This matter concerns construction of a deck/platform structure without a permit in a works of the District floodway in Columbia County. Staff's initial contact with Mr. Hugh Wilson, registered agent and president of the corporation, concerning removal or permitting of the structure led to attempts to work with Mr. Don Thomas who, according to Mr. Wilson, is in the process of acquiring the property and responsible for constructing the deck/platform in the floodway. Subsequent attempts by staff to contact Mr. Thomas and Mr. Wilson have been unsuccessful. Therefore, the matter was recently referred to District counsel who is preparing to make one final attempt to contact the property owner before drafting a formal complaint.

District counsel sent Mr. Wilson a certified letter advising him that the platform/dock on his property must be removed unless he obtains a Works of the District permit from the District pursuant to sections 40B-4.3020 through 40B-4-3040, F.A.C. Mr. Wilson was advised to remove the illegal structure on the property or submit an application for an after-the-fact permit to the District within ten days from the receipt of the letter. Mr. Wilson was also asked to pay a $1,500.00 penalty and reimburse the District its costs and attorney's fees in the amount of $647.38. The letter was received on March 23, 2010, therefore, Mr. Wilson had until April 2, 2010, to comply with the district's requests. However, Mr. Wilson telephoned counsel and staff on March 29, 2010, requesting some additional time to comply. Mr. Wilson stated that he is working to have the structure removed immediately. Staff intends to closely monitor progress and counsel will follow-up with Mr. Wilson regarding the penalty, costs and fees.

On March 30, 2010, District counsel received a letter from Mr. Wilson enclosing a copy of his letter to Don and Susan Thomas, which advised them to remove the

structure within five days. After several telephone conversations, staff advised Mr. Wilson that the District would waive its demand to bring the property into compliance within ten days. Mr. Wilson thereafter contacted the Thomases and advised them that they could apply for a permit in lieu of removing the structure provided they bare all of the costs associated with that process.

**The Thomases subsequently submitted a permit application which, if approved, will allow for the structure to remain in place. Once staff completes its review of the application, which was complete on May 26, 2010, District counsel will seek recovery of the penalty, costs and attorney's fees from the property owner.**

**PENDING COMPLIANCE MATTERS:**

For a list of pending compliance matters, see the current Resource Management Regulatory Activity Report under the Resource Management section.