

Suwannee River Water Management District

Governing Board Materials

Executive Office

The following materials have been reviewed and approved for distribution to the Governing Board and the public.

Director of Governmental Affairs

Assistant Executive Director

Executive Director

MEMORANDUM

TO: Governing Board
FROM: Charlie Houder, Assistant Executive Director
DATE: August 27, 2012
RE: R. O. Ranch, Inc. Endowment and Trust Agreement

RECOMMENDATION

Staff recommends that the Governing Board:
(1) authorize the transfer the funds in the R. O. Ranch endowment fund to R. O. Ranch, Inc., and
(2) approve and execute the Trust Agreement for the management of the funds.

BACKGROUND

In April 2006 Frank and Olive Schulte donated a 54% interest in their property to R. O. Ranch, Inc., a 501(c)(3) non-profit corporation established by the District Governing Board. In July 2006 the District purchased the property from the Schultes and R. O. Ranch, Inc., thereby creating a \$3.5 million fund for R. O. Ranch Inc. In accordance with Resolution 2006-19, the funds were deposited in a separate sub-account of the District's account with the Florida State Board of Administration account. This account has been managed such that the principal is preserved, and only the income generated from these funds is withdrawn for the purposes of supporting R.O. Ranch, Inc.

Based on input from the Executive Office of the Governor, legislative staff, and the Department of Environmental Protection, the endowment is not included in the District's FY 2012-13 budget. Staff has worked with the R. O. Ranch Board of Directors to arrange for the transfer of funds from District accounts to an account controlled by R. O. Ranch, Inc.

It has been the intent of the Board of Directors that the funds be governed by a trust that would protect its principal as well as shield it from potential claims in the future. Staff and Board Counsel have been assisting in the development of such a trust. The draft trust agreement currently under consideration by the Board of Directors establishes the District as the Trustee. The R. O. Ranch, Inc. Board of Directors will consider the agreement at their meeting on September 6, 2012.

gal
enclosure

TRUST AGREEMENT

This trust agreement (the "Trust Agreement") is made and entered into this ____ day of _____, 2012, by and between the SUWANNEE RIVER WATER MANAGEMENT DISTRICT, a Florida water management district created pursuant to Section 373.069, Florida Statutes, whose address is 9225 CR 49, Live Oak, FL 32060, who is the trustee under this Trust Agreement (hereinafter the "DISTRICT" or the "TRUSTEE"), and R.O. Ranch, Inc., a Florida not-for-profit corporation whose address is 696 SE CR 357, Mayo, FL 32066, who is the beneficiary under this Trust Agreement (hereinafter "R.O. RANCH" or the "BENEFICIARY").

RECITALS

WHEREAS, the DISTRICT purchased that certain real property in Lafayette County, Florida described on attached Exhibit "A" (the "Property") from RO RANCH in 2006; and

WHEREAS, net cash proceeds in the amount of \$_____ (the "Net Proceeds") were generated from the above referenced transaction; and

WHEREAS, as directed and instructed by RO RANCH, upon closing the above referenced transaction, the DISTRICT retained the Net Proceeds in trust for the benefit of RO RANCH; and

WHEREAS, the Property was acquired by the DISTRICT to protect water resources in the upper Steinhatchee River basin; and

WHEREAS, pursuant to Section 373.1391, Florida Statutes, the DISTRICT is required to manage and maintain the Property, to the extent practicable, in such a way as to ensure a balance between public access, general public recreational purposes, and restoration and protection of their natural state and condition; and

WHEREAS, the parties agree that an appropriate compatible use of the Property is to provide lands to accommodate recreation, including an equestrian oriented park and campground together with other facilities for public and private use for private and public events and functions such as meetings, concerts, reunions, community events, etc.; and

WHEREAS, certain structures and improvements, including without limitation, equestrian oriented parks and trails, campgrounds and other related recreational facilities (the "Current Facilities") have been constructed on the Property, and certain other structures and improvements may be constructed on the Property in the future (the "Future Facilities"), and the Current Facilities and the Future Facilities are collectively referred to herein as the "Facilities"); and

WHEREAS, pursuant to Section 373.1401, Florida Statutes, the DISTRICT contracted with RO RANCH for the improvement, management, and maintenance of the Property including the Facilities (as used hereinafter the term "Property" shall also include the "Facilities"), and

accordingly the DISTRICT and RO RANCH entered into a Management Agreement dated _____ (the "Management Agreement"), which provided, among other things, that RO RANCH would manage and maintain the Property; and

WHEREAS, it was and is intended by the DISTRICT and RO RANCH that the Net Proceeds be used to provide funds for the management and maintenance of the Property, and construction of Future Facilities, as herein set forth; and

WHEREAS, interest has accrued on the Net Proceeds since closing the above referenced transaction, and some of that interest income has been spent on management and maintenance of the Property, and as of the date of this Trust Agreement, the Net Proceeds including all unspent interest now totals \$ _____ ; and

WHEREAS, the DISTRICT and RO RANCH desire to create and enter into this Trust Agreement to provide the terms under which the DISTRICT, as trustee, will manage, use and dispose of the Net Proceeds and all other assets of this trust.

NOW THEREFORE, in consideration of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section I
Recitals

The above recitals are true and correct and incorporated herein by reference.

Section II
Name of Trust

The name of this trust shall be the RO RANCH TRUST.

Section III
Trust Property

The trust property shall consist of the Net Proceeds and all accrued interest which is presently in the possession of the TRUSTEE (the "Trust Property"). All of the Trust Property shall be subject to the terms and conditions of this Trust Agreement. As further evidence of this assignment, the BENEFICIARY has executed or will execute or cause to be executed all instruments as may be required to complete assignment or transfer of title of the Trust Property to the TRUSTEE. The TRUSTEE accepts transfer and assignment of the Trust Property as trustee and undertakes to hold, manage, and dispose of the Trust Property in accordance with the provisions of this Trust Agreement.

Section IV.
Additions to Trust

The BENEFICIARY and any other person shall have the right at any time to add to the principal of the trust any property that is acceptable to the TRUSTEE. Such property, when received and accepted by the TRUSTEE, shall become part of the Trust Property and shall be administered, held, controlled, and distributed by the TRUSTEE in accordance with the terms and conditions of this Trust Agreement.

Section V.
Disposition of Principal and Income

The TRUSTEE shall hold, manage, invest, and reinvest the Trust Property, shall collect and receive the income, and after deducting all necessary expenses incident to the administration of the trust, dispose of the principal and income as follows:

1. The TRUSTEE shall make one annual payment from the Trust Property to the BENEFICIARY which payment shall be made automatically and without the need of any demand. Each annual payment shall be made within sixty (60) days after the beginning of the TRUSTEE's fiscal year and shall be in an amount equal to seventy five (75%) percent of the net income earned on the Trust Property during the immediately preceding fiscal year.

2. In the event the BENEFICIARY believes that the above annual payment is insufficient to fulfil the BENEFICIARY's duties under the Management Agreement, the BENEFICIARY may request additional payments from the Trust Property to the BENEFICIARY. Should the TRUSTEE determine that such requests are consistent with the BENEFICIARY's responsibilities under the Management Agreement, the TRUSTEE may make such requested payment to the BENEFICIARY.

3. The income of the trust not distributed shall be accumulated and added to the Trust Property and shall be administered, held, controlled, and distributed by the TRUSTEE in accordance with the terms and conditions of this Trust Agreement.

Section VI.
Irrevocability of the Trust

The trust created hereby shall be irrevocable. The BENEFICIARY hereby expressly waives all rights and powers, whether alone or in conjunction with others, to alter, amend, revoke, or terminate the trust or the terms of this Trust Agreement, in whole or in part. Except as may be otherwise provided in this Trust Agreement, the BENEFICIARY relinquishes absolutely and forever any interest, either vested or contingent, including any reversionary right or possibility of reverter, in the Trust Property, and any power to determine or control, by alteration, amendment, revocation,

termination, or otherwise, the beneficial interest in the Trust Property.

Section VII.
Powers of Trustee

In the administration of this trust, the TRUSTEE shall have the following powers:

1. To retain any property or assets contributed to this trust, or to sell, exchange, or otherwise dispose of any such property or assets, at public or private sale, without application to court, on any terms, including the extension of credit, which the TRUSTEE deems advisable.
2. To acquire, by purchase or otherwise, any property, real or personal, without being limited by any provision of law which restricts investments by fiduciaries and without regard to any principles of diversification, including, but not limited to, common and preferred stocks, bonds, mutual funds, common trust funds, secured and unsecured obligations, and mortgages; or to sell, exchange, or otherwise dispose of any such property, at public or private sale, without application to court, on any terms, including the extension of credit, which the TRUSTEE deems advisable.
3. To acquire and pay for, exercise, or sell any options or subscription rights in connection with securities or any other property.
4. To hold securities in the names of nominees or in bearer form.
5. To operate, repair, alter, improve, insure, grant options upon, mortgage, partition, or lease for any period of time any real property or interest in real property held by the TRUSTEE.
6. To retain and pay, as an expense of administration, accountants, attorneys, investment advisors, and other assistants, and to delegate discretionary investment management authority to such individuals, the delegation to be exercised consistent with the spirit of this Trust Agreement.
7. To borrow money from any source and for any purpose, including but not limited to the payment of taxes, and to pledge or mortgage any assets held by the TRUSTEE as security for money borrowed.
8. To make distributions from the trust in cash or in kind, or partly in each, and to allocate property other than ratably.
9. To hold property of separate trusts in common investments for the convenience of investment or administration.
10. To enter such contracts or agreements or to compromise or settle any debts, claims, or controversies as they deem necessary or advisable.

11. To vote personally or by proxy any share of stock held by the TRUSTEE.

The TRUSTEE may act freely under all of the powers given to the TRUSTEE after forming its judgment based upon all the circumstances as to the wisest and best course to pursue, without the necessity of obtaining the consent or approval of any interested person or any court, and notwithstanding that the TRUSTEE may be interested in connection with the same matters in other capacities.

The powers granted to the TRUSTEE shall be deemed to be supplementary to and not exclusive of the general powers of trustees pursuant to law and shall include all powers necessary to carry the same into effect.

Section VIII.
Limitations on Powers of Trustee

The TRUSTEE shall not have the power to make any distribution of the Trust Property to any person or entity other than the BENEFICIARY.

Section IX.
Compensation of Trustee

The TRUSTEE waives compensation for its services herein.

Section X
Successor Trustees

The TRUSTEE, or any successor, may resign at any time by giving written notice 60 days before resignation shall take effect, to the BENEFICIARY. On the resignation of any trustee, the BENEFICIARY shall designate a successor trustee by written notice to the resigning trustee within 30 days after receipt of such notice of resignation. In the event a successor trustee shall not be designated, the resigning trustee shall transfer and deliver to the BENEFICIARY all the Trust Property. Upon which the resigning trustee shall be discharged as trustee and shall have no further powers, discretions, rights, obligations, or duties with reference to the Trust Property. All such powers, discretions, rights, obligations, and duties of the resigning trustee shall be binding on successor trustee. Any trustee or successor trustee, named or appointed must be neither BENEFICIARY nor a "related or subordinate party" as that term is defined for federal tax purposes.

Section XI.
Payment of Taxes

Both the TRUSTEE and BENEFICIARY are tax exempt from Federal Income Tax. It is anticipated that this trust shall likewise qualify for such tax exempt status. It shall be the responsibility of the BENEFICIARY to make all necessary arrangements and apply for such status

with the Internal Revenue Service. Should such status not be granted or should any taxes be due for the trust for any other reason, the TRUSTEE is authorized and directed to pay all such taxes from the Trust Property and file whatever tax returns TRUSTEE deems necessary or convenient. TRUSTEE shall likewise be authorized and directed to pay for accounting and tax preparation services from the Trust Assets.

Section XII.
Discretion of Trustee

All powers granted to or vested in the TRUSTEE by any provision of this Trust Agreement are to be exercised in the sole and absolute discretion of the TRUSTEE. However, discretion shall be exercised in a fiduciary capacity, primarily in the interest of the BENEFICIARY.

Section XIII.
Acts of Trustee

Any instrument executed by the TRUSTEE shall be binding on the BENEFICIARY.

Section XIV.
Spendthrift Provision

Except as otherwise expressly provided, all income or principal to be paid to the BENEFICIARY shall be paid by TRUSTEE directly and only to the BENEFICIARY. The TRUSTEE shall not recognize any transfer, mortgage, pledge, hypothecation, order, or assignment of the BENEFICIARY by way of anticipation of income or principal. The income and principal of the trust shall be exempt from the claims of creditors or other claimants and from orders, decrees, levies, attachments, garnishments, executions, and other legal or equitable process or proceedings to the fullest extent permissible by law. If any creditor or other claimant attempts by any means to subject to the satisfaction of the claim of the creditor or claimant the interest of the BENEFICIARY then notwithstanding any other provisions of this Trust Agreement, the BENEFICIARY, during such time thereafter as TRUSTEE, in TRUSTEE's absolute discretion, shall deem advisable, shall not be entitled to receive payments from the trust.

Section XV.
Allocation Between Principal and Income

Unless otherwise specifically provided in this Trust Agreement, the TRUSTEE, in the TRUSTEE's absolute discretion, may determine the allocation of receipts between principal and income and may apportion dividends between principal and income.

Section XVI.
Accounting

TRUSTEE at any time may render to the BENEFICIARY an account of the acts of TRUSTEE and transactions with respect to the Trust Property from the date of the creation of the trust or from the date of the last previous account of TRUSTEE. The BENEFICIARY shall have sixty (60) days after receipt of such accounting to review such accounting and, should the BENEFICIARY find something objectionable, give written notice specifying the objections, to the TRUSTEE. Should the BENEFICIARY fail to make any objections within the above time frame the accounting shall be deemed approved by the BENEFICIARY and such approval shall constitute a full and complete discharge and release of TRUSTEE from all further liability, responsibility, and accountability for or with respect to the acts and transactions of TRUSTEE as set forth in such account, both as to income and principal. Should any objections be timely made all objections not presented within such time frame shall be irrevocably and forever waived.

Section XVII.
Bond

The DISTRICT shall not be required to give any bond.

Any person or persons other than the DISTRICT appointed to act as trustee or successor trustee under this trust instrument, except any corporate trustee authorized to engage in the trust business in Florida, before entering on his or her duties of trusteeship, shall execute a bond payable to the trust, with an authorized surety company as surety, to secure the faithful performance of trustee's duties. Bond shall be in an amount not less than the value of the Trust Property and the probable value of one year's annual income from the Trust Property. The cost of bond shall be assessed to the trust, chargeable either to income or principal as trustee in trustee's discretion shall determine. The requirement of bond may be waived by the BENEFICIARY.

Section XVIII.
Severability

If any provision of this Trust Agreement should be invalid or unenforceable, the remaining provisions shall continue to be fully effective.

Section XIX.
Venue and Jurisdiction of Litigation

The exclusive venue and jurisdiction for any litigation enforcing, construing or relating to this Trust Agreement shall be the Circuit Court or the County Court in and for Suwannee County, Florida.

Section XX
Waiver of Jury Trial

The TRUSTEE and the BENEFICIARY mutually and forever waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Trust Agreement. The TRUSTEE and the BENEFICIARY agree to have any such actions decided by a judge alone, without a jury.

Section XXI.
No Waiver of Sovereign Immunity

Notwithstanding anything else herein to the contrary, nothing herein shall be construed to waive or to otherwise affect the DISTRICT's sovereign immunity and/or the protections given the DISTRICT under Section 768.28, Florida Statutes.

Section XXII.
No Third Party Beneficiaries

No provision of this Trust Agreement shall be deemed for the benefit of any person or entity other than the TRUSTEE and the BENEFICIARY and no other person or entity shall acquire any rights under this Trust Agreement.

Section XXIII.
Entire Agreement

Other than the Management Agreement, which remains valid and unchanged by this Trust Agreement and is to co-exist with and be interpreted consistent with this Trust Agreement, this Trust Agreement supersedes all previous agreements, oral or written, between the TRUSTEE and the BENEFICIARY, and represents the whole and entire agreement between the parties. Neither party has entered into this Trust Agreement in reliance upon any fact or representation not expressly provided in this Trust Agreement and/or the Management Agreement.

Section XXIV.
Amendment, Revocation or Abandonment of this Trust Agreement

This Trust Agreement may not be amended, revoked, or abandoned except through a written agreement executed by the parties with the same formalities as this Trust Agreement.

Section XXV.
Trust Agreement not to be Construed against Either Party

This Trust Agreement is the product of negotiation between the TRUSTEE and the BENEFICIARY. Thus the terms of this Trust Agreement shall not be construed against either the TRUSTEE and the BENEFICIARY as the drafter.

Section XXVI.
Acceptance of Trustee and Governing Law

This trust has been accepted by the TRUSTEE and will be administered in the State of Florida. Its validity, construction, and rights shall be governed by the laws of that state, without regard to its conflict of laws rules.

Section XXVII.
Miscellaneous

The headings used herein are intended solely for use as reference and are not intended to be a part of this Trust Agreement. Where necessary or appropriate to the meaning in this Trust Agreement, the singular and plural are interchangeable, and words of any gender include all genders. Once fully executed, photocopies of this Trust Agreement have the same force and effect as the original.

IN WITNESS WHEREOF, the TRUSTEE and the BENEFICIARY have signed this Trust Agreement as set out below.

EXECUTED by the DISTRICT on this ____ day of _____, 2011.

SUWANNEE RIVER WATER
MANAGEMENT DISTRICT

By: _____
Don Quincey, Jr.
Chair of its Governing Board

ATTEST:

By: _____
Donald R. Curtis, III
Secretary/Treasurer

EXECUTED by the R.O. RANCH on this ____ day of _____, 2011.

R.O. RANCH, INC.

By: _____
Donald R. Curtis, III
Chair of its Board of Directors

ATTEST:

By: _____
Print Name: _____
Title: _____

MEMORANDUM

TO: Governing Board

FROM: Ann Shortelle, Ph.D., Executive Director
Charlie Houder, Asst. Executive Director
Steve Minnis, Governmental Affairs Director

DATE: August 27, 2012

RE: Activity Report, Executive Office

The following is a brief summary of activities by Ann Shortelle, Charlie Houder and Steve Minnis from July 27, 2012 through August 21, 2012.

Ann:

- Met with SJRWMD on July 27 at Silver River State Park for a discussion regarding Silver River Flow Record.
- Participated in an MFL Coordination meeting August 3.
- Attended Conservation Farming Twilight Tour at the Suwannee Valley Extension Center on August 7.
- Participated in CUPcon Rulemaking Workshop in Chiefland August 8.
- Met with Cliff Lewis of the Georgia Environmental Protection Division on August 10.
- Attended FLOW meeting on August 13.
- Participated in Florida Conservation Coalition meeting August 16.
- Attended Springs Coordination meeting with DEP on August 16.

Steve:

- Steve attended the Alachua County Board of Commissioners public hearing to adopt a year-round conservation measure and water shortage ordinance.
- Steve attended the City of High Springs Commission public hearing on the year-round water conservation measure and water shortage ordinance.
- Steve met with Representative-Elect Charlie Stone in Chiefland.

Ann and Charlie:

- Participated in bi-weekly teleconference with DEP and other water management districts.
- Attended the August 2 R. O. Ranch Board of Directors meeting in Cooks Hammock.
- Met with Donald Rich on August 10 regarding the Ellaville Surplus Property Exchange.

Ann and Steve:

- Ann and Steve attended the Jefferson County, Gilchrist County, Lafayette County, and Madison County Board of County Commissioners meetings where Ann made a "State of the Resource" presentation. Governing Board Member Cole present the Jefferson County Board with the Payment in Lieu of Taxes check and Member Alexander presented the Madison County BOCC with the Payment in Lieu of Taxes check.
- Ann and Steve provided the District's FY 2012-12 Tentative Budget briefing to the Senate and House budget committee staff.

Ann, Charlie and Steve:

- Participated in CUPcon Rulemaking Workshop at District Headquarters August 7.