

BEFORE THE GOVERNING BOARD  
OF THE  
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

GARY R. GRIFFIN, Petitioner/Applicant,	)	
v.	)	FILE OF RECORD NO. 81-220
ST. JOHNS RIVER WATER	)	APPLICATION NOS. 4-5734
MANAGEMENT DISTRICT	)	6-5734
Respondent.	)	
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ORDER

Pursuant to notice, on June 9, 1981, the Request for Hearing of GARY R. GRIFFIN came on for hearing before the Governing Board of the St. Johns River Water Management District at the District Headquarters, Palatka, Florida. Following the presentation of evidence, the Governing Board discussed the matter; voted to deny the application for permit; requested the Respondent to draft an order and the Petitioner to file exceptions to the draft order; and then continued the hearing until July 7, 1981. On July 7, 1981, the Governing Board considered the draft order and exceptions and incorporated the exceptions it felt were meritorious and rejected the remainder as being either properly addressed directly or indirectly by the draft order or irrelevant. Thereupon the Governing Board ordered the draft order to be conformed and closed the hearing.

APPEARANCES

For Petitioner: Ross McVoy, Madigan, Parker, Gatlin  
Swedmark & Skelding, P. O. Box 669, Tallahassee, Florida 32302;  
For Respondent: Vance Kidder, P. O. Box 1429, Palatka, Florida  
32077.

WITNESSES AND EXHIBITS: Four witnesses testified and numerous singular and composite exhibits were admitted into evidence. Testifying for the Petitioner were the Petitioner, Gary R. Griffin, and Brian Bussen, P.E. Testifying for the Respondent were Tahir Chaudhry, P.E. and Robert Moresi. Exhibits admitted into evidence by party were:

FILING AND ACKNOWLEDGMENT  
FILED, on this date, pursuant to 120.52(9)  
Florida Statutes, with the designated District  
Clerk's receipt of which is hereby acknowledged.

*Laura D. Redington* 7-20-81  
Clerk Date

By Petitioner Griffin:

1. Personal Representative Deed dated December 4, 1980;
2. 1963 Plat - St. Johns Valley Camp Sites, Inc.;
3. 1966 Plat - St. Johns Valley Camp Sites, Inc.;
4. Fee Simple Deed dated March 10, 1966 from Harry D. Murdock and Alma C. Murdock to Central & Southern Florida Flood Control District;
5. Summary Final Judgment - Paradise Fruit Co., Inc. v. Board of Trustees of the Internal Improvement Fund of the State of Florida and State of Florida Department of Natural Resources;
6. Lake Poinsett Quadrangle;
7. Aerial Photograph 186 - January 1979;
8. Composite slides of the subject property;
9. Permit application - WOD Application No. 6-5734 with attachments (Joint COE/DER application of 2 pages, Affidavit of Ownership, 2 sheets of drawings, an aerial photo, Affidavit of A. C. Britt with attached location map, agent authorization for James W. Carr); December 8, 1980 letter with attachments (3 addendum sheets of drawings); December 9, 1980 letter with attachment (2nd affidavit of A. C. Britt with bulkhead located on map); 19 pages of calculations by Brian Bussen for GHQ, Inc.; MSSW Application No. 4-5734;
10. Two different October 14, 1980 affidavits from A. C. Britt;
11. Affidavit of April 198? by Preston Arnold;
12. Letter of December 16, 1980, Jack A. Moore, Jr. to Gary R. Griffin, (Petitioner offered only to establish letter sent and so received);
13. Letter of February 11, 1981, J. A. Moore, Jr. to James W. Carr, (Petitioner offered only to establish letter sent and so received);
14. Letter of January 26, 1981, Walter H. Wheeler to Robert Moresi;
15. Overall Plat of St. Johns River Valley Camp Sites showing proposed project.

By Bussen:

16. Drawings titled "St. Johns Water Management 10-Year Flood Design". (2 pages)

By Respondent District:

1. Letter of February 11, 1981, Jack A. Moore, Jr. to James W. Carr;

Official Recognition - By Request per Section 120.61, F.S.

2. Chapters 40C-4 and 40C-6, Florida Administrative Code effective February 1981; Upper St. Johns River Basin Surface Water Management Plan, Phase I, Volumes 1 and 2, October 1979 and February 1981, respectively; The Water Resources Management, Plan, Phase I, November 1977; Resolutions 75-11 and 81-2 of the Governing Board of the St. Johns River Water Management District; Affidavit from District Clerk that foregoing were true and accurate copies of the public records of the St. Johns River Water Management District.

ISSUES: The Petitioner raised the following issues:

1. The exemption of the 1800 feet of bulkhead;
2. The validity of the revocation by Respondent;
3. The applicability of the draft criteria and impossibility of storage of surface waters pursuant to the methodology following the draft criteria;
4. The Petitioner's right to use his property; and
5. The compliance of the application with the appropriate statutory and rule criteria of Respondent.

FINDINGS OF FACT

1. On November 26, 1980, the Petitioner submitted to the Respondent an application for a works of the district permit to:

(a) Replace approximately 1800 feet of collapsed, destroyed, or partially existing bulkhead along the exterior shoreline of Petitioner's property.

(b) Construct a retention bulkhead on both sides of an existing interior canal.

(c) Maintenance dredge and remove unpermitted filling partially blocking an artificially created waterway entrance to the interior of the property.

(d) Place the fill from the dredging in a deadend drainage canal.

(e) Level a spoil mound into an existing finger canal.  
Petitioner's exhibit 9 (first 10 pages).

2. An on-site inspection of the property identified in the application was made by the Respondent on December 4, 1980, and additional information was requested.

3. On December 8, 1980, the Respondent received the requested additional information from the Petitioner.  
Petitioner's exhibit 9 (December 8, 1980 letter with attachments - addendum 1-3).

4. The Petitioner submitted the affidavits of A. C. Britt and Preston Arnold concerning construction activity -- seawall, canal digging and filling -- that occurred prior to 1965. Petitioner's exhibits 10 and 11.

5. On December 16, 1980, the Respondent, through Mr. Jack A. Moore, Director of the Division of Permitting, sent the Petitioner a letter informing the Petitioner that 1800 feet of proposed bulkhead intended to replace collapsed or destroyed bulkhead was exempted pursuant to Subsection 403.813(2)(e), Florida Statutes. Petitioner's exhibit 12.

6. On February 12, 1980, the Respondent, through Mr. Jack A. Moore, Director of the Division of Permitting, sent the Petitioner a letter rescinding the December 16, 1980 letter and informing the Petitioner that the 1800 feet of bulkhead intended to replace previously existing bulkhead was not exempted from the permitting requirement but, to the contrary, a permit was required. Petitioner's exhibit 13.

7. In early March, 1981, the Petitioner submitted to the Respondent engineering calculations and drawings showing that the Petitioner proposed to fill behind the proposed bulkheads and construct two stormwater runoff retention basins. Petitioner's exhibit 9 (pages 18 through 36).

8. On March 20, 1981, the Petitioner completed his application by submitting to the Respondent a modified application for a management and storage of surface water permit that referenced the fill and retention basins. Petitioner's exhibit 9 (last page).

9. The Petitioner purchased certain property in December, 1980. Petitioner's exhibit 1. The properties the Petitioner purchased for \$150,000 consisted of 29 lots and parcel B as found on the Petitioner's exhibit 3. There was no evidence submitted by Petitioner as to ownership of the remainder of subject area although he asserts control over it. Petitioner's exhibits 1 through 4.

10. The property the Petitioner owns per his exhibit 1 as well as other properties were platted in 1963 (Petitioner's exhibit 2) and replatted in 1966 (Petitioner's exhibit 3). A predecessor in title to Petitioner deeded away parcel C, as indicated on Petitioner's exhibit 3, in 1966. Petitioner's exhibit 4.

11. Predecessors in title to the Petitioner had canals dug, seawalls constructed, and some fill placed behind the seawalls, but the vast majority of the work necessary to effectuate a development as proposed on Petitioner's exhibit 3 did not take place. Work towards such an end had terminated in the years 1963-1965. Otherwise the latest any construction activity occurred on the property was 1969, and that activity concerned an addition to a house located on the property. Petitioner's permit application accurately depicts the property as it presently exists.

12. Prior to the termination of construction in the 1960s, some fill had been placed behind bulkheading. The bulkhead lengths labeled 594.76 feet, 500.00 feet and 300.0 feet in Petitioner's permit application were once in place but no longer are. Moreover, the fill that was once behind the bulkheading, as indicated on Petitioner's exhibit 11, has also disappeared. The fill was placed to an elevation of 14 feet MSL.

13. The property lies in the annual floodplain of the St. Johns River and its Lake Poinsett. Lake Poinsett is a lake whose

surface area is in excess of 4,000 acres and whose ordinary high water line is 12.1 feet MSL. The vast majority of Petitioner's property is at or below 12.1 feet MSL in elevation. The mean annual flood elevation is 14 feet MSL, and the 1-in-10 year flood elevation is 17.6+ feet MSL.

14. The modified project proposes all that was encompassed by the initial application plus the filling of 20 acres<sub>±</sub> of land that averages an elevation of 12 feet<sub>±</sub> MSL to an elevation of 18 feet MSL and the excavation of two retention ponds with a surface area of 6.5 acres<sub>±</sub>.

15. There was no evidence presented as to the intended use for the area to be filled as well as the other areas within the property that do not require filling other than that 1.5 acres are to be used for a homesite or homesite in addition to the one home currently there. However, it may be presumed that the Petitioner's repeated reference to the fact that the area was platted indicates the filled area is to be subdivided. If such is the case, from the Petitioner's exhibits, it can be derived that the Petitioner now has 29 lots available for sale or building without the proposed project and that approximately 56 additional lots would be available if fill were placed in the property per Petitioner's application.

16. As the property lies now, the waters of the St. Johns River flow on and off the property and to depths over the property as water levels of the River dictate. The proposed project will eliminate 175 acre feet of water storage capability that currently exists for river waters and will displace that amount of water onto the lands of others during the 1-in-10 year storm event. The amount of water displaced in lesser storm events will be less. Nevertheless, the project will cause increased flood stage on the lands of others.

17. 175 acre feet of water is equal to 58 million gallons of water, and that is five days' supply of water for the City of Melbourne. Moreover, 175 acre feet spread over the 4,336 acres of Lake Poinsett would raise the water level one-half of an inch. The ground slope and downstream gradient around Lake Poinsett are

slight, and the water that is stored over the subject property would be displaced on to other lands around Lake Poinsett were the project constructed. The amount of water that would be displaced onto the lands of others were the proposed project constructed is significant and not minimal.

18. The subject property involved in this permit application is located in the upper St. Johns River basin, a watershed containing approximately 2,000 square miles (1,280,000 acres). This basin includes the headwater marshes, channels and lakes of the St. Johns River system, which extends from southern Indian River County at river mile 301, 111 miles north into southern Seminole and Volusia Counties at river mile 190. The subject property associated with this application is situated within this basin on the east shoreline of Lake Poinsett adjacent to approximately river mile 237. Therefore, some 1,300 square miles or 65% of the entire basin area lies upstream of the subject property.

Historically based on gaging records collected since 1939 within this watershed, some 686,000 acres of total floodplain or 54% of the entire basin area has been inundated by flood stages arising in the valley reaches of the St. Johns River and contiguous marshlands. Since 1900, this total floodplain area has been reduced some 42% by the chronological and cumulative development of 297,500 acres of floodplain lands. Development of these lands has been accomplished by the construction of dikes or levees of sufficient height or filling to sufficient height to prevent inundation during normal and flood stages in the adjacent St. Johns River. Over 90% or some 270,000 acres of this floodplain encroachment has occurred upstream of Lake Poinsett. The land use within these existing diked or filled floodplain areas includes over 40,000 acres of production citrus groves, over 100,000 acres of improved pasture and cropland and in excess of 10,000 acres of platted homesites and homes.

The consequence of this long term, cumulative removal of volumetric storage by individual land owners has obviously been to significantly reduce the remaining volumetric storage available in the upper St. Johns River valley. Prior to development,

the surface water runoff resulting from normal as well as more severe storm events was received into the river system by some 20 major and minor tributaries which intercepted and conveyed runoff from the 2,000 square mile basin. Since annual basin rainfall has not appreciably changed over the period of development, equivalent amounts of runoff are still received into the valley floodplain areas. However, now under existing conditions, significantly less storage is available, and therefore, surface water stages resulting from a given storm intensity, frequency, duration and distribution are significantly higher today than during pre-development conditions. Today, in this basin, a relatively minor storm has the capability to produce a major flood resulting in millions of dollars of damages to real property and improvements constructed in the floodplain.

Another important aspect involving land use which has contributed to this elevated flood stage condition relates to drainage practices which have taken place concurrent with encroachment in the floodplain. Over the last 60 years, as each individual upland landowner has successively used his land more intensively, a higher order of surface water drainage was designed and constructed. This normally involved the construction of field ditches, canals, pump stations, streets, storm drains, etc., all of which variably increase the rate and volume of surface water runoff which is received first by the natural tributaries of the St. Johns River and then into the river valley itself. Therefore, in addition to a substantial diminution of volumetric storage, the basin runoff incident to a particular rainfall event has been increased volumetrically, and the time in which it is concentrated into the river valley has been greatly abbreviated. Both of these factors further intensify the peak stages and peak flows in the upper St. Johns River valley.

The permit application concerned with this order proposes a land use activity which will further reduce the volumetric storage of both the annual floodplain and slightly higher elevation of the floodplain inundated during frequencies more often than the 1-in-2 year storm event. Issuance of this permit would



therefore be in absolute disregard to the existing flood peril of the remaining developed and undeveloped lands adjacent to this river system, to the public interest which is already faced with constructing over a \$100,000,000 flood control project in this basin to compensate for the loss of floodplain storage and finally to the resource known as the St. Johns River. For these reasons, this proposed project, if it were constructed, would adversely affect the property of others and is not in the public interest.

18a. The Petitioner's engineering calculations were based on the 1-in-10 year storm and the district staff evaluated the calculations to determine whether pre- and post-development discharge would be the same. The 1-in-10 year storm is a storm event that the district staff has chosen and tried for two years or so as the common denominator between an applicant's engineer and the district staff; to facilitate evaluation of a proposed project some storm event can be chosen. The 1-in-10 year storm event is a storm event that is not too severe nor is it too the opposite. The district is revising its rules of Part IV of Chapter 373, Florida Statutes, Chapter 40C-4, Florida Administrative Code, and the 1-in-10 year storm is one of the matters scheduled to be adopted.

#### CONCLUSIONS OF LAW

19. The 1,800 feet of bulkhead is not exempt. The intent of the legislature when it passed the legislation was to authorize property owners to repair and replace bulkheading that protected uplands. In the instant case, the bulkheading as well as the fill that was behind the bulkhead are gone. The upland as contemplated by the statute does not exist; the fill that was there has been gone for years. Indeed, that much of the subject property is at or near the ordinary high water mark reflects the degree to which whatever fill was once there has been eliminated. Therefore, subsection 403.813(2)(e), Florida Statutes, does not exempt the 1,800 feet of previously existing bulkheading because the facts surrounding the bulkheading in question take it from the purview of that subsection.

20. The project application as originally proposed and as modified is governed by the rules as amended in December 1980 and effective in February 1981 as stipulated to by the parties. The project as initially proposed was required to be permitted pursuant to Chapter 40C-6, Florida Administrative Code. The St. Johns River is a work of the district, and the proposed project would have placed a work within, on and across a work of the district and the proposed project is not exempted. Section 373.085, Florida Statutes. Subsections 40C-6.09(1)(2) and 40C-6.041(1) and Section 40C-6.051, Florida Administrative Code. The project as modified was required to be permitted pursuant to Chapter 40C-4, Florida Administrative Code. Lake Poinsett is in excess of 40 acres, and the proposed modified project will divert water from Lake Poinsett. Additionally, the St. Johns River drains an area exceeding 5 square miles, and the proposed project would cover over 30 acres. The proposed project would be placed within the River's 100-year floodplain and would divert water from a land surface area in excess of 10 acres. The proposed project is not otherwise exempted. Sections 373.413 and 416, Florida Statutes. Subsections 40C-4.041(1)(b) and 40C-4.041(1)(d) and Section 40C-4.051, Florida Administrative Code.

21. Sections 373.413 and 373.416, Florida Statutes establish the statutory criteria for a management and storage of surface water permit, to wit:

the construction will not be harmful to the water resources of the district;

the operation or maintenance will not be inconsistent with the overall objectives of the district.

These statutory requirements have been further implemented by the rules in Chapter 40C-4, Florida Administrative Code. The permit application was recommended for denial because it was reviewed as not complying with and contravening Subsections 40C-4.301(1)(b) and 40C-4.301(3)(b)(c), Florida Administrative Code. Indeed the proposed modified project is not in the public interest; it will cause increases in flow or stage of waters such that the lands of others are adversely affected; it will cause


that the lands of others are adversely affected; it will cause increases in flood stage on the lands of others. Moreover, the proposed project would harm the resource, would be inconsistent with the overall objectives of the district and Chapter 373, Florida Statutes, and would do harm to the property of others.

THEREFORE, IT IS ORDERED AND ADJUDGED that the application for permit of Gary R. Griffin be denied.

DONE AND ENTERED this 20<sup>th</sup> day of July, 1981.


ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

  
A. RAY BEVILLE, CHAIRMAN

  
RUTH D. HEDSTROM, DISTRICT CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was furnished by United States Mail this 21<sup>st</sup> day of July, 1981 to ROSS A. MCVOY, ESQUIRE, Attorney for Petitioner, MADIGAN, PARKER, GATLIN, SWEDMARK & SKELDING, 318 North Monroe Street, Forum Building, Post Office Box 669, Tallahassee, Florida 32302.

  
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