

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

CROWLEY MUSEUM AND NATURE
CENTER, INC., A Florida
Corporation,

Plaintiff,

Case No. 2002-CA-015283NC

v.

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT,
SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT
GOVERNING BOARD,
CLASSIE GROWERS, LLC, et al.,

Defendants.

**FOURTH AMENDED COMPLAINT FOR INVERSE CONDEMNATION,
TRESPASS, NUISANCE, AND NEGLIGENCE**

Plaintiff, Crowley Museum and Nature Center, sues defendants
and alleges:

1. This is an action for inverse condemnation, trespass, negligence, and private and public nuisance for damages that exceed \$15,000 and for injunctive relief. As of the date of this amended complaint, thousands of trees on the lands of Plaintiff have died, are dying, or are at risk of dying as a result of excess irrigation

water flowing off defendants' property and onto downstream lands of Plaintiff. A representational map showing the locations of the Upper Myakka River, Flatford Swamp, the agricultural defendants, and the Crowley Museum and Nature Center is attached as Exhibit A.

2. This Court has jurisdiction pursuant to §§ 26.012(2)(a) and (f), Florida Statutes.

3. Venue is proper pursuant to §§ 47.011, 47.021, and 47.051, Florida Statutes, because the cause of action accrued in Sarasota County and because all of the defendants engaged in wrongful acts or omissions which combined to produce a single injury to the lands of the Plaintiff.

STATEMENT OF FACTS

Parties

4. At all times mentioned in this complaint, the Crowley Museum and Nature Center ("Nature Center") was and still is located at 16405 Myakka Road, Sarasota, Florida 34240.

5. The Nature Center is a Florida non-profit corporation which owns a large tract of land in Sarasota County, Florida. The Nature Center lies directly west of the Myakka River, is bounded on the south and west by County Road 780, and lies just north of the County Road 780 bridge over the Myakka River.

6. The Nature Center encompasses a wide range of biological communities, from high pinelands to hardwoods bordering the Myakka River. The Nature Center was established in 1974 to protect the natural habitats and wildlife indigenous to the area and to educate the public about the natural and cultural history of Southwest Florida. It is managed as a nature preserve and environmental education center.

7. The hardwood forest communities of the Nature Center are contiguous with the Myakka River and are therefore vulnerable to any upstream changes to the quantity and timing of river flows (hydroperiod), as well as changes in water quality. “Hydroperiod” is the depth, duration, frequency, and seasonality of flooding.

8. As a wildlife sanctuary and in conjunction with nearby state-owned lands such as the Myakka River State Park, the Nature Center supports sandhill cranes and other native species.

9. The Nature Center’s forests historically consisted of a mixed hardwood canopy including trees such as southern maple, tupelo, popash, ironwood, laurel oaks, and live oaks.

10. Live oaks and laurel oaks are included in the hammocks (hardwood forests) within the Nature Center. The large northern hammock area had many

hickory trees interspersed among the oaks, but the hickory trees are now almost all dead standing trees.

11. The Nature Center has constructed a boardwalk that crosses through the Nature Center's forest lands. Along with other aesthetic and educational amenities, there is a lookout tower with a view of the Myakka River and adjacent marshes at the end of the boardwalk.

12. Plaintiffs are entitled to exclusive title, possession, and control of the property above the ordinary high water line of the river.

13. Defendant, Southwest Florida Water Management District is a special taxing district charged with the duty of regulating and protecting water resources within its boundaries. Those boundaries encompass the entire Myakka River watershed.

14. Defendant Southwest Florida Water Management District's address is 2379 Broad Street, Brooksville, Florida 34604-6899.

15. Defendant Governing Board of the Southwest Florida Water Management District is located at the same address and is joined as a defendant as required by Chapter 373.444, Florida Statutes. Throughout this complaint, the Southwest Florida Water Management District and its Governing Board will be referred to singly as the "WMD."

16. The WMD administers a water management system that includes permitting of water use and regulation of surface waters. As part of its water management activities, the WMD approves and funds surface water and tailwater recovery programs and systems to regulate surface water flow.

17. Water use permits issued by the WMD for agricultural uses of water allow permittees to use ground water for “flood irrigation” or “water table management.” This is an extremely wasteful irrigation practice that supplies water to crops by raising the water table to a level within the plants’ root zone. Flood irrigation is particularly intense in the Upper Myakka watershed during the Spring and Fall dry seasons.

18. This practice is possible in the Upper Myakka River watershed area north of the Nature Center because there is a shallow impermeable layer (“hardpan”) beneath the surface of the soil that prevents rapid drainage of the irrigation water into deep groundwater aquifers.

19. Instead of “disappearing” underground, excess irrigation water generated by the practice of flood irrigation, which takes the form of both surface runoff and underground discharges (lateral flow), flows or seeps down slope until it collects in the area with the lowest topographical relief in the Upper Myakka River watershed – an area known as Flatford Swamp. See Exhibit A.

20. In 1991, in recognition of its unique environmental characteristics and the major influence the Swamp has on the flow regime (hydroperiod) and water quality of the Myakka River downstream from the Swamp including the portion of the river which flows past the Nature Center, the WMD purchased 2,357 acres of Flatford Swamp under Florida's Save Our Rivers land acquisition program.

21. In a resource evaluation required as part of the acquisition, the WMD specifically recognized that "the proposed acquisition site represents a valuable wetland ecosystem that is dependent on appropriate surface water levels and hydroperiods to sustain its function, as well as those of the downstream river."

22. Due to its hydrological characteristics, the Upper Myakka River watershed is described in regulatory parlance as a "volume sensitive basin."

23. The amount of ground water that is being added to the Upper Myakka River basin is evidenced by the drawdown of the underground aquifer that supplies the irrigation water. Withdrawals by the tomato and vegetable farmers in this region have lowered the aquifer by over fifty feet – the most severe drawdown of aquifer levels anywhere in the entire state of Florida.

24. The WMD now uses Flatford Swamp as a runoff detention basin for these excess irrigation flows.

25. Defendant Classie Growers, L.L.C. ("Classie Growers") is a Florida

corporation with its principal place of business at 4555 Verna Bethany Road, Myakka City, Florida 34251. Classie Growers is owned and operated by defendant John Falkner.

26. Classie Growers operates a 9,230-acre farm, approximately 4,600 acres of which lie within the Upper Myakka River drainage basin upstream of the Nature Center. This farm is commonly referred to as “Classie Farms.”

27. Defendant Classie Growers uses a combination of drip irrigation and flood irrigation to supply water to its vegetable row crops.

28. Defendant Four Star Tomato, Inc. (“Four Star”) is a Florida corporation with its principal place of business at 1205 28th Avenue East, Palmetto, Florida 34222.

29. Four Star’s Long Creek Farm covers 1,240 acres, approximately 1,000 acres of which lie within the Upper Myakka River drainage basin upstream of the Nature Center.

30. Defendant Four Star uses solely flood irrigation to supply water to its vegetable row crops.

31. Defendant Crystal Advisors Corporation is a corporation existing under the laws of the British Virgin Islands and has appointed Bardels Management, Inc. to act as its agent for purposes of the Crystal Advisors property

at issue in the instant action. Bardels Management's principal place of business is located at 3930 Inverrary Blvd., Suite 201, Lauderhill, Florida 33319.

32. Crystal Advisors operates a 3,100-acre farm that lies entirely within the Upper Myakka River drainage basin upstream of the Nature Center.

33. Crystal Advisors uses a combination of drip irrigation and flood irrigation to supply water to its vegetable row crops.

34. Defendant S.C.F. Farms, Inc. is a Florida corporation with its principal place of business at 12740 Curley Street, San Antonio, Florida 33576.

35. S.C.F. Farms operates a 2,875-acre farm that lies within the Upper Myakka River drainage basin upstream of the Nature Center.

36. Defendant S.C.F. Farms uses a combination of drip irrigation and flood irrigation to supply water to its vegetable row crops.

37. Defendant John Falkner's principal place of business is 4555 Verna Bethany Road, Myakka City, Florida 34251.

38. John Falkner operates a 988-acre farm known as "Bear Bay Road Farm," approximately 300 acres of which lie within the Upper Myakka River drainage basin upstream of the Nature Center.

39. John Falkner operates a 1,850-acre farm known as "Falkner Farm," approximately 700 acres of which lie within the Upper Myakka River drainage

basin upstream of the Nature Center.

40. Defendant John Falkner uses flood irrigation to supply water to irrigate the vegetable row crops on Bear Bay Road Farm and Falkner Farm.

41. Defendants John Falkner and Thomas Falkner's principal place of business is 4555 Verna Bethany Road, Myakka City, Florida 34251.

42. John and Thomas Falkner operate a 738-acre farm known as "Taylor Creek Farm," which lies entirely within the Upper Myakka River drainage basin upstream of the Nature Center.

43. Defendants John and Thomas Falkner use flood irrigation to supply water to the vegetable row crops on Taylor Creek Farm.

44. Defendant Stephen Cerven's principal place of business is 4555 Verna Bethany Road, Myakka City, Florida 34251.

45. Stephen Cerven operates a 820-acre farm that lies entirely within the Upper Myakka River drainage basin upstream of the Nature Center.

46. Defendant Stephen Cerven uses flood irrigation to supply water to his vegetable row crops. On information and belief, the Plaintiff avers that the Cerven property is operated by John Falkner *sui juris* or through a corporation controlled by him.

47. Defendants Coffee Pond LLC, Curtis Road Land Company, LLC,

Myakka Holdings LLC, and Sandy Branch Ranch, LLC (“Coffee Pond, et al.”) are Florida corporations with their principal place of business at 475 Rifle Range Road, Bartow, Florida 33830.

48. Defendant Garcott, LLC (“Garcott”) is a Florida corporation with its principal place of business at 6426 Newsome Road, Lakeland, Florida 33813.

49. Coffee Pond, et al. and Garcott operate a 2,953-acre farm known as “Sarasota Ranch,” which lies entirely within the Upper Myakka River drainage basin upstream of the Nature Center.

50. Defendants Coffee Pond, et al. and Garcott use flood irrigation to supply water to the vegetable row crops on Sarasota Ranch.

51. Defendants Batista Madonia and Evelyn Madonia’s principal place of business is 902 E. Alexander Street, Plant City, Florida 33566.

52. Batista and Evelyn Madonia operate a 1,275-acre farm known as the “Highway 64 Farm,” approximately 600 acres of which lie within the Upper Myakka River drainage basin upstream of the Nature Center.

53. Defendants Batista and Evelyn Madonia use drip irrigation and flood irrigation to supply water to the vegetable row crops on the Highway 64 Farm.

54. Defendant Russ Putnal’s principal place of business is 10755 Russ Road, Myakka City, Florida 34251.

55. Russ Putnal operates a 1,110-acre farm that lies entirely within the Upper Myakka River drainage basin upstream of the Nature Center.

56. Defendant Russ Putnal uses solely flood irrigation to supply water to approximately 720 acres on which he cultivates sod.

57. Defendant Walter A. Gill's principal place of business is 5415 Wauchula Road, Myakka City, Florida 34251.

58. Walter A. Gill operates a 136-acre farm that lies entirely within the Upper Myakka River drainage basin upstream of the Nature Center.

59. Defendants Classie Growers, Four Star, Crystal Advisors, S.C.F. Farms, John Falkner, John and Thomas Falkner, Stephen Cerven, Coffee Pond et al., Garcott, Batista and Evelyn Madonia, Russ Putnal and Walter Gill are hereafter collectively referred to as the "agricultural defendants."

The Agricultural Defendants' Conduct

60. The type of flood irrigation used by the above-named agricultural defendants consists of surface ditch systems, where delivery and distribution of water into the field is accomplished through parallel open ditches. These systems include impoundments and appurtenant works.

61. These ditches are filled with ground water pumped from wells during bed preparation and during the growing season to raise the water table to a level

that allows for sufficient wetting of the root zone.

62. Surface runoff and underground discharges (lateral flood) caused by the agricultural defendants' flood irrigation systems cause massive amounts of water to be discharged into the Upper Myakka River system.

63. These discharges artificially extend the wet season so that the wetlands of the Upper Myakka River are subjected to inundation during what would normally be the dry season.

64. As a result, discharges from the agricultural defendants substantially alter the timing and volume of discharges to the Upper Myakka River system.

65. Discharges of excess irrigation water by the agricultural defendants into the Upper Myakka River flow downstream and ultimately enter Plaintiff's land.

The WMD'S Conduct

66. In 1997, the WMD initiated a study of unexplained tree deaths which were occurring in Flatford Swamp. An internal WMD meeting on the initial findings of the Flatford Swamp study concluded that: a) there had been no significant change in rainfall; b) there had been no change in mean flow; and c) since 1985 there had been dramatic and significant increases in flows during the yearly dry season (historically the river would experience periods of no or

extremely low flow during the dry season).

67. In June 1998, the final Flatford Swamp study was published. The study concluded that water inundation was responsible for the tree mortalities on the lands downstream of the lands of the agricultural defendants, and suggested solutions that would halt the progress of tree mortality.

68. After almost three years of review, the WMD issued a water use permit to Harloff Farms (now owned by defendant Classie Growers) in November of 1998. The WMD's permit strategy was to require Harloff Farms to capture and reuse flood irrigation water before it escaped the farm.

69. In an internal memo in January 1999, WMD environmental resource director Dr. David Tomasko concluded: a) that the excess water responsible for the tree deaths could not be explained by increases in rainfall; b) that increases in water levels in the Myakka River during low flow periods occurred concurrently with increased conductivity in the Myakka River (conductivity is a measure of the electrical conductance of water – high conductivity is associated with groundwater because groundwater (unlike rainwater) contains dissolved minerals that will conduct electricity); c) that the types of dissolved minerals that were causing the increase in conductivity were traditional markers of irrigation water from deeper aquifers; d) that increases in water levels and conductivity were temporally

associated with substantial increases in acreage of citrus, row crops, and tomato farms in the watershed; and e) that conductivity in Flatford Swamp tributaries was highest when a control creek (not influenced by irrigation water) ceased to flow (*i.e.*, when there was no rainfall in the area).

70. Also in January 1999, a type of toxic cyanobacteria (also known as blue-green algae) was discovered in Flatford Swamp.

71. This toxic algae can cause severe, acute, inflammatory reactions. One researcher was forced to leave the Flatford Swamp project due to an extreme reaction to the algae and the WMD allowed employees to refuse tasks that required them to personally enter the Swamp.

72. Cyanobacteria blooms, also known as toxic algae blooms, are caused by the excessive amounts of fertilizers entering the Swamp in the agricultural defendants' irrigation tailwater.

73. The Governing Board of the WMD created the Upper Myakka River Watershed Management Committee in February 1999 and deemed the tree mortality in the Swamp a "critical issue."

74. In September 1999, John Falkner purchased Harloff's property, renamed it Classie Growers, and requested a default permit.

75. In October 1999, Pacific Tomato Growers ("PTG"), another

agricultural operation in the area, proposed a surface water recovery project. Later in December, Classie Farms proposed a partnership with the WMD and County to build a three-phase irrigation tailwater recovery project. "Irrigation tailwater" is ground water pumped for irrigation that escapes off the property and into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, highway, road, or ditch, or onto land other than the owner of the well. An irrigation tailwater recovery project is a water recovery system designed to reuse irrigation water so that it no longer escapes off the property of the owner of the well.

76. In January 2000, Ross Morton, a professional wetlands scientist with the WMD, recommended development of a water budget for Flatford Swamp (a water budget is a summation of inputs, outputs, and net changes to a particular water resource system over a fixed amount of time) prior to implementation of regulatory efforts or water withdrawal projects because without a water budget the WMD would not be able to timely determine whether the efforts were actually achieving the goal of hydroperiod restoration.

77. Another memorandum from Dr. Tomasko in March 2000 revealed (internally) the scope of the excessive flows problem: in February 2000, the yield of Flatford tributaries (which drain 54 square miles) was greater than flows for the Peace River (which drains 826 square miles). This wide disparity clearly indicated

that most of the flow in the Myakka River was due to groundwater withdrawals that were being discharged into the river through flood irrigation.

78. In March 2000, the WMD approved funding for the PTG and Classie Growers projects. The WMD eventually paid \$785,000 toward the costs of the Classie Growers project and \$250,000 toward the PTG project. The purpose of these projects was to “offset” water that was flowing into the Swamp.

79. In August 2000, the permit for Classie Growers to begin construction of its water recovery system was issued.

80. In February 2001, the WMD’s Governing Board visited Plaintiff’s property and observed the damage caused by increased water flows. Plaintiff understood from that meeting and the WMD’s concerns that the problem of continuing tree mortality was in the process of being solved.

81. In July 2001, officials with the Nature Center wrote the Executive Director of the WMD Governing Board in anticipation of developing a wetlands restoration plan for the Center. They asked what the WMD’s plans were for stopping the excess flows and the District’s timetable for restoring their wetland.

82. Sonny Vergara, Executive Director for the WMD Governing Board, responded to the Nature Center’s letter in August 2001. He stated that: a) the District’s “extensive projects” to reduce excess flows would also benefit

downstream systems like the Nature Center's; b) that the "key axioms" related to restoration of hydroperiods were the two District co-funded pilot projects (Falkner and PTG) with Falkner scheduled to be completed in October 2001; c) that there would be reductions in permitted quantities and other regulatory initiatives; and d) that there would be monitoring and evaluation of data to determine the effectiveness of the projects. However, he was unable to provide a specific date when historic dry season flows would be established.

83. In August 2001, WMD employees visited a breach in Classie Growers' collection pond which was then discharging a very large volume of water onto neighboring properties upstream of Flatford Swamp. The WMD was told by John Garrett – Mr. Falkner's hydrologist and engineer – that no corrective action could occur until John Falkner returned from Michigan in October. The WMD's action was limited to notification provided during the site visit.

84. In April 2002, Dr. David Tomasko issued a memorandum documenting the highly significant trend of increasing specific conductance in the Upper Myakka River watershed. The memo also noted: a) that sulfate levels can be calculated using specific conductance; b) that sulfate can be tied to eutrophication (a process by which surface waters become fertilized and begin to suffer excessive vegetative growth and algae blooms); and c) that the amount of

open water vegetation in the Upper Myakka Lake (a portion of the Myakka River located downstream of the Nature Center) increased from 27 acres in 1995 to 230 acres in 1999.

85. Also in April 2002, WMD staff stated their concern that the WMD's water use permits did not require periodic reports to determine whether the flood irrigation water recovery systems were having any effect. In fact, the WMD did not even include a field in its database to put such information.

86. In August 2003 (two years behind schedule), Classie Growers informed the WMD that Phase I of the tailwater recovery project was complete. Phase I was supposed to consist of three reservoirs (one connected to a mile long east-west "interceptor" trench that ran along the southern border of the property in an area which lies directly north of a major tributary to Flatford Swamp) and pipes and wells which were supposed to pump water that collected in the reservoirs onto fields for irrigation.

87. By the end of 2003, the WMD was receiving complaints from neighboring landowners that Classie Growers was not using its tailwater recovery project and that excessive water continued to flow across the neighboring properties. One of these landowners went so far as to have the water flowing across his property tested and determined that it was in fact groundwater –

establishing that the water leaving Classie Growers was flood irrigation water.

88. Although the permit for Classie Growers required a gage in the trench reservoir and daily monitoring of this gage in order to determine whether the project was halting the flow of excess water off its property and into the Swamp, an examination of permit compliance triggered by the complaints revealed that the gage had not been installed and that data had not been provided.

89. A site visit in January 2004 by WMD employees to the Classie Growers property revealed that the tailwater recovery system was not being fully utilized.

90. In March 2004, Dr. Tomasko informed District staff that while in the field doing water quality monitoring he had observed a substantial amount of water entering Flatford Swamp tributaries from the Classie Growers' property, that specific conductance testing strongly indicated that offsite movement of irrigation water was involved, and that the specific conductance levels in the tributary streams were some of the highest ever recorded.

91. In May of 2005, Dr. Tomasko's yearly tree mortality report found that conditions in the Swamp had worsened. An analysis of tree transects indicated that the mean value of tree health in Flatford Swamp was significantly lower than in previous years and that data measurements demonstrated substantial flood

irrigation water flowing in tributaries to the Swamp. A photograph of the dead trees in Flatford Swamp is attached as Exhibit B. The report concluded that the overall conditions in Flatford Swamp showed evidence of increased water levels and concurrent decreased tree health in May 2005 compared to the previous five years of study providing further proof that the excessive irrigation water continued to flow into the Swamp and downstream onto the property of the Nature Center.

92. At that point it became clear to the Plaintiff that the corrective actions that the WMD had described had either not been implemented or had not been effective and that the WMD had granted the agricultural defendants a flowage easement across the District's property and consequently also over the Nature Center's property downstream.

93. Trees were also continuing to die on Plaintiff's property.

94. In September 2005, the WMD again received complaints that excess irrigation water was moving offsite from the Classie Growers property into tributaries of Flatford Swamp.

95. During site visits to the Classie Growers' property occasioned by these complaints, staff: a) personally observed irrigation water flowing off the Classie Growers property and into tributaries of Flatford Swamp; b) determined (again) that the trench recovery system was not operating properly; and c) used

conductivity levels to confirm that water flowing off the Classie Growers' property and into tributaries of Flatford Swamp was excess groundwater.

96. An examination of monitoring data on file with the District shows: a) that the permit condition requiring water levels within the trench reservoir to be operated within certain set limits in order to limit off-site discharge had never been complied with; and b) that the trench reservoir "interceptor" system that was touted by the WMD as a solution to excess irrigation water in Flatford Swamp has had virtually no effect on subsurface tailwater flowing downslope and into tributaries of Flatford Swamp.

97. The WMD has approved all three phases of the Falkner tailwater recovery project.

98. In November 2005, a Myakka River Watershed Presentation was made to the WMD Governing Board at which staff admitted that excess flows were occurring during historically dry times of the year, that the inability of the system to dry out had led to significant tree die off, and that additional measures would need to be taken if natural hydroperiods were to be restored.

99. At the same meeting, private landowners informed the Board that offsite flows of irrigation water continued, that trees were continuing to die on their property and the District's property, and that the WMD needed to deal with

this problem.

100. In February 2006, the WMD finally requested funding for a water budget analysis of the Upper Myakka River watershed in order to determine the effectiveness of WMD efforts to restore the natural hydroperiods of the Swamp and Upper Myakka River.

101. In March 2006, a WMD overflight revealed off-site water discharges from several agricultural sites in the Upper Myakka River watershed.

102. The Upper Myakka River is being flooded by discharge of flood irrigation water and trees downstream in and below Flatford Swamp have died.

103. By discharging large amounts of water to the Upper Myakka River during the dry season and altering the timing and volume of surface and subsurface drainage, the agricultural defendants have caused a wave of tree deaths affecting not only the Nature Center but also other portions of the basin such as Flatford Swamp and the Myakka River State Park.

104. Thousands of trees at the Nature Center have been killed by the defendants' excess water discharges and it appears the zone of tree mortality is still progressing. A recent photograph of a dead tree at the Nature Center is attached as Exhibit C. It is unclear when this process will stop so that no final account of the destroyed trees is possible.

105. The WMD has a duty as the landowner of Flatford Swamp to act reasonably, so that its conduct does not injure downstream landowners through inundation that causes property damage.

106. The WMD has at all times been fully aware of the damage caused to the Nature Center by upstream flood irrigation and water management practices. As explained by the WMD in a March 2006 report:

[E]xcess water has resulted in abnormal tree stress and mortality in Flatford Swamp. Most of the damage is within the swamp although effects are found to the north and south of the swamp's boundaries. . . . In recent years, flows during the typical dry season have increased. The continuous presence of water, without a springtime drying-out period, is fatal to many trees. Due to the topography of this region, irrigation water gradually seeps through the water table into the swamp.

107. In the face of this knowledge, the WMD continues to permit and condone the agricultural defendants' practices, and has effectively granted the agricultural defendants a flowage easement across its own property in Flatford Swamp and over the lands of the Nature Center downstream.

COUNT I
INVERSE CONDEMNATION AGAINST THE WMD

108. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

109. Inverse condemnation is a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.

110. The WMD voluntarily participated in the design and funded construction of works that discharge excess and unwanted irrigation water from Classie Growers and other agricultural defendants, which water flows into the WMD's lands in Flatford Swamp.

111. The WMD issued permits that authorized defendants Classie Growers, John Falkner, John and Thomas Falkner, Steven Cerven, Bastista and Evelyn Madonia, Four Star, Crystal Advisors and Walter Gill to discharge irrigation water into the WMD's lands in Flatford Swamp, effectively giving those defendants a flowage easement over those lands.

112. The WMD granted this easement with the knowledge that Flatford Swamp would serve as a conduit to convey water downstream onto lands owned

by the Plaintiff.

113. The WMD lands have in fact functioned as a conduit that conveys unwanted irrigation water downstream to Plaintiff's property with the effect that the WMD has taken a flowage easement over the property of the Nature Center.

114. This taking of a flowage easement was in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, section 9 and Article X, section 6(a) of the Florida Constitution.

115. The WMD knows that this water was in quantities greater than and in a manner different than natural flow in that substantial water flows were conveyed during the dry season where the natural regime was no flow or very low flow.

116. The WMD knows that this increase in water and in the manner of flow has killed large numbers of trees on the lands of the Plaintiff.

117. As a result, the WMD has taken a flowage easement from the Nature Center without paying just compensation.

COUNT II
TRESPASS BY ALL DEFENDANTS

118. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

119. Plaintiff is in lawful possession of the lands upon which the trees are being killed.

120. The defendants have intentionally or negligently caused irrigation tailwater to enter and remain on the lands of the plaintiff.

121. The Plaintiff has not licensed or authorized defendants to do so.

122. By unlawfully causing excess water to flow onto the Nature Center, the defendants trespassed and encroached upon Plaintiff's lands, and wrongfully interfered with and disturbed the rightful possession, use and enjoyment of the Nature Center by Plaintiff.

123. Plaintiff is entitled to damages for defendants' trespass and unlawful encroachment upon Plaintiff's land, and for defendants' wrongful interference with Plaintiff's right to use and enjoy these lands.

124. The defendants are and have been aware that that discharge of flood irrigation water is damaging the lands of the Nature Center.

125. In addition, the Nature Center has suffered damages and will suffer future damages in excess of \$15,000 for the costs of restoring the ecological systems on the lands of the Nature Center that have been damaged or destroyed by the defendants' actions.

COUNT III

NEGLIGENCE OF AGRICULTURAL DEFENDANTS

126. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

127. The agricultural defendants have a duty of care to reasonably manage their irrigation and water control systems so as not to injure the property of lower riparian owners such as the Nature Center.

128. The conduct of the agricultural defendants created a foreseeable zone of risk of injury to the Nature Center.

129. The agricultural defendants breached this duty by improperly withdrawing excessive water so as to waste it and disposing of this wasted water by unreasonably allowing it to discharge off their property where it would damage the lands of downstream riparian owners.

130. It was reasonably foreseeable to the agricultural defendants that their use of flood irrigation could result in harm (such as adverse alterations to wetland hydroperiods that cause tree deaths) to the lands of their neighbors and lower riparian owners.

131. Plaintiffs have incurred damages to their land as a result of the agricultural defendants' negligence.

132. The agricultural defendants' negligence is the legal cause of the damage to the lands of the Nature Center.

133. Without the agricultural defendants' negligent use of flood irrigation, the injury suffered by the Nature Center would not have occurred.

COUNT IV
PRIVATE NUISANCE AGAINST ALL DEFENDANTS

134. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

135. The defendants have authorized, funded, constructed or operated irrigation tailwater control systems which result in excessive waters flowing off the lands of the defendants and invading the interests of the Nature Center.

136. These invasions have substantially and unreasonably interfered with Plaintiff's use and enjoyment of its property.

137. The defendants have caused or allowed and are causing or allowing irrigation tailwater to invade the interests of the Nature Center by damaging and killing its trees.

138. These tailwater discharges have substantially and unreasonably interfered with Plaintiff's use and enjoyment of its property.

139. The conduct of the defendants is and was intentional in that they have

known that the damage to the Nature Center was resulting or was substantially certain to result from that conduct.

140. The conduct of the defendants in interfering with the Nature Center's interests was unreasonable and wrongful.

141. The wrongful conduct of the defendants is the legal cause of the invasion of the rights of the Nature Center

142. Plaintiff is entitled to damages for the defendants' wrongful interference with Plaintiff's right to use and enjoy its properties.

COUNT V

PUBLIC NUISANCE BY AGRICULTURAL DEFENDANTS

143. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

144. Chapter 373.444, of the Florida Statutes provides that, "Any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works which violates the laws of this state or which violates the standards of the governing board or the department shall be declared a public nuisance. The operation of such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be enjoined by suit by the state or any of its agencies or by a private citizen."

145. Chapter 373.444 further provides that, “The governing board or the department shall be a necessary party to any such suit.”

146. Chapter 373.019(10) defines “impoundment” as any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

147. Under Florida law, the agricultural defendants are required to exercise reasonable care and may not cause damage to downstream landowners or establish a nuisance. Thus, these violations of Florida law are declared public nuisances by section 373.444, Florida Statutes.

148. Further, the standards of defendant Governing Board forbid water withdrawals which result in waste of water or water activities which result in excess runoff. Basis of Review for Water Use Permit Applications, § 4.12. These violations of standards of the Governing Board are declared public nuisances by section 373.444, Florida Statutes.

149. The agricultural defendants operate surface water recovery and/or tailwater recovery systems comprised of reservoirs, impoundments, appurtenant works and/or works which violate the laws of this state or which violate the standards of the governing board.

150. These surface water recovery and/or tailwater recovery systems are in

violation of the laws of Florida and the standards of the Governing Board by allowing excess waters to exit their properties, resulting in waste and adversely impacting environmental resources and offsite land uses.

151. Defendant WMD has permitted, funded or overseen the construction and/or operation of these systems and under Chapter 373.444, Florida Statutes, is a necessary party to this action.

152. The defendants have created a public nuisance by their wrongful actions.

153. Chapter 373.444, Florida Statutes, does not require a showing of special injury by Plaintiff.

154. However, Plaintiff has suffered and is suffering special injury as the defendants' actions have caused physical harm to Plaintiff's property.

155. The harms suffered by Plaintiff are significant and have interfered with Plaintiff's right to use and enjoy its property.

156. Plaintiff is entitled to recover the damages which have occurred as a result of the agricultural defendants' wrongful activities and to enjoin such further violations by defendants.

COUNT VI
NEGLIGENCE OF THE WMD

157. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

158. The WMD undertook management of the Flatford Swamp tree mortality problem by purchasing Flatford Swamp so as to protect it as well as downstream properties.

159. The WMD also participated in designing and funding surface water recovery and/or tailwater recovery projects on lands of some of the agricultural defendants.

160. The WMD had a duty to act reasonably by designing and monitoring the projects it funded so as to prevent them from damaging the lands of downstream riparian landowners.

161. The WMD has a duty to manage its lands so as not to injure downstream riparian properties.

162. The WMD unreasonably failed to properly monitor the projects it funded to the detriment of downstream riparian landowners.

163. The conduct of the WMD created a foreseeable zone of risk of injury to the Nature Center.

164. The WMD essentially granted a de facto flowage easement across its property and negligently allowed irrigation floodwaters to be discharged from its property in Flatford Swamp onto the property of the Nature Center.

165. It was reasonably foreseeable to the WMD that flooding, adverse alterations to wetland hydroperiods, wetland inundation, and tree death could occur to neighboring and lower riparian owners and that damages would result from the inundation of Nature Center's lands. This is illustrated by the fact that the District Board even visited Plaintiff's property in 2001 and witnessed the damaging effects of increased flows.

166. The WMD's negligence in failing to exercise its duty of care is the legal cause of the injury suffered by the Nature Center.

167. Plaintiff has suffered injury to its lands as a result of the WMD's negligence.

168. Without the WMD's negligence, the injury suffered by the Nature Center would not have occurred.

DAMAGES AGAINST ALL DEFENDANTS

169. By reason of the defendants' acts, Plaintiff has suffered the following damages which exceed \$15,000:

- (a) just compensation and severance damages from the WMD for

the taking of the flowage easement, including an award of attorneys' fees and costs

(b) damages against the agricultural defendants for the death of large numbers of trees;

INJUNCTIVE RELIEF

170. Paragraphs 1 through 107 are realleged and incorporated herein by reference.

171. Plaintiff has no adequate remedy at law for future inundation and damage to the Nature Center's land.

172. Until the inundation of the Nature Center's land described in paragraphs 60 through 107 ceases, the damage to the lands of the Nature Center will continue. Any restoration efforts that Plaintiffs might undertake would be futile until the natural hydrology of the Nature Center is restored.

173. The continuing nature of the defendants' acts would necessitate a separate action by Plaintiff for damages for each act and would subject Plaintiff, defendants, and this Court to the expense, annoyance, and inconvenience of a multiplicity of suits.

174. For these reasons, the flooding of the Nature Center's lands caused by the defendants causes irreparable injury to the Nature Center.

175. The Nature Center is entitled to an injunction prohibiting the defendants from continuing to engage in practices that invade and damage the lands of the Nature Center.

WHEREFORE, Plaintiff prays for the following relief against defendants:

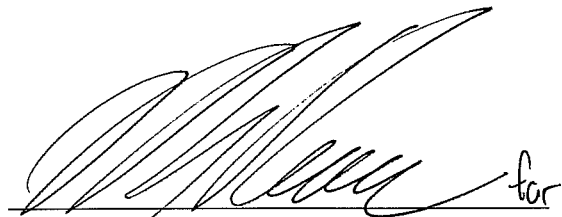
- (1) an order finding that the WMD has taken an annual and recurring seasonal flowage easement in the lands of the Plaintiff;
- (2) an order requiring the WMD to pay just compensation to the Plaintiff, including attorneys' fees and costs;
- (3) an order enjoining agricultural defendants, agricultural defendants' agents, employees, and others acting under defendants' direction and authority from causing water to enter Plaintiff's property and interfere with Plaintiff's possession, use, and enjoyment of its property;
- (4) an order requiring Defendant WMD to manage its lands in Flatford Swamp so as not to destroy or damage the lands of downstream riparian landowners;
- (5) an order enjoining the WMD from allowing excess water to pass through its lands to the detriment of downstream riparian landowners;
- (6) an order requiring the WMD to monitor the waters passing through its property for nutrients, algae, and specific conductance; and requiring that such monitoring records be made available to ensure compliance, and to establish a water budget for the Upper Myakka River;
- (7) trespass damages against the agricultural defendants;

- (8) negligence damages against the agricultural defendants;
- (9) damages for private nuisance against the agricultural defendants;
- (10) an award of Plaintiff's costs in bringing and maintaining this suit; and
- (11) such other and further relief as the Court may deem just, equitable and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial as to the amount of just compensation, and as to claims for damages set forth in the complaint.

RESPECTFULLY SUBMITTED this 16th day of October, 2006.

A handwritten signature in black ink, appearing to read "David G. Guest", with a horizontal line underneath it. To the right of the signature, the word "for" is written in a smaller, cursive hand.

David G. Guest
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing proposed amended complaint has been provided by first class mail this 16th day of October, 2006 to

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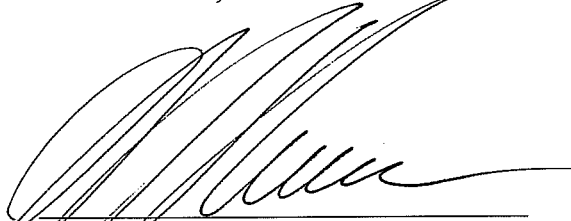
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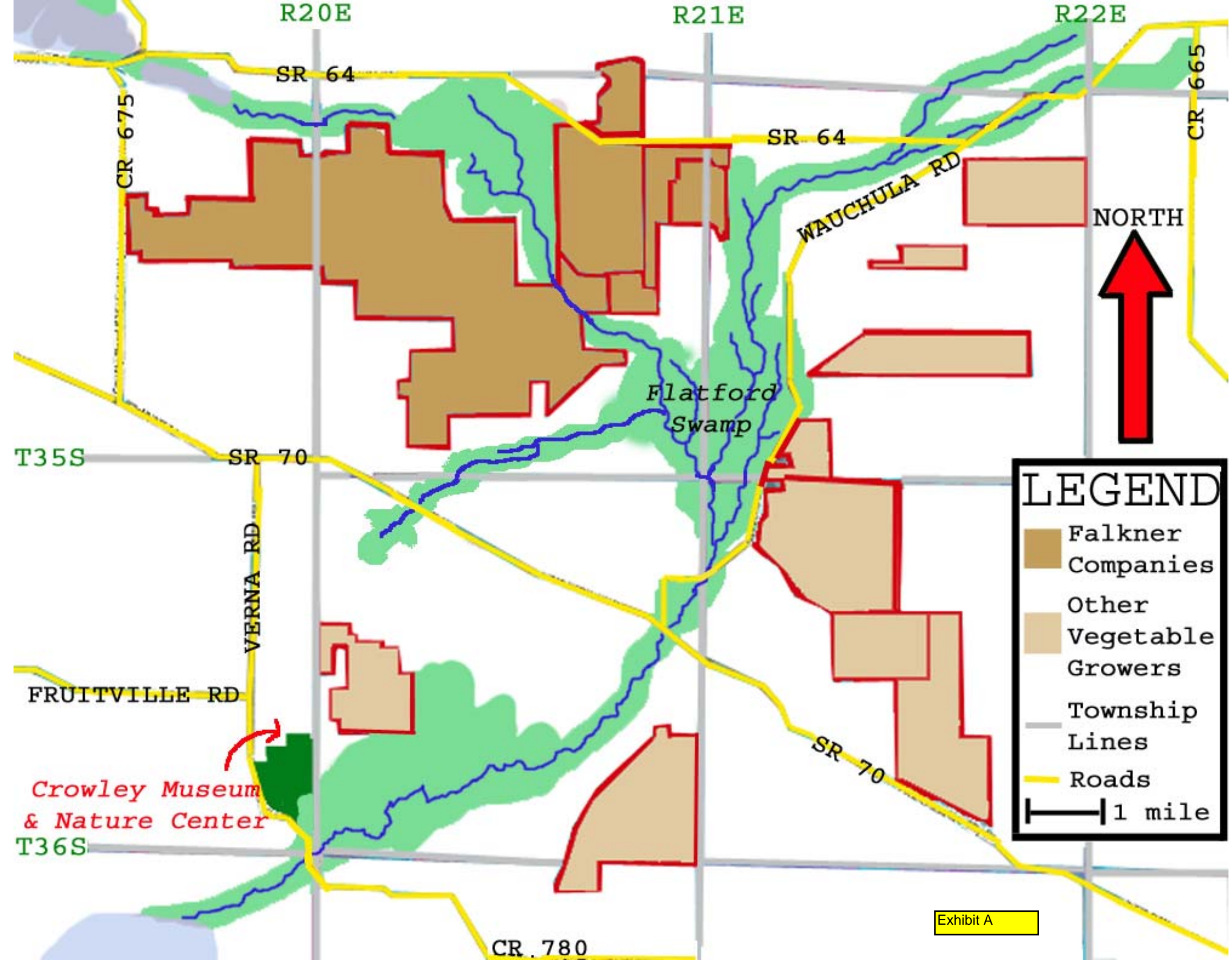




Exhibit B



Exhibit C