

MEMORANDUM

TO: Governing Board
FROM: George T. Reeves, Esq., Board Counsel
DATE: January 7, 2013
RE: Enforcement Status Report

ADMINISTRATIVE MATTERS WITHIN THE DISTRICT

Respondent	Justin M. Fitzhugh
Enforcement Number / County	CE05-0046 / Columbia
Violation	Non-Functioning Stormwater Management System & Failure to Submit As-Builts
Legal Counsel	Brannon, Brown, Haley & Bullock
Date Sent to Legal	July 1, 2010
Target Date	Ongoing
Legal Fees to date	\$2,111 (approximate)

This violation is for a non-functioning surface water management system and failure to submit as-built certification forms.

The property at issue has been purchased by a new owner, who has cleared the pond.

Leroy Marshall will conduct a site inspection to determine what, if any, remedial work remains to be done to bring the system into full compliance. If it is determined by District staff that the pond is now functioning properly and no further remedial work is necessary, this matter will be removed from the enforcement report. **No changes since last report.**

Respondent	Derrick Freeman
Enforcement Number / County	CE08-0043 / Suwannee
Violation	Unpermitted Structure in Floodway
Legal Counsel	Brannon, Brown, Haley & Bullock
Date sent to Legal	August 9, 2010
Target Date	Ongoing
Legal Fees to date	\$667 (approximate)

This violation is for construction of a structure in the floodway.

Mortgage Company is aware of the outstanding violations existing on the property. Freeman has filed a Suggestion of Bankruptcy and the finalization of the foreclosure matter is on hold until either the bankruptcy is resolved or the mortgage company is given authorization to proceed with the foreclosure.

Counsel is awaiting status report from mortgage company attorney. The bank is proceeding with an in rem foreclosure action. Counsel will work with the bank's attorneys in an effort to have the bank cure the outstanding violations on the property. **No change since last report.**

Respondent	Richard Oldham
Enforcement Number / County	CE10-0024 / Bradford
Violation	Unpermitted Pond & Deposition of Spoil Material
Legal Counsel	Brannon, Brown, Haley & Bullock, P.A.
Date sent to legal	October 13, 2011
Target Date	Ongoing
Legal Budget / Legal Fees to date	\$5,000 / \$2,473

This violation is for construction of a pond without a permit and deposition of spoil material in a flood area.

Richard Oldham and Diana Nicklas were served with an Administrative Complaint and Order and the time for filing a petition for hearing lapsed.

Counsel has filed a Petition for Enforcement in the Circuit Court for Bradford County and will have Oldham and Nicklas personally served upon receipt of the summons from the Clerk. Awaiting service on Respondents. **No change since last report.**

Respondent	Scott McNulty
Enforcement Number / County	CE10-0045 / Levy County
Violation	Unpermitted Excavation & Road Construction
Legal Counsel	Robinson, Kennon & Kendron, P.A.
Date sent to legal	March 7, 2011
Target Date	Ongoing
Legal Budget / Legal Fees to date	\$5,500 / \$11,109.50

This matter, involving an unpermitted excavation and road construction in the Cedar Key Heights Subdivision, caused the Suwannee River Water Management District to file an Administrative Complaint. Prior to the Administrative Hearing, the Respondent, Scott McNulty, executed a Consent Agreement, which was adopted as Final Agency Action by the Suwannee River Water Management District.

The Respondent has not complied with the Consent Agreement, and in the December Board Meeting, the Board directed staff to have a permit issued and construction completed pursuant to the permit, and report back at the February Board Meeting as to the status of the matter and whether or not the matter was resolved.

Respondent	Larry R. Sigers
Enforcement Number / County	CE08-0072 / Columbia
Violation	Unpermitted Dredge & Fill
Legal Counsel	Robinson, Kennon & Kendron, P.A.
Date sent to legal	October 5, 2011
Target Date	March 12, 2012
Legal Budget / Legal Fees to date	\$7,500 / \$7,517.00

A Consent Agreement was entered into with Mr. Sigers as a result of violations of District Rules. Staff is monitoring the Project in accordance with the Consent Agreement; however, Mr. Sigers is not yet in compliance.

Respondent	Rodney O. Tompkins
Enforcement Number / County	CE11-0001 / Gilchrist
Violation	Unpermitted Water Use
Legal Counsel	Springfield Law, P.A.
Date sent to legal	October 3, 2011
Target Date	September 11, 2012
Legal Budget / Legal Fees to date	\$4,800/\$4,627

After approximately one year of attempting to secure the property owner's voluntary cooperation, Staff counsel completed drafting the Administrative Complaint on April 15, 2012 and provided it to staff for execution by the Executive Director. The next day, April 16, 2012, staff received a copy of an incomplete original application via facsimile transmission. Staff decided to treat the submittal as initiating the permit application process, even though basic information and technical data are missing, including an original signature, application fee, and water conservation forms. While staff are attempting to informally obtain some of the required information, if it is not received on or before May 7, 2012, staff will prepare a formal request for additional information. Also, subsequent to submittal of the application, staff counsel received another letter from Terry Kann, attorney for the property owner, on April 18, 2012, expressing continuing concerns regarding the details of any water use permit proposed by the District.

The property owner failed to submit any additional information or application fee prior to the District's deadline to request additional information. Therefore, on May 16, 2012, a RAI was sent to Mr. Tompkins as Trustee for the property owner, which provided an additional 90 days to submit the needed documentation and fee. Deadline for RAI submittal was August 14, 2012.

The Governing Board authorized the Executive Director to file an Administrative Complaint at its September Board meeting. **Staff and staff counsel are attempting to serve the District's administrative complaint on Mr. Tompkins by the Gilchrist County Sheriff's Office.**

Respondent	Cannon Creek Airpark
Enforcement Number / County	CE05-0031/ Columbia
Violation	Unpermitted Construction
Legal Counsel	Springfield Law, P.A.
Date sent to legal	February 2006
Target Date	In Permit Process
Legal Fees to date	\$7,048.50

This enforcement action has been on-going for a number of years. This involves work that was done within the subdivision to alleviate flooding. The work was done without a permit. 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.

District staff is currently reviewing an ERP application to implement one phase of the County's master stormwater plan that includes the Cannon Creek area, which should address the remaining drainage problems for this project. The District is waiting for Columbia County to respond to the mitigation offer before taking further action on the permit application.

Columbia County responded to the request for additional information. Staff is reviewing the submittal in regards to the proposed wetland mitigation offer.

District staff met with Columbia County on February 28, 2012, to discuss outstanding RAI items and expect to soon receive additional information from the County. Columbia County proposes to “bundle” the wetland mitigation required for this project with mitigation being provided for a Home Depot project. Staff plans to discuss this approach with the District’s Governing Board.

A permit for this project was issued on August 6, 2012. Staff is still working with Columbia County on the associated Interlocal Agreement. **No change since last report.**

CIRCUIT COURT MATTERS

Respondent	Charlie Hicks, Jr.
Enforcement Number / County	CE07-0087 / Madison County
Violation	Unpermitted Construction in Floodway
Legal Counsel	Brannon, Brown, Haley & Bullock, P.A
Date sent to legal	October 30, 2008
Target Date	Ongoing
Legal Fees to date	\$21,536.50

The violation consists of construction of a structure in the floodway, without obtaining a Works of the District permit. The case has been before this court several times.

The nonjury trial on damages was conducted on April 3, 2012. The Court entered its Final Judgment awarding the District a total amount of \$31,794.07, which consisted of a \$10,000 penalty, an award of attorneys’ fees of \$19,454.50, and legal and investigative costs totaling \$2,339.57. Counsel is proceeding in executing on the judgment. **No change since last report.**

Respondent	Steven Midyette
Enforcement Number / County	CE07-0065 / Gilchrist County
Violation	Unpermitted Clearing & Filling of Wetlands & Unpermitted Construction
Legal Counsel	Brannon, Brown, Haley & Bullock, P.A
Date sent to legal	September 9, 2008
Target Date	Ongoing
Legal Fees to date	\$9,190.00

The is an ongoing enforcement case which involved clearing of wetland vegetation within a riverine wetland slough without a permit, filling in wetlands and constructing a boat ramp within a riverine wetland slough without a permit.

A Complaint was filed with the Circuit Court of Gilchrist County and it was served on Mr. Midyette on March 30, 2011. There have been several status conferences with the latest being October 30, 2012.

The majority of remedial work has been accomplished. The parties are currently negotiating the attorneys’ fees and costs and penalty amount to be paid by Midyette and the procedure for payment of the agreed upon amount. **No change since last report.**

Respondent	Paul Moody
Enforcement Number / County	CE10-0009 / Bradford County
Violation	Unpermitted Construction of a Water Well by an Unlicensed Contractor
Legal Counsel	Brannon, Brown, Haley & Bullock, P.A
Date sent to legal	February 18, 2010
Target Date	Ongoing
Legal Fees to date	\$3,205

This violation was unpermitted construction of a water well by an unlicensed contractor. A complaint was filed in the Circuit Court of Bradford County. A Final Judgment on Liability has been entered by the Court against Mr. Moody.

Counsel will assess the viability of seeking a money judgment against him. **No change since last report.**

Respondent	EI Rancho No Tengo, Inc.
Enforcement Number / County	CE05-0017 / Columbia
Violation	Unpermitted Construction
Legal Counsel	Springfield Law, P.A.
Date sent to legal	January 2006
Target Date	April 30, 2012
Legal Fees to date	\$251,932

This enforcement matter has been ongoing since 2006. After multiple court hearings, and in accordance with Court rulings, a Notice of Sheriff's Sale was sent to the parties by certified mail.

The Sheriff's Sale of Defendant's real property pursuant to two writs of execution occurred on May 3, 2011. The Executive Director and Counsel were present at the sale. After an opening bid by Jeffrey Hill of ten dollars, Mr. Still bid \$390,000, which was also the highest bid. Twenty-two minutes prior to the sale, Jeffrey Lance Hill, Sr., filed a chapter 12 case with the U.S. Bankruptcy Court in Jacksonville, Florida. Counsel has since consulted with Lance Cohen, a bankruptcy attorney in Jacksonville, whom the District retained in 2008 when EI Rancho No Tengo, Inc., filed a bankruptcy case. Mr. Cohen is of the opinion that because Mr. Hill filed for bankruptcy prior to the Sheriff's Sale, the District's interest in quieting title would best be served in bankruptcy court. Therefore, Staff has directed Counsel to work with Mr. Cohen again to efficiently and expeditiously secure title to the land in the District.

On March 22, 2012, the Bankruptcy Court granted the District's motion to dismiss the Chapter 12 bankruptcy case filed by Jeffrey Hill. On March 28, 2012, District staff recorded the Sheriff's deed with the Columbia County Clerk's Office.

On May 16, 2012, Mr. Hill filed a Notice of Appeal of the Bankruptcy Court's May 3rd Order. The District's bankruptcy counsel, Lance Cohen, is responding to the appeal. Staff was directed to meet with the newer Board members individually to bring them up to date and after this was done to schedule a meeting with Mr. Hill, Mr. Williams and Mr. Reeves to discuss possible settlement. The parties have met, but a settlement was not reached.

The District's bankruptcy counsel, Lance Cohen, filed an Answer Brief on September 10, 2012, in Jeffrey Hill's appeal of the Bankruptcy Court's dismissal of his Chapter 12 case. The case is now fully briefed and, therefore, either oral argument or a written decision should occur or be issued before the end of the year. **No change since last report.**

Plaintiff	Jeffrey L. Hill, Sr. and Linda P. Hill
Enforcement Number / County	CE11-0045 / Columbia
Violation	NA
Legal Counsel	SRWMD Insurance Legal Counsel
Date sent to legal	August 2011
Target Date	Ongoing
Legal Fees to date	\$9,550

This is not a District enforcement matter, but appears to have been prompted by one. This matter concerns a circuit court complaint recently filed against the District by Jeffrey and Linda Hill arising out of the District's enforcement litigation against El Rancho No Tengo, Inc. In summary, the Complaint alleges that the District has violated Plaintiffs' personal and property rights, acted with recklessness and malice, taken Plaintiffs' personal and property, forced Mr. Hill into bankruptcy, and caused Plaintiffs psychological and emotional harm. The request for relief includes returning all real and personal property taken, permanently enjoining the District from taking Plaintiffs' property, damages in the amount of \$1,000,000.00, renewal and reinstatement of a writ dated August 4, 1991, and costs and attorney's fees. District Counsel has responded by filing a motion to dismiss, strike and for more definite statement. Counsel is currently researching whether a judgment on the merits may also be available at this stage of the proceeding. In any event, Counsel will soon request a hearing on the District's motion(s).

On October 20, 2011, Plaintiffs served an Amended Complaint to which Counsel responded by serving an Amended Motion to Dismiss and Strike. Counsel also provided a draft Motion to Award [\$57,105, F.S.] Attorney's Fees to Plaintiffs on November 17, 2011. Counsel attended a hearing on the District's amended motion to dismiss and strike the amended complaint on December 9, 2011. The Court dismissed three counts of Hills' amended complaint and struck three more, but also gave the Hills 30 days from the date the order is signed to file a second amended complaint.

Counsel drafted and delivered an order to the Hills for review and comment on December 19, 2011. Comments on the draft order are due from the Hills to Counsel on December 22, 2011, at which time Counsel will send a proposed order to Judge Parker. Once a second amended complaint is filed by the Hills, Counsel will prepare an answer with affirmative defenses.

Rather than commenting to Staff Counsel on the District's draft proposed order, Plaintiff's filed their "Objection to Proposed Order," but not before Staff Counsel submitted the District's proposed order to Judge Parker on December 26, 2011. Thereafter, the District's proposed order was entered and Plaintiffs filed a timely motion for rehearing. On January 25, 2012, this case was transferred from Staff Counsel Jennifer Springfield to Staff Counsel Lindsey Lander. In February, this case was transferred to the District's Insurance Claim Services.

A hearing was set for October 5, 2012, regarding the Plaintiffs Motion for Rehearing on the Court's order dismissing and striking the amended complaint and allowing Plaintiffs 30 days leave to file a second amended complaint. **No change since last report.**

Respondent	Linda Fennell
Enforcement Number / County	CE06-0107 / Lafayette
Violation	Unpermitted Construction in Floodway
Legal Counsel	Brannon, Brown, Haley & Bullock, P.A
Date sent to legal	July 2009
Target Date	Ongoing
Legal Fees to date	\$13,610

This violation is for construction of structures within the regulatory floodway without a works of the district permit. This matter is ongoing in the Lafayette County Circuit Court.

Staff Counsel is negotiating a settlement proposal with Fennell’s attorney, which would require removal of the dock, payment of the District’s costs and attorneys’ fees, and application of a deed restriction or similar instrument allowing the home to stay within the 75-foot setback for the duration of Fennell’s ownership. The settlement proposal, if accepted by Fennell, will be brought to the Governing Board for approval. **No change since last report.**

Respondent	Jeffrey Hill / Haight Ashbury Subdivision
Enforcement Number / County	CE04-0003 / Columbia
Violation	Not Built in Accordance with Permitted Plans
Legal Counsel	Springfield Law, P.A.
Date sent to legal	May 2006
Target Date	Ongoing
Legal Fees to date	\$13,176

This enforcement activity has been ongoing for several years. At the hearing on January 31, 2011, the Court granted the District’s motion for summary judgment in this case. The judge’s order requires Mr. Hill to comply with the corrective actions specified in the District’s final order, imposes a civil penalty, and awards the District its costs and attorney’s fees.

Since the Bankruptcy Court’s automatic stay is no longer in effect due to the dismissal of Jeffrey Hill’s Chapter 12 case (see above discussion under Suwannee River Water Management District v. El Rancho No Tengo, Inc.), Counsel intends to ask the Court to schedule another case management conference, as well as a hearing to determine the civil penalty amount and the amount of the District’s costs and attorney’s fees, all of which have already been awarded.

During the pendency of the bankruptcy proceeding, Staff Counsel drafted an agreement between the District and the County setting forth the County’s offer to obtain the necessary legal access and perform the correction action required on the stormwater management system. Thereafter, the District would transfer the permit to the County as the perpetual operation and maintenance entity. In exchange for the County’s assistance, and other actions agreed to by the County to help the District resolve two other long-standing ERP violations, the District contemplates donating an approximate 42-acre parcel of land on Alligator Lake that adjoins County-owned property.

Columbia County Attorney, Marlin Feagle, has reviewed the draft interlocal agreement and County managers are still interested in pursuing this approach. **No change since last report.**

Respondent	Jeffrey Hill / Smithfield Estates-Phase 1
Enforcement Number / County	CE04-0025 / Columbia
Violation	Not Built in Accordance with Permitted Plans
Legal Counsel	Springfield Law, P.A.
Date sent to legal	May 2006
Target Date	June 30, 2012
Legal Fees to date	\$13,176

This enforcement activity has been ongoing for several years. At the hearing on January 31, 2011, the Court granted the District’s motion for summary judgment in this case. The judge’s order requires Mr. Hill to comply with the corrective actions specified in the District’s final order, imposes a civil penalty, and awards the District its costs and attorney’s fees.

Since the Bankruptcy Court's automatic stay is no longer in effect due to the dismissal of Jeffrey Hill's Chapter 12 case (see above discussion under Suwannee River Water Management District v. El Rancho No Tengo, Inc.), Counsel intends to ask the Court to schedule another case management conference, as well as a hearing to determine the civil penalty amount and the amount of the District's costs and attorney's fees, all of which have already been awarded.

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Columbia County Attorney, Marlin Feagle, has reviewed the draft interlocal agreement and County managers are still interested in pursuing this approach. **No change since last report.**