MEMORANDUM

TO: Governing Board

FROM: Tom W. Brown, General Counsel

DATE: September 1, 2010

RE: Enforcement Status & Litigation Report

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)**

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.

Authorization to initiate litigation granted by the Board on July 13, 2010. **A Complaint was mailed to Clerk of Circuit Court of Union County on August 10, 2010 for filing. While attempting to serve Mr. Moody at his Lake Butler address, the Union County Sheriff's Department determined that although Mr. Moody resides in Lake Butler, his address is actually located just over the county-line in Bradford County. On August 26, 2010, Counsel mailed a Motion to Transfer Venue for filing in the Union County Circuit Court. A proposed Order was also sent to the Circuit Judge for consideration**.

Tillman Richardson (CE10-0004)

Received file from District on April 30, 2010. Numerous notices of violation were mailed to Tillman Richardson at various addresses during the month of May, which notices were returned as undeliverable. Counsel was able to locate a post office box address for Mr. Richardson in Fort White to which a Notice of Violation was mailed on June 15, 2010. The Notice of Violation was directed to unpermitted construction within the regulatory floodway of the Suwannee River and also placement of fill material within the regulatory floodway on the property. The Notice of Violation required a response from Mr. Richardson on or before July 15, 2010. Mr. Richardson responded to counsel on or about June 30, 2010 and the site inspection was scheduled for July 1, 2010. Counsel and District staff met with Mr. Richardson on site to discuss possible resolution of this matter. Mr. Richardson instructed counsel and staff that a works of the District permit application would be submitted to cure the unpermitted construction located on the property. Mr. Richardson is to coordinate with District staff to insure the appropriate information is contained in the permit application.

Mr. Richardson met with District staff regarding information that is required in the permit application. Counsel will mail Mr. Richardson notification on or before September 2, 2010 to inform him that a $2,000.00 assessed penalty and the permit application must be submitted to the District on or before September 17, 2010 or Counsel will seek authority from the Board to pursue enforcement through litigation in Circuit Court.

Bill McCans/Starke Sonic Drive-In (CE08-0037)

Received file from District on July 1, 2010. Counsel mailed a Notice of Violation to Mr. McCans on July 22, 2010, regarding non-functioning surface water management system and failure to submit as-built certification forms. The Notice of Violation requires a response from Mr. McCans on or before August 22, 2010.

In response to the Notice of Violation, the District was notified on August 2, 2010 that Mr. McCans hired GTC Design Group to remedy the non-functioning pond. GTC Design Group notified the District that it is working on plans designed to bring the pond into proper functioning condition. GTC Design Group has until October 15, 2010 to complete the plans and submit them to the District for approval.

Justin M. Fitzhugh/Movie Gallery (CE05-0046)

Received file from District on July 19, 2010. Counsel mailed a Notice of Violation to Justin Fitzhugh on July 22, 2010, regarding a non-functioning surface water management system and failure to submit as-built certification forms. The Notice of Violation requires a response from Mr. Fitzhugh on or before August 22, 2010.

No response was received from Mr. Fitzhugh by the August 22nd deadline; therefore, Counsel will seek authority from the Board at the October 2010 meeting to initiate litigation.

ADMINISTRATIVE MATTERS WITH DIVISION OF ADMINSTRATIVE HEARINGS:

Cheryl and Michael Mahan v. Suwannee River Water Management District

In late 2009, District staff discovered an existing unpermitted 320 square-foot deck constructed within the regulatory floodway of the Suwannee River on property owned by Cheryl and Michael Mahan. After notice from the District, the Mahans filed a Petition for Variance, which was denied by the Governing Board on July 13, 2010 for failure to demonstrate that principles of fairness would be violated if the Mahans are required to comply with District rules and for failure to demonstrate that a substantial hardship would be created by requiring the Mahans to comply with District rules.

On July 15, 2010, the Mahans, through their attorney, filed a Petition for Hearing, which was properly forwarded by District staff to the Division of Administrative Hearings. An Administrative Law Judge was assigned and issued an Initial Order on July 15, 2010. Counsel filed a Response to the Initial Order on July 22, 2010. A final hearing is scheduled to be conducted on September 23 and 24, 2010. Discovery is currently ongoing.

An onsite meeting was conducted between counsel and District staff and the Mahan's and their attorney on August 4th. The parties are in the process of negotiating a settlement agreement, which is expected to be finalized on or before September 20, 2010.

Erik J. Olsen v. Suwannee River Water Management District

On July 12, 2010, the District issued ERP10-0054 to the Taylor County Board of County Commissioners for the construction and operation of a boat ramp at the First Avenue Boat Ramp Project location in Taylor County. On July 27, 2010, a Petition for Hearing was filed by Erik J. Olsen in which Mr. Olsen alleges he has a substantial interest in the issuance of the permit and he also challenges the issuance of the permit. District staff referred the file to the Division of Administrative Hearings on July 27, 2010. An Administrative Law Judge was assigned and issued an Initial Order on July 29, 2010.

Counsel filed a response to the initial Order on August 3, 2010. Numerous settlement negotiations have taken place between counsel, Mr. Olsen and pertinent individuals with Taylor County. Due to Mr. Olsen's demands, a settlement agreement was unable to be reached. However, August 18, 2010, Taylor County submitted to the District its formal request to withdraw ERP10-

0054 permit application for the First Avenue Boa tramp project in Steinhatchee, Florida. In August 23, 2010, Counsel filed a Notice of Withdrawal of Application and Request for Order Closing DOAH's file. In response, the Administrative Law Judge, on August 24, 2010, issued a final Order Closing the File. Therefore, this matter is closed and will be removed from the Enforcement Report next month.

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, and 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.

While visiting the website maintained by the Columbia County Clerk of Court to ascertain whether a notice of appeal was filed with regard to the court's *Final Order Awarding and Determining Attorney's Fees and Costs*, District counsel discovered that a motion to rehear was filed by Defendant on May 12, 2010. Although Defendant's motion indicated that a copy was served on District counsel, none was ever received.

Counsel for District filed a response to Defendant's Motion to Rehear on June 14, 2010, and it is scheduled to be heard before Judge Parker on July 20, 2010, at 2:00 p.m. A copy of the Notice of Hearing was sent to Defendant via certified mail on June 25, 2010.

The Governing Board authorized the District to enforce both judgments against Defendant at its June 8, 2010 regular board meeting. Counsel for District has secured a judgment lien with the Division of Corporations in the amount of $280,376.20. The District now has two judgment liens pending with the Division of Corporation. The *Final Order Awarding and Determining Attorney's Fees and Costs* and the Affidavit of Jon Dinges has been recorded in the Official Records of Columbia County, Florida. After Judge Parker rules on Defendant's Motion to Rehear, counsel for District will prepare the documents to execute a levy on Defendant's real property

On July 20, 2010, Judge Parker heard *Defendant's Motion to Rehear* "the final order awarding and determining attorney's fees and costs" filed by Jeffrey L. Hill "as witness for defendant." Prior to the hearing, District filed *Plaintiff's Response to Defendant's Motion to Rehear*. Although under Florida law corporations must be represented by a lawyer in circuit court, Jeffery Hill and Linda Hill appeared without counsel on behalf of ERNT and testified. Mr. Guy N. Williams was also present.

The Court denied Hill's motion to rehear and instructed Mr. Hill to not appear before the Court again in this cause without an attorney. In addressing the only possible basis for rehearing alleged, the Court reiterated its finding that Defendant was properly noticed of the final hearing on March 26, 2010, regarding costs and attorney's fees. However, even though the motion to rehear is a nullity because it was not filed by an attorney, the Court allowed Defendant ten days to submit legal authority to the contrary.

After the Court's ruling on the motion to rehear is reduced to writing, ERNT will have 30 days to file a notice of appeal of that ruling

On August 2, 2010, Judge Parker executed the Order Denying Defendant's Motion to Rehear. The deadline for filing a notice of appeal is September 1, 2010. As of August 23, 2010, Defendant has not filed an appeal with the First District Court of Appeal or the Columbia County Clerk's office. Counsel for the District is preparing to initiate levy proceedings on September 2, 2010.

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.

Ms. Fennell filed an Answer to the District's Complaint on June 4, 2010. A meeting is scheduled on June 28, 2010, between counsel and Ms. Fennell's attorney to discuss possible settlement of this matter. Possible resolutions were conveyed to Fennell's attorney, who will consult with Ms. Fennell and report back to counsel by mid-July, 2010. Counsel has received no response from Ms. Fennell or her attorney regarding possible settlement. Therefore, litigation against Ms. Fennell will proceed accordingly.

Discovery is currently ongoing.

Charlie Hicks, Jr. — 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 attorney's 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 unpermitted structures located on the property and to otherwise restore the property to predevelopment conditions or obtain a permit from the District to relocate the unpermitted 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.

Motion for Contempt argued to the Court on June 3, 2010. The Court entered its Order adjudging Mr. Hicks in Contempt of Court on June 8, 2010. A site inspection was conducted on June 21, 2010, and it was discovered that Mr. Hicks had made no attempt to comply with the Court's Contempt Order. Counsel notified the Court and pursuant to the Court's June 8th Order, the Court will issue an Order to Show Cause

and require Mr. Hicks to attend the hearing and explain why the Court's Orders have not been complied with. We are awaiting the Court's action.

The Court issued an Order to Show Cause to Mr. Hicks on July 29, 2010, which mandates that Mr. Hicks personally appear before the Court on August 23, 2010 and shall show cause why he has willfully and intentionally refused to remove all unpermitted structures from within the regulatory floodway of the Withlacoochee River as required by the Court's previous Orders.

The Court notified Counsel that the hearing set for August 23, 2010 had been moved to September 10, 2010. Mr. Hicks was ordered by the Court to personally appear and show cause why he has willfully and intentionally violated the Court's Orders.

Frank Soucinek/Countryside Estates (CE# 07-0050)

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.

All day mediation conducted on June 7, 2010. A settlement was reached in this matter that will require Mr. Soucinek to apply for a permit modification and bring the non-functioning pond into compliance with permit conditions and District rules. Mr. Soucinek will reimburse District for a portion of its attorney's fees as a condition of settlement. Recommended that the Board approve the terms of the mediation agreement.

A pre-application meeting was held between Mr. Soucinek's engineer and District staff in early July 2010.

Soucinek's engineer is working on the permit modification application, but has yet to file. On or before September 3, 2010, Counsel will notify Mr. Soucinek by mail that the required permit modification application shall be submitted to the District on or before September 17, 2010.

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.

Mr. Berg is in the process of obtaining an engineer to submit the works of the District permit application for the seawall. The permit application is expected in the next two to three weeks or else litigation will proceed.

Berg's engineer contacted District staff regarding the seawall permit and is currently preparing plans and the permit application regarding the existing seawall, a proposed deck, and dock. The submission is expected within the next two weeks.

Additional time required to finalize the permit application. Therefore, the submission date for the permit application has been extended to September 17, 2010. No additional extensions will be granted. If the permit application has not been submitted by September 17th, litigation will proceed accordingly.

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. **(Same)**

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. **(Same)**

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)**

PENDING COMPLIANCE MATTERS:

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