

**SPECIAL MEETING - WATER SUPPLY CONTRACTS**

**BOARD OF COUNTY COMMISSIONERS**

**SEPTEMBER 29, 2005**

A special meeting of the Board of County Commissioners was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Sara J. Devos and Commissioners Thomas G. Moore and Matthew D. DeBoer. **(Commissioners Adam Cummings and Thomas C. D'Aprile were not present for this portion of the meeting.)** Also in attendance were County Administrator Bruce D. Loucks, County Attorney Janette S. Knowlton, Chief Deputy Board Services Tommy Q. White, Executive Assistants to the Board Bonnie Stoner and Judy Hunter and Supervisor of Minutes Diane J. Nice. The meeting was called to order at **2:32 P.M.** followed by the Pledge of Allegiance to the Flag.

**Chairman Devos** stated this was a very important meeting for Board discussion and direction on some Peace River Authority documents. **(Commissioners Adam Cummings and Thomas C. D'Aprile were present for the remainder of the meeting.)**

**I. CITIZEN INPUT**

None.

**II. REGULAR AGENDA**

Agenda Item 1, Utilities - Board discussion, direction, and possible approval of proposed Peace River Authority documents: (a) Three-way contract between Charlotte, Sarasota, and Authority concerning sale of 2 MGD of water; (b) Memorandum of Understanding with Sarasota concerning 2 MGD contract dispute; (c) Second Amended Interlocal Agreement Creating the Authority; and (d) Master Water Supply Contract

Roger Baltz, Assistant County Administrator, stated this was a follow-up to the September 13, 2005 workshop during which several items were identified - a payment for \$311,000 that has been resolved at the staff level; the rate setting section which staff felt was resolved in working with the Water Authority (WA)

and our financial consultant; and they feel the Master Water Supply Contract (MWSC) details/issues have been worked out. Mr. Baltz explained the action before the Board today was to discuss, review and possibly approve four different agreements - (1) the MWSC, (2) the Second Amended Interlocal Agreement for the Peace River/Manasota Regional Water Supply Authority (PRMRWSA), (3) a Memorandum of Understanding (MOU) that addresses how Charlotte and Sarasota Counties will go about resolving a dispute over past water sale billings; and staff was ready to recommend Board approval of these three, and the fourth document was a three-party Water Sale and Storage Agreement but there was still one outstanding and unresolved issue. Janette S. Knowlton, County Attorney, explained the issue deals with the payment of the Base Rate charge, the revised wording on page 3 eliminated the statement that Sarasota had paid the base rate charge to Charlotte County during FY02, recommended the Board approve the document as revised that excluded the part that was in dispute, and clarified this would reserve our rights and the mediation process they've agreed to go through and the MOU. Mr. Baltz summarized the intent of the agreement, and stated both the MOU which sets up a dispute resolution process and the three-party agreement are both conditions precedent for approval of the MWSC and which must move forward concurrently with the MWSC. **(Discussion ensued regarding the 2 MGD Sarasota County took from Charlotte County and the dispute regarding \$1 million owed by Sarasota County.)** **Commissioner DeBoer** summarized the County was going to be able to get back the 2 MGD sooner and additionally, Sarasota County wants the water they didn't receive but say they paid for, to be escrowed in the ground in the ASRs wells as their water. Mr. Baltz agreed. **Commissioner DeBoer** said this undermines the whole concept of take-or-pay contracts and he was obviously struggling with this. **Commissioner Cummings** opined **Commissioner DeBoer** raised a legitimate issue regarding escrowing the water when you had a take-or-pay contract, there's a cost to us in this settlement offer whenever water was injected into and retrieved from ASRs, this wasn't a perfect agreement but it's a realistic balance, and they will need to come up with a strategy to improve the reliability of the system when escrowing of water occurs. **Commissioner Moore** asked what would happen if the Board doesn't sign the MOU. Attorney Knowlton said the order things need to be done in was the MOU, which sets up the dispute resolution process, and the Water Sale and Storage Agreement, need to be

approved before approving the Interlocal Agreement and the MWSC. Attorney Knowlton stated those two documents would then go back to Sarasota County for approval. (**Chief Deputy Board Services Tommy Q. White was not present for the remainder of the meeting.**) **Commissioner Moore** said he was in favor of signing the documents and proceeding, and opined the process has been extremely time consuming for everyone but said it's not a total loss. **Commissioner Cummings** said based on staff recommendation he will support signing the revised MOU and Water Sale and Storage Agreement documents as he would have concerns without the changes because of the \$1 million dispute. **Commissioner Cummings** said the only remaining issue was the MWSC, there's been a lot of communications and letters back and forth clarifying language, and he wanted a public record to establish what those interpretations were. Mr. Baltz said, "Let me share with the Commission, what happened after our workshop was we had a series of issues. There were three primary issues. We received a letter from the legal counsel for the WA, Doug Manson, that spoke to the issues that were raised. One of them was whether or not the MWSC, and specifically the rates that we pay for our water, could be changed under this newer contract by a simple majority vote of the members of the WA, and that's relevant to us because we pay different rates for our water and this new water supply contract and these documents before you today supercede the existing contracts that are in place now, where we do have protection, if you want to call it that, but where we have to voluntarily agree to, for instance going to the common rate. To answer your question directly Commissioner, yes I'm satisfied that the concerns we had have been addressed, we received some clarification in that letter from Mr. Manson and also through some more thorough research of our own. There's a section within the MWSC that states that the water supply contract, should we approve it, can only be amended if it's agreed to by all the members of the WA ... all the member counties. So we're pleased by that. The other section that you specifically had a question on was the rate setting and whether the rates are tied to a little over 27% debt that we'll incur toward the project or whether they're tied to a little over 22% water allocation which we receive from the project. Staff have looked at that very closely, we've talked to the WA staff about it, they've addressed it in that letter I just mentioned, plus they've provided a chart. I also understand that they have a chart that designates how the base rates are going to be set

which they're going to put in resolution form and take forward to the next WA board meeting. That maybe a little more detailed than you had wanted but to answer your question again, yes, I believe we've addressed all those issues. I would relate that to you and I feel like our Attorney's Office feels likewise on those issues." **Commissioner Cummings** said his understanding was we're comfortable that this contract wasn't going to allow the WA to go to a uniform rate or common rate without Charlotte County's approval and we're also comfortable that we'll pay 27% on the capital portion of our rates but only 23% on the remainder of our rates based on our allocation. Mr. Baltz said he concurred and asked Mr. Thomas to acknowledge. (Mr. Thomas, the County's rate specialist, responded "yes" from the audience.) Mr. Baltz stated the third issue was the payment for about \$311,000 for an oversized payment and we had a concern about where that money would come from. **Commissioner Cummings** recalled they were already paying themselves back to begin with so it was less of an issue than we were concerned about initially. Mr. Baltz agreed. Attorney Knowlton advised the County's protection was actually in the contract as well as in Mr. Manson's letter. Mr. Baltz added we really felt like we had a mandate today to work very hard to bring back a series of documents the Board could approve, they're about 99% of way there but they're not quite there yet, the language was enough of a concern with the dispute resolution process coming up that we felt it necessary to discuss that issue with the you and recommend the Board still approve these documents but with the changes recommended by Attorney Knowlton. **Commissioner Cummings** said he was willing to support that recommendation. **Chairman Devos** said she agreed with most of the comments and changes, but she was concerned with the \$1 million loss, she doesn't want to forgive that, and she wants be assured the County was reimbursed. Attorney Knowlton stated the purpose of the changes was to make sure we don't compromise the County's position in mediation or litigation to recover the \$900,000 to \$1 million. Marty Burton, Assistant County Attorney, reported she'd just been given the message that the Sarasota County Attorney's Office, whom we've been working with on the proposed changes to the three-party agreement, has just requested one or two more revisions; and if the Board would take a brief recess so they can give her those changes via telephone, then they will decide now that they will go ahead and recommend approval to their board when it meets on Monday which was still before the Peace

River Authority meeting on Wednesday. Attorney Knowlton agreed and asked the Board's indulgence to give them a short break and maybe we'll be able to wrap this up. **Chairman Devos** stated the Chair feels that would be the right and best thing right now and asked how long a recess was needed. Attorney Burton responded 15 minutes.

**RECESS: 3:20 P.M. - 3:35 P.M.**

**(County Attorney Janette Knowlton was not present for this portion of the meeting.)**

Mr. Baltz reviewed the primary issues while the County Attorney finished with the negotiated changes, stated what's in it for Charlotte County was more water bringing us up to 16.1 MGD as our final allocation from this expansion of the WA. **Commissioner DeBoer** asked how much were we paying the WA a year for the 2 MGD take-or-pay contract. Mr. Baltz said about \$1.23 million. **Commissioner DeBoer** stated if Charlotte County didn't have the agreement they have with Sarasota County we would have paid \$1.3 million a year for 2 MGD we would not have been using, and so if we turned to Sarasota County right now and say let's forget the \$900,000 that disputed, it only costs us a \$100,000 a year instead of \$1.3 million for capacity that was take-or-pay contract. **Chairman Devos** said she now understands where the Commissioner was going. Bruce D. Loucks, County Administrator, clarified what you're doing is amortizing the differential between what was paid and not paid, recognizing that that's our out-of-pocket cost amortized over nine years, whereas our out-of-pocket cost for the whole 2 MGD would have been a multi-million dollar number as opposed to \$100,000 a year when you amortized it. **Commissioner DeBoer** said what they're really arguing with Sarasota County about is the fact that they saved us from paying \$1.3 million a year, he knows \$1 million was a lot of money but the fact is that to reach an agreement Sarasota County absorbed a lot of that cost even though he's sure they sold some of the water but nevertheless, the point is that we would've had to pay it we didn't come to that agreement, so he just didn't see it as a great big issue. **Commissioner DeBoer** said he worries about the whole idea of a regional approach when we start creating new classifications of customers, when he saw this he wondered why Charlotte County doesn't become a exclusive user, it seems to me we're arguing about a lot of things we

don't need to argue about, although he's not happy overall with this, he felt they could come to some sort of agreement on the \$900,000 because he just doesn't see sister counties going through mediation or court or any of this other nonsense, and he would rather write the \$900,000 off as goodwill because that's what they gave us when we needed that settlement and didn't have the money to make these kind of payments which hopefully would result in better relationships in the future where we can start acting like a regional authority. **Commissioner D'Aprile** asked if anyone had heard from the County Attorney regarding the reason for the recess. **Chairman Devos** said not yet but there was something she failed to talk about Tuesday and commented about the attendees to their Washington, D.C. trip. **(County Attorney Janette Knowlton was present for the remainder of the meeting.)** Attorney Knowlton reported they'd just gotten off the telephone with Sarasota but remember that board hasn't heard this yet and will consider it on Monday. Theresa Connor, P.E., Sarasota County Water Resources Manager, said this wasn't an agenda item for Monday, it's correct that the Sarasota County Board doesn't know anything about this, and they did approve a contract yesterday that we thought everyone supported but we will discuss it with their board at their Monday meeting. Attorney Knowlton reported they discussed the proposed changes with the Sarasota County Attorney's Office, and they are willing to recommend that their board adopt this as revised with Charlotte County's suggested changes but they just further revised it from the last version this Board saw. Attorney Knowlton clarified it's only page 3, Section 3 where they changed some of the language and read the following into the record: "The Parties agree that, through no fault of any party, during FY02, Sarasota did not receive approximately 730 million gallons of water to which it was entitled under the 2.0 MGD Agreement ("FY02 Water"). The Parties further agree that Sarasota shall receive said FY02 Water from the Authority. The Parties also agree that, through no fault of any party, from October 1, 2002 through September 30, 2005 Sarasota did not take delivery of approximately 368 million gallons of water under the 2.0 MGD Agreement ("FY02-05 Water"). The Parties further agree that Sarasota shall receive the FY02-05 Water from the Authority. Charlotte and Sarasota agree that the sufficiency of the amount Sarasota paid for the FY02 Water and the FY02-05 Water remains in dispute. Nothing within this section shall alter or impact the rights of either Sarasota or Charlotte

regarding the payment dispute concerning the 2.0 MGD Agreement which is the subject of the MOU between Sarasota and Charlotte." **Commissioner Cummings** asked if there was any other language Sarasota wanted to add. Attorney Knowlton said no, that was it. **Chairman Devos** said was she to understand that on today's Regular Agenda, if they were looking at what is proposed for approval, what was just read into the record would be item (a) because she wants to make sure they have a proper motion. Attorney Knowlton said yes, except the document for (a) was actually called 'Water Sale and Storage Agreement' instead of 'Three-way contract...'. **COMMISSIONER D'APRILE MOVED APPROVAL OF (A) WATER SALE AND STORAGE AGREEMENT WITH THE REVISION AS READ INTO THE RECORD BY ATTORNEY KNOWLTON, (B) MEMORANDUM OF UNDERSTANDING WITH SARASOTA COUNTY CONCERNING 2 MGD CONTRACT DISPUTE, (C) SECOND AMENDED INTERLOCAL AGREEMENT CREATING THE AUTHORITY, AND (D) MASTER WATER SUPPLY CONTRACT, SECONDED BY COMMISSIONER CUMMINGS.** **Commissioner DeBoer** reiterated for the record, "I think a lot of this is not necessary. If in fact we just agree to the date that's in here that Charlotte County will be able to use the 2 MGD that we agree that Sarasota County can escrow the amount that they have in here, and that Charlotte County waives the claim to any underpayment by Sarasota, and just move on with business." **Commissioner Cummings** said he didn't think it's that big of an effort because mediation is basically a conversation you go to and see if you can come to a common understanding, he didn't see that as a problem, and if we don't, then we worry about whether or not we want pursue it any further. **Commissioner DeBoer** said the Commissioner may not think it's a big deal but a lot of staff time was going to be expended doing these kind of things when they could be doing other things that are more productive and if in fact there are three members on this Board that agree to what he suggested, then why put everybody through that. **CALL ON THE MOTION: CHAIRMAN DEVOS AND COMMISSIONERS CUMMINGS, D'APRILE AND MOORE VOTED "YES" AND COMMISSIONER DeBOER VOTED "NO." MOTION CARRIED: (4:1).** **Commissioner D'Aprile** said what he was going to ask since the Chair already called the question, was could what **Commissioner DeBoer** suggested have been added as a friendly amendment. **Chairman Devos** said no. **Commissioner D'Aprile** said he tended to agree with **Commissioner DeBoer** about the \$900,000 because they were establishing a mountain out of a molehill and he felt what the Commissioner suggested made sense. Attorney Knowlton clarified the MOU provides for them to go through the

mediation process and if it fails, she will come back to the Board to request authorization to sue to recoup the money.

MEETING ADJOURNED: 4:00 P.M.

Signature on file in Commission Minutes

Sara J. Devos

Chairman

ATTEST:

BARBARA T. SCOTT, CLERK  
OF THE CIRCUIT COURT AND  
EX-OFFICIO TO THE BOARD  
OF COUNTY COMMISSIONERS

By: Signature on file in Commission Minutes  
Deputy Clerk

/ksm