

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

**Item Number: R- 6**

**1 DEPARTMENT MAKING REQUEST**

County Attorney

**2 MEETING DATE**

9/9/2014 9:00:00 AM

**3 REQUESTED MOTION/ACTION**

Discussion and direction regarding the 1991 Peace River Facility Rebuild Project; and consideration of adoption of Resolution Initiating Conflict Resolution Procedures under Chapter 164, F.S. with the Water Authority.

**4 AGENDA**

Regular

**5 IS THIS ITEM BUDGETED ( IF APPLICABLE ) -**

**Budget Action**

**Financial Impact Summary Statement**

**Detailed Analysis Attached -**

**Budget Officer-**

**6 BACKGROUND ( Why is this Action Necessary, and What Action will be accomplished )**

**ATTACHMENTS:**

Name:

Description:

Type:

[Resolution.docx](#)

Resolution Initiating Ch. 164

Exhibit

[14-09-](#)

[01 Charlotte Cover Letter Ch164 Resolution.docx](#)

Cover Letter to Resolution

Resolution  
Letter

[14-09-02 Charlotte-](#)

[PRMRWSA Return Project Savings Letter.docx](#)

Letter request for refund of project savings

Exhibit

RESOLUTION  
NUMBER 2014-\_\_\_\_\_

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA RELATING TO INITIATION  
OF THE CONFLICT RESOLUTION PROCEDURES PROVIDED BY  
CHAPTER 164, FLORIDA STATUTES TO RESOLVE ISSUES  
RELATING TO THE 1991REBUILD PROJECT AND PROVIDING  
AN EFFECTIVE DATE.**

RECITALS

**WHEREAS**, Charlotte County (County), is a member and water customer of the Peace River/Manasota Regional Water Supply Authority (Authority);

**WHEREAS**, on or about April 11, 2013, the Authority Board adopted a “Resolution Setting Forth Preliminary Schedules of Rates, Fees and Charges for FY 2014” (Resolution No. 2013-04) approving the Tentative Budget for FY 2014, which included costs for the 1991 Peace River Facility Rebuild Project (Project)<sup>1</sup>, but did not include an approved plan for paying the Project Cost through either the Authority Water Rate or from some other source of Authority funds and establishing the preliminary Water Rate for FY 2014;

**WHEREAS**, on or about September 3, 2013, the Authority adopted a “Resolution Setting Forth Rates, Fees and Charges for FY 2014” (Resolution No. 2013-06) approving the Final FY 2014 Budget, which did not include Project costs, and establishing the Final FY 2014 Water Rate;

**WHEREAS**, on or about October 2, 2013, the Authority adopted a resolution amending Resolution 2013-06 to update the Final FY 2014 Budget to include Project costs, allocate Project costs among the Authority’s water customers with the County required to pay 74.18% or approximately \$9.5 million of the Project costs and

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<sup>1</sup> The Project refers to a series of maintenance, renewal and replacement activities within an estimated cost of approximately \$12.8 million intended to renew and restore the 1991 Peace River Facility, which is the original 12 MGD component of the current 48 MGD Peace River Facility, to conditions suitable for continued reliable service without any increase in water supply capacity.

establishing a revised FY 2014 Water Rate requiring repayment of Project costs in a single lump sum payment or at the request of a customer to be financed by the Authority and assessed on an annual basis for 20 years. Amended Resolution 2013-06 also re-assigned \$10,848,937 from the Authority's CIP Fund consisting of \$2,081,569 of excess funds pre-paid by the County for the Regional Expansion Project (REP) and excess bond funds of \$8,767,368 issued by the Authority to fund the REP and various pipeline projects to pay the Project costs;

**WHEREAS**, on or about December 4, 2013, the Authority held a public hearing to consider an amendment to the Final FY 2014 Budget to include Project costs. The Authority adopted the Final FY 2014 Budget, a "Resolution Setting Forth Cost Allocations for 1991 Peace River Facility Rebuild Project" (Resolution 2013-07) and a "Resolution Setting Forth Cost Policy to Credit Participating Customers for Project Savings" (Resolution 2013-08). Resolution 2013-07 allocated 74.18% or approximately \$9.5 million of Project costs to the County; mandated that unless a common rate is established for all components of the Authority System prior to FY 2015, these allocations will be used to determine the FY 2015 Water Rate effective October 1, 2014; and, provided that when integrated into the FY 2015 Water Rate, the County would have to pay \$8.5 million of its \$9.5 million cost allocation as a single lump sum payment or, at its request, financed by the Authority and assessed on an annual basis for 20 years. Resolution 2013-07 also re-assigned \$10,848,937 from the Authority's CIP Fund consisting of \$2,081,569 of excess funds pre-paid by the County for the Regional Expansion Project (REP) and excess bond funds of \$8,767,368 issued by the Authority to fund the REP and various pipeline projects to pay the Project costs. Resolution 2013-08 obligated the Authority to refund the \$10,848,937 re-assigned from the REP and pipeline projects upon payment of the Project costs through the FY 2015 water rate. Finally, at this meeting, the Authority did not rescind, modify or reconfirm the resolution adopted at the October 2, 2013 meeting amending Resolution 2013-06;

**WHEREAS**, on or about February 20, 2014 the Authority re-characterized the Project as increasing the water supply capacity of the 1991 Peace River Facility to 15

MGD, when it applied for 50% state funding of approximately \$3 million of the original \$12.8 million estimated cost of the Project and designated these expenditures the “Peace River Facility Treatment Capacity Expansion – Phase I” (Project Expansion);

**WHEREAS**, on or about April 2, 2014 the Authority formally re-characterized the Project as increasing the water supply capacity of the 1991 Peace River Facility to 15 MGD and ratified the Authority’s application for 50% state funding of approximately \$3 million of the original \$12.8 million estimated cost of the Project for the Project Expansion;

**WHEREAS**, on or about June 2014, the Florida Legislature approved and the Governor signed HB 5001 ER setting forth state appropriations for FY 2015 and specifically approving a \$1.5 million appropriation for the Project Expansion and the Authority applied to the Southwest Florida Water Management District (SWFWMD) for \$750,000 of grant funding for the Project Expansion, which request was subsequently approved by the SWFWMD Governing Board;

**WHEREAS**, on or about August 25, 2014, the Authority held a public hearing to consider adoption of the Final FY 2015 Budget to include Project costs. The Authority adopted the Final FY 2015 Budget and a “Resolution Setting Forth Rates, Fees and Charges for FY 2015” (Resolution 2014-05). Resolution 2014-05 effectively increased the Project cost by \$500,000 from approximately \$12.8 million to \$13.3 million to reflect estimated additional construction costs, then applied \$1,955,103 from the R&R Fund (to which the County contributed at least 49.2% or approximately \$962,693) to reduce the remaining Project costs to approximately \$11.4 million, then applied \$1.5 million of state appropriations to reduce the remaining Project cost to approximately \$9.9 million, allocated 78.67% or approximately \$7.8 million of the remaining Project cost to the County and re-assigned \$3,668,661 from the Authority’s CIP funds consisting of \$2,081,569 of excess funds pre-paid by the County for the REP and excess bond funds of \$1,587,092 issued by the Authority to fund the REP and various pipeline projects to pay the Project cost. Also, although Resolution 2014-05 identifies the County’s cost

allocation as \$4,112,636, the actual \$497,600 cost assessed to the County in the FY 2015 Water Rate represents an effective cost allocation of \$6,472,736 amortized at 4.5% for 20 years, which effective cost allocation does not take into account either the \$1.5 million state appropriations or the additional \$500,000 of construction costs. Finally, contrary to Resolution 2013-07, neither the Final FY 2015 Budget nor Resolution 2014-05 required the County to pay its cost allocation as a single lump sum payment. Instead, without the County's permission, the Final FY 2015 Budget and Resolution 2014-05 in essence finances the County's cost allocation over a period of 20 years at an interest rate of 4.5% per year; and

**WHEREAS**, prior to initiating court action against the Authority regarding the Final FY 2014 Budget, the October 2, 2013 amendment to Resolution 2013-06, Resolution 2013-07, Resolution 2013-08; the Final FY 2015 Budget, Resolution 2014-05 and related actions, the County wishes to initiate the conflict resolution procedures in Chapter 164, Florida Statutes.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, THAT:**

1. Charlotte County initiates the conflict resolution procedures with regards to the Authority's Final FY 2014 Budget, the October 2, 2013 amendment to Authority Resolution 2013-06, Authority Resolution 2013-07, Authority Resolution 2013-08; the Authority's Final FY 2015 Budget, Authority Resolution 2014-05 and related actions.

2. The issues in conflict between the County and the Authority are as follows:

- a. Whether the Authority is legally authorized to adopt the Final FY 2014 Budget, set the Final FY 2014 Water Rate, adopt the October 2, 2013 amendment to Resolution 2013-06, adopt Resolution 2013-07, adopt Resolution 2013-08, adopt the Final FY 2015 Budget, set the Final FY 2015 Water Rate, adopt Resolution 2014-05, proceed with the Project and Project Expansion, allocate Project costs among its water customers and

allocate 3 MGD of additional water supply capacity at the 1991 Peace River Facility among its water customers, since the “Second Amended Interlocal Agreement Creating the Peace River/Manasota Regional Water Supply Authority” (Interlocal Agreement) dated October 5, 2005 was never approved by the Florida Department of Environmental Protection, as required by Section 373.713(1), Florida Statutes;

- b. Whether the October 2, 2013 amendment to Authority Resolution 2013-06 is legally effective;
- c. Whether, as amended on October 2, 2013, the FY 2014 Water Rate was adopted in accordance with the requirements of the “Peace River/Manasota Regional Water Supply Authority Master Water Supply Contract” (Master Water Supply Contract) dated October 5, 2005 and Section 373.713(2), Florida Statutes;
- d. Whether the inclusion of the County’s Cost Allocation in the FY 2014 Water Rate, as amended on October 2, 2013, will result in an inequitable and unreasonable rate in violation of the Master Water Supply Contract and Section 373.713(2), Florida Statutes;
- e. Whether Resolution 2013-07 is a de facto water rate not adopted in accordance with the requirements of the Master Water Supply Contract and Section 373.713(2), Florida Statutes;
- f. Whether the Authority’s plan, as expressed in Resolution 2013-07, to include the County’s Cost Allocation in the FY 2015 Water Rate would result in an inequitable water rate in violation of the Master Water Supply Contract and Section 373.713(2), Florida Statutes;
- g. Whether the FY 2015 Water Rate as adopted is in accordance with the Master Water Supply Contract and Section 373.713(2), Florida Statutes;
- h. Whether the inclusion of the County’s Cost Allocation in the FY 2015 Water Rate will result in an inequitable and unreasonable rate in violation of the Master Water Supply Contract and Section 373.713(2), Florida Statutes;

- i. Whether the Authority has the legal authority under the Interlocal Agreement, the Master Water Supply Contract and Section 373.713, Florida Statutes to re-assign the \$2,081,569 of excess funds pre-paid by the County for the REP to pay the Project costs, as reflected in the FY 2014 Water Rate and the FY 2015 Water Rate;
- j. Whether the Authority has the legal authority under the Interlocal Agreement, the Master Water Supply Contract and Section 373.713, Florida Statutes to re-assign excess bond funds issued by the Authority to fund the REP and various pipeline projects to pay the Project costs, as reflected in the FY 2014 Water Rate and the FY 2015 Water Rate;
- k. Whether the Authority has the legal authority under the Interlocal Agreement, the Master Water Supply Contract and Section 373.713, Florida Statutes to require the County to repay excess bond funds issued by the Authority to fund the REP and various pipeline projects through the water rate, as set forth in Resolution 2013-08;
- l. Whether the Authority has the legal authority under the Interlocal Agreement, the Master Water Supply Contract and Section 373.713, Florida Statutes to in essence finance the County's Cost Allocation for the Project without the County's permission and to assess the resulting costs on an annual basis through the water rate for a period of 20 years;
- m. Whether the Authority has failed to properly maintain and/or address deficiencies in the 1991 Peace River Facility and to adopt adequate budgets to provide for renewal and replacement costs to keep the Authority System in good working, in violation of the Master Water Supply Contract and Section 373.713(2), Florida and, whether such failures resulted in a need for the Project and the County Project Cost Allocation, as set forth in Resolutions 2013-07 and 2014-05, the Final FY 2014 and 2015 Budgets and the Final FY 2014 and 2015 Water Rates;
- n. Whether the Authority failed to utilize budgeted funds collected from the County as part of FY 1991 through FY 2013 water rates for renewal and replacement of the 1991 Peace River Facility and, if those funds had

properly been utilized by the Authority for renewal and replacement, would the estimated \$12.8 million Project costs have been reduced;

- o. Whether the 1991 Peace River Facility was inherently capable of producing 15 MGD without the Project;
  - p. Whether the Project Expansion is a valid new Authority Water Supply Source project under the Master Water Supply Contract;
  - q. Whether the additional 3 MGD capacity available at the 1991 Peace River Facility should be allocated among the Authority's water customers pursuant to Paragraph 29 of the Master Water Supply Contract, as a re-rating of a component of the Regional Water System, or pursuant to Paragraph 11 of the Master Water Supply Contract, as a new Authority Water Supply Source project;
  - r. Whether the County is entitled to a declaratory judgment, an injunction and other relief with respect to Issues 2.a through 2.q;
  - s. Whether Issues 2.a through 2.q have resulted in a breach of the Master Water Supply Contract entitling the County to damages, specific performance, attorney's fees and other relief; and
  - t. Whether Issues 2.a through 2.q have violated Florida's Deceptive and Unfair Trade Practices Act (Section 501.201, Florida Statutes) entitling the County to an injunction, attorneys fees and costs and other relief.
3. The County Administrator is directed to mail a certified copy of this resolution by letter meeting the requirements of Section 164.1052, Florida Statutes by certified mail, return receipt requested to the Executive Director of the Authority and provide copies of the resolution and letter to the county administrators for Manatee, Sarasota, and DeSoto counties and the City Manager of the City of North Port, within five (5) days of the enactment of this resolution.

**The remainder of this page is intentionally left blank.**



**PASSED AND DULY ADOPTED** this \_\_\_\_\_ day of September, 2014.

ATTEST:  
Barbara T. Scott, Clerk of Circuit  
Court and Ex-Officio Clerk to the  
Board of County Commissioners

Board of County Commissioners  
of Charlotte County

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Kenneth W. Doherty, Chairman

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Janette s. Knowlton, County Attorney  
LR2014-2725

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September \_\_\_\_, 2014

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Patrick Lehman  
Executive Director  
Peace River/Manasota Regional  
Water Supply Authority  
9415 Town Center Parkway  
Lakewood Ranch, FL 34202

**Re: Initiation of Conflict Resolution Procedures**

Dear Mr. Lehman:

Please find a certified copy of Resolution \_\_\_\_\_ passed by the Charlotte County Board of County Commissioners initiating conflict resolution procedures, as set forth in Chapter 164, Florida Statutes. The government entities in conflict are Charlotte County and the Peace River/Manasota Regional Water Supply Authority (Authority). The nature of the conflict and the issues in conflict are identified in the Resolution. Charlotte County is initiating the conflict resolution procedures, as the issues in conflict arise out of the allocation of water services, as specified in Section 164.1051(4), Florida Statutes and out of a general desire to avoid potentially costly and protracted litigation between the County and the Authority by reaching an expeditious, effective and cost-effective resolution of the conflict.

Charlotte County proposes September \_\_, 2014 at \_\_\_\_\_, Florida as the date and location of the conflict assessment meeting to be held pursuant to Section 164.1053, Florida Statutes. Based on the nature of the conflict, Charlotte County suggests, at a minimum, that you and Mr. Doug Manson attend the meeting on behalf of the Authority and that I, Mrs. Janette Knowlton and Mr. Edward de la Parte, Jr. attend the meeting on behalf of Charlotte County. Of course, you are free to invite other staff, consultants or attorneys to attend, as you see fit.

Sincerely,

Charlotte County, Florida

Ray Sandrock, County Administrator

Mr. Patrick Lehman  
September \_\_\_\_, 2014  
Page 2 of 2

Enclosure: certified Resolution \_\_\_\_\_

cc: Douglas Manson, Esq. (w/encl.)(via E-mail and U.S. Mail)  
Thomas Harmer, County Administrator, Sarasota County(w/encl.)(via E-mail and U.S. Mail)  
Ed Hunzeker, County Administrator, Manatee County(w/encl.)(via E-mail and U.S. Mail)  
C. Guy Maxcy, County Administrator, DeSoto County(w/encl.)(via E-mail and U.S. Mail)  
Jonathan Lewis, City Manager, City of North Port(w/encl.)(via E-mail and U.S. Mail)

September 2, 2014

**Via Email**

Mr. Patrick J. Lehman, P.E.,  
Executive Director  
Peace River Manasota Regional  
Water Supply Authority  
9415 Town Center Parkway  
Lakewood Ranch, FL 34202

**Re: Return of Regional Expansion and Phase 1A Pipeline Project Savings**

Dear Pat,

As you know, Charlotte County elected to pre-pay for its portion of the Regional Expansion Program (REP) pursuant to Section 16.2 of the Peace River Manasota Regional Water Supply Authority Master Water Supply Contract. We understand the REPhas now been completed and excess funds remain. According to the Resolution 2013-08, which was adopted by the Authority Board on December 4, 2013, Charlotte County's share of these excess funds attributable to the REP is \$2,081,569.00. Section 3 of Resolution 2013-08 provides that this amount may be refunded to Charlotte County. Accordingly, we request that you reimburse this amount in full to Charlotte County at your earliest convenience.

Thank you in advance for your cooperation. We look forward to the return of the \$2,081,569.00 at your earliest convenience.

Sincerely,

Charlotte County, Florida

Ray Sandrock, County Manager

cc: Authority Board of Directors  
Doug Manson, Esq.  
Charlotte County BOCC  
Janette S. Knowlton, Esq., Charlotte County  
Ed Hunzeker, Manatee County  
Mitchell Palmer, Esq., Manatee County  
Thomas Harmer, Sarasota County  
Stephen E. DeMarsh, Esq., Sarasota County  
C. Guy Maxcy, Desoto County  
Donald D. Conn, Esq., DeSoto County  
Jonathan Lewis, City of North Port  
Robert K. Robinson, Esq. City of North Port