


**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20051166

1. ACTION REQUESTED/PURPOSE: Approve the Inter-agency Delegation Agreement between Lee County and the South Florida Water Management District ("District") for the delegation of enforcement responsibility of the District to the County. Authorize Chairman's signature on the Delegation Agreement.

2. WHAT ACTION ACCOMPLISHES: Board of County Commissioners' approval is required to finalize the agreement with the South Florida Water Management District.

3. MANAGEMENT RECOMMENDATION: Management recommends approval. Promotes consistent enforcement of rules and regulations governing the water well construction program for all water wells in Lee County.

| | | | | | |
|--|---|--|---|---|--|
| 4. Departmental Category: 8 CBA | | | | 5. Meeting Date: 09-13-2005 | |
| 6. Agenda: | | 7. Requirement/Purpose: (specify) | | 8. Request Initiated: | |
| <input checked="" type="checkbox"/> Consent | <input checked="" type="checkbox"/> Statute | Ch. 373 | Commissioner | | |
| <input type="checkbox"/> Administrative | <input checked="" type="checkbox"/> Ordinance | 00-15 | Department <u>Public Works</u> | | |
| <input type="checkbox"/> Appeals | <input type="checkbox"/> Admin. Code | | Division <u>Natural Resources</u> | | |
| <input type="checkbox"/> Public | <input type="checkbox"/> Other | | By: <u>Roland Ottolini, Director</u> | | |
| <input type="checkbox"/> Walk-On | | |  | | |


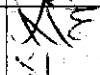
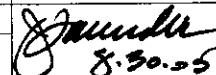
9. Background:

On August 10, 2005, the governing board of the South Florida Water Management District ("District") approved and executed the attached Delegation Agreement, delegating to Lee County its authority to administer and enforce the rules governing the program for water well construction standards for all water wells in the county. This Delegation Agreement revises and replaces the prior agreement dated January 9, 1985.

Under the terms of the agreement, Lee County will evaluate and make final inspections and disposition of permit applications for the construction, repair and abandonment of all water wells in Lee County. Lee County will keep all fees for applications submitted and perform the appropriate monitoring and enforcement activities. The District will forego implementation of water well construction permitting programs for wells within the county. Such agreement will allow for a uniform and consistent regulatory program for water well construction standards.


Attachments: Two (2) Agreements

10. Review for Scheduling:

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney | Budget Services | | | | County Manager/P.W. Director |
|--|-------------------------|-----------------|-------|---|-----------------|---------|--------|---------|---|
|  | N/A | N/A | N/A |  | Analyst | Risk | Grants | Mgr. |  |
| | | | | | 8/31/05 | 8/31/05 | 8/1/05 | 8/31/05 | 8.30.05 |

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

| |
|--|
| RECEIVED BY COUNTY ADMIN.  |
| DATE: <u>8/31/05</u> |
| TIME: <u>10:11</u> |
| BY: <u>8/31/05</u> |

**DELEGATION AGREEMENT BETWEEN
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
AND LEE COUNTY FOR REGULATION OF WATER WELLS**

PR NO. PR051185

This Delegation Agreement (“Agreement”) is made this ___ day of _____, 2005, by and between the South Florida Water Management District (“DISTRICT”) and Lee County, a political subdivision and Charter County (“COUNTY”) to accomplish the purposes and goals stated herein.

WITNESSETH:

WHEREAS, the DISTRICT, pursuant to Chapter 373, Florida Statutes, amended, and the Rules and Regulations duly adopted thereunder, has the authority and responsibility, within its jurisdiction, for the administration and enforcement of rules and regulations governing water wells; and,

WHEREAS, the lands within the boundaries of the COUNTY are also within the boundaries of the DISTRICT, and are therefore subject to the rules, regulations, authority and orders of the DISTRICT, pursuant to Chapter 373, Florida Statutes, as amended; and,

WHEREAS, the COUNTY, pursuant to Lee County Ordinance No. 00-15, as amended, has the authority and responsibility, within its jurisdiction, for the administration and enforcement for rules and regulations governing administration, permitting standards, construction, repair, and plugging of water wells, test wells, test borings, elevator shafts, testing reports and inspections, abandonment of water wells; providing for licensing; providing for supplemental regulations; providing for penalties, conflict, and appeals within Lee County; and,

WHEREAS, both the DISTRICT and the COUNTY desire that each be allowed to accomplish its objectives within the geographic boundaries of the COUNTY without interfering with the rights of the other.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, it is agreed as follows:

I. PARTIES

1. The DISTRICT is a public corporation of the State of Florida existing by virtue of Laws of Florida, 1949, and operating pursuant to Chapter 373, Florida Statutes, and Title 40E, Florida Administrative Code (F.A.C.), as a multipurpose water management district with its principal office at P.O. Box

24680, 3301 Gun Club Road, West Palm Beach, Florida 33416-4680.

2. Lee County Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida;
3. The Board of County Commissioners has the power and authority to enter into agreements with other governmental agencies within or outside the boundaries of the COUNTY for performance of such agency's authorized function. Florida Statute §125.01(1)(p) and Florida Statute Chapter 163.

II. **AUTHORITY AND PURPOSE OF AGREEMENT**

1. The DISTRICT, pursuant Chapter 373, Florida Statutes and the Rules duly adopted thereunder, has authority within its jurisdiction for the administration and enforcement of rules governing water wells.
2. The DISTRICT desires implementation of the water well regulation program contemplated in Part III of Chapter 373, Florida Statutes, and the Rules and Regulations duly adopted thereunder.
3. The DISTRICT recognizes that the COUNTY has desire and the regulatory experience necessary to implement such regulatory program governing subsurface drilling activities.
4. The DISTRICT has authority pursuant to Sections 373.308 and 373.309, Florida Statutes to delegate, by interagency agreement adopted pursuant to Section 373.046, Florida Statutes, to any political subdivision any of its authority under Part III of Chapter 373, Florida Statutes.
5. The purpose of this Agreement is to establish the permitting, compliance and enforcement responsibility of the COUNTY associated with the delegation of the water well construction program for all water wells in Lee County; to establish the responsibilities of the COUNTY regarding maintaining adequate levels of administrative, technical and financial capabilities to implement and enforce the program; and to establish responsibilities of the COUNTY for reporting to and maintaining communication with the DISTRICT.

In consideration of the benefits to each of the parties, the DISTRICT and the COUNTY agree as follows:

III. **SCOPE OF DELEGATION**

1. The DISTRICT hereby delegates to LEE COUNTY its authority pursuant to Chapter 373, Part II, Florida Statutes and Chapter 40E-3, Florida Administrative Code, to implement and administer the program for regulation

of water well construction standards for all water wells in the COUNTY. This delegation does not preempt LEE COUNTY from adopting regulations and implementing a program for regulation of construction standards for water wells, monitoring wells, test wells, test borings and elevator shafts pursuant to its independent authority. In the event of a conflict between the delegated regulations and local regulations, the most stringent shall apply.

2. LEE COUNTY shall review, evaluate and make final inspections and disposition of permit applications for the construction, repair and abandonment of all water wells in Lee County, pursuant to:
 - a. Chapter 40E-3, F.A.C., which is attached as EXHIBIT 1;
 - b. The rules incorporated in Section 40E-3.3036, F.A.C., which are attached as EXHIBITS 2-6, and
 - c. The August 27, 2004, Interagency Agreement between The Department of Environmental Protection and the South Florida Water Management District, and the Department of Health regarding delegation of water wells in delineated areas which is attached as EXHIBIT 7. Official maps of areas delineated pursuant to Section 62-524.430, F.A.C., are available from the Department of Environmental Protection.
3. LEE COUNTY shall use application and permit forms including completion report forms approved for use by the DISTRICT. An application form and a completion report form approved for use by the DISTRICT are attached as EXHIBIT 8.
4. The COUNTY will keep all fees for applications submitted. The DISTRICT will continue to review, evaluate and make final disposition as to the rules, regulations, authority and orders of DISTRICT pertaining to the consumptive use of water pursuant to Part II of Chapter 373, Florida Statutes.
5. The COUNTY will withhold issuance of any Well Construction Permit, if the withdrawal from the proposed well will require a Consumptive Use Permit until the Consumptive Use permit application has been approved by the DISTRICT, unless the project is exempt from permitting requirements pursuant to 40E-2.051, F.A.C., or the DISTRICT has otherwise concurred in the issuance of the Well Construction Permit.
6. The COUNTY will perform the appropriate monitoring and enforcement activities to ensure compliance with the provisions of its well construction permits. This provision does not preclude the DISTRICT from conducting enforcement activities concerning well construction in Lee County. However,

to the extent practical, the DISTRICT will not initiate enforcement action within Lee County without prior communication or coordination with the local program.

7. The DISTRICT will forego implementation of water well construction permitting program for wells within COUNTY.
8. Upon the effective date of this Agreement, the COUNTY shall adopt or amend any ordinance, as necessary to implement the provisions of this Agreement. The DISTRICT will adopt any necessary rule amendment to implement and give effect to the provisions and intent of this Agreement.

IV. REPORTING RESPONSIBILITIES

1. The COUNTY will provide to the DISTRICT, on a quarterly basis, a list (hard copy and computer disk) summarizing each well construction permit issued and all well completion reports received during the three previous months. The summary shall include, at a minimum, well construction permit number, date issued, permit type (construct/repair/abandon), permittee name and address, section/township/range, contractor name and license number, Water Use Permit number, type of use, total depth, and casing diameter and depth. The DISTRICT will work with the COUNTY to develop a mutually acceptable reporting format.
2. The Project Manager for the DISTRICT is Bill Rasperger and all correspondence and communications from the COUNTY shall be directed to him. The Project Manager shall be responsible for overall coordination and oversight relating to the performance of this Agreement.

The COUNTY's contact person for communication with the DISTRICT is: Roland Ottolini, Director of Natural Resources, P.O. Box 398, Fort Myers, Florida 33902, (239) 479-8127.

3. All reports and correspondence required under this agreement shall be sent to:

South Florida Water Management District
Water Use Division
Attn: Bill Rasperger
Specialist Scientific Associate
P.O. Box 24680
West Palm Beach, Florida 33416-4680

Mr. Roland Ottolini
Director, Natural Resources
P.O. Box 398
Fort Myers, Florida 33902-0398

V. **PROGRAM MANAGEMENT**

1. The COUNTY shall hire and maintain a staff capable of performing the duties specified in this Agreement. The COUNTY shall maintain adequate program funding, staffing and equipment to comply with the provisions of this Agreement. DISTRICT will assist COUNTY in procuring funding under this Agreement.
2. The COUNTY shall assess and retain permit fees for the delegated water well program. Nothing in this Agreement shall preclude the COUNTY from assessing administrative fees if it deems it necessary to support review and compliance functions under this Agreement.

VI. **PROGRAM OVERSIGHT**

1. In order to promote consistency, the DISTRICT may review, upon reasonable notice to the COUNTY, any pending water well application or issued permits which the COUNTY is reviewing or has processed pursuant to this Agreement. The DISTRICT may also randomly inspect project sites for which an application is being processed by the COUNTY or which the COUNTY has issued a permit, in cooperation with the COUNTY and the applicant.
2. The primary purpose of this program review is to determine if permit applications, monitoring programs, compliance efforts, and enforcement actions are being managed in accordance with applicable rules and statutes, and ordinances and that appropriate files are being maintained for all delegated responsibilities assumed by the COUNTY.

VII. **GENERAL PROVISIONS**

1. The COUNTY is an independent contractor and is not an employee or agent of the DISTRICT. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the DISTRICT and the COUNTY, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement.
2. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, DISTRICT shall indemnify, defend and hold harmless COUNTY against any actions, claims or damages arising out of DISTRICT's negligence in connection with this Agreement, and COUNTY shall indemnify, defend and hold harmless DISTRICT against any actions, claims, or damages arising out of COUNTY's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section

768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

3. The COUNTY shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes.
4. Either party may terminate this Agreement at any time upon one hundred twenty (120) days prior written notice to the other party. Within thirty (30) days of a notice of intent to terminate this Agreement, both parties shall make good faith efforts to resolve any basis for the termination. If after 60 days, one or both of the parties to this Agreement still wish to terminate the Agreement, the COUNTY shall not accept any further applications under this Agreement. Except as otherwise agreed by the parties, the COUNTY shall complete processing any pending application submitted to the COUNTY in accordance with this Agreement.
5. The terms of this Agreement may be extended, renewed amended or modified only by mutual consent of both parties and until reduced to writing.
6. If any part of this Agreement is judicially, administratively or otherwise determined to be invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect, provided that both parties agree that the material purposes of this Agreement can be determined and effectuated.
7. Failures or waivers to enforce any condition or provision of this Agreement by the parties, their successors and assigns shall not operate as a discharge of, or invalidate, such condition or provision, or impair the enforcement rights of the parties, their successors and assigns.
8. This agreement states the entire understanding between the parties and supercedes any prior agreements to the contrary. The COUNTY recognizes that any representations, statements or negotiations, made by the DISTRICT do not suffice to legally bind the DISTRICT in a contractual relationship unless they have been reduced to writing, authorized and signed by an authorized DISTRICT representative. This Agreement shall be binding on the parties, their assigns and successors in interest.
9. Upon execution of this Agreement by both parties, the COUNTY shall begin implementation of this Delegation Agreement. This Agreement will terminate in accordance with Section VII(4) above.

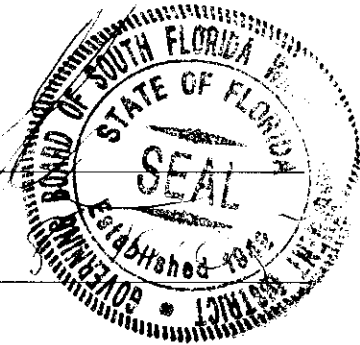
IN WITNESS WHEREOF, the parties have caused these presents to be executed by their duly authorized officers and their official seals hereto affixed the day and year first above written.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD

ATTEST:

By: _____

Date: _____



By: _____

Date: _____

Julia B. [Signature]
Chairman

8/10/05

Legal Form Approved:

By: _____

SFWMD Office of Counsel

ATTEST:

CHARLIE GREEN, CLERK

By: _____

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA

By: _____

Chairman

APPROVED AS TO FORM:

By: _____

Office of the County Attorney

Exhibit 1-- Chapter 40E-3, F.A.C.

Exhibit 2-- Chapter 62-531, F.A.C., Well Contractor Licensing Requirements

Exhibit 3-- The Department's Water Well Contractor Disciplinary Guidelines and Procedures Manual (October 2002) and the Department's Florida Unified Citation Dictionary for Well Construction (October 2002)

Exhibit 4-- Chapter 62-532, F.A.C., Water Well Permitting and Construction Requirements

Exhibit 5-- Chapter 62-555, F.A.C., Construction of Public Supply Water Wells
Exhibit 6-- Chapter 62-524, F.A.C., Construction of Water Wells in Delineated Areas
Exhibit 7-- Interagency Agreement between The Department of Environmental Protection
and the South Florida Water Management District, and the Department of Health
Exhibit 8—Application form and Completion Report form