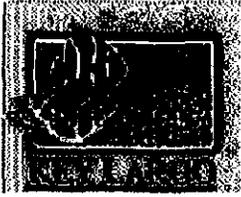


March 3<sup>rd</sup>

2004



# **Key Largo Wastewater Treatment District Board of Commissioner's Meeting Agenda**

**5:00 PM Wednesday, March 3, 2004**

**Key Largo Civic Club, 209 Ocean Bay Drive  
Key Largo, Monroe County, Florida**

- A. Call to Order
- B. Pledge of Allegiance
- C. Additions, Deletions or Corrections to the Regular Meeting Agenda
- D. Minutes – Draft      Draft January 14, 2004, Draft February 4, 2004 and Draft February 18, 2004
- E. Public Comment
- F. Legal Counsel's Report
- G. Action Items
  - 1. Approval of the Pending Payments List for February 25, 2004
- H. General Manager's Report
  - 1. Update on Strategic Planning
  - 2. Update on conversation with Science Kiener of FEMA on a FEMA Grant Extension
  - 3. Update on Initial Contact with Agencies Concerning Near Shore Water Monitoring and Testing
- I. Engineer's Report
  - 1. KLWTD Engineering Status Report for the Period Ending 02/24/04
- J. Public Comment
- K. Commissioner's Items
  - 1. Discussion of the Haskell Company suggested project manager – Chairman Bauman
  - 2. Discussion of Municipal Wastewater Appropriations Deadlines – Commissioner Tobin
- L. Meeting Adjournment

# Florida Governmental Utility Authority

## Guest Sign In Sheet

Thursday, February 19, 2004

\*\*\*\*Please Print\*\*\*\*

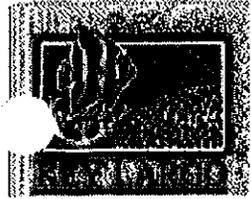
<u>Name &amp; Company</u>	<u>E-mail address</u>	<u>Phone</u>
1. Will English	William.English@Nashville.com	909-759-8110
2. Luis M. Arcos	Luis@LMARCOS.COM	305-924-0233
3. Steve Gibbs	SGIBBS@KEYSNEWS.COM	664-2266
4. BURKE ANNON		305-852-6179
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***DRAFT***

**Key Largo Wastewater Treatment District  
Board of Commissioner's Meeting Agenda**

**4:00 PM Wednesday, January 14, 2004**

**Key Largo Civic Club, 209 Ocean Bay Drive  
Key Largo, Monroe County, Florida**



**Board Members Present**

Gary Bauman, Chairman  
Cris Beaty  
Jerry Wilkinson  
Charlie Brooks  
Andrew Tobin

**Staff Members Present**

Robert Sheets, General Manager  
Tom Dillon, Board Attorney  
David Miles, Chief Financial Officer  
Ed Castle, Board Engineer  
Jeff Weiler, Board Engineer  
Faith Doyle, Board Clerk

**Guests Present**

Peter Kinsley, The Haskell Company  
Ted Hortenstine, Brown and Caldwell  
Oppenheim, Brown and Caldwell  
Marguerite McCauley, Government Services Group, Inc.  
Gaile Jalenlek, Key Largo Resident  
Robert Burt, Key Largo Resident  
Steve Gibbs, Reporter  
Ann Henson, Reporter  
Dick Morton, Key Largo Resident  
Richard Lancaster, Key Largo Resident  
Nos Espat, Randazza

A. Call to Order

Chairman Bauman called the meeting to order at 4:11 pm

B. Pledge of Allegiance

All stood and recited the Pledge.

C. WORKSHOP – ADMINISTRATIVE PROCEEDURES

Please see below.

D. Additions, Deletions or Corrections to the Regular Meeting Agenda

It was the consensus of the Board to move the workshop to the end of the meeting to accommodate the members of the Key Largo Federation of Homeowners who wish to attend their meeting that was scheduled to begin at 7:00 P.M. Commissioner Brooks noted that he was concerned that several items on the agenda that were of interest to the public who had not arrived at the meeting because a workshop was advertised to be held at 4:00 P.M. Chairman Bauman noted the concern and suggested that agenda items not pertaining to the secondary treatment process be considered first.

Chairman Bauman requested that an additional public comment period be added to the agenda prior to the workshop. There were no objections to the change.

Commissioner Brooks stated that after the concerns stated by Commissioner Tobin at the last meeting that there are issues related to the contract that should be considered prior to the action items. He believes an executive session is necessary. Mr. Dillon stated that with no complaint pending the Board is prohibited from calling an executive session. He noted that an executive session can only be called to discuss a pending claim and it would require a special notice to be advertised and a court reporter present to provide an official transcript.

#### E. Public Comment

Chairman Bauman asked for public comment. Mr. Dick Morton of Riviera Village addressed the Board. Mr. Morton inquired if the projects were a negotiated contract or if they had been part of a competitive bid. Mr. Sheets stated that the Haskell contract was awarded as a result of a response to a request for proposals. The process after the award was to finalize the terms of the contract. Mr. Morton believes that all of these disputes should have been taken up before this time. Mr. Sheets stated that the issue being discussed at present was the secondary treatment process. Mr. Morton asked if the secondary treatment process decision was the Board's responsibility. Mr. Sheets stated that it is a provision of the contract to permit the Board to issue a purchase order for equipment if they desire and to participate in the treatment process selection. Mr. Morton stated that he is concerned with the controversy over this issue and that the Board continues to question the recommendations.

Mr. Dick Lancaster, President of the Hammer Point Board of Directors addressed the Board. Mr. Lancaster commended the Board for their progress in the tight time frame they have been up against. Mr. Lancaster stated concern with the Board's continuing debates over the treatment system issues. Mr. Lancaster believes that the USBF treatment system has a greater potential for problems and because the contractor (Haskell), the engineering company (Brown and Caldwell), board engineer (WEC), the manager and the Monroe County coordinator of wastewater opposes it and with the lack of a guarantee that the process will work he urged the Board to rethink and proceed carefully.

The clerk was requested to reflect for the record that Mr. Nos Espat arrived at 5:10 P.M.

#### F. Legal Counsel's Report

##### 1. Response to Commissioner Tobin's concerns raised at the 1/7/04 meeting

Mr. Dillon reviewed his memorandum in detail. The memorandum is made part of this record as Attachment A.

Mr. Kinsley of the Haskell company commented that the TSC Jacobs Company has worked with Haskell prior and he is confident that they will sign the purchase order and payment terms and would provide payment and performance bonds.

Commissioner Brooks asked about KLWTD purchasing the equipment. Mr. Dillon states that per the contract they could purchase it.

Discussion ensued on the issue of 'good faith' in honoring the contract. Mr. Dillon cautioned that the WTD must act reasonably and Haskell needs to demonstrate that they are acting reasonably and their action of requesting further information from Fluidyne was done to demonstrate this. Direct purchases were also discussed.

Commissioner Brooks believes that the contract terms are negating the Board's desires. Commissioner Brooks questioned if Board members could attend the design phase meetings. Discussion ensued on the possible sunshine law implications of members attending the design meetings. Commissioner Wilkinson stated that from past practice the Board had given comments during design discussions, which the engineers have addressed but not always to the Board member's liking.

Mr. Sheets is confident that the contract has a provision that beyond the monthly status report there is a meeting to be held monthly and these could be held in conjunction with a board meeting, however this may preclude the staff from reviewing information prior to the Board.

Chairman Bauman suggested that staff recommend a procedure to the Board. Mr. Castle stated that the contract requires Haskell to provide submittal protocol and once the 30% design is received a recommendation to approve them would be provided. Mr. Kinsley of Haskell stated that he welcomes the participation of the Board. Commissioner Wilkinson asked what the deadline for 30% design approval was. Mr. Kinsley stated that presently there is a two-week time frame in the present schedule.

Commissioner Bauman asked WEC to have a recommended submittal protocol available for the February 4, 2004 meeting.

2. Warranty Form to Nos Espot
  - a. Randazza suggested form
  - b. Dillon suggested form
3. Fluidyne Warranty

Mr. Dillon presented a revision to items F2a and F2b he addressed items F2 and F3 in his memorandum all of which are made part of the record as Attachment B. The attached warranties were the final versions that were signed by the vendors. Discussion ensued concerning the various warranties.

Discussion ensued on the characteristics of the sewage. Assumptions were made during the RFP process per Dillon and he stated that if they are not realistic they should not be adhered to.

Commissioner Brooks questioned influent characteristics and its possible negation of the warranties. Mr. Dillon had suggested different verbiage to protect the district. Further discussion ensued.

Chairman Bauman objected to the attempts to re-negotiate the warranties during the meeting. He believes that with three signed warranties there should be a decision made immediately. Commissioner Brooks stated that he had a problem with that. Mr. Dillon suggested making a motion on approving the signed documents as presented. Commissioner Brooks stated that he hasn't had time to review what was sent on the 1-12-04.

Commissioner Tobin asked if the Fluidyne warranty was substantially the same as what had been provided in the agenda book. Mr. Dillon stated all except the two items that he detailed.

Commissioner Brooks stated there is confusion by placing three warranties together. Mr. Dillon stated that Randazza and Purestream had split out the responsibilities listed in the original warranty. Commissioner Tobin stated that he would prefer one warranty with the manufacture and vendor with only one document.

Discussion ensued on the bonding requirements. Mr. Dillon stated that bonds during the initial year are not as important because Haskell holds a bond. He noted that two bonds are not necessary, but that if Haskell is not willing to take responsibility on a process they could not support, there would be no bonding to secure the performance of the person providing the secondary treatment system. Discussion ensued concerning the function of a performance bond and payment bond and the fact that legal counsel reiterated that has never heard of a "process bond". It was noted that the performance bond requirement was struck from the Purestream/Randazza warranty.

#### 5. Haskell Company Purchase Order

Mr. Kinsley answered questions concerning the purchase order and added that vendors he has worked with do provide support and if it is not stated in the warranty it is either stated in the contract or the purchase order.

#### 6. Haskell Design Calculations Request

#### 7. Informational copy of the December 29, 2003 Haskell Company Correspondence

Items F6 and F7 were discussed. Mr. Dillon reviewed the issue of delay. Mr. Dillon had requested Haskell to get information to prove or disprove that USBF would not work. The calculation requested had not provided by Randazza. Commissioner Brooks stated the design calculation had been available since February. Mr. Dillon countered that a statement made in a Randazza's letter says that the district staff could not verify the cost increase because they don't have the information. Please see Item G-2 below for further discussion.

The Chairman recessed the meeting at 6:55 p.m.

The Chairman reconvened the meeting at 7:10 p.m.

### G. Action Items

#### 1. Pending Payments List

Mr. Sheets stated that the payment list was modified to show what funds the payments come out of as directed by the Board. The GSG time sheets and hourly activity sheets were supplied for informational purposes as per the Board's request.

Mr. David Miles reported the funds on hand at present were \$62,585.66 and that a deposit from FCAA of FEMA Phase 1 money in the amount of \$232,108.21. The MSTU money has not been disbursed as previously reported. The amount is approximately \$140,000.00. It was noted that the County's policy is to not pay by wire transfer. Commissioner Wilkinson requested the current cash balance. Mr. Miles stated that it was \$294,693.87 the bills payable today will be deducted from the stated balance.

Chairman Bauman asked if there should be a separate capital and administrative funds. Mr. Miles stated that it would be more difficult and is not necessary because it creates an administrative burden to track the accounts.

Commissioner Tobin stated the routine for approval of the bills should be to let the Board review the legal invoices, that GSG invoices should include accounting of the time spent on KLWTD activities and that he would not approve the Haskell pay applications until he understands the process. Mr. Sheets stated that he had provided pages of breakdown at item H2. Mr. Tobin stated that the Mull & Associates invoice could be paid if Mr. Miles could explain it. Mr. Miles stated that it was for the hours spent for the annual audit less 10 percent retainage.

Commissioner Brooks question the Board's payroll checks being process prior to the payments pending list being approved. Mr. Miles stated that by resolution of the Board he has the authority to disburse up to \$2,500.00 and that the payroll is being paid under that authority. Also the payroll and federal taxes have been paid.

Commissioner Brooks stated that legal fees for two months in the amount of approximately \$16,000 concerns him and that if the cost of on issue is over \$5,000 there should be an accounting. Mr. Dillon stated that the contract states that his invoice is to be submitted in detail and forwarded to the manager. Mr. Sheets stated that his had been done in the past, however at the transition of Mr. Dillon to legal counsel it was assumed that it was no longer necessary this can be changed. Mr. Sheets asked the Board if it were requesting copies of all the invoices listed on the pending payments list. Discussion ensued. Mr. Sheets requested direction to provide backup on all pending payments. Commissioner Brooks and Commissioner Tobin would like to see a dollar threshold. Discussion ensued. Commissioner Beaty would like Commissioner Tobin to review all legal bills. Chairman Bauman asked the other service providers if they had difficulty providing detailed invoices. It was noted that consideration must be given to the prompt pay act because when the Board has money the prompt pay act comes into play so a specific procedure should be enacted.

**MOTION TO APPROVE ALL BUT ITEMS NO. 3, 4, 5, 6, (DILLON'S, GSG'S AND HASKELL'S) AND TO PAY THE BALANCE OF THE PAYMENT PENDING LIST WAS MADE BY COMMISSIONER TOBIN. Discussion ensued. Commissioner Tobin stated that Haskell might be approved at the end of the meeting after the pay application process was reviewed. Commissioner Beaty seconded the motion. Chairman Bauman requested a roll call vote as follows:**

<b>Commissioner Beaty</b>	<b>Yes</b>
<b>Commissioner Brooks</b>	<b>Yes</b>
<b>Commissioner Tobin</b>	<b>Yes</b>
<b>Commissioner Wilkinson</b>	<b>Yes</b>
<b>Chairman Bauman</b>	<b>Yes</b>

**All were in favor and the motion was unanimously approved.**

**Commissioner Tobin requested an item be added to the agenda. The item was to reconvene the meeting after the workshop to approve payment of the Haskell pay application if it were in order. The Board gave its consensus.**

2. Resolution of Haskell Contract Concerns
  - RE: Secondary Treatment Selection
    - a. Resolve to Mediate with the Haskell Company
    - b. Resolve to Relieve Haskell from AWT Warranty

c. Select Modified SBR Technology

Mr. Dillon concluded his presentation on the letter from Haskell and stated that staff had examined the other information provided by Randazza and Purestream and continues to conclude that the USBF process would not work. Mr. Kinsley and Mr. Hortenstine summarized that from the design calculations that were evaluated and after consulting with Purestream's engineers that none of the information received had changed their position. Mr. Hortenstine gave specific details of the process used in analyzing the addition information, which included speaking with Dr. John Smith with Smith Environmental of Cincinnati Ohio. A modeling scenario was run with the information but it didn't address the bio kinetics. Dr. Bratby of Brown and Caldwell also spoke with Mr. Smith and are in agreement with Mr. Hortenstine's deductions. Dr. Bratby used Biowind to model and couldn't achieve 3.0. Mr. John Smith provided information from a plant in Long Island, NY and one from Italy to demonstrate that 3.0 could be achieved however, out of 3-5 months of data provided only several days reached 3.0 the consistent numbers were from 5 to 8. Mr. Kinsley and Mr. Hortenstine concluded that they did not find out anything that changed their opinion.

Chairman Bauman asked Mr. Dillon for his opinion on the issue. Mr. Dillon stated that the short answer is that neither Haskell or Brown & Caldwell, nor Weiler believes that USBF can meet the standards and Haskell cannot go forward without resolution to the problem. Mr. Castle has received the same information and he stated that it did not include the kinetic values to achieve the levels required. Mr. Castle purchased a different process model program from the EECS Group and he couldn't achieve the required nitrate level. Discussion ensued. It was noted that a program was not sent just the input information. Mr. Castle of WEC concluded that no significant information to change his mind was provided and the fact that he used an independent model and obtaining the same results aided his conclusion.

Commissioner Tobin asked if the process calculations were first received on the 10<sup>th</sup> January. Mr. Castle stated that the first useable information was received on January 10, 2004.

Chairman Bauman asked for comments from Mr. Espat of Randazza. Mr. Espat noted that he was not on the call with Brown and Caldwell and the Purestream representatives so he could not dispute what was said. Mr. Espat believes there are two issues, one why the process name had changed, because four major competitors had claimed rights to their patent. Mr. Espat noted that there was no change to the process. Mr. Espat noted that John Smith was not only the consultant, but is the co-owner of the patent. Mr. Espat addressed Mr. Dillon on the warranty and clarified that when design is discussed the only reason we say 'actual' is because we must have some parameter of where you are starting. It is Mr. Espat's opinion that no one will guarantee from a specific starting point. Mr. Espat stated that it was clear when Boyle sent out the RFP criteria that there would not be 250 B.O.D. you would have a food distribution supplement to provide the nitrogen results. Mr. Espat stated that as far as consequential damages, the warranty is signed by both owners of the Purestream Company and Randazza provided an additional warranty. Mr. Espat stated that in the disclaimer where Mr. Dillon addressed the issue was contradictory.

Mr. Espat stated that concerning bonding that if Haskell is providing the opportunity for Fluidyne to bond through them so he should be given the same opportunity. Mr. Espat believes that Fluidyne can't get one on their own either, he is not sure of this but he should be given the same opportunity. If he needs to have one he would like to add it to his proposal. The cost of the bond should be included in the original bid he would buy it if it were made available to him. Mr. Espat stated that concerning process or performance bonds it is important that the District clarify what performance means and he believes as far as performance bonding it should be clearly stated as what it includes if it is a process warranty it has to be defined so that you are protected for 5531. Mr. Espat thanked the Board.

Chairman Bauman asked for further Board comment. Commissioner Brooks requested to read information into the record. Commissioner Tobin requested to question Mr. Espat. The Chair granted the request.

Commissioner Tobin asked Mr. Espat to please tell the Board why the information that was asked for months ago had only been provided last week and why according to both engineers it was not sufficient data. Mr. Espat stated that he had arranged the discussion with Mr. Smith and that the calculations and all the required information had been on record in the District and was issued by CPH Engineering and he had spent 5 hours going over the information with Mr. Stu Oppenheim in February. Mr. Espat stated that he had difficulty defining whom he should be in contact with and that he had answered Mr. Kinsley's requests but Mr. Oppenheim requests were extensive and costly. Commissioner Tobin stated that the information received from Randazza hasn't established 3.0. Mr. Espat stated that the USBF BESST technology is patented and they cannot divulge the essence of their process with the calculations that others could copy their process. Discussion ensued on the patent process and the information divulged and if it is public record. Commissioner Brooks stated that on patents some are never divulged Polaroid had hundreds on film process and Coca Cola's ingredients. Mr. Espat stated that there are portions of the information, which were not disclosed to WEC and Brown and Caldwell. Commissioner Tobin stated that without this information the Board cannot prudently spend 8 million dollars on something they cannot see or have proven them. Mr. Espat stated that there is no engineering that can present SBR has produced 5531.

Commissioner Brooks contacted John Smith of Smith Environmental Engineering. He responded with a letter dated January 13, 2004, which is made part of this record as Attachment C. Commissioner Brooks noted a point made in the letter that as the consultant for Purestream's USBF BESST system that the KLWTD project had been reviewed in detail by him and the current design will meet the requirements of 2.0 per liter of total nitrogen. It further explains that Mr. Smith had discussed with Ted Hortenstine and attempted to describe that the process is unique and combines the internal recycle and doesn't fit the mold and doesn't fit standards. It also notes that during Mr. Smith's tenure at the EPA he was part of a pilot program that operated many plants in various places. Commissioner Brooks also noted that he had talked with David Refling of Boyle Engineering who claims USBF BESST could meet the requirements and so stated in the PDR that a chemical feed and possibly a denitrifying filter on the end would be required for the other process. Mr. Refling provided an email verifying his opinion, which is made part of this record as Attachment D. Commissioner Brooks also referred to a letter from Osvaldo Ojito who worked with Gartek (Attachment E) and a letter from Gartek (Attachment F) stating that both processes have been used and they believe both systems could meet 5531. In total Commissioner Brooks had four engineers that claim it would reach 5531.

Chairman Bauman stated the issue is not whether he believes it or could find engineers to certify the process the issue is Brown and Caldwell doesn't believe it and the Board needs to decide if we need to get new engineer, or begin dispute resolution or consider a new vendor. It is a legal issue at this point; Haskell has a contract with Brown and Caldwell.

COMMISSIONER WILKINSON MADE A MOTION TO APPROVE THE ISAM FLUDIYNE PROCESS. CHAIRMAN BAUMAN RULED THE MOTION OUT OF ORDER UNTIL DISCUSSION IS CONCLUDED. Commissioner Tobin interjected with several more questions. Commissioner Brooks stated that concerning parliamentary procedure if the Board wants to take this up the Board may need to motion to reconsider the previous motion and for it to come forth it must come from one of the yes votes for the USBF system.

Commissioner Tobin inquired that if Boyle is comfortable with USBF and with three board members vacillating he thought that with cooperation with Nos they might come to some determination. Commissioner Tobin asked for Haskell's opinion of Dave Refling's email stated that both technologies have the potential and his recommendation for the KLWTD to hold a performance bond. Commissioner Brooks added the Mr. Refling had spent about 30 minutes on the phone with him and stated that both can believe 5531 and for this size plant the USBF would be best for this application and would produce a saving. Mr. Kinsley stated that he knows, likes and respects Mr. Refling along with Mr. Betancourt of Gartek, however, they have not been privileged to all the information and exchange of information nor had the benefit of the study and at the end of the project neither Gartek nor Boyle will stamp the drawings Brown & Caldwell is going to stamp them. The Haskell Company is not swayed by the comments versus the study. Mr. Kinsley concluded that the Board's engineer Ed Castle of WEC is also getting the same numbers with all the same information.

Chairman Bauman closed the legal report and asked the Board members for any final comments. Commissioner Tobin asked Mr. Dillon that in light of the recent memos what his opinion was of the legal issues the Board might face. Mr. Dillon stated the main question is who will take the risk for performance. If we demand that Haskell take USBF and install it, Haskell would be justified in invoking the dispute resolution process, and that it is not reasonable to ask someone to build a plant after so much detailed study showing that the technology won't work. We would be unreasonable if we demand that they do so. Commissioner Tobin asked if they had signed a contract saying we can choose a process and could they find remedy by getting out of the contract. Mr. Dillon stated that not only could they seek a remedy they can declare KLWTD in breach and demand payment for the time they spent and without a clause in the contract covering termination the District could be liable. This is not the type of contract where the Board can demand performance that is not objectively reasonable. If the Board does so, the District will lose time and money.

**CHAIRMAN BAUMAN BROUGHT ITEM G-2 RESOLUTION OF THE HASKELL CONTRACT CONCERNS TO THE FLOOR FOR CONSIDERATION. THE THREE OPTIONS PROVIDED WERE: A. RESOLVE TO MEDIATE; B. RESOLVE TO RELIEVE HASKELL FROM AWT WARRANTY; OR C. SELECT MODIFIED SBR TECHNOLOGY. COMMISSIONER WILKINSON MOTION TO SELECT 2C TO SELECT MODIFIED SBR TECHNOLOGY.** Brooks states he is out of order. Mr. Dillon noted that a motion to reconsider applies on the day of the vote only. Mr. Dillon's professional opinion is that Commissioner Wilkinson is in order. **CHAIRMAN BAUMAN ASKED TO WAIVE THE RULES TO MAKE A SECOND AND SECONDED.** Chairman Bauman asked for further discussion. Commissioner Beaty asked what the exposure would be if we relieve them of the warranty. Mr. Dillon stated that the exposure would be to give up the 8 million dollar performance bond the benefit of the engineer selected to design and seal the project and to give up the performance warranty that Haskell provides and substitute it with an engineer that KLWTD did not choose. Also Purestream would be without a performance bond and there would be a conflict from the obligations of Haskell to complete the work and we would lose the meat of the contract. Mr. Dillon concluded that the team was selected by the Board and the District would lose the benefit of the team and that replacing it with an engineer to be named later and an un-bonded technology would not be prudent. Commissioner Brooks stated that he has low confidence with fluidyne due to the information distributed and the form of reports from various plants, for example the Bartow plant being identified as an AWT plant. He questioned who generated the reports and the internet claims that Bartow is an AWT plant. Commissioner Brooks stated that he could not support the motion. Commissioner Tobin stated that he is glad the board takes the time to hammer out the issues and glad the public is interested. He feels trapped because the lawyer advises voting a certain way, which is a lesson that the legal counsel is the sixth Commissioner. He continued that the KLWTD is lucky they have an experienced, ethical attorney, but Commissioner Tobin is not happy to be in the present position.

Commissioner Tobin stated that the Board has done all it can to support the original decision but he is disappointed that Mr. Espat continues to be the loner trying to make the point for the company that the

USBF system has a lower cost but with the little amount of information given late in the game there is not much else that can be done and we may regret Mr. Espat not being there and there may be problems in the future but we are trapped with no choice. Commissioner Wilkinson stated the public should have been permitted to speak prior to the vote and the solicited letters presented this evening were no proof. The public needs some proven system and the Haskell warranty system is best and he supports SBR and technology committee has recommended SBR. Commissioner Wilkinson stated that he was sorry it is this way but a selection must be made and the board was elected to make the tough decisions. He thanked all involved for their exceptionally hard work after we continue to slap them and say they don't know what they are talking about. **WITH NO FURTHER DISCUSSION CHAIRMAN BAUMAN REQUESTED A ROLL CALL VOTE AS FOLLOWS:**

<b>COMMISSIONER BEATY</b>	<b>NO</b>
<b>COMMISSIONER BROOKS</b>	<b>NO</b>
<b>COMMISSIONER TOBIN</b>	<b>YES</b>
<b>COMMISSIONER WILKINSON</b>	<b>YES</b>
<b>COMMISSIONER BAUMAN</b>	<b>YES</b>

**THE MOTION WAS APPROVED BY A VOTE OF THREE IN FAVOR AND TWO NOT IN FAVOR.**

**H. General Manager's Report**

1. Transition Committee Status Report No. 2

Mr. Sheets stated that this item would be covered during the workshop or postponed to a later date.

2. Presentation of GSG Time Sheets and Hourly Activity Descriptions
- 3.

Mr. Sheets stated that this information was provided at the direction of the Board and would be provided with each invoice. Commissioner Wilkinson commented on the time sheets and breakdowns submitted by GSG and asked if it is necessary to have this information with every invoice. He believes it is not necessary for a fixed fee contract.

4. Discussion with FEMA concerning the EA

Mr. Sheets reviewed the information provided which included an email log forwarded from Science Kilner. Mr. Sheets stated that he would be meeting with Miles Anderson on Monday the 19<sup>th</sup>.

**I. Engineer's Report**

1. Conceptual Review of the Impacts of Connection of the Calusa Camp Resort to the KLWTD (Please see the enclosed report)

Mr. Castle offered to postpone the presentation due to the late hour. Commissioner Tobin requested a summary of the Calusa report that had been provided. Mr. Castle stated that several synopses were provided. The first deals with quality of influent and the system that is in place. The wastewater will be strong and greasy but with no toxic effects however, there is a great deal of infiltration but once the system is rehabilitated it could be accepted. Discussion ensued on the age of the system and financing the connection from the Calusa Campground to the KLWTD system. Mr. Castle notes that the positive aspects are that the KLWTD system picks up flow and adds 350 customers and pointed out that on page 24 of the report was a summary of how much income could potentially be generated.

## J. Commissioner's Items

1. Discussion of Strategic Planning and Consulting Strategic Planning Firm  
-- Chairman Bauman
2. Discussion of near shore water testing – Chairman Bauman

It was the consensus of the Board to table the Commissioner's Items until the February 4, 2004 meeting.

## K. Meeting Adjournment

Mr. Sheets introduced Ms. Marguerite McCauley who was present to conduct the Administrative Procedures Workshop. Mr. Sheets stated that the Administrative Procedure should be scheduled as a separate meeting if it is to get undivided attention. He added that the document would take many meetings to become a working document on how to address issues facing the KLWTD. The Board gave its consensus to hold the Administrative Procedure Workshop at a future meeting. Ms. McCauley offered to provide a brief overview of the information provided. Chairman Bauman declined but thanked Ms. McCauley for her attendance and invited her back to present the manual at a future meeting. Ms. McCauley would advise the Board of her availability.

Mr. Sheets stated that the Transition Plan was to be discussed as part of the workshop but could be postponed to discuss the Haskell pay application. It was the consensus of the Board to postpone the discussion of the Transition Plan until a future agenda.

**The chairman adjourned the regular meeting at 8:50 pm to begin the workshop.**

**The chairman reconvened the regular meeting at 9:17 p.m. Commissioner Brooks made a motion to approve the Haskell Company's pay application NO. 1. Commissioner Tobin seconded the motion. All were in favor and the motion was unanimously approved.**

**All were in favor of a motion to adjourn at 9:18 p.m.**

**Thomas M. Dillon**

# Memo

**To:** Key Largo Wastewater Treatment District  
**From:** Thomas M. Dillon  
**CC:** Robert Sheets, Charles Sweat, David Miles, Faith Doyle  
**Date:** 1/11/04  
**Re:** Various issues raised by Board members

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**Note: This memorandum constitutes attorney work product and attorney communications.**

At the Board meeting of January 7, 2004 and in emails thereafter, members of the Board have raised the following issues:

1. Comment on the advisability of assuming certain obligations in connection with the choice of the USBF secondary treatment system
2. Comment on the Haskell delay issue
3. Comment on the Haskell Purchase Order form and design calculation requests
4. Comment on the Purestream/Randazza warranty and the Fluidyne warranty
5. Does the Board have a responsibility to review or approve the 30% design drawings?  
*(Attachment B - TO memo of 1-12-04)*
6. May Board members attend a progress meeting under the Haskell contract?

**1. I recommend against the District assuming obligations not already assumed in the Design-Build Agreement in connection with the choice of the USBF secondary treatment system.**

I addressed this issue in my memorandum to the Board dated December 16, 2004. Briefly summarized, it is my opinion that the Design-Build Agreement places certain responsibilities on Haskell as the design-builder in connection with the secondary treatment system.

These responsibilities include the obligation to design the Project, including the secondary treatment system, to assure that the Project is constructed to a standard of quality, integrity,

durability and reliability that is equal to or better than the standard established by the Scope of Work; and to warrant equipment and materials purchased by Haskell. The District can rely on Haskell to perform these obligations based on the same factors that led the District to select Haskell as its design-builder, i.e., the experience and reputation of Haskell and its design engineer to do so competently. In addition, Haskell's performance of these obligations is secured by a performance bond in a penal sum equal to 100% of the contract price.

The evidence presented to the District to date does not include any evidence that the USBF system or the ISAM/SBR system has ever met the standard established by the scope of work, i.e., 5,5,3,1. The engineering analysis of Brown & Caldwell and Weiler Engineering, and the expert opinion of GSG suggest that the USBF system, as that system is understood by those experts, cannot meet the standard, but that the ISAM/SBR system can meet the standard. The only expert who has provided an opinion that USBF can meet the standard is the engineer proffered by Randazza at the October 17, 2003 meeting.

In correspondence and at the January 7, 2004 Board meeting, Haskell has proposed a solution under which the District would purchase the USBF system directly and would relieve Haskell of any obligation to provide engineering services or a performance warranty for the USBF system. Haskell made that proposal because of its belief, based on Brown & Caldwell's previous analysis, that the USBF system will not achieve the contract standard of 5,5,3,1. However, as of January 7, 2004, Haskell apparently had not yet been provided with design calculations for the USBF system that Randazza actually intends to provide. I am in receipt of a January 10, 2004 email from Randazza that purports to provide the requested calculations. I understand that Haskell and its design engineer, Brown & Caldwell, will review these calculations in order to determine whether the proposed USBF system is likely to achieve the standards.

If, after reviewing and evaluating the USBF system, Haskell in good faith determines that it cannot accept responsibility to design and warrant the USBF system and if Haskell on that basis insists that it will not accept that responsibility, there will be a serious issue whether the District can declare that Haskell has breached its obligations under the Design-Build Agreement.

It is my opinion that, if, based on an engineering analysis of the engineering information provided by Randazza, Haskell takes the position that the USBF system will not perform and the District takes the position that Haskell must design and construct the USBF system anyway, and Haskell invokes the dispute resolution provisions of the Design-Build Agreement, the District will not prevail unless it first retains additional expert assistance. The dispute resolution process, even using the streamlined procedures in the Design-Build Agreement, will be costly and time-consuming.

I do not recommend that the District resolve this issue by assuming Haskell's present responsibility to design and warrant performance of the secondary treatment system. Doing so would give up important District contract rights and leave the District without the services of its chosen design-build contractor to design and warrant system performance. Instead, the District would have to rely on an unknown design engineer that the District did not select,

and the District would have to rely on the promises of Randazza and Purestream to ensure system performance. These promises would be secured only by a \$75,000 cash deposit, which, in the opinion of District staff, would be insufficient to effect any significant redesign or alteration of the secondary treatment system.

**2. Further delay in the Project could cause it to extend beyond its contractual completion date, but Haskell has not demonstrated that fact through schedules submitted to date.**

If the Project is delayed beyond its contractual completion date, there will be a possibility that the District will be entitled to liquidated damages. The District is entitled to liquidated damages to the extent that the project is actually delayed beyond its contractually established completion date as a result of events that are beyond the control of Haskell, and for which the District has assumed responsibility. Haskell contends that the Project is at risk of being delayed beyond its completion date as a result of events beyond its control and for which the District is responsible.

In support of Haskell's contention that the delays to date could delay the Project beyond its planned completion date, Haskell has provided a series of schedules depicting its planned work activities. The schedules accompanied a letter dated December 29, 2003.

These schedules are not Critical Path Method ("CPM") schedules. A CPM schedule is one that shows the shortest time in which a project can be completed by depicting major work items in a logical sequence. CPM scheduling is generally considered to be the only satisfactory method of showing project delays.

The schedules submitted by Haskell are bar charts showing the amount of time within which Haskell intends to complete various aspects of the work. However, since the schedules do not show the logical time relationship between all work items, it is not possible, based on these schedules, to infer the actual impact of each event of delay on the total time necessary to complete the work.

Haskell has cited three events that it believes have delayed the Project, including (a) alleged delays in final resolution of the FEMA Environmental Assessment ("EA"); (b) alleged delays in the District's selection of a secondary treatment process; and (c) alleged delays resulting from the District's selection of the USBF process, which Haskell believes cannot work. All of these events could contribute to a delay in Project completion. Without commenting on the merits of Haskell's contention that the District has assumed responsibility for these events, the following discussion illustrates the point that Haskell's bar chart schedules do not demonstrate that the Project will actually be delayed.

**(a) Delays in final resolution of the EA**

Haskell first advised the District of this alleged cause for delay by letter of October 13, 2003. The letter was sent in response to an October 13, 2003 email from Robert Sheets to Science Kilmer, in which Mr. Sheets expressed the District's concern with the progress of the EA. On the basis of that email, I believe that there is no question that the EA has been delayed beyond the date on which it was expected. However, the Preliminary Project Schedule (Design-Build Agreement Exhibit B), which is not a CPM schedule, does not show

a date by which the EA was anticipated. (I am not aware of any other schedule provided by Haskell prior to the "Sept '03 Update" submitted with Haskell's letter of December 29, 2003.

In order to determine the effect of a delay in the EA, it would be necessary to start with a CPM schedule and to determine the planned date of the first event that could not occur in the absence of EA completion. Haskell has not done so.

**(b) and (c) Delays in the secondary treatment selection process**

Haskell first advised the District of this alleged cause for delay by letter of October 31, 2003, in which Haskell alleged that the District improperly postponed selection of a secondary treatment system at the District's special meeting of October 17, 2003. By letter of December 12, 2003, Haskell asserted that the District's selection of USBF was continuing the delay.

Again, the Preliminary Project Schedule does not show a date by which this decision was anticipated. Although Haskell's letter of October 31 states that the decision should have been made at the October 17 meeting, the letter of December 29 states that the decision should have been made on September 17. In the absence of a CPM schedule, it is simply not possible to ascertain the effect of any delay in selecting a secondary treatment system.

Despite the fact that the exact amounts of delay cannot be determined, it is clear that major portions of the Project cannot be commenced until the EA is completed and the secondary treatment issue is resolved. Any time lost as a result of these events will be likely to consume available contract time and will put timely completion of the project at risk.

At the District meeting of January 7, 2003, Mr. Kinsley stated that there were 40 days of float on the Project and that the District had used most of them. He questioned the fairness of the District using most of the float. Float is a quantity that can be determined only through CPM Scheduling. Float is the difference between the time allowed to complete the work and the time necessary to complete the work. At the present time and in the absence of a CPM schedule, it is not possible for the District to determine the amount of float available or to know how much has been used. In any case, the questions of who owns the float, who has used it, and whether such use was fair remain to be determined.

**3. A contractor's purchase order form is primarily the contractor's choice and the District should not become engaged in judging the propriety of a form unless substantial District interests are involved. The District and Haskell have agreed on the calculations required from Randazza.**

At the District's January 7, 2004 meeting and in a letter to Robert Sheets dated January 6, 2004, Haskell has advised the District that the purchase order form sent to Randazza is Haskell's standard purchase order form for complex equipment for which Haskell has assumed performance obligations. Haskell has advised that it invariably requires its vendors of complex equipment to sign this form.

By email of January 9, 2004, I asked Haskell to "certify that the standard purchase order and subcontract is the form that The Haskell Company typically uses for purchase of equipment similar in nature and complexity to the secondary treatment equipment and is the form that Fluidyne has agreed to." I have not received a response to this email.

In construction contract, the contractor is an independent contractor. The owner normally specifies only the desired result, and the contractor has the right and responsibility to select such means and methods as the contractor deems appropriate. Improper interference with contractor means and methods is a fertile source of construction contract litigation, in which owners can be held liable not only to the contractor for interference, but also to third parties if the interference destroys the independent contractor relationship. Therefore, unless there is a significant owner interest involved, an owner should normally not become involved in the selection of a contractor's means and methods.

In this case, I recommend that the District not attempt to interfere with Haskell's subcontracting or purchase ordering methods unless the District perceives that the subcontracting or purchase ordering methods are unreasonable and are being used improperly to subvert the District's decision regarding secondary treatment.

Assuming Haskell's representations as to the purchase order are correct and are confirmed in writing, I believe that that the District cannot make a credible case that Haskell's purchase order is unreasonable or is being used improperly to subvert District interests.

As to the requests for calculations made by Brown & Caldwell through Haskell to Randazza, I requested staff review of the calculation requests upon receipt. After discussion between staff and Brown & Caldwell, the requests were revised somewhat, and I understand that staff believes the requests to be reasonably necessary for Brown & Caldwell to review the USBF design. I have no basis on which to disagree with staff.

#### **4. Comment on the Purestream/Randazza warranty and the Fluidyne warranty**

By email dated January 9, 2004, I reviewed the warranty form that I had earlier submitted to Randazza, with Randazza's suggested modifications. Randazza had suggested that the part of the warranty requiring it and Purestream to provide a bond or other reasonable security to Haskell should be deleted. I believe that the requirement for security to protect Haskell is a reasonable requirement in view of Haskell's significant risks if the USBF system does not achieve 5,5,3,1 and in light of the fact that the record does not include evidence that the USBF is capable of doing so. Also, since the warranty form is substantially the same as the form already signed by Fluidyne, there is little reason to believe that the warranty form is unreasonable burdensome.

Note that Fluidyne is not able to provide security for the second year of the Fluidyne warranty. Purestream/Randazza should not be required to provide greater security than Fluidyne.

Except for the second year bonding requirement, the Fluidyne warranty is as requested by the District.

#### **5. The District has a responsibility to review and approve the 30% design drawings, but the contract does not require the Board to do so.**

The question whether the Board must act on the design drawings or other approvals is not specified in the contract. I don't know the Board's desire re action on the design drawings.

## **6. Board members may attend a progress meeting under the Haskell contract**

The Board asked whether it might attend a progress meeting with Haskell if the meeting is not publicly noticed. The Government in the Sunshine Act does not prohibit public officers from attending a non-public meeting and receiving information, as long as the discussion at the meeting is not a substitute for debate on an issue that will come before the agency. Board members may ask questions at such a meeting, but may not engage in discussion of future action items.

**Thomas M. Dillon**

# Memo

**To:** Key Largo Wastewater Treatment District

**From:** Thomas M. Dillon

**CC:** N/A

**Date:** 1/12/04

**Re:** Comparisons of warranties signed by Fluidyne, Randazza, and Purestream with forms provided to them

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**Note: This memorandum constitutes attorney work product and attorney communications.**

The purpose of this memorandum is to compare the warranties signed by Fluidyne, Randazza, and Purestream with the warranty forms provided to them by me on behalf of the District. None of the entities has signed the warranty exactly as provided. The comparison is in outline format with comments on the material changes made by each entity. I am providing along with this memorandum markups of the warranties provided and showing additions and deletions by each party.

Fluidyne has signed a warranty form that is very similar to that provided by me. Purestream and Randazza have made several changes.

- Purestream and Randazza propose a secondary treatment system called "BESST" in place of "USBF".
- Purestream and Randazza divide the warranty obligations among them, with Purestream warranting equipment and Randazza promising support and training. Where one of the two entities promises to fulfill a warranty obligation, I have not noted it as a material change.

## **MATERIAL CHANGES FROM THE FORMS PROVIDED.**

### **Recitals**

- Randazza and Purestream have modified the recitals, and the remainder of the document by removing the references to a "secondary treatment system" called

"USBF", and replacing them with references to an "advanced biological treatment process" called "BESST." I do not know the significance of this change.

Warranty duration of two years from Acceptance Date in Design-Build Agreement.

- Fluidyne limits duration to no later than 9/1/2007.

Conditions of warranty; sewage influent substantially as characterized for the purpose of the secondary treatment facility.

- Purestream requires the actual sewage influent characteristics to be "the same as the sewage influent design criteria as stated in the Design-Build Agreement and used in the design of the BESST plant."
- NOTE: I DO NOT BELIEVE THAT THE DESIGN-BUILD AGREEMENT STATES THE CHARACTERISTICS OF THE SEWAGE. TMD
- NOTE: THE PURESTREAM WARRANTY WOULD BE VOID IF THE ACTUAL SEWAGE VARIES IN ANY WAY FROM THE SEWAGE CHARACTERISTICS USED AS THE DESIGN BASIS FOR THE PLANT. TMD

Disclaimer of responsibility for certain consequential damages suffered by the district.

- Randazza form does not include the disclaimer

Security for warranty obligations.

- Fluidyne provides security for first year, only.
- Purestream provides no security.
- Randazza offers to pay "pay Haskell for a Process Bond if Haskell is able to obtain such a Bond in the Wastewater Treatment Industry" with the cost of the bond added to Randazza's proposal.
- Randazza to deposit \$75,000 as security for its promises.
- NOTE: THE TERM "PROCESS BOND" IS NOT A TERM WITH WHICH I AM FAMILIAR. THE FORM SOUGHT A PERFORMANCE BOND OR OTHER SECURITY FOR THE PROMISES MADE. TMD.
- NOTE: RANDAZZA'S PROMISES DO NOT INCLUDE ANY WARRANTY ON THE PLANT EQUIPMENT OR MATERIALS. TMD

Compliance with all applicable laws and regulatory requirements, including FDEP redundancy requirements.

- Purestream and Randazza have deleted this requirement.
- NOTE: THE DELETION IS SOMEWHAT SURPRISING, SINCE THE PROVISION REQUIRING COMPLIANCE WITH REDUNDANCY REQUIREMENTS WAS INSERTED UPON THE REQUEST OF RANDAZZA'S REPRESENTATIVE. TMD

## **Other**

- **Fluidyne form required it to provide advice, counsel, and technical support by telephone at no charge for not less than five years after expiration of the warranty. Fluidyne deleted this requirement but made the same promise in a cover letter.**
- **Randazza makes additional promises, as follows:**
  - **Provide construction assistance**
  - **Provide startup assistance and training**
  - **Provide on-the-job assistance and training for five years after startup**

## FLUIDYNE WARRANTY COMPARISON

Variations from District proposed form shown in red

WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, the District entered into that agreement in reliance upon, among other things, the representation by Haskell that it was offering an additional 12 months of warranty on the Fluidyne Corporation ("Fluidyne") SBR secondary treatment process equipment at no additional cost to the District, and

WHEREAS, the parties intend by this writing to memorialize that additional warranty on the part of Fluidyne,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, Fluidyne hereby warrants to the District as follows:

1. Fluidyne warrants that all materials and equipment provided by Fluidyne ("Fluidyne materials and equipment") to Haskell and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials.
2. Fluidyne warrants that it will, at its option, commence and diligently prosecute activities to repair or replace, within a reasonable time period, but not to exceed ten calendar days after written notice from the District, and at Fluidyne's expense, any and all Fluidyne materials or equipment that fail due to faulty materials or manufacture.
3. Fluidyne warrants further that if Fluidyne equipment fails to perform in accordance with the requirements of the performance criteria defined in Exhibit D of the Design-Build Agreement as a result of defective Fluidyne materials or equipment or because of the design of the Fluidyne SBR secondary treatment process equipment, Fluidyne will, within a reasonable time period, but not to exceed ten calendar days after written notice from the District, and at Fluidyne's expense, commence and diligently prosecute all actions necessary, including redesign and reconstruction of the secondary treatment process equipment, and modification of operating procedures, to cause the Fluidyne equipment to perform in accordance with the requirements of the performance criteria defined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.
4. If Fluidyne fails to respond in accordance with Item 2 or Item 3 above after ten calendar days prior written notice from the District and If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, Fluidyne will reimburse the District for the reasonable costs of such efforts within 30 days of the District providing notice to Fluidyne.

5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two years, but will not extend beyond September 1, 2007.
6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the Fluidyne materials or equipment or due to a defect in their design or specified operating procedures, the Fluidyne equipment is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.
7. The following are express conditions of this warranty:
  - a. That the sewage influent is substantially as characterized for the purpose of design of the SBR facility under the Design-Build Agreement and free of significant concentrations of material that can inhibit or adversely impact biological treatment processes; and
  - b. That the District has substantially complied with all of the operating instructions and maintenance requirements required for normal and proper operation and instructions communicated to the District by Haskell or Fluidyne under the Design-Build Agreement.
8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, Fluidyne will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but Fluidyne shall be entitled to compensation for the reasonable cost of repair or replacement.
9. Except for damage to the equipment caused by a condition described in Paragraphs 1 through 4, above, Fluidyne expressly disclaims responsibility for any damages caused by failure of the Fluidyne secondary treatment process equipment, including lost income to the District.
10. If the District or Fluidyne is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys' fees (including charges for paralegals and others working under the direction or supervision of the party's attorney.)
11. The failure of the District or Fluidyne to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought.
12. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida. Dispute resolution under this warranty shall be conducted in accordance with Article 14 of the

Design Build Agreement and in accordance with the following procedures: negotiations, mediation, and judicial resolution.

- ~~13. In addition to the foregoing warranty obligations, Fluidyne represents and warrants that it will provide advice, counsel, and technical support by telephone for a period of not less than five years after the expiration of this warranty at no expense to the District. [NOTE: FLUIDYNE COVER LETTER PROMISES TO PROVIDE TELEPHONE SUPPORT TO END USERS "LONG AFTER THE EXPIRATION OF THE WARRANTY PERIOD" AND "ADVICE, COUNSEL, AND TECHNICAL SUPPORT BY TELEPHONE AT NO CHARGE TO THE DISTRICT." FLUIDYNE COVER LETTER ALSO OFFERS TO PROVIDE A SERVICE CONTRACT AT EXTRA COST. TMD.]~~
14. In addition to the foregoing warranty obligations, Fluidyne represents and warrants that the Fluidyne materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.
15. Fluidyne will provide, through Haskell, bonding to secure performance of its obligations under this warranty and payment for labor and materials to be supplied ~~under this warranty~~ on the project including the initial 12-month warranty but not any extended warranty.

## PES WARRANTY COMPARISON

Variations from District proposed form shown in red

WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, PURESTREAM ES, L.L.C. ("PES") is a potential supplier of secondary treatment equipment an advanced biological treatment process, referred to herein as the USBF BESST plant, and

WHEREAS Randazza Enterprises, Inc ("Randazza") is an the sole authorized State of Florida manufacturers Representative representative of PES, and

WHEREAS, PES and Randazza, for the purpose of inducing the District to select the USBF plant BESST process for the Project, desires to make additional transferable warranty and service commitments for the benefit of the District to Randazza, and

WHEREAS, the parties intend by this writing to memorialize the additional transferable warranty and service commitments,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, PES and Randazza agrees as follows:

1. PES and Randazza warrants that all materials and equipment provided by PES as part of the USBF BESST plant to Randazza, Haskell, and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials.
2. PES and Randazza warrants that they will repair or replace, without delay and at their expense, any and all USBF BESST plant components that fail due to faulty materials or manufacture.
3. PES and Randazza warrants further that if the Project fails to perform in accordance with the requirements of the Design-Build Agreement as a result of defective PES materials or equipment, or because of the design of the USBF BESST plant, PES and Randazza will, without delay, and at their expense, undertake all actions necessary, including redesign and reconstruction of the USBF BESST plant, including additional process equipment, if necessary, and modification of operating procedures, to cause the Project project to perform in accordance with the requirements of the Design-Build Agreement as outlined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.
4. If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, PES and Randazza will reimburse the District for the reasonable costs of such efforts within thirty (30) days of the District providing notice to PES or Randazza.

5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two (2) years.
6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the PES materials or equipment or due to a defect in their design or specified operating procedures, the Project is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.
7. The following are express conditions of this warranty:
  - a. That the actual sewage influent characteristics are the same as the sewage influent design criteria as stated in ~~is substantially as characterized for the purpose of design of the USBF plant under the Design-Build Agreement and used in the design of the BESST plant;~~ and
  - b. That the District has substantially complied with all of the operating instructions and maintenance requirements communicated to the District by PES or Randazza or Haskell under the Design-Build Agreement.
8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, PES and Randazza will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but shall be entitled to compensation for the reasonable cost of repair or replacement.
9. Except for damage to the Project caused by a condition described in Paragraphs 1 through 4, above, PES and Randazza expressly disclaims responsibility for any damages caused by failure of the USBF BESST plant, including lost income to the District.
10. ~~Randazza will provide Haskell with all the assistance needed during the construction phase of the USBF plant at no cost to Haskell.~~
11. ~~Randazza will assume the full responsibility, at no cost to Haskell or the District, for the startup and training of District operators once the USBF plants #1, #2 and #3 have been completely installed and electrical power has been provided to the equipment.~~
12. ~~Randazza will continue to provide on the job supervision and technical training/assistance to the District operators at no cost to the District for a period of five years after the startup of USBF plants #1, #2 and #3 during which period, the USBF Plants will have been demonstrated to perform in accordance with the requirements of the Design Build Agreement. It is understood that plants #1, #2 and #3 will be tested to meet the Design Build Agreement by simply alternating the Influent flows to either of the plants at any time after startup of all three plants in order to demonstrate their performance.~~
13. If the District or PES or Randazza is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys' fees

(including charges for paralegals and others working under the direction or supervision of the party's attorney.)

14. The failure of the District or PES or Randazza to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought all parties involved with this Agreement and the Design-Build Agreement.
15. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida.
- ~~16. In addition to the foregoing warranty obligations, PES and Randazza represent and warrant that the PES materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.~~
- ~~17. PES and Randazza will provide to Haskell bonding or other reasonable security to secure performance of their obligations under this warranty and payment for labor and materials to be supplied under this warranty.~~
- ~~18. In addition to the foregoing, Randazza agrees that Haskell shall deduct from the first amounts due Randazza for the PES materials and equipment the sum of \$75,000, which shall be transmitted to the District and deposited in an interest-bearing account to secure performance by Randazza of all of the Randazza and Purestream obligations hereunder. If Randazza and Purestream satisfactorily perform all of their obligations under this warranty agreement, the District shall transmit the principal and all accrued interest to Randazza upon the passing of Two years from and after the Acceptance Date of the Purestream materials and equipment under the Haskell contract. If at any time the District reasonably believes that Randazza and/or Purestream are in default under this warranty agreement, then the District shall so notify Randazza of that fact and shall thereafter be entitled to withdraw immediately all or any part of the principal and accrued interest for the purpose of remedying such default. The District may place the principal in a demand deposit account at any federally insured bank, and the District shall have no obligation to Randazza to manage the deposit for the purpose of increasing or maximizing the return on the deposit.~~

## RANDAZZA WARRANTY COMPARISON

Variations from District proposed form shown in red

WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, PURESTREAM ES, L.L.C. ("PES") is a potential supplier of secondary treatment equipment an advanced biological treatment process, referred to herein as the USBF BESST plant, and

WHEREAS Randazza Enterprises, Inc ("Randazza") is an the sole authorized State of Florida Manufacturer's Representative representative of PES, and

WHEREAS, PES and Randazza, for the purpose of inducing the District to select the USBF BESST plant for the Project, desire to make additional warranty and service commitments for the benefit of the District, and

WHEREAS, the parties intend by this writing to memorialize the additional warranty and service commitments,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, PES and Randazza agree as follows:

- ~~1. PES and Randazza warrant that all materials and equipment provided by PES as part of the USBF plant to Haskell and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials. Randazza will provide Haskell with all the assistance needed during the construction phase of the BESST (USBF) plant at no cost to Haskell.~~
- ~~2. PES and Randazza warrant that they will repair or replace, without delay and at their expense, any and all USBF plant components that fail due to faulty materials or manufacture.~~
- ~~3. PES and Randazza warrant further that if the Project fails to perform in accordance with the requirements of the Design-Build Agreement as a result of defective PES materials or equipment or because of the design of the USBF plant, PES and Randazza will, without delay and at their expense, undertake all actions necessary, including redesign and reconstruction of the USBF plant, and modification of operating procedures, to cause the Project to perform in accordance with the requirements of the Design-Build Agreement as outlined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.~~
- ~~4. If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, PES and Randazza will reimburse the District for the reasonable costs of such efforts within 30 days of the District providing notice to PES or Randazza.~~

- ~~5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two years.~~
- ~~6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the PES materials or equipment or due to a defect in their design or specified operating procedures, the Project is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.~~
- ~~7. The following are express conditions of this warranty:
  - ~~a. That the actual sewage influent is substantially as characterized for the purpose of design of the USBF plant under the Design-Build Agreement; and~~
  - ~~b. That the District has substantially complied with all of the operating instructions and maintenance requirements communicated to the District by PES or Randazza or Haskell under the Design-Build Agreement.~~~~
- ~~8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, PES and Randazza will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but shall be entitled to compensation for the reasonable cost of repair or replacement.~~
- ~~9. Except for damage to the Project caused by a condition described in Paragraphs 1 through 4, above, PES and Randazza expressly disclaim responsibility for any damages caused by failure of the USBF plant, including lost income to the District.~~
- ~~10. Randazza will provide Haskell with all the assistance needed during the construction phase of the USBF plant at no cost to Haskell.~~
11. Randazza will assume the full responsibility, at no cost to Haskell or the District, for the startup and training of District operators once the BESST (USBF) plants #1, #2 and #3 have been completely installed and electrical power has been provided to the equipment.
12. Randazza will continue to provide on the job supervision and technical training/assistance to the District operators at no cost to the District for a period of five years after the startup of BESST (USBF) plants #1, #2 and #3 during which period, the BESST (USBF) Plants will have been demonstrated to perform in accordance with the requirements of the Design-Build Agreement. It is understood that plants #1, #2 and #3 will be tested to meet the Design-Build Agreement by simply alternating the Influent flows to either of the plants at any time after startup of all three plants in order to demonstrate their performance.
13. If the District or PES or Randazza is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys' fees (including charges for paralegals and others working under the direction or supervision of the party's attorney.)

14. The failure of the District or PES or Randazza to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought.
15. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida.
16. ~~In addition to the foregoing warranty obligations, PES and Randazza represent and warrant that the PES materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.~~
17. ~~PES and Randazza will provide to Haskell bonding or other reasonable security to secure performance of their obligations under this warranty and payment for labor and materials to be supplied under this warranty. Randazza is willing to pay Haskell for a Process Bond if Haskell is able to obtain such a Bond in the Wastewater Treatment Industry. The added cost of said Process Bond will be added to the Randazza Contract/Proposal.~~
18. In addition to the foregoing, Randazza agrees that Haskell shall deduct from the first amounts due Randazza for the PES materials and equipment the sum of \$75,000, which shall be transmitted to the District and deposited in an interest-bearing account to secure performance by Randazza of all of the Randazza and Purestream obligations hereunder. If Randazza and Purestream satisfactorily perform all of their obligations under this warranty agreement, the District shall transmit the principal and all accrued interest to Randazza upon the passing of Two years from and after the Acceptance Date of the Purestream materials and equipment under the Haskell contract. If at any time the District reasonably believes that Randazza and/or Purestream are in default under this warranty agreement, then the District shall so notify Randazza of that fact and shall thereafter be entitled to withdraw immediately all or any part of the principal and accrued interest for the purpose of remedying such default. The District may place the principal in a demand deposit account at any federally insured bank, and the District shall have no obligation to Randazza to manage the deposit for the purpose of increasing or maximizing the return on the deposit.

431 OHIO PIKE, SUITE 223 SOUTH  
CINCINNATI, OHIO 45255  
PHONE: (513) 688-1650  
FAX: (513) 688-1657  
E-MAIL: SMITHENG159@FUSE.NET

# Smith Environmental Engineering, Inc

January 13, 2004

TO: Commissioners of Key Largo Wastewater Treatment District (KLWTD)

- Mr. Gary Bauman
- Mr. Cris Beatty
- Mr. Charles Brooks
- Mr. Andy Tobin
- Mr. Jerry Wilkinson

Gentlemen:

This letter has been prepared at the request of Mr. Nos Espat, President of Randazza Enterprises, Inc. in response to questions raised by the Engineering Firm of Brown and Caldwell regarding the design of BESST Process for the subject project.

My company Smith Environmental Engineering, Inc. (SEEI) has been a process consultant for Purestream ES LLC and their predecessor companies since 1989. We have provided process design services for the Purestream Sequencing Batch Reactor Process (SBR), the USBF process and most recently the BESST process. I am coauthor of the BESST process patent, US Patent 6,620,322,B1, September 16, 2003.

Regarding the above project, I have reviewed the Purestream process design in detail and it is my opinion that the current Purestream design will meet the project design requirements of 3 mg/l of total nitrogen.

I have discussed the technical aspects of the design in some detail with Mr. Ted Hortenstine, P.E., Orlando Office Leader. I have attempted to describe to B&C that the BESST process is unique in that the process combines the Internal Recycle with the RAS recycle and therefore does not fit the MLE and similar biological single sludge Nitrification Denitrification models.

I have provided B&C with all requested project process design documentation and further requested that Purestream ES, LLC provide B&C with operating data that documents the BESST process capability of meeting all project design requirements. I am also aware that Purestream has provided full process warranty to KLWTD.

I have also attached for your information and file SEEI qualifications and experience.

Sincerely yours,



John M. Smith, P.E.

President

Attachments: - JMS Q & E

## **HIGHLIGHTS OF QUALIFICATIONS AND EXPERIENCE OF SMITH ENVIRONMENTAL ENGINEERING, INC. IN THE POLLUTION CONTROL FIELD (2001)**

**431 Ohio Pike, Suite 223 South, CINCINNATI, OHIO 45255 Phone: (513) 688-1650 Fax: (513) 688-1657**

Twenty-One (21) years in business. Offices and testing laboratories in Cincinnati, Ohio.

- § Completed over 400 municipal and Industrial projects ranging in size from \$5,000 feasibility studies to \$600,000 per year full-scale design contracts. Includes the design of 2 and 22 mgd advanced treatment plants in Malaysia.
- § Completed over 50 Turn-Key industrial and/or pretreatment facilities. Clients include food processing, metal finishing, chemical manufacturing, dairy products, groundwater treatment and superfund site remediation. Provided process performance and equipment warranties on our systems.
- § Selected by U.S. Environmental Protection Agency (USEPA) as expert consultants to prepare USEPA design manuals, handbooks and field guides on:
  - s Odor and Corrosion design manual completed ( 1985)
  - s Phosphorous Removal ( with emphasis on biological nutrient removal technology) completed 1987)
  - s Sewer System Infrastructure Analysis and Rehabilitation (1992)
  - s Sulfide Report to Congress (1992)
  - s Corrosion Handbook (1991)
  - s Sequencing Batch Reactor-s for Nutrient Removal (1991)
  - s Septage handling and treatment field guides (1992)
- § Completed over 90 odor and corrosion projects including 12 special odor and corrosion studies for the USEPA.
- § All senior staff members and associate consultants have degrees in civil, sanitary or chemical engineering.
- § Senior staff members have strong USEPA applied engineering and R/D backgrounds. Senior engineers have over 110 years combined experience.
- § Ninety-five percent of all jobs have been completed within budget and on schedule.
- § Senior project managers are intimately familiar with all State and Federal EPA programs.

Because of the strong research, process engineering and detailed design experience of our senior staff, we offer exceptional qualifications in the following areas:

- § Odor and VOC corrosion Control
- § Odor Sampling and Odor Control Chemical Testing
- § Industrial/ Municipal Wastewater and Solids Treatment/ Disposal Treatment with Primary Focus on Combination of Conventional and Innovative Physical/Chemical and Biological Processes.
- § Nutrient Removal Technologies
- § Biological Secondary and Tertiary Treatment Alternatives
- § Physical and Chemical Treatment
- § Sanitary Process Design, Cost Analysis and Value Engineering
- § Facility Planning and Analysis of Municipal Treatment Alternatives
- § Industrial Treatment Systems to meet USEPA Industrial Pretreatment Standards
- § Storm Water Permitting and treatment Alternatives
- § Alternative treatment Systems, Bench-Scale and Pilot Plant Testing
- § Solid Waste Management Odor and VOC Control
- § Expert Testimony on Odor Control, Conventional and AWT Plants, Construction Claims, Health and Safety
- § SBR, USBF and Hybrid Anaerobic Technology

\*\*\*\*\*

**NOTICE**

**Smith Environmental Engineering, Inc. (SEEI) was formerly operated from October 1982 to July 1, 2003 as J. M. Smith & Associates, PSC Consulting Engineers (JMS). All intellectual property of JMS is now owned by SEEI.**

\*\*\*\*\*

**SECTION 5**

**RESUMES**

**JOHN M. SMITH, P.E.  
PRESIDENT  
J.M. SMITH & ASSOCIATES, PSC, CONSULTING ENGINEERS**

**EDUCATION:**

B.S. Civil Engineering, University of Kentucky, 1964  
M.S. Sanitary Engineering, University of Cincinnati, 1971

**PROFESSIONAL REGISTRATION:**

P.E. Civil Engineering - Kentucky (PE8205), Ohio (PE47482), Indiana (PE021215),  
Louisiana (PE21840), Florida (PE47329)  
P.E. Sanitary Engineering - Kentucky, Ohio, Indiana, Louisiana, Florida

**ORGANIZATIONS:**

Water Environmental Federation  
American Society of Civil Engineers  
Ohio Association of Consulting Engineers  
Cincinnati Association of Consulting Engineers  
Clermont County Chamber of Commerce  
Life Member of Who's Who

**EXPERIENCE:**

10/82 to Present	President and CEO of , J.M. Smith & Associates, PSC, Consulting Engineers
7/82 to 10/82	Chief, Systems Engineering and Evaluation Branch, USEPA Wastewater Research Division, Office of Research and Development, Cincinnati, Ohio
9/73 to 10/82	Chief, Urban Systems Management Section, Systems Engineering and Evaluation Branch, USEPA Wastewater Research Division, Office of Research and Development, Cincinnati, Ohio
1/72 to 9/73	Acting Chief, Municipal Treatment Research Program, USEPA Office of Research and Development, Cincinnati, Ohio
6/68 to 1/72	Sanitary Engineer, USEPA National Environmental Research Center, Cincinnati, Ohio
12/67 to 6/68	Civil Engineer, U.S. Army Corps of Engineers, Cincinnati, Ohio
5/64 to 9/67	Project Engineer, Barbeau Construction Management, Consulting Engineers, Batavia, Ohio

## **AWARDS:**

EPA Bronze Medal for Commendable Service, 1973  
EPA Quality Increase Award, 1969, 1976, 1977  
Outstanding Performance Award EPA, 1981, 1982  
NSPE Engineer of the Year in EPA, 1981

John M. Smith has over 31 years of experience in civil and sanitary engineering, including a broad background in process design of conventional and innovative wastewater treatment technologies. This experience is derived from an initial four years of sewer and wastewater treatment plant design and construction experience with the engineering firm of Barbeau Construction Management in Batavia, Ohio, followed by over 16 years of research and engineering experience with the USEPA Office of Research and Development, and over 13 years as president and CEO of J.M. Smith and Associates.

During his tenure at EPA, Mr. Smith directed the Agency's Pilot Plant Research Program that included an engineering and technical staff of approximately 60 persons who operated multi-line pilot plants in Washington, D.C., Pomona, California and Lebanon, Ohio. Basic and applied research was conducted under the direction of Mr. Smith on over 50 advanced waste treatment processes over a period of six years.

Mr. Smith later directed the three million dollar per year engineering and evaluation activities of EPA's Wastewater Research Program, including the development and management of a plant operations and design program, a small community research program, an innovative and alternative technology research program, and an engineering and technical assistance program.

Highlights of Mr. Smith's EPA experience at USEPA's Office of Research and Development include the analysis of research data from over 140 wastewater treatment processes, the development of six new treatment processes and the development and dissemination of rational design information for the full scale implementation of these technologies.

Mr. Smith is recognized internationally as a process design expert in Wastewater and Sludge Treatment Technology, and in Sewer

System Evaluation and Odor and Corrosion Control.

Mr. Smith was a lecturer in over 120 USEPA sponsored United States and International Design Seminars and was the co-author of seven USEPA Design Manuals covering the technical areas of nitrogen control, upgrading wastewater treatment plants, phosphorus removal, sulfide control, infiltration and inflow reduction, carbon adsorption, and small community wastewater treatment systems.

Mr. Smith holds patents on "Fixed Film Denitrification," "Expanded Bed Biological Treatment," and "A Rotating Disk Mechanical Evaporation Device."

Mr. Smith was selected to direct the USEPA National Innovative and Alternative (I/A) Technology Program in Cincinnati. This group provided extensive technical support and direction for the Agency's I/A program for over five years. Activities included development of agency regulations, policy guidance, and project selection criteria; preparation of an I/A Technology Assessment Manual; formation and management of a national I/A clearinghouse; and management of a I/A Technical Support Group that had responsibility for review of I/A facility plans for all ten EPA Regional Offices.

Mr. Smith reviewed over 300 separate facility plans and made recommendations to USEPA Regional Administrators regarding their acceptance of I/A technology under the applicable criteria previously established.

Mr. Smith was selected as USEPA Engineer of the Year out of 10,000 engineers for these efforts.

Mr. Smith has testified before the United States Congress "Investigation and Oversight Committee" on the impact of Innovative Technology on improving water quality and reducing the national cost of municipal wastewater treatment in the United States.

Mr. Smith also acted as senior advisor to other segments of USEPA, national organizations and congressional committees. He has presented expert testimony on design criteria and deficiencies that settled USEPA's litigation issues for three major AWT facilities.

Because of Mr. Smith's strong philosophy on the need to use research-based rational design criteria in municipal treatment works, he initiated and managed EPA's first program on "Identification and Correction of Design Deficiencies" and initiated the EPA/WPCF - sponsored Design Information Series Reports.

Mr. Smith's areas of technical expertise include process and detailed design of municipal and industrial waste treatment technologies including mechanical plant biological processes, land-based biological processes, physical-chemical treatment technologies, anaerobic suspended and fixed-film biological systems, and hazardous waste treatment and disposal technologies.

As founder and president of J.M. Smith and Associates, PSC, Consulting Engineers (JMS), Mr. Smith has directed and actively participated in the conduct of over 300 projects in the municipal and industrial treatment fields ranging from design and construction management of advanced secondary treatment plants to design of hazardous waste control facilities.

Under Mr. Smith's personal direction, JMS was retained by USEPA to prepare Design Manuals on Odor and Corrosion Control, Phosphorus Removal, Sewer System Infrastructure Analysis and Rehabilitation, a Sulfide Report to Congress, Corrosion Handbook, Sequencing Batch Reactor for Nutrient Removal and Septage Handling and Treatment Guide.

Under the direction of Mr. Smith, JMS has pioneered the development and designed the first United States full-scale application of the following technologies:

- a) deep well chemical oxidation for treatment of sludge and high strength organic wastes
- b) multiple U-Tube aeration for force main sulfide control
- c) largest vapor phase odor control system in the United States
- d) the use of high resolution sonar for inspection of sewer lines and force mains

## **PUBLICATIONS**

### **Author**

Smith, J.M., Hartmann, G.L., "Texas Firm Introduces New Wastewater Treatment Technology," published in Hazardous Materials Technical Center Update, pg. 4, Vol. 6, No. 2, March, 1987.

Smith, J.M., "Deep Shaft Wet Air Oxidation," published in Standard Handbook for Hazardous Waste Treatment and Disposal, McGraw-Hill, 1986.

Smith, J.M., "Supercritical Deep Well Wet Oxidation of Liquid Organic Wastes," Proceedings of the International Symposium Subsurface Injection of Liquid Wastes, presented at Royal Sonesta Hotel, New Orleans, Louisiana, March 3-5, 1986; published by National Water Well Association.

Smith, J.M., "Supercritical Deep Well Oxidation: A Potential Low Cost Final Solution," presented at APCA conference in New Orleans, Louisiana, December 8-12, 1986.

Smith, J.M., "Energy Recovery and Conservation for Low Cost Systems," Presented at Workshop on Low-Cost Wastewater Treatment, Clemson University, April 19-21, 1983.

Smith, J.M., Lubin, G.R., "The Costs, Problems, and Benefits of Innovative and Alternative Technology," Presented at National Sanitation Foundation October 20, 1981, Ann Arbor, Michigan.

Smith, J.M., Evans, F.L. III, Bender, J.N., "Improved Operation and Maintenance Opportunities at Municipal Treatment Facilities," 7th Japan Conference on Sewage Treatment Technology, Tokyo, Japan, May 20, 1980.

Smith, J.M., McCarthy, J.J., Longest, H.L. II, "Impact of Innovative and Alternative Technology in the United States in the 1980's" 7th Japan Conference on Sewage Treatment Technology, Tokyo, Japan, May 20, 1980.

Smith, J.M., Evans, F.L. III, "Innovative Municipal Energy Alternatives," presented at the 50th annual meeting of the Rocky Mountain Section of AAWA and 44th annual meeting of the Rocky Mountain Water Pollution Control Association November 5-7, 1980.

Oppelt, E.T., Smith, J.M., "U.S. EPA Research and Current Thinking on Fluidized Bed Biological Treatment," December, 1979.

Oppelt, E.T., Smith, J.M., Feige, W.A., "Expanded Bed Biological Treatment," EPA 600/2-78-177, July, 1978.

Lykins, B.W., Jr., Smith, J.M., "Interim Report on the Impact of Public Law 92-500 on Municipal Pollution Control Technology," EPA 600/2-78-018, January, 1976.

Feige, W.A., Smith, J.M., "Wastewater Applications with a Tubular Reverse Osmosis Unit," published in WATER 1973 AIChE Symposium Series, Pgs. 523-533, #136, Vol 70, 1974.

Lewis, R.F., Smith, J.M., "Upgrading Existing Lagoons," USEPA Technology Transfer Design Seminar Program, October, 1973.

Smith, J.M., Masse, A.N., Feige, W.A. "Applications of New Concepts of Physical-Chemical Wastewater Treatment," presented at Vanderbilt University, Nashville, Tennessee, September 18-22, 1972.

Smith, J.M., "Nitrogen Removal from Municipal Wastewater by Columnar Denitrification," a thesis submitted to the Department of Civil Engineering, University of Cincinnati, Ohio, 1971.

Smith, J.M., et al, "Renovation of Municipal Wastewater by Reverse Osmosis." Federal Water Quality Administration Report ORD-17040, May, 1970.

#### **Author/CoAuthor**

USEPA Process Design Manual for Upgrading Existing Wastewater Treatment Plants - first and second editions.

USEPA Process Design Manual for Suspended Solids Removal -first and second editions.

USEPA Process Design Manual for Carbon Adsorption - first and second editions.

USEPA Process Design Manual for Sulfide Control in Sewerage Systems - first edition.

USEPA Areawide assessment Procedures Manual, Volumes I, II, and III.

USEPA Process Design Manual for Phosphorus Removal, September, 1987.

USEPA Design Manual for Infrastructure Analysis and Rehabilitation

USEPA Sulfide Report to Congress

USEPA Corrosion Handbook

USEPA Manual for Sequencing Batch Reactor's for Nutrient Removal

USEPA Septage Handling Field Guide

#### **Author Unpublished Reports**

John M. Smith, Robert P.G. Bowker - Investigation of Ground Water Contamination at U.S. Refugee Camp

John M. Smith - Wastewater Treatment Plant Non-Compliance Investigation, and Energy Audit

John M. Smith - Design Review and New Design of 20 mgd AWT Plant

John M. Smith - Design Review and Process Design for a 7.5 mgd AWT Plant

John M. Smith - Capacity and Performance Evaluation of a 117 mgd Secondary Treatment Plant

**John M. Smith - Feasibility Study and Analysis of Alternative Odor Control Methods for Wastewater Collection System**

**John M. Smith - Design Review and Re-Design of a 0.6 mgd AWT Plant**

**John M. Smith - Facility Plan and Design Review for a 22.5 mgd AWT Plant**

**John M. Smith, Robert P.G. Bowker - Design of New Generation Intra-Channel Clarifier**

**John M. Smith - Sewer Construction Inspection and Infiltration Analysis**

**John M. Smith - Project Engineer for Sewer System and Treatment Plant Inspection**

**John M. Smith - Design Review and Analysis of Municipal Treatment Systems**

**John M. Smith - Design Review and Engineering Evaluation of Non-Compliance of a 143 mgd AWT Plant**

**Subj:** Re: Phone call  
**Date:** 1/14/2004 10:40:59 AM Eastern Standard Time  
**From:** [DRelling@BoyleEngineering.com](mailto:DRelling@BoyleEngineering.com)  
**To:** [CBrooks442@aol.com](mailto:CBrooks442@aol.com)

Charlie,

I will try to briefly describe the phone conversation we had yesterday per your request.

In my opinion both the Fluidyne SBR and the Purestream USBF have the potential to achieve "AWT" standards assuming that effluent filtration is provided and chemical addition is also provided for supplemental phosphorus and nitrogen removal. We recommended that both chemical feed systems should be provided.

For either system for a facility of this size, the most difficult effluent concentration to achieve will be the total nitrogen concentration of 3 mg/L. I recommend a performance guarantee with an associated bond would be the best way to protect the KLWTD even if there is a small additional cost for the bond.

The processes each have their advantages and disadvantages, which I would be happy to discuss in greater detail.

Please let me know if you have any questions,

Dave

—Unmodified Original Message—

Dave got your email heres reply to verify my email addrss

Thanks for the interest and info you provided

Subj: **USBF v. SBR**  
Date: 1/13/2004 4:16:18 PM Eastern Standard Time  
From: [oojito@ojito.com](mailto:oojito@ojito.com)  
To: [cbrooks442@aol.com](mailto:cbrooks442@aol.com)

Greetings Comm. Brooks:

Mr. Robert Betancourt, PE, of GARTEK related to us your interest in learning our preference in treatment process for the KLP and KLV projects. It is our opinion that the USBF would be the better choice based on a combination of economics and the particulars of your projects. Both process can meet the effluent requirements, but again, based on front end as well as operational considerations our recommendation is the USBF process.

Please call me if you care to discuss this further,

Sincerely,

OJITO & Associates, Inc.

Oswaldo A. Ojito, PE

Wednesday, January 14, 2004 America Online: CBrooks442

**GARTEK**

January 12<sup>th</sup>, 2004

Commissioner Charlie S. Brooks  
35 Pigeon Drive  
Key Largo, FL. 33037

\*\*\*Via E-Mail\*\*\*  
[cbrooks442@aol.com](mailto:cbrooks442@aol.com)

Re: USBF vs. SBR Waste Water Treatment Systems

Dear Mr. Brooks:

As per our previous conversations regarding the above referenced Waste Water Treatment processes, we have used both processes in the past and they both meet AWT effluent criteria standards of 5-5-3-1 BOD, TSS, TKN, P with filtration.

Gartek Engineering Corp. recommended from the beginning selection of the USBF process over the SBR process for KLP and KLTV projects due to the following reasons:

- 1) Wasting Sludge is done approximately 16 to 18 months.
- 2) Hauling Sludge is approximately 5 to 6 years.
- 3) Maintenance and Operational cost is less.

For current projects in our office of similar capacity and location (i.e. Islands remote from main lands) due to the obvious economical sludge removal advantages, we are only specifying at the present time the USBF process.

Sludge removal is very costly, if it must be removed on a monthly basis. This is a cost that is typically overlooked during the design and construction phase of the project but is a real cost that the Tax Payers will need to face during the operational phase of the project for the life of the system.

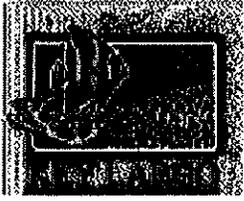
As a local Monroe County Taxpayer I would not like to be financially penalized for life, for the selection of the wrong Waste Water System for this application. I urge the Waste Water Board to consider the selection of the USBF process for these projects as well as any future Waste Water Treatment projects in the Florida Keys.

If you have any questions, please call me at your earliest convenience.

Sincerely,  
Gartek Engineering Corp.

Robert L. Betancourt, P.E.  
President

RLB:pcy



# **Key Largo Wastewater Treatment District Board of Commissioner's Meeting Agenda**

**5:00 PM Wednesday, February 4, 2004  
Key Largo Civic Club, 209 Ocean Bay Drive  
Key Largo, Monroe County, Florida**

## **Board members present**

Gary Bauman  
Cris Beaty  
Charlie Brooks  
Andrew Tobin  
Jerry Wilkinson

## **Staff Present**

Charles Sweat, GSG  
David Miles, GSG  
Thomas Dillon, Board Attorney  
Ed Castle, WEC, Board Engineer  
Michael Hatfield, WEC, Board Engineer  
Faith Doyle, Board Clerk

## **Guest present**

### A. Call to Order

Chairman Bauman called the meeting to order at 5:08 p.m.

### B. Pledge of Allegiance

### C. Additions, Deletions or Corrections to the Regular Meeting Agenda

Mr. Wilkinson stated that certain discussion items have been neglected because of the lengthy agendas. Chairman Bauman agreed that certain items merit further consideration and should be carried over if the members consider them relevant.

### D. Minutes – Draft January 7, 2004, Draft January 14, 2004, Draft December 3, 2004, Draft November 19, 2003, Draft November 5, 2003

Commissioner Brooks motioned to approve all the minutes except for the January 14, 2004. Commissioner Brooks stated that he did not have difficulty with the minutes but with what was discussed at the meeting. Commissioner Tobin seconded for discussion. Mr. Tobin does not believe that a verbatim transcript is needed but only a summary with the motions, seconds and votes. The audio tapes are the also available. Commissioner Brooks asked Mr. Dillon if he bills

for review of the minutes. Mr. Dillon confirmed that review of the minutes is considered part of the \$100 charge for attending a meeting. Discussion ensued on the need for summary minutes which are more detailed or motion minutes which include only the final actions taken by the Board. Commissioner Wilkinson asked Mr. Dillon what his position is concerning the minutes. Mr. Dillon advised that the meeting minutes are hearsay, and that the recording is the actual record of the meeting; whether the minutes are summary in form or more descriptive of the discussions was not legally significant. Commissioners Wilkinson, Brooks and Beaty expressed a preference for more detailed minutes. Chairman Bauman called for a vote on the January 7, 2004; December 3, 2003; November 19, 2003; and the November 5, 2003. All were in favor and the motion was approved. The Board requested that the January 14, 2004 minutes be placed on the next agenda.

#### E. Public Comment

Mr. Tobin introduced Mr. Bill Guy who is a local contractor who could do laterals because he is an underground utility contractor. Commissioner Tobin suggested he introduce himself to Mr. Messer of D.N. Higgins.

Mr. Michael Hatfield of WEC was introduced and it was noted that he will be involved with the KLTV and KLP projects.

#### F. Action Items

##### 1. Pending Payments List

Chairman Bauman brought the pending payment list to the floor for consideration. Commissioner Tobin discussed flat fee billing and payment options of the GSG Contract. He has concerns with the construction management contract. Commissioner Tobin stated that because of the notice of resignation this should be reconsidered. He is open to suggestions for a resolution of how the payments should be made on a contract that is not going to be fulfilled. Commissioner Brooks also stated concerned with making payments for services that may be a duplication of effort and it appears that some of the tasks being performing are purely administrative.

Commissioner Wilkinson asked if there was a formal resignation. Chairman Bauman stated that an official notice had not been received. Mr. Sweat was asked if he had a letter with him to present to the Board. Mr. Sweat stated that he did not but he would provide one if the Board wishes. Chairman Bauman stated that a letter was to be provided and Mr. Sweat stated that he would insure that one was provided.

Discussion continued concerning Chairman Bauman's instructions to Mr. Dillon to prepare a time and material contract with strict documentation of time spent and that the fixed fees should be removed so that a final payment can be determined. Commissioner Tobin doesn't believe that would rectify the situation and that the payments should be discussed among Mr. Dillon and Mr. Miles who should be able to determine an equitable figure to conclude the contract. Chairman Bauman requested that Commissioner Tobin, Mr. Miles and Mr. Dillon review the GSG invoices, contract and work authorizations and provide him with a time and materials contract. Commissioner Tobin wants a reconciliation of the flat fee contract.

Discussion ensued on the details of the 30% design meeting that had taken place amongst staff earlier. Commissioner Brooks had attended the meeting and observed the actions of staff and thought that it was a very productive meeting.

Commissioner Tobin doesn't want to pay the GSG bills until time and attendance records and a brief description of what the hours were for has been provided. Mr. Miles stated in the January 7<sup>th</sup> agenda book the information requested had been provided. Commissioner Tobin stated that the time sheets and detail given were not sufficient. Mr. Miles discussed the information noting the hours attributed to financial management, CIP projects, etc. Commissioner Tobin stated the monthly breakdown doesn't give you a great indicator and assuming that the information is true we have to understand how much money is owed. Mr. Miles noted that a ½ a man year of time has been accrued by GSG for the Key Largo work.

Commissioner Beaty suggested that installment 5 of 24 be paid to true things up and have GSG work for a time and materials basis from this point forward. Commissioner Tobin agreed that installment 5 of 24 should be paid today and then reconcile what to do from this point forward and that the termination date should be April 1, 2004. Mr. Miles cautioned the Board that time and materials would increase the KLWTD costs greatly.

Discussion continued concerning when notification was given, if 90 days severance pay is required, on the effective date of the notice and monies owed. Mr. Sweat stated that GSG would not leave the board high and dry, and would provide service until the transition.

Mr. Sweat stated that the termination letter would terminate the fixed price contract and initiate the time and material option. Commissioner Wilkinson asked Mr. Dillon if a letter is required to be sent. Mr. Dillon stated that a letter would provide documentation.

Chairman Bauman asked if there were any other questions on the payments pending list. Commissioner Wilkinson stated that the legal invoices should be reviewed to verify if some of the costs could be reimbursed from project funds. Discussion ensued concerning shortfalls in the project funds if it is financially prudent.

**Commissioner Tobin made a motion to approve the pending payments list. Commissioner Beaty seconded the motion adding that the KLWTD would evaluate and reconcile the GSG invoices. All were in favor and the motion was approved.**

At 6:06 p.m. Commissioner Brooks requested to change the agenda to have David Andrews of Mull & Associate present the Comprehensive Annual Financial Report. Mr. Andrews reviewed the document which had been provided to the Board. Mr. Andrews stated that Gatsby 34 brings government accounting more similar to corporate accounting and that the independent auditors report states that the accounting provides a reasonable basis and standards for an audit and to develop an opinion. Commissioner Tobin asked what Mull does in relationship to over site of GSG. Mr. Andrews stated that Mull reviews contracts in comparison with financial transactions.

Mr. Miles stated that the Board should accept the information and then it can be filed as per act 189. The Annual Financial Report must be forwarded to the Department of Banking and Finance. It must be executed by the Chairman and will be brought to the Board on February 18<sup>th</sup> for consideration. It must go within 45 days to the Department of Banking and Finance. A copy will be forwarded to Monroe County and it needs to be forwarded to the bank and any

grantor agency. Mr. Andrews notes that on page 16 the \$78,000 deficit that if it remains in the CAFR for two years extra reporting would be required. Discussion ensued concerning the CAFR report.

**Commissioner Tobin moved to accept the report as information only. Commissioner Wilkinson seconded for discussion. He questioned the populations and the acreage reported. Discussion ensued if Monroe County might forgive the loan. Commissioner Wilkinson stated that Mayor Nelson told him that the loan could be forgiven by submitting qualifying paid invoices to the County Clerk's office. All were in favor and the motion carried.**

Mr. Sweat stated that he and Mr. Messer had discussed presenting a purchase order to Roovac for the pits because it is a two month lead time item and the risk would be Roovac's and not the Board's. Mr. Messer would take possession of the pits until they are used for construction. Discussion ensued. Mr. Messer stated that Higgins would issue the purchase order. Discussion ensued concerning the Board issuing the purchase order to save on the sales tax. Chairman Bauman and commissioner Beaty supported the idea. Commissioner Brooks wants the KLWTD to sign the purchase order. Mr. Dillon stated that he should review the Higgins prepared purchase order prior to the KLWTD signing it.

Mr. Messer requested that if the Haskell change order is approved that Mr. Messer be given his bonds back.

Chairman Bauman requested that the Roediger valve pit purchase order to the next agenda.

Mr. Castle informed the Board that the staff had met at 1:00 p.m. to review the 30% design of the KLTV collection system and gravity maintenance issues were discussed. The 30% design of the treatment plant was received. Mr. Castle's initial review was positive, but several items from Appendix G need to be addressed. Mr. Dillon comments that a design protocol must be submitted and that some legal issues were raised including the Haskell notices of delay. Mr. Dillon stated that he appreciated the opportunity to attend the meeting and be present for legal issues. Mr. Castle will do the final review of the design protocol and it would be presented to the Board at the next meeting. It was noted that copies of the final concept review had been provided to the Board Chair.

Commissioner Tobin noted that Mr. Castle was impressive with his attention to detail on future maintenance issues and anticipating problems. Mr. Fishburn comments that all went well at the review and he has no issues with the 30% design and the 60% designs will be much more complete and detailed.

Mr. Will English, of the Haskell Company stated that he is meeting with George Garrett concerning site mitigation and other issues concerning the treatment plant.

Commissioner Brooks stated that he attended the staff meeting and that it was pleasant and encouraging to see the staff working well together. Commissioner Brooks believes the 60% designs would ease concerns.

Chairman Bauman recessed the meeting at 7:10 p.m.  
Chairman Bauman reconvened at 7:25 p.m.

Commissioner Tobin excused himself at 7:28 p.m. stating that he recommends approval of the Haskell change order only if it notes that they don't get paid if KLWTD doesn't get grant funds.

Commissioner Bauman requested that the legal counsel report be next. Mr. Dillon informed the Board that he met with Mr. Collins the Monroe County Attorney and that the County Attorney said he would write an opinion that County funds could be used for the Board's salary and other general administrative costs. The County Attorney interprets the Interlocal Agreement to require a budget line item for Board compensation. Mr. Dillon will work with Mayor Nelson to have the County add a budget line to the County budget, which should correct it.

He noted that Representative Sorenson's office had requested draft legislation to cover District issues. Mr. Dillon drafted a paragraph that amends the enabling legislation to provide for appointment by the remaining Board members of a person to fill a vacancy. Discussion ensued on the default mechanism of the 189 statute and filing vacancies.

The Board requested that the legislative changes proposed be considered as an action item on the next agenda. Discussion ensued on the cost of holding a special election and constitutional issues of making requirements on appointed officials.

2. Standard Engineering Contracts with the top ranked firms from the April 2003 CCNA process. (Please note these include all revisions that were made to the WEC contract that was previously approved by the Board)
  - a. ARCADIS
  - b. Boyle
  - c. CPH
  - d. Calvin, Giordano & Associates, Inc.
  - e. Malcolm Pirnie, Inc.
  - f. Metcalf & Eddy
  - g. PBS&J

Commissioner Brooks made a motion to approve the Standard Engineering Contracts with the top ranked firms. Commissioner Beaty seconded the motion. Commissioner Wilkinson stated that he does not like the CCNA process. Commissioner Beaty noted that the process is required by law. Commissioner Brooks noted that on page 5 he would like the wording to be changed to reflect that the Board would make the decisions on issues with work authorizations. Mr. Miles noted that by previous Board resolution that the staff only has approval to enter into work authorizations under \$2,500 and then must seek retroactive Board approval at the next meeting. Mr. Dillon suggested drafting an amendment to the agreement to reflect the Board's desire. The Board requested that the amendment be drafted and placed as an action item on the next agenda. Commissioner Brooks noted that on page 7 article seven paragraph 3 refers to termination or suspension. Mr. Dillon stated that it is standard and is included for the event that a contract is terminated for convenience. Mr. Dillon recommended the contracts be approved. Discussion ensued on the CCNA process and the bidding process. Chairman Tobin requested a roll call vote, which was as follows:

<b>Commissioner Beaty</b>	<b>Yes</b>
<b>Commissioner Brooks</b>	<b>Yes</b>

Commissioner Tobin  
 Commissioner Wilkinson  
 Chairman Bauman

**NOT PRESENT**  
**No**  
**Yes**

The motion was approved.

### 3. Approval of the Revised Haskell Change Proposal for Key Largo Park

Chairman Bauman brought the item to the floor for discussion. Mr. Dillon stated that he approves of the document as to form. **Mr. Beaty made a motion to approve the change order. Commissioner Wilkinson seconded for discussion. Commissioner Wilkinson stated that he believes the District is being over charged for the markup fees. Discussion ensued on the cost plus five percent issue and the contract provisions. Chairman Bauman asked the Manager to go back to Haskell to accept absorbing the cost of the change order. Commissioner Brooks moved to table the item.**

#### G. General Manager's Report

##### 1. Annual Audit and CAFR Presentation

See above.

##### 2. Financial Update

Moved to the next meeting.

##### 3. Update on the Tax Exempt Status

Moved to the next meeting.

##### 4. Discussion on Rescheduling of the Transition Plan and Administrative Procedures Workshops

Moved to the next meeting.

#### H. Legal Counsel's Report

##### 1. Meeting with Monroe County Attorney Richard Collins concerning the reimbursement of Board payroll from County funds

See above.

#### I. Engineer's Report

##### 1. Design-Build Agreement design requirements (30% design submittal)

See above.

##### 2. Calusa Campground Presentation

Mr. Castle began the presentation at 8:30 p.m. Mr. Castle concluded the presentation at 8:55 p.m. Discussion ensued on the issue of complying with the County master plan, the private land issue and RV influent.

##### 3. Haskell Monthly Progress Reports for October, November and December

Mr. English noted that the reports are not detailed because the projects haven't begun construction. Commissioner Brooks questioned the progress reports and why they haven't been updated. Mr. Castle stated that a revised schedule should be submitted. Mr. Dillon comments

that the first two reports and the schedule provided do conflict and do demonstrate delay. Mr. English stated that MPR's usually don't start until the construction starts. Mr. Dillon noted that the contract states that the project manager was to be approved by the Board. Mr. English stated that he would provide a resume to the Board and address the issues raised concerning the progress reports with Mr. Kinsley

#### 4. WEC Engineering Status Report

Mr. Castle reviewed his report and stated that they will get much more detailed as time progresses and construction begins.

#### J. Public Comment

No one present wished to address the Board.

#### K. Commissioner's Items

1. Discussion of Strategic Planning and Consulting Strategic Planning Firm – Chairman Bauman (CARRIED OVER FROM 1-14-04 AGENDA)

Chairman Bauman deferred his item to the next meeting.

2. Discussion of near shore water testing – Chairman Bauman (CARRIED OVER FROM 1-14-04 AGENDA)

Chairman Bauman deferred his item to the next meeting.

3. Discussion of "Decision Time" email dated 1-22-04 -- Commissioner Wilkinson

Commissioner Wilkinson deferred his item to the next meeting.

4. Discussion of all e-mail and other communications since our last meeting – Commissioner Brooks

Commissioner Brooks deferred his item to the next meeting.

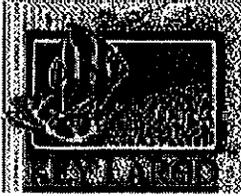
5. Update and discussion of the PMP (Project Management Plan) regarding future Federal funding through the Army Corps of Engineers/South Florida Water Management District – Commissioner Brooks

Item K-5 was brought to the floor for discussion by Chairman Bauman. Commissioner Brooks stated that information was needed to be given to the Army Corp of Engineers by the 20<sup>th</sup> of January. He provided copies to the Board members. He reviewed the schedule of existing and possible projects that he had provided to assist in securing the funds available. He provided the information on his own because he had no direction from the Board. Commissioner Brooks passed out an email concerning the issue.

#### L. Meeting Adjournment

Commissioner Beaty made a motion to adjourn at 9:12 p.m. Commissioner Wilkinson seconded the motion. All were in favor.

# DRAFT



## Key Largo Wastewater Treatment District Board of Commissioner's Meeting Minutes

5:00 PM Wednesday, February 18, 2004  
Key Largo Civic Club, 209 Ocean Bay Drive  
Key Largo, Monroe County, Florida

### Board Members Present

Gary Bauman, Chairman  
Cris Beaty  
Charles Brooks  
Andrew Tobin  
Jerry Wilkinson

### Staff Present

Robert Sheets  
Charles Sweat  
Thomas Dillon  
David R. Miles  
Ed Castle

### Guests Present

William English, The Haskell Company  
Jon Morrison, Florida League of Cities  
Amy Osborne, Key Largo Resident  
Tom Evans, Evans Environmental  
Jill Patterson, Key Largo Resident  
Burkeee Cannon, Key Largo Resident  
Steve Gibbs, Reporter for the Free Press  
Fred & Ann Nickerson, Key Largo Residents  
Kim Wigington, Key Largo Resident  
Robert E. Burt, Key Largo Resident

#### A. Call to Order

Chairman Bauman called to order at 5:10 p.m.

#### B. Pledge of Allegiance

The Pledge was recited.

#### C. Additions, Deletions or Corrections to the Regular Meeting Agenda

Commissioner Brooks requested that a Resolution concerning sending a letter to the Florida Legislature and the Governor expressing KLWTD's unanimous support for the "Landmark Monroe County Conservation Proposal" that sets goals for protecting near shore waters and native forests be added for consideration. He explained his and Mayor Nelson's position on the issue. His point of view indicates that KLWTD should voice its opinion on the issue to the Governor. Chairman Bauman and Comm. Tobin objected to the resolution being acted on tonight and placed it as Commissioner's Item K-8 for discussion.

Commissioner Brooks also noted that with the commissioner's items being last they continue to be put off, he is interested in the discussion on Comm. Wilkinson's items K-3 and his item K-4 and suggested they be placed in front of the other commissioner's items.

Comm. Wilkinson's 2-15-04 email concerning an extension to the FEMA grant was added as Item K-9.

D. Minutes – Draft      Draft October 17<sup>th</sup> 2003 and January 14, 2004

**Commissioner Brooks made a motion to approve the October 17, 2003 minutes with the inclusion of Mr. Dillon's suggested changes. Commissioner Wilkinson seconded the motion. Commissioner Tobin abstained from voting because he had not had time to review the minutes. The motion was approved with a vote of four in favor and one abstention.**

The January 14, 2004 minutes were tabled. Chairman Bauman requested they be included on the next meeting agenda.

E. Public Comment

Mr. Robert Burt informed the Board that the KLTV picnic would be held at the west park off Buttonwood at the end of Park Drive on March 27, 2004 at 4:00 p.m. He invited the members to attend.

Ms. Ann Osborn introduced herself as a resident of KLTV and expressed her interest in any administrative secretary/clerk positions that become available with the District. She attended the meeting to observe the work of the Board. Chairman Bauman welcomed her and stated that the transition to local employees is in the future and that once an advertisement for the position is posted the Board would consider all applications submitted.

1. Presentation by the Florida League of Cities on the KLWTD Insurance coverage

Mr. Jon Morrison of the Florida League of Cities presented information on the District's insurance coverage. The General Liability Policy had been forwarded in its entirety to the Board Members.

Mr. Morrison noted that the District has Errors and Omissions Endorsement to cover decisions made by the Board or by individual members and that historically it provides legal counsel to the insured. Any lawsuits filed against the District would have defense counsel provided through the League's approved list. Any cost of investigation (depositions, court reporters, etc.) would be covered and no court cost would be due from the District for a covered litigated claim. The District would need to notify the League of any claims or potential claims. If a summons or

complaint is received it must be reviewed by the League to verify if it is covered. Determination is made by the allegations in the complaint.

Commissioner Tobin questioned if the District would be covered while meeting at the Key Largo Civic Club for a slip and falls. Mr. Morrison stated that the Civic Club as a 501.3c would have their own coverage. Discussion ensued on liability issues including defense costs for third party claims, which are not covered, damage during construction activities, which would be covered by the contractor and District representative traveling on District business, which would be covered by workers compensation and the individuals automobile policy.

Commissioner Beaty asked about sewage backups or other negligent acts. Mr. Morrison stated that an investigation would be conducted and that negligence based acts only would be covered and if a lawsuit were filed they would defend them. Negligence scenarios were discussed. Commissioner Wilkinson asked if the insurance would cover a malfunctioning valve. Mr. Morrison stated that the manufacture would be contacted for reimbursement on any claims paid.

Mr. Morrison stated that he would provide standard insurance forms to the clerk in the event any claims were made. Mr. Sheets stated that the District as a governmental entity was protected by sovereign immunity and that for certain claims would not pay more than the coverage limits on claims.

Chairman Bauman thanked Mr. Morrison for the information provided.

#### F. Legal Counsel's Report

Please see below.

#### G. Action Items

1. Approval of Legislative Change to House Bill 471 to 2002-337 Laws of Florida concerning vacancies to the Board

**Commissioner Beaty made a motion to approve the item. Commissioner Wilkinson seconded the motion for discussion. Commissioner Brooks asked whether the last sentence of the change provides that the District may not use funds for any purpose that is expressly prohibited by the granting agency. Mr. Dillon stated that the County's position that the District may not use funds for administrative expenses, including Board compensation was based on the County's belief that the restriction was implicit and not explicit. The proposed legislation would allow a restriction only if the granting agency explicitly imposed the restriction. Discussion ensued on whether the Board could provide health insurance coverage for the Board. Mr. Dillon advised that the Board had the authority to do so. Chairman Bauman asked for any further discussion. All were in favor and the motion was approved.**

2. Approval of Legislative Change to House Bill 471 to 2002-337 Laws of Florida concerning payments of Board salaries

**Mr. Dillon introduced the vacancy provision. Commissioner Beaty moved to approve the amendment as stated. Commissioner Wilkinson seconded for discussion. Commissioner Wilkinson stated that it is his opinion that as an elected Board that all**

members should be elected. Discussion ensued concerning if an appointment were made when would the appointee's term end. Discussion ensued concerning Chapter 189, Chapter 337 concerning special districts and the possibility of the Governor appointing Board members. Chairman Bauman invited public comment. Ms. Jill Patterson, a Key Largo resident stated that she felt strongly that if time permits the public should vote on all members of the Board. Mr. Burke Cannon also believes that the public should elect members. Discussion ensued concerning appointments adversely impacting the staggering of the expiration of individual members terms and the cost of holding a special election. Rewording the amendment was discussed. Chairman Bauman requested a roll call vote, which was as follows:

Commissioner Beaty	No
Commissioner Brooks	No
Commissioner Tobin	No
Commissioner Wilkinson	No
Chairman Bauman	No

The motion was defeated.

Commissioner Beaty made a motion to reconsider the legislative change with a change to amendment paragraph 6, striking the words "remainder of the expired term" and replacing it with "the next general election. Commissioner Wilkinson seconded the motion. Chairman Bauman requested a roll call vote.

Commissioner Beaty	Yes
Commissioner Brooks	No
Commissioner Tobin	Yes
Commissioner Wilkinson	Yes
Chairman Bauman	Yes

The motion carried.

3. Approval of the KLWTD Annual Financial Report to the Department of Banking and Finance

Commissioner Beaty moved to approve the KLWTD Annual Financial Report to be forwarded to the Department of Banking and Finance. Commissioner Brooks seconded the motion. All were in favor and the motion was approved.

4. Approval of Amendment No. 1 to the Haskell Contract

Mr. Dillon informed the Board that the item was a housekeeping amendment that would change the notice from the default of Lewis, Longman and Walker to Mr. Dillon and includes a clause concerning the prompt pay act. Commissioner Wilkinson moved to approve the amendment. Commissioner Beaty seconded the motion for discussion. Commissioner Brooks asked if the persons to receive notices should be identified by title instead by name. It was suggested that both title and name be used and a copy to the KLWTD P.O. Box. The Board requested that Haskell sign the amendment prior to it being presented for consideration. The motion was withdrawn and the item was tabled until a future meeting.

## 5. Approval of Amendment No. 2 to the Standard Engineering Consulting Contracts

Mr. Dillon explained to the Board that the amendment was drafted to clarify that the Board approves invoices and not the staff. **Commissioner Brooks moved to approve the item. Commissioner Wilkinson seconded the motion. All were in favor and the motion was approved.**

## 6. Acceptance of the Government Services Group, Inc. Letter of Resignation and the GSG Time and Materials Exhibit A

Mr. Sheets stated that the letter was submitted at the request of the Board and to formalize the verbal resignation tendered in December of 2003. The letter indicates that by this notice GSG would provide services under the present contract until May 9. It was noted that monthly fees are not to exceed \$6,600.00 for grant management. Commissioner Tobin stated that he was not ready to accept a time and materials option for any additional work. Chairman Bauman stated that the resignation has been accepted but the Board requires more discussion concerning the time and materials option.

Mr. Sheets requested clarification and direction from the Board because after the last meeting and discussion with staff and the chair he believed that after the 90 days any work would be compensated at time and materials. Commissioner Tobin stated that he would need projections before acting. Mr. Dillon was asked to draft a document to cover services after May 9, 2003.

Commissioner Brooks asked if the resignation was negated. Mr. Sheets stated that under the present contract this notice indicates that GSG would not be the General Manager after May 9, 2004 and that for services to continue after that point a new scope of service must be defined and approved by the Board. Commissioner Brooks expressed concern that immediate steps must be taken to replace GSG. Chairman Bauman proposed an all day meeting on a Saturday to develop solutions. Chairman Bauman stated that a formal transition plan is needed.

Commissioner Beaty asked if the "true up" on hours expended by GSG had been provided. Mr. Sheets stated that the information had been provided in the January 7, 2004 agenda materials.

Mr. Sheets agreed to bill under second contract for grant administration on an hourly basis with a not to exceed amount of \$6,600. Chairman Bauman asked if this was acceptable to the Board. Commissioners Tobin, Brooks and Chairman Bauman stated yes. Mr. Sheets stated that he would forward his recollection of the Board's wishes to Mr. Dillon.

## 7. Approval of the Pending Payments List for February 11, 2004

Mr. Miles informed the Board that he had emailed a copy of the invoices to each member of the Board last Thursday. Commissioner Tobin questioned WEC's request for payment on the Calusa Campground report and if it was lump sum. Mr. Sheets and Mr. Dillon confirmed that they had completed the scope of the work order. **Commissioner Beaty moved to approve the Pending Payments list for February 11, 2004. Commissioner Tobin seconded the motion. Commissioner Wilkinson requested a future agenda item to discuss charging some items against the grant for administration. With no further discussion all voted in favor and the item was unanimously approved.**

## H. General Manager's Report

### 1. Quarterly Financial Reports

This item was presented for informational purposes only.

### 2. Update on the Tax Exempt Status

This item was provided for informational purposes only. Mr. Miles noted that the certificate must be sent with each purchase order and that the District on a District check to be considered tax-exempt must issue payment.

### 3. February 4, 2003 Thirty Percent Design Meeting Minutes

This item was provided for information only. Commissioner Wilkinson stated that he didn't like the format and it was not at the level of detail he would like to see. Mr. Sweat stated that these types of notes are typical of design construction meetings. Chairman Bauman asked who follows up items indicated in the minutes and when. Mr. Sweat stated that the tasks had been assigned during the discussions at the meeting. Mr. Dillon noted that the contract indicated that a submittal protocol was required to be submitted to the Board but there is not a contractual need for minutes. Discussion ensued on the development and implementation of an issue log.

Commissioner Brooks noted that at last meeting he requested that who ever provides reports or minutes states who provided them.

### 4. Update on the rescheduling of the Transition Plan, Administrative Procedures and Strategic Planning Workshops

Mr. Sheets stated that there was no backup information provided with this item. He informed the Board that staff had meet and would provide a memorandum at the March 3 meeting. Mr. Sheets indicated that a series of planning workshop should be scheduled between now and the end of April and all day meetings to be held on Saturdays were suggested. These workshops would cover strategic planning, the transition plan and administrative procedures.

The dates of March 20, March 27, April 3, and April 17 were offered. It was suggested that for the strategic planning process a facilitator be brought in to help the process. The strategic plan would help to address the other issues. The Chairman would be given names of facilitators to contact.

Mr. Burke Cannon a Key Largo Resident commented that a facilitator is an interesting concept. From his past business experience workshops and seminars were a productive way to find direction and set priorities.

Commissioner Tobin commented that strategic planning has been discussed, but there are serious deadlines that need to be considered immediately, including hiring a secretary clerk. He suggested dual planning with advertising in the Keynoter and Reporter to begin interviewing for a secretary/clerk.

Mr. Sheets informed the Board that there would be a conference call on Thursday that would include Mr. Castle, Mr. Sweat, Mr. Dillon and himself to discuss the FONSI fine points with Ms. Science Kilner of FEMA.

Mr. Sheets informed the Board that there would be a meeting scheduled to go over the site 100.5 issues including site mitigation and the recently discovered issue of the two land use zones. It would include Mr. Dillon, Mr. Sheets, Mr. Sweat, a Brown and Caldwell representative and Commissioner Tobin.

Chairman Bauman recessed the meeting at 7:55 p.m.

Chairman Bauman reconvened the meeting at 8:05 p.m.

## I. Engineer's Report

### 1. The Haskell Company's Design Development Protocol Review

Mr. Castle stated that the design build agreement required a design protocol. This draft includes that staff's comments and is being presented for the Board's comments. Once accepted by the Board then Haskell will implement the protocol. Mr. Castle would include an in issue log, which is to include comments and who made them, who will take care of them and when they are completed. The Manager will maintain the log and provide a copy to the Board and staff. Discussion ensued concerning the Manager being the main contact and if there would be problems with the upcoming transition. Mr. Castle offered his assistance during the transition but with a change in the scope of work compensation would need to be discussed. Commissioner Wilkinson stated that the Board must be copied on all comments and requested Mr. English to provide him with the comments from Haskell and Brown and Caldwell on the 30% submittal.

Discussion ensued concerning the receipt of the 60% drawings, when the 99% drawings would be ready and how vacant lots would be hooked up. It was noted that Haskell had been requested to design the entire project and the District would build as far out as funds would permit.

Mr. Sweat stated that the Board would be copied on the issue log and informed of the next design meeting.

Mr. Dillon requested direction from the Board concerning his attendance at the design review meetings. It was the consensus of the Board the Mr. Dillon not attends any subsequent design meeting.

## J. Public Comment

Mr. Burke Cannon stated that he questions why the Board is considering a transition at this time. It is his opinion that there are too many issues facing the Board to be changing administration.

## K. Commissioner's Items

### 1. Discussion of Strategic Planning – Chairman Bauman

Please see above.

## 2. Update/Discussion of Near Shore Water Testing – Chairman Bauman

Chairman Bauman stated that it would be a disservice to Key Largo residents if no testing was done to document the water quality during droughts, the tourist season, the rainy season, etc. Discussion ensued. Commissioner Wilkinson noted that lake water testing could be done by certain government agencies at no charge such as Florida University. Commissioner Wilkinson offered to pass information to Mr. Sheets. Mr. Sheets stated that he would contact the agencies and update the Board.

## 3. Discussion of "Decision Time" Email – Commissioner Wilkinson

Commissioner Wilkinson's email stating concern over the project not being able to meet AWT standards was brought to the floor at 8:35 p.m. Mr. Castle stated that he firmly believes that AWT standard could be met with present design and modifications. Discussion ensued on the expansion of plants on the site. Mr. Sweat stated that the plant would be built, as capacity is needed.

## 4. Discussion of e-mails and communications – Commissioner Brooks

Commissioner Brooks stated that he would second terminating the present design build contract and starting all over if so much time and effort hadn't been committed.

Commissioner Brooks is concerned with limited distribution of emails and asked Mr. Dillon if the person who writes the emails discussing things coming before the Board can be responded to. Mr. Dillon stated that there couldn't be any substitute for debate. All debate must be held at a public Board meeting he added that the first opinion out is the only opinion out until a meeting.

Chairman Bauman requested that Commissioner Wilkinson not respond to Board issues by email. Discussion ensued on the Sunshine Law.

Mr. Dillon was asked his legal opinion of the situation. Mr. Dillon stated that no one has violated the Sunshine Law and that the first one to speak is the only one to get to speak until the meeting. Mr. Dillon stated that he would warn the Board if he suspects a violation.

## 5. Discussion of enacting a resolution to begin a search for an administrative secretary/clerk – Commissioner Tobin

Commissioner Tobin wants to advertise for secretary so that an office can be set up and the Board can get control of their documents. He suggested to get started with Mr. Dillon as the point person. Chairman Bauman stated that it would be more logical to hire a manager first who would then hire the clerk and set up the office. Mr. Dillon stated that he must have strategic plan because there is no consensus of the Board on any of the issues relating to the transition. Mr. Sheets commented that at this time what to advertise for has not been decided, will the employee be full-time, part-time a contractor will the person receive benefits, where would they work from, etc.

Commissioner Tobin requested the item be included repeated as a discussion item on the next agenda.

Commissioner Beaty stated that as part of the transition committee it would be premature to look for a secretary prior to finding a general manager.

Commissioner Tobin requested that a discussion of office space be place on the next agenda.

6. Discussion of the Legislative Forum Membership Meeting and Legislative Reception – Commissioner Brooks

The item was presented for information only. No members expressed interest in attending.

7. Update/Discussion on the Ileana Ros-Lehiten meeting – Chairman Bauman

Chairman Bauman informed the Board that at the meeting most people attending stated that finding solutions to the wastewater issue are paramount in the Keys. All the local officials present expressed the same opinion. Ms. Ros-Lehiten promised as much money as politically possible for the wastewater issue.

8. Discussion of a resolution to send a letter to the Florida cabinet and Governor expressing KLWTD's unanimous support for: The Landmark Monroe County Conservation Proposal (LMCP) that sets goals for protecting near shore waters and native forests – Commissioner Brooks

Commissioner Brooks stated that passing the resolution was a matter of stating interest in getting money. Chairman Bauman stated that this is a strategic planning issue. Commissioner Tobin stated that this is an on going debate that the KLWTD should not become involved with quickly. Action on this item would have long-term implications and the resolution needs work it needs a conclusion.

9. Commissioner Wilkinson made motion to elevate the FEMA Grant Extension suggested in his 2-15-04 email to an action item on the next agenda. Commissioner Tobin seconded the motion.

Mr. Sheets stated that he would contact with Ms. Science Kilner of FEMA and provide the Board with a status report at the next meeting.

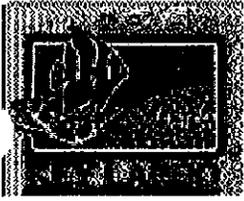
L. Meeting Adjournment

Chairman Bauman adjourned the meeting at 9:25 p.m.

**KLWTD Board Meeting  
March 3, 2004**

**Item G – 1**

**Pending Payments List  
for February 25, 2004**



**KEY LARGO WASTEWATER TREATMENT DISTRICT  
POST OFFICE BOX 491, KEY LARGO, FLORIDA 33037  
(305) 451-5105**

**TO:** Key Largo Wastewater Treatment District Board Members

**CC:** Robert E. Sheets, General Manager  
Faith Doyle, Clerk to the Board  
Charles Sweat, Director of Operations  
Thomas Dillon, Board Attorney

**FROM:** David R. Miles, Director of Finance

**DATE:** February 25, 2004

**RE:** Pending Payments Key Largo Wastewater Treatment District

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Dear Commissioners:

This agenda item is designed to provide an update on the financial status of the Key Largo Wastewater Treatment District. As of February 25, 2004 the District had \$129,495.66 in its bank account. We have \$68,905.64 in invoices in-hand for payment by March 17, 2004. Exhibit A is the list of currently outstanding invoices pending payment. As requested by the Board at the January 14, 2004 meeting, separate accounting of cash balances are shown as follows on February 25, 2004:

Administration & Operations:	\$ 86,553.28
Key Largo Park:	(25,009.25)
Key Largo Trailer Village:	<u>67,951.63</u>
Total	\$ 129,495.66

The second draw request from the FDEP grant for KL Park was mailed February 25, 2004 in the amount of \$14,602.99. The previous advance from FKAA on the FEMA Phase I grant of \$232,108.21 has been reduced to \$2,889.23 through previously approved disbursements. On February 24, 2004, a second FEMA Phase I advance for the KL Trailer Village project in the amount of \$250,000.00 was requested from FKAA.

Staff is currently working on a second draw request from Monroe County for MSTU funds and a request for an advance on Monroe County matching funds for the FDEP grant for the KL Park project. Both requests will be completed by February 27, 2004.

This pending payment list includes the first payment to Monroe County on the initial \$100,000.00 loan. It includes \$10,000.00 in principle and \$3,024.69 in interest. The interest payment is through December 31, 2003, and includes the \$2,212.50 of interest that was accrued in the prior fiscal year audited financial statements.

**Key Largo Wastewater Treatment District  
Payments Pending, March 3, 2004  
Prepared February 25, 2004**

Date of Invoice	Vendor	Invoice #	Description	Payment Category	Invoice Amount	Date Due	Date Paid
<b>Cash Balance Forward for Administration &amp; Operations</b>					<b>\$ 86,553.28</b>		
01/30/04	Thomas M. Dillon	1008	Professional Svc Jan/04	1	5,886.85	Upon Receipt	
02/25/04	Monroe County	Pmt 1	Principal & Interest Monroe County Loan	1	13,024.69	Upon Approval	
<b>Total Invoices for Administration &amp; Operations</b>					<b>18,911.54</b>		
<b>Balance Forward if All Admin &amp; Operations Invoices Paid</b>					<b><u>\$ 67,641.74</u></b>		
<b>Cash Balance Forward for Key Largo Park</b>					<b>\$ (25,009.25)</b>		
<b>Total Invoices for Key Largo Park</b>					<b>0.00</b>		
<b>Balance Forward if All Key Largo Park Invoices Paid</b>					<b><u>\$ (25,009.25)</u></b>		
<b>Cash Balance Forward for Key Largo Trailer Village</b>					<b>\$ 67,951.63</b>		
01/31/04	The Haskell Company	013104	Key Largo Trailer Village Design Appl.#4	3	49,994.10	Upon Receipt	
<b>Total Invoices for Key Largo Trailer Village</b>					<b><u>49,994.10</u></b>		
<b>Balance Forward if All Key Largo Trailer Village Invoices Paid</b>					<b><u>\$ 17,957.53</u></b>		
<b>Total All Invoices</b>					<b><u>\$ 68,905.64</u></b>		

Approved for Payment:

\_\_\_\_\_  
Gary Bauman, KLWTD Chair

\_\_\_\_\_  
Cris Beaty, KLWTD Secretary

\_\_\_\_\_  
Date

Payment Category Key:

1- District Administration

2- Key Largo Park Construction

3- Key Largo Trailer Village Construction

**KLWTD Board Meeting  
March 3, 2004**

**Item H – 1**

**Strategic Planning for the  
KLWTD Board**

# **M E M O R A N D U M**

**TO:** KLWTD Board of Commissioners  
**FROM:** Robert Sheets, District Manager of the KLWTD Board  
**DATE:** February 25, 2004  
**RE:** Strategic Planning for the KLWTD Board

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Since the District's inception the biggest challenge for the Board and the staff has been to find the time to discuss the future and the direction this District will take in delivering Wastewater Infrastructure to its citizens. It has become essential that the Board commit the time and effort to complete this strategic planning process and identify the critical goals and objectives the Board wishes to accomplish in the foreseeable future.

The District staff composed of the District Engineer, Attorney for the Board, and the District Manager have met and have prepared a series of recommendations and proposed dates that will enable the Board to develop a plan, a strategy and an implementation mechanism to achieve both short, intermediate and long-term goals.

Based on staff's discussion our recommendations are as follows: Over the next 90-days the Board must set aside a sufficient amount of time to meet in a workshop environment with the aid of a facilitator to address the numerous issues confronting the Board. The most critical and pressing issues that must come out of the strategic planning process are as follows:

- I. Define the Board's mission, goals and objectives. The Board must gain a consensus as to the District's mission. Is the Board's mission to sewer all of Key Largo as rapidly as possible based on funding availability, or is it to do something different. This is a critical issue that must be identified and addressed before all else can occur. In addition to developing the mission, strategies and values should also be identified along with specific objectives that will help measure the accomplishments of the Board.

We have provided for you a copy of a similar strategic plan prepared by the Florida Governmental Utility Authority (FGUA), which sets out its mission, its values and strategy goes for each individual year. Thus allows a means to measure its accomplishments.

II. Identify specific issues that must be addressed and accomplished. Staff's review and analysis identified the following that must be dealt with as part of the strategic plan. They are as follows:

- a) Complete and come to an agreement on a Transition Plan. This will be critical to any move toward local management. Direction must be provided as soon as possible.
- b) Update the Master Plan for the District. This will be critical in identifying the next projects for both preliminary cost estimates and funding criteria. This is critical so that the District does not lose its place in line for future State and Federal funds.
- c) Administrative procedures. The District must begin developing a set of formalized procedures consistent with their goals and objectives. We have developed draft administrative procedures as a starting point, and the District should be prepared to review those documents over the course of the next 60-90 days.
- d) Connection program. The Board must develop a formal connection program and a set of policies that will address such things as the enforcement of the mandatory connection program and the terms the District will employ for acceptance. What funding mechanisms will the District make available to the residents to help fund the \$2700 Capital Connection Fee and potentially other on-site costs.
- e) Where does the District go from here? How does the District continually monitor it's progress and respond to the community's questions of "what are we getting for our dollars"?

### Dates

We have identified the following as dates that we recommend to be set-aside for these planning meetings. They are as follows:

- Saturday, March 20, 2004
- Saturday, March 27, 2004
- Saturday, April 3, 2004
- Saturday April 17, 2004

Even though we know that this is a rather ambitious schedule, we believe the adherence to this type of commitment will be essential if we are going to accomplish these things within the next 90-days.

### Utilization of a Facilitator

It has been staffs' experience, working with various boards and organizations, that a task of this magnitude requires special assistance and not just in strategic planning but also in meeting process and enhancing the quality of decision-making. Therefore, we are recommending that the Board seriously consider the use of an outside facilitator that has demonstrated expertise in strategic planning, working with new boards, working in the water & sewer environment and a demonstrates expertise and success in helping organizations develop, prepare and implement programs of this nature.

We've taken the liberty of attaching a resume and background of Dr. Herbert Marlowe, who has worked for numerous cities and counties, water authorities and water management districts across the state and has demonstrated a great success and ability in helping achieve these types of objectives. If the Board has other individuals in mind, we will certainly be happy to consider them, but we believe Dr. Marlowe's reputation and expertise is of such a magnitude and our need is so great, that we recommend giving him serious consideration.

### Recommendations

The staff believes that there is no more important decision than where we go from here. Therefore, we strongly recommend that the Board consider our recommendation and agree to all of the provisions that we have outlined for your review.

RS/ssh

# Analytica

POB 998  
Newberry, FL 32669  
[HMarlowe@aol.com](mailto:HMarlowe@aol.com)

352 472 7171 Voice  
352 472 5687 Fax  
352 262 5222 Cell

February 23, 2004

Mr. Robert Sheets  
Governmental Services Group  
Tallahassee

Dear Robert:

I appreciate the opportunity to submit my qualifications to facilitate the work of the Key Largo WasteWater Treatment District to address issues such as:

- Mission of the District;
- Goals and Objectives;
- Developing a Transition plan to local management;
- Establishing a Connection Policy;
- Identification of needed administrative procedures and a plan to develop these procedures
- Approach to developing a Master Plan up date;
- Other topics as identified.

As you are aware I have extensive experience working with Water Supply and Waste Water Treatment entities, be they independent authorities, departments of local governments, or regional planning bodies. This work has been both at strategic and policy levels as well as at operational levels within entities to improve their work. For example I have worked with the governing board of the SWFWMD district while at the same time working with lift station operators in Palm Beach County. I taught the "A" level certification course for water and wastewater operators at the University of Florida while also providing in-depth organizational consulting to a water/wastewater utility. These experiences provide me with a distinctive perspective on the water/wastewater business from a regulatory, governance, and operational perspective. Currently I am working with four Florida counties, 13 municipalities and one water supply district to develop a long term water supply strategy. I have also done extensive work in the areas of economic development and land use where water is a critical factor.

In addition to experience in water and waste water related issues, I have extensive experience working with governing bodies on a wide range of topics. Most of this work involves assisting governing bodies to work through a variety of difficult and challenging choices to create solutions the board can endorse. I have worked with public sector boards ranging from 5 to 33 members and have extensive experience in working with boards with diverse viewpoints.

With respect to Monroe County, I along with a group of colleagues, recently developed a post-disaster redevelopment plan to address issues of redevelopment following a major public disaster. With respect to other Monroe County projects I was a member of a consulting team that developed a sustainable economic development strategy for the Key Largo area. I have done studies of the community mental health system and school based management system in the county while at the University of Florida. Currently I am working with the Community Based Care Alliance for Miami-Dade and Monroe Counties in strategic planning.

Finally, my experience in strategic planning and organizational development for public sector type bodies in Florida is far-reaching. As the attached list indicates, I have worked with authorities, special taxing districts, municipalities, county governments and regional bodies.

If I can provide additional information please let me know. I am available on the dates you indicated.

Cordially,

Herbert A. Marlowe, Jr.

## Strategic and Business Planning Experience – Public Sector

Organizational Strategic Plans, Community Vision Plans, Annual Agendas, Master Plans, Financial Master Plans, Economic Development Strategic Plans, Investment Plans, Public Venue Plans

- Peace River/Manasota Regional Water Authority
- Tampa Bay Water Coordinating Council (W. Coast Regional Water Supply Authority, SWFWMD, Hillsborough County, Pasco County, Pinellas County, City of Tampa, City of St. Petersburg)
- Volusia County Water Alliance (County and 17 cities)
- Florida Governmental Utilities Association
- Florida Stormwater Association
- Florida Association of Counties
- Alachua County
- Broward County
- Brevard County
- Gadsden County
- Hamilton County
- Leon County
- Madison County
- Sarasota County
- St. Lucie County
- Suwannee County
- Volusia County
- City of Cape Coral
- City of Cocoa
- City of Daytona Beach
- City of DeBary
- City of DeLand
- City of Fort Walton Beach
- City of Lake Wales
- City of Leesburg
- City of Naples
- City of Ormond Beach
- City of Tallahassee
- City of Temple Terrace
- City of Riviera Beach
- City of Sarasota
- City of Winter Haven
- Community of Panacea (Florida Waterfronts award winning plan)
- Town of Ponce Inlet
- Key Largo, Sustainable Economic Development Plan
- Economic Development Plan, Glades area of Palm Beach County
- Tourist Development Council, Palm Beach County
- Tourist Development Council, Lee County
- The Juvenile Welfare Board of Pinellas County
- The Children's Trust of Miami-Dade County
- The Children's Board of Hillsborough County
- The School Readiness Coalition of St. Lucie County
- Florida Partnership for School Readiness
- Community Based Care Alliance of Miami-Dade and Monroe Counties

## **Operational Planning and Organizational Development Experience**

**Business process design or re-design, organizational re-structuring, pay and compensations plans, performance management systems**

- **Water Utility Department, Palm Beach County (water and sewer)**
- **JEA, Jacksonville (electric, water, sewer)**
- **Monroe County, Post-Disaster Redevelopment Plan**
- **St. Johns Water Management District**
- **Southwest Florida Water Management District**
- **South Florida Water Management District**
- **Florida Department of Health**
- **Florida Department of Juvenile Justice**
- **Alachua County (NACO award winning project)**
- **Broward County**
- **Charlotte County**
- **Lee County**
- **Martin County**
- **Osceola County**
- **Palm Beach County**
- **St. Lucie County**
- **Volusia County**
- **Walton County**
- **City of DeLand**
- **City of Fort Walton Beach**
- **City of Hollywood**
- **City of Juno Beach**
- **City of Sarasota**
- **City of Venice**
- **Village of North Palm Beach**
- **Town of Tequesta**
- **Children's Board of Hillsborough County**
- **Children's Services Council, Palm Beach County**
- **The School Readiness Coalition of Palm Beach County**

## **HERBERT A. MARLOWE, Jr., Ph.D.**

Herb is a specialist in effectiveness strategy. He combines expertise in process facilitation, creative thinking, conflict resolution and group decision making to help his clients develop effective strategies to achieve their desired results. He professionally applies these strategies through his consulting firm, Analytica and a family business, Marlowe Farms.

His work with private sector, public sector and third sector clients at local, state and national levels on a wide range of topics enables him to bring a diverse set of perspectives to any issue. His skills in active listening and idea synthesis assist clients to frame challenges and opportunities in new and solvable ways. His skills in conflict resolution and consensus building help groups work through challenges in constructive and synergistic ways that build better solutions in the end. His ability to translate ideas into practical steps facilitates the development of workable actions plans that lead to real progress. His use of technology and user-friendly visual language techniques clarifies complex issues, facilitates diagnosis of key issues, fosters creative thinking and consensus building and serves to illustrate roadmaps to desired ends.

With over thirty years of consulting experience, Herb has worked on a broad range of issues in a wide number of fields including: water supply and wastewater treatment, agriculture, health, mental health, human services, transportation, community redevelopment, economic development, downtown redevelopment, criminal justice, organizational re-structuring, human resource issues, recreation and culture, public utilities, tourism, race and cultural relations, science and engineering, marketing and development, and environmental. In each of these areas he has applied his particular skills to assist groups to analyze the issue, develop alternatives, and prioritize an action plan to move forward toward some shared goal.

Within this broad experience, Herb has developed particular expertise in working on water related issues. He has done in-depth organizational consulting with water/wastewater utilities, worked with policy makers on water supply policy and developed strategic plans for stormwater associations. He has made presentations to a number of professional water/wastewater organizations and taught the "A" level water/wastewater certification course at the University of Florida.

Author of numerous books and articles, Herb received his Ph.D. from the University of Florida, where he specialized in process facilitation and strategy in the areas of organizational change and effectiveness. He founded Analytica after an academic career that was preceded by military service in Vietnam. He lives on his family farm in Newberry, Florida along with his wife, two children, one grandchild and more horses and cattle than one really needs in life.

**KLWTD Board Meeting  
March 3, 2004**

**Item H – 2**

**Request for an Extension of the  
FEMA Grant Deadline**

## M E M O R A N D U M

**TO:** KLWTD Board of Commissioners  
**FROM:** Robert Sheets, District Manager of the KLWTD Board  
**DATE:** February 25, 2004  
**RE:** Request for an Extension of the FEMA Grant Deadline

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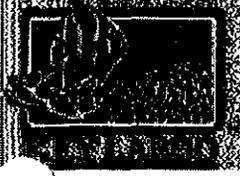
At the request of the Board I have contacted Ms. Science Kilner of FEMA regarding the process and procedure required for the District to submit a request for an extension to the grant beyond September 2005. Ms. Kilner informed me that Mr. Miles Anderson of the DCA serves as the grant administrator on behalf of FEMA and that all requests for modifications to the Grant Agreement must be forwarded to Mr. Anderson.

Based on this information I contacted Mr. Anderson regarding the process the District should follow in submitting a request for an extension to the deadline. Mr. Anderson stated that the best approach for the District is to wait until all delays associated with the final site approval have been resolved before submitting a request for an extension. Mr. Anderson believes by waiting the District would make one request based on the most current knowledge regarding all possible impact on the schedule. Mr. Anderson did indicate that any request would be welcomed and it is his role to work with the District to see that these projects are completed.

**KLWTD Board Meeting  
March 3, 2004**

**Item H – 3**

**Update Concerning Near-Shore  
Water Monitoring and Testing**



**KEY LARGO WASTEWATER TREATMENT DISTRICT**  
**POST OFFICE BOX 491; KEY LARGO, FLORIDA 33037**  
**(305) 451-5105**

**TO:** Key Largo Wastewater Treatment District Board Members

**CC:** Robert E. Sheets, General Manager  
Faith Doyle, Clerk to the Board  
Ed Castle, P.E., Board Engineer

**FROM:** Charles Sweat, Director of Operations

**DATE:** February 25, 2004

**RE:** Near Shore Water Quality Monitoring

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As requested by the Board at the February 18, 2004 Meeting, staff has begun evaluating the feasibility of instituting a near-shore water quality monitoring program for Key Largo. In conversations with Gus Rios, at DEP, he indicated that currently there is an EPA funded near-shore water quality study underway in Marathon to assess the environmental results of the Little Venice system. He suggested that the results of this study could be applied to the Key Largo area and that any "meaningful" study would cost the district upwards of \$100,000. He further went on to state that DEP could possibly conduct a future one-time sampling and testing event for Key Largo. The Florida Rural Water Association was also contacted regarding this subject but no programs of the scope and magnitude required by the KLWTD were readily available.

The most promising results came from the group, based out of the University of Florida in Gainesville, known as Lakewatch. Florida Lakewatch is a volunteer citizen lake monitoring program that facilitates citizen participation in the management of Florida lakes through monthly monitoring activities. Dan Willis, of Lakewatch, stated that their focus is predominately on freshwater they do monitor saltwater quality in some areas of the Florida Keys, most notably Tavernier and the Tarpon Basin. The saltwater testing done in the Keys is leftover from a similar program called Coastwatch. The state funding for Coastwatch is no longer available, however as previously stated, they still facilitate some water quality monitoring in the Keys. The tests run by Lakewatch are total phosphorus, total nitrogen, chlorophyll and visibility. Volunteers are used to collect the samples and state funding pays for the laboratory fees. The results are then posted on the Lakewatch website. KLWTD Staff is initiating discussions with Lakewatch to determine if adequate State funding is available to begin a near-shore water quality monitoring program or expand the current Keys monitoring to include the near-shore Key Largo area.

If you have any questions please feel free to contact me.

**KLWTD Board Meeting  
March 3, 2004**

**Item 1 – 1**

**Engineering Status Report for the  
Period Ending 02/24/04**



*"Excellence in Engineering"*

20020 Veterans Boulevard., Suite 7  
 Port Charlotte, FL 33954  
 (941) 764-6447 ph  
 (941) 764-8915 fax

**Key Largo Wastewater Treatment District  
 Engineering Status Report  
 Period Ending 02/24/04**

**Client Issues**

**Calusa Camp Resort**

The Calusa Camp Resort was completed and presented to the Board at the February 4, 2004 KLSTD Board meeting.

The table below provides a summary of the costs associated with each connection alternative.

Alternative Number	Capital Cost to KLWTD	Capital Cost to Property Owners	Capital Cost to Owner (per RV site)	Total Project Cost
1	\$162,000	\$981,500	\$2,674	\$1,143,500
2	\$162,000	\$934,400	\$2,546	\$1,096,400
3	\$162,000	\$664,200	\$1,810	\$826,200
4	\$225,000	\$697,680	\$1,901	\$952,680
5	\$475,000	\$683,280	\$1,862	\$1,158,280

A relative ranking of the 5 connection alternatives examined for a number of categories is provided below. A ranking of 1 is assigned to the most favorable alternative and a ranking of 5 is assigned to the least favorable alternative

Alternative Number	Cost to KLWTD	Cost to Property Owner	Total Cost	Technical Ranking
1	1	5	5	1
2	1	4	3	2
3	1	1	1	3
4	2	3	2	4
5	3	2	4	2

As stated at the presentation, it is the recommendation of WEC that Alternatives 3 and 4 not be accepted by the Board. These alternatives may adversely affect the operation of

the vacuum system and may result in poor performance and possibly spills of raw sewage.

### **Treatment Plant**

The 30% Design Development Submittal was presented to Staff at the February 4<sup>th</sup> Design Progress Meeting at which the 30% submittals for the collection system were reviewed. The Haskell Company has not yet scheduled a Design Progress Meeting for the wastewater treatment plant 30% design. It is noted by WEC that a number of components of the 30% submittal were not initially provided. These components were:

- Draft Basis of Design Memorandum
- Preliminary Piping and Valving Lists
- Preliminary Grading, Drainage, Landscaping and Electrical Site Plans
- Preliminary Electrical Site Plan
- Preliminary Landscape Plan

At WEC's request, The Haskell Company has provided some additional information, but some components are still missing. No design for the vacuum pump station has been submitted to date. The Preliminary Geotechnical Report, required as part of the Concept Review Submittal, was supplied at WEC's request.

The wastewater treatment plant 30% design is currently being reviewed by WEC. A list of comments will be generated and submitted to the District Manager.

The draft FONSI for the MM 100.5 site was received from FEMA. Review of the draft FONSI was conducted. The area allowed for construction is limited to 2.6 acres, but it is felt that this is sufficient for current needs and future expansion. If additional space is needed on the site at some future date, the environmental assessment process would have to be reinitiated.

It was noted that portions of the MM 100.5 site are zoned residential. A minor conditional use permit will be required for construction of the wastewater treatment plant. The Monroe County Growth Management staff will assist the District in preparing the permit application. The Haskell Company must provide a site plan in order for the application to be completed. George Garrett will be the contact person at the County for this process and will be preparing a punchlist of required activities to complete the permitting process. Mr. Garrett will also be the contract person for developing the environmental mitigation plan. A site plan is also required for this process to move forward.

### **Key Largo Park and Key Largo Trailer Village**

The Key Largo Trailer Village collection system 30% Design Development drawings were submitted in January. The Key Largo Park collection system design was also submitted. WEC staff reviewed the plans and provided the following comments:

KEY LARGO PARK AND  
KEY LARGO TRAILER VILLAGE  
CONSTRUCTABILITY REVIEW  
JANUARY 21, 2004

**GENERAL**

1. Show slope and "saw tooth" locations on profile.
2. Show all utility crossings on profile.
3. Use Engineers scales for both horizontal and vertical scales.
4. Provide full size - to scale drawings for review.
5. Provide master mainline sheets showing the entire project, KLTV and KLP so the overall strategy of line placement can be evaluated.
6. Where gravity and vacuum parallel installations exceed 80 feet, consider use of additional vacuum chambers due to cost of line placement. ***This is a value-engineering item.***
7. Limit connections per vacuum valve to 1000 GPD. Using 167 GPD per residence, this equals six units. This number is exceeded in some cases.
8. Cleanouts should be placed on all service laterals at the property line.
9. 8-inch gravity lines should have profiles and end with a manhole instead of a cleanout. If the cleanout associated with the sump is not big enough to allow a sewer jet to be used, then a manhole should also be placed near the vacuum chamber. 10-States Standards, and therefore FDEP, require manholes at each end of a gravity main. Also, jet cleaning from the upstream side of a main is not recommended. The orientation of the service wyes allows high pressure water and air to jet up the laterals.
10. All vacuum lines should show the profile.
11. The "C200" sheets have multiple locations where the service laterals do not have vacuum chambers.
12. I would like to see all the vacuum lines labeled (V100, V101, V200, etc.). It is difficult to follow on where the individual lines connect and which system they are on.
13. 10-inch vacuum main to KLTV has no division valves in a 5000-ft run. A number of branch vacuum mains are also shown without division valves.
14. Provide calculations used for sizing of pipes
15. Vacuum lines, vacuum valve pits and sumps, and 8-inch gravity mains are placed in pavement. Moving these into unpaved areas of the ROW will save asphalt and flowable fill restoration costs. ***This is a value-engineering item.***

**Sheet C-1**

1. The minimum clearance with water mains does not comply with regulatory requirements of 62-604. The clearance does meet the minimum requirements for placement of new or relocated water mains under 62-555-314(1)(b) and (2)(a). However, the new wastewater rules (62-604, October 2003) do not reflect this, although the 10-foot horizontal and 18-inches vertical separation can be reduced if certain conditions are followed.

2. A general note should be added requiring the contractor to maintain access to all properties at all times or to coordinate temporary interruptions with the property owners.

#### **Sheet C-2**

1. Show minimum overlap of surface coarse of asphalt over existing base asphalt. Monroe County's standard detail requires 1 foot.
2. Detectable tape is normally place 18 inches below the surface. Use manufacturers recommendation.
3. Reversed double wye in detail will be prone to plugging and will not effectively split the flow equally to the two valves. Buffer tanks would be more appropriate.

#### **Sheet C-100**

1. Is an open cut of US 1 acceptable with FDOT?
2. Where is highway-crossing detail?
3. Give detail showing parallel installation of 10-inch vacuum mains.
4. Give profile from vacuum station to match line A-A.

#### **Sheet C-102**

1. "CONSTRUCT VACUUM VALVE CHAMBER" at H9 does not make sense.

#### **Sheet C-106**

1. Both 4-inch vacuum mains at I8 are on the gravity side of the vacuum chamber. Does not match sheet C-108.

These comments were submitted to the District Manager and were also addressed at the Design Progress Meeting held on February 4<sup>th</sup>. The meeting was productive. The Haskell Company and Brown & Caldwell were receptive to recommendations by the District Staff and appear to be willing to work cooperatively with us.

WEC provided an alternative layout for design of the service laterals to vacuum pits that will allow for more effective maintenance of the system and eliminate many of the short 8-inch gravity mains. WEC was concerned about lack of access to these sections of gravity main for cleaning. The possibility of blockages resulting in back-ups of multiple users is reduced in the suggested layout. This alternative design does not increase the number of vacuum pits and does not increase the linear footage of pipe needed. Brown & Caldwell and Walt Messer of DN Higgins reviewed the suggested layout and have decided to incorporate it into the system design.

The concern over the reversed double wyes in the 30% design is to be addressed in the 60% design submittal. This design appears to be intended to eliminate the use of buffer tanks. Instead of two valves placed in a concrete manhole structure, two standard Roediger sumps are used, with two valves being placed in a single PE valve chamber. This configuration would reduce costs, but would not allow access to the gravity mains

for cleaning. If a plug occurred, it would be difficult to clear, and once cleared, the material causing the plug would likely enter the sump and could plug at the 3-inch line at the base of the sump. The backed-up wastewater released when the plug was cleared would then overflow onto the street.

**Haskell Pay Applications**

WEC received Pay Application No. 4 in draft form at the end of January. Additional information was requested from The Haskell Company to support their requests. After all available information was received, WEC was able to approve the application at a reduced amount, based on the amount of work completed. The Haskell Company made the reductions requested as shown above, resulting in the approved amounts tabulated below.

**Application No. 3**

<b>Item</b>	<b>Gross Requested Billing</b>	<b>Gross Approved Billing</b>	<b>Retainage This Period (10%)</b>	<b>Net to Pay as Approved</b>
4. Supervision	\$5,000.00	\$5,000.00	\$500.00	\$4,500.00
5. Travel & Subsistence	\$2,000.00	\$2,000.00	\$200.00	\$1,800.00
14. Concept Review Submittal	\$26,276.32	\$15,766.00	\$1,576.60	\$14,189.40
15. 30% Design Development	\$30,405.75	\$18,243.00	\$1,824.30	\$16,481.70
16. 60% Design Development	\$14,540.00	\$14,540.00	\$1,454.00	\$13,086.00
<b>TOTAL</b>	<b>\$51,217.00</b>	<b>\$20,811.50</b>	<b>\$2,081.15</b>	<b>\$50,057.10</b>

**Regulatory Compliance Issues**

No compliance issues at this time.

**Project Team Meetings and Actions**

WEC participated in the normally scheduled weekly Working Group conference calls each Monday during the period. WEC also attended the February 4<sup>th</sup> and February 18<sup>th</sup> Board meetings. WEC met prior to each meeting with GSG and Tom Dillon in preparation for the Board meetings.

As discussed previously, WEC also attended the KLTV 30% Design Progress Meeting on February 4<sup>th</sup>.

On February 17<sup>th</sup>, Jeff Weiler and Ed Castle met in Key West with Robert Sheets and Tom Dillon to discuss the need for strategic planning. This workshop resulted in the recommendations discussed in the District Manager's report.

WEC, along with District Staff, also participated in two conference calls regarding the MM 100.5 site. The first was with Science Kilner of FEMA to discuss the draft FONSI. The second was with George Garrett and Tim McGarry of Growth Management. This call focused on the minor conditional use permit and the mitigation plan as discussed previously.

**KLWTD Board Meeting  
March 3, 2004**

**Item K – 1**

**Discussion of the Haskell  
Company Suggested Project  
Manager**

## SECTION 2 - QUALIFICATIONS OF DESIGN-BUILD TEAM

### **Employee Information:**

**William English**

Project Manager  
The Haskell Company

**Project Title:** Project Manager / Lead Scheduler  
/ Lead Expediter

**Experience:** Haskell - 3 yrs. Others - 2 yrs.

### **Education:**

B.S. - Building Construction and Contracting

### **Professional Registration:**

State of Georgia, Licensed Utility Manager

### **Applicable Work Experience:**

As project manager, English aids project acquisition, procurement and construction. He prepares bids, estimates, subcontracts, and manages project documentation. He is responsible for shop drawing review, the submittal process, and coordination between vendors and field operations. In the field, he directs work activities to maintain project schedule, inspects work for compliance and quality, generates and executes punch-list items.

- ◆ Port of Miami, Florida
  - Lummus Island Sanitary Sewer Improvements
  - DERM Sewer Laterals and Ship Pumpouts
  - \$3.5 million, Miami, FL
- ◆ Glades Road Water Treatment Plant Membrane Softening Process Addition, \$47 million, Boca Raton, FL
- ◆ Forest Hills Park, City of Coral Springs, FL
- ◆ Lake Oconee Water Transfer Station, Madison, GA
- ◆ City of Covington Fuel Containment Facility, Covington, GA
- ◆ City of Gainesville Raw Water Pump Improvements, Gainesville, GA
- ◆ City of Sandersville Digester Improvements, Sandersville, GA
- ◆ City of Villa Rica Intermediate Pump Station, Villa Rica, GA
- ◆ Ocmulgee East Pump Station, Macon, GA
- ◆ Windermere Sewage Treatment Plant, Cumming, GA
- ◆ Water System Improvements at Georgia Power Site - Storage and pumping facilities, Athens, GA
- ◆ Windermere Pump Stations No. 1 & 2, Cumming, GA
- ◆ Middle Oconee Water Pollution Control Plant, Athens, GA
- ◆ Hickory Flat Booster Pump Station, Canton, GA
- ◆ Jackson Co. SR60 Storage & Pumping Facilities, Pendergrass, GA
- ◆ Sweetwater Pump Station Upgrade, Cobb County, GA
- ◆ Oconee Co. Land Application System, Watkinsville, GA

## Faith Doyle

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**From:** Thomas M. Dillon [thomasdillon@terranoa.net]  
**Sent:** Monday, February 23, 2004 2:34 PM  
**To:** Faith Doyle; Charles Sweat; 'David Miles'; 'Ed Castle'; Gary Bauman (E-mail); Jeff Weiler (E-mail); Robert Sheets  
**Subject:** Re: draft KLWTD 3/3 agenda

I would expect a submittal requesting such approval before the Board acts.

Tom

----- Original Message -----

**From:** "Faith Doyle" <FDoyle@govmserv.com>  
**To:** "Charles Sweat" <CSweat@GovMServ.com>; "'David Miles'" <dmiles@govserv.com>; "'Ed Castle'" <edrcastle@aol.com>; "Gary Bauman (E-mail)" <g.bauman@dolphinpatioandgrill.com>; "Jeff Weiler (E-mail)" <jeff@weilerengineering.com>; "Robert Sheets" <rsheets@govserv.com>; "'Thomas Dillon'" <thomasdillon@terranoa.net>  
**Sent:** Monday, February 23, 2004 1:04 PM  
**Subject:** RE: draft KLWTD 3/3 agenda

> Gentlemen.....

>  
> I came across another item from my notes.....

> APPROVAL OF THE HASKELL PROJECT MANAGER -- MR. WILLIAM ENGLISH

> should this be included on 3/3 ?????

> thanks,

> Faith

>> -----Original Message-----

>> From: Faith Doyle  
>> Sent: Monday, February 23, 2004 12:55 PM  
>> To: Charles Sweat; David Miles; Ed Castle; Gary Bauman (E-mail); Jeff Weiler (E-mail); Robert Sheets; Thomas Dillon  
>> Subject: draft KLWTD 3/3 agenda  
>> Importance: High

>> Gentlemen,

>> This is the first draft of the March 3, 2003 agenda....

>> THE ITEMS ON THIS AGENDA WERE PULLED FROM THE WORKING GROUP AND MY MEETING

>> NOTES!!!!!!!!!!!!!!!!!!!!!!

>> Please let me know if you do not agree with the items!!!!!!!!!!!!!!!!!!!!!!

>> << File: KLWTD draft Agenda 3-3-4 .doc >>

>> Faith Doyle  
>> Clerk to the Board  
>> c/o Government Services Group, Inc.  
>> 614 N. Wymore Road  
>> Winter Park, FL 32789  
>> Phone (407) 629-6900  
>> Fax (407) 629-6963  
>> Cell (321) 246-0059

**KLWTD Board Meeting  
March 3, 2004**

**Item K – 2**

**Discussion of the Municipal  
Wastewater Appropriations  
Deadlines**

Cirrus Fulcra Page 1 of 2

## Faith Doyle

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Please add this to the agenda.

----- Original Message -----

**From:** Jody Thomas

**To:** Mayor - Key Colony Beach ; [roberts-jim@monroecounty-fl.com](mailto:roberts-jim@monroecounty-fl.com) ; David Fernandez ; [tobinlaw@terranova.net](mailto:tobinlaw@terranova.net) ; Jim Reynolds ; [jankes@marathon.fl.us](mailto:jankes@marathon.fl.us) ; [bernie.LaPira@islamorada.fl.us](mailto:bernie.LaPira@islamorada.fl.us)

**Sent:** Tuesday, February 24, 2004 11:26 AM

**Subject:** Wastewater Appropriations Deadline

OOPs, forgot attachment

To Municipal Wastewater and Stormwater Funding Partners:

Each year Senators Graham and Nelson ask local governments to provide them with a list of all the appropriations requests for each government using a certain form. They use these requests from all over the state to create the priorities they transmit to the various Appropriations Committee Chairs. We at the Nature Conservancy also use this form to request funding for our priorities. This year the deadline is March 1, 2004. You have probably already taken care of this, but just in case I wanted to give you a reminder regarding our FY05 wastewater request.

I am advising that we all ask for \$30 million to fund the Water Quality Improvements Act to be divided as agreed upon in the Project Development Team plan that you all have participated in writing with Cecelia Weaver and Shelley Trulock. Our Congressional delegation appreciated our joint request last year and said it makes it easier for them to advocate for the funding if we are forwarding the same request.

My form is attached so you can see how various blanks are filled in. Please feel free to copy relevant parts on your own form. The past funding amounts I used for federal, state and local governments are from a handout I received at the Water Quality Steering Committee and from the FKAA. If the amount listed for your locality is incorrect, please correct it on your form.

Please send the form via email to [amanda\\_wood@graham.senate.gov](mailto:amanda_wood@graham.senate.gov) and [kim\\_lucky@billnelson.senate.gov](mailto:kim_lucky@billnelson.senate.gov)

In other news, I hope you all saw that when Governor Bush appointed Colleen Castille to be head of DEP, he stated that one of her goals will be to help get federal funding for improving the water quality in the Florida Keys. I am glad to see it is on the radar screen at the highest levels. Additionally, Nancy Klingener and I spoke to the director of the President's Council on Environmental Quality, Jim Connaughton, last week in Key West at the NOAA groundbreaking ceremony about the need to fund this program. Mr. Connaughton is the brother-in-law of Office of Management and Budget (OMB) director, Josh Bolton. Mayor Nelson was at the same event and very effectively made the case for this funding to Mr. Connaughton. We are on their radar screen as never before.

Last month, I was also pleased to see Appropriations Committee Chairman David Hobson at the Everglades Coalition Meeting. Chairman Hobson also spoke about the need to find funding for this purpose if the Administration will support it.

2/25/04

We are working with Mrs. Ros Lehtinen to set up a breifing at the Florida Congressional Delegation meeting in Washington in the next few months to lay our our case for all Florida Members of Congress. When that is set up I will let you know so a representative of your government can arrange come to that event and also visit with various committee staff.

Please let me know if you have any questions about any of this or if you have received any information that could be useful in our efforts.

Many thanks for your hard work this year.

Jody

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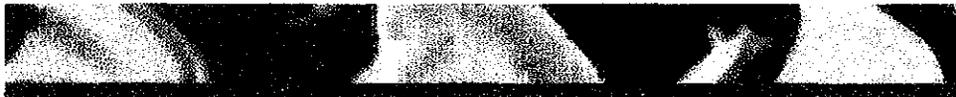
**Jody Thomas**  
*Director, South Florida/Florida Keys Program*

jthomas@tnc.org  
(305) 745-8402 Ext. 106 (Phone)  
(305) 587-4300 (Mobile)  
(305) 745-8399 (Fax)

**The Nature Conservancy**  
**Florida Keys Office**  
P.O. Box 420237  
Summerland Key, FL 33042

*The Nature  
Conservancy.*  
SAVING THE LAST GREAT PLACES ONE

**nature.org**



**Andrew M. Tobin**  
**P.O. Box 620**  
**Tavernier, FL 33070**  
**305-852-3388**  
**Tobinlaw@Terranova.net**

**FY2005 Civilian Appropriations Request Form  
Senators Bob Graham & Bill Nelson**

*If you need assistance in answering a question, please call Amanda Wood (202-224-3041) or Kim Luckey (202-224-5274).*

**Date:** February 23, 2004

<b>Organization:</b>	The Nature Conservancy	<b>Address:</b>	P.O. Box 420237, Summerland Key, FL 33042		
<b>Organization Point of Contact:</b>	Jody Thomas	<b>Phone:</b>	305-745-8402		
<b>Address:</b>	Same	<b>Email:</b>	jthomas@tnc.org		
<b>DC Representation: (If any)</b>	Ted Illston	<b>Phone:</b>	703.841-4592		
<b>Address:</b>	4245 N.Fairfax Dr. Arlington, Va 22203	<b>Email:</b>	tillston@tnc.org		
<b>Name of Project:</b>	Florida Keys Water Quality Improvements	<b>Total # of Projects Requested</b>	1	<b>Priority #:</b>	1

<b>Suggested Appropriations bill:</b>	Energy and Water																		
<b>Suggested Account in bill:</b>	Construction General																		
<b>Total Amount of Federal Funding Requested for Fiscal Year 2005</b>	\$30,000,000																		
<b>Is any of this Funding Included in the President's Budget Request?</b>	no																		
<b>Anticipated Future Funding Requests</b>	\$67,000,000 (remainder of funds Authorized in 2000)																		
<b>Local and State Funding Sources and Amounts</b>	<table border="0"> <tr><td>Grant from the State of Florida for 2003</td><td align="right">\$12,000,000</td></tr> <tr><td>Grant from State of Florida for 2002</td><td align="right">\$ 1,600,000</td></tr> <tr><td>Monroe County Infrastructure Funds 2002</td><td align="right">\$ 6,000,000</td></tr> <tr><td>State of Florida, FY05 Governor's Budget Request</td><td align="right">\$18,000,000</td></tr> <tr><td>South Florida Water Management District</td><td align="right">\$ 100,000</td></tr> <tr><td>Florida Dept of Community Affairs</td><td align="right">\$ 1,417,093</td></tr> <tr><td>Florida Dept of Environmental Protection</td><td align="right">\$ 333,036</td></tr> <tr><td>City of Marathon</td><td align="right">\$ 3,257,637</td></tr> <tr><td>City of Layton</td><td align="right">\$ 75,000</td></tr> </table>	Grant from the State of Florida for 2003	\$12,000,000	Grant from State of Florida for 2002	\$ 1,600,000	Monroe County Infrastructure Funds 2002	\$ 6,000,000	State of Florida, FY05 Governor's Budget Request	\$18,000,000	South Florida Water Management District	\$ 100,000	Florida Dept of Community Affairs	\$ 1,417,093	Florida Dept of Environmental Protection	\$ 333,036	City of Marathon	\$ 3,257,637	City of Layton	\$ 75,000
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<b>Other Federal Funding Sources and Amounts</b>	<table border="0"> <tr><td>FEMA Funding</td><td align="right">\$10,600,000</td></tr> <tr><td>EPA Little Venice and Demonstration</td><td align="right">\$ 8,100,000</td></tr> <tr><td>NOAA - CIAPP</td><td align="right">\$ 500,000</td></tr> </table>	FEMA Funding	\$10,600,000	EPA Little Venice and Demonstration	\$ 8,100,000	NOAA - CIAPP	\$ 500,000												
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EPA Little Venice and Demonstration	\$ 8,100,000																		
NOAA - CIAPP	\$ 500,000																		

**Project Funding History**

Fiscal Year	Amount Appropriated	Appropriations Bill	Account
2004	\$500,000 and \$2,000,000	Energy & Water and Omnibus	Construction General
2003			
2002			
2001	\$420,000	PL 106-554, Section 109	Construction General
<b>Federal agency advocate (name, office, e-mail and phone number):</b>	Richard Bonner, Deputy District Engineer, Jacksonville District, 904.232.2586		
<b>State agency advocate (name, office, e-mail and phone number):</b>	Mike Collins, Board of Governors, South Florida Water Management District, 305.853.3219		

**Purpose of and Justification for Funding**

This funding request is derived from information in the draft Program Management Plan under development by the Army Corps of Engineers, South Florida Water Management District and representatives of local government. It is a realistic projection of project needs in each of the participating municipalities and covers design, land acquisition or construction activities. Local governments in Marathon, Key Colony Beach, Layton, Marathon, Monroe County, Key West and the new sewer district in Key Largo developed the substance of this application and will follow up with letters of support from the various councils.

**How would you like this project described in the bill?**

\$30 million dollars to continue construction of water quality improvements in the Florida Keys as authorized by Public law 106-534.

## Sustainable District Fiscal Viability

Fiscal philosophy - To operate the myriad of functions of the Key Largo Wastewater Treatment District will be extremely costly. While outsourcing of most businesses is often effective, outsourcing in the Keys to the mainland is not. Outsourcing our current contracts is extremely "COST" and control ineffective. It appears that even Brown & Caldwell think of us as a distant country for travel purposes. Cost to maintain outside plant personnel and equipment to repair, adjust and service sewer lines and valves have not even been addressed. There also are little funds for unknown expenses of which there could be considerable in numbers and amounts.

Recommendation: I am of the opinion that we should invoice every cent of District expenses eligible towards:

First to any and all eligible grants. In this manner, we preserve the maximum funds for District expenses while at the same time preserving MSTU funds for District internal management. Even a portion, perhaps all of our salaries should be invoiced. I am of the opinion we repeatedly forward the invoices and force them to either reimburse or reject. Our contracts are not set up to connect a few additional houses if funds allow. What is set up is that we will have to manage and operate what is installed either from fees or taxes for perpetuity. These expenses are permanent and the grants are transitory. FCAA set the precedence for this.

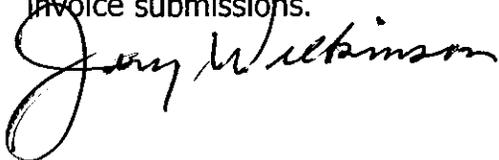
Second, any invoices not eligible for grant re-imburement, or rejected, should be submitted to the Monroe County Clerk for retirement of the \$100,000 debt. Either way this preserves District funds, allows 100% use of its citizen's taxes for citizen support and for our establishment of a viable management infrastructure. Rationale - Monroe County has the responsibility to improve the near shore water quality via improved wastewater treatment. Monroe County loaned the KLWTD \$100,000 to startup the district and was never intended to be an actual "loan." The Key Largo citizens pay the usual County taxes including 148 funds for waster water planning, etc., their pro rata share of state revenue sharing funds go into county coffers, and paid/pay an additional MSTU tax to continue to operate the existing KLWTD. District eligible expenses to improve the county's water quality should be used to retire the "seed money" loan to startup the district. Actual payment using MSTU funds, or any other post startup funds, reduces to funds to improve the county's water quality.

Third, we have to invoice every cent anyway whether grant or MSTU, we might as well either preserve funds for future District expenses while doing so. Receiving and preserving District administrative capital either from the grants, or from credit towards payment of the \$100,000 loan will place the District in a more favorable position to be able of maintain and operate the equipment once it is the Districts.

Fourth, failure to preserve sufficient plus a reserve capital can force the District increase the MSTU millage rates. Now is the time to establish a fiscal responsible attitude. We all campaigned to keep the citizen's cost at a minimum.

Necessary action:

1. Direct staff to begin submitting these invoices to the grantors.
2. Submit a request to Mayor Nelson to establish procedures to retire the \$100,000 debt via invoice submissions.



## Faith Doyle

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**From:** Robert Sheets [rsheets@govserv.com]  
**Sent:** Tuesday, March 02, 2004 2:06 PM  
**To:** Faith Doyle  
**Subject:** FW: Key Largo Park Design Change Order



ltr GSG 030204.doc

Please call when you receive.

-----Original Message-----

**From:** Kinsley, Peter M. [mailto:peter.kinsley@thehaskellco.com]  
**Sent:** Tuesday, March 02, 2004 1:58 PM  
**To:** Robert E. Sheets (E-mail); Charles L. Sweat (E-mail); Thomas M. Dillon (E-mail); Edward R. Castle (E-mail)  
**Cc:** Stuart Oppenheim (E-mail)  
**Subject:** Key Largo Park Design Change Order

Attached, please find the letter dated today regarding KLWTD's rejection of our change request for the design of the Key Largo Park. As stated in the letter, I have removed the cost of the Project Director in order to expedite resolution as Brown and Caldwell has significant cost out of pocket. This reduces the previously approved change request by \$1,947.00. I will bring hard copy to tomorrow's meeting and am requesting that this issue be added to the agenda. Thanks...

<<ltr GSG 030204.doc>>

Peter M. Kinsley  
The Haskell Company  
Division Leader - Water  
904/ 357-4868 (phone)  
904/ 357-4282 (fax)

**Peter M. Kinsley**  
*Division Leader - Water*

March 2, 2004

Re: Wastewater Management System For  
The Key Largo Trailer Village Area  
Key Largo, Florida  
Change Order No. 1 – Revision 2  
Change Proposal No. 1 – Revision 3  
**Issue No. 02-001 – Key Largo Park  
Design and Construction (Design  
Only)**

Mr. Robert Sheets  
Government Services Group, Inc.  
1500 Mahan Drive  
Suite 250  
Tallahassee, Florida 32308

Dear Mr. Sheets:

In response to the February 4, 2004 rejection of Change Order No. 1 by the Key Largo Wastewater Treatment District (KLWTD), we offer the following:

- Change Order No. 1 only included Change Proposal No. 1 – Revision 2 that was unanimously approved by the KLWTD on November 19, 2003. Based upon the direction received, The Haskell Company and our engineer, Brown and Caldwell proceeded in good faith with the immediate prosecution of the additional scope of work.
- It is our understanding that Change Order No. 1 was rejected because of disputed cost included in the pricing believed to be covered in the 5%. Specifically, the Project Director (\$1,800) and General Conditions (\$1,000) were questioned. Provided below is our response.
  - The additional 20 man-hours of Project Director included in the pricing are for review of the additional design documents associated with this change at the 30%, 60%, 90% and Final Design Development submittals. The Project Director is not a fully dedicated employee of the project and has an estimated number of required man-hours. The Project Director's review of additional design documents outside of the original scope of work introduces a direct cost to the project that could not have been anticipated while preparing our original cost proposal and should be reimbursed.
  - The cost of General Conditions included in this proposal is for plan reproduction. The design associated with this change introduced 27 additional drawings, which must be reproduced in half size and full size multiple times at the 30%, 60%, 90% and Final Design Development submittals. The reproduction of drawings outside of the original scope of work introduces a direct cost to the project that could not have been anticipated while preparing our original cost proposal and should be reimbursed.

Mr. Robert Sheets

March 2, 2004

Page 2

Although we do not agree with the position of the KLWTD in this regard and take exception to the rejection of a previously approved Change Proposal after the work has been initiated, attached, please find six executed copies of Change Order No. 1 – Revision 1. Change Order No. 1 – Revision 1 includes Change Proposal No. 1 – Revision 3 that has been modified such that the cost of the Project Director and associated fee has been removed. This concession has been offered in support of settlement so that prompt payment can be made to our engineer who has already incurred significant cost associated with the performance of this added scope of work. Please execute Change Order No. 1 – Revision 1 so we may process payment for services rendered.

Please be advised that The Haskell Company intends on submitting for permit of the collection system upon approval of our 60% Design Development Submittal and therefore requires immediate resolution of this issue. Should you have any questions or require further information, please do not hesitate to contact me at (904) 357-4868.

Sincerely,

Peter M. Kinsley  
Division Leader - Water

cc: Mr. Walt Messer, DN Higgins, Inc.  
Mr. Stuart Oppenheim, Brown and Caldwell  
Issue No. 02-001

***THOMAS M. DILLON***

*Attorney at Law*

*94220 Overseas Highway, Unit 2B*

*Tavernier, Florida 33070-3005*

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February 27, 2004

State Representative Ken Sorensen  
303 House Office Building  
402 South Monroe Street  
Tallahassee, Florida 32399-1300

Attention: Laura Todd

Dear Representative Sorensen and Ms. Todd:

I am the attorney for the Key Largo Wastewater Treatment District. I hereby certify and declare under penalty of perjury that the following facts are known to me and that, if called, I could and would competently testify thereto.

I am in receipt of draft legislation amending chapter 202-337, Laws of Florida, as amended. I presented the draft legislation to the Board of the Key Largo Wastewater Treatment District at its regular meeting of February 18, 2004.

At that meeting, the District Board took the following actions:

- Approved as written the proposed subparagraph 2(q) of Section 4 of chapter 202-337, Laws of Florida, as amended, to wit:  

(q) To use any and all funds provided to it from any source to pay for the general, administrative, and overhead expenses of the district, including compensation of the members of the governing board, provided that the district shall not use funds in a manner contrary to any express lawful restriction on the use of funds imposed by the authority granting the funds.
- Approved a revision to subparagraph (6) of Section 5 of chapter 202-337, Laws of Florida, as amended, such that in the event of a vacancy in the District Board, the remaining commissioners would appoint a qualified person to fill the vacancy, but directing me to work with your office in order to revise the proposal such that the person filling the vacancy would remain in office for the remainder of the term or until the next general election in Key Largo, Florida.

Pursuant to the Board's direction, I have worked with Laura Todd, who has provided to me the following proposed wording for subparagraph 6:

If any vacancy occurs in a seat occupied by a governing board member elected by the qualified electors, the remaining members of the governing board shall, within 45 days after the vacancy occurs, appoint a person who would be eligible to hold the office to the end of the unexpired term or until the next general election, whichever occurs first. Any person elected at such next general election to fill such seat shall serve in such capacity for the remainder of the predecessor's term.

**I have reviewed the proposed wording, and I believe that it is consistent with the direction of the District Board.**

**Based on the foregoing, and pursuant to the direction given me by the District Board, I am advising you that the proposed legislation, as written above, is approved by the Key Largo Wastewater Treatment District, and I ask you to introduce and promote the legislation at your earliest opportunity.**

**In addition, I am enclosing the original "2004 Economic Impact Statement" prepared by District Chairman Gary Bauman.**

**Sincerely,**

**C: Key Largo Wastewater Treatment District**

**Faith Doyle**

---

**From:** Thomas M. Dillon [thomasdillon@terranova.net]

**Sent:** Friday, February 27, 2004 7:34 AM

**To:** Robert Sheets; Andrew M. Tobin; Charles Brooks; Cris Beaty; Faith Doyle; Jerry Wilkinson

**Subject:** legislation

I am attaching a letter sent to Representative Sorenson's office yesterday approving the draft legislation as being consistent with the Board's direction at the meeting of 2/18/04.

Note that the legislation as drafted minimizes concerns with the staggered term issue by providing that the replacement director serves for the remainder of the vacant term, or the next general election, AND a replacement director is elected at the next general election completes only the remaining term. As a result, the staggered terms would be restored at the end of the vacant term.

In addition to the letter, I prepared an Economic Impact Statement for the legislation, showing no impact other than avoiding the cost of a special election in the event of a vacancy. Chairman Bauman signed the statement, and I transmitted it along with the letter. I will provide copies to the Board at the 3/3/04 meeting.

Tom

2/27/04

# Analytica

POB 998  
Newberry, FL 32669  
[HMarlowe@aol.com](mailto:HMarlowe@aol.com)

352 472 7171 Voice  
352 472 5687 Fax  
352 262 5222 Cell

February 23, 2004

Mr. Robert Sheets  
Governmental Services Group  
Tallahassee

Dear Robert:

I appreciate the opportunity to submit my qualifications to facilitate the work of the Key Largo WasteWater Treatment District to address issues such as:

- Mission of the District;
- Goals and Objectives;
- Developing a Transition plan to local management;
- Establishing a Connection Policy;
- Identification of needed administrative procedures and a plan to develop these procedures
- Approach to developing a Master Plan up date;
- Other topics as identified.

As you are aware I have extensive experience working with Water Supply and Waste Water Treatment entities, be they independent authorities, departments of local governments, or regional planning bodies. This work has been both at strategic and policy levels as well as at operational levels within entities to improve their work. For example I have worked with the governing board of the SWFWMD district while at the same time working with lift station operators in Palm Beach County. I taught the "A" level certification course for water and wastewater operators at the University of Florida while also providing in-depth organizational consulting to a water/wastewater utility. These experiences provide me with a distinctive perspective on the water/wastewater business from a regulatory, governance, and operational perspective. Currently I am working with four Florida counties, 13 municipalities and one water supply district to develop a long term water supply strategy. I have also done extensive work in the areas of economic development and land use where water is a critical factor.

In addition to experience in water and waste water related issues, I have extensive experience working with governing bodies on a wide range of topics. Most of this work involves assisting governing bodies to work through a variety of difficult and challenging choices to create solutions the board can endorse. I have worked with public sector boards ranging from 5 to 33 members and have extensive experience in working with boards with diverse viewpoints.

With respect to Monroe County, I along with a group of colleagues, recently developed a post-disaster redevelopment plan to address issues of redevelopment following a major public disaster. With respect to other Monroe County projects I was a member of a consulting team that developed a sustainable economic development strategy for the Key Largo area. I have done studies of the community mental health system and school based management system in the county while at the University of Florida. Currently I am working with the Community Based Care Alliance for Miami-Dade and Monroe Counties in strategic planning.

Finally, my experience in strategic planning and organizational development for public sector type bodies in Florida is far-reaching. As the attached list indicates, I have worked with authorities, special taxing districts, municipalities, county governments and regional bodies.

If I can provide additional information please let me know. I am available on the dates you indicated.

Cordially,

Herbert A. Marlowe, Jr.

## Strategic and Business Planning Experience – Public Sector

Organizational Strategic Plans, Community Vision Plans, Annual Agendas, Master Plans, Financial Master Plans, Economic Development Strategic Plans, Investment Plans, Public Venue Plans

- Peace River/Manasota Regional Water Authority
- Tampa Bay Water Coordinating Council (W. Coast Regional Water Supply Authority, SWFWMD, Hillsborough County, Pasco County, Pinellas County, City of Tampa, City of St. Petersburg)
- Volusia County Water Alliance (County and 17 cities)
- Florida Governmental Utilities Association
- Florida Stormwater Association
- Florida Association of Counties
- Alachua County
- Broward County
- Brevard County
- Gadsden County
- Hamilton County
- Leon County
- Madison County
- Sarasota County
- St. Lucie County
- Suwannee County
- Volusia County
- City of Cape Coral
- City of Cocoa
- City of Daytona Beach
- City of DeBary
- City of DeLand
- City of Fort Walton Beach
- City of Lake Wales
- City of Leesburg
- City of Naples
- City of Ormond Beach
- City of Tallahassee
- City of Temple Terrace
- City of Riviera Beach
- City of Sarasota
- City of Winter Haven
- Community of Panacea (Florida Waterfronts award winning plan)
- Town of Ponce Inlet
- Key Largo, Sustainable Economic Development Plan
- Economic Development Plan, Glades area of Palm Beach County
- Tourist Development Council, Palm Beach County
- Tourist Development Council, Lee County
- The Juvenile Welfare Board of Pinellas County
- The Children's Trust of Miami-Dade County
- The Children's Board of Hillsborough County
- The School Readiness Coalition of St. Lucie County
- Florida Partnership for School Readiness
- Community Based Care Alliance of Miami-Dade and Monroe Counties

## Operational Planning and Organizational Development Experience

Business process design or re-design, organizational re-structuring, pay and compensations plans, performance management systems

- Water Utility Department, Palm Beach County (water and sewer)
- JEA, Jacksonville (electric, water, sewer)
- Monroe County, Post-Disaster Redevelopment Plan
- St. Johns Water Management District
- Southwest Florida Water Management District
- South Florida Water Management District
- Florida Department of Health
- Florida Department of Juvenile Justice
- Alachua County (NACO award winning project)
- Broward County
- Charlotte County
- Lee County
- Martin County
- Osceola County
- Palm Beach County
- St. Lucie County
- Volusia County
- Walton County
- City of DeLand
- City of Fort Walton Beach
- City of Hollywood
- City of Juno Beach
- City of Sarasota
- City of Venice
- Village of North Palm Beach
- Town of Tequesta
- Children's Board of Hillsborough County
- Children's Services Council, Palm Beach County
- The School Readiness Coalition of Palm Beach County

## **HERBERT A. MARLOWE, Jr., Ph.D.**

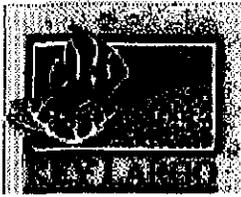
Herb is a specialist in effectiveness strategy. He combines expertise in process facilitation, creative thinking, conflict resolution and group decision making to help his clients develop effective strategies to achieve their desired results. He professionally applies these strategies through his consulting firm, Analytica and a family business, Marlowe Farms.

His work with private sector, public sector and third sector clients at local, state and national levels on a wide range of topics enables him to bring a diverse set of perspectives to any issue. His skills in active listening and idea synthesis assist clients to frame challenges and opportunities in new and solvable ways. His skills in conflict resolution and consensus building help groups work through challenges in constructive and synergistic ways that build better solutions in the end. His ability to translate ideas into practical steps facilitates the development of workable actions plans that lead to real progress. His use of technology and user-friendly visual language techniques clarifies complex issues, facilitates diagnosis of key issues, fosters creative thinking and consensus building and serves to illustrate roadmaps to desired ends.

With over thirty years of consulting experience, Herb has worked on a broad range of issues in a wide number of fields including: water supply and wastewater treatment, agriculture, health, mental health, human services, transportation, community redevelopment, economic development, downtown redevelopment, criminal justice, organizational re-structuring, human resource issues, recreation and culture, public utilities, tourism, race and cultural relations, science and engineering, marketing and development, and environmental. In each of these areas he has applied his particular skills to assist groups to analyze the issue, develop alternatives, and prioritize an action plan to move forward toward some shared goal.

Within this broad experience, Herb has developed particular expertise in working on water related issues. He has done in-depth organizational consulting with water/wastewater utilities, worked with policy makers on water supply policy and developed strategic plans for stormwater associations. He has made presentations to a number of professional water/wastewater organizations and taught the "A" level water/wastewater certification course at the University of Florida.

Author of numerous books and articles, Herb received his Ph.D. from the University of Florida, where he specialized in process facilitation and strategy in the areas of organizational change and effectiveness. He founded Analytica after an academic career that was preceded by military service in Vietnam. He lives on his family farm in Newberry, Florida along with his wife, two children, one grandchild and more horses and cattle than one really needs in life.



# **Key Largo Wastewater Treatment District Board of Commissioner's Meeting Agenda**

**5:00 PM Wednesday, March 3, 2004**

**Key Largo Civic Club, 209 Ocean Bay Drive  
Key Largo, Monroe County, Florida**

- A. Call to Order
- B. Pledge of Allegiance
- C. Additions, Deletions or Corrections to the Regular Meeting Agenda
- D. Minutes – Draft      Draft January 14, 2004, Draft February 4, 2004 and Draft February 18, 2004
- E. Public Comment
- F. Legal Counsel's Report
- G. Action Items
  - 1. Approval of the Pending Payments List for February 25, 2004
- H. General Manager's Report
  - 1. Update on Strategic Planning
  - 2. Update on conversation with Science Kilner of FEMA on a FEMA Grant Extension
  - 3. Update on Initial Contact with Agencies Concerning Near Shore Water Monitoring and Testing
- I. Engineer's Report
  - 1. KLWTD Engineering Status Report for the Period Ending 02/24/04
- J. Public Comment
- K. Commissioner's Items
  - 1. Discussion of the Haskell Company suggested project manager – Chairman Bauman
  - 2. Discussion of Municipal Wastewater Appropriations Deadlines – Commissioner Tobin
- L. Meeting Adjournment

**DRAFT**

**Key Largo Wastewater Treatment District  
Board of Commissioner's Meeting Agenda**

**4:00 PM Wednesday, January 14, 2004**

**Key Largo Civic Club, 209 Ocean Bay Drive**

**Key Largo, Monroe County, Florida**



**Board Members Present**

Gary Bauman, Chairman  
Cris Beaty  
Jerry Wilkinson  
Charlie Brooks  
Andrew Tobin

**Staff Members Present**

Robert Sheets, General Manager  
Tom Dillon, Board Attorney  
David Miles, Chief Financial Officer  
Ed Castle, Board Engineer  
Jeff Weiler, Board Engineer  
Faith Doyle, Board Clerk

**Guests Present**

Peter Kinsley, The Haskell Company  
Ted Hortenstine, Brown and Caldwell  
Stu Oppenheim, Brown and Caldwell  
Marguerite McCauley, Government Services Group, Inc.  
Gaile Jalenlek, Key Largo Resident  
Robert Burt, Key Largo Resident  
Steve Gibbs, Reporter  
Ann Henson, Reporter  
Dick Morton, Key Largo Resident  
Richard Lancaster, Key Largo Resident  
Nos Espat, Randazza

A. Call to Order

Chairman Bauman called the meeting to order at 4:11 pm

B. Pledge of Allegiance

All stood and recited the Pledge.

C. WORKSHOP – ADMINISTRATIVE PROCEEDURES

Please see below.

D. Additions, Deletions or Corrections to the Regular Meeting Agenda

It was the consensus of the Board to move the workshop to the end of the meeting to accommodate the members of the Key Largo Federation of Homeowners who wish to attend their meeting that was scheduled to begin at 7:00 P.M. Commissioner Brooks noted that he was concerned that several items on the agenda that were of interest to the public who had not arrived at the meeting because a workshop was advertised to be held at 4:00 P.M. Chairman Bauman noted the concern and suggested that agenda items not pertaining to the secondary treatment process be considered first.

Chairman Bauman requested that an additional public comment period be added to the agenda prior to the workshop. There were no objections to the change.

Commissioner Brooks stated that after the concerns stated by Commissioner Tobin at the last meeting that there are issues in related to the contract that should be considered prior to the action items. He believes an executive session is necessary. Mr. Dillon stated that with no complaint pending the Board is prohibited from calling an executive session. He noted that an executive session can only be called to discuss a pending claim and it would require a special notice to be advertised and a court reporter present to provide an official transcript.

#### E. Public Comment

Chairman Bauman asked for public comment. Mr. Dick Morton of Riviera Village addressed the Board. Mr. Morton inquired if the projects were a negotiated contract or if they had been part of a competitive bid. Mr. Sheets stated that the Haskell contract was an awarded as a result of a response to a request for proposals. The process of after the award was to finalize the terms of the contract. Mr. Morton believes that all of these disputes should have been taken up before this time. Mr. Sheets stated that the issue being discussed at present was the secondary treatment process. Mr. Morton asked if the secondary treatment process decision was the Board's responsibility. Mr. Sheets stated that it is a provision of the contract to permit the Board to issue a purchase order for equipment if they desire and to participate in the treatment process selection. Mr. Morton stated that he is concerned with the controversy over this issue and that the Board continues to question the recommendations.

Mr. Dick Lancaster, President of the Hammer Point Board of Director's addressed the Board. Mr. Lancaster commended the Board for their progress in the tight time frame they have been up against. Mr. Lancaster stated concern with the Board's continuing debates over the treatment system issues. Mr. Lancaster believes that the USBF treatment system has a greater potential for problems and because the contractor (Haskell), the engineering company (Brown and Caldwell), board engineer (WEC), the manager and the Monroe County coordinator of wastewater opposes it and with the lack of a guarantee that the process will work he urged the Board to rethink and proceed carefully.

The clerk was requested to reflect for the record that Mr. Nos Espot arrived at 5:10 P.M.

#### F. Legal Counsel's Report

##### 1. Response to Commissioner Tobin's concerns raised at the 1/7/04 meeting

Mr. Dillon reviewed his memorandum in detail. The memorandum is made part of this record as Attachment A.

Mr. Kinsley of the Haskell company commented that the TSC Jacobs Company has worked with Haskell prior and he is confident that they will sign the purchase order and payment terms and would provide payment and performance bonds.

Commissioner Brooks asked about KLWTD purchasing the equipment. Mr. Dillon states that per the contract they could purchase it.

Discussion ensued on the issue of 'good faith' in honoring the contract. Mr. Dillon cautioned that the KLWTD must act reasonably and Haskell needs to demonstrate that they are acting reasonably and their action of requesting further information from Fluidyne was done to demonstrate this. Direct purchases were also discussed.

Commissioner Brooks believes that the contract terms are negating the Board's desires. Commissioner Brooks questioned if Board members could attend the design phase meetings. Discussion ensued on the possible sunshine law implications of members attending the design meetings. Commissioner Wilkinson stated that from past practice the Board had given comments during design discussions, which the engineers have addressed but not always to the Board member's liking.

Mr. Sheets is confident that the contract has a provision that beyond the monthly status report there is a meeting to be held monthly and these could be held in conjunction with a board meeting, however this may preclude the staff from reviewing information prior to the Board.

Chairman Bauman suggested that staff recommend a procedure to the Board. Mr. Castle stated that the contract requires Haskell to provide submittal protocol and once the 30% design is received a recommendation to approve them would be provided. Mr. Kinsley of Haskell stated that he welcomes the participation of the Board. Commissioner Wilkinson asked what the deadline for 30% design approval was. Mr. Kinsley stated that presently there is a two-week time frame in the present schedule.

Commissioner Bauman asked WEC to have a recommended submittal protocol available for the February 4, 2004 meeting.

2. Warranty Form to Nos Espat
  - a. Randazza suggested form
  - b. Dillon suggested form
3. Fluidyne Warranty

Mr. Dillon presented a revision to items F2a and F2b he addressed items F2 and F3 in his memorandum all of which are made part of the record as Attachment B. The attached warranties were the final versions that were signed by the vendors. Discussion ensued concerning the various warranties.

Discussion ensued on the characteristics of the sewage. Assumptions were made during the RFP process per Dillon and he stated that if they are not realistic they should not be adhered to.

Commissioner Brooks questioned influent characteristics and its possible negation of the warranties. Mr. Dillon had suggested different verbiage to protect the district. Further discussion ensued.

Chairman Bauman objected to the attempts to re-negotiate the warranties during the meeting. He believes that with three signed warranties there should be a decision made immediately. Commissioner Brooks stated that he had a problem with that. Mr. Dillon suggested making a motion on approving the signed documents as presented. Commissioner Brooks stated that he hasn't had time to review what was sent on the 1-12-04.

Commissioner Tobin asked if the Fluidyne warranty was substantially the same as what had been provided in the agenda book. Mr. Dillon stated all except the two items that he detailed.

Commissioner Brooks stated there is confusion by placing three warranties together. Mr. Dillon stated that Randazza and Purestream had split out the responsibilities listed in the original warranty. Commissioner Tobin stated that he would prefer one warranty with the manufacture and vendor with only one document.

Discussion ensued on the bonding requirements. Mr. Dillon stated that bonds during the initial year are not as important because Haskell holds a bond. He noted that two bonds are not necessary, but that if Haskell is not willing to take responsibility on a process they could not support, there would be no bonding to secure the performance of the person providing the secondary treatment system. Discussion ensued concerning the function of a performance bond and payment bond and the fact that legal counsel reiterated that has never heard of a "process bond". It was noted that the performance bond requirement was struck from the Purestream/Randazza warranty.

#### 5. Haskell Company Purchase Order

Mr. Kinsley answered questions concerning the purchase order and added that vendors he has worked with do provide support and if it is not stated in the warranty it is either stated in the contract or the purchase order.

#### 6. Haskell Design Calculations Request

#### 7. Informational copy of the December 29, 2003 Haskell Company Correspondence

Items F6 and F7 were discussed. Mr. Dillon reviewed the issue of delay. Mr. Dillon had requested Haskell to get information to prove or disprove that USBF would not work. The calculation requested had not provided by Randazza. Commissioner Brooks stated the design calculation had been available since last February. Mr. Dillon countered that a statement made in a Randazza's letter says that the district staff could not verify the cost increase because they don't have the information. Please see Item G-2 below for further discussion.

The Chairman recessed the meeting at 6:55 p.m.

The Chairman reconvened the meeting at 7:10 p.m.

### G. Action Items

#### 1. Pending Payments List

Mr. Sheets stated that the payment list was modified to show what funds the payments come out of as directed by the Board. The GSG time sheets and hourly activity sheets were supplied for informational purposes as per the Board's request.

Mr. David Miles reported the funds on hand at present were \$62,585.66 and that a deposit from FCAA of FEMA Phase 1 money in the amount of \$232,108.21. The MSTU money has not been disbursed as previously reported. The amount is approximately \$140,000.00. It was noted that the County's policy is to not pay by wire transfer. Commissioner Wilkinson requested the current cash balance. Mr. Miles stated that it was \$294,693.87 the bills payable today will be deducted from the stated balance.

Chairman Bauman asked if there should be a separate capital and administrative funds. Mr. Miles stated that it would be more difficult and is not necessary because it creates an administrative burden to track the accounts.

Commissioner Tobin stated the routine for approval of the bills should be to let the Board review the legal invoices, that GSG invoices should include accounting of the time spent on KLWTD activities and that he would not approve the Haskell pay applications until he understands the process. Mr. Sheets stated that he had provided pages of breakdown at item H2. Mr. Tobin stated that the Mull & Associates invoice could be paid if Mr. Miles could explain it. Mr. Miles stated that it was for the hours spent for the annual audit less 10 percent retainage.

Commissioner Brooks question the Board's payroll checks being process prior to the payments pending list being approved. Mr. Miles stated that by resolution of the Board he has the authority to disburse up to \$2,500.00 and that the payroll is being paid under that authority. Also the payroll and federal taxes have been paid.

Commissioner Brooks stated that legal fees for two months in the amount of approximately \$16,000 concerns him and that if the cost of on issue is over \$5,000 there should be an accounting. Mr. Dillon stated that the contract states that his invoice is to be submitted in detail and forwarded to the manager. Mr. Sheets stated that his had been done in the past, however at the transition of Mr. Dillon to legal counsel it was assumed that it was no longer necessary this can be changed. Mr. Sheets asked the Board if it were requesting copies of all the invoices listed on the pending payments list. Discussion ensued. Mr. Sheets requested direction to provide backup on all pending payments. Commissioner Brooks and Commissioner Tobin would like to see a dollar threshold. Discussion ensued. Commissioner Beaty would like Commissioner Tobin to review all legal bills. Chairman Bauman asked the other service providers if they had difficulty providing detailed invoices. It was noted that consideration must be given to the prompt pay act because when the Board has money the prompt pay act comes into play so a specific procedure should be enacted.

**MOTION TO APPROVE ALL BUT ITEMS NO. 3, 4, 5, 6, (DILLON'S, GSG'S AND HASKELL'S) AND TO PAY THE BALANCE OF THE PAYMENT PENDING LIST WAS MADE BY COMMISSION TOBIN. Discussion ensued. Commissioner Tobin stated that Haskell might be approved at the end of the meeting after the pay application process was reviewed. Commissioner Beaty seconded the motion. Chairman Bauman requested a roll call vote as follows:**

<b>Commissioner Beaty</b>	<b>Yes</b>
<b>Commissioner Brooks</b>	<b>Yes</b>
<b>Commissioner Tobin</b>	<b>Yes</b>
<b>Commissioner Wilkinson</b>	<b>Yes</b>
<b>Chairman Bauman</b>	<b>Yes</b>

**All were in favor and the motion was unanimously approved.**

**Commissioner Tobin requested an item be added to the agenda. The item was to reconvene the meeting after the workshop to approve payment of the Haskell pay application if it were in order. The Board gave its consensus.**

2. Resolution of Haskell Contract Concerns
  - RE: Secondary Treatment Selection
    - a. Resolve to Mediate with the Haskell Company
    - b. Resolve to Relieve Haskell from AWT Warranty

### c. Select Modified SBR Technology

Mr. Dillon concluded his presentation on the letter from Haskell and stated that staff had examined the other information provided by Randazza and Purestream and continues to conclude that the USBF process would not work. Mr. Kinsley and Mr. Hortenstine summarized that from the design calculations that were evaluated and after consulting with Purestream's engineers that none of the information received had changed their position. Mr. Hortenstine gave specific details of the process used in analyzing the addition information, which included speaking with Dr. John Smith with Smith Environmental of Cincinnati Ohio. A modeling scenario was run with the information but it didn't address the bio kinetics. Dr. Bratby of Brown and Caldwell also spoke with Mr. Smith and are in agreement with Mr. Hortenstine's deductions. Dr. Bratby used Biowind to model and couldn't achieve 3.0. Mr. John Smith provided information from a plant in Long Island, NY and one from Italy to demonstrate that 3.0 could be achieved however, out of 3-5 months of data provided only several days reached 3.0 the consistent numbers were from 5 to 8. Mr. Kinsley and Mr. Hortenstine concluded that they did not find out anything that changed their opinion.

Chairman Bauman asked Mr. Dillon for his opinion on the issue. Mr. Dillon stated that the short answer is that neither Haskell or Brown & Caldwell, nor Weiler believes that USBF can meet the standards and Haskell cannot go forward without resolution to the problem. Mr. Castle has received the same information and he stated that it did not include the kinetic values to achieve the levels required. Mr. Castle purchased a different process model program from the EECS Group and he couldn't achieve the required nitrate level. Discussion ensued. It was noted that a program was not sent just the input information. Mr. Castle of WEC concluded that no significant information to change his mind was provided and the fact that he used an independent model and obtaining the same results aided his conclusion.

Commissioner Tobin asked if the process calculations were first received on the 10<sup>th</sup> January. Mr. Castle stated that the first useable information was received on January 10, 2004.

Chairman Bauman asked for comments from Mr. Espat of Randazza. Mr. Espat noted that he was not on the call with Brown and Caldwell and the Purestream representatives so he could not dispute what was said. Mr. Espat believes there are two issues, one why the process name had changed, because four major competitors had claimed rights to their patent. Mr. Espat noted that there was no change to the process. Mr. Espat noted that John Smith was not only the consultant, but is the co-owner of the patent. Mr. Espat addressed Mr. Dillon on the warranty and clarified that when design is discussed the only reason we say 'actual' is because we must have some parameter of where you are starting. It is Mr. Espat's opinion that no one will guarantee from a specific starting point. Mr. Espat stated that it was clear when Boyle sent out the RFP criteria that there would not be 250 B.O.D. you would have a food distribution supplement to provide the nitrogen results. Mr. Espat stated that as far as consequential damages, the warranty is signed by both owners of the Purestream Company and Randazza provided an additional warranty. Mr. Espat stated that in the disclaimer where Mr. Dillon addressed the issue was contradictory.

Mr. Espat stated that concerning bonding that if Haskell is providing the opportunity for Fluidyne to bond through them so he should be given the same opportunity. Mr. Espat believes that Fluidyne can't get one on their own either, he is not sure of this but he should be given the same opportunity. If he needs to have one he would like to add it to his proposal. The cost of the bond should be included in the original bid he would buy it if it were made available to him. Mr. Espat stated that concerning process or performance bonds it is important that the District clarify what performance means and he believes as far as performance bonding it should be clearly stated as what it includes if it is a process warranty it has to be defined so that you are protected for 5531. Mr. Espat thanked the Board.

Chairman Bauman asked for further Board comment. Commissioner Brooks requested to read information into the record. Commissioner Tobin requested to question Mr. Espot. The Chair granted the request.

Commissioner Tobin asked Mr. Espot to please tell the Board why the information that was asked for months ago had only been provided last week and why according to both engineers it was not sufficient data. Mr. Espot stated that he had arranged the discussion with Mr. Smith and that the calculations and all the required information had been on record in the District and was issued by CPH Engineering and he had spent 5 hours going over the information with Mr. Stu Oppenheim in February. Mr. Espot stated that he had difficulty defining whom he should be in contact with and that he had answered Mr. Kinsley's requests but Mr. Oppenheim requests were extensive and costly. Commissioner Tobin stated that the information received from Randazza hasn't established 3.0. Mr. Espot stated that the USBF BESST technology is patented and they cannot divulge the essence of their process with the calculations that others could copy their process. Discussion ensued on the patent process and the information divulged and if it is public record. Commissioner Brooks stated that on patents some are never divulged Polaroid had hundreds on film process and Coca Cola's ingredients. Mr. Espot stated that there are portions of the information, which were not disclosed to WEC and Brown and Caldwell. Commissioner Tobin stated that without this information the Board cannot prudently spend 8 million dollars on something they cannot see or have proven them. Mr. Espot stated that there is no engineering that can present SBR has produced 5531.

Commissioner Brooks contacted John Smith of Smith Environmental Engineering. He responded with a letter dated January 13, 2004, which is made part of this record as Attachment C. Commissioner Brooks noted a point made in the letter that as the consultant for Purestream's USBF BESST system that the KLWTD project had been reviewed in detail by him and the current design will meet the requirements of 3.0 per liter of total nitrogen. It further explains that Mr. Smith had discussed with Ted Hortenstine and attempted to describe that the process is unique and combines the internal recycle and doesn't fit the mold and doesn't fit standards. It also notes that during Mr. Smith's tenure at the EPA he was part of a pilot program that operated many plants in various places. Commissioner Brooks also noted that he had talked with David Refling of Boyle Engineering who claims USBF BESST could meet the requirements and so stated in the PDR that a chemical feed and possibly a denitrifying filter on the end would be required for the other process. Mr. Refling provided an email verifying his opinion, which is made part of this record as Attachment D. Commissioner Brooks also referred to a letter from Osvaldo Ojito who worked with Gartek (Attachment E) and a letter from Gartek (Attachment F) stating that both processes have been used and they believe both systems could meet 5531. In total Commissioner Brooks had four engineers that claim it would reach 5531.

Chairman Bauman stated the issue is not whether he believes it or could find engineers to certify the process the issue is Brown and Caldwell doesn't believe it and the Board needs to decide if we need to get new engineer, or begin dispute resolution or consider a new vendor. It is a legal issue at this point; Haskell has a contract with Brown and Caldwell.

COMMISSIONER WILKINSON MADE A MOTION TO APPROVE THE ISAM FLUDIYNE PROCESS. CHAIRMAN BAUMAN RULED THE MOTION OUT OF ORDER UNTIL DISCUSSION IS CONCLUDED. Commissioner Tobin interjected with several more questions. Commissioner Brooks stated that concerning parliamentary procedure if the Board wants to take this up the Board may need to motion to reconsider the previous motion and for it to come forth it must come from one of the yes votes for the USBF system.

Commissioner Tobin inquired that if Boyle is comfortable with USBF and with three board members vacillating he thought that with cooperation with Nos they might come to some determination. Commissioner Tobin asked for Haskell's opinion of Dave Refling's email stated that both technologies have the potential and his recommendation for the KLWTD to hold a performance bond. Commissioner Brooks added the Mr. Refling had spent about 30 minutes on the phone with him and stated that both can achieve 5531 and for this size plant the USBF would be best for this application and would produce a saving. Mr. Kinsley stated that he knows, likes and respects Mr. Refling along with Mr. Betancourt of Gartek, however, they have not been privileged to all the information and exchange of information nor had the benefit of the study and at the end of the project neither Gartek nor Boyle will stamp the drawings Brown & Caldwell is going to stamp them. The Haskell Company is not swayed by the comments versus the study. Mr. Kinsley concluded that the Board's engineer Ed Castle of WEC is also getting the same numbers with all the same information.

Chairman Bauman closed the legal report and asked the Board members for any final comments. Commissioner Tobin asked Mr. Dillon that in light of the recent memos what his opinion was of the legal issues the Board might face. Mr. Dillon stated the main question is who will take the risk for performance. If we demand that Haskell take USBF and install it, Haskell would be justified in invoking the dispute resolution process, and that it is not reasonable to ask someone to build a plant after so much detailed study showing that the technology won't work. We would be unreasonable if we demand that they do so. Commissioner Tobin asked if they had signed a contract saying we can choose a process and could they find remedy by getting out of the contract. Mr. Dillon stated that not only could they seek a remedy they can declare KLWTD in breach and demand payment for the time they spent and without a clause in the contract covering termination the District could be liable. This is not the type of contract where the Board can demand performance that is not objectively reasonable. If the Board does so, the District will lose time and money.

**CHAIRMAN BAUMAN BROUGHT ITEM G-2 RESOLUTION OF THE HASKELL CONTRACT CONCERNS TO THE FLOOR FOR CONSIDERATION. THE THREE OPTIONS PROVIDED WERE: A. RESOLVE TO MEDIATE; B. RESOLVE TO RELIEVE HASKELL FROM AWT WARRANTY; OR C. SELECT MODIFIED SBR TECHNOLOGY. COMMISSIOENR WILKINSON MOTION TO SELECT 2C TO SELECT MODIFIED SBR TECHNOLOGY.** Brooks states he is out of order. Mr. Dillon noted that a motion to reconsider applies on the day of the vote only. Mr. Dillon's professional opinion is that Commissioner Wilkinson is in order. **CHAIRMAN BAUMAN ASKED TO WAIVE THE RULES TO MAKE A SECOND AND SECONDED.** Chairman Bauman asked for further discussion. Commissioner Beaty asked what the exposure would be if we relieve them of the warranty. Mr. Dillon stated that the exposure would be to give up the 8 million dollar performance bond the benefit of the engineer selected to design and seal the project and to give up the performance warranty that Haskell provides and substitute it with an engineer that KLWTD did not choose. Also Purestream would be without a performance bond and there would be a conflict from the obligations of Haskell to complete the work and we would lose the meat of the contract. Mr. Dillon concluded that the team was selected by the Board and the District would loose the benefit of the team and that replacing it with an engineer to be named later and an un-bonded technology would not be prudent. Commissioner Brooks stated that he has low confidence with fluidyne due to the information distributed and the form of reports from various plants, for example the Bartow plant being identified as an AWT plant. He questioned who generated the reports and the internet claims that Bartow is an AWT plant. Commissioner Brooks stated that he could not support the motion. Commissioner Tobin stated that he is glad the board takes the time to hammer out the issues and glad the public is interested. He feels trapped because the lawyer advises voting a certain way, which is a lesson that the legal counsel is the sixth Commissioner. He continued that the KLWTD is lucky they have an experienced, ethical attorney, but Commissioner Tobin is not happy to be in the present position. Commissioner Tobin stated that the Board has done all it can to support the original decision but he is disappointed that Mr. Espat continues to be the loner trying to make the point for the company that the

USBF system has a lower cost but with the little amount of information given late in the game there is not much else that can be done and we may regret Mr. Espat not being there and there may be problems in the future but we are trapped with no choice. Commissioner Wilkinson stated the public should have been permitted to speak prior to the vote and the solicited letters presented this evening were no proof. The public needs some proven system and the Haskell warranty system is best and he supports SBR and the technology committee has recommended SBR. Commissioner Wilkinson stated that he was sorry it is this way but a selection must be made and the board was elected to make the tough decisions. He thanked all involved for their exceptionally hard work after we continue to slap them and say they don't know what they are talking about. **WITH NO FURTHER DISCUSSION CHAIRMAN BAUMAN REQUESTED A ROLL CALL VOTE AS FOLLOWS:**

<b>COMMISSIONER BEATY</b>	<b>NO</b>
<b>COMMISSIONER BROOKS</b>	<b>NO</b>
<b>COMMISSIONER TOBIN</b>	<b>YES</b>
<b>COMMISSIONER WILKINSON</b>	<b>YES</b>
<b>COMMISSIONER BAUMAN</b>	<b>YES</b>

**THE MOTION WAS APPROVED BY A VOTE OF THREE IN FAVOR AND TWO NOT IN FAVOR.**

#### H. General Manager's Report

##### 1. Transition Committee Status Report No. 2

Mr. Sheets stated that this item would be covered during the workshop or postponed to a later date.

##### 2. Presentation of GSG Time Sheets and Hourly Activity Descriptions

3.

Mr. Sheets stated that this information was provided at the direction of the Board and would be provided with each invoice. Commissioner Wilkinson commented on the time sheets and breakdowns submitted by GSG and asked if it is necessary to have this information with every invoice. He believes it is not necessary for a fixed fee contract.

##### 4. Discussion with FEMA concerning the EA

Mr. Sheets reviewed the information provided which included an email log forwarded from Science Kilner. Mr. Sheets stated that he would be meeting with Miles Anderson on Monday the 19<sup>th</sup>.

#### I. Engineer's Report

##### 1. Conceptual Review of the Impacts of Connection of the Calusa Camp Resort to the KLWTD (Please see the enclosed report)

Mr. Castle offered to postpone the presentation due to the late hour. Commissioner Tobin requested a summary of the Calusa report that had been provided. Mr. Castle stated that several synopses were provided. The first deals with quality of influent and the system that is in place. The wastewater will be strong and greasy but with no toxic effects however, there is a great deal of infiltration but once the system is rehabilitated it could be accepted. Discussion ensued on the age of the system and financing the connection from the Calusa Campground to the KLWTD system. Mr. Castle notes that the positive aspects are that the KLWTD system picks up flow and adds 350 customers and pointed out that on page 31 of the report was a summary of how much income could potentially be generated.

## J. Commissioner's Items

1. Discussion of Strategic Planning and Consulting Strategic Planning Firm  
-- Chairman Bauman
2. Discussion of near shore water testing – Chairman Bauman

It was the consensus of the Board to table the Commissioner's Items until the February 4, 2004 meeting.

## K. Meeting Adjournment

Mr. Sheets introduced Ms. Marguerite McCauley who was present to conduct the Administrative Procedures Workshop. Mr. Sheets stated that the Administrative Procedure should be scheduled as a separate meeting if it is to get undivided attention. He added that the document would take many meetings to become a working document on how to address issues facing the KLWTD. The Board gave its consensus to hold the Administrative Procedure Workshop at a future meeting. Ms. McCauley offered to provide a brief overview of the information provided. Chairman Bauman declined but thanked Ms. McCauley for her attendance and invited her back to present the manual at a future meeting. Ms. McCauley would advise the Board of her availability.

Mr. Sheets stated that the Transition Plan was to be discussed as part of the workshop but could be postponed to discuss the Haskell pay application. It was the consensus of the Board to postpone the discussion of the Transition Plan until a future agenda.

**The chairman adjourned the regular meeting at 8:50 pm to begin the workshop. The chairman reconvened the regular meeting at 9:17 p.m. Commissioner Brooks made a motion to approve the Haskell Company's pay application NO. 1. Commissioner Tobin seconded the motion. All were in favor and the motion was unanimously approved.**

**All were in favor of a motion to adjourn at 9:18 p.m.**

**Thomas M. Dillon**

# Memo

**To:** Key Largo Wastewater Treatment District  
**From:** Thomas M. Dillon  
**CC:** Robert Sheets, Charles Sweat, David Miles, Faith Doyle  
**Date:** 1/11/04  
**Re:** Various issues raised by Board members

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**Note: This memorandum constitutes attorney work product and attorney communications.**

At the Board meeting of January 7, 2004 and in emails thereafter, members of the Board have raised the following issues:

1. Comment on the advisability of assuming certain obligations in connection with the choice of the USBF secondary treatment system
2. Comment on the Haskell delay issue
3. Comment on the Haskell Purchase Order form and design calculation requests
4. Comment on the Purestream/Randazza warranty and the Fluidyne warranty
5. Does the Board have a responsibility to review or approve the 30% design drawings? *(Attachment B - TD memo of 1-12-04)*
6. May Board members attend a progress meeting under the Haskell contract?

**1. I recommend against the District assuming obligations not already assumed in the Design-Build Agreement in connection with the choice of the USBF secondary treatment system.**

I addressed this issue in my memorandum to the Board dated December 16, 2004. Briefly summarized, it is my opinion that the Design-Build Agreement places certain responsibilities on Haskell as the design-builder in connection with the secondary treatment system.

These responsibilities include the obligation to design the Project, including the secondary treatment system, to assure that the Project is constructed to a standard of quality, integrity,

durability and reliability that is equal to or better than the standard established by the Scope of Work; and to warrant equipment and materials purchased by Haskell. The District can rely on Haskell to perform these obligations based on the same factors that led the District to select Haskell as its design-builder, i.e., the experience and reputation of Haskell and its design engineer to do so competently. In addition, Haskell's performance of these obligations is secured by a performance bond in a penal sum equal to 100% of the contract price.

The evidence presented to the District to date does not include any evidence that the USBF system or the ISAM/SBR system has ever met the standard established by the scope of work, i.e., 5,5,3,1. The engineering analysis of Brown & Caldwell and Weiler Engineering, and the expert opinion of GSG suggest that the USBF system, as that system is understood by those experts, cannot meet the standard, but that the ISAM/SBR system can meet the standard. The only expert who has provided an opinion that USBF can meet the standard is the engineer proffered by Randazza at the October 17, 2003 meeting.

In correspondence and at the January 7, 2004 Board meeting, Haskell has proposed a solution under which the District would purchase the USBF system directly and would relieve Haskell of any obligation to provide engineering services or a performance warranty for the USBF system. Haskell made that proposal because of its belief, based on Brown & Caldwell's previous analysis, that the USBF system will not achieve the contract standard of 5,5,3,1. However, as of January 7, 2004, Haskell apparently had not yet been provided with design calculations for the USBF system that Randazza actually intends to provide. I am in receipt of a January 10, 2004 email from Randazza that purports to provide the requested calculations. I understand that Haskell and its design engineer, Brown & Caldwell, will review these calculations in order to determine whether the proposed USBF system is likely to achieve the standards.

If, after reviewing and evaluating the USBF system, Haskell in good faith determines that it cannot accept responsibility to design and warrant the USBF system and if Haskell on that basis insists that it will not accept that responsibility, there will be a serious issue whether the District can declare that Haskell has breached its obligations under the Design-Build Agreement.

It is my opinion that, if, based on an engineering analysis of the engineering information provided by Randazza, Haskell takes the position that the USBF system will not perform and the District takes the position that Haskell must design and construct the USBF system anyway, and Haskell invokes the dispute resolution provisions of the Design-Build Agreement, the District will not prevail unless it first retains additional expert assistance. The dispute resolution process, even using the streamlined procedures in the Design-Build Agreement, will be costly and time-consuming.

I do not recommend that the District resolve this issue by assuming Haskell's present responsibility to design and warrant performance of the secondary treatment system. Doing so would give up important District contract rights and leave the District without the services of its chosen design-build contractor to design and warrant system performance. Instead, the District would have to rely on an unknown design engineer that the District did not select,

and the District would have to rely on the promises of Randazza and Purestream to ensure system performance. These promises would be secured only by a \$75,000 cash deposit, which, in the opinion of District staff, would be insufficient to effect any significant redesign or alteration of the secondary treatment system.

**2. Further delay in the Project could cause it to extend beyond its contractual completion date, but Haskell has not demonstrated that fact through schedules submitted to date.**

If the Project is delayed beyond its contractual completion date, there will be a possibility that the District will be entitled to liquidated damages. The District is entitled to liquidated damages to the extent that the project is actually delayed beyond its contractually established completion date as a result of events that are beyond the control of Haskell, and for which the District has assumed responsibility. Haskell contends that the Project is at risk of being delayed beyond its completion date as a result of events beyond its control and for which the District is responsible.

In support of Haskell's contention that the delays to date could delay the Project beyond its planned completion date, Haskell has provided a series of schedules depicting its planned work activities. The schedules accompanied a letter dated December 29, 2003.

These schedules are not Critical Path Method ("CPM") schedules. A CPM schedule is one that shows the shortest time in which a project can be completed by depicting major work items in a logical sequence. CPM scheduling is generally considered to be the only satisfactory method of showing project delays.

The schedules submitted by Haskell are bar charts showing the amount of time within which Haskell intends to complete various aspects of the work. However, since the schedules do not show the logical time relationship between all work items, it is not possible, based on these schedules, to infer the actual impact of each event of delay on the total time necessary to complete the work.

Haskell has cited three events that it believes have delayed the Project, including (a) alleged delays in final resolution of the FEMA Environmental Assessment ("EA"); (b) alleged delays in the District's selection of a secondary treatment process; and (c) alleged delays resulting from the District's selection of the USBF process, which Haskell believes cannot work. All of these events could contribute to a delay in Project completion. Without commenting on the merits of Haskell's contention that the District has assumed responsibility for these events, the following discussion illustrates the point that Haskell's bar chart schedules do not demonstrate that the Project will actually be delayed.

**(a) Delays in final resolution of the EA**

Haskell first advised the District of this alleged cause for delay by letter of October 13, 2003. The letter was sent in response to an October 13, 2003 email from Robert Sheets to Science Kilmer, in which Mr. Sheets expressed the District's concern with the progress of the EA. On the basis of that email, I believe that there is no question that the EA has been delayed beyond the date on which it was expected. However, the Preliminary Project Schedule (Design-Build Agreement Exhibit B), which is not a CPM schedule, does not show

a date by which the EA was anticipated. (I am not aware of any other schedule provided by Haskell prior to the "Sept '03 Update" submitted with Haskell's letter of December 29, 2003.

In order to determine the effect of a delay in the EA, it would be necessary to start with a CPM schedule and to determine the planned date of the first event that could not occur in the absence of EA completion. Haskell has not done so.

(b) and (c) Delays in the secondary treatment selection process

Haskell first advised the District of this alleged cause for delay by letter of October 31, 2003, in which Haskell alleged that the District improperly postponed selection of a secondary treatment system at the District's special meeting of October 17, 2003. By letter of December 12, 2003, Haskell asserted that the District's selection of USBF was continuing the delay.

Again, the Preliminary Project Schedule does not show a date by which this decision was anticipated. Although Haskell's letter of October 31 states that the decision should have been made at the October 17 meeting, the letter of December 29 states that the decision should have been made on September 17. In the absence of a CPM schedule, it is simply not possible to ascertain the effect of any delay in selecting a secondary treatment system.

Despite the fact that the exact amounts of delay cannot be determined, it is clear that major portions of the Project cannot be commenced until the EA is completed and the secondary treatment issue is resolved. Any time lost as a result of these events will be likely to consume available contract time and will put timely completion of the project at risk.

At the District meeting of January 7, 2003, Mr. Kinsley stated that there were 40 days of float on the Project and that the District had used most of them. He questioned the fairness of the District using most of the float. Float is a quantity that can be determined only through CPM Scheduling. Float is the difference between the time allowed to complete the work and the time necessary to complete the work. At the present time and in the absence of a CPM schedule, it is not possible for the District to determine the amount of float available or to know how much has been used. In any case, the questions of who owns the float, who has used it, and whether such use was fair remain to be determined.

**3. A contractor's purchase order form is primarily the contractor's choice and the District should not become engaged in judging the propriety of a form unless substantial District interests are involved. The District and Haskell have agreed on the calculations required from Randazza.**

At the District's January 7, 2004 meeting and in a letter to Robert Sheets dated January 6, 2004, Haskell has advised the District that the purchase order form sent to Randazza is Haskell's standard purchase order form for complex equipment for which Haskell has assumed performance obligations. Haskell has advised that it invariably requires its vendors of complex equipment to sign this form.

By email of January 9, 2004, I asked Haskell to "certify that the standard purchase order and subcontract is the form that The Haskell Company typically uses for purchase of equipment similar in nature and complexity to the secondary treatment equipment and is the form that Fluidyne has agreed to." I have not received a response to this email.

In construction contract, the contractor is an independent contractor. The owner normally specifies only the desired result, and the contractor has the right and responsibility to select such means and methods as the contractor deems appropriate. Improper interference with contractor means and methods is a fertile source of construction contract litigation, in which owners can be held liable not only to the contractor for interference, but also to third parties if the interference destroys the independent contractor relationship. Therefore, unless there is a significant owner interest involved, an owner should normally not become involved in the selection of a contractor's means and methods.

In this case, I recommend that the District not attempt to interfere with Haskell's subcontracting or purchase ordering methods unless the District perceives that the subcontracting or purchase ordering methods are unreasonable and are being used improperly to subvert the District's decision regarding secondary treatment.

Assuming Haskell's representations as to the purchase order are correct and are confirmed in writing, I believe that that the District cannot make a credible case that Haskell's purchase order is unreasonable or is being used improperly to subvert District interests.

As to the requests for calculations made by Brown & Caldwell through Haskell to Randazza, I requested staff review of the calculation requests upon receipt. After discussion between staff and Brown & Caldwell, the requests were revised somewhat, and I understand that staff believes the requests to be reasonably necessary for Brown & Caldwell to review the USBF design. I have no basis on which to disagree with staff.

#### **4. Comment on the Purestream/Randazza warranty and the Fluidyne warranty**

By email dated January 9, 2004, I reviewed the warranty form that I had earlier submitted to Randazza, with Randazza's suggested modifications. Randazza had suggested that the part of the warranty requiring it and Purestream to provide a bond or other reasonable security to Haskell should be deleted. I believe that the requirement for security to protect Haskell is a reasonable requirement in view of Haskell's significant risks if the USBF system does not achieve 5,5,3,1 and in light of the fact that the record does not include evidence that the USBF is capable of doing so. Also, since the warranty form is substantially the same as the form already signed by Fluidyne, there is little reason to believe that the warranty form is unreasonable burdensome.

Note that Fluidyne is not able to provide security for the second year of the Fluidyne warranty. Purestream/Randazza should not be required to provide greater security than Fluidyne.

Except for the second year bonding requirement, the Fluidyne warranty is as requested by the District.

#### **5. The District has a responsibility to review and approve the 30% design drawings, but the contract does not require the Board to do so.**

The question whether the Board must act on the design drawings or other approvals is not specified in the contract. I don't know the Board's desire re action on the design drawings.

## **6. Board members may attend a progress meeting under the Haskell contract**

The Board asked whether it might attend a progress meeting with Haskell if the meeting is not publicly noticed. The Government in the Sunshine Act does not prohibit public officers from attending a non-public meeting and receiving information, as long as the discussion at the meeting is not a substitute for debate on an issue that will come before the agency. Board members may ask questions at such a meeting, but may not engage in discussion of future action items.

**Thomas M. Dillon**

# Memo

**To:** Key Largo Wastewater Treatment District

**From:** Thomas M. Dillon

**CC:** N/A

**Date:** 1/12/04

**Re:** Comparisons of warranties signed by Fluidyne, Randazza, and Purestream with forms provided to them

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**Note: This memorandum constitutes attorney work product and attorney communications.**

The purpose of this memorandum is to compare the warranties signed by Fluidyne, Randazza, and Purestream with the warranty forms provided to them by me on behalf of the District. None of the entities has signed the warranty exactly as provided. The comparison is in outline format with comments on the material changes made by each entity. I am providing along with this memorandum markups of the warranties provided and showing additions and deletions by each party.

Fluidyne has signed a warranty form that is very similar to that provided by me. Purestream and Randazza have made several changes.

- Purestream and Randazza propose a secondary treatment system called "BESST" in place of "USBF".
- Purestream and Randazza divide the warranty obligations among them, with Purestream warranting equipment and Randazza promising support and training. Where one of the two entities promises to fulfill a warranty obligation, I have not noted it as a material change.

## **MATERIAL CHANGES FROM THE FORMS PROVIDED.**

### **Recitals**

- Randazza and Purestream have modified the recitals, and the remainder of the document by removing the references to a "secondary treatment system" called

"USBF", and replacing them with references to an "advanced biological treatment process" called "BESST." I do not know the significance of this change.

Warranty duration of two years from Acceptance Date in Design-Build Agreement.

- Fluidyne limits duration to no later than 9/1/2007.

Conditions of warranty; sewage influent substantially as characterized for the purpose of the secondary treatment facility.

- Purestream requires the actual sewage influent characteristics to be "the same as the sewage influent design criteria as stated in the Design-Build Agreement and used in the design of the BESST plant."
- NOTE: I DO NOT BELIEVE THAT THE DESIGN-BUILD AGREEMENT STATES THE CHARACTERISTICS OF THE SEWAGE. TMD
- NOTE: THE PURESTREAM WARRANTY WOULD BE VOID IF THE ACTUAL SEWAGE VARIES IN ANY WAY FROM THE SEWAGE CHARACTERISTICS USED AS THE DESIGN BASIS FOR THE PLANT. TMD

Disclaimer of responsibility for certain consequential damages suffered by the district.

- Randazza form does not include the disclaimer

Security for warranty obligations.

- Fluidyne provides security for first year, only.
- Purestream provides no security.
- Randazza offers to pay "pay Haskell for a Process Bond if Haskell is able to obtain such a Bond in the Wastewater Treatment Industry" with the cost of the bond added to Randazza's proposal.
- Randazza to deposit \$75,000 as security for its promises.
- NOTE: THE TERM "PROCESS BOND" IS NOT A TERM WITH WHICH I AM FAMILIAR. THE FORM SOUGHT A PERFORMANCE BOND OR OTHER SECURITY FOR THE PROMISES MADE. TMD.
- NOTE: RANDAZZA'S PROMISES DO NOT INCLUDE ANY WARRANTY ON THE PLANT EQUIPMENT OR MATERIALS. TMD

Compliance with all applicable laws and regulatory requirements, including FDEP redundancy requirements.

- Purestream and Randazza have deleted this requirement.
- NOTE: THE DELETION IS SOMEWHAT SURPRISING, SINCE THE PROVISION REQUIRING COMPLIANCE WITH REDUNDANCY REQUIREMENTS WAS INSERTED UPON THE REQUEST OF RANDAZZA'S REPRESENTATIVE. TMD

## **Other**

- **Fluidyne form required it to provide advice, counsel, and technical support by telephone at no charge for not less than five years after expiration of the warranty. Fluidyne deleted this requirement but made the same promise in a cover letter.**
- **Randazza makes additional promises, as follows:**
  - **Provide construction assistance**
  - **Provide startup assistance and training**
  - **Provide on-the-job assistance and training for five years after startup**

## FLUIDYNE WARRANTY COMPARISON

Variances from District proposed form shown in red

WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, the District entered into that agreement in reliance upon, among other things, the representation by Haskell that it was offering an additional 12 months of warranty on the Fluidyne Corporation ("Fluidyne") SBR secondary treatment process equipment at no additional cost to the District, and

WHEREAS, the parties intend by this writing to memorialize that additional warranty on the part of Fluidyne,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, Fluidyne hereby warrants to the District as follows:

1. Fluidyne warrants that all materials and equipment provided by Fluidyne ("Fluidyne materials and equipment") to Haskell and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials.
2. Fluidyne warrants that it will, at its option, commence and diligently prosecute activities to repair or replace, within a reasonable time period, but not to exceed ten calendar days after written notice from the District, and at Fluidyne's expense, any and all Fluidyne materials or equipment that fail due to faulty materials or manufacture.
3. Fluidyne warrants further that if Fluidyne equipment fails to perform in accordance with the requirements of the performance criteria defined in Exhibit D of the Design-Build Agreement as a result of defective Fluidyne materials or equipment or because of the design of the Fluidyne SBR secondary treatment process equipment, Fluidyne will, within a reasonable time period, but not to exceed ten calendar days after written notice from the District, and at Fluidyne's expense, commence and diligently prosecute all actions necessary, including redesign and reconstruction of the secondary treatment process equipment, and modification of operating procedures, to cause the Fluidyne equipment to perform in accordance with the requirements of the performance criteria defined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.
4. If Fluidyne fails to respond in accordance with Item 2 or Item 3 above after ten calendar days prior written notice from the District and If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, Fluidyne will reimburse the District for the reasonable costs of such efforts within 30 days of the District providing notice to Fluidyne.

5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two years, but will not extend beyond September 1, 2007.
6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the Fluidyne materials or equipment or due to a defect in their design or specified operating procedures, the Fluidyne equipment is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.
7. The following are express conditions of this warranty:
  - a. That the sewage influent is substantially as characterized for the purpose of design of the SBR facility under the Design-Build Agreement and free of significant concentrations of material that can inhibit or adversely impact biological treatment processes; and
  - b. That the District has substantially complied with all of the operating instructions and maintenance requirements required for normal and proper operation and instructions communicated to the District by Haskell or Fluidyne under the Design-Build Agreement.
8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, Fluidyne will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but Fluidyne shall be entitled to compensation for the reasonable cost of repair or replacement.
9. Except for damage to the equipment caused by a condition described in Paragraphs 1 through 4, above, Fluidyne expressly disclaims responsibility for any damages caused by failure of the Fluidyne secondary treatment process equipment, including lost income to the District.
10. If the District or Fluidyne is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys' fees (including charges for paralegals and others working under the direction or supervision of the party's attorney.)
11. The failure of the District or Fluidyne to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought.
12. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida. Dispute resolution under this warranty shall be conducted in accordance with Article 14 of the

Design Build Agreement and in accordance with the following procedures: negotiations, mediation, and judicial resolution.

- ~~13. In addition to the foregoing warranty obligations, Fluidyne represents and warrants that it will provide advice, counsel, and technical support by telephone for a period of not less than five years after the expiration of this warranty at no expense to the District. [NOTE: FLUIDYNE COVER LETTER PROMISES TO PROVIDE TELEPHONE SUPPORT TO END USERS "LONG AFTER THE EXPIRATION OF THE WARRANTY PERIOD" AND "ADVICE, COUNSEL, AND TECHNICAL SUPPORT BY TELEPHONE AT NO CHARGE TO THE DISTRICT." FLUIDYNE COVER LETTER ALSO OFFERS TO PROVIDE A SERVICE CONTRACT AT EXTRA COST. TMD.]~~
14. In addition to the foregoing warranty obligations, Fluidyne represents and warrants that the Fluidyne materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.
15. Fluidyne will provide, through Haskell, bonding to secure performance of its obligations under this warranty and payment for labor and materials to be supplied ~~under this warranty~~ on the project including the initial 12-month warranty but not any extended warranty.

## PES WARRANTY COMPARISON

Variations from District proposed form shown in red

WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, PURESTREAM ES, L.L.C. ("PES") is a potential supplier of secondary treatment equipment an advanced biological treatment process, referred to herein as the USBF BESST plant, and

WHEREAS Randazza Enterprises, Inc ("Randazza") is an the sole authorized State of Florida manufacturers Representative representative of PES, and

WHEREAS, PES and Randazza, for the purpose of inducing the District to select the USBF plant BESST process for the Project, desires to make additional transferable warranty and service commitments for the benefit of the District to Randazza, and

WHEREAS, the parties intend by this writing to memorialize the additional transferable warranty and service commitments,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, PES and Randazza agrees as follows:

1. PES and Randazza warrants that all materials and equipment provided by PES as part of the USBF BESST plant to Randazza, Haskell, and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials.
2. PES and Randazza warrants that they will repair or replace, without delay and at their expense, any and all USBF BESST plant components that fail due to faulty materials or manufacture.
3. PES and Randazza warrants further that if the Project fails to perform in accordance with the requirements of the Design-Build Agreement as a result of defective PES materials or equipment, or because of the design of the USBF BESST plant, PES and Randazza will, without delay, and at their expense, undertake all actions necessary, including redesign and reconstruction of the USBF BESST plant, including additional process equipment, if necessary, and modification of operating procedures, to cause the Project project to perform in accordance with the requirements of the Design-Build Agreement as outlined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.
4. If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, PES and Randazza will reimburse the District for the reasonable costs of such efforts within thirty (30) days of the District providing notice to PES or Randazza.

5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two (2) years.
6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the PES materials or equipment or due to a defect in their design or specified operating procedures, the Project is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.
7. The following are express conditions of this warranty:
  - a. That the actual sewage influent characteristics are the same as the sewage influent design criteria as stated in ~~is substantially as characterized for the purpose of design of the USBF plant under the Design-Build Agreement and used in the design of the BESST plant; and~~
  - b. That the District has substantially complied with all of the operating instructions and maintenance requirements communicated to the District by PES or Randazza or Haskell under the Design-Build Agreement.
8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, PES and ~~Randazza~~ will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but shall be entitled to compensation for the reasonable cost of repair or replacement.
9. Except for damage to the Project caused by a condition described in Paragraphs 1 through 4, above, PES and ~~Randazza~~ expressly disclaims responsibility for any damages caused by failure of the USBF BESST plant, including lost income to the District.
- ~~10. Randazza will provide Haskell with all the assistance needed during the construction phase of the USBF plant at no cost to Haskell.~~
- ~~11. Randazza will assume the full responsibility, at no cost to Haskell or the District, for the startup and training of District operators once the USBF plants #1, #2 and #3 have been completely installed and electrical power has been provided to the equipment.~~
- ~~12. Randazza will continue to provide on the job supervision and technical training/assistance to the District operators at no cost to the District for a period of five years after the startup of USBF plants #1, #2 and #3 during which period, the USBF Plants will have been demonstrated to perform in accordance with the requirements of the Design-Build Agreement. It is understood that plants #1, #2 and #3 will be tested to meet the Design-Build Agreement by simply alternating the Influent flows to either of the plants at any time after startup of all three plants in order to demonstrate their performance.~~
13. If the District or PES or Randazza is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys' fees

(including charges for paralegals and others working under the direction or supervision of the party's attorney.)

14. The failure of the District or PES or Randazza to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought all parties involved with this Agreement and the Design-Build Agreement.
15. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida.
- ~~16. In addition to the foregoing warranty obligations, PES and Randazza represent and warrant that the PES materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.~~
- ~~17. PES and Randazza will provide to Haskell bonding or other reasonable security to secure performance of their obligations under this warranty and payment for labor and materials to be supplied under this warranty.~~
18. In addition to the foregoing, Randazza agrees that Haskell shall deduct from the first amounts due Randazza for the PES materials and equipment the sum of \$75,000, which shall be transmitted to the District and deposited in an interest-bearing account to secure performance by Randazza of all of the Randazza and Purestream obligations hereunder. If Randazza and Purestream satisfactorily perform all of their obligations under this warranty agreement, the District shall transmit the principal and all accrued interest to Randazza upon the passing of Two years from and after the Acceptance Date of the Purestream materials and equipment under the Haskell contract. If at any time the District reasonably believes that Randazza and/or Purestream are in default under this warranty agreement, then the District shall so notify Randazza of that fact and shall thereafter be entitled to withdraw immediately all or any part of the principal and accrued interest for the purpose of remedying such default. The District may place the principal in a demand deposit account at any federally insured bank, and the District shall have no obligation to Randazza to manage the deposit for the purpose of increasing or maximizing the return on the deposit.

## RANDAZZA WARRANTY COMPARISON

Variances from District proposed form shown in red

WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, PURESTREAM ES, L.L.C. ("PES") is a potential supplier of secondary treatment equipment an advanced biological treatment process, referred to herein as the USBF BESST plant, and

WHEREAS Randazza Enterprises, Inc ("Randazza") is an the sole authorized State of Florida Manufacturer's Representative representative of PES, and

WHEREAS, PES and Randazza, for the purpose of inducing the District to select the USBF BESST plant for the Project, desire to make additional warranty and service commitments for the benefit of the District, and

WHEREAS, the parties intend by this writing to memorialize the additional warranty and service commitments,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, PES and Randazza agree as follows:

- ~~1. PES and Randazza warrant that all materials and equipment provided by PES as part of the USBF plant to Haskell and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials. Randazza will provide Haskell with all the assistance needed during the construction phase of the BESST (USBF) plant at no cost to Haskell.~~
- ~~2. PES and Randazza warrant that they will repair or replace, without delay and at their expense, any and all USBF plant components that fail due to faulty materials or manufacture.~~
- ~~3. PES and Randazza warrant further that if the Project fails to perform in accordance with the requirements of the Design-Build Agreement as a result of defective PES materials or equipment or because of the design of the USBF plant, PES and Randazza will, without delay and at their expense, undertake all actions necessary, including redesign and reconstruction of the USBF plant, and modification of operating procedures, to cause the Project to perform in accordance with the requirements of the Design-Build Agreement as outlined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.~~
- ~~4. If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, PES and Randazza will reimburse the District for the reasonable costs of such efforts within 30 days of the District providing notice to PES or Randazza.~~

- ~~5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two years.~~
- ~~6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the PES materials or equipment or due to a defect in their design or specified operating procedures, the Project is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.~~
- ~~7. The following are express conditions of this warranty:
  - ~~a. That the actual sewage influent is substantially as characterized for the purpose of design of the USBF plant under the Design-Build Agreement; and~~
  - ~~b. That the District has substantially complied with all of the operating instructions and maintenance requirements communicated to the District by PES or Randazza or Haskell under the Design-Build Agreement.~~~~
- ~~8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, PES and Randazza will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but shall be entitled to compensation for the reasonable cost of repair or replacement.~~
- ~~9. Except for damage to the Project caused by a condition described in Paragraphs 1 through 4, above, PES and Randazza expressly disclaim responsibility for any damages caused by failure of the USBF plant, including lost income to the District.~~
- ~~10. Randazza will provide Haskell with all the assistance needed during the construction phase of the USBF plant at no cost to Haskell.~~
11. Randazza will assume the full responsibility, at no cost to Haskell or the District, for the startup and training of District operators once the BESST (USBF) plants #1, #2 and #3 have been completely installed and electrical power has been provided to the equipment.
12. Randazza will continue to provide on the job supervision and technical training/assistance to the District operators at no cost to the District for a period of five years after the startup of BESST (USBF) plants #1, #2 and #3 during which period, the BESST (USBF) Plants will have been demonstrated to perform in accordance with the requirements of the Design-Build Agreement. It is understood that plants #1, #2 and #3 will be tested to meet the Design Build Agreement by simply alternating the Influent flows to either of the plants at any time after startup of all three plants in order to demonstrate their performance.
13. If the District or PES or Randazza is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys' fees (including charges for paralegals and others working under the direction or supervision of the party's attorney.)

14. The failure of the District or PES or Randazza to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought.
15. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida.
16. ~~In addition to the foregoing warranty obligations, PES and Randazza represent and warrant that the PES materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.~~
17. ~~PES and Randazza will provide to Haskell bonding or other reasonable security to secure performance of their obligations under this warranty and payment for labor and materials to be supplied under this warranty. Randazza is willing to pay Haskell for a Process Bond if Haskell is able to obtain such a Bond in the Wastewater Treatment Industry. The added cost of said Process Bond will be added to the Randazza Contract/Proposal.~~
18. In addition to the foregoing, Randazza agrees that Haskell shall deduct from the first amounts due Randazza for the PES materials and equipment the sum of \$75,000, which shall be transmitted to the District and deposited in an interest-bearing account to secure performance by Randazza of all of the Randazza and Purestream obligations hereunder. If Randazza and Purestream satisfactorily perform all of their obligations under this warranty agreement, the District shall transmit the principal and all accrued interest to Randazza upon the passing of Two years from and after the Acceptance Date of the Purestream materials and equipment under the Haskell contract. If at any time the District reasonably believes that Randazza and/or Purestream are in default under this warranty agreement, then the District shall so notify Randazza of that fact and shall thereafter be entitled to withdraw immediately all or any part of the principal and accrued interest for the purpose of remedying such default. The District may place the principal in a demand deposit account at any federally insured bank, and the District shall have no obligation to Randazza to manage the deposit for the purpose of increasing or maximizing the return on the deposit.

431 OHIO PIKE, SUITE 223 SOUTH  
CINCINNATI, OHIO 45255  
PHONE: (513) 688-1650  
FAX: (513) 688-1657  
E-MAIL: SMITHENG159@FUSE.NET

# Smith Environmental Engineering, Inc

January 13, 2004

TO: Commissioners of Key Largo Wastewater Treatment District (KLWTD)

- Mr. Gary Bauman
- Mr. Cris Beatty
- Mr. Charles Brooks
- Mr. Andy Tobin
- Mr. Jerry Wilkinson

Gentlemen:

This letter has been prepared at the request of Mr. Nos Espat, President of Randazza Enterprises, Inc. in response to questions raised by the Engineering Firm of Brown and Caldwell regarding the design of BESST Process for the subject project.

My company Smith Environmental Engineering, Inc. (SEEI) has been a process consultant for Purestream ES LLC and their predecessor companies since 1989. We have provided process design services for the Purestream Sequencing Batch Reactor Process (SBR), the USBF process and most recently the BESST process. I am coauthor of the BESST process patent, US Patent 6,620,322,B1, September 16, 2003.

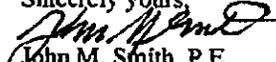
Regarding the above project, I have reviewed the Purestream process design in detail and it is my opinion that the current Purestream design will meet the project design requirements of 3 mg/l of total nitrogen.

I have discussed the technical aspects of the design in some detail with Mr. Ted Hortenstine, P.E., Orlando Office Leader. I have attempted to describe to B&C that the BESST process is unique in that the process combines the Internal Recycle with the RAS recycle and therefore does not fit the MLE and similar biological single sludge Nitrification Denitrification models.

I have provided B&C with all requested project process design documentation and further requested that Purestream ES, LLC provide B&C with operating data that documents the BESST process capability of meeting all project design requirements. I am also aware that Purestream has provided full process warranty to KLWTD.

I have also attached for your information and file SEEI qualifications and experience.

Sincerely yours,

  
John M. Smith, P.E.  
President

Attachments: - JMS Q & E

## **HIGHLIGHTS OF QUALIFICATIONS AND EXPERIENCE OF SMITH ENVIRONMENTAL ENGINEERING, INC. IN THE POLLUTION CONTROL FIELD (2001)**

**431 Ohio Pike, Suite 223 South, CINCINNATI, OHIO 45255 Phone: (513) 688-1650 Fax: (513) 688-1657**

Twenty-One (21) years in business. Offices and testing laboratories in Cincinnati, Ohio.

- \$ Completed over 400 municipal and industrial projects ranging in size from \$5,000 feasibility studies to \$600,000 per year full-scale design contracts. Includes the design of 2 and 22 mgd advanced treatment plants in Malaysia.
- \$ Completed over 50 Turn-Key industrial and/or pretreatment facilities. Clients include food processing, metal finishing, chemical manufacturing, dairy products, groundwater treatment and superfund site remediation. Provided process performance and equipment warranties on our systems.
- \$ Selected by U.S. Environmental Protection Agency (USEPA) as expert consultants to prepare USEPA design manuals, handbooks and field guides on:
  - s Odor and Corrosion design manual completed ( 1985)
  - s Phosphorous Removal ( with emphasis on biological nutrient removal technology) completed 1987)
  - s Sewer System Infrastructure Analysis and Rehabilitation (1992)
  - s Sulfide Report to Congress (1992)
  - s Corrosion Handbook (1991)
  - s Sequencing Batch Reactors for Nutrient Removal (1991)
  - s Septage handling and treatment field guides (1992)
- \$ Completed over 90 odor and corrosion projects including 12 special odor and corrosion studies for the USEPA.
- \$ All senior staff members and associate consultants have degrees in civil, sanitary or chemical engineering.
- \$ Senior staff members have strong USEPA applied engineering and R/D backgrounds. Senior engineers have over 110 years combined experience.
- \$ Ninety-five percent of all jobs have been completed within budget and on schedule.
- \$ Senior project managers are intimately familiar with all State and Federal EPA programs.

Because of the strong research, process engineering and detailed design experience of our senior staff, we offer exceptional qualifications in the following areas:

- \$ Odor and VOC corrosion Control
- \$ Odor Sampling and Odor Control Chemical Testing
- \$ Industrial/ Municipal Wastewater and Solids Treatment/ Disposal Treatment with Primary Focus on Combination of Conventional and Innovative Physical/Chemical and Biological Processes.
- \$ Nutrient Removal Technologies
- \$ Biological Secondary and Tertiary Treatment Alternatives
- \$ Physical and Chemical Treatment
- \$ Sanitary Process Design, Cost Analysis and Value Engineering
- \$ Facility Planning and Analysis of Municipal Treatment Alternatives
- \$ Industrial Treatment Systems to meet USEPA Industrial Pretreatment Standards
- \$ Storm Water Permitting and treatment Alternatives
- \$ Alternative treatment Systems, Bench-Scale and Pilot Plant Testing
- \$ Solid Waste Management Odor and VOC Control
- \$ Expert Testimony on Odor Control, Conventional and AWT Plants, Construction Claims, Health and Safety
- \$ SBR, USBF and Hybrid Anaerobic Technology

\*\*\*\*\*

**NOTICE**

**Smith Environmental Engineering, Inc. (SEEI) was formerly operated from October 1982 to July 1, 2003 as J. M. Smith & Associates, PSC Consulting Engineers (JMS). All intellectual property of JMS is now owned by SEEI.**

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**SECTION 5**

**RESUMES**

**JOHN M. SMITH, P.E.**

**PRESIDENT**

**J.M. SMITH & ASSOCIATES, PSC, CONSULTING ENGINEERS**

**EDUCATION:**

B.S. Civil Engineering, University of Kentucky, 1964

M.S. Sanitary Engineering, University of Cincinnati, 1971

**PROFESSIONAL REGISTRATION:**

P.E. Civil Engineering - Kentucky (PE8205), Ohio (PE47482), Indiana (PE021215), Louisiana (PE21840), Florida (PE47329)

P.E. Sanitary Engineering - Kentucky, Ohio, Indiana, Louisiana, Florida

**ORGANIZATIONS:**

Water Environmental Federation

American Society of Civil Engineers

Ohio Association of Consulting Engineers

Cincinnati Association of Consulting Engineers

Clermont County Chamber of Commerce

Life Member of Who's Who

**EXPERIENCE:**

10/82 to Present

President and CEO of , J.M. Smith & Associates, PSC, Consulting Engineers

7/82 to 10/82

Chief, Systems Engineering and Evaluation Branch, USEPA Wastewater Research Division, Office of Research and Development, Cincinnati, Ohio

9/73 to 10/82

Chief, Urban Systems Management Section, Systems Engineering and Evaluation Branch, USEPA Wastewater Research Division, Office of Research and Development, Cincinnati, Ohio

1/72 to 9/73

Acting Chief, Municipal Treatment Research Program, USEPA Office of Research and Development, Cincinnati, Ohio

6/68 to 1/72

Sanitary Engineer, USEPA National Environmental Research Center, Cincinnati, Ohio

12/67 to 6/68

Civil Engineer, U.S. Army Corps of Engineers, Cincinnati, Ohio

5/64 to 9/67

Project Engineer, Barbeau Construction Management, Consulting Engineers, Batavia, Ohio

## **AWARDS:**

EPA Bronze Medal for Commendable Service, 1973  
EPA Quality Increase Award, 1969, 1976, 1977  
Outstanding Performance Award EPA, 1981, 1982  
NSPE Engineer of the Year in EPA, 1981

John M. Smith has over 31 years of experience in civil and sanitary engineering, including a broad background in process design of conventional and innovative wastewater treatment technologies. This experience is derived from an initial four years of sewer and wastewater treatment plant design and construction experience with the engineering firm of Barbeau Construction Management in Batavia, Ohio, followed by over 16 years of research and engineering experience with the USEPA Office of Research and Development, and over 13 years as president and CEO of J.M. Smith and Associates.

During his tenure at EPA, Mr. Smith directed the Agency's Pilot Plant Research Program that included an engineering and technical staff of approximately 60 persons who operated multi-line pilot plants in Washington, D.C., Pomona, California and Lebanon, Ohio. Basic and applied research was conducted under the direction of Mr. Smith on over 50 advanced waste treatment processes over a period of six years.

Mr. Smith later directed the three million dollar per year engineering and evaluation activities of EPA's Wastewater Research Program, including the development and management of a plant operations and design program, a small community research program, an innovative and alternative technology research program, and an engineering and technical assistance program.

Highlights of Mr. Smith's EPA experience at USEPA's Office of Research and Development include the analysis of research data from over 140 wastewater treatment processes, the development of six new treatment processes and the development and dissemination of rational design information for the full scale implementation of these technologies.

Mr. Smith is recognized internationally as a process design expert in Wastewater and Sludge Treatment Technology, and in Sewer

System Evaluation and Odor and Corrosion Control.

Mr. Smith was a lecturer in over 120 USEPA sponsored United States and International Design Seminars and was the co-author of seven USEPA Design Manuals covering the technical areas of nitrogen control, upgrading wastewater treatment plants, phosphorus removal, sulfide control, infiltration and inflow reduction, carbon adsorption, and small community wastewater treatment systems.

Mr. Smith holds patents on "Fixed Film Denitrification," "Expanded Bed Biological Treatment," and "A Rotating Disk Mechanical Evaporation Device."

Mr. Smith was selected to direct the USEPA National Innovative and Alternative (I/A) Technology Program in Cincinnati. This group provided extensive technical support and direction for the Agency's I/A program for over five years. Activities included development of agency regulations, policy guidance, and project selection criteria; preparation of an I/A Technology Assessment Manual; formation and management of a national I/A clearinghouse; and management of a I/A Technical Support Group that had responsibility for review of I/A facility plans for all ten EPA Regional Offices.

Mr. Smith reviewed over 300 separate facility plans and made recommendations to USEPA Regional Administrators regarding their acceptance of I/A technology under the applicable criteria previously established.

Mr. Smith was selected as USEPA Engineer of the Year out of 10,000 engineers for these efforts.

Mr. Smith has testified before the United States Congress "Investigation and Oversight Committee" on the impact of Innovative Technology on improving water quality and reducing the national cost of municipal wastewater treatment in the United States.

Mr. Smith also acted as senior advisor to other segments of USEPA, national organizations and congressional committees. He has presented expert testimony on design criteria and deficiencies that settled USEPA's litigation issues for three major AWT facilities.

Because of Mr. Smith's strong philosophy on the need to use research-based rational design criteria in municipal treatment works, he initiated and managed EPA's first program on "Identification and Correction of Design Deficiencies" and initiated the EPA/WPCF - sponsored Design Information Series Reports.

Mr. Smith's areas of technical expertise include process and detailed design of municipal and industrial waste treatment technologies including mechanical plant biological processes, land-based biological processes, physical-chemical treatment technologies, anaerobic suspended and fixed-film biological systems, and hazardous waste treatment and disposal technologies.

As founder and president of J.M. Smith and Associates, PSC, Consulting Engineers (JMS), Mr. Smith has directed and actively participated in the conduct of over 300 projects in the municipal and industrial treatment fields ranging from design and construction management of advanced secondary treatment plants to design of hazardous waste control facilities.

Under Mr. Smith's personal direction, JMS was retained by USEPA to prepare Design Manuals on Odor and Corrosion Control, Phosphorus Removal, Sewer System Infrastructure Analysis and Rehabilitation, a Sulfide Report to Congress, Corrosion Handbook, Sequencing Batch Reactor for Nutrient Removal and Septage Handling and Treatment Guide.

Under the direction of Mr. Smith, JMS has pioneered the development and designed the first United States full-scale application of the following technologies:

- a) deep well chemical oxidation for treatment of sludge and high strength organic wastes
- b) multiple U-Tube aeration for force main sulfide control
- c) largest vapor phase odor control system in the United States
- d) the use of high resolution sonar for inspection of sewer lines and force mains

## **PUBLICATIONS**

### **Author**

Smith, J.M., Hartmann, G.L., "Texas Firm Introduces New Wastewater Treatment Technology," published in Hazardous Materials Technical Center Update, pg. 4, Vol. 6, No. 2, March, 1987.