ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

OSCEOLA COUNTY, Petitioner, v. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and SOUTH BREVARD WATER AUTHORITY, Respondents,	SJRWMD FILE OF RECORD NO. 91-1048 DOAH CASE NO. 91-1779
TRIPLE E CORPORATION, TRIPLE N CORPORATION, Petitioners, v. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and SOUTH BREVARD WATER AUTHORITY, Respondents,	DOAH CASE NO. 91-1780
EAST CENTRAL FLORIDA SERVICES and CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS (Deseret), Petitioners, v. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and SOUTH BREVARD WATER AUTHORITY, Respondents.	DOAH CASE NO. 91-1781

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings (DOAH), by its duly designated Hearing Officer, the Honorable Mary Clark, held a formal administrative hearing in the above-styled consolidated cases on September 3 through September 20, 1991, November 4 through November 8, 1991, and November 18 through November 21, 1991, in Orlando, Florida.

APPEARANCES

For Petitioner Osceola County:	SEGUNDO J. FERNANDEZ, ESQUIRE Oertel, Hoffman, Fernandez & Cole 2600 Blairstone Road, Suite C Post Office Box 6507 Tallahassee, Florida 32314-6507
For Petitioners Deseret and Triple E Corporation and Triple N Corporation:	DOUGLAS P. MANSON, ESQUIRE Foley and Lardner Barnett Plaza, Suite 3650 101 East Kennedy Boulevard Post Office Box 3391 Tampa, Florida 33601-3391
For Respondent South Brevard Water Authority:	CLIFTON A. MCCLELLAND, JR.,ESQUIRE Potter, McClelland, Marks and Healy 700 South Babcock Street Suite 400 Post Office Box 2523 Melbourne, Florida 32902-2523
For Respondent St. Johns River Water Management District:	WAYNE E. FLOWERS, ESQUIRE NANCY B. BARNARD, ESQUIRE Highway 100 West Post Office Box 1429 Palatka, Florida 32178-1429

On March 16, 1992, Ms. Clark submitted to the St. Johns River Water Management District ("District"), and all other parties to this proceeding, a Recommended Order, a copy of which is attached hereto as Exhibit "A". Petitioner Osceola County, Respondent South Brevard Water Authority ("SBWA"), and Respondent District timely filed exceptions to the Recommended Order. This matter then came before the Governing Board on May 12, 1992, for final agency action.

STATEMENT OF THE ISSUES

The issue in this proceeding is whether the District should approve SBWA's consumptive use permit application, no. 2-097-0021ANG, pursuant to Chapter 40C-2, Florida Administrative Code (F.A.C.). The SBWA is seeking permission to withdraw an annual average daily rate of 18.8 million gallons (mgd) of water and a maximum daily rate of 21.4 mgd of water. Subject to certain limiting conditions to be set forth in the SBWA's consumptive use permit, the water is proposed to be produced from twelve Floridan Aquifer wells to be located on property owned by the District in eastern Osceola County. The District proposed to grant the permit application which was challenged by the Petitioners, resulting in the formal administrative proceeding. Petitioners challenged the issuance of the permit to SBWA on the basis of the SBWA's alleged failure to comply with the applicable requirements of Chapter 373, Florida Statutes (F.S.), and Chapter 40C-2, F.A.C., and other applicable law.

I. RULINGS ON DISTRICT EXCEPTIONS

A. District Exception No. 1

The District takes exception to the Hearing Officer's Finding of Fact No. 84 as not supported by competent substantial evidence in the record. The District's exception is accepted and recommended Finding of Fact No. 84 is rejected.

It is a basic precept of administrative law that in order for a hearing officer's finding of fact to be sustained it must be based on competent substantial evidence. See Subsection 120.57(1)(b)10, F.S. There is no competent substantial evidence to support paragraph 84 of the findings of fact because there is no evidence that such document was ever produced by the staff of the St. Johns River Water Management District.

The evidence shows that recommended Finding of Fact No. 84 contains a verbatim quote from the executive summary in a document entitled "Technical Memorandum, The Potential For Future Water Supply Development Within South Brevard County." (Osceola Exhibit No. 84). The testimony was undisputed that this document was produced by the staff of the South Florida Water Management District, not the St. Johns River Water Management District staff. (Vol. 22: 125; Vol. 2: 160).

In addition, the policy expressions contained in the exhibit and repeated by the Hearing Officer in this finding are not those of this District and are therefore irrelevant to this proceeding.

B. District Exception No. 2

The District's second exception is to the Hearing Officer's interpretation of the reasonable-beneficial use criteria as it relates to an applicant's "need" for the water requested. This exception is accepted and Conclusion of Law No. 11 in the Recommended Order is rejected. The Hearing Officer concluded that "[t]he use must be needed to be in such quantity as necessary for economic and efficient utilization or to be for a purpose that is reasonable and consistent with the public interest." This Board is free to substitute its own legal conclusions for those of the Hearing Officer, so long as competent substantial evidence supports the substituted legal conclusions. Harloff v. City of Sarasota, 575 So.2d 1324, 1325 (Fla. 2d DCA 1991), rev.denied, 583 So.2d 1035 (Fla. 1991).

All of the Hearing Officer's recommended findings of fact relevant to this conclusion are adopted. The Hearing Officer found that under the SBWA's master plan, the water withdrawn from the BCWMA would replace, not augment, current and projected surface and ground water withdrawals by the City of Melbourne and General Development Utilities ("GDU"). In addition, the recommended permit conditions would require reductions in these other permitted allocations equivalent to the amount withdrawn from the BCWMA wellfield. She also found that the City and GDU systems have a combined capacity of approximately 30 mgd. (Findings of Fact Nos. 77, 78 and 86).

The criterion in paragraph 40C-2.301(4)(a), F.A.C., and section 10.3(a) of the Applicant's Handbook (A.H.), makes "need" an

issue in the review of a consumptive use permit application. This criterion states that "the following criteria must be met in order for a use to be considered reasonable beneficial: (a) the use must be in such quantity as is necessary for economic and efficient utilization". (Emphasis supplied.)

The Hearing Officer was correct in determining that an applicant must prove its need for the water requested. However, the Hearing Officer's interpretation of this factor was legally incorrect and inconsistent with this Board's interpretation of its rule. This Board considers an applicant's need in terms of the quantity of water requested in relation to the proposed use of or demand for the water. The source and particularly the location of the source do not enter into this equation. Provided all other criteria relating to the impacts of the proposed withdrawals are met, this District does not dictate from where a proposed use of water must be withdrawn. The source and location of the source are pertinent only in assessing the physical impacts of the withdrawal.

In the instant case, approval of the requested permit will merely result in a different source of water being used to supply a demand which was heretofore supplied from elsewhere. There are many instances in the consumptive use permitting history of this District where this has occurred, albeit more often on a much smaller scale. Consistent with this Board's own rule interpretation, we hold that based on the recommended findings of the Hearing Officer, the SBWA adequately demonstrated that its proposed use of water is in such quantity as is necessary for economic and efficient utilization.

C. District Exception No. 3

The District takes exception to the Hearing Officer's Conclusion of Law No. 13 which holds in the first sentence that cost to the consumer necessarily enters into the reasonable-beneficial use test. This exception is granted because the sweeping legal conclusion of the Hearing Officer warrants circumscription. Generally, cost to the consumer is not a substantive factor considered under District rules in determining whether a proposed water use is reasonable-beneficial or in the public interest, but may be relevant in certain factual instances, not relevant to this proceeding, such as when an applicant contends that water conservation measures, water reuse or use of the lowest acceptable quality water source otherwise required are not economically feasible. See, paragraphs 40C-2.301(4)(e),(f), and (g), F.A.C. Even in these particular instances, economic feasibility is viewed from the perspective of the applicant, and cost to consumers (the applicant's customers) may be a component of an applicant's evaluation of economic feasibility. Therefore, the cost to consumers alone is not considered in determining whether a proposed use is reasonable-beneficial except in the particular circumstances arising under paragraphs 40C-2.301(4)(e),(f) and (g), F.A.C.

In this proceeding, SBWA did not contend that compliance with the criteria in paragraphs 40C-2.301(e),(f) and (g), F.A.C., was not economically feasible, and therefore, the Hearing Officer's findings regarding the cost of the project and to consumers were unnecessary under the facts of this proceeding. The Governing

Board is the statutory agency head that grants or denies consumptive use permits, adopts rules, and establishes agency policy regarding consumptive use permitting. There is no competent substantial evidence in the record that the Governing Board has ever considered cost to consumers in determining if a proposed water use is reasonable-beneficial or in the public interest. Consequently, the Hearing Officer's broad legal statement in the first sentence of Conclusion of Law No. 13 is rejected as a matter of law. See, Subsection 120.57(1)(b)10, F.S.; Alles v. Dept. of Professional Regulation, 423 So.2d 624 (Fla. 5th DCA 1982) (Agency may reject a hearing officer's conclusion of law without limitation).

C. District Exception No. 4

The District takes exception to the Hearing Officer's Conclusion of Law No. 15 in which the Hearing Officer concluded that SBWA failed to present competent evidence that the minimal drawdown of the surficial aquifer will not adversely affect wetlands in the area when those wetlands are already stressed, and that the proposed monitoring conditions are insufficient to protect these wetlands. The District concedes that the following facts found by the Hearing Officer related to this exception are supported by competent substantial evidence.

Under the facts found by the Hearing Officer on the issue of wetland impacts, the District's exception is rejected for the following reasons. The SBWA, as the permit applicant, is obligated by law to present sufficient evidence to establish that its

requested water use complies with each criterion in section 40C-2.301, F.A.C. See, Harloff v. City of Sarasota, 575 So.2d 1324 (Fla. 2d DCA), rev. denied, 583 So.2d 1035 (Fla.1991). (It is the consumptive use permit applicant's burden to prove that the request meets regulatory criteria). Subsection 40C-2.301(7), F.A.C., plainly states in pertinent part that "[t]he applicant shall have the burden of proof to establish and present sufficient data" that the proposed use meets each criterion of section 40C-2.301, F.A.C.

Contrary to the District's exception, the Hearing Officer's numerous findings of the functional complexity and diversity of the wetlands in the BCWMA and the inadequacy of SBWA's assessment of the potential impacts to these wetlands from the drawdown was not limited solely to the .14 foot drawdown area, but all isolated herbaceous wetland communities on BCWMA subject to the effects of the drawdown. See, Findings of Fact Nos. 58, 59, 61, 62, 64, 65, 66, 67, 69, 70, 99, and 100. Even the monitoring conditions offered by the District to evaluate any impacts of the wells on wetlands are not limited to the .14 foot drawdown area, but encompass all wetlands in the larger .10 foot drawdown contour. (SJRWMD Exhibits 24-B and 30).

Since an administrative proceeding is de novo to formulate the agency's final action, SBWA was required at the time of the hearing to present credible evidence of entitlement to the District permit. Florida Dept. of Transportation v. J.W.C. Co., Inc., 396 So.2d 778 (Fla. 1st DCA 1981). Paragraph 40C-2.301(4)(d), F.A.C., provides that the applicant must prove that "[t]he environmental or economic

harm caused by the consumptive use [shall] be reduced to an acceptable amount." See also, section 10.3(d), A.H..

The District's exception is correct that this criterion does not require elimination of all environmental impacts, but this does not mean that the criterion allows unacceptable environmental impacts. The Hearing Officer, sitting as the fact-finder in this proceeding, found that SBWA failed to establish the severity of impacts to the wetlands that might be caused by the drawdown, particularly during a dry period, because SBWA's assessment of the wetlands was lacking in the face of the findings showing the complex, diverse and sensitive nature of the wetlands on the site. SBWA did not consider the adverse impacts the surficial aquifer drawdown will have on the "fragile wetland system" in the BCWMA. See Findings of Fact Nos. 66, 68, 69, 72 and 99. It was not the Petitioners' burden to establish adverse environmental impacts from the drawdown, but rather SBWA's burden to establish and present credible evidence that the environmental harm caused by the water use can be reduced to an acceptable amount. Harloff, supra; See e.g., In re: South Dade Agro Homes, Inc., 7 FALR 3645 (SFWMD June 13, 1985) (Applicant failed to show reasonable assurance that water use in undisturbed wetland would not cause environmental harm).

An applicant must provide sufficient information to determine the effect predicted drawdowns will have on wetlands as a necessary factual component in meeting the criterion in paragraph 40C-4.301(4)(d), F.A.C. This factual evidence provides the foundation for ultimately determining whether any harm has been reduced to an acceptable amount. As to this factual matter, this Board is

precluded by law from reweighing the evidence to reach a desired result. Subparagraph 120.57(1)(b)10, F.S.; Freeze v. Dept. of Business Regulation, 556 So.2d 1204(Fla. 5th DCA 1990); The Corporation of the President of the Church of Jesus Christ of Latter Day Saints v. SJRWMD and City of Cocoa, Case Nos. 89-828, 89-751 (SJRWMD December 13, 1990), aff'd, 590 So.2d 427 (Fla. 5th DCA 1991).

Since SBWA failed to meet its threshold burden of proof regarding the nature and extent of environmental harm that may occur to the wetlands in the BCWMA as shown by the evidence at hearing, the monitoring conditions, even if adequate, do not overcome the failure to meet such burden. The Hearing Officer's Finding of Fact No. 100 only addresses the monitoring conditions designed to detect the extent of harm expected to occur based on the evidence, not the adequacy of mitigation measures allowable under section 10.3(d), A.H., to successfully offset or reduce the harm.

In 1800 Atlantic Developers v. Dept. of Environmental Regulation, 552 So.2d 946 (Fla. 1st DCA 1989), rev. denied, 562 So.2d 345 (Fla. 1990), the mitigation plan for the dredge and fill project was testified to in detail during the final hearing, and such testimony was subject to extensive cross examination. 1800 Atlantic at 950. The details of the proposed mitigation and the sufficiency of such plan to successfully offset the perceived adverse effects of the project is a prerequisite for an agency to determine as a matter of law that the rule criteria have been met by the applicant. Although it is the agency's ultimate legal

responsibility to determine the adequacy of the mitigation measures, it is still the applicant's burden, and the Hearing Officer's duty as the fact-finder, to establish the underlying findings necessary for the agency to be assured that the mitigation is not only feasible, but that it will successfully offset any impacts that would otherwise make the water use unpermittable. Perry, et al. v. City of Jacksonville, et al., Case Nos. 90-001 and 90-002 (FLWAC February 14, 1991) (DER erred in granting District surface water system permit for landfill where the applicant offered no evidence at hearing of mitigation plan to offset impacts to habitat and a post-hearing permit condition by DER for a plan submittal did not cure the lack of reasonable assurance); Manasota 88, Inc. v. Agrico Chemical Co., 12 FALR 1319 (DER 1990), aff'd, 376 So.2d 781(Fla. 2d DCA 1991) (Competent substantial evidence of feasibility of proposed mitigation plan is sufficient to meet applicant's burden); Collier Development Corp. v. State, Dept. of Environmental Regulation, 592 So.2d 1107 (Fla. 2d DCA 1991) (Failure of hearing officer to make findings on mitigation precludes agency from making decision on application); Town of Windemere v. Orange County Parks and Dept. of Environmental Regulation, 13 F.A.L.R. 3897 (D.E.R. May 27, 1991) (Hearing Officer has duty to make underlying findings necessary to determine if mitigation will offset adverse impacts).

In this proceeding, as in Perry, supra, the SBWA did not anticipate adverse findings regarding environmental impacts and thus failed at hearing to factually establish a cognizable mitigation plan to offset such impacts which cannot now be remedied

by a post-hearing permit condition. No mitigation plan or sufficient testimony was offered at the hearing showing that the potential for harm to the wetlands from the drawdown found by the Hearing Officer can be successfully offset or reduced to an acceptable amount. See Findings of Fact Nos. 95 and 98. Proposed permit condition no. 43 only requires the submittal of a mitigation plan when harm to the wetlands is detected. (SJRWMD Exhibit 24-B.)

Competent substantial evidence shows that adverse impacts to a sensitive fragile wetland ecosystem may occur as a result of the proposed water use drawdown. These impacts cannot be found as offset or reduced to an acceptable amount without credible evidence establishing a feasible and acceptable mitigation plan to address such impacts. In light of the findings of the complexity and sensitivity of the herbaceous isolated wetlands to the drawdown from SBWA's water use in a wildlife management area, the SBWA has failed to meet its factual burden to show compliance with paragraph 40C-2.301(4)(d), F.A.C., and section 10.3(d), A.H., and therefore District exception no. 4 is rejected.

II. RULINGS ON SBWA EXCEPTIONS

A. SBWA Exception to Finding of Fact No. 72

SBWA contends that Finding of Fact No. 72 is not supported by competent substantial evidence. The exception goes to the weight of the evidence and inferences drawn therefrom by the Hearing Officer. It is improper for this Board to retry the case after the

hearing has concluded by altering findings and reweighing evidence. Tampa Wholesale Liquors, Inc. v. Div. of Alcoholic Beverages and Tobacco, 376 So.2d 1195 (Fla. 2d DCA 1979). The decision to believe one expert over another is left to the Hearing Officer, and the decision cannot be altered absent a complete lack of competent substantial evidence from which the finding could be reasonably inferred. Fla. Chapter of Sierra Club v. Orlando Utility Comm., 436 So.2d 383, 389 (Fla. 5th DCA 1983). This Board cannot reweigh conflicting evidence, judge credibility of witnesses, or otherwise interpret the evidence to reach a desired result. Heifetz v. Dept. of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985); Freeze v. Dept. of Business Regulation, 556 So.2d 1204 (Fla. 5th DCA 1990). If a hearing officer's finding is supported by any competent substantial evidence from which the finding could reasonably be inferred, then it cannot be disturbed. Berry v. Dept. of Environmental Regulation, 530 So.2d 1019 (Fla. 4th DCA 1988). This exception is rejected because the finding is supported by competent substantial evidence. (Vol. 19: 55; Vol. 20: 54, 144, 150). The exception is also rejected for the reasons set forth in the ruling on District Exception No. 4.

B. SBWA Exception to Finding of Fact No. 76

SBWA takes exception to that part of Finding of Fact No. 76 which states that GDU has ample capacity to the year 2000 if an additional Department of Environmental Regulation capacity rating is obtained. This exception goes to the weight of the evidence and inferences drawn therefrom by the Hearing Officer. The finding is

supported by competent substantial evidence and therefore the exception is rejected. (Vol. 22: 55, 66-67, 203, 290; Osceola County Exhibit No. 69).

C. SBWA Exception to Finding of Fact No. 80

Exception is taken to that part of the finding which SBWA asserts makes an implication that SBWA would require the City of Palm Bay to shut down the GDU facility if purchased by the City. This exception relates to the weight of the evidence and inferences drawn therefrom by the Hearing Officer. The finding is supported by competent substantial evidence and is therefore rejected. (Vol. 22: 85, 88, 173-174).

D. SBWA Exception to Finding of Fact No. 81

SBWA takes exception to the portion of recommended Finding of Fact No. 81 which states: "GDU's service has been ... reliable. Contamination to the surface aquifer utilized by GDU has been successfully treated." SBWA contends that this finding is inconsistent with the undisputed evidence. This exception is rejected because it merely seeks the Governing Board to reweigh the evidence, and the finding is supported by competent substantial evidence. (Vol. 21: 32-37).

E. SBWA Exception to Finding of Fact No. 82

SBWA takes exception to Finding of Fact No. 82. SBWA merely reargues the evidence. The finding is supported by competent substantial evidence and the exception is rejected. (Vol. 22: 22,

58, 77-78, 100, 105, 128, 130, 135-136, 139, 186, 228; Vol. 21: 22-24, 82).

F. SBWA Exception to Finding of Fact No. 83

SBWA takes exception to the portion of recommended Finding of Fact No. 83 which reads:

> Comparisons of concentrations of raw water chlorides and total dissolved solids for the drought years of 1989 (sic 1981) and 1990, show significant reductions for the latter time frame.

SBWA contends that there is no competent substantial evidence to support this finding. This exception is rejected because the finding is supported by competent substantial evidence. (Vol. 22: 138-139, 186; Osceola County Exhibit Nos. 78, 85 and 112-U).

G. SBWA Exception to Finding of Fact No. 84

SBWA contends that recommended Finding of Fact No. 84 is not supported by competent substantial evidence in the record. This exception is accepted for the reasons set forth in the ruling on District Exception No. 1.

H. SBWA Exception to Finding of Fact No. 85

Exception is taken to the second paragraph of Finding of Fact No. 85. The exception merely reargues the evidence. The finding is supported by competent substantial evidence and the exception is rejected. (Vol. 22: 139; Vol. 21: 82-107).

I. SBWA Exception to Finding of Fact No. 86

SBWA takes exception to the portion of Finding of Fact No. 86 which states that the proposed water use will simply substitute water sources, not increase supply. SBWA again reargues the evidence with no record citations. The finding is supported by competent substantial evidence and the exception is rejected. (Vol. 22: 156; Vol. 1 : 28-29, 69).

J. SBWA Exception to Finding of Fact No. 99

SBWA contends that Finding of Fact No. 99 is not supported by competent substantial evidence. This exception is rejected because the finding is supported by competent substantial evidence. (Vol. 30: 55-56, 72-75, 77, 106-109; Vol.20: 151-155, 296, 306-307). Additionally, the exception is rejected for the reasons set forth in the ruling on District Exception No. 4.

K. SBWA Exception to Finding of Fact No. 100

SBWA takes exception to portions of recommended Finding of Fact No. 100 as not based on competent substantial evidence in the record and for the reasons cited in its exceptions to Findings of Fact Nos. 86 and 99. For the reasons set forth in the ruling on SBWA's exception to Finding of Fact No. 99, this exception is likewise rejected.

L. SBWA Exception to Conclusion of Law No. 11

SBWA takes exception to recommended Conclusion of Law No. 11, which is the Hearing Officer's interpretation of the reasonable-beneficial use criteria as it relates to an applicant's "need" for the water requested. This exception is accepted solely for the reasons set forth in the ruling on District Exception No. 2, and not for the reasons set forth in the SBWA exception.

M. SBWA Exception to Conclusion of Law No. 12

SBWA takes exception to the portion of the Hearing Officer's recommended Conclusion of Law No. 12 which states:

> Denial of the permit would not compel the applicant to seek another source; it merely preserves the status quo, recognizing that for the projected term of the applied-for-permit, the status quo is adequate, in quantity and quality.

In its exception, SBWA merely reargues the evidence which formed the factual basis for the Hearing Officer's conclusion. The exception is rejected.

N. SBWA Exception to Conclusion of Law No. 15

SBWA takes exception to the Hearing Officer's recommended Conclusion of Law No. 15. This exception is rejected for the reasons set forth in the ruling on District Exception No. 4.

O. SBWA Exception to Ruling in the Appendix

SBWA takes exception to the Hearing Officer's rulings on certain of its proposed findings as not comporting with the

essential requirements of law. This exception is rejected because exceptions are to be directed to the hearing officer's findings, conclusions or recommendations. Subsection 40C-1.564(3), F.A.C. The District is only authorized by subparagraph 120.57(1)(b)10, F.S., to reject or modify findings of fact not supported by competent substantial evidence. Nevertheless, the hearing officer may reject proposed findings as cumulative, unnecessary or irrelevant if each such proposed finding is identified as such, as was done in this case. Island Harbor Beach Club, Ltd. v. Dept. of Natural Resources, 476 So.2d 1350 (Fla. 1st DCA 1985).

III. RULINGS ON OSCEOLA COUNTY'S EXCEPTIONS

A. Exception No. 1

Osceola County takes exception to the Hearing Officer's recommended Finding of Fact No. 26 as not based on competent substantial evidence. This exception is denied because there is competent substantial evidence in the record to support the recommended finding. (Vol. 4: 105; Vol. 25: 47-49; Vol. 31: 186; SBWA Exhibit Nos. 222 and 479).

B. Exception No. 2

Osceola County takes exception to the first two paragraphs of recommended Finding of Fact No. 50 as not based on competent substantial evidence. This exception is rejected because there is competent substantial evidence in the record to support the finding. (Vol. 25: 47-48; Vol. 26: 106-107, 176-179).

C. Exception No. 3

Osceola County contends that there is no competent substantial evidence in the record to support the third paragraph of the Hearing Officer's recommended Finding of Fact No. 30. The exception is rejected because there is competent substantial evidence to support this paragraph of the finding. (Vol. 10: 21; Vol. 29: 9-10, 21; SBWA Exhibit Nos. 187 and 222).

D. Exception No. 4

Osceola County contends that the Hearing Officer's recommended Finding of Fact No. 49 is not based on competent substantial evidence. The County is merely rearguing the evidence in its exception. The exception is rejected because the finding is supported by competent substantial evidence in the record. (Vol. 6: 30-52; SBWA Exhibit Nos. 12, 350-356, and 478).

E. Exception No. 5

Osceola County takes exception to the second paragraph of the Hearing Officer's recommended Finding of Fact No. 52 as not supported by competent substantial evidence in the record. The exception is rejected because there is competent substantial evidence to support the Hearing Officer's inference. (Vol. 25: 43).

F. Exception No. 6

Osceola County takes exception to portions of the Hearing Officer's recommended Finding of Fact No. 54 as not based on

competent substantial evidence in the record. The exception is rejected because there is competent substantial evidence to support the finding. (Vol. 6: 12, 46).

G. Exception No. 7

Exception is taken to the Hearing Officer's rejection of Osceola County's proposed Findings of Fact Nos. 171 through 175. This exception is rejected as unallowable under section 40C-1.564, F.A.C., which only authorizes exceptions to the Hearing Officer's findings of fact in the recommended order.

H. Exception No. 8

Osceola County takes exception to the Hearing Officer's rejection of its proposed Findings of Fact Nos. 178 and 212E. This exception is rejected for the reason set forth in the ruling on Osceola County's Exception No. 7.

I. Exception No. 9

Osceola County takes exception of the Hearing Officer's rejection of its proposed Finding of Fact No. 31. This exception is rejected for the reason set forth in the ruling on Osceola County's Exception No. 7.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. The Hearing Officer's recommended findings of fact and conclusions of law contained in Exhibit A are adopted and incorporated herein, except as modified in this Final Order; AND

2. The South Brevard Water Authority's consumptive use permit application, no. 2-097-0021ANG, is DENIED.

DONE AND ORDERED this 10th day of June 1992, in Palatka, Florida.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY: Joe E. Hill
JOE E. HILL
CHAIRMAN

RENDERED this 10th day of June 1992.

BY: Patricia C. Schultz
PATRICIA C. SCHULTZ
DISTRICT CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing FINAL ORDER was filed with the DISTRICT CLERK of the St. Johns River Water Management District, Post Office Box 1429, Palatka, Florida 32178-1429 this 10th day of June 1992; and one true and correct copy was forwarded by United States Mail this same day to the following parties of record:

MARY CLARK, HEARING OFFICER
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The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550;

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SEGUNDO J. FERNANDEZ, ESQUIRE
Attorney for Osceola County
Oertel, Hoffman, Fernandez & Cole, P.A.
2600 Blairstone Road, Suite C
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Tallahassee, Florida 32314-6507; and

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Attorney for South Brevard Water Authority
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DONALD F. WRIGHT
FLORIDA BAR NO. 116650
Attorney for St. Johns River
Water Management District
Post Office Box 1429
Palatka, Florida 32178-1429
(904) 329-4199

NOTICE OF RIGHTS

1. Any substantially affected person who claims that final action of the District constitutes an unconstitutional taking of property without just compensation may seek review of the action in circuit court pursuant to Section 373.617, Florida Statutes, and the Florida Rules of Civil Procedures, by filing an action within 90 days of the rendering of the final District action.

2. Pursuant to Section 120.68, Florida Statutes, a party who is adversely affected by final District action may seek review of the action in the district court of appeal by filing a notice of appeal pursuant to Fla.R.App.P. 9.110 within 30 days of the rendering of the final District action.

3. A party to the proceeding who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, Florida Statutes, may seek review of the order pursuant to Section 373.114, Florida Statutes, by the Land and Water Adjudicatory Commission (Commission) by filing a request for review with the Commission and serving a copy on the Department of Environmental Regulation and any person named in the order within 20 days of the rendering of the District order. However, if the order to be reviewed is determined by the Commission within 60 days after receipt of the request for review to be of statewide or regional significance, the Commission may accept a request for review within 30 days of the rendering of the order.

4. A District action or order is considered "rendered" after it is signed by the Chairman of the Governing Board on behalf of the District and is filed by the District Clerk.

5. Failure to observe the relevant time frames for filing a petition for judicial review as described in paragraphs #1 and #2 or for Commission review as described in paragraph #3 will result in waiver of that right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF RIGHTS has been furnished by United States Mail to:

MARY CLARK HEARING OFFICER
DIVISION OF ADMINISTRATIVE HEARINGS
THE DESOTO BUILDING
1230 APALACHEE PARKWAY, TALLAHASSEE FL 32399-1550

at 4:00 ~~x.m./p.m.~~ this 10th day of June, 1992.

Patricia C. Schultz

PATRICIA C. SCHULTZ
DISTRICT CLERK
St. Johns River Water
Management District
Post Office Box 1429
Palatka, FL 32178-1429
(904) 329-4500

CERTIFIED MAIL
#P 400 907 341

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2. Pursuant to Section 120.68, Florida Statutes, a party who is adversely affected by final District action may seek review of the action in the district court of appeal by filing a notice of appeal pursuant to Fla.R.App.P. 9.110 within 30 days of the rendering of the final District action.

3. A party to the proceeding who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, Florida Statutes, may seek review of the order pursuant to Section 373.114, Florida Statutes, by the Land and Water Adjudicatory Commission (Commission) by filing a request for review with the Commission and serving a copy on the Department of Environmental Regulation and any person named in the order within 20 days of the rendering of the District order. However, if the order to be reviewed is determined by the Commission within 60 days after receipt of the request for review to be of statewide or regional significance, the Commission may accept a request for review within 30 days of the rendering of the order.

4. A District action or order is considered "rendered" after it is signed by the Chairman of the Governing Board on behalf of the District and is filed by the District Clerk.

5. Failure to observe the relevant time frames for filing a petition for judicial review as described in paragraphs #1 and #2 or for Commission review as described in paragraph #3 will result in waiver of that right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF RIGHTS has been furnished by United States Mail to:

DOUGLAS P MANSON ESQUIRE
FOLEY & LARDNER
BARNETT PLAZA #3650
101 EAST KENNEDY BLVD
PO BOX 3391
TAMPA FL 33601-3391

at 4:00 ~~x~~p.m. this 10th day of June, 1992.

Patricia C. Schultz

PATRICIA C. SCHULTZ
DISTRICT CLERK
St. Johns River Water
Management District
Post Office Box 1429
Palatka, FL 32178-1429
(904) 329-4500

CERTIFIED MAIL
P400 907 342

NOTICE OF RIGHTS

1. Any substantially affected person who claims that final action of the District constitutes an unconstitutional taking of property without just compensation may seek review of the action in circuit court pursuant to Section 373.617, Florida Statutes, and the Florida Rules of Civil Procedures, by filing an action within 90 days of the rendering of the final District action.

2. Pursuant to Section 120.68, Florida Statutes, a party who is adversely affected by final District action may seek review of the action in the district court of appeal by filing a notice of appeal pursuant to Fla.R.App.P. 9.110 within 30 days of the rendering of the final District action.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF RIGHTS has been furnished by United States Mail to:

CLIFTON A MCCLELLAND JR ESQUIRE
POTTER MCCLELLAND MARKS & HEALY PA
700 SOUTH BABCOCK STREET #400
PO BOX 2523
MELBOURNE FL 32902-2523

at 4:00 ~~XXXXX~~p.m. this 10th day of June, 1992.

Patricia C. Schultz

PATRICIA C. SCHULTZ
DISTRICT CLERK
St. Johns River Water
Management District
Post Office Box 1429
Palatka, FL 32178-1429
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF RIGHTS has been furnished by United States Mail to:

SEGUNDO J FERNANDEX ESQUIRE
OERTEL HOFFMAN FERNANDEX & COLE PA
2600 BLAIRSTONE ROAD #C
PO BOX 6507
TALLAHASSEE FL 32314-6507

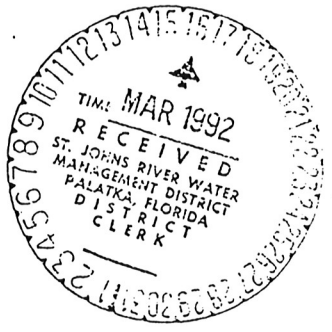
at 4:00 ~~x x x x~~/p.m. this 10th day of June, 1992.

Patricia C. Schultz

PATRICIA C. SCHULTZ
DISTRICT CLERK
St. Johns River Water
Management District
Post Office Box 1429
Palatka, FL 32178-1429
(904) 329-4500

CERTIFIED MAIL
#P 400 907 343

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS



OSCEOLA COUNTY, Petitioner, vs. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and SOUTH BREVARD WATER AUTHORITY, Respondents,	CASE NO. 91-1779
TRIPLE E CORPORATION, TRIPLE N CORPORATION, Petitioner, vs. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and SOUTH BREVARD WATER AUTHORITY, Respondents,	CASE NO. 91-1780
EAST CENTRAL FLORIDA SERVICES and CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS (Deseret), Petitioners, vs. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and SOUTH BREVARD WATER AUTHORITY, Respondents.	CASE NO. 91-1781

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Mary Clark,

EXHIBIT "A"

held a formal administrative hearing in the above-styled cases on September 3-20, 1991, November 4-8, 1991 and November 18-21, 1991, in Orlando, Florida.

APPEARANCES

For Petitioner, Osceola County:	Segundo J. Fernandez, Esquire Scott Shirley, Esquire Oertel, Hoffman, Fernandez & Cole, P.A. P.O. Box 6507 Tallahassee, Florida 32314
For Petitioners, Deseret and Triple E and N:	Douglas P. Manson, Esquire Foley & Lardner, P.A. P.O. Box 3391 Tampa, Florida 33601
For Respondent SBWA:	Clifton A. McClelland, Jr., Esquire Patrick Healy, Esquire Potter, McClelland, Marks and Healy, P.A. P.O. Box 2523 Melbourne, Florida 32902-2523
For District:	Wayne E. Flowers, Esquire Nancy B. Barnard, Esquire St. Johns River Water Management District P.O. Box 1429 Palatka, Florida 32178-1429

STATEMENT OF THE ISSUES

As reflected in the parties' prehearing stipulation filed on August 28, 1991, the issue in this case is whether the St. Johns River Water Management District (SJRWMD) should approve South Brevard Water Authority's (SBWA) consumptive use permit (CUP) application. The SBWA is seeking permission to withdraw an annual average daily rate of 18.8 million gallons (mgd) and a

maximum daily rate of 21.4 mgd. The District proposes to grant the permit with specified conditions.

Petitioners challenge the issuance of the permit, alleging that applicable requirements of Chapter 373, F.S. and Chapter 40C-2, F.A.C. and other applicable law are not met.

The standing of Petitioners, other than Osceola County, is at issue.

Also at issue is whether the relevant criteria include consideration of the adequacy of existing sources of water, and the consideration of costs of utilizing existing sources versus the cost of the proposed new source of water.

PRELIMINARY STATEMENT

After the petitions in the three cases styled above were forwarded to the Division of Administrative Hearings, they were consolidated without objection in an order dated April 11, 1991. The hearing dates and prehearing schedule were established with the agreement of all parties.

An individual Petitioner, Ralph Kaschai, withdrew his request for hearing, and the style of the consolidated cases was amended accordingly on June 13, 1991.

At the final hearing, the SBWA presented the following witnesses: Robert J. Massarelli, accepted as an expert in water resource planning, land use planning, and environmental planning; Roy Silberstein, accepted as an expert in water resources, water resource engineering, groundwater hydrology, and environmental engineering; Dean Mades, accepted as an expert in water resources engineering, hydrology, and groundwater flow modeling; Dr.

Michael L. Voorhees, accepted as an expert in hydrology, water resources engineering, groundwater flow modeling, and solute transport modeling; Luther W. Hyde, accepted as an expert in hydrology and hydrogeology, furnishing model parameters, and analyzing results of groundwater modeling; P. Fred Biery, accepted as an expert in water supply engineering, water master planning and implementation; Philip E. Searcy, accepted as an expert in water resources, public water supply and professional engineering; William Hamilton, accepted as an expert in environmental science and biology, impact assessment and prediction concerning wetland and wildlife resources; Dr. John Rice, accepted as an expert in habitat mapping and development of environmental monitoring plans for wetland systems; Peter L. Palmer, accepted as an expert in groundwater hydrology, groundwater modeling and interpretation, and water resource development; and William Pitt, accepted as an expert in hydrology, engineering, design construction and cost estimating for deep well injection systems, and water quality, both surface and groundwater.

The following exhibits offered by the SBWA were received in evidence: SBWA #1-17, 19, 21-26, 29-34, 36-39, 41-42, 44, 46-49, 51-64, 75, 77-78, 81, 85, 94, 99, 101-103, 106-119, 124, 127, 132-136, 138, 140-141, 143-150, 152, 155, 161-162, 164-168, 170-173, 178, 183-188, 195, 197, 199, 205, 209, 219-224, 228-230, 232-233, 239, 249-250, 252-253, 258-263, 273-274, 306, 309, 323, 324-346, 348-358, 360, 364-366, 368-373, 381, 386-387, 389, 393, 395-397, 403-405, 407-408, 412, 417, 425-436, 438, 450, 451, 456-480.

Osceola presented the following witnesses: Charles W. Drake, accepted as an expert in hydrogeology and geology, water well construction, water use permitting, groundwater flow and solute transport modeling, water resource planning, and designing and conducting aquifer performance tests; Bruce LaFrenz, accepted as an expert in geology, hydrogeology, well and wellfield siting and design, aquifer performance test design, execution and analysis, and groundwater modeling; Thomas Prickett, accepted as an expert in water resource engineering and groundwater modeling; Gerald C. Hartman, accepted as an expert in water resources planning, development and engineering; Kevin Erwin, accepted as an expert in ecology with special expertise in impact assessment; Dr. Robert Livingston, accepted as an expert in aquatic ecology and systems ecology; James C. Christopher, accepted as an expert in environmental engineering, water resource supply planning and engineering, water quality and chemistry, and water supply comparative cost analysis; and Stanley Cohen accepted as an expert in utility economics including financing, feasibility, and operations auditing.

The following were received in evidence as Osceola's exhibits: #1, 5-25, 29-30, 32-33, 35, 36-49, 50(a)-50(q), 51-64, 66-71, 73-78, 80, 81(a)-81(d), 82-85, 87, 89, 95, 97-98, 99(a)-99(d), 100(a) & (b), 101(a) & (b), 107(a) & (b), 109-110, 111(a)-(f), 112(a-am), 113(a)-(e), 114 (a)-(e), 115(a)-(i) and 115(k)-(l). Ruling was reserved on the admissibility of Osceola Ex. #94. For reasons stated in the conclusion of law, that exhibit is rejected as irrelevant.

East Central Florida Services (ECFS) and the Corporation of the President of the Church of Jesus Christ of Latter Day Saints (Deseret) presented the following witnesses: Charles W. Drake, accepted as an expert in hydrogeology and geology, water well construction, water use permitting, groundwater flow and solute transport modeling, water resource planning, and designing and conducting aquifer performance tests; Peter Anderson, accepted as an expert in water resource engineering, groundwater modeling and computer programming of groundwater models; Gerald C. Hartman, accepted as an expert in water resources planning, development and engineering; and John King.

Triple E Corporation and Triple N Corporation presented the following witnesses: Peter Anderson, accepted as an expert in water resource engineering, groundwater modeling and computer programming of groundwater models (Vol. 13, p. 7); and Maury Carter.

These exhibits were received as joint exhibits on behalf of Triple E, Triple N, and Deseret: #2, 7-9, 13-14, 16-20, 22-26, 36, 41, 71, 73, 75-76, 81-83, 85-89.

The District presented the following witnesses: Richard Levin, accepted as an expert in geology, hydrogeology and groundwater modeling; Brian McGurk, accepted as an expert in geology, hydrogeology, hydrology and groundwater modeling; Lance D. Hart, accepted as an expert in wetlands ecology, plant ecology and impact assessment; Robert Christianson; and Jeffrey Elledge.

These exhibits were received in evidence on behalf of the District: #6-9, 21-24, 29-30, 35(a), 37(e)-(k), 38(a)-(c). Ruling on SJRWMD #24(b), revised permit conditions, was reserved. That exhibit is now admitted, as more fully explained in the conclusions of law.

On the evening of September 16, 1991, as agreed by the parties, testimony was received from members of the public. Three exhibits, marked "Public Exhibits #1-3" were accepted as part of the record in this proceeding.

The transcript, comprised of thirty-one (31) volumes, was filed on February 13, 1992, except for three volumes which were later filed on February 28 and March 2, 1992.

The parties filed proposed recommended orders and memoranda of law on February 21, 1992. Specific rulings on the findings of fact are found in the attached appendix.

FINDINGS OF FACT

The Parties

1. The applicant, South Brevard Water Authority (SBWA) was created by special act of the legislature, Chapter 83-375, Laws of Florida. Its principal office is located in Melbourne, Brevard County, Florida.

Its general mission is described in Section 1, of Chapter 83-375, Laws of Florida, as amended by Chapter 87-481, Laws of Florida:

> Section 1. It is hereby declared and determined by the Legislature that a regional water authority is the most responsive, efficient, and effective local government entity to

> secure, operate, and maintain an adequate, dependable, and safe water supply for the district and customers of the district. It is the intent of the Legislature that such regional water authority possess the full power and authority to implement, finance, and operate a single coordinated program of water supply transmission and distribution to meet the future quantity and quality needs of the district and for customers of the district. There is a paramount public need to develop a safe, reliable, and energy-efficient source of public water for the district residents and to contruct the wellfields, transmission lines, and other facilities necessary to supply such water.

2. The St. Johns River Water Management District (SJRWMD or District) is an agency created pursuant to Chapter 373, F.S. in charge of regulating consumptive uses of water in a 19-county area of the State of Florida, including all of Brevard and part of Osceola County. The geographical boundaries of the District are described in Section 373.069(2)(c), F.S.

3. Osceola County is a political subdivision of the state, west of, and contiguous to, south Brevard County.

4. The Corporation of the President of the Church of Jesus Christ of Latter Day Saints (Deseret) is a Utah corporation authorized to conduct business in the State of Florida. Deseret owns real property in Osceola County to the north and east of the proposed wellfield. Deseret possesses a valid consumptive use permit authorizing the withdrawal of water for this property.

5. East Central Florida Services (ECFS) does not own land or possess a consumptive use permit (CUP). Its purpose is

to take over the water management program for the Deseret property. It has applied to the Public Service Commission for certification.

6. Notwithstanding the parties' stipulation that "Triple E Corporation" and "Triple N Corporation" own real property in Osceola County near the proposed wellfield (prehearing stipulation, filed 8/28/91, p. 5), no such corporations are registered in the State of Florida.

The lands identified as Triple E and Triple N are owned by multiple parties through trusts, primarily managed by Maury L. Carter, one of the owners.

Neither Triple E nor Triple N properties have CUP's. The properties are used for agricultural purposes and the Triple N property has a well and recreational camp.

The Site of the Proposed Use

7. The proposed wellfield is located on property owned by the SJRWMD, the Bull Creek Wildlife Management Area (BCWMA), located entirely in eastern Osceola County.

8. The BCWMA is comprised of 22,206 acres within the drainage area of the St. Johns River. The northern third of the management area is drained by Crabgrass Creek, and the southern two-thirds is drained by Bull Creek. The easternmost boundary is located approximately one mile from the Brevard County boundary.

9. Currently all 22,206 acres of the BCWMA are under lease to the Florida Game and Fresh Water Fish Commission, which agency manages the area as a public recreation facility for hunting, fishing, hiking, horseback riding, camping and archeological studies.

The sparsely populated area has historically been used for logging and cattle grazing. It was acquired for a detention area and it currently provides nonstructural flood protection.

10. Its surface topography is relatively flat, with uplands and wetlands separated by only inches in vertical elevation. Upland communities include pine flatwoods, saw palmetto prairies, pine savannahs and sand oaks. Wetland communities include cypress domes, mixed shallow marshes, sawgrass marsh, wet prairies and transitional prairies.

11. The BCWMA is classified as a "conservation area" in the District's current adopted Five Year Land Plan which summarizes the agency's land acquisition and management policies.

A "conservation area" is defined as "...an area acquired for water resource conservation and protection in an environmentally-acceptable manner". The term includes water supply areas, including areas for public wellfield location. (Osceola Co. exhibit #33, p. 15)

Facilities Associated with the Proposed Consumptive Use

12. Although the precise siting of the wells has not been established, the wellfield will be located at the northern end of the BCWMA, east-west into a "panhandle" area, and extending south, for an inverted "L" shape.

The wellfield will consist of 12 production wells in 2000 ft. intervals. Wells 1-9 will lie along an east-west axis adjacent to Crabgrass Creek, while wells 10-12 will lie along a north-south axis below well 9, the eastern-most well.

13. The capacity of each well is designed at 3,000 gallons per minute or approximately 4.30 million gallons a day (mgd). Each well consists of 20" diameter casing pipe extending 700' below the ground surface. From there, an open hole for production will extend another 250 feet in depth.

A small, 20 ft. by 30 ft., concrete building will enclose the motor and other equipment associated with each well, in order to eliminate vandalism and to baffle the noise. The wells will be sited to avoid jurisdictional wetlands.

14. In addition to the production wells, monitoring wells will be constructed to comply with permit conditions.

15. Because the water drawn from the proposed wellfield will exceed potable standards, reverse osmosis (RO) desalinization treatment is required. A below ground header pipeline will carry raw water from the wellfield to an RO treatment facility in Brevard County.

The RO treatment facility will process 75 percent of water coming from the wellfield, 85 percent of which is recovered as finished water, and 15 percent of which is disposed of as brine by deep well injection.

The 25 percent of raw water which bypasses the treatment process will be blended with the finished water to yield water which meets drinking water standards for chloride levels. The yield is anticipated to be 16.67 mgd on an average day and 18.9 mgd on a maximum day. However, the finished water yield could be higher if raw water quality permits greater blending and less reject water.

On the finished water side, the water will need to be treated again to assure that it will be compatible with water from the City of Melbourne plant. Failure to balance the blended waters chemically could result in corrosion of pipes, leaching of pipes, discoloration, rusty water, and odorous water. A proper process, therefore, is essential and is highly sophisticated.

16. From the treatment facility the water will travel in underground pipes, beneath the St. Johns River, beneath I-95 and east to the Melbourne distribution system. From there some water is anticipated to travel south to connect to the General Development Utilities (GDU) system.

Hydrogeologic Characteristics of the Site

17. For modelling purposes, the aquifer system in the region is represented by sequential layers of differing characteristics in the flow and movement of water.

The SBWA model contains 6 layers; the Osceola model contains 7 layers. In both models, layer 1 corresponds to the surficial (water table) aquifer; layer 2 corresponds to the Hawthorn formation (the upper confirming layer); layer 3 is the Upper Floridan aquifer; layer 4 describes the 200 ft. thick portion of the Upper Floridan called the "production zone"; layer 5 in the SBWA model is approximately 450 ft. thick and is called a confining unit; Osceola's consultants consider this layer less permeable or semi-confirming; layer 6 is the lower Floridan; and layer 7 in the Osceola model is the bottom reaches of the lower Floridan.

18. The surficial aquifer consists of sand and shell deposits and extends to a depth of approximately 100 feet below land surface. The surficial aquifer is capable of producing small to moderate amounts of water for domestic uses.

19. The Hawthorn is an interbedded formation consisting of clay, limestone and phosphate.

Due to its extremely low permeability, this layer restricts both the vertical and horizontal movement of water.

The Hawthorn is thicker in Central Florida than in other portions of the state. At the BCWMA the thickness of the Hawthorn ranges from 240 feet in the area northwest of the management area to 80 feet in the southeastern portion of the management area.

20. The upper Floridan Aquifer at the BCWMA, as characterized by the SBWA's consultant and based on site specific data, extends from the base of the Hawthorn to a depth of approximately 900 feet below land surface.

That portion of the upper Floridan Aquifer between the bottom of the Hawthorn and 700 feet below land surface consists of fine grained limestone with relatively low permeability. This zone corresponds with layer 3 in the groundwater modeling done by the SBWA.

The portion of the upper Floridan between the bottom of the Hawthorn and 700 feet below land surface is less capable of producing water than the portions below this level.

That portion of the upper Floridan Aquifer between 700 feet and 900 feet of depth consists of hard dolomites.

Dolomitic zones are the most productive zones of water within the Floridan in this part of the state because these formations contain solution fractures and cavities. This zone corresponds with layer 4 in the groundwater modeling done by the SBWA.

21. Several researchers and modelers have suggested the existence of a zone, variously referred to as a semi-confining unit, a zone of lower permeability or a middle semi-confining unit, located between the upper and lower Floridan Aquifer.

This area between 900 feet and 1350 feet below land surface consists largely of hard dolomites similar in nature to those in the zone immediately above it. This zone corresponds to layer 5 in the groundwater modeling done by SBWA.

Previous regional modeling efforts have utilized model derived values to describe the middle semi-confining unit rather than site specific information showing the location, thickness or hydrogeological characteristics of the zone. Site specific data tends to confirm the lower permeability of this zone relative to the layers above and below it. Site specific data consists of a core sample, mineral content observed during the drilling of the test monitor well, and a Neumann-Witherspoon ratio analysis conducted during the aquifer performance test.

22. The area between 1350 feet and 1450 feet below land surface also consists of dolomites but with greater permeability and greater transmissivity (the measure of an aquifer's ability to transmit water in a horizontal direction). This area corresponds to layer 6 in the groundwater modeling done by the SBWA.

23. No site specific data exists beneath 1483 feet, representing the total depth of test well TM.

Regional data does exist which characterizes the areas from 1500 feet below land surface to the bottom of the lower Floridan Aquifer as consisting of zones of varying lithology, and varying permeabilities. This zone which corresponds to layer 7 in the groundwater modeling done by Osceola County is not homogeneous or uniform over its entire thickness according to available regional data, consisting of geologic reports of deep wells in the east-central Florida area.

24. All parties agree that in the area of the proposed wellfield, horizontal movement of water in the Floridan aquifer is from west, where the greatest recharge occurs along the Lake Wales Ridge, to east, where there is little or no recharge.

Water quality in the upper Floridan as measured by chloride concentrations deteriorates as one moves from west to east. The Floridan aquifer beneath the BCWMA represents a transition zone between the recharge area to the west and high saline formation waters in the east. The dominant geochemical components in water beneath the BCWMA are biocarbonates.

25. Water quality, as measured by chloride concentrations, also deteriorates with depth. Chloride concentrations, based on data derived from the drilling of well TM at the BCWMA, increase gradually from 306 milligrams per liter (mgl) at 410 feet, to 658 mgl at 1473 feet below land surface. Chloride concentrations increase abruptly to 1980 mgl in well TM at 1483 feet of depth.

26. Evidence is inconclusive as to whether all of the proposed production wells will draw water exceeding 250 mgl in chloride concentrations. It is undisputed that most will, but chloride contours initially provided by SBWA's consultant indicate that the southernmost wells may produce water between 150 and 250 mgl.

27. A comprehensive aquifer performance test (APT) was conducted at the BCWMA by the SBWA's consultant, Post, Buckley Schuh, and Jernigan, Inc. (PBSJ). The test was designed by the staff of the SJRWMD in consultation with the U.S. Geological Survey (USGS). This test yielded data which enabled PBSJ to calculate several aquifer characteristics for use in the groundwater modeling which was later done by SBWA's modeling consultant, Environmental Science and Engineering, Inc. (ESE).

Eight wells were utilized in connection with the APT conducted at the BCWMA in January and February 1990. Three of the wells were dual zone monitoring wells capable of monitoring events in two different geologic units simultaneously.

Three wells, including the test production well (TP) were open to the interval between 700 and 900 feet below land surface which was identified by the SBWA as the production zone.

Typically APT's are run for 12 to 72 hours in Florida. Well TP was pumped for approximately 10 days at a rate equivalent to that expected during actual production while observations were made of water levels in all wells, including three off-site wells (the Holopaw test well, the Kempfer well and

the Bruner well). All of the information the SBWA needed from the APT was obtained in the first hours of the test.

Water levels in the area monitored during the APT ceased dropping due to pumpage within 1 hour after the pumping started.

28. Three different analytical models were used to calculate a transmissivity value for the production zone, utilizing data derived during the APT. The result showed transmissivity in this zone to be approximately 2 million gallons per foot per day.

This is a very high transmissivity value indicating a comparatively prolific aquifer, capable of producing the volumes of water requested in the application.

29. As transmissivity increases, the cone of depression associated with pumpage tends to flatten out and be less steep. The cone of depression extends further out, creating a wider area of drawdown.

30. Hydraulic conductivity is the measure of an aquifer's resistance to flow either in a vertical (KV) or horizontal (KH) direction.

Two methods were used to calculate the hydraulic conductivity of the Hawthon Formation by PBSJ: laboratory analysis of a core sample taken from this unit, and a bail test (measuring an increase in water level over time) conducted on a well on site by the SJRWMD.

Two different methods were used by PBSJ to calculate the hydraulic conductivity of layer 5: laboratory

analysis of a core sample taken from that zone, and the Neuman-Witherspoon ratio analysis method.

31. Porosity is the void space in porous media through which transport of particles, such as chlorides, can occur. Effective porosity has an impact on the ability of saline or dense water to move upward from depth toward a pumping well. The lower the effective porosity within an aquifer, the greater the potential for upconing of saline water within that aquifer.

Effective porosity for layers 4 and 5 was calculated using two different methods, those being laboratory analysis of core samples taken from these zones, and analysis of acoustic logs generated during the APT. Each of these methods is accepted in the field of hydrogeology.

Anticipated Impacts to Groundwater Levels and Flows as a Result of the Proposed Consumptive Use

32. A numeric groundwater flow model is a computer code representing the groundwater flow process. Both SBWA and Osceola used numeric groundwater flow models developed by their consultants to predict and simulate the impacts associated with withdrawals proposed in the application.

33. The SBWA used a finite difference model called INTERSAT for its simulations. INTERSAT is a widely used and accepted groundwater flow model. The model was run by ESE for the SBWA in the impact or drawdown mode. Drawdown or impact models simulate changes in water levels in response to a stress such as a pumping well. Drawdown models are an accepted and frequently used method to evaluate wellfield stress, particularly in association with a CUP application.

34. ESE and PBSJ utilized several analytical models to first determine and later to verify the area to which the boundaries of their model would extend. The radius of influence of a well or wellfield is the distance from the center of pumpage extending out to where drawdowns caused by that pumpage reach zero. The boundary for a numeric groundwater model should be set at, or beyond, the radius of influence of the pumpage being simulated by the model.

Based on the analytical models run by ESE and PBSJ the radius of influence of the wellfield proposed in the application is 43,000 to 45,000 feet. The approximate distances of the boundaries set in INTERSAT model from well TP were 50,000 feet to the east, 40,000 feet to the west, 40,000 feet to the north and 50,000 feet to the south.

The INTERSAT model covers a total area of 320 square miles. This size falls somewhere between a regional model and a local model, and is adequate in size to address the impacts associated with the proposed withdrawals.

35. The vertical boundary of SBWA's model extends to 1450 feet below land surface and, as stated above, is divided into 6 layers. The 1450 feet depth generally coincides with the limits of site specific data generated during the APT. The six layers in the SBWA flow model coincide with the six distinct geologic units identified by PBSJ in their APT report.

The site specific data generated by the APT was utilized, along with other regional modeling studies, to arrive at a set of "conservative" aquifer parameters to be utilized in the INTERSAT model.

"Conservative" parameters for purposes of this application are those which would tend to overpredict drawdown in the surficial aquifer and the production zone, while allowing for more upconing of dense water from the bottom of the model.

The selection of "conservative" aquifer parameters by SBWA involved taking site specific values, comparing them with the ranges of values reported in the other available regional models and selecting values which, while still within the range of reported values used in other studies, would tend to show greater impacts for the areas of primary concern than the site specific values.

Every aquifer parameter utilized in SBWA's groundwater flow model falls within the range of values reported in at least one of the groundwater modeling studies previously done in this region.

36. The size of the grids utilized in the SBWA model were 500 feet by 500 feet within the vicinity of the wellfield. Grid sizes expand as one moves toward the outer boundaries of the model.

The fineness of the grids used by ESE, particularly in the wellfield area, allows for accurate representation and resolution of surface water features, impacts in the production zone and for evaluating the effects of saltwater upcoming in the transport model also done by ESE.

37. Within the radius of influence of the proposed wellfield, there are no existing wells in layers 5 or 6.

The ESE model simulations for 18.8 mgd pumpage predict a maximum drawdown in the surficial aquifer (layer 1) of 0.14 feet centered primarily within the BCWMA. At a distance of 1 mile from the wellfield the impact drops to 0.12 feet.

None of the existing legal users of water in layer 1 within the radius of influence of the proposed wellfield will suffer a ten percent or greater reduction in withdrawal capacity from their wells solely as a result of the proposed withdrawals, since 10 percent reduction would require at least 3 feet of drawdown.

38. The ESE model simulations predict a maximum drawdown caused by the proposed pumpage of 4.5 feet in layer 3 centered along the alignment of wells and primarily within the BCWMA. At a distance of 2 miles, the drawdown drops to 2 feet. At the Brevard-Osceola County line the drawdown in layer 3 is approximately .5 feet.

Petitioner Deseret's flowing wells are drilled in layer 3 and are located within the area where a drawdown of 1 foot is predicted in layer 3 by the ESE model.

39. Deseret uses its property for a cow/calf ranching operation and has approximately 32,000 head of cows. Deseret uses 39 flowing wells east of state road 192 to irrigate pasture, water cattle and supply drinking water. Deseret possesses a valid CUP for a portion of the total flow capacity from those wells.

Seasonally, the wells flow at different rates, but they are most relied upon in dry conditions when the natural flow would be decreased.

It is unlikely that the proposed SBWA withdrawals will stop the flow of any of Deseret's wells; and it is unlikely that the flow will be reduced by more than 10 percent. Deseret and Osceola's consultants do predict a greater drawdown and opine that approximately 12 of Deseret's wells will cease flowing as a result of the SBWA withdrawals.

As addressed below, the modelling by Petitioner's consultants, upon which those predictions are based, is less reliable than that of SBWA's consultants.

40. If the effects are greater than predicted, mitigation in the form of installation of pumps is possible, albeit inconvenient and expensive. Mitigation would have to be provided by the applicant, SBWA.

41. The drawdowns predicted by the ESE model for layer 4 are not significantly different from those for layer 3. It is anticipated that no legal user of water within the radius of influence of the proposed wellfield will suffer a 10 percent or greater reduction in withdrawal capacity for its wells, as a result of SBWA's proposed withdrawals.

42. Petitioners' consultants, Hartman and Associates, (Hartman) modeled a significantly larger (4900 square miles) and deeper (3000 feet) area than did SBWA. The model makes its predictions based on one data point for every 49 square miles within the modeled area.

Petitioners utilized much larger model grids in the wellfield area (2000 feet by 2000 feet) than did the SBWA. Grid of this size lacks the resolution necessary to evaluate wellfield impacts.

43. Petitioners selected their aquifer parameters from another regional modeling study done in 1985 rather than using site specific data. Those parameters were then adjusted or calibrated until a match was obtained to a computer created potentiometric surface which was supposed to reflect the potentiometric surface for May 1990, an uncharacteristically dry period.

The created potentiometric surface to which Hartman calibrated its model varies greatly from the potentiometric surface as reflected in the actual data points from which USGS derives its potentiometric surface maps.

While no model is perfect, and actual data is preferable, in the absence of all the actual data that is needed, the ESE model is a more credible predictor of drawdowns.

Anticipated Impacts to Groundwater Quality as a Result of the Proposed Consumptive Use

44. Solute transport models are computer models designed to simulate the movement of mass, in this case -- chlorides -- through a groundwater flow system. These models are linked to, and are dependent on flow fields generated by groundwater flow models.

45. In order to predict changes in water quality anticipated to occur as a result of its proposed withdrawals, SBWA's consultants used a solute transport model called HST3D.

Developed by the USGS, this model is widely used and accepted.

For simulations using the HST3D model, SBWA used the flow field and a portion of the grid generated by its INTERSAT groundwater flow model.

46. The HST3D simulations run by ESE utilized a cross section of the INTERSAT model grid extending through row 26 of that grid, which is the row containing the line of 9 proposed wells running on an east-west axis. Use of a cross sectional grid is an appropriate method by which to examine salt water intrusion. Upconing, to the extent that it will occur as a result of the proposed pumpage, would be greatest within the cross section containing the 9 wells. The cross section extends two miles through the wellfield to the west.

47. As chloride concentrations in water increase, the density of the water increases. Density can retard the degree of upconing when chloride concentrations are as low as 1000-2000 parts per million and becomes significant at 3000-5000 parts per million. Failure of a model to consider density effects, when appropriate, would tend to overstate upconing.

HST3D does consider density effects.

48. SBWA's consultant ran several simulations with the HST3D model to predict changes that would occur as a result of the proposed pumpage in chloride concentrations over 7, 14 and 30 year time periods.

These simulations utilized the same aquifer parameters as the INTERSAT model together with the effective porosity values derived from site specific data.

49. Assuming a starting chloride concentration of 1000 mgl at the bottom of layer 5, the measured concentration at that level in well TM on the BCWMA site, after 30 years of pumpage at 18.8 mgd, the chloride concentrations in layer 4 would increase by only 100 mgl.

The simulations for 7 years of pumpage which is the duration of the proposed permit, show that the predicted increase in chloride levels would be substantially less than 100 mgl.

Other HST3D simulations were run by SBWA for a pumpage rate of 35 mgd utilizing beginning chloride concentrations of 5,000 mgl and 10,000 mgl, respectively at the bottom of layers. The results did not show any significant changes in chloride concentrations in layer 4 over and above those shown when a lower starting chloride concentration was assumed.

50. In a circumstance where, as here, the chloride concentrations in the zone from which water is proposed to be withdrawn exceeds secondary drinking water standards (250 mgl), the SJRWMD evaluates the existing legal water uses within the area that would be impacted by the proposed use.

It it is determined that the increase in chloride concentrations caused by a proposed use would detrimentally affect other existing legal users or the applicant, only then is the increase deemed to be "significant".

Within the layers of the aquifer which would experience increases in chloride concentrations as a result of

the proposed withdrawal, layers 4, 5 and 6, no existing users of water would be detrimentally affected.

51. Petitioner Deseret's closest wells to the proposed wellfield are in layer 3 where chloride levels will not be affected by the proposed wellfield within the 7 year duration of the proposed permit or even beyond that period. Further, the use Deseret makes of the water from the wells in closest proximity to the proposed wellfield, pasture irrigation, can tolerate significantly higher chloride concentrations than will exist even directly beneath the wellfield in level 4 after 30 years of pumping.

52. Use of water for public supply purposes is considered by SJRWMD to be in the public interest. Utilization of the water beneath BCWMA for public supply purposes, even with some increase in chloride concentrations in the source of the water over the life of the permit, does not on balance detrimentally affect the public interest.

53. Two different solute transport models were done by Petitioners' consultants, one a numeric model and the other an analytical model.

The numeric model done by Hartman, RANDOMWALK, does not predict changes in chloride concentrations within an aquifer, but rather tracks movement of particles. RANDOMWALK does not account for density effects.

The analytical model done by Prickett for the Petitioners relies on assumptions, many of which are not met in the aquifer system at BCWMA. Those assumptions relate to

uniformity of the system, for example: porosity and permeabilities, and lack of regional gradients.

The solute transport models utilized by the Petitioners are less reliable for predicting water quality changes resulting from the proposed pumpage than the model utilized by the SBWA.

54. Salt water intrusion is a dramatic increase of chloride levels in an aquifer layer. The saline water encroachment which occurs from the wellfield stress will be in the lower confining unit. There will be limited degradation in the lower part of the production zone. The wellfield will not induce significant lateral intrusion from the east. There will not be any dramatic changes in chlorides. The movement of the chlorides is confined to the locality of the wellfield. Most of the movement is vertical and is of limited increase. The proposed Bull Creek withdrawals will not aggravate any currently existing salt water intrusion problems.

55. The reject brine water from the RO treatment plant will be disposed of in deep injection wells in Brevard County. These injection wells would deposit the brine into a receiving body of water in the Oldsmar geologic formation. The brine reject will have a total dissolved solids (TDS) concentration of approximately 7,000 mgl. The receiving water into which the brine will be injected approximates sea water, with TDS concentrations in the range of 36,000 mgl. The receiving body will obviously not be further degraded.

Environmental Impacts of the Proposed Consumptive Use

56. District staff, SBWA consultants and Osceola's consultants independently conducted onsite field investigations of the BCWMA to evaluate the vegetative communities and land uses which exist on site. Each consultant prepared a habitat map identifying the various vegetative communities found at the site.

57. While relatively pristine, the BCWMA has been logged and grazed by cattle in the past. The impacts of man's activities have been remediated by ceasing the activity. There are few permanent incursions, such as roads, canals and buildings.

58. The area is a very diverse landscape, with a mosaic of different types of plant communities. There are various upland and wetland habitats. The variety of wetlands are forested and non-forested, deep and shallow, open and closed. These wetlands perform important functions, including water storage and purification, aquifer recharge, flood control, and provision of food sources and habitat for wildlife, and they are "factories" for producing the materials needed by many higher organisms.

The wetlands on site are structurally complex and are good habitat for macro-invertebrates and the fish and higher organisms that feed on them. A number of these wetlands are shallow, isolated wetlands.

59. During periods of inundation, when the wetlands fill up with water and interconnect with the Bull Creek drainage system, the system exports various organisms to the wetlands.

Fish that are live bearers move into isolated wetlands during periods of inundation, and they and their offspring become a source of food for birds.

Fish species that lay eggs can withstand desiccation (total drying out) can survive the temporary drying of wetlands, but live bearers must repopulate during periods of inundation.

60. The mixed wetland hardwoods on site contain a diversity of bugs, crawfish, mayflies, damsel flies, midges, and snails. Some of these are important food sources for higher organisms. The apple snail, for example, is an important food source for such birds as the limpkin and the endangered snail kite, and its eggs are food for crawfish and other organisms.

61. The biological communities that exist in the wetlands and uplands at the site are determined by a number of factors, including the depth and duration of the hydroperiod, soils, climate, temperature, and availability of sunlight.

These communities and their habitats will react to changes in light, water, temperature, and many other subtle effects, causing changes in plant diversity and structure, the areal extent of certain types of habitats and wetlands, and utilization by wildlife.

62. Natural fluctuations in the hydroperiod also cause these changes, generally from the exterior edges of a wetland to the interior. The wetlands in the BCWMA have been able to withstand the natural drought and flood periods, or they wouldn't be there today.

63. Periodic burning is essential to the health of ecosystems such as in the Bull Creek area. Fires reduce the prevalence of species less tolerant to fire, allow other species to strengthen their presence, return organic material to the soil, and reduce the fuel available for wild fires.

Originally occurring naturally as a result of lightening strikes, prescribed burns are now undertaken by agencies such as the Division of Forestry and the Game and Fresh Water Fish Commission to replicate the beneficial functions of natural periodic burning.

Fire management is used as a land management technique at BCWMA and continued fire management at the BCWMA will maintain a natural ecological setting typical of Florida.

64. Slight variations in elevation which mark the difference between wetlands and uplands can result in utilization of the areas by different animal communities. Where different types of plant communities meet, an "ecotone" is created. Where an ecotone exists, the "edge effect" of the competition between the two communities occurs. The result of the edge effect is higher plant and animal species diversity, which is extremely important to the natural community.

Some animals make specific use of the ecotone for habitat and food resources. Many amphibians, frogs in particular, live in the ecotone. Some birds will not roost in the upland forests but will roost in the edge of the forest adjacent to wetlands.

Wetlands in the BCWMA are connected to the remainder of the Bull Creek system through groundwater resources. Their biological and ecological communities are also connected as the same organisms move throughout the system.

65. Isolated wetlands also exhibit a "moving edge" effect, where changes in the surface water and water table levels cause different plants, or plants at different levels of maturity, to exist in the wetland and its perimeter. This increases the productivity of the wetland by making it attractive to a wider variety of plant and animal species.

If the expansion and contraction of isolated wetlands is reduced by lowered water levels, the smaller wetlands would exhibit a reduced edge effect, and the cumulative effect of this reduction over time would disrupt the functioning of the wetland-upland system.

66. Isolated wetland systems are more sensitive to drawdowns in the surficial aquifer than connected wetland systems because the drainage area contributing water to the wetland system is smaller.

Isolated herbaceous wetland communities are the most sensitive of the vegetative communities on BCWMA to drawdowns in the surficial aquifer.

67. The surficial aquifer fluctuates naturally as much as five feet annually. Rainfall is the primary source of water for the surficial aquifer. Water levels in the surficial aquifer respond very quickly to rainfall events.

Hydroperiods of the wetland systems in the BCWMA respond to rainfall and surficial aquifer levels.

68. The wetland hydroperiods vary from year to year, and wetland ecosystems have adopted to those annual changes. But a groundwater withdrawal from the surficial aquifer in the Bull Creek area would cause a corresponding lowering of the surface water level, since the wetlands are not "perched", or separated from the aquifer by a confining layer. A drawdown would lower water levels throughout the hydroperiod, under both high water and low water conditions, with a more pronounced effect during the dry season and drought periods.

69. Some of the over twenty threatened and endangered plant species present at Bull Creek grow in shallow, marginally wet areas. Changes in even a few inches of groundwater would cause these plant species to be retarded in growth, and their abundance would decrease or they would die out at the site.

Many of the wetlands are shallow, broad, sloping areas, and groundwater elevation changes of just a few inches will cause changes in the areal extent of these wetlands. Even the .14 foot drawdown predicted by SBWA's modeling would affect shallow inundated or saturated systems by changing the moisture level at the surface, particularly by affecting the lowest water levels.

70. Changes in the vegetative composition of wetlands will affect the macro-invertebrate characteristics of a site. For example, as water levels change, the density of the vegetation (in terms of number of plant stems per acre) can

decrease, leaving fewer places for the macro-invertebrates to hide, and the populations of macro-invertebrates will decrease through predation.

As food sources, habitat and breeding grounds decrease, those animal species that can relocate will attempt to do so. Relocation can adversely affect the survival of the species; for example, a wood stork unable to find a particular food upon which it is dependent at a particular interval in its life cycle may abandon its nest and its young. Animals that attempt to relocate may find that there is not a suitable similar habitat available, making their attempt to adjust to the change in their environment unsuccessful.

71. The proposed use will not significantly affect the stages or vegetation of the upland communities at the BCWMA because they are not as dependent on saturation or inundation as a wetland community.

Forested wetland systems, be they isolated or connected, will not be influenced by a drawdown of the magnitude predicted by SBWA for the surficial aquifer. Forested systems have deep root zones and the canopy provides shading to the strata below. Forested systems are able to tolerate natural changes in hydrology.

72. The SBWA assessment does not offer any detailed cataloguing of the plant and animal communities on site, or a description of how the systems operate or interface with each other. It does not provide sufficient information to be able to assess the impacts of the proposed wellfield on these systems.

There was insufficient information presented by the applicant to conclude that the environmental harm to be caused by operation of a wellfield at the BCWMA has been reduced to an acceptable level.

The applicant relied on the fact that drawdowns in the surficial aquifer will be minimal, without fully considering the impact of those minimal drawdowns on a fragile wetland ecosystem during a dry period.

Water Demand

73. The SBWA was created by special act in 1983 as a dependent special district for the purpose of developing regional water supplies and transmission of water to water distribution systems. In its existence so far, its labors have been in the former, and none in the latter category. Efforts to develop a regional water supply have been frustrated by litigation, by reluctance of local public systems to give up their authority and by delays in pursuing and processing CUP applications, two of which are still pending, in addition to the instant application.

74. The City of Melbourne's public water system provides water to Melbourne, Palm Bay and West Melbourne, and to some unincorporated areas surrounding Melbourne. It also supplies water to the area called south beaches, comprised of the Brevard County area south of Patrick Air Force Base, including Satellite Beach, Melbourne Beach, Indiatlantic and Indian Harbor Beach. The current water supply is Lake Washington, which is part of the chain of lakes on the St. Johns River.

75. The city of Melbourne was granted a CUP on January 15, 1991, for withdrawals from Lake Washington, ranging from

27.15 million gallons maximum daily withdrawals in 1991 to 21.7 million gallons maximum daily withdrawals in 1998.

In addition, Melbourne has planned a new facility and has the CUP to withdraw 8.13 million gallons a day from the Floridan Aquifer commencing in 1993. After reverse osmosis treatment, the groundwater withdrawal will yield 6.5 million gallons a day finished water, making up the difference from reduced withdrawals from Lake Washington.

76. Approximately 56 potable water systems have been identified by SBWA in South Brevard, south of the Pineda Causeway. Almost all are small private systems. Besides Melbourne, the other major water supplier in the area is General Development Utilities (GDU), serving the City of Palm Bay.

GDU's CUP expires in 1993 with an average daily withdrawal of 6.5 mgd and maximum daily withdrawal of 8.5 mgd. It has ample capacity until 1996, and beyond to the year 2000, if an additional Department of Environmental Regulation capacity rating is obtained.

77. The total capacity of the two major existing facilities is approximately 30 mgd and total existing consumptive use quantities (including existing CUPs with expiration dates varying from 1993 to 1998) approach 40 mgd.

78. The current SBWA water master plan assumes that existing sources need replacing. More specifically, SBWA, if this CUP is granted, seeks to replace Lake Washington as the primary source of water in the area with the groundwater obtained from the BCWMA wellfield.

79. An agreement between the City of Melbourne and SBWA provides that the City will initially purchase 8 mgd, plus all future needs of water from the SBWA. This 8 mgd would be used by Melbourne prior to using its 6.5 mgd finished water from the RO facility, and the RO water would be used prior to withdrawals from Lake Washington.

The agreement, dated January 9, 1991, acknowledges the need for, and specifically authorizes improvements to Melbourne's Lake Washington Water Treatment Plant, including the conversion of the existing high service pumping station to a low service pumping station with average daily capacity of 20 mgd and maximum capacity of 25 mgd. (SBWA Ex. 49)

80. GDU is a private utility and currently is outside the jurisdiction of the SBWA. General Development Corporation is in receivership and the City of Palm Bay is negotiating for purchase of the utility. If the purchase is successful, the supply will become publicly owned and subject to the jurisdiction of the SBWA.

The City of Palm Bay is not bound to purchase GDU at any price, and the requirement that it would shut down its newly purchased facility to receive water from SBWA is a disincentive to the acquisition.

In the meantime, GDU has no incentive to reduce CUP capacity and devalue its facility.

81. GDU's service has been uninterrupted and reliable. Contamination to the surface aquifer utilized by GDU has been successfully treated. Although septic tanks proliferate in Palm

Bay, their location, as well as the presence of confining layers in the surficial aquifer, reduce the susceptibility of GDU wells to contamination from septic tanks.

82. The applicant's concerns about unreliability and safety of Lake Washington as a continued water source are unsubstantiated by the weight of evidence in this proceeding.

Surface water facilities have been used in Florida since before the turn of the century and no major facility has ever been off-line one day due to raw water contamination. Nor has any major Florida surface water plant ever been sabotaged.

There is a greater chance in Florida of problems with pipeline failures, and the miles of pipes planned to transmit ground water from Bull Creek east to SBWA consumers increase the chances of those problems.

83. Recently, the SJRWMD Upper Basin Project has significantly improved the water quality and quantity in Lake Washington through restoration of marshlands in the upper basin and capping flowing wells. Restored marsh areas will allow for additional removal of nutrients and provide an additional storage to the Lake Washington/Upper Basin system, significantly improving safe yield quantities.

Comparisons of concentrations of raw water chlorides and total dissolved solids for the drought years of 1989 and 1990, show significant reductions for the latter time frame. Recent evaluations indicate that Lake Washington would be acceptable in terms of chlorides and TDS concentrations for a 35 mgd withdrawal, even during 50 and 100 year droughts.

Water quality improvements to Lake Washington can be directly related to the Upper Basin project.

Trihalomethanes are regulated by the Safe Drinking Water Act. They are produced by the disinfection process of treating raw water with chlorines, and they are carcinogenic. A previously experienced problem at the Melbourne plant has been corrected with operational changes.

84. As recently as 1988, an internal staff report by SJRWMD staff provided:

> Lake Washington has been a reliable source of public water supply since 1960 and can remain so in the future with the continuation of sound basin planning and watershed management by the St. John's river Water Management District.
>
> The quality of the raw water from Lake Washington is subject to annual and seasonal variations that make the treatment process more difficult, and the quality of the delivered water less consistent, than would be the case with a groundwater supply.
>
> A supplemental water source near Lake Washington would improve the quality of the water delivered to the users, would increase the total volume that could be taken from the lake in times of stress, and would provide a reliable alternative in case of emergency.
>
> The upper zone of the Floridan Aquifer within south Brevard County has the potential to supply a significant portion of the area's future water needs with existing low-pressure, reverse osmosis technology at a cost that is comparable to current supplies.

RECOMMENDATIONS

Public Policy should clearly recognize Lake Washington as an essential component of the long term public water supply system of south Brevard county.

The Upper St. Johns River Basin Project should be constructed as planned, and any future proposals to alter the system should consider the water supply value of Lake Washington as an important element in the resource analysis associated with the plan review.

Detailed analysis should be undertaken to determine the volume and quality of water that can be pumped from the upper Floridan aquifer near Lake Washington without interfering with existing users. A similar analysis should be performed near Palm Bay to evaluate the feasibility of supplying some of the future needs of that area with a local reverse osmosis plant drawing raw water from the Upper Floridan aquifer.

The detailed evaluation of the hydrogeology of Osceola county should proceed immediately in order to be able to estimate the groundwater development potential within the county.

No transfer of water from Osceola county to Brevard county should be considered until there is some definitive indication that Lake Washington cannot supply the quality and quantity now predicted under the Upper Basin Plan or that low-pressure reverse osmosis is proven to be an unacceptable option.

(Osceola Co. Ex. 84, p. 1)

85. A comparison of raw water quality for Lake Washington and the Floridan Aquifer at BCWMA reveals that Lake Washington is lower in chlorides, TDS and hardness. Consumer dissatisfaction with water "hardness" is given by SBWA as one basis to seek an alternative water source.

Utilizing Lake Washington as its source, the City of Melbourne treatment facility produces good water quality and there is no good reason to justify abandoning it as a source. Certainly the CUPs recently approved for the City of Melbourne recognize this fact, and those CUPs at least partially effectuate the recommendations of SJRWMD staff reflected above.

86. SBWA's CUP would simply substitute water sources, not increase water supply. This is evidenced by SJRWMD's recommended permit condition requiring that the Melbourne and GDU existing CUPs be reduced by equivalent amounts prior to any withdrawals at Bull Creek.

Water Conservation

87. SBWA has submitted a reasonable water conservation plan to the SJRWMD. The 1991 plan is in draft form but it updates an existing 1984 water conservation program.

The program includes a public information and education campaign, home water use audits, installation of water-efficient devices and a model xeriscope project.

88. SBWA cannot enact conservation ordinances, but can implement water conservation measures during a water shortage. Ordinances and resolutions for water conservation have been widely adopted by the local governing bodies in the SBWA service area.

Costs of the Project

89. SJRWMD staff consider costs to the customer as one of many other aspects of CUP application review. In this case specific inquiries were made by the staff as to proposed costs and those inquiries were answered by SBWA in supplemental application submittals.

90. Both consultants for SBWA and for Osceola County generated capital costs for wellfield production, water treatment, transmission and distribution system.

In February 1990, SBWA estimated the project cost for the 20 mgd phase of its system as $47,900,000.00. The cost to the consumer was estimated as $2.57 per 1000 gallons, including debt service, operation and maintenance, Melbourne costs and SBWA costs.

Osceola's consultants estimated the project cost to be $56,849,000.00, but considered the cost per thousand gallons to be $1.94, for the SBWA share of the bill only. Osceola's consultants projected a significantly lower operation and maintenance cost for the SBWA proposal than the projections by SBWA's consultants.

91. Osceola also computed the costs to the consumer for the City of Melbourne to supply the same amount of water proposed by SBWA from a larger (26.5 mgd) ultimate capacity facility, to be a total of $18.57 million. The result, reasonably derived, would be an incremental cost to the consumer of $.46 per 1000 gallons, or (per Osceola's computations) $1.29 per 1000 less than the consumer would pay under the SBWA

proposal. The average residential monthly use is 4600 gallons of water.

The difference, even under Osceola's computations, does not make SBWA's proposal unaffordable.

92. The SBWA proposes to finance construction through the sale of tax exempt revenue bonds as authorized in its enabling legislation. This is a feasible funding mechanism.

The Proposed SJRWMD Conditions

93. The SJRWMD technical staff report (TSR) was issued on February 28, 1991, recommending approval of the SBWA application, with conditions.

During the course of the hearing, additional conditions were proposed by the staff and were accepted by SBWA. For reasons addressed in the Conclusions of Law, that evidence is considered over the objection of the Petitioners.

94. The conditions provide for expiration of the permit seven (7) years from issuance. Maximum daily withdrawals from each well are limited to 1.78 million gallons, and average daily withdrawals are limited to 1.57 million gallons, substantially less than their projected capacity.

SBWA is required to implement the conservation plan it submitted in August 1991, in accordance with the schedule in that plan, with a report on plan implementation to be submitted before February 28, 1995.

95. SBWA is required to mitigate any adverse impact caused by its withdrawals to legal uses of water existing at the time of permit application. The district retains the right to curtail permitted withdrawals if adverse impacts occur to such existing legal users.

The proposed conditions require monitoring of water levels within the surficial aquifer and within wetlands located in the area most likely to be impacted.

To the extent that drawdowns occur in the surficial aquifer exceeding those predicted by SBWA's modelling, the permit conditions are intended to detect those drawdowns and address remediation.

96. The conditions require construction of three dual zone monitoring wells prior to production, under specifications approved by SJRWMD. Water quality samples must be collected periodically from these and from the production wells and submitted to the district. Chloride concentrations are to be sampled from each production well on a monthly basis.

97. Additional aquifer performance tests are required upon completion of the proposed production wells to determine whether aquifer parameters originally determined are consistent throughout the well field.

98. Recommended permit conditions #29-43 address the steps required for monitoring impacts on wetlands. Surficial aquifer monitoring wells must be constructed and data recorded on two-week intervals for a period of at least two years prior to withdrawal from a production well. After production is

initiated, data must be recorded on a weekly basis for the duration of the permit.

District staff is to identify wetlands to be monitored and SBWA must obtain baseline vegetative data for a period of two years prior to operation of any production well.

Once production pumping starts, district staff will continue to review monitoring data to determine impacts on any wetlands in the area of concern. Upon detection of adverse impacts, the pumping must cease until a mitigation plan or reduced pumping schedule is approved.

99. The proposed conditions are adequate to address actual adverse impacts to existing legal users and to the water supply, but not to the wetlands. Since changes occur slowly, two years of pre-production data collection and monitoring is insufficient to achieve a level of assurance that a base line has been established. Although monitoring will continue through the permit period, the data to be collected weekly must only be submitted on an annual basis to the district--too infrequently to remedy problems as they arise.

SUMMARY OF FINDINGS

100. The applicant's extensive modelling efforts reasonably predict effects as to the amount of drawdown and changes in water quality. The applicant's assessment of the effect of drawdown on the area's vital sensitive wetlands was inadequate. While the conditions proposed by SJRWMD substantially address the inadequacies of the assessment by requiring additional indexing and monitoring, the conditions

should include longer pre-production observation and more frequent reporting.

Most significantly, the applicant failed to prove that there is a need for this permit. Its assertions that the existing sources of water are inadequate in either quantity or quality were not substantiated by the greater weight of evidence.

Without need, the costs of the project, even if "affordable", are excessive. Without need, the risks associated with undertaking production in this new wellfield outweigh any benefits of an alternative supply.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this proceeding pursuant to Section 120.57(1), F.S.

2. The SJRWMD regulatory authority with regard to CUP applications is governed by the provisions of Chapter 373, F.S. and Chapter 40C-2, F.A.C.

3. As applicant, the SBWA has the burden of proving entitlement to this consumptive use permit. Florida Department of Transportation v. JWC Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981); Harloff v. City of Sarasota, 575 So.2d 1324 (Fla. 2nd DCA 1991); Rule 40C-1.545, F.A.C.; 40C-2.301(7), F.A.C.

Standing

4. Petitioners' standing is governed by Section 120.57(1), F.S., describing formal proceedings in which the substantial interests of a party are determined by an agency.

The standing of Osceola County is stipulated in this proceeding. It's standing to contest the transfer of water from within its governmental boundaries to a neighboring county was established in Osceola County v. St. Johns River Water Management District, 486 So.2d 616 (Fla. 5th DCA 1986), affirmed, 504 So.2d 385 (Fla. 1987).

5. The petition for formal hearing filed in March 1981 on behalf of Triple E Corporation and Triple N Corporation recites that those parties are Florida corporations and are "persons" as defined in Section 120.52(13), F.S. This basic allegation was not proven, rather it was admitted that "Triple E" and "Triple N" are not corporations.

Neither Triple E nor Triple N have existing CUPs. Testimony was presented as to speculation that drawdowns might affect the cattle operations, but specifics were not presented. Similarly no injury in fact was shown as to existing spring fed lakes or existing wells on the property. The property owners failed to establish individual standing as required in Agrico Chemical Co. v. Florida Department of Environmental Regulation, 406 So.2d 478 (Fla. 1st DCA 1981).

6. Similarly, Petitioner ECFS failed to establish standing under the Agrico test. ECFS does not own property, have a CUP permit or control the wells belonging to Deseret.

7. Deseret did properly plead and demonstrate its standing. It's free flowing wells will likely be affected to an insubstantial degree. If this application is granted, however, and when actual affects are later determined, those effects will have to be mitigated or ameliorated by the applicant.

The Criteria

8. Section 373.223(1), F.S. provides:

> 373.223 Conditions for a permit.--
>
> (1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water;
> (a) Is a reasonable-beneficial use as defined in s. 373.019(4);
> (b) Will not interfere with any presently existing legal use of water; and
> (c) Is consistent with the public interest.

* * *

9. "Reasonable-beneficial use" is defined in Section 373.019(4), F.S., as:

> "...the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."

10. Rule 40C-2.301, F.A.C., provides in pertinent part:

* * *

> (2) To obtain a consumptive use permit for a use which will commence after the effective date of implementation, the applicant must establish that the proposed use of water:
>
> (a) is a reasonable beneficial use; and
> (b) will not interfere with any presently existing legal use of water; and
> (c) is consistent with the public interest.

(3) For purposes of subsection (2)(b) above, "presently existing legal use of water" shall mean those legal uses which exist at the time of receipt of the application for the consumptive use permit.

(4) The following criteria must be met in order for a use to be considered reasonably beneficial:

(a) The use must be in such quantity as is necessary for economic and efficient utilization.

(b) The use must be for a purpose that is both reasonable and consistent with the public interest.

(c) The source of the water must be capable of producing the requested amounts of water.

(d) The environmental or economic harm caused by the consumptive use must be reduced to an acceptable amount.

(e) To the degree which is financially, environmentally, and socially practicable, available water conservation and reuse measures shall be used or proposed for use.

(f) The consumptive use should not cause significant saline water intrusion or further aggravate currently existing saline water intrusion problems.

(g) The consumptive use should not cause or contribute to flood damage.

(h) The water quality of the source of the water should not be seriously harmed by the consumptive use.

(i) The water quality of the receiving body of water should not be seriously harmed by the consumptive use. A valid permit issued pursuant to Rule 17-4.240 or Rule 17-4.260, Florida Administrative Code, shall establish a presumption that this criterion has been met.

(5)(a) A proposed consumptive use does not meet the criteria for the issuance of a permit set forth in Rule 40C-2.301(2) if such proposed water use will:

1. significantly induce saline water encroachment; or

2. cause the water table or surface water level to be lowered so that stages or vegetation will be adversely and significantly affected on lands other than those owned, leased or otherwise controlled by the applicant; or

3. cause the water table level or aquifer potentiometric surface level to be lowered so that significant and adverse impacts will affect existing legal users; or

4. require the use of water which pursuant to Section 373.223(3), Florida Statutes, and Rule 40C-2.301(6), the Board has reserved from use by permit; or

5. cause the rate of flow of a surface water course to be lowered below a minimum flow which has been established pursuant to Section 373.042(1), Florida Statutes; or

6. cause the level of a water table aquifer, the potentiometric surface level of an aquifer source, or the water level of a surface water source to be lowered below a minimum level which has been established pursuant to Section 373.042(2), Florida Statutes.

(b) Compliance with the criteria set forth in subsection (5)(a) above does not preclude a finding by the Board that a proposed use fails to comply with the criteria set forth in Section 40C-2.301(2) above.

(6)(a) The Board may reserve water from use or withdrawal under the authority of a consumptive use permit, in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. The Board hereby determines and finds that protection of the water resource from significant harm is required for protection of the public health and safety.

(b) Such reservation of water shall be implemented by rule, pursuant to Section 373.223(3), Florida Statutes, and shall be

subject to periodic review and revisions by the Board in the light of changed conditions.

(7) The applicant shall have the burden of proof to establish and present sufficient data to support a finding by the Board that the proposed use meets the conditions specified in subsections (1) or (2).

Applying the Criteria

11. Need is the pivotal and single overriding issue in determining whether this proposed consumptive use is a reasonable beneficial use.

Logic and common sense compel an interpretation that need for the permit is an inherent component of the criteria in Section 373.019(4), F.S., and Rules 40C-2.301(4)(a) and (b), F.A.C. The use must be needed to be in such quantity as necessary for economic and efficient utilization or to be for a purpose that is reasonable and consistent with the public interest.

No party has cited a case from this district involving a permit that does not increase consumption but only substitutes the source of water. However,the district has isolated need as a factor in its Applicant's Handbook at Section 10.2, providing, in pertinent part:

10.2 State Water Policy

Section 17-40, F.A.C., provides that, in determining whether a use is a reasonable beneficial use, consideration should be given to any evidence presented concerning the following factors:

(a) the quantity of water requested for the use;
(b) the demonstrated need for the use;

* * *

(h) the method and efficiency of use; [and]

* * *

(k) the present and projected demand for the source of water;

* * *

(emphasis provided)

This interpretation is consistent with that of a sister district, the Southwest Florida Water Management District in West Coast Regional Water Supply Authority and S.C. Bexley, Jr. v. Southwest Florida Water Management District, Final Order entered 9/4/85, in DOAH Cases #84-2653/84-2654. In that case the district adopted Hearing Officer, Diane Tremor's recommendation to deny two CUP applications for water to be supplied to Pasco County when Pasco County already had an adequate existing source of that water.

There, as here, the applicants argued that it is not the role of the district to determine how existing sources should be replaced. There, as here, it was argued that the new supply was necessary to reduce or eliminate reliance on a source perceived to be unreliable. There, as here, the proof failed.

12. A conclusion that the permit should be denied does not embrace Osceola County's contention that SBWA must exhaust other possible sources of water in Brevard County before extracting water from beneath its neighbors. The applicant does

have the ultimate discretion to select its source and to present that source to the district for consideration. Nothing in the rules, statute, applicant's handbook or common law suggests the source must be best or closest to the consumer. This case does not involve a choice of which new source is better. This case presents simply a choice of an existing supply versus a replacement. Denial of the permit would not compel the applicant to seek another source; it merely preserves the status quo, recognizing that for the projected term of the applied-for permit, the status quo is adequate, in quantity and quality.

13. Cost to the consumer necessarily enters into the reasonable-beneficial use criteria. Cost is considered by district staff as one of many factors in review of an application.

As found above, even under the projections presented by Osceola County, the additional cost of the Bull Creek project would not be so exorbitant as to preclude approval, if the costs were necessary. Absent need, no amount of additional cost is justifiable.

14. The extensive modelling efforts by the parties yield different results as to projected impacts on water quality of the proposed source of the water and the impacts on the environment or existing legal users.

In this regard, the modelling provided by the applicant is more credible. That modelling projects minimal upconing and consequently no serious harm to the quality of the source of water.

It is uncontroverted that the proposed source is capable of producing the amount of water being sought by the permit.

The water table or aquifer potentiometric surface will be lowered, but significant and adverse impacts on existing legal users are not projected.

Monitoring and mitigation required by the District's proposed conditions should ameliorate those impacts and, more specifically, any economic hardship caused by the reduction of flow in Deseret's wells during drought.

15. Although the lowering of the surficial water table is predicted to be minimal, the applicant has failed to present competent evidence that this reduction will not adversely affect wetlands in the area when those wetlands are already stressed by natural occurrences in the hydroperiod. Monitoring conditions proposed by the district are insufficient to detect those impacts over time, and are insufficient to insure that the impacts will be reported in a timely manner.

16. No party disputes that the supply of water to the public is, of itself, "in the public interest".

"Public interest" is defined very broadly, however, in the District's Applicant's Handbook at 9.3, as:

> For purposes of this section, "public interest" means those rights and claims on behalf of people in general. In determining the public interest in consumptive use permitting decisions, the Board will consider whether an existing or proposed use is beneficial or detrimental to the overall collective

well-being of the people or to the water resource in the area, the District and the State.

It follows that neither the immediate consumers nor the public at large are benefitted by a proposed use that is superfluous.

Evidentiary Matters

17. SJRWMD Exhibit 24b is received over the objection of Petitioners. This exhibit, comprised of amended permit conditions proposed primarily to address wetland monitoring, was offered by the district in the fourth week of hearing and introduced no new issues. Petitioners had an opportunity to rebut the document in the fifth and final week, after a ten-day hiatus. See Manasota 88, Inc., v Agrico Chemical Co., 576 So.2d 781 (Fla. 2nd DCA 1991), holding that denial of motions in limine and for a continuance were not a violation of due process when a modified mitigation plan was submitted at hearing.

18. Ruling on admission of Osceola's exhibit #94 was also reserved. This document, the Final Report of the Governor's Water Resource Commission dated December 1, 1989, is excluded as irrelevant. It has not been adopted by the district and does not provide policy determinative of the issue at hand. The report includes recommendations for action by various governmental bodies and agencies. Until those recommendations are adopted into policy by statute or rule, or become the articulated incipient policy of the district, they may not be applied in the review of a CUP application.

RECOMMENDATION

Based on the foregoing, it is hereby,

RECOMMENDED:

That the SBWA application for CUP be denied.

DONE AND RECOMMENDED this 12th day of March, 1992, in Tallahassee, Leon County, Florida.

Mary Clark

MARY CLARK
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904)488-9675

Filed with the Clerk of the Division of Administrative Hearings this 13th day of March, 1992.

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

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APPENDIX

The following constitute disposition of the findings of fact proposed by each party.

Petitioner, Osceola County

1. These findings have been adopted in full or in substantial part in the recommended order submitted herewith: 1-5, 7-8, 14, 21-22, 24-25, 27-28, 30, 32, 35, 62-65, 73, 104, 113, 116-125, 127, 129-130, 132-138, 140, 154, 157-158, 164, 167-168, 183, 186, 189, 191-195, 197-200, 202-204, 209, 212.

2. These findings are rejected as contrary to or unsupported by the weight of evidence: 37-38, 48, 51, 53, 56, 66, 79-81, 84-90, 92-94, 102-103, 105-107, 110-112, 115, 128, 171-172, 212(d), (f) and (g), 213-214.

3. These findings are rejected as cumulative, unnecessary or irrelevant: 6, 9-13, 15-20, 23, 26, 29, 31, 33-34, 36, 39-47, 49-50, 52, 54-55, 57-61, 67-72, 74-78, 82-83, 91, 95-101, 108-109, 114, 126, 131, 139, 141-153, 155-156, 159-163, 165-166, 169-170, 173-182, 184-185, 190, 196, 201, 205-208, 210-211, 212(e), 215.

Petitioners, Triple E, Triple N, East Central Florida Services, Inc., and Deseret

1. These findings have been adopted in full or in substantial part in the recommended order submitted herewith: 1-6, 8-9, 16-20, 22-25, 27-28, 30-31, 50-56, 59-60.

2. These findings are rejected as contrary to or unsupported by the weight of evidence: 7, 12, 32, 34-37, 40, 42, 44, 48, 49, 58.

3. These findings are rejected as cumulative, unnecessary or irrelevant: 10-11, 13-15, 21, 26, 29, 33, 38-39, 41, 43, 45-47, 57, 61-63.

Respondent, South Brevard Water Authority

1. These findings have been adopted in full or in substantial part in the recommended order submitted herewith: 1-6, 9-11, 13, 16-24, 28, 30-34, 36, 38, 46-48, 61, 64, 70, 72-74, 90-91, 94-98, 105-108, 110-111, 113, 115-116, 121, 126-129, 133, 149, 152, 157, 169, 179, 181-190, 192-194.

2. These findings are rejected as contrary to or unsupported by the weight of evidence: 41, 130-132, 156, 158, 167, 174, 177.

3. These findings are rejected as cumulative, unnecessary or irrelevant: 7-8, 12, 14-15, 25-27, 29, 35, 37, 39-40, 42-45, 49-60, 62-63, 65-69, 71, 75-89, 92-93, 100-104, 109, 112, 114, 117-120, 122-125, 134-148, 150-151, 153-155, 159-166, 168, 170-173, 175-176, 178, 180, 191.

Respondent, St. Johns
River Water Management District

1. These findings have been adopted in full or in substantial part in the recommended order submitted herewith: 1-8, 10-22, 24-36, 38-44, 47-62, 64-88, 90, 92-116, 118-122, 124-130, 132-142, 144-151, 159-160, 164, 166-167, 169, 171, 174-175, 177, 193-196, 198, 202, 206.

2. These findings are rejected as contrary to or unsupported by the weight of evidence: 131 (the conclusion), 153-154, 156-157, 161-162, 197, 204, 207.

3. These findings are rejected as cumulative, unnecessary or irrelevant: 9, 23, 37, 45-46, 63, 89, 91, 117, 123, 143, 150, 152, 155, 158, 163, 165, 168, 170, 172-173, 176, 178-192, 199-201, 203, 208-210.