

State of Florida



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# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** September 25, 2008  
**TO:** Ann Cole, Commission Clerk - PSC, Office of Commission Clerk  
**FROM:** Jean E. Hartman, Senior Attorney, Office of the General Counsel  
**RE:** Docket No. 060122-WU- Joint petition for approval of stipulation or procedure with Office of Public Counsel, and application for limited proceeding increase in water rates in Pasco County, by Aloha Utilities, Inc.

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Please place the attached document in the above-referenced docket file. Thank you.

DOCUMENT NUMBER-DATE

09069 SEP 25 8

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## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is entered into and between the Southwest Florida Water Management District ("District"), a public corporation, and Aloha Utilities, Inc. ("Aloha"), a Florida corporation.

### RECITALS

- A. WHEREAS, the District is a regulatory agency created by the State of Florida to preserve, protect, manage and control the water resources within its jurisdictional boundaries;
- B. WHEREAS, Aloha, a private utility company, is a Florida corporation which provides water and wastewater services to its customers under the regulation of the Florida Public Service Commission pursuant to Chapter 367, Florida Statutes;
- C. WHEREAS, Aloha withdraws water pursuant to a Water Use Permit ("WUP") issued by the District authorizing water withdrawals on an annual average basis from eight water wells for public supply use;
- D. WHEREAS, at all times pertinent hereto, the WUPs issued to Aloha by the District have authorized 2.04 million gallons per day withdrawals on an annual average basis, those WUPs being Nos. 0003182.002 (September 29, 1992 - April 27, 1999), 20003182.004 (April 27, 1999 - November 26, 2007) and 20003182.005 (November 26, 2007 - present), hereafter collectively referred to as "the Permits";
- E. WHEREAS, Special Condition 13 of Aloha's current WUP provides that the District shall grant extensions for good cause as to any matter outside the control of Aloha which affects Aloha's ability to perform its obligation to purchase and deliver the water specified in Special Condition 13 of the current WUP;
- F. WHEREAS, the District and Aloha are engaged, and have been engaged since at least August 25, 2002, in a dispute regarding the permits and Aloha's compliance with the Permits; and
- G. WHEREAS, the parties desire to settle these disputes in a manner that is in the public interest and conducive to the preservation of the water resources which the District protects and manages.

### AGREEMENT

The parties hereto agree as follows:

1. The preceding recitals are true and correct and are hereby made a part of this Settlement Agreement.
2. In consideration of Aloha's agreement to pay the District \$175,000.00, and

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for such other promises and considerations as are expressly set forth herein, the District hereby releases and forever discharges Aloha of and from any and all past, present, and future claims, demands, obligations, actions, causes of action, rights, and damages, which the District now has, or which may hereafter accrue on account of or in any way growing out of, connected with, or arising from Aloha's groundwater withdrawals from its eight wells pursuant to, in connection with, under the auspices of, or as contemplated by the Permits since time immemorial and until and including the effective date of this Settlement Agreement.

3. Aloha anticipates that final, unappealable rates, and the necessary infrastructure to begin purchasing water from Pasco County shall be in place by November 6, 2009. Aloha shall begin purchasing such water for which the Public Service Commission has granted appropriate rates from Pasco County within 30 days of the Commission's order becoming final and the necessary infrastructure having been put in place by Aloha and Pasco County to allow such purchases.

4. Aloha is not in violation of its current WUP, and the District currently contemplates no enforcement action against Aloha with regard to Permit No. 2003182.005. Aloha is currently working to reduce its groundwater withdrawals by securing bulk water from Pasco County. Special Condition 13 of Aloha's current WUP contemplates that the District shall grant extensions for good cause as to any matter outside the control of Aloha which affects Aloha's ability to perform its obligation to purchase and deliver the water specified in Special Condition 13 of the WUP. This paragraph is not a waiver of the District's right to pursue enforcement of Special Condition 13 of the WUP for noncompliance by Aloha that is not beyond the reasonable control of Aloha.

5. The parties covenant and agree to file dismissals (with prejudice) in the case of *Southwest Florida Water Management District vs. Aloha Utilities, Inc.*, Case No. 51-2002-CA-2549-WS, in the Circuit Court of the Sixth Judicial Circuit, in and for Pasco County, Florida, as are necessary and appropriate for the case to be dismissed in its entirety.

6. This Settlement Agreement can only be amended or modified by a written agreement duly executed by each of the parties.

7. This Settlement Agreement shall be governed by, construed and enforced under the laws of the State of Florida.

8. No provision in this Settlement Agreement is to be interpreted for or against any of the parties because that party or counsel for that party drafted said such provision.

9. This Settlement Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and there are no inducements, representation, warranties, or other standings that do not appear within the terms or provisions of this Settlement Agreement.

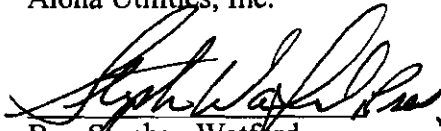
10. In the event of litigation between the parties arising out of or related to performance or non-performance of any obligation of any party to this Settlement Agreement, the prevailing party shall be entitled to recover its attorneys fees and costs incurred.

11. Each individual signing this Settlement Agreement warrants and represents that he or she has the full authority and that he or she is duly authorized and empowered to execute this Settlement Agreement on behalf of the party for which he or she signed and to bind that party to the terms, conditions and requirements hereof.

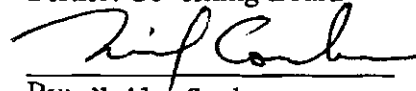
12. The effectiveness of this Settlement Agreement is subject to approval by the District's Governing Board. District staff agrees to recommend approval of the Settlement Agreement at the Governing Board's August 26, 2008 meeting. This Settlement Agreement is binding on Aloha upon its execution by Aloha and cannot be withdrawn or rescinded unless the Governing Board fails to approve the Settlement Agreement at its August 26, 2008 meeting. In the event the District Governing Board does not approve this Settlement Agreement, the Settlement Agreement shall be null, void and of no legal effect.

13. The \$175,000.00 payment described in paragraph 2 above shall be paid by Aloha to the District within thirty (30) days of approval of the Settlement Agreement by the District's Governing Board.

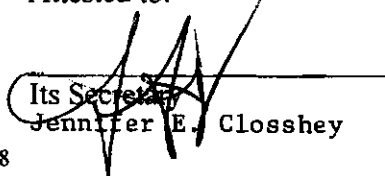
Aloha Utilities, Inc.

  
By: Stephen Watford  
President

Southwest Florida Water Management  
District Governing Board

  
By: Neil Combee  
Its: Chairman

Attested to:

  
Its Secretary  
Jennifer E. Closshey

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Approved as to Legal Form and Content

  
Attorney