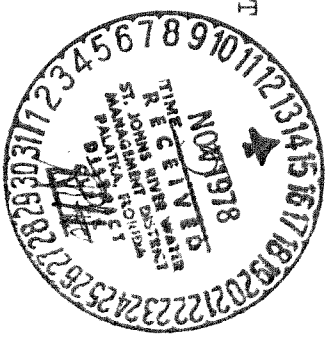


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ST. JOHNS RIVER WATER MANAGEMENT DISTRICT



IN RE:

BERRY GROVES, INC.,  
MANAGEMENT AND STORAGE  
OF SURFACE WATERS  
APPLICATION NO. 4071078220  
IN INDIAN RIVER COUNTY, FLORIDA

FILE OF RECORD NO. 78-35

ORDER GRANTING PERMIT WITH LIMITING CONDITIONS  
PURSUANT TO INFORMAL HEARING BEFORE GOVERNING BOARD

THIS MATTER came on to be heard before the Governing Board of the St. Johns River Water Management District at Public Hearing on October 13, 1978. Said Public Hearing, having been duly and properly noticed, was conducted at Whitney Hall, Marineland, St. Johns County, Florida. All parties hereto were present or given the opportunity to be present, and together with the general public, were duly notified of an opportunity to present testimony and evidence. The Board, having reviewed the application and all documents in the File of Record, and Applicant Exhibits, having heard testimony, and having received and examined all documentary evidence, and having heard argument of counsel, makes the following:

FINDINGS OF FACT:

1. The Applicant proposes to construct a surface water management system to remove storm water from a planned 3900± acres citrus grove in Indian River County, Florida.
2. Pursuant to Chapter 373, Florida Statutes, and Chapter 16I, Florida Administrative Code, Applicant has applied (Application No. 4071078220) to the St. Johns River Water Management District for a Management and Storage of Surface Water Permit.
3. The project site is located in Township 32S, Range 37E, in Indian River County, Florida, more particularly described in the File of Record, Staff Exhibit 1.

B. That the District had not promulgated the 1"/day discharge cap by rule and thus, would be required to carry an evidentiary burden of justification for the cap as applied to the Applicant, and show a significant adverse impact if the cap were not imposed.

C. That the impact of the requested 2.75 "/day discharge on the stage level at Blue Cypress Lake would be only .27 inches (.0225 ft.) and as such, would not constitute a significant adverse impact.

D. That the staff-recommended provisos would cause additional and unreasonable expense to the Applicant.

10. Based on the staff and Applicant testimony and all of the documents of record, the Board finds that the staff, at the January 25, 1978 conference did not express approval of or assent to the 2.75"/day, requested discharge into the St. Johns Marsh.

11. The 1"/day maximum discharge rate cap is an interim criteria, approved by the Governing Board in prior permitting actions, applying to a limited area -- affected portions of the Upper St. Johns Basin. The criterion has not been published in Chapter 16I, pending completion of the Upper Basin Study and adoption of an Interim Criteria Manual, which would definitively support general application of the 1"/day discharge limitation in specified portions of the Upper Basin.

12. The testimony and exhibits, as applied to this Applicant, show that the stage level at Blue Cypress Lake has been and would reach flood level in the future, in non-severe storm conditions, and that the Applicant's incremental proposed discharge greater than 1"/day will require that the discharge be stored at the expense of other owners in the floodplain and to their substantial detriment, and will cause a significant adverse impact on the resource: reflects improper water management: and, may result in a significantly increased danger to the public welfare.

13. Any additional expense to the Applicant occasioned by the staff-recommended provisos is outweighed by the public benefit in limiting an already overburdened hydrologic situation.

14. The limitations recommended by the staff via provisos are reasonable in minimizing the adverse impacts of the proposed design.

15. Written objection to a portion of the design was received from Irving Herris, Esquire, representing JAIN, Inc. and Albert H. Kahn, Trustee, a landowner contiguous to the Applicant. Mr. Barry Harriss represented to the Board that the objector's concern about deprivation of natural water flow during low water supply would be met by the Applicant's design feature for placing a plug in the Park Lateral which allows flow under certain conditions.

16. No intervention request has been received by the Board. IN ACCORDANCE with the foregoing, and in consideration of applicable laws and regulations, the Board makes the following

#### CONCLUSIONS OF LAW:

1. The Applicant has established that the proposed project, subject to all the terms and conditions set forth herein and in the Technical Staff Report, contained in the File of Record, with the limitation provisos recommended by the staff attached hereto:

- a) is consistent with the development and regulation of works of the St. Johns River Water Management District; and
- b) is consistent with the proper management and utilization of water and related land resources; and
- c) will not be harmful to the water resources of the District; and
- e) will not be a danger to public health or safety.

2. The activity proposed, with the limiting provisos, is in compliance with the requirements of Chapter 373, Florida Statutes, and Chapter 161, Florida Administrative Code.

3. The Agency was not estopped from requiring its maximum discharge limitation of 1"/day as a result of the preapplication conference of January 25, 1978.

4. The staff testimony and documentation sufficiently substantiate the imposition of the 1" discharge rate as applied to

this Applicant's proposed project.

5. The 1" discharge limitation is a standard of application limited to certain areas within the Upper St. Johns River Basin dictated by natural causes and is not a standard of general applicability and need not be promulgated by rule as per Chapter 120, Florida Statutes.

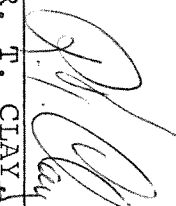
WHEREFORE, upon consideration it is

ORDERED

That the Executive Director of the St. Johns River Water Management District or a duly delegated member of the staff is authorized and directed to issue a Management and Storage of Surface Waters permit pursuant to the above numbered application, subject to the provisos and conditions set forth in the Technical Staff Report.

DONE AND ORDERED at Whitney Hall, Marineland, St. Johns County, Florida, on the 13th day of October, 1978, A.D.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

  
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R. T. CLAY, CHAIRMAN

ATTEST:

SEAL:

  
\_\_\_\_\_  
FREDERICK O. ROUSE, ASST. SECRETARY

cc: Berry Groves, Inc.  
William L. Earl, Esquire, Attorney for Applicant  
Henry Dean, Esquire, Attorney for Applicant  
Judith Benninger Brown, Staff Attorney  
Herb Webb, Board Counsel  
Irving Harris, Esquire, Attorney for Objector