ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, A UTAH CORPORATION, d/b/a in Florida under the name of DESERET RANCHES,

Petitioner,

v.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and CITY OF COCOA,

Respondents.

DOAH CASE NO. 89-0828

FOR 89-751

HOLLAND PROPERTIES, INC.,

Petitioner,

v.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and CITY OF COCOA,

Respondents.

DOAH CASE NO. 89-5419

FOR 89-887

DORIS L. KELLER, ODELL WARREN, WILLIAM S. KIRK, JR., STEVEN M. COPELAND and BONNIE K. COPELAND, his wife, DEBORAH A. BUCHANAN, LUCILLE C. RADULSKI, TOM PETERSON and KAREN PETERSON, his wife, KEN BUBLE and LAURA BUBLE, his wife, BRUCE ARCHEBELLE and TOMMIE ARCHEBELLE, his wife, FREDERICK E. BOYD, JR., and JUDY ROCHE BOYD, his wife, BARBARA JIGOULEFF, GILL HEUGHEBAENT, JERRY EARP and LAURA L. EARP, his wife, JOHN JENIEC and DEBRA JENIEC, his wife, ROBERT G. FAUROT and GERRI LYNN FAUROT, his wife, DANIEL A. SHAW and SANDRA J. SHAW, his wife, LOWELL HALCOM and LILLIAN HALCOM, his wife, RICHARD PEARCE and JUDITH A. PEARCE, his wife, MURRAY SAPPINGTON and DIANE SAPPINGTON, his wife, SUSAN KAY OUSLEY, LUNWIC JENKINS, JR.,

and KAREN JENKINS, his wife, JIM M. MANEELY and EILEEN C. MANEELY, his wife, HENRY J. HOPKINS and BETTY HOPKINS, his wife, TERRY L. BURKE and WENDY W. BURKE, his wife, TERRY L. GARDNER and VIRGINIA B. GARDNER, his wife, TIMOTHY A. SCHULLER and LYSA K. SCHULLER, his wife, PHILLIP DEPUTY GRASSELLI and ANTONINETTE GRASSELLI, his wife, ROBERT L. EDGERTON and LUCY T. EDGERTON, his wife, JO ANN POWELL and NORMA D. DAVID, JAMES YOUNG and NANCY YOUNG, his wife, EARNEST G. FIELDS, d/b/a ISLE OF PINES COUNTRY STORE, and ISLE OF PINES PROPERTY OWNERS ASSOCIATION, INC., a Florida corporation,

Petitioners,

v.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and CITY OF COCOA,

Respondents.

DOAH CASE NO. 90-1488

FINAL ORDER

On October 30, 1990, the Hearing Officer from the Division of Administrative Hearings submitted to the St. Johns River Water Management District ("District"), and all other parties to the above-styled proceeding, a Recommended Order, a copy of which is attached as Exhibit "A". Petitioners Holland Properties, Inc. ("Holland") and Doris L. Keller, et al. ("Keller") and Petitioner The Corporation of the President of the Church of Jesus Christ of Latter Day Saints ("Deseret") filed exceptions to the Recommended Order. Respondent District and Respondent City of Cocoa ("City") filed responses to the exceptions. All of these pleadings were

timely filed and are part of the record. This matter thereupon came before the Governing Board on December 12, 1990, for final agency action.

BACKGROUND

The issue in this case is whether the District should approve the City's consumptive use permit application. The City is seeking to renew and modify a consumptive use permit previously issued by the District on February 19, 1979, for a wellfield located in Orange County, Florida. The City is currently permitted to withdraw water at an annual average daily rate of 30 million gallons and a maximum daily rate of 40 million gallons. The City is asking to increase these withdrawals up to a permitted annual average daily rate of 31 million gallons and a permitted maximum daily rate of 48 million gallons. Subject to certain limiting conditions to be set forth in the City's consumptive use permit, the water will be produced from 34 active Floridan Aquifer wells at an annual average daily rate of 29.1 million gallons and a maximum daily rate of 46.1 million gallons and from 14 Intermediate Aquifer wells at an annual average and maximum daily rate of approximately 1.9 million gallons. The District proposes to grant the permit application with certain specified conditions, as more particularly described in its Recommended Conditions, Application No. 2-095-0005AUGMR, February 1990. Deseret Ranches, and Holland and Keller, et. al, challenge the issuance of a permit

to the City on the basis of the City's alleged failure to comply with the applicable requirements of Chapter 373, Florida Statutes (F.S.), Florida Administrative Code (F.A.C.) Chapter 40C-2 and other applicable laws.

RULINGS ON PETITIONERS HOLLAND AND KELLER, ET AL. EXCEPTIONS

A. Exceptions to Findings of Fact

Exception No. 1:

This exception challenges all of Finding of Fact No. 25 except for the definition of "recharge". Petitioners assert that the findings therein were not based upon competent substantial evidence because the factual predicate relied upon in the supporting testimony was inaccurate. Petitioners' exception in essence asserts that conflicting evidence was presented regarding the composition of the Hawthorne Formation and accuracy of a United States Geologic Survey (USGS) recharge map to cast a doubt regarding the factual assumption on which Aikens attributed his expert opinion in support of the finding.

Paragraph 120.57(1)(b)10., F.S., prohibits the Governing Board from rejecting or modifying a hearing officer's finding of fact unless, from reviewing the entire record, there is no competent substantial evidence to support the finding. Ferris v. Austin, 487 So.2d 1163 (Fla. 5th DCA 1986); National Industries, Inc. v. Commission on Human Relations, 527 So.2d 894 (Fla. 5th DCA 1988); Freeze v. Dept. of Business Regulation, 556 So.2d 1204

(Fla. 5th DCA 1990). The decision to believe one expert over another is left to the hearing officer and cannot be altered absent a complete lack of competent substantial evidence from which the finding could reasonably be inferred. Fla. Chapter of Sierra Club v. Orlando Utility Commission, 436 So.2d 383, 389 (Fla. 5th DCA 1983). The sufficiency of the facts required to form the opinion of an expert must normally reside with the expert himself and any deficiencies in the facts required to form an opinion relate to the weight of the evidence. Gershanik v. Dept. of Professional Regulation, 458 So.2d 302 (Fla. 3d DCA 1984), rev. denied 462 So.2d 1106 (Fla. 1985); H.K. Corp. v. Estate of Miller, 405 So.2d 218, 219 (Fla. 3d DCA 1981); Quinn v. Millard, 358 So.2d 1378 (Fla. 3d DCA 1978). Furthermore, Respondents were not required to lay out in detail, all underlying facts or data which formed the basis of each expert's opinion. Subsection 90.705(1), F.S. The Governing Board is not authorized to weigh conflicting evidence, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion. Heifetz v. Dept. of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985). Accord, Smith v. Dept. of Health and Rehabilitative Services, 555 So.2d 1254 (Fla. 3d DCA 1989); Howard Johnson Co. v. Kilpatrick, 501 So.2d 59, 60 (Fla. 1st DCA 1987).

Petitioners assert that Aikens' reliance on a USGS map to determine the recharge of the area of the City's wellfield is suspect based upon the testimony of Petitioners' witness, William F. Lichtler. However, Aikens testified that he did not solely

rely on the map to form the basis of his opinion. (Aikens III: 160, 180-181). Moreover, such issue goes to the weight of the evidence. Additionally, whether the well drillers logs in Holland Ex. No. 21 detracts from the basis of the opinion evidence given by Aikens is a matter for the fact finder, not the Governing Board. Heifetz, supra.

Notwithstanding Petitioners' exception regarding Aikens' testimony, there is otherwise competent substantial evidence to support the finding and the exception is therefore rejected. (Levin: 15, 49; Levin V: 129-145; Pyne II: 12, 50; Glass VI: 76, 124, 126-127).

Exception No. 2:

Petitioners except the final paragraph of finding of fact no. 26 on the same basis as stated in Exception No. 1. The finding is likewise supported by competent substantial evidence and therefore the exception is rejected. (Aikens: 46-47; Levin: 15-16).

Exception No. 3:

Petitioners except the final sentence of finding of fact no. 61. This exception goes to the weight of the evidence and the Governing Board cannot reject a finding simply because it may think the basis of such finding is inconclusive. Berry v. DER, 530 So.2d 1019 (Fla. 5th DCA 1988). The finding is supported by competent substantial evidence and therefore the exception is rejected. (Levin: 36-37; Pyne: 93-94; Glass VI: 55-56, 84-85).

Exception No. 4:

Petitioners except finding of fact no. 62. There is competent substantial evidence to support the finding and therefore the exception is rejected. (Levin: 15, 49; Pyne II: 12; Glass VI: 76, 108-109, 111-112, 124, 126-127).

Exception No. 5:

Petitioners except the last sentence of finding of fact no. 65. Petitioners assert that no empirical data was submitted to support the expert opinion which is the basis for the finding and thus the basis for it is speculative. The failure of an expert witness to disclose the facts or data underlying his opinion does not make such opinion inadmissible. It is Petitioners' burden to challenge the factual basis for the opinion. City of Hialeah v. Weatherford, 466 So.2d 1127 (Fla. 3d DCA 1985); Section 90.705(1), F.S. Regardless, the finding is otherwise supported by competent substantial evidence and therefore the exception is rejected. (Aikens III: 199-200; Levin: 38, 42; Levin V: 124, 206; Glass VI: 84-85, 121).

Exception No. 6:

Petitioners except the final sentence of finding of fact no. 66. For the reasons set forth in the ruling to exception no. 5, this exception is likewise rejected. (Levin: 38-39, 42; Levin V: 213; Pyne: 99-100; Aikens: 55-56, 82-85, 89-93; Glass VI: 64, 66, 129; Bral VI: 155).

Exception No. 7:

Petitioners except all of finding of fact no. 68. Part of this exception is a recital of Petitioners' exception no. 1 as it relates to the hydrologic connection between the aquifers, and for the reasons set forth in the ruling on that exception, that portion of this exception is likewise rejected. There is also competent substantial evidence that the City's proposed withdrawal will not impact the levels of any surface water bodies or wetlands. (Levin: 49; Aikens: 129, 131-132, 134; Wilkening: 20-21, 44; Dunn: 48, 57-61; Hart: 45). Consequently, this exception is rejected.

Exception No. 8:

Petitioners except all of finding of fact no. 70 for the reasons set forth in exceptions nos. 1 and 7. Accordingly, for the reasons set forth in the ruling on exception nos. 1 and 7, this exception is also rejected. (Levin: 37-38; Aikens: 77, 80, 93-95, 99-120; Levin V: 124-125; Aikens VI: 171-178; Glass VI: 84-85).

Exception No. 9:

Petitioners except the last sentence of finding of fact no. 72 on the same basis as stated in exception no. 1. Accordingly, this exception is rejected for the reasons set forth in the ruling on Petitioners' exception no. 1. (Levin: 15-16, 47-49; Aikens: 54, 121; Glass IV: 75-76).

Exception No. 10:

Petitioners except the last sentence of finding of fact no. 79 for the reasons set forth in exception no. 1. This exception is rejected for the reasons set forth in the ruling on exception no. 1. (Aikens: 163, 171, 173-176).

Exception No. 11:

Petitioners except all of finding of fact no. 80 asserting that no evidence was offered as to whether the modeling analysis was affected by taking into account the backplugging of wells in the eastern wellfield. This finding of fact can be reasonably inferred from competent substantial evidence. (Aikens: 166; Stephenson: 119-120; Levin: 43-48; Levin V: 159-160).

Exception No. 12:

Petitioners except the first sentence of finding of fact no. 81. Petitioners' exception goes to the weight of the evidence premised upon the sufficiency of data to reach an evidentiary conclusion. The Governing Board cannot reweigh the evidence. The finding of fact is supported by competent substantial evidence and therefore the exception is rejected. (Levin: 43; Pyne: 42-43; Pyne II: 163; Levin V: 159-160, 172).

Exception No. 13:

Petitioners except all of finding of fact no. 84 asserting that no competent substantial evidence supports the finding.

Competent substantial evidence supports the finding and therefore the exception is rejected. (Levin: 43-45; Levin V: 158-160, 172, 175, 182-183, 189-190; Pyne: 42-43, 68, 79; Pyne II: 150, 163; Aikens: 157-161, 166-168; Aikens III: 49; Stephenson: 123).

Exception No. 14:

Petitioners except the first sentence of finding of fact no. 85 asserting that there is no competent substantial evidence to support it. Competent substantial evidence supports the finding and therefore the exception is rejected. (Pyne: 43; Pyne II: 162-163).

Exception No. 15:

Petitioners except the portion of finding of fact no. 86 which states "and lateral intrusion from east to west would have to flow against the natural gradient of the pieziometric surface." Petitioners' argument is to the weight given the evidence by the hearing officer. There is competent substantial evidence to support the finding and therefore the exception is rejected. (Pyne: 43; Pyne II: 161, 163; Levin V: 189-190).

Exception No. 16:

Petitioners except all of findings of fact nos. 87 through 89 asserting that the testimony of Petitioners' witness Lichtler should have been given greater weight than that of District witness Levin to support the findings. The Governing Board is not

free to reweigh the testimony of Levin and Lichtler, but rather is limited to determining whether some competent substantial evidence was presented to support the hearing officer's findings. South Florida Water Management District v. Caluwe, 459 So.2d 390 (Fla. 4th DCA 1989). Additionally, the decision to believe one expert over another is a matter left to the hearing officer if there is some evidence to support the decision. Fla. Chapter of Sierra Club, supra. There is competent substantial evidence to support the findings and therefore the exception is rejected. (Levin V: 158-160, 175, 177-178; Pyne: 43; Pyne II: 150, 162-163; Stephenson: 120; Aikens: 155, 166-167).

Exception No. 17:

Petitioners except all of findings of fact nos. 90 and 91 again asking the Governing Board to reweigh the evidence presented to the hearing officer at the hearing. There is competent substantial evidence to support the findings that degradation of water quality in the City's wells occurs primarily through upconing, and very insubstantially through lateral intrusion. (Levin: 43-45; Levin: 158-169, 172, 175, 182-183, 189-190; Pyne: 42-43, 68, 79; Pyne II: 150, 163; Aikens: 155-156, 166-168; Stephenson: 120). Therefore the exception is rejected.

Exception No. 18:

Petitioners except all of finding of fact no. 92 asserting that the finding is not supported by competent substantial

evidence for the reasons set forth in Petitioners' exception nos. 10 through 17. Consequently, for the reasons set forth in the rulings on Petitioners' exception nos. 10 through 17, this exception is likewise rejected. (Elledge: 14-15; Levin: 43-46; Aikens: 157-175; Pyne: 42-43, 68, 79-90; Hartman VI: 189-190).

Exception No. 19:

Petitioners except all of finding of fact no. 93 asserting that there was no competent substantial evidence presented to support the first paragraph of the finding. Petitioners are incorrect. There is competent substantial evidence that significant saline water intrusion occurs when a water use causes chloride concentrations to exceed 250 milligrams per liter. (Elledge: 14-15; Levin: 44). The second paragraph of the finding is also supported by competent substantial evidence and therefore the exception is rejected. (Levin: 43-44; Aikens: 88, 165, 170-173; Stephenson: 119-120).

Exception No. 20:

Petitioners except that portion of finding of fact no. 94, which states "and lack of a good hydraulic connection with the underlying Floridan makes it extremely unlikely that higher chloride concentrations will be moved from the Floridan into the Intermediate and surficial aquifers", for the reasons set forth in Petitioners' exception no. 1. Consequently, this exception is

rejected for the reasons set forth in the ruling on Petitioners' exception no. 1.

Exception No. 21:

Petitioners except all of the findings of fact nos. 98, 99 and 119 and that portion of the "Recommendation" found on page 45 of the Recommended Order which recommends approval of the permit "with the conditions proposed by District Staff in February, 1990."

Petitioners fail to explain with particularity why the hearing officer's findings and recommendation regarding the permit conditions should be altered or rejected. Petitioners merely recite the propriety of the conditions proposed by Petitioners. There is competent substantial evidence to support the permit conditions and therefore the exception is rejected. (Levin: 50-58; Wilkening: 41-44; Stephenson: 124-125, 174-157; Elledge 15; Wilkening V: 222).

Exception No. 22:

Petitioners except the first paragraph of finding of fact no. 108 asserting that the finding lacks evidentiary support. Petitioners essentially attack the credibility of the results of the double mass analysis performed to determine the effects the pumping will have on groundwater and surface water levels. Petitioners' exception again goes to the weight of the evidence, which the Governing Board may not reevaluate if there is some

competent substantial evidence to support the finding. Heifetz, Caluwe, supra. Whether the analysis was sufficient to support the opinions of the expert witnesses is a matter of weighing the evidence presented by the parties. There is competent substantial evidence to support the finding, therefore the exception is rejected. (Dunn: 18-20, 27-40; Wilkening: 18-20, 25-41; Wilkening V: 236-237).

Exception No. 23:

Petitioners except all of finding of fact no. 112 asserting that the finding is not supported by competent substantial evidence. Petitioners' exception is again an attack on the weight given to the evidence by the hearing officer based on the testimony and exhibits offered in the hearing. The hearing officer considered and weighed the testimony of Lichtler and the City and District witnesses to reach the finding. If there is some competent substantial evidence to support it, the finding must be upheld. Freeze, supra. There is competent substantial evidence to support the finding and therefore the exception is rejected. (Aikens: 130, 200-201; Levin: 15, 49; Glass VI: 76, 108-109, 111-112, 124, 126-127; Dunn: 48, 57-58).

Exception No. 24

Petitioners except the phrase "or other analysis" in finding of fact no. 114 as not supported by competent substantial evidence. Petitioners assert that witness Lichtler's testimony

casts doubt on the conclusions of the City's and District's witnesses. This exception goes to the weight of the evidence. There is competent substantial evidence that Petitioners performed no independent modeling or other analysis and that there will be no measurable effect upon the water table, surface water levels, or vegetation on any of Petitioners' property. (Hartman: 1-24; Hartman IV: 194-217; Hartman VI: 180-211; Drake: 1-29; Drake IV: 125-194; Lichtler: 1-45; Lichtler V: 54-106; Lichtler VI: 211-248; Holland V: 4-41; Baird V: 42-45; Edgerton V: 46-54; Levin: 15, 49; Aikens: 130, 200-201; Glass VI: 76, 108-109, 111-112, 124, 126-127; Dunn: 48, 57-58).

Exception No. 25:

Petitioners except the first paragraph of finding of fact no. 116 asserting that a showing of immediate injury is not required to establish standing pursuant to Challancin v. Florida Land and Water Adjudicatory Commission, 515 So.2d 1288 (Fla. 4th DCA 1987), and that the hearing officer improperly placed the burden on Petitioners to establish standing.

The law in Florida is quite clear that a petitioner in a Subsection 120.57(1), F.S., administrative proceeding must show that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a hearing and that the injury is of the type or nature which the hearing is designed to protect. South Florida Water Management District v. City of St. Cloud, 550 So.2d 551 (Fla. 5th DCA 1989); Agrico Chemical Co. v. Dept. of

Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981). Although Challancin did not involve a Section 120.57 proceeding as in this matter, the Court applied such precedent to conclude that there was a sufficient threat or immediacy of potential injury to the property of the Florida Audubon Society from flood control decisions relating to the proposed development to constitute an injury-in-fact to the properties of the Florida Audubon Society within the South Florida Water Management District.

Petitioners' exception confuses the burden on a petitioner in a Subsection 120.57(1), F.S., proceeding to prove the allegations of standing in his petition, with the burden of proof on a permit applicant to provide reasonable assurance of compliance with District rules. It is the City's burden as the permit applicant to establish by a preponderance of the evidence entitlement to the consumptive use permit. See, D.O.T. v. J.W.C. Co., Inc., 396 So.2d 778 (Fla. 1st DCA 1981); Middlebrooks v. St. Johns River Water Management District, DOAH Case Nos. 89-2396 and 89-2397, F.O.R. 89-750 and 89-778 (March 12, 1990). It is Petitioners' burden to demonstrate at the hearing that they will actually suffer the alleged injuries, which is a matter of proof. North Ridge General Hospital, Inc. v. NME Hospitals, Inc., 478 So.2d 1138 (Fla. 1st DCA 19850; Sullivan v. Northwest Florida Water Management District, 490 So.2d 140 (Fla. 1st DCA 1986). Therefore Petitioners' exception is rejected.

Exception No. 26:

Petitioners except all of finding of fact no. 120 asserting that it is not supported by competent substantial evidence as previously argued by Petitioners in previous exceptions and also the finding is actually a conclusion of law. For the reasons set forth in the rulings on Petitioners' previous exceptions, this exception is likewise rejected.

B. Exceptions To Conclusions of Law

Exception No. 27:

Petitioners except conclusions of law nos. 6 through 8 which conclude that the City's proposed water use is reasonable beneficial under the criteria in Subsection 40C-2.301(4), F.A.C. Petitioners evidently are asserting that the proposed use does not comply with Subsection 40C-2.301(4), F.A.C., because the District has to consider as another "relevant factor" under Section 10.2(q), Consumptive Uses of Water, Applicant's Handbook, the recommendation in the Governor's Water Resource Commission Report regarding the development of local supplies prior to the importation of water. The recommendations of the Commission set forth in the Report were facilitated by the Governor's Executive Order No. 90-21 which, inter alia, "calls upon" the state's water management districts to implement the recommendations. Both the Executive Order and Commission Report were accepted into evidence by the hearing officer, contingent upon their relevancy to this proceeding. (I: 17-18; IV: 14). The hearing officer later

rejected Petitioners' proposed finding regarding the importation issue as "unnecessary or contrary to the weight of the evidence." (Holland and Keller Proposed Finding No. 96; Recommended Order p. 50).

Petitioners' reliance on Section 10.2(q) of the Consumptive Uses of Water, Applicant's Handbook as the springboard for the placement of the Commission's recommendation at issue in this proceeding is misplaced. Section 10.2 of the Handbook merely sets forth the policy guideposts within Subsection 17-40.040(2), F.A.C., of the State Water Policy by which the District may develop programs, rules and plans. See Subsection 17-40.001(2), F.A.C. It is the general statutory authority in Chapter 373, F.S., and general factors within the State Water Policy by which the District is guided in adopting the regulatory criteria to determine whether a proposed use is reasonable beneficial. See Section 10.3, Applicant's Handbook. Therefore the applicable rule provisions to determine whether a proposed water use is reasonable beneficial are set forth in Subsection 40C-2.301(4), F.A.C., and Section 10.3, Applicant's Handbook. Inclusion of the "other relevant factors" consideration in paragraph 17-40.401(2)(r), F.A.C. (Section 10.2(q), A.H.) is an indication that a water management district, when adopting its reasonable beneficial use permitting criteria, is not limited to consideration of the specific factors enumerated in paragraphs 17-40.401(2)(a)-(q), F.A.C., but could also incorporate other matters deemed relevant during rulemaking by its Governing Board.

Petitioners have also misconceived the nature of the Executive Order and Commission Report and their applicability to this regulatory proceeding. The Governor's Water Resource Commission was established by the Governor's Executive Order No. 89-74 and was charged to analyze the current state of Florida's water resources and recommend steps necessary to ensure the continued enjoyment of the resource, as well as to determine whether current statutory environmental laws can protect the state's aquifers. (Appendix A1 of Report). The Commission Report provides "Recommendations" on "Water Supply Planning" and "Funding". (Commission Report pp. 12-24). The precise Commission recommendation relied upon in this exception states: "Encourage sound utilization of local and regional water supplies, by specifying in the State Comprehensive Plan and State Water Management Plan that local and regional water supplies should be developed prior to importation." (Commission Report p. 15). Consequently, the Commission Report merely encourages that the initial development of local and regional water supplies, rather than water importation be addressed in the State Comprehensive Plan and the State Water Management Plan. The Governor's Executive Order 90-21 also encourages these planning steps by calling upon the water management districts to address this issue in development of the State Water Management Plan. These documents are not regulatory in nature and are not laws or rules with which the Governing Board must comply in considering the issuance of a consumptive use permit. See, 1981 Opinion of the

Attorney General, Florida 081-49 (July 8, 1981) (Absent specific statutory authority, the Governor cannot by executive order give binding directions to a state agency); Kirk v. Baker, 224 So.2d 311 (Fla. 1969). Petitioners have not cited any authority to support this exception. Moreover, the Governing Board must act on a consumptive use permit application based solely on compliance with the District's rules in Chapter 40C-2 and with Chapter 373, F.S., not on non-compliance with other laws outside its ambit of authority. Council of the Lower Keys v. Torpinno, 429 So.2d 67 (Fla. 3d DCA 1983). Furthermore, Petitioners cite to no evidence in the record to establish a Governing Board policy requiring a consumptive use permit applicant to first exhaust the availability and treatment of local water supplies prior to allowance of water importation. See Fla. Cities Water Co. v. FPSC, 384 So.2d 1280 (Fla. 1980).

Additionally, Petitioners have by pretrial stipulation waived any argument that the subject matter of the Executive Order and Commission Report is an issue in this proceeding. Petitioners have stipulated that the applicable permitting provisions relevant to the City's application are Section 40C-2.301, with the exception of paragraph 40C-2.301(4)(g) and subparagraph 40C-2.301(5)(a)4., and the limiting conditions of Section 40C-2.381, F.A.C. All other issues are waived. (Paragraph D of Second Prehearing Stipulation). Consequently, Petitioners have expressly waived the applicability or relevance of the Executive Order and Commission Report to this proceeding. Nest v. Dept. of

Professional Regulation, 490 So.2d 987 (Fla. 1st DCA 1986); Lotspeich Co. v. Neogard Corp., 416 So.2d 1163 (Fla. 3d DCA 1982). Therefore this exception is rejected.

Exception No. 28:

Petitioners except those portions of Conclusion of Law No. 6 pertaining to compliance with paragraphs 40C-2.301(4)(f) and (h) because there is no competent substantial evidence to support such conclusion as explained by Petitioners in exceptions nos. 10 through 20. Consequently, for the reasons set forth in the ruling on Petitioners' exceptions nos. 10 through 20, there is competent substantial evidence to support the conclusion and therefore the exception is rejected.

Exception No. 29:

Petitioners except the last sentence of Conclusion of Law No. 8 asserting that the phrase "the water resources and citizenry of Orange County, the site of withdrawal, will not be harmed" is not supported by competent substantial evidence for the reasons set forth in Petitioners' prior exceptions. There is competent substantial evidence that the water resources and citizenry in the area of the proposed withdrawals will not be harmed by the City's proposed water use. (Levin: 15-16, 42-45, 49, 50-58; Levin V: 158-160, 172, 175, 177-178, 182-183, 189-190; Aikens: 52, 76, 79, 91, 96-98, 101-103, 129, 130-153, 157-161, 171, 173-175; Aikens III: 49; Pyne: 12, 42-43, 48, 68, 79, 110; Pyne II: 150, 163;

Glass VI: 75-76, 108-109, 111-112, 124, 126-127; Stephenson: 123; Wilkening: 20-25, 28-33, 44; Elledge: 14-15, 23-24; Dunn: 32-40, 57-58; Hart: 33, 34, 44-46). Therefore the exception is rejected.

Exception No. 30:

Petitioners except all of Conclusion of Law No. 10 which finds that the City has met its burden by proving entitlement to the permit. Petitioners assert that the City failed to prove that the geological strata for the Lake Mary Jane area are likely to be what the City has modelled. Petitioners also imply that the placement of testing and monitoring conditions on the permit is inconsistent with the City's burden of showing compliance with Sections 40C-2.301 and 40C-2.381, F.A.C.

There is competent substantial evidence to support the conclusion that the geographical strata are likely to be what the City has modelled. (Levin: 15, 36-37, 42-49; Levin V: 123, 212, 182-190; Aikens: 45, 47, 52-55, 82-83, 88-91, 126-129, 170, 173; Aikens III: 49; Glass VI: 55-56, 64, 66, 76, 80-85, 108-109, 111-112, 124-129; Pyne: 42, 93-94, 99-106; Pyne II: 12, 150, 163).

It has been explicitly set forth in the rulings on Petitioners previous exceptions that there is competent substantial evidence to support the conclusion that the City has shown entitlement to the consumptive use permit. Subsection 373.219(1), F.S., and Subsection 40C-2.381(1), F.A.C., authorize the Governing Board to place reasonable conditions on a consumptive use permit to ensure that there is no harm to the

water resources and that the use remains consistent with the objectives of the District. It is not the City's burden to show that a violation of the criteria in Chapter 40C-2, F.A.C., is a scientific impossibility, only to show that the non-occurrence of such violation is reasonably assured by the preponderance of evidence in the proceeding. The inclusion of the permit conditions are necessary to provide this assurance. (Levin: 50-58; Hart: 44-46; Wilkening: 41-44; Dunn: 57-58). Therefore the exception is rejected.

Exception No. 31:

Petitioners except that portion of Conclusion of Law No. 11 which states, "However, the evidence they produced to challenge the studies conducted by the City and review by the District fail to establish that even as 'existing legal users' they would be injured by the consumptive use sought by the City." Petitioners argument is a continued elaboration of the argument set forth in exception no. 25 regarding a petitioner's burden to show injury-in-fact to establish standing and the City's burden to show entitlement to the permit. Accordingly, based upon the reasons set forth in the ruling on exception no. 25, this exception is also rejected.

RULINGS ON DESERET'S EXCEPTIONS

A. Exceptions to Findings of Fact

Petitioner Deseret has filed exceptions to findings of fact nos. 25, 30, 31, 33, 35, 42, 44, 46, 47, 50, 52, 53, 54, 55, 61, 62, 63, 65, 66, 68, 70, 71, 72, 73, 74, 76, 80, 81, 85, 88, 89, 91, 92, 93, 94, 96, 97, 98, 99, 108, 112, 114, 116, 117, 118, 119 and 120 on the grounds that "they are not supported by the greater weight of the evidence and/or have not been proven by substantial competent evidence." Deseret merely cites to transcript references to support the exceptions. The Governing Board is not authorized to reweigh the findings of the hearing officer. Heifetz v. Dept. of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985).

Subsection 40C-1.564(3), F.A.C., states that "Each exception shall state with particularity the finding of fact, conclusion of law, or recommendation which is objectionable and the reasons therefor." Deseret's exceptions to the findings of fact merely state a disagreement with the findings without offering any specific explanation of the basis for its position that the hearing officer's findings are not supported by competent substantial evidence. The exceptions fail to comply with Subsection 40C-1.564(3), F.A.C. Accordingly, a lack of competent substantial evidence in the record not being shown by Deseret for each finding of fact to which Deseret takes exception and the presence of ample competent substantial evidence in the record to

support each finding, the Governing Board rejects all of Deseret's exceptions to the hearing officer's findings of fact.

B. Exceptions to Conclusions of Law

Deseret excepts Conclusion of Law No. 6 in the following respects:

Deseret disagrees that there is competent substantial evidence to support the conclusion that the City's proposed usage is in a quantity necessary for economic and efficient utilization as required by paragraph 40C-2.301(4)(a), F.A.C. There is competent substantial evidence to support the conclusion. (Levin: 21, 31-34, 52; Levin V: 197-198; Stephenson: 15-16, 70-71, 77, 132-134, 162-163, 173; Pyne: 26, 29, 30-35, 39-40, 51-52, 107-108, 115, 117; Pyne II: 22, 27-30, 72-73, 104-105, 209-210; Elledge: 20).

Deseret disagrees that the evidence supports the conclusion that the sources of the proposed use are capable of providing the requested amounts as required by paragraph 40C-2.301(4)(c), F.A.C. There is competent substantial evidence to support the conclusion. (Aikens: 202; Levin: 34-35).

Deseret disagrees with the conclusion that the City's proposed use complies with paragraph 40C-2.301(4)(d), F.A.C. Although the exception goes to the weight of the evidence, there is competent substantial evidence to support the conclusion. (Aikens: 51-153, 176; Levin: 46-49; Pyne: 70-75, 110-112,

Wilkening: 16-17, 20, 36-37, 44; Glass VI: 76, 108-112, 119; Stephenson: 174-178, 180-181; Dunn: 33-43, 50-63; Hart: 23, 30).

Deseret disagrees with the conclusion that the City's proposed use complies with paragraph 40C-2.301(4)(f), F.A.C., by not causing significant saline water intrusion in the western wellfield or further aggravating existing saline water intrusion in the eastern wellfield. There is competent substantial evidence to support the conclusion. (Aikens: 169-172; Levin: 43-45; Levin V: 156-161; Pyne: 42-43, 68, 79-88, 108-110; Elledge: 14-15, 20).

Accordingly, Deseret's exception to Conclusion of Law No. 6 is rejected.

Deseret excepts Conclusion of Law No. 7 asserting, without explanation, that the conclusion is based on unreliable evidence. This exception goes to the weight given to the evidence by the hearing officer and for that reason alone this exception must be rejected. Nevertheless, there is competent substantial evidence to support the conclusion. (Levin: 40-42, 48; Aikens: 102-121).

Deseret excepts Conclusion of Law No. 8 asserting that the hearing officer has misinterpreted Section 373.223, F.S., by determining that the proposed use serves a "public purpose" rather than whether the proposed use is "consistent with the public interest." Deseret misunderstands the conclusion. The hearing officer not only concluded that the use serves a public purpose by providing a public water supply to the City's residents as well as to neighboring local governments, but that such use will not harm the water resources and citizenry of Orange County wherefrom the

water is withdrawn. The Governing Board has construed Section 373.223, F.S., in Section 9.3 of the Consumptive Uses of Water, Applicant's Handbook to require a determination of 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. The conclusion of law is consistent with the rule by finding that the proposed use is beneficial to the City's residents and other users of water as a public supplier, without harm or being detrimental to the water resources and people of the area. Therefore the exception is rejected.

Deseret excepts Conclusion of Law No. 9 that the proposed use will not cause a significant inducement of saline encroachment. Deseret challenges the wisdom of the conclusion rather than explaining with particularity why there is no competent substantial evidence to support the conclusion. The conclusion is supported by competent substantial evidence. (Aikens: 169-172; Levin: 43-45; Levin V: 156-161; Pyne: 42-43, 68, 79-88, 108-110; Elledge: 14-15, 20). Therefore the exception is rejected.

Deseret excepts Conclusion of Law No. 10 disagreeing with the hearing officer's conclusion that the City has met its burden of proving entitlement to the consumptive use permit. The exception goes to the weight given to the evidence by the hearing officer in reaching the legal conclusion and therefore the conclusion shall remain undisturbed. Deseret also asserts that the recommended permit conditions do not provide reasonable assurance against any

harm that might result from the City's water use. There is competent substantial evidence that the recommended conditions are reasonable to assure that the City's use will not be harmful to the water resources of the area and is consistent with the objectives of the District pursuant to Subsection 373.219(1), F.S., and Subsection 40C-2.381(1), F.A.C. (Levin: 51-58; Elledge: 14-15; Hart: 44-46; Wilkening: 41-44). Therefore the exception is rejected.

Deseret excepts Conclusion of Law No. 11 that Deseret failed to establish standing in the proceeding. It was Deseret's burden, as a petitioner for the administrative proceeding, to demonstrate through evidence that Deseret will actually suffer the injuries alleged in its petition. North Ridge General Hospital, Inc., supra. Deseret fails to explain with particularity how the hearing officer's conclusion is not supported by any competent substantial evidence. Further, Deseret's exception is similar to Holland's exceptions nos. 25 and 31. For these reasons, the exception is rejected.

Furthermore, in all of Deseret's exceptions to the Hearing Officer's conclusions of law, Deseret is simply rearguing the opinions of its experts in the context of the permitting criteria of Section 40C-2.301, F.A.C., and is asking the Governing Board to reweigh the evidence, which it is not permitted to do. Heifetz, supra.

In an epilogue to its Exceptions, Deseret seeks the Governing Board to adopt permit conditions offered by Deseret to supplement

the Special Conditions litigated in the hearing and recommended by the hearing officer. These proposed conditions are substantially similar but not identical to the conditions in Deseret's Proposed Recommended Order which were rejected by the hearing officer in finding of fact no. 119 as cumulative or unnecessary. Deseret fails to explain with particularity how the finding is not supported by competent substantial evidence. More importantly, the Governing Board is precluded by law from adopting in its final order matters based upon supplemental findings outside the record of the proceeding or rejected by the hearing officer unless the hearing officer's findings are not supported by some competent substantial evidence. Subparagraph 120.57(1)(b)10., F.S.; Bekiempis v. Dept. of Professional Regulation, 421 So.2d 693 (Fla. 1st DCA 1982). Therefore the exception is rejected.

Having ruled on the Exceptions it is:

ORDER

WHEREFORE, having considered the Recommended Order of the hearing officer, the Exceptions thereto filed by the Petitioners, and the Responses to Exceptions filed by the Respondents, and having further reviewed the transcript and record of this proceeding, and being otherwise fully advised in the premises, it is thereupon:

ORDERED that the hearing officer's Recommended Order dated October 26, 1990, attached hereto as Exhibit A, is adopted in its

entirety as the final action of the Governing Board of the St. Johns River Water Management District and it is

ORDERED that the City of Cocoa's application for a consumptive use permit is hereby granted under the terms and conditions as provided herein and with the addition of a condition that the City install flow meters on each of the new wells and on each of the existing wells for which the permit is being renewed and it is

ORDERED that the petitions of the Corporation of the President of the Church of Jesus Christ of Latter Day Saints, Holland Properties, Inc., and Doris L. Keller, et al. are dismissed.

Done and Ordered this 12th day of December, 1990.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

12/12/90
(DATE)

Saundra H. Gray
SAUNDRA H. GRAY, CHAIRMAN
GOVERNING BOARD

RENDERED this 13th day of December, 1990.

Patricia C. Schultz
PATRICIA C. SCHULTZ
DISTRICT CLERK

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, A UTAH CORPORATION, d/b/a in Florida under the name of DESERET RANCHES, Petitioner, vs. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, and CITY OF COCOA, Respondents.	)	CASE NO. 89-0828
HOLLAND PROPERTIES, INC., Petitioner, vs. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and CITY OF COCOA, Respondents.	)	CASE NO. 89-5419
DORIS L. KELLER, ODELL WARREN, WILLIAM S. KIRK, JR., STEVEN M. COPELAND and BONNIE K. COPELAND, his wife, DEBORAH A. BUCHANAN, LUCILLE C. RADULSI, TOM PETERSON and KAREN PETERSON, his wife, KEN BIBLE and LAURA BIBLE, his wife, BRUCE ARCHEBELLE and TOMMIE ARCHEBELLE, his wife, FREDERICK E. BOYD, JR. and JUDY ROCHE BOYD, his wife, BARBARA JIGOULEFF, GILL HEUGHEBAENT, JERRY EARP and LAURA L. EARP, his wife, JOHN JENIEC and DEBRA JENIEC, his wife, ROBERT G. FAUROT and GERRI LYNN FAUROT, his wife, DANIEL A. SHAW and SANDRA J. SHAW, his wife, LOWELL HALCOM and LILLIAN HALCOM, his wife, RICHARD A. PEARCE and JUDITH A. PEARCE, his wife, MURRAY SAPPINGTON and DIANE SAPPINGTON, his wife, SUSAN KAY OUSLEY, LONNIE JENKINS, JR., and KAREN JENKINS, his wife, JIM M. MANEELY and EILEEN C. MANEELY, his wife, HENRY J. HOPKINS and BETTY	)	

HOPKINS, his wife, TERRY L. BURKE and WENDY W. BURKE, his wife, TERRY L. GARDNER and VIRGINIA B. GARDNER, his wife, TIMOTHY A. SCHULLER and LYSA K. SCHULLER, his wife, PHILLIP DEPUTY GRASSELLI and ANTOINETTE GRASSELLI, his wife, ROBERT L. EDGERTON and LUCY T. EDGERTON, his wife, JO ANN POWELL and NORMA D. DAVID, JAMES YOUNG and NANCY YOUNG, his wife, EARNEST G. FIELDS, d/b/a ISLE OF PINES COUNTRY STORE, and ISLE OF PINES PROPERTY OWNERS ASSOCIATION, INC., a Florida Corporation,

Petitioners,

vs.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT and CITY OF COCOA,

Respondents.

CASE NO. 90-1488

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Mary Clark, held a formal hearing in the above-styled consolidated cases on May 16-18, 1990, in Cocoa, Florida and on May 21-24, 1990, in Orlando, Florida.

APPEARANCES

For Petitioner, Corporation of the President of the Church of Jesus Christ of Latter Day Saints ("Deseret"):	Frederick T. Reeves Blain and Cone 202 East Madison Street Tampa, FL 33602
For Petitioners, Holland Properties, Inc., ("Holland") and Doris L. Keller, et al. ("Keller, et al."):	Robert W. Morrison and Donald G. Morrison Wells, Morrison, Davis and Bergstrom 340 North Orange Avenue Orlando, FL 32802
For Respondent, St. Johns River Water Management District ("District"):	Kathryn L. Mennella St. Johns River Water Management District Post Office Box 1429 Palatka, FL 32178-1429

For Respondent, City of Cocoa ("City"):

Edward P. de la Parte, Jr.
and David M. Caldevilla
de la Parte and Gilbert
705 East Kennedy Blvd.
Tampa, FL 33602

STATEMENT OF THE ISSUES

The parties' Second Prehearing Stipulation filed on May 10, 1990, describes the nature of the controversy as follows:

> The issue in this case is whether the District should approve the City's consumptive use permit application. The City is seeking to renew and modify a consumptive use permit previously issued by the District on February 19, 1979 for a wellfield located in Orange County, Florida. The City is currently permitted to withdraw water at an annual average daily rate of 30 million gallons and a maximum daily rate of 40 million gallons. The City is asking to increase these withdrawals up to a permitted annual average daily rate of 31 million gallons and a permitted maximum daily rate of 48 million gallons. Subject to certain limiting conditions to be set forth in the City's consumptive use permit, the water will be produced from 34 active Floridan Aquifer wells at an annual average daily rate of 29.1 million gallons and a maximum daily rate of 46.1 million gallons and from 14 Intermediate Aquifer wells at an annual average and maximum daily rate of approximately 1.9 million gallons. The District proposes to grant the permit application with certain specified conditions, as more particularly described in its Recommended Conditions, Application No. 2-095-0005 AUGMR, February 1990. Deseret Ranches, Holland, and Keller, et al challenge the issuance of a permit to the City on the basis of the City's alleged failure to comply with the applicable requirements of Chapter 373, Florida Statutes, Florida Administrative Code Chapter 40C-2 and other applicable law. (pp. 2-3)

The disputed issues of law or fact are more specifically described as follows:

1. Whether the use of water reflected in the City's consumptive use permit application meets all the criteria specified in Rule 40C-2.301, F.A.C., with the exception of 40C-2.301(4)(g) and 40C-2.301(5)(a)4., F.A.C., which are irrelevant to the application;
2. What limiting conditions pursuant to Rule 40C-2.381, F.A.C., should be imposed on the City's proposed consumptive use, if granted; and
3. Whether Deseret Ranches, Holland and Keller, et al. have standing to challenge the City's consumptive use permit application pursuant to Section 120.57(1), F.S.

Two issues raised in Petitioners' pleadings were ruled irrelevant to this proceeding in a prehearing order entered on April 26, 1990: the parties were precluded from presenting evidence related to adverse affects to water uses that were not in existence at the time the permit application was filed and evidence related to any interdistrict transfer of water.

PRELIMINARY STATEMENT

This case arose when Deseret filed its Petition in opposition to the District's notice of intention to grant a consumptive use permit to the City of Cocoa, as described in application no. 2-095-0005AUGMR.

Other petitions in opposition or motions to intervene were filed by Orange County, Econ Utilities Corporation, International Corporate Park Associates, International Corporate Park, Inc., John J. Brunetti, Wedgefield Development Corporation, Orlando Utilities Commission and Holland Properties. The motions were granted, and all of the petitions were consolidated after referral to the Division of Administrative Hearings by the District.

At various times prior to November 1989, all Petitioners except Deseret and Holland settled their differences with the City and dismissed their petitions. Their files were closed.

In early November 1989, the City submitted an amended application to the District which, among other changes, relocated some proposed wells and provided additional modeling of the impacts of the relocations. The hearing, which had already been continued once, was reset to commence on February 26, 1990, to allow notice to additional potential parties.

An error in the newspaper notice resulted in the need to republish, and ultimately the need for another hearing continuance, when a new petition (Keller et al.) was filed in response to the corrected publication. This petition was on behalf of individual property owners near Lake Mary Jane, in Orange County, in the vicinity of well sites proposed in the City's amended application.

Two such property owners, Richard A. and Judith A. Pearce, opted to proceed pro se. However, they did not participate in discovery nor did they appear at the hearing. Other individuals, originally included in the petition, John and Debra Jeniec and Earnest G. Fields, d/b/a "Isle of Pines County Store", voluntarily withdrew from the case prior to hearing.

At the final hearing, the City presented the following witnesses: William H. Stephenson, accepted as an expert in environmental engineering and operating and managing of public water supply and waste water utilities; David Pyne, accepted as an expert in water resource engineering and hydrology; Alan Aikens, accepted as an expert in hydrogeology, hydrology, analytical groundwater flow modeling, numerical groundwater flow modeling, and solute transport modeling; William J. Dunn, accepted as an expert in botany, biology, and ecology; Paul Genho, through introduction of his deposition; John P. Glass, accepted as an expert in geohydrology, groundwater flow modeling, and solute transport modeling; Richard S. Levin, accepted as an expert in geology, hydrogeology and groundwater modeling; and Kevin Bral, accepted as an expert in water resources engineering and hydrology.

The following exhibits offered by the City were received in evidence: 1-48, 50-71, 73-152, 156, 166, 170-172, 200, 202-206, 271, and 296-297.

Deseret presented the following witnesses: Charles W. Drake, accepted as an expert in geology, hydrogeology, hydrology, groundwater flow modeling, and review of the setup of a solute transport model and how it would interact with a groundwater flow model; and Gerald C. Hartman, accepted as an expert in water resources engineering and hydrology.

The following exhibits offered by Deseret were received in evidence: 1-3, 5, 7, 16, and 19-21.

Holland and Keller, et al., presented the following witnesses: Robert S. Holland; Richard A. Baird; Lucy T. Edgerton; and William F. Lichtler, accepted as an expert in geology and hydrogeology, including the areas of water supply, groundwater flow modeling, well field design and construction, consumptive use permitting, saltwater intrusion, environmental impacts of water resources development, and artificial recharge, including aquifer storage and recovery wells.

The following exhibits offered by Holland or Keller et al., were received into evidence: 2-36, and Edgerton #1. Holland exhibit #1, an intra-agency District memo regarding a prior application by the City, was marked for identification with a ruling on its admissibility withheld. The exhibit is rejected as irrelevant.

The District presented the following witnesses: Richard S. Levin, accepted as an expert in geology, hydrogeology and groundwater modeling; Harold A. Wilkening, III, accepted as an expert in hydrology and water resources engineering; Lance D. Hart, accepted as an expert in plant ecology and wetland ecology; and Jeffrey C. Elledge, accepted as an expert in hydrology and water resources engineering.

The following exhibits offered by the District were received into evidence: 1-6, and 10-13.

The direct testimony of all witnesses designated as experts was prefiled, with thorough cross and redirect examination at the hearing.

A transcript of the proceeding was filed and a deadline for filing proposed recommended orders and other post-hearing argument was extended until September 17, 1990, when counsel for Holland was hospitalized in August.

Specific rulings on the findings of fact proposed by each party are found in the attached appendix.

On September 25, 1990, the City filed a motion to strike portions of Deseret's proposed recommended order, a "recommendation" section outlining twenty-two proposed permit conditions. Deseret responded to the motion on October 2, 1990. The motion is DENIED. The proposed conditions are not included as findings of fact and are not considered "evidence", but rather in the nature of argument as to what conditions should be imposed if the permit is to be granted.

FINDINGS OF FACT

The Parties

1. The City is a municipal corporation of the State of Florida. The City owns and operates a public water utility system which supplies potable water to the City of Cocoa, Cocoa Beach, Rockledge, Cape Canaveral, certain unincorporated areas of Brevard County, Merritt Island, Patrick Air Force Base, Cape Kennedy, Cape Canaveral Air Force Station, and the Cocoa Beach Ocean Tracking Annex. Potable water is provided to approximately 136,000 persons in that service area.

2. The District is an agency created pursuant to Chapter 373, F.S., with the responsibility for regulating consumptive uses of water in a nineteen county area of the State of Florida, including all of Brevard County and that part of Orange County on which the City's wellfield is located.

3. Deseret Ranches is a Utah corporation authorized to do business in the State of Florida. Deseret owns real property in eastern Orange County surrounding the City's existing wells. Twenty-one of the City's proposed wells are to be located on Deseret's property.

Deseret's operations in the vicinity of the wells include citrus, cattle, sod harvesting, forestry, and wildlife management for hunting leases.

4. Holland Properties, Inc., is a closely-held Florida corporation owning real property in eastern Orange County on which three of the City's proposed wells are to be located. Holland's business is primarily citrus and cattle.

Holland has four wells on its property, one at a dwelling, one at the bunkhouse and cattle pens, and two in the citrus groves.

5. Doris Keller, the Isle of Pine Property Owners Association and remaining individual petitioners own residential property near and bordering Lake Mary Jane within a two-mile radius of proposed City wells #32 and 33. The property owners generally maintain individual wells for domestic and irrigation purposes.

6. The corporate and individual petitioners are existing legal users of water.

The System and WellField

7. The City's public water utility system consists of a wellfield and raw water collection lines, the Wewahootee pump station, transmission lines from the pump station to the treatment plant, the Dyal water treatment plant, and a distribution system which includes both elevated and ground storage.

The distribution system is located in Brevard County; the wellfield and rest of the utility are located in eastern Orange County, west of the St. Johns River. The entire system and its users are located within the boundaries of the District.

8. The City's wellfield is divided into an eastern wellfield and a western wellfield which together have a total of twenty-three active wells and nine inactive wells. Active wells 7A, 13, 14, 15, 16, 17, 18, and 19 are located in the western wellfield. Active wells 1, 2, 3, 4, 4A 1, 5, 7, 7T, 8, 9, 10, 11,

12A, 12B and R-1; and inactive wells 1T, 2T, 3T, 4T, R-2, R-3, R-4, R-5, and R-6 are in the eastern wellfield.

9. The wells designated with a prefix "R" are aquifer storage and recovery (ASR) wells. These are used to inject partially treated water into an underground formation for storage and later use in meeting maximum day demands on the utility. All six ASR wells have been constructed, and well R-1 is operating under a temporary consumptive use permit. All of the ASR wells are located on the 63-acre Dyal water treatment plant site owned by the City.

When all are operational the six ASR wells will have a combined recovery capacity of approximately 8 million gallons a day (MGD).

10. The City has been operating its wellfield for more than thirty years.

The Application

11. On February 20, 1979, the District issued consumptive use permit (CUP) #2-095-0005 to the City for its eastern Orange County wellfield. The permit approved a total of 30 MGD average daily withdrawal and 40 MGD maximum daily withdrawal. This total included an existing use of 16 MGD average daily withdrawal and 23 MGD maximum daily withdrawal, approved for a period of 25 years.

The new use, 14 MGD average daily withdrawal and 17 MGD maximum daily withdrawal, was approved for 10 years.

12. In September 1988, the City submitted its CUP application to renew the new use approval due to expire in February 1989. This application also sought an increased allocation to meet projected demand for the City's service area.

The application included a request for authority to withdraw surface water from the Taylor Creek Reservoir, but this request was withdrawn in February 1989.

The total consumptive use allocation sought in CUP application #2-095-0005 is 31 MGD average daily withdrawal and 48 MGD maximum daily withdrawal, which total includes the approved existing use which will not expire until the year 2004.

13. The City proposes to add seven new Floridan aquifer wells (wells 38, 39, 40, 41, 42, 43 and 44) and eleven new intermediate aquifer wells (wells 5T, 6T, 8T, 9T, 10T, 11T, 12T, 13T, 14T, 15T and 16T) to the eastern wellfield; all to be located on land currently owned by Deseret.

14. The City proposes to add six new Floridan aquifer wells to the western wellfield: wells 20, 21, 22, 31, 32 and 33. Wells 20, 21 and 22 will be located on land currently owned by Deseret. Wells 31, 32 and 33 will be located on land currently owned by Holland.

15. The application includes the addition of all six ASR wells on land owned by the City.

16. The City proposes to activate two existing Intermediate aquifer wells, 2T and 3T.

17. District staff issued a technical staff report dated February 6, 1989, recommending approval of the September 1988 application, with conditions.

18. After the application was amended in November 1989, District staff again reviewed it and prepared revised permit conditions, dated February 21, 1990.

Petitioners have not directly contested those conditions but have proposed their own conditions if their position regarding denial of the permit is rejected.

Description of the Geology and Hydrogeology

19. An aquifer is a geologic unit, portion of a geologic unit or combination of geologic units containing water that can be withdrawn economically.

There are four significant aquifer systems in the area of the City wellfield: the Surficial aquifer, the Intermediate aquifer, the upper Floridan aquifer and the lower Floridan aquifer.

20. The potentiometric surface, or "head" of an aquifer refers to the pressure surface of a confined or semi-confined aquifer. It is the level above the top of the aquifer to which water will rise within a tightly cased well completed in the aquifer.

21. Fine grained sands, clay and shell deposits exist from land surface to approximately 50 feet below land surface (BLS). The saturated portion of this unit comprises the Surficial aquifer, sometimes called the shallow or water table aquifer.

22. From approximately 50 feet to 60 feet BLS there is a discontinuous clay lens. This unit acts as a semi-confining unit between the Surficial aquifer and the underlying Intermediate aquifer. There is a reasonably good hydraulic connection between the Intermediate and Surficial aquifer in the vicinity of Lake Mary Jane.

23. The Intermediate aquifer lies approximately 60 feet to 100 feet BLS, and is comprised of water-bearing shell layers mixed with sand.

24. Below the Intermediate aquifer is a thick clay layer, called the Hawthorn formation, which is a confining layer separating the Intermediate from the underlying Floridan aquifer.

Within the Hawthorn are discontinuous lenses of marl (clayey limestone) which in some areas can produce water. The Hawthorn extends from approximately 100 feet BLS to 250 feet BLS, and becomes less thick heading west.

25. The Hawthorne formation in the subject area has extremely low permeability, making it very difficult for water to move through the formation. It is widely accepted that there is a poor hydraulic connection between the Floridan aquifer beneath the Hawthorne, and the Intermediate and Surficial aquifers above the Hawthorne. The subject area has one inch or less per year recharge to the Floridan from the overlying aquifers.

"Recharge" means the supply of water to an aquifer from an outside source, for example, rainfall.

26. Below the Hawthorne formation is the massive limestone and dolomite sequence of the Floridan aquifer, divided generally into an upper and lower region, with the upper Floridan beginning at approximately 250 feet BLS descending to 650 feet BLS, and the lower region extending from approximately 650 feet BLS to greater than 1100 or 1200 feet BLS.

Most of the water in the Floridan aquifer in the subject area enters horizontally from the Floridan aquifer in the recharge area of western Orange County.

27. There is a natural flow from west to east, from the high recharge area and higher head, to the lower head in the east.

28. All but one of the active wells in Cocoa's existing wellfield draws from the upper Floridan aquifer. Well 7T withdraws water from the Intermediate aquifer. Wells 1T, 2T, 3T and 4T, currently inactive, are designed to withdraw water from the Intermediate aquifer.

None of the proposed new wells will draw from the lower Floridan or Surficial aquifers.

29. The Floridan and Intermediate aquifers are capable of producing the quantity of water requested by the City, a fact which at various times in this proceeding has been admitted by Petitioners' experts, Lichtler and Drake.

Wellfield Design and Operation

30. In its 30 years of operation the City has made some wellfield management errors. A number of wells were drilled too deep and pumped too hard, causing deterioration in the water quality of wells in the eastern wellfield when poorer quality water located deep within the Floridan aquifer was drawn upward into the wells.

31. The City has begun addressing elevated chloride levels by backplugging some of its upper Floridan aquifer wells, with success. The Petitioners are urging expansion of the City's backplugging program. However, the production capacity of a well is reduced by backplugging.

32. The total capacity of the City's wellfield with all existing active wells operating is approximately 38 MGD. In 1989 the peak demands for water came close to exceeding capacity on several occasions, thus there is currently no reserve capacity in the wellfield.

33. Due to the lack of reserve, the District issued water shortage orders dated November 14, 1989 and April 10, 1990, imposing water shortage restrictions in the City's service area.

34. Reserve capacity is essential to sound wellfield management. It provides flexibility and the ability to meet water demands during routine maintenance or in the event of loss of a well due to pump breakdown or lightning strike.

Additional wells will allow the City to redistribute pumpage to reduce the negative impacts of pumping in the eastern wellfield.

35. Twenty percent, the amount requested in the City's application, is a reasonable and appropriate reserve in excess of the City's projected maximum daily demand.

The City's current wellfield is physically incapable of meeting projected 1997 water demands, even without a reserve.

Water Demand Conservation and Reuse

36. In 1989 the City withdrew water from its wellfield at a rate of 26 MGD average daily withdrawal and 38 MGD maximum daily withdrawal.

The City's application requests an increased allocation to meet a reasonable projected demand over the next seven years.

37. In 1989 the City served approximately 136,000 persons and anticipates serving 160,000 by 1997, based on projections from the Brevard County planning department.

38. In projecting need for the year 1997, the City took an average of the results of two projection methods: a straight line method and a population-based method.

39. The straight line method is based on historical average and maximum daily demands on the system from 1984 through 1987, the four full years prior to the City's application submittal. This method projects a demand in 1997 of approximately 36 MGD average daily withdrawal and 57 MGD maximum.

40. The population-based method calculates future average daily demands based on projections of future equivalent residential connections. Future maximum daily demands are calculated by applying an historic ratio of maximum day to average day demands. The ratio for the period 1983-1987 was 1.57.

This method predicts an average daily demand of 29 MGD and maximum daily demand of 45 MGD in 1997.

41. Averaging the two results yields a prediction of 32.5 MGD average demand and 51 MGD maximum daily demand for the City's service area in 1997.

42. Reasonable persons can differ as to future demand projections. Gerald Hartman, Deseret's expert, projected less demand but only projected to the year 1995, as he advocates a shorter term permit than the seven years requested by the City. He also obtained historical data over an eighteen year period between 1970 and 1987, when the area was experiencing a lower growth rate.

When extrapolated to a seven, rather than five year projection, Hartman's figures are reasonably close to those projected by the City.

43. Historical demand data for the years 1988 and 1989 since the City's application was filed, are consistent with the City's projections.

44. It is generally preferable to over-project demand, rather than under-project and have insufficient water available for the service area's needs.

45. The District staff's proposed special permit conditions #12 and 13 provide a gradual increase in allocation over the period of the permit, up to 48 MGD maximum daily withdrawal in 1997.

In addition, permit condition #9 reserves to the District the right to modify annual allocations if the permittee does not reach its new projected demand in the service area.

46. Although the projected maximum daily demand is 51 MGD, the application seeks 3 MGD less, or an allocation of 48 MGD. Some of this deficit will be mitigated by more effective reuse and conservation methods.

47. The City employs a full-time conservation officer to conduct education and retrofitting programs. The City's conservation efforts are consistent with other permitted users, and its commitment to reuse measures has been reasonable.

The City and other governmental units or installations within its service area are reusing domestic wastewater at a rate of approximately 30%.

48. Except for its contract with the City of Cocoa Beach, the City currently does not have the authority to impose reuse and conservation beyond its own municipal jurisdiction. As the contracts expire, renewal contracts will include such provisions.

49. The District requires additional information to support requests with per capita usage above 150 GPD. Based on the total number of residential connections and water usage billed to residential meters, the City reasonably derives a per capita usage rate of 72 gallons per day.

50. Alternate sources are not reasonably available to meet the City's system's near future water demands.

51. Development of the Taylor Creek Reservoir as a surface water source will take approximately five to eight years -- too long to meet the City's needs now and in the interim.

52. Reverse osmosis plants (sometimes called desalination) may be a viable source of water in the Brevard County area in the future, but they have a limited potential yield and are a costly alternative. Moreover, this alternative is not available now for Cocoa's near-future needs.

53. Storage facilities are useful for meeting hourly demands during the day. They are filled at night and drained during the day when necessary. However, with a lightning strike or mechanical failure which might take several days or several weeks to repair, the storage tanks will not replace a lost well.

54. ASR wells are a relatively new technology. The first in Florida became operational in 1984. They do not produce new water, but rather provide additional storage capacity, much like above-ground tanks.

Operation of the City's one permitted ASR well has raised questions as to how long the quality of water injected into the well may be maintained. ASR wells cannot be considered a reliable substitute for additional production wells at this time.

55. Nor is expansion of interconnections with neighboring water systems a reasonable present alternative. The City has two interconnections with the Melbourne water system and one is planned with the Titusville system. These are for emergency use only, as these two municipalities do not have excess water supply for Cocoa's service area needs.

Impact of the Proposed Consumptive Use on Water Levels

56. The City's wellfield has been in operation for thirty years and there is no evidence of adverse impact on water levels in wells owned by the Petitioners. No one has ever complained to the City regarding interference with the production of water from his or her well, with lake levels, or with vegetation.

57. At the request of the District, the City's consultants conducted studies to determine the impact of the proposed withdrawals on existing legal users of water.

The Intermediate aquifer studies consisted of aquifer performance tests (APT) and pump tests at the Wewahootee Pump Station and along Wewahootee Road, and groundwater flow modeling. The Floridan aquifer studies included APT's at ASR Well R-1 at the Dyal treatment plant, and groundwater flow modeling of proposed withdrawals from the Floridan aquifer.

58. An APT involves withdrawing water from a well and measuring the withdrawals on water levels in that or other monitor wells. The test is used to determine hydraulic characteristics of a well and the aquifer within the vicinity of the well.

59. Groundwater flow models are used in the field of hydrology to mathematically simulate impacts of withdrawals on one or more hydrologic formations. They are commonly relied on by regulatory agencies in evaluating applications for consumptive use. In many cases these models are the only tool available for assessing impact of water supply facilities that have not been constructed.

60. For its groundwater flow model, the City's consultants used a model prepared by the U.S. Geological Survey (USGS) called USGS MODFLOW. This is a numerical model used to calculate groundwater flows and aquifer levels for various hydrogeologic units in a system. It is a model to determine regional, rather than local, impacts.

The consultants also used a more limited "analytic" model to predict the effects on water levels at various locations near the existing and proposed production wells.

61. In measuring impacts to the upper Floridan aquifer, parameters or aquifer characteristics were obtained from historical data on the existing wellfield, published hydrogeologic information and past APT's and pump tests performed on existing city wells. This data made it unnecessary to conduct additional APT's.

62. It was unnecessary to model the impact of proposed upper Floridan withdrawals on the Intermediate and Surficial aquifers because of the poor hydraulic connection between the Floridan and overlying aquifers.

63. The MODFLOW model was appropriately calibrated by comparing the simulated potentiometric surface with a USGS potentiometric surface map showing the actual measured 1987 potentiometric surface of the upper Floridan aquifer, using both 1985 and 1987 pumpage amounts.

Although USGS potentiometric surface maps involve, by necessity, some extrapolation and interpretation of surfaces between a series of observation wells, these maps are commonly relied upon by hydrogeologists.

Calibration such as that conducted by the City produces a reasonable simulation of actual measured levels.

64. Because there was very little information available on the characteristics of the Intermediate aquifer in the subject area, three APT's were conducted by the City's consultants to determine the hydraulic characteristics of the Intermediate Aquifer and to establish its lateral extent in the wellfield. Additionally, single well pumping tests were conducted at several sites along Wewahootee Road. The parameters derived from these tests were used with the groundwater flow model to predict area drawdowns and the impact of the City's proposed withdrawals on the area's water resources.

65. For the groundwater flow model the City used a one mile by one mile grid at the center of the study area. There are no standard grid sizes, and the size used by the City is adequate for determining regional impacts. In the area of the City wellfield, the City's groundwater flow model tends to overestimate expected drawdowns.

66. The city's analytical model was used to predict water level changes locally within the grids at varying distances from existing and proposed wells. This included withdrawal impacts on the potentiometric surface of the Upper Floridan Aquifer in the immediate vicinity of the production wells and beneath the properties owned by Deseret, Holland, and the individual property owners.

The analytical model and its parameters applied by the City were reasonable.

67. The City's proposed consumptive use will cause a redistribution of wellfield pumping that will reduce stress on the upper Floridan aquifer in the eastern wellfield and will shift withdrawals into the western wellfield. The potentiometric surface of the Upper Floridan in the eastern wellfield will rebound (rise), and the surface will decline slightly in the western wellfield. This will more evenly spread the stress.

68. Because of the poor hydraulic connection between the upper Floridan and overlying aquifers (Intermediate and Surficial) the reduction in potentiometric surface of the upper-Floridan by the City's proposed withdrawal will not have a measurable impact on the withdrawal capability of any Surficial or Intermediate aquifer well. Nor will the levels of any surface water bodies or wetlands be impacted by the City's use.

69. The City's withdrawals will have no effect on users of the lower Floridan aquifer. The closest existing legal user is the Orlando Utility commission and its facilities are so far away that there is virtually no interaction between the City's withdrawals and the potentiometric surface of the lower Floridan at Orlando Utility's wellsites.

70. It is reasonably predicted that the difference between proposed and current City withdrawals from the upper Floridan will cause approximately 0.6 to 0.8 feet additional drawdown in Deseret's wells; 2.4 to 3.3 feet drawdown in Holland's wells; and 1.3 to 4.4 feet in Keller and other individual Petitioners' wells.

Effects on the withdrawal capability and operation of any existing well due to the City's proposed upper Floridan withdrawals will be insignificant and well below the 10% or greater reduction which, according to the District's Applicants' Handbook, Section 9.4.4., is the threshold for presumption of interference with an existing legal use.

71. The results of modeling Cocoa's withdrawals from the Intermediate aquifer predicted a worst case scenario of no more than 25 feet drawdown in the Intermediate aquifer. Water table (Surficial aquifer) drawdowns will range from approximately .24 feet to .34 feet. The drawdown is too insignificant to adversely affect the use of lakes and impoundments. Drawdown effect decreases rapidly with distance from the wells, with any decline in water table inconsequential beyond a half mile radius.

The District has not established minimum flows for surface water courses nor minimum levels for aquifers or surface water sources.

72. No Intermediate or Surficial aquifer wells are located close enough to the area of influence to be affected by the City's Intermediate aquifer withdrawals.

Because of the poor hydraulic connection between the Floridan and Intermediate aquifer, no Floridan wells will be affected by the City's Intermediate aquifer withdrawals.

73. Withdrawals from the single existing ASR well has not caused any adverse impacts to the water resources of the area, to existing wells, land uses, vegetation or lakes. There has been no saline intrusion nor land subsidence problems.

All six ASR wells are located in the same area, 300-400 feet apart, and no adverse impacts from these are reasonably foreseen. Even the Petitioners encourage their use.

74. None of the Petitioners performed modeling or other analysis to show drawdowns or other impacts from the City's proposed upper Floridan and Intermediate aquifers. Instead, Petitioners' experts concentrated on criticisms of the City's parameters, assumptions and methodology in an effort to erode confidence in the City's findings.

The experts presented by Petitioners had little or no experience in preparing or using the groundwater flow model USGS MODFLOW, used by the City.

Nor did the Petitioners' experts actually apply other parameters to the model to determine ultimate results.

75. District staff reviewed the groundwater flow model and analytic modeling performed by the City's consultants. Richard Levin, a hydrologist employed by the District who was trained by the authors of USGS MODFLOW, ran the model on his computer to verify the results reported by the City. Levin's calibration scenario included an additional 20 existing withdrawal sources not

utilized by the City, but his results did not significantly vary from those obtained by the City.

Levin also reran and confirmed the results of the City's analytic model.

76. If, as urged by Petitioners, there is no substitute for actual experience in determining adverse impacts, that actual experience will be derived once the new wells are in place and operating.

As a condition of permit approval, the District has the authority to curtail withdrawals if such impacts occur. The City will be required to mitigate any adverse impacts. There are methods available for the City to mitigate impacts on the use of other wells and the City is capable of implementing those methods.

Impacts of Proposed Consumptive Use on Chloride Levels

77. Concern about the chloride problem addressed in paragraphs 30 and 31, above, led the District staff to require that the City conduct solute transport modeling in the application process.

A solute transport model is a computer simulation of the changes in water quality in an aquifer due to changes in water level in the aquifer. A solute transport model is used to evaluate the impact of groundwater withdrawals on water quality and the impact of withdrawals on the movement of naturally occurring low quality water.

The use of such models in the field of hydrology is universally accepted. It is considered a highly sophisticated tool.

78. The City's consultants used a solute transport model prepared by the USGS referred to as "USGS MOC".

Calibrated parameters from the Floridan aquifer USGS MODFLOW Model were used to create a solute transport model of the smaller area immediately surrounding the City's wellfield. Within this area, water quality baseline conditions were input and the model was run to simulate recent chloride levels at the wellfield. It was run again to simulate the impact of the proposed Floridan Aquifer withdrawals on chloride levels.

79. It was not necessary to analyze the Intermediate or Surficial aquifers, as historic data from these sources indicate no change in water quality; therefore elevated chlorides in these units is not a concern.

Withdrawals from the Intermediate aquifer will not affect water quality of the Floridan aquifer due to the poor hydraulic connection.

80. The modeling analysis did not take into account the beneficial effects of rehabilitating Floridan aquifers in the eastern wellfield (the backplugging), thus the model results are a conservative prediction of anticipated chloride levels.

81. The parameters input into the MOC Model are reasonable. The grid size was selected to provide twice the resolution of the MODFLOW model, or 1/2 mile by 1/2 mile.

82. Chloride concentrations used in the model came from data from existing production wells as they were being installed. They represent the original unstressed condition of the Floridan aquifer.

83. Petitioners have posited that the City's proposed new wells will draw poorer water quality from the east into the area of the western wellfield and into their own wells. This theory suggests that chloride contamination is based on lateral intrusion, rather than "upconing" of poor quality water from below.

84. The modeling, as well as experience in management of the City's existing wellfield, with one peculiar exception, disprove that theory.

85. Monitoring of the eastern wellfield has not shown significant lateral movement of the lower quality water. The higher chloride levels appear confined to the production wells themselves.

Success of the City's backplugging program also suggests that the chloride is moving up from below, rather than laterally.

When wells experiencing higher chlorides in the eastern wellfield have been allowed to rest for short periods, the heavier chloride-laden water subsides back into the lower zones of the aquifer, and water quality is immediately improved when pumping resumes. Lateral intrusion problems resolve more slowly since horizontal movement through the aquifer is quite slow.

86. The predominant natural groundwater flow in this region is from west to east, and lateral instrusion from east to west would have to flow against the natural gradient of the pieziometric surface. This fact is acknowledged in an informative although perhaps somewhat outdated, 1968 treatise co-authored by Deseret's expert, William F. Lichtler, Water Resources of Orange County, Florida, (Holland exhibit #20, p. 127)

87. The District performed a geochemical pattern analysis of the City's wells to determine the relative dominance of calcium chloride versus sodium chloride.

88. Water in the recesses of the lower Floridan aquifer is relic seawater, characterized by a predominant sodium chloride content. A fault or fracture along the St. Johns River to the east of the wellfield has allowed relic seawater to move upward into the upper Floridan in that area.

The lower reaches of the upper Floridan contains water with calcium chloride content where fresh water from the western recharge area has moved in to displace the relic sea water, but which, because of its age, has picked up calcium ions from the limestone through which it has traversed.

89. The chloride water found in the City's wells is predominately calcium chloride, drawn upwards, rather than laterally, through the aquifer.

90. An anomaly occurs in the monitor well C, close to wells 7A, 13 and 14, where upconing occurred between depths of 1351 and 1357 feet BLS, and not between depths of 1044 and 1050 feet BLS. Chlorides concentration occurred, however, in Cocoa well 14 accross the road at depths of only 252 to 761 feet BLS.

Deseret's expert claims that this is explained by the fact that chlorides have travelled horizontally from the east into well 14.

The City's experts conjecture that the better water quality in the deeper zone and abrupt decrease in quality is caused by a dead pocket of fresh water, removed from the usual exchange and flow system, or a lens of fresh water similar to that which has occurred in other areas of the state even when no pumping stress is found.

91. The weight of evidence supports the City's position that degradation of water quality is occurring primarily through upconing, and very insubstantially through lateral intrusion.

92. This means that the City's proposed plan to reduce withdrawals from the existing eastern wellfield Floridan aquifer wells, redistributing pumping over the new wellfield configuration, continuing to backplug wells with elevated chlorides and submitting a wellfield operations plan pursuant to the District's recommended conditions, will improve existing conditions in the eastern wellfield.

The proposed withdrawals in the western wellfield should not draw the poorer quality water westerly into Petitioner's wells.

93. Saline water intrusion or encroachment is considered significant when a consumptive use causes chloride concentrations to exceed 250 milligrams per liter (mg/l), the state standard for drinking water.

The City's solute transport model comparing existing permitted withdrawals to the proposed consumptive use reveals that the modeled area having chloride concentration exceeding 250 mg/l will substantially decrease from 3.4% to .4%, and the modeled area having chloride concentration between 50 and 150 mg/l will increase from 34.2% of the area to about 37% of the area. These predictions do not take into consideration the additional improvements which will occur by rehabilitating the eastern wellfield Floridan aquifer wells.

94. The water quality in the Intermediate aquifer remains very good, and lack of a good hydraulic connection with the underlying Floridan makes it extremely unlikely that higher chloride concentrations will be moved from the Floridan into the Intermediate and surficial aquifers.

95. Proposed use of the six ASR wells will not harm the quality of the groundwater underlying the Dyal treatment plant. It is more likely that injection of partially treated drinking water will help flush out the brackish water in the area.

96. Petitioners did not perform modeling or other analysis demonstrating that water quality impacts from the City's proposed consumptive use are any different from those presented by the City. As with the groundwater flow model, Petitioner's experts instead sought to impeach the presumptions and techniques employed by the City's consultants in the solute transport model. Some of these are the same as used in MODFLOW.

Although qualified as experts in solute transport modeling, Petitioner's witnesses have no experience in using the model, USGS MOC, at issue in this proceeding.

97. The City proposes three new monitor wells in its 1988 and 1989 applications: one each in the eastern and western wellfield, and a third to be located north of the wellfield, somewhere between the wellfield and the Orange

County landfill. These and existing monitor wells will facilitate monitoring of the flow of lower quality water.

98. The District's conditions drafted in February 1990 to address the City's application, as amended, prescribe a detailed water quality monitoring regimen, including the submittal of water quality test results to the District prior to production withdrawals from any of the proposed Floridan aquifer wells in the eastern and western wellfields.

Certain supply and monitor wells are required to be sampled and analyzed, with the results to be sent to the District semi-annually.

The wellfield operation program which will be developed by the City and approved by the District must include the provision that the eastern wellfield Floridan aquifer wells will not pump more than 5.20 MGD on a combined average annual basis and the western wellfield Floridan aquifer wells will not pump more than 2.07 MGD each on an average annual basis.

99. These conditions and the condition that the City must mitigate any adverse water quality impacts caused by its withdrawals will protect Petitioners and other existing legal users.

Environmental Impacts
of the Proposed Consumptive Use

100. District staff and the City's consultants conducted field investigations in the one mile corridor of Deseret's property, the center of which is the site of existing and proposed City Intermediate aquifer wells.

This area is characterized by improved pasture land, pine flatwoods, citrus groves, freshwater marsh, wetland mixed forest, cypress sloughs and domes, freshwater swamps, and borrow pits and ditches.

101. Land uses found in this area are forestry, livestock production, citrus production, sod production, landscape plant harvesting, hunting and fishing leases, and borrow pit operation.

102. Vegetation and land uses on Holland's property are improved pasture, citrus groves, pine flatwoods and pine/palmetto rangeland, mixed hardwood wetland, cypress forest, wetland mixed forest, wet prairie, and ponds and borrow pits.

103. The land use existing on the individual Petitioner's property is low density single family residential.

104. In order to analyze the impact of withdrawals on vegetation and land uses, the City's consultants looked at rainfall data and water level data from three monitor wells, performed a double mass analysis for each of the three wells, examined operation records of the City's Intermediate aquifer well 7T, and made field site visits to the properties.

105. The double mass analysis compares cumulative well stages with cumulative rainfall for the available period of record.

The analysis plots the cumulative sum of one set of data against the other set of data over a common period of time. A trend line is established from the

plot, and a change in the slope of the double mass line implies a change in the relationship between the two data sets.

Double mass analysis is used in the fields of biology, botany and ecology to examine how groundwater and surface water levels are affected by man-made activities--in this case, pumping. Changes in water levels can in turn affect natural biological systems.

106. The three monitoring wells selected in the analysis were installed by and maintained by the USGS for the purpose of monitoring the City wellfield. One is located in the center of the pumping area, and the other two are outside the influence of the wellfield.

107. Rainfall data was collected from the National Oceanographic and Atmospheric Agency (NOAA) station at the Orlando International Airport, within ten miles of the center of the City's wellfield. This is the closest station with a continuous record dating back 30 or more years, the period covered by the City's pumping history.

108. Data used in the analysis was appropriate. The analysis establishes that historical operation of the Cocoa wellfield under progressively greater withdrawals has had no discernible impact on the water table.

Pumping from Intermediate Aquifer well 7T did not impact water table elevations in monitoring well Cocoa M, approximately one-half mile away, indicating that drawdown from Intermediate Aquifer wells is very localized.

109. Historic water table declines have been the result of rainfall deficits, and as to Deseret's and Holland's properties specifically, due to the landowners' and others' drainage practices.

A number of large ditches and pits have been constructed throughout Deseret's property, mostly located within improved pasture and interspersed wetlands.

Ditches, five feet deep, and swales, one to two feet deep, have been constructed on Holland's property to lower the water table elevation in the grove area and to promote runoff and reduce ponding in the pastures.

110. In addition, there are major drainage works in the vicinity of Holland's property and the Lake Mary Jane area less than one mile from the western boundary of Holland's property. These works include the Disston Canal and various U.S. Army Corps of Engineer projects constructed in the 1960's and 1970's to control flooding.

111. Because water table decline due to pumping is highly localized (confined to an approximate one-half mile radius), pumping from the City's Intermediate aquifer wells will have no measurable effect on Holland's or the individual Petitioners' property.

112. Upper Floridan withdrawals will have no measurable effect on the water table, surface water levels, vegetation or land use because the Floridan is not well connected hydraulically to the overlying regions.

113. The City's proposed withdrawals will not cause land collapse or sinkholes, as the area is not hydrologically prone to such, and these phenomena have not occurred during the history of the wellfield. Land collapse or

subsidence caused by a reduction in water levels is a specific adverse impact required by the District to be mitigated in its proposed permit conditions.

114. The Petitioners have presented no evidence of modeling or other analysis indicating drawdowns or water table impacts different from those presented by the City or the District. The Petitioners presented no experts qualified in the fields of botany, biology or ecology.

115. The District's proposed permit conditions #28-38 dictate detailed evaluation methods to determine the impact of the City's Intermediate aquifer wells on wetlands and vegetation. This involves the installation of pieziometers and gauges in selected wetlands, and installation of a rain gauge at the Wewahootee pump station to record daily rainfall data for the duration of the permit. Data must be reported to the District. Vegetative monitoring is required for a period of one year prior to the operation of any Intermediate aquifer wells other than 2T, 3T and 7T.

Standing and Other Matters

116. Petitioners failed to prove that they will suffer an immediate injury in fact of the type which this proceeding is designed to protect if the City's CUP application is approved subject to the District's 1990 proposed permit conditions.

Rather than present affirmative evidence of actual injury, they attempted in a thorough manner to discredit the findings of the City's studies and the District's review.

117. Modeling and predictive analysis such as that provided by the City and the District may be imperfect, but the ultimate conclusions are supported by the weight of evidence.

In the unlikely event that, as suggested by Petitioners, the City has been so reckless as to pick and choose parameters to "fix" the results of its studies, this folly will quickly be exposed in the monitoring performed under the District's conditions.

118. The District's recommended permit conditions are appropriate regulatory requirements to assure that the City's proposed use will not cause unmitigated adverse impacts. The City has accepted those conditions.

119. The conditions proposed by Holland and Keller, et al., and by Deseret, are already covered within the District's conditions or are unnecessary.

120. The City has proven its entitlement to the permit it seeks.

CONCLUSIONS OF LAW

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

122. The District's regulatory authority over the City's application for a CUP is governed by and subject to the provisions of Chapter 373, F.S. and Chapter 40C-2, F.A.C.

123. The City has the burden of proving entitlement to the permit it seeks. Florida Department of Transportation v. JWC Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981); Rule 40C-1.545, F.A.C.; Rule 40C-2.301(7), F.A.C.

124. 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.
> "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.

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

> 40C-2.301 Conditions for Issuance of Permits.
> (1) To obtain a consumptive use permit for a use existing on the effective date of implementation, the applicant shall apply for a permit under the provisions of Section 373.226, Florida Statutes, and Rule 40C-2.041(2), Florida Administrative Code, and shall establish that it is a reasonable beneficial use and is allowable under the common law of Florida.
> (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.

A Reasonable Beneficial Use
40C-2.301(4)(a), F.A.C.

126. The City's proposed usage is in a quantity necessary for economic and efficient utilization. The per capita usage figures for the service area are reasonable and the amounts requested are consistent with competent projections of the service areas growth and needs. The water is needed to meet existing and future demands, to provide a reserve capacity, and to alleviate water quality problems in the eastern wellfield.

40C-2.301(4)(b), F.A.C.

The purpose of the usage, to serve the area's residents, and industrial and commercial community is reasonable and consistent with the public interest; as is the purpose of addressing the chloride problem in the eastern wellfield.

40C-2.301(4)(c), F.A.C.

The experience of past wellfield operation as well as the APT's and pump tests conducted in the Intermediate and Floridan aquifers establish that these sources are capable of providing the requested amounts of water.

40C-2.301(4)(d), F.A.C.

Thirty years of experience without a complaint of harm, as well as the predictions of the modeling and other analyses, demonstrate no environmental or economic harm will be caused by the City's requested consumptive use.

40C-2.301(4)(e), F.A.C.

Conservation and reuse measures are in place and additional measures are proposed as the City's service contracts are renewed. The District's conditions for approval include a requirement for implementation of a reclaimed water system and an increased minimum volume of reusage by 1991 and 1994.

40C-2.301(4)(f), F.A.C.

The weight of competent evidence proves that the proposed new wells and shift of pumping will alleviate, rather than exacerbate, existing saline water intrusion problems, and will not create new problems, as feared by Petitioners, in the western wellfield.

40C-2.301(4)(g), F.A.C.
(Flooding is not an issue in
this permit proceeding)

40C-2.301(4)(h) and (i), F.A.C.

The only water quality issue raised in this case involves the chloride concentration addressed above. These criteria have been met by the permit applicant.

Will not Interfere with a Presently Existing Legal Use

127. "Interference with a legal use of water" is defined in the Applicants' Handbook as

...a decrease in the withdrawal capability of any individual withdrawal facility of a legal use of water which was existing at the time of the application for the initial permit such that the existing user experiences economic, health or other type of hardship.

Section 9.2.2.

Section 9.4.4. of the Applicants' Handbook provides that a ten percent reduction in withdrawal capability or economic, health or other type of hardship on an existing legal user are presumed to be "interference".

The City's use will cause substantially less than ten percent reduction of withdrawal capability and no identifiable economic, health or other hardship.

128. Consistent with the Public Purpose

The City's proposal to continue to operate a public water supply serving not only its own residents but those of neighboring local governments is a public purpose in itself. The supply of water to commercial and industrial users as well as to significant federal operations is consistent with the public interest. The water resources and citizenry of Orange County, the site of withdrawal, will not be harmed.

129. The applicant has proven its proposed use will not violate the criteria of Rule 40C-2.301(5), F.A.C., above. The District has not established minimum flows or water levels; thus there are no such standards to be met at this time.

130. The city has met its burden of proving entitlement to the consumptive use permit it seeks.

The City's reliance on modeling and the assignment of aquifer parameters is readily distinguishable from the failure of the applicant to perform actual testing in the case, Booker Creek Preservation, Inc. v. Mobil Chemical Co., 481 So.2d 10 (Fla. 1st DCA 1985), cited by Deseret.

In its case, Mobil proposed to build pollutant-discharging industrial facilities in connection with phosphate mine activities in an area where sub-surface anomalies were likely to occur. Mobil performed actual geological testing in only one of three areas of discharge. The appellate court reversed the agency's finding that the applicant provided "reasonable assurance" that the proposed facility would not cause a water quality violation.

The evidence in this case is that the geological strata are likely to be what the City has modelled. Further testing and monitoring will be conducted after the wells are contructed, and in some instances, before they begin pumping. Errors in the City's predictions will be quickly discernable and, in contrast to the pollution potential in Mobil's case, readily remediated.

Standing

131. Petitioners appropriately pled standing to participate in this proceeding. However, the evidence they produced to challenge the studies conducted by the City and review by the District failed to establish that even as "existing legal users" they would be injured by the consumptive use sought by the City.

The existence of wells and appurtenant structures or roads on or near one's property may be nettlesome, and the testimony of Mr. Holland is particularly poignant in that regard. But this is not the proceeding to resolve the burden of the works themselves. This proceeding resolves only the burden of the consumptive use of the water produced by those works--the withdrawals, not the means of withdrawal.

RECOMMENDATION

Based on the foregoing, it is hereby RECOMMENDED:

That a Final Order be entered, approving the City of Cocoa's application for consumptive use permit, as amended in November 1989, and with the conditions proposed by District staff in February 1990; and dismissing the petitions of Deseret, Holland, and Keller, et al..

DONE AND RECOMMENDED this __26th__ day of October, 1990, in Tallahassee, Leon County, Florida.

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
__26th__ day of October, 1990.

APPENDIX

The following constitute specific rulings on the findings of fact proposed by the parties.

Findings Proposed by Deseret

1. Adopted in paragraph 1.
2. Adopted in paragraph 2.
3.-5. Adopted in paragraph 3.
6. Adopted in paragraph 1.
7.-11. Adopted in substance in paragraph 8.
12. Rejected as unnecessary.
13. Adopted in paragraph 9.
14. Adopted in paragraph 10.
15. Adopted in paragraph 13.
16.-17. Rejected as unnecessary.
18. Adopted in paragraph 13.
19.-46. The parties' stipulation is included in the record of this proceeding. The legal descriptions of the well sites are established without dispute and need not be repeated here.
47. Adopted in paragraph 15.
48. Adopted in paragraph 9.
49.-50. Adopted in paragraph 3.
51. Adopted in paragraph 30.
52. Adopted in paragraph 19; except for the second sentence, which is rejected as contrary to the weight of evidence.

53.-54. Adopted in part in paragraphs 58 and 77, otherwise rejected as unnecessary.
55. Adopted in paragraph 60.
56.-58. Rejected as unnecessary.
59.-70. Rejected as contrary to the weight of evidence.
71. Adopted in substance in paragraph 30.
72. Addressed in part in paragraph 90, otherwise rejected as contrary to the weight of evidence.
73. Adopted in substance in paragraph 31.
74.-84. Rejected as unnecessary or contrary to the weight of evidence.
85. Adopted in substance in paragraph 78.
86.-91. Rejected as unnecessary or contrary to the weight of evidence.
92.-96. Addressed in summary in paragraph 90, but the conclusion with regard to the cause is rejected as contrary to the weight of evidence.
97.-105. Rejected as contrary to the weight of evidence or unnecessary.
106.-110. Addressed in paragraph 63; however, the conclusions reflected in these paragraphs, with regard to the reasonableness of the calibration, are rejected as contrary to the weight of evidence.
111.-116. Rejected as unnecessary or contrary to the weight of evidence.

Findings Proposed by Holland and Keller, et al.

1. Adopted in paragraph 1.
2. Adopted in paragraph 2.
3.-4. Rejected as unnecessary.
5. Adopted in paragraph 3.
6. Adopted in paragraph 4.
7. Adopted in paragraph 1.
8. Adopted in paragraph 7.
9.-10. Adopted in substance in paragraph 8.
11. Adopted in paragraph 10.
12.-13. Adopted in paragraph 30.
14.-15. Adopted in paragraph 8.
16. Adopted in paragraph 13.
17. Adopted in paragraph 14.
18. Adopted in paragraph 13.
19. Adopted in paragraph 14.
20. Rejected as unnecessary.
21.-24. Adopted in paragraph 9.
25.-30. Addressed in Preliminary Statement.
31. Adopted in summary in paragraph 4.
32. Adopted in summary in paragraph 5.
33. Rejected as unnecessary.
34.-50. Rejected as unnecessary or contrary to the weight of evidence.
51.-52. Adopted in paragraph 30.
53. Rejected as unnecessary.
54. Adopted in substance in paragraph 31.
55.-66. Rejected as unnecessary or contrary to the weight of evidence.

67. Adopted in paragraphs 67 and 70.
68.-96. Rejected as unnecessary or contrary to the weight of evidence.

Findings Proposed by the City of Cocoa

1.-4. Adopted in paragraphs 1 and 7.
5. Rejected as unnecessary.
6. Adopted in paragraph 10.
7.-8. Adopted in substance in paragraph 8.
9.-17. Rejected as unnecessary.
18.-26. Adopted in paragraphs 13-16.
27. Adopted in paragraph 2.
28.-45. Addressed in summary in Preliminary Statement.
46. Adopted in paragraph 19.
47. Adopted in paragraph 27.
48.-49. Adopted in paragraph 25.
50. Adopted in paragraph 28.
51.-52. Adopted in paragraph 29.
53.-54. Adopted in paragraph 36.
55. Adopted in paragraph 37.
56. Rejected as cumulative.
57. Adopted in paragraph 38.
58.-60. Adopted in paragraph 40.
61. Adopted in paragraph 39.
62. Adopted in paragraph 39.
63. Adopted in paragraph 38.
64. Adopted in substance in paragraph 41.
65. Adopted in substance in paragraph 45.
66. Adopted in substance in paragraph 42.
67. Adopted in substance in paragraph 44.
68. Adopted in substance in paragraph 42.
69.-77. Rejected as unnecessary.
78. Adopted in paragraph 47.
79. Rejected as contrary to the weight of evidence.
80. Adopted in paragraph 47.
81.-82. Adopted in paragraph 48.
83. Adopted in paragraph 47.
84.-85. Rejected as unnecessary.
86. Adopted in paragraph 46.
87. Adopted in paragraph 45.
88.-89. Adopted in paragraph 34.
90.-91. Adopted in paragraph 35.
92.-93. Rejected as unnecessary.
94.-96. Adopted in paragraph 33.
97. Rejected as cumulative.
98. Adopted in paragraph 53.
99.-101. Adopted in paragraph 54.
102.-104. Rejected as cumulative.
105.-108. Adopted in substance in paragraph 56.
109.-110. Adopted in paragraph 57.
111. Adopted in paragraph 60.
112.-113. Adopted in paragraph 62.
114. Adopted in paragraphs 60, 65 and 66.
115. Rejected as unnecessary.
116.-117. Adopted in paragraph 61.

118. Rejected as unnecessary.
119. Adopted in paragraph 65.
120.-126. Rejected as unnecessary.
127.-128. Adopted in paragraph 75.
129. Adopted in paragraph 65.
130.-140. Rejected as unnecessary.
141. Adopted in paragraph 66.
142.-144. Rejected as unnecessary.
145.-146. Adopted in paragraph 74.
147.-148. Adopted in paragraph 67.
149.-150. Adopted in paragraph 68.
151. Adopted in paragraph 69.
152.-160. Adopted in paragraph 70.
161.-162. Rejected as cumulative.
163. Adopted in paragraph 64.
164. Rejected as cumulative.
165. Adopted in paragraph 64.
166.-167. Rejected as cumulative.
168.-174. Adopted in substance in paragraph 71.
175. Adopted in paragraph 72.
176. Rejected as contrary to the weight of evidence.
177.-179. Adopted in paragraph 73.
180. Adopted in paragraph 74.
181.-183. Rejected as cumulative.
184.-185. Adopted in substance in paragraph 76.
186.-187. Adopted in paragraphs 30 and 31.
188.-190. Rejected as unnecessary.
191. Adopted in paragraph 31.
192. Rejected as unnecessary.
193.-194. Adopted in paragraph 31.
195. Rejected as unnecessary.
196.-197. Adopted in paragraph 77.
198.-199. Adopted in paragraph 78.
200.-201. Adopted in paragraph 79.
202.-203. Rejected as cumulative.
204. Adopted in paragraph 85.
205. Rejected as unnecessary.
206. Addressed in paragraph 90.
207. Adopted in paragraph 85.
208.-209. Adopted in paragraph 91.
210. Rejected as unnecessary.
211.-212. Adopted in paragraph 96.
213.-218. Adopted in substance in paragraph 92.
219.-223. Adopted in paragraph 79.
224. Adopted in paragraph 95.
225. Adopted in paragraph 92.
226. Adopted in paragraph 93.
227. Rejected as cumulative.
228.-229. Adopted in paragraph 97.
230. Adopted in paragraph 98.
231. Adopted in paragraphs 100.-101.
232. Adopted in paragraph 102.
233. Adopted in paragraph 103.
234. Rejected as contrary to the weight of evidence and unnecessary.
235.-236. Adopted in paragraph 114.
237. Adopted in paragraph 107.

238. Adopted in paragraph 106.
239. Adopted in paragraph 105.
240. Adopted in paragraph 108.
241.-243. Adopted in paragraph 109.
244. Adopted in paragraph 105.
245.-246. Rejected as unnecessary.
247. Adopted in paragraph 112.
248.-253. Adopted in paragraph 111.
254.-261. Adopted in substance in paragraph 113.
262. Adopted in paragraph 115.
263.-264. Rejected as unnecessary.
265. Adopted in paragraph 52.
266. Adopted in paragraph 51.
267. Adopted in paragraph 55.
268. Rejected as cumulative and unnecessary.
269.-274. Rejected as cumulative or unnecessary.
275.-279. Adopted in paragraph 116.
280. Adopted in paragraphs 118. and 119.

Findings Proposed by St. Johns River Water Management District

1. Adopted in paragraphs 1. and 7.
2. Adopted in paragraph 1.
3. Adopted in paragraph 7.
4. Adopted in paragraph 10.
5. Adopted in substance in paragraph 8.
6.-7. Adopted in paragraph 11.
8.-9. Rejected as unnecessary.
10. Adopted in paragraph 12.
11. Rejected as unnecessary.
12.-13. Adopted in paragraph 12.
14. Adopted in paragraph 19.
15. Adopted in paragraph 21.
16. Adopted in paragraph 22.
17. Adopted in paragraph 23.
18. Adopted in paragraph 24.
19. Adopted in paragraphs 25. and 26.
20. Adopted in paragraph 26.
21.-22. Adopted in paragraph 28.
23.-24. Adopted in paragraphs 13. and 14.
25.-26. Rejected as unnecessary.
27. Adopted in paragraph 29.
28.-31. Rejected as cumulative or unnecessary.
32. Adopted in paragraph 9.
33. Rejected as unnecessary.
34. Adopted in paragraph 28.
35. Adopted in paragraph 7.
36. Adopted in paragraph 36.
37. Adopted in paragraph 37.
38. Rejected as unnecessary.
39.-40. Adopted in paragraph 36.
41. Adopted in paragraph 38.
42. Adopted in paragraph 39.
43. Adopted in paragraph 40.
44. Adopted in paragraph 41.
45. Adopted in paragraph 43.

46.-49. Adopted in substance in paragraph 47.
50. Adopted in paragraph 49.
51.-53. Rejected as cumulative or unnecessary.
54. Adopted in paragraph 47.
55. Rejected as unnecessary.
56.-57. Rejected as unnecessary or cumulative.
58. Adopted in paragraph 46.
59. Adopted in paragraph 45.
60. Adopted in paragraph 52.
61. Adopted in paragraph 51.
62. Adopted in paragraph 55.
63. Adopted in paragraph 35.
64. Adopted in paragraph 34.
65. Adopted in paragraph 32.
66. Adopted in paragraph 33.
67. Adopted in paragraph 54.
68.-69. Adopted in paragraph 56.
70. Adopted in paragraph 57.
71.-72. Adopted in paragraph 60.
73. Adopted in paragraph 61.
74.-76. Adopted in summary in paragraph 70.
77. Adopted in paragraph 65.
78.-80. Rejected as unnecessary.
81. Adopted in paragraph 75.
82.-83. Adopted in paragraph 63.
84.-85. Rejected as unnecessary.
86. Adopted in paragraph 60.
87.-89. Adopted in paragraph 66.
90. Adopted in paragraph 67.
91.-92. Adopted in paragraph 68.
93. Adopted in paragraph 69.
94. Rejected as cumulative.
95. Adopted in paragraph 70.
96. Rejected as cumulative.
97.-98. Adopted in paragraph 70.
99. Adopted in paragraph 57.
100. Adopted in paragraph 64.
101.-102. Rejected as unnecessary and cumulative.
103.-106. Adopted in paragraph 71.
107. Adopted in paragraph 72.
108.-109. Adopted in paragraph 73.
110. Adopted in paragraph 76.
112.-113. Adopted in paragraph 71.
113.-115. Adopted in paragraphs 30, 31 and 77.
116. Rejected as unnecessary.
117. Adopted in paragraph 31.
118.-120. Rejected as unnecessary or cumulative.
121. Adopted in paragraph 77.
122.-123. Adopted in paragraph 78.
124. Adopted in paragraph 80.
125. Adopted in paragraph 85.
126. Adopted in paragraph 84.
127. Adopted in paragraph 86.
128.-129. Adopted in paragraph 85.
130. Adopted in paragraph 87.
131.-132. Adopted in paragraph 88.
133. Adopted in paragraph 89.

134.-135. Adopted in paragraph 93.
136.-138. Adopted in paragraph 94.
139. Adopted in paragraph 95.
140.-141. Adopted in paragraph 97.
142. Adopted in paragraph 111.
143.-147. Adopted in paragraph 100.
148. Adopted in paragraph 102.
149. Adopted in paragraph 103.
150.-151. Adopted in paragraph 104.
152.-155. Adopted in paragraph 108.
156.-159. Adopted in paragraph 109.
160.-165. Rejected as cumulative or unnecessary.
166. Adopted in paragraph 112.
167. Adopted in paragraph 113.
168.-169. Adopted in paragraph 118.
170. Adopted in paragraph 116.

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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.