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ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

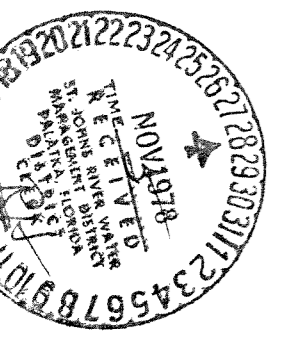
IN RE: )  
 )  
 ) EVANS PROPERTIES, INC., )  
 ) MANAGEMENT AND STORAGE )  
 ) OF SURFACE WATERS )  
 ) APPLICATION NO. 4070778212 ) FILE OF RECORD NO. 78-49  
 ) IN INDIAN RIVER COUNTY, FLORIDA.)  
 )

FINAL ORDER DENYING PERMIT PURSUANT TO  
INFORMAL HEARING BEFORE GOVERNING BOARD

THIS MATTER came on to be heard before the Governing Board of the St. Johns River Water Management District at Public Hearing on November 15, 1978. Said Public Hearing, having been duly and properly noticed, was conducted at St. Johns River Community College, Fine Arts Gallery, Palatka, Putnam County, Florida. All parties hereto were present, and together with the general public, were duly notified of an opportunity to present testimony and evidence. The Board, having reviewed the application and all documents in the File of Record and Applicant and Staff Exhibits, having heard testimony of Applicant and Staff, and having received and examined all documentary evidence, and having heard argument of counsel, makes the following:

FINDINGS OF FACTS:

1. The Applicant proposes to construct a water management system for new citrus groves on 2,105.61+ acres in Indian River County, Florida.
2. Pursuant to Chapter 373, Florida Statutes, and Chapter 161, Florida Administrative Code, Applicant has applied (Application No. 4070778212) to the St. Johns River Water Management District for a Management and Storage of Surface Water Permit.



3. The project site is located immediately North of the Florida Turnpike, SW of Vero Beach, in the St. Johns River Marsh, in Indian River County, Florida, more particularly described in the File of Record, Staff Exhibit 1, which Exhibit is incorporated by reference herein.

4. The prior agency history of the project and application are fully described in the Technical Staff Report, File of Record, Staff Exhibit 1.

5. The Applicant's proposed project is fully described in the subject Application, contained in the File of Record, Staff Exhibit 1.

6. The staff recommended denial of the project on October 30, 1978, for reasons provided in the Technical Staff Report, File of Record, Staff Exhibit 1.

7. The Applicant was hand-delivered written Notice of the Staff recommendation on October 31, 1978 and was provided written opportunity to request a Chapter 120.57, F.S. hearing by Petition within 14 days, the Notice being a part of the File of Record, Staff Exhibit 1.

8. The Applicant did not provide timely written request for hearing. However, on November 15, 1978, at the time provided for action during the regular Governing Board meeting on the Application, the Applicant made oral request for an informal hearing under Chapter 120.57(2), which request was granted.

9. The Applicant raised four objections to the recommendation of denial during the course of the hearing and offered testimony thereto:

A. That Applicant is successor in interest to that certain Agreement of January 29, 1963 with the Florida Department of Transportation. The Applicant interprets the agreement as granting a right to the proposed southerly discharge of water into the Florida Turnpike Borrow Ditch. The Board finds that said Agreement grants no rights binding on the St. Johns River Water Management District which are related to the proposed project discharge. The District finds that the requested southerly diversion of water would be an unreasonable interbasin diversion, contrary to Board policy.

B. The Applicant represented that request had been initiated of the South Florida Water Management District to accept into that agency's C-25 Canal the requested southerly discharge which would enter C-25 from the Florida Turnpike Borrow Ditch. The District finds that no approval has been granted by South Florida Water Management District. The District further finds that were such approval subsequently granted, it would not be dispositive of the issue of the St. Johns River Water Management District's prohibition against unreasonable interbasin diversion.

C. The Applicant stated that his proposed discharge of water to the North would enter contiguous property which is in his sole ownership. The Board finds that Applicant's contiguous property would not store said discharge but would merely convey it to adjacent owners for ultimate storage, with adverse impact, on the land of others including but not limited to property in the fee simple ownership of the St. Johns River Water Management District.

D. The Applicant stated that historic discharge is in excess of 1"/day. The Board's May, 1978 action on this Applicant's earlier application found and established 1/2"/day as the discharge for this land, which is greatly in excess of the historic discharge.

10. The staff testimony on these issues is included in the File of Record, Exhibit 1, entered by staff counsel without objection by the Applicant, and also in the written testimony of Jerry E. Kubal, District Director of Water Resources, offered as Staff Exhibit "A" in the hearing, after agreement with the Applicant to its entrance in written form. The Board finds that the staff testimony substantiates denial based on the adverse impacts of the requested southerly and northerly discharges of water.

11. Applicant's requested northerly discharge is 1.89"/day. The maximum discharge rate cap of 1/2"/day was approved in this Applicant's prior application action regarding the same property for the same use.

The District has, in all previous permitting actions in the Upper Basin applied and adjudicated on a case by case basis an emergent criterion of a 1"/day maximum discharge to hydrologically sensitive portions of the Uppers St. Johns Basin. The 1"/day criterion has not been published in Chapter 16I, pending completion of the Upper Basin Study and adoption of an Interim Criteria Manual, which would definitively support general application of a 1"/day discharge limitation in specified portions of the Upper Basin. In this particular proposed project uncontroverted staff testimony shows that 1/2"/day is an appropriate limitation.

12. The testimony and exhibits, as applied to this Applicant, show that the stage level at Blue Cypress Lake has been and would reach flood level in the future, in non-severe storm conditions, and that the Applicant's incremental proposed northerly discharge greater than the 1/2"/day already permitted or the 1"/day interim criterion will require that the discharge be stored at the expense of other owners in the floodplain and to their substantial detriment, will cause a significant adverse impact on the resource, reflects improper water management; and, may result in a significantly increased danger to the public welfare.

13. Any burden to the Applicant occasioned by limitations on the northerly discharge is outweighed by the public benefit in protecting an already overburdened hydrologic situation.

14. The prohibition against the requested southerly discharge for interbasin diversion is reasonable in minimizing the adverse impacts of the proposed project. Alternatives to this discharge exist, but are not acceptable to the Applicant.

15. No Intervention request or Objection to the proposed project has been received by the Board.

IN ACCORDANCE with the foregoing, and in consideration of applicable laws and regulations, the Board makes the following

CONCLUSIONS OF LAW:

1. The proposed project, as described in the Technical Staff Report, contained in the File of Record,
  - a. is inconsistent with the development and regulation of works of the St. Johns River Water Management District; and
  - b. is inconsistent with the proper management and utilization of water and related land resources; and
  - c. will be harmful to the water resources of the District; and
  - d. will be a danger to public health or safety.
2. The activity proposed is not in compliance with the requirements of Chapter 373, Florida Statutes, and Chapter 16I, Florida Administrative Code.
3. The testimony and documentation sufficiently substantiate, by adjudication, and prior permitting action on the project the imposition of the cap on the northerly discharge rate as applied to this Applicant's proposed project.
4. Additionally, the Board has previously determined in its May 1978 Board Meeting, in granting a permit to this Applicant, for subject property, for a water management system for the same use, identical limitations on the northerly water discharge and the southerly Interbasin Diversion. Applicant made no appeal of that determination. Applicant has neither alleged nor proven facts showing a substantial change from conditions which existed at the time of the earlier grant of permit in May, 1978, nor has the purpose of the project or planned land use changed since the granting of said permit. The principle of administrative res judicata is applicable to the instant request, and it is not in the public interest to revisit matters previously and so recently determined.
5. The northerly discharge limitation is a standard of application, limited to certain areas within the Upper St. Johns River Basin, dictated by a combination of natural causes and man-made alterations of the hydrology and land-use of the Basin and is not a

standard of general applicability and need not be promulgated by rule as per Chapter 120, Florida Statutes.

6. The Board's policy of prohibition against unreasonable interbasin diversion, more fully described in the Notice of Intent to Deny, and supported in the Staff Exhibits and testimony, as applied to this Applicant, is a reasonable limitation on the southerly discharge in meeting the overall duties and objectives of the St. Johns River Water Management District.

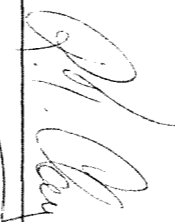
WHEREFORE, upon consideration it is

ORDERED

That the Application for a Management and Storage of Surface Waters permit is denied.

DONE AND ORDERED at St. Johns River Community College, Fine Arts Gallery, 5001 St. Johns Avenue, Palatka, Florida, on the 15th day of November, 1978, A.D.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT



R. T. CLAY, CHAIRMAN

ATTEST:

SEAL:



FREDERICK O. ROUSE, ASST. SECRETARY

cc: Applicant  
W. W. Kerr, Couch Manufacturing Company  
Judith Benninger Brown, Staff Attorney  
Herb Webb, Board Counsel  
Dennis Auth, Projects Coordinator  
Jerry Kubal, Director, Department Water Resources  
Florida Department of Environmental Regulation  
Florida Department of Transportation  
Corps of Engineers