

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** January 7, 2014  
**TO:** Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk  
**FROM:** Caroline M. Klancke, Senior Attorney, Office of the General Counsel  
**RE:** Docket No. 130229-WS - Application for amendment of territory for Certificate Nos. 622-W and 564-S in Volusia and Brevard Counties by Farnton Water Resources LLC.

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Please place the attached correspondence and information in Docket No. 130229-WS.  
Thank you.

CMK

RECEIVED-FPSC  
14 JAN - 7 PM 1:23  
COMMISSION  
CLERK

## Caroline Klancke

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**From:** Lesley Blackner <lblackner@aol.com>  
**Sent:** Monday, January 06, 2014 11:11 PM  
**To:** lblackner@aol.com; Caroline Klancke; bjherrin@yahoo.com; Records Clerk  
**Subject:** Re: Interested Party in Docket 130229

Dear Clerk:

Please include me as an interested person in the above referenced matter:

Lesley Blackner  
[lblackner@aol.com](mailto:lblackner@aol.com)

I trust I will receive email updates regarding this application.

Thank you,

Lesley Blackner

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

From: Lesley Blackner <lblackner@aol.com>  
To: CKLANCKE <[CKLANCKE@PSC.STATE.FL.US](mailto:CKLANCKE@PSC.STATE.FL.US)>; bjherrin <[bjherrin@yahoo.com](mailto:bjherrin@yahoo.com)>; Kelly.jr <[Kelly.jr@leg.state.fl.us](mailto:Kelly.jr@leg.state.fl.us)>  
Sent: Thu, Jan 2, 2014 11:31 pm  
Subject: Interested Party in Docket 130229

Dear Ms. Klanke,

The above referenced docket refers to an application to expand Miami Corporation's waste water territory to now include all of Miami Corporation's tract within Volusia County, including the Farmton Mitigation Bank. You will recall I filed a protest on behalf of Volusia Flagler Sierra Club and Edgewater Citizens Alliance in 2012 about deficiencies in the previous application (Docket No. 110298-SU). See attached. A renewed application is again up for review. The same concerns regarding the impacts remain.

I was not noticed about this modification, even though I was listed as a party on the previous docket. Please explain why I was not given notice.

I wish to bring to your attention the fact that the New Smyrna Beach Utility Commission did not receive notice of this new application. It is a publicly owned utility independent of the city of New Smyrna Beach, as reflected in the City Charter, Chapter 15. It appears that this failure to provide notice may be a violation of notice requirements.

Is a staff report pending for the current application? I wish to file my prior protest in this pending modification request. Please advise.

I look forward to your response.

Lesley Blackner  
[lblackner@aol.com](mailto:lblackner@aol.com)  
561-659-5754

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for certificate) DOCKET NO. 110298-SU  
to provide wastewater service in) ORDER No. PSC-12-0204- PAA-Su  
Volusia and Brevard Counties by)  
Farmton Water Resources LLC. )

**PROTEST OF THE FINAL ORDER GRANTING CERTIFICATE**  
**NO. 564-S**

Edgewater Citizens Alliance for Responsible Development  
("ECARD") and Volusia-Flagler Sierra Club protest the Notice of  
Proposed Agency Action Setting Initial Rates and Charges and Final  
Order Granting Certificate No. 564-S, dated April 16, 2012 which  
established a wastewater utility For Farmton Water Resources, LLC and  
says in support thereof:

1. ECARD is a non-profit corporation based in Edgewater, Florida.

ECARD's mission is to protect the semi-rural ambiance of the  
region from over-development. ECARD engages in political  
activity, public hearings, public education, and door-to-door  
communication.

2. Volusia-Flagler Sierra Club is a non-profit organization dedicated to conservation and protection of the natural environment.
3. Both ECARD and Volusia-Flagler Sierra Club have actively opposed the development of the Farmton Local Plan on the 57,000 acres owned by Miami Corporation in Volusia and Brevard Counties. One reason for its opposition is the fact that since 2000, over 24,000 acres of the Farmton tract has operated as the Farmton Mitigation Bank (“FMB”), the largest wetland mitigation bank in the United States, established under the terms of the June 7, 2000 agreement Miami Corporation entered into with the U.S. Army Corps of Engineers, the US Environmental Agency and the U.S. Fish and Wildlife Service. A copy of the Miami Corporation Farmton Mitigation Bank Enabling Instrument (“FMB Enabling Instrument”) is attached hereto as Exhibit “1” and incorporated as if fully stated herein.
4. The FMB Enabling Instrument states the goal for the FMB, providing in relevant part:

The goal of the mitigation plan is to provide restoration, enhancement, and preservation of wetlands and uplands within each of the three bank sites. Specific objectives include re-establishing surface water flows and wetland hydroperiods, allowing the regeneration of converted and previously harvested wetlands and uplands, improving the quality of habitat, greatly reducing the amount of hunting, phasing out cattle grazing, and preservation of ecosystems.”

In addition to the self-contained ecological value of the Farmton Mitigation Bank, the bank is a valuable component of the natural corridor system that is being established along the St. Johns River. It is significant to the regional ecosystem, not only because of its large size, but also because it is adjacent to other conservation lands, including the Buck Lake property owned by the St. Johns River Water Management District, and the Colbert-Cameron Mitigation Bank. The property also lies near the Lake Monroe Mitigation Bank and South Lake Harney Conservation Areas. It consists of a major network of wildlife corridors extending from the east side of the St. Johns River to Crane Swamp and Spruce Creek Swamp (the headwaters of Spruce Creek). Numerous Listed Species (endangered and threatened) have been identified within each of the Bank sites. Much of the value of the bank lies in this fact: without the bank, most of the land could be used in perpetuity for either forestry or development.

(Page 2-3 of the FMB Enabling Instrument.)

5. The FMB is comprised of three separate, but hydrologically connected tracts within the greater Farnton property. The South bank site is 4,391 acres almost completely located within Brevard County. The remainder is within Volusia County.
6. The authorization of a wastewater territory designation within the FMB is contrary to the public interest. The authorization was granted on the basis of incomplete and erroneous information presented by the applicant. Further, the FMB Enabling Instrument precludes sewage activities and/or activities from FMB territory. ECARD and Volusia-Flagler Sierra Club protest the placement of the south site of the FMB within the authorized wastewater territory.
7. The FMB is administered by the Farnton Mitigation Banking Interagency Review Team (“IRT”), which includes the US Environmental Protection Agency, the US Army Corps of Engineers, the US Fish and Wildlife Service and the National Marine Fisheries Service. These federal agencies were not provided any notice, much less timely notice, of the instant

application and proceedings. These agencies were not informed by applicant of its application for a wastewater utility to be placed over the FMB. This deliberate omission resulted in a certification process that failed to provide the Public Service Commission with adequate information regarding the service territory and the unlawful incompatibility of a wastewater utility on a federal/state mitigation bank.

8. As of January 2012, 34.11 state credits have been sold on land within the south bank site. Federal credits have also been sold on the south bank site, which includes several rare salt marsh communities and a marsh lake, among other environmentally significant features. (See attachment 2, January 25, 2012 FMB report prepared by Marc von Canal, M.S.) Those lands within the south site of the FMB for which credits have been sold are encumbered with recorded conservation easements. The conservation easement used for the FMB is included in the FMB Enabling Instrument attached hereto as Exhibit 1. The



Conservation Easement forbids incompatible uses, and provides in relevant part:

1 Purpose. The purpose of this Conservation Easement is to assure that the Property (with the exception of included wetlands and uplands which are to be enhanced, restored or managed as specified in the aforementioned MBI and Permit) will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the property.

...

3. Prohibited Uses. Any activity or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited.

9. It is thus inaccurate for applicant to state “Related parties Miami Corporation and Swallowtail LLC own almost all of the land proposed for certification by Farnton Water Resources LLC (“FWR”) with the exception of five (5) parcels.” (Letter dated February 17, 2012 from F. Marshall Deterding to Ann Cole.) The south FMB site is encumbered by the 2000 FMB Enabling

Instrument and specific parcels within the site are further encumbered by recorded conservation easements. Applicant failed to meet “proof of ownership” requirement set forth in Rule 25-30.033(1)(j), F.A.C. The applicant for the instant certification failed to disclose the full nature of the ownership interests governing the FMB.

10. In its objection to the instant utility, Volusia County observed that much of proposed territory for service within Volusia County “does erroneously include thousands of acres of land that is subject to permanent preservation under the Farmton Local Plan’s GreenKey land use designation. This acreage will never need wastewater service.” (Volusia County’s Objection dated November 28, 2011.) Unfortunately, Volusia County failed to inform the Public Service Commission that most of this conserved property constitutes the FMB and is subject to the 2000 FMB Enabling Instrument and federal law. The south site of the FMB within Brevard County, like the sites within Volusia County, will never need wastewater service. The Public Service Commission

was not informed by any of the participating parties that much of the proposed territory for service constitutes the largest wetland mitigation bank in the United States.

11. Because the south FMB site is within the proposed wastewater territory, it will be subject to unlawful pollution and degradation resulting from installation of wastewater infrastructure and sewage activity. Such pollution, degradation and harm are contrary to the 2000 FMB Enabling Instrument, section 367.011(3), Florida Statutes (2011) and federal law. The likely pollution and degradation includes:

**Disruption of hydrologic connectivity of the mitigation bank lands, degradation of the regional watershed and sensitive habitats due to roadway expansions, water withdrawals, and installation of wastewater utilities.** This will likely occur through channelization or impoundment of surface water and the resulting alteration of hydroperiods and disruption of sheet flows by Williamson Blvd. and numerous other roadway expansions; the drawdown of groundwater associated with the new water supply wells in close proximity to sensitive wetlands on bank lands; and installation of new wastewater utilities in close proximity to sensitive wetlands. *The newly proposed wastewater utilities carry the additional risk of chlorinated wastewater discharges into highly organic*

*receiving waters, which may result in the formation of formaldehyde in the sensitive waters at potentially toxic levels. The net result of the proposed activities, in addition to the localized disruption of hydroperiods and flows, is an overall degradation of the two affected watersheds (Halifax River and St. Johns River) in terms of natural and historical flows, downstream detritus transport, and water quality.*

Von Canal report at page 2. (Emphasis added.)

12. This protest is also submitted on the ground that there is no immediate, imminent or even remote need for this utility.

Applicant asserts that construction is imminent near the interchange of Interstate 95 and State Road 5A. State Road 5A, also known as Stuckway Road, extends under I-95 and takes travelers east from I-95 to US Highway 1. Yet State Road 5A is unpaved beyond a few hundred feet of the western exit from the interchange and has remained unpaved and unimproved since the mid-1960s, when it was constructed. This is the location where applicant claims construction demand is imminent. The Florida Department of Transportation five year plan (2012-2017) for Brevard County shows no funding available for planning, much

less building any road infrastructure to extend 5A west. There is no evidence of any intent by Brevard or Volusia counties to extend State Road 5A west beyond the interchange within the next five years. A paved road is necessary to accommodate the nearly 800,000 square feet of mixed use construction claimed by applicant. But it will not be built within the next five years. Applicant erred in its claim that construction is imminent and thus the wastewater utility is imminently required. This application is, as Volusia County noted in its objection, “extremely premature and inconsistent with the Farmton Local Plan and the five year review provisions of Section 367.111(1) Florida Statutes.” (Objection by Volusia County filed November 28, 2011).

WHEREFORE, ECARD and Volusia-Flagler Sierra Club submit this protest of the granting of a wastewater utility authorization to Farmton Water Resources, LLC and request that this protest be made part of the permanent record of the instant proceeding.

Dated: May 7, 2012

Respectfully submitted,

*Lesley Blackner*

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Lesley Blackner  
340 Royal Poinciana Way  
Suite 340  
Palm Beach, FL 33480  
Tel: 561-659-5754  
Fax: 561-659-3184  
Email: lblackner@aol.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original hereof has been served by US mail upon Director, Division of the Commission Clerk and Administrative Service, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850 and one copy upon F. Marshall Deterding, Rose Sundstrum & Bentley, 2548 Blirstone Pines Drive, Tallahassee, FL 32301 and Jamie Seaman & Derrill L McAteer, County of Volusia Legal Department, 123 West Indiana Avenue, Deland, FL 32720; Mr. Ron Miedema, USEPA, 400 North Congress Avenue, Suite 120, West Palm Beach, FL 33401; Erin Gawera & Dave Hankla, US Fish and Wildlife Service, 7915 Baymeadows Way, Suite

200, Jacksonville, FL 32256; Teresa Frame & Jon Griffin, US Army  
Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232-0019;  
George Getsinger, NOAA-National Marine Fisheries Service, c/o GTM  
NERR Habitat Conservation Div., 9741 Ocean Shore Boulevard, St.  
Augustine, FL 2080-8618 this 7<sup>th</sup> day of May, 2012.

*Lesley Blackner*

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Lesley Blackner