

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAKKA COMMUNITY CLUB,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 89-1176
)	
EL JOBEAN PHILHARMONIC GROUP,)	
INC., and SOUTHWEST FLORIDA)	
WATER MANAGEMENT DISTRICT,)	
)	
Respondents.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Arnold H. Pollock, held a formal hearing in the above styled case on June 7, 1989 in Sarasota, Florida.

APPEARANCES

For Petitioner:	Becky Ayech Personal Representative Miakka Community Club 421 Verna Road Sarasota, Florida 34240
For Respondent:	Douglas Manson, Esquire
El Jobean	Blain & Cone P.A. 202 Madison Street Tampa, Florida 33602
Respondent:	Edward B. Helvenston, Esquire
SWFWMD	Assistant General Counsel 2379 Broad Street Brooksville, Florida 34609-6899

STATEMENT OF THE ISSUES

The issue for consideration in this case is whether Respondent, El Jobean Philharmonic Group, Inc., should be issued a consumptive use permit to draw water on its property located in Sarasota County, Florida for the irrigation of a golf course.

PRELIMINARY STATEMENT

On January 27, 1989, the Southwest Florida Water Management District, (District), issued a Notice of Intent to approve the application for a consumptive use permit filed by Respondent, El Jobean Philharmonic Group, Inc. (El Jobean), to withdraw ground water for the purpose of irrigating its golf course to be located in Sarasota County, Florida. On February 14, 1989, Becky

Ayech, on behalf of the Miakka Community Club (Miakka), filed a request for formal hearing and, at approximately the same time, Wyatt S. Bishop, Jr., a landowner in the general area of the proposed well, also filed a request for formal hearing. Both requests were forwarded to the Division of Administrative Hearings for appointment of a Hearing Officer and on April, 4, 1989, the undersigned consolidated the cases and set hearing for June 7 and 8, 1989, at which time the hearing was convened as scheduled.

Shortly after commencement of the hearing, Mr. Bishop and representatives of the Respondents entered into an agreement for the settlement of their dispute. This resulted in a voluntary dismissal of Mr. Bishop's request for hearing.

At the hearing, Petitioner presented the testimony of Ms. Ayech, John D. Richardson, and Glenda Lee Mustico, all residents of the area alleged to be affected. Petitioner also introduced Petitioner's Exhibits 1 through 3 and 6 through 16h. Petitioner's Exhibits 4 and 5 for identification were not received into evidence. Respondent El Jobean presented the testimony of Robert McDaniel, a principal in the applicant group; Timothy Lee Martin, a project engineer; and Robert J. Moresi, an expert hydrologist. El Jobean also introduced Respondent's Exhibits 1 through 6. Respondent, District, presented the testimony of Robert G. Tyson, a consumptive use permitting supervisor in its Venice office, and introduced District Exhibit 1.

A transcript of the hearing was furnished and parties submitted Proposed Findings of Fact which have been ruled upon in the Appendix to this Recommended Order.

FINDINGS OF FACT

1. At all times pertinent to the issues herein, the Southwest Florida Water Management District had permitting authority for the issuance of consumptive use permits in the area in which Respondent, El Jobean, proposes to sink its irrigation well.

2. On December 12, 1988, El Jobean submitted a consumptive use permit application to sink a new well for the purpose of irrigation of a golf course to be developed on the property it owns in Sarasota County. The well is to be located in the NE 1/4 of the NE 1/4 of Section 32, Township 36S, Range 20R, in Sarasota County, Florida near the southern boundary of an irregularly shaped piece of property consisting of approximately 855 acres, owned by the applicant, which extends over Sections 28, 29, 32 and 33, Township 36S, Range 20E. Respondent proposed to sink a 10 inch diameter well to a total depth of approximately 900 feet with casing in the well now to extend down to 300 feet, with a pump capacity of 1,000 GPM. The golf course to be irrigated is to encompass approximately 190 acres. The applicant requested authority to withdraw an average of 600,000 GPD with a limitation of a maximum of 1,440,000 GPD.

3. The application was properly staffed by the District. In the staff report on the application, the average daily use limitation was expanded to 707,000 GPD; consumptive use was raised from 0 to 139,000 GPD; and maximum daily consumption was reduced from 1,440,000 GPD to 1,240,000 GPD. These changes were due to correction of arithmetic errors in the application and were accepted by the applicant. The ultimate recommendation of the staff was for approval of a 6 year permit, subject to certain conditions outlined in subparagraph I of the staff report.

4. These special conditions require the provision and use of flow measuring devices to maintain an accurate record of the water withdrawn; the maintenance of flow records and the providing of periodic reports to the District; the collection and analyzing of water quality of samples taken from the well to measure the appropriate parameters for chlorides, sulfates, and total dissolved solids; the reporting of the results of these samplings and a description of the sampling and analytical methodologies employed; and a requirement that the permittee investigate the feasibility of supplementing and/or substituting drawn water with treated sewage affluent.

5. After the staff report was submitted, proper notice of the District's intent to issue the permit was published. Based on that notice, protests were filed both by Miakka and Mr. Bishop.

6. The area in question is located within the Manasota Basin which, itself, is located within the Southern West-Central Florida Ground Water Basin, (SWCFGWB), which encompasses all of Pasco, Hillsborough, Manatee, Sarasota, Polk, Hardee, and DeSoto Counties, and parts of Lee, Glades, Charlotte and Highlands Counties. The SWCFGWB sits atop several aquifers which include the Floridian Aquifer, two Intermediate aquifers, and the Surficial Aquifer. The Floridian Aquifer is the deepest and the Surficial Aquifer is on the top.

7. The Miakka Community Club is a Florida corporation made up of residents of the pertinent area whose primary function is to preserve and conserve the rural nature and spirit of the Northeast section of Sarasota County. The club performs this function through educational programs, community activities, and participation in the legislative process.

8. Miakka urges denial of the permit sought by El Jobean based on its membership's belief that the property owners whose property is in the immediate vicinity of the proposed well will be adversely affected if El Jobean is permitted to sink its well and withdraw water from it. The club membership believes that approval of El Jobean's well will result in contamination of existing personal water wells due to excessive use by El Jobean; potential contamination of Sarasota County's future drinking water sources which include the capital Ringling, MacArthur tract and the Myakka River; reduction of property values; and destruction of personal resources. Petitioner also urges that since the proposed golf course will be a part of a private club for the use of members only, in which membership will be limited, there is no public benefit derived from the approval of and sinking of the well in question. Petitioner also contends that during the periods of severe water shortage as are being currently experienced, permission to sink a well of this size to draw water in of the magnitude expressed in the application, would be counterproductive and detrimental to the interests of the other property owners in the area.

9. In support of its claim, Petitioner presented the testimony of two homeowners from the area, Mr. Richardson and Ms. Mustico. Mr. Richardson, whose well is 183 feet deep, has had several problems with his well even without the instant drilling. In 1974, and subsequent thereto, he has had to go deeper with a suction pipe because the water has dropped below the level of the tail pipe. Ms. Mustico's 160 foot deep well, with 80 feet of casing, is used to supply water for the home. She also has other wells for watering her lawn and for livestock, one of which goes down 500 feet. She is concerned that the well proposed by El Jobean will adversely impact her ability to draw water from her

wells because, she believes, the water level from which her water is drawn will drop. In the past, her primary well has gone dry and the wells of several neighbors have gone dry as well.

10. Through maps and other documentation taken from the Ground Water Resource Availability Inventory for Sarasota County, Florida, prepared by the District in March 1988, Petitioner has established that areas of significant groundwater withdrawal within the SWCFGWB occur in Hillsborough, Manatee, Polk, Hardee, DeSoto and Highlands Counties. With the exception of an extremely small portion of Sarasota County located contiguous to Manatee County, there appear to be no areas of major ground water withdrawal currently existing in Sarasota County. The majority of the major municipal well fields within the pertinent basin that are located within Sarasota County, extend down to the Intermediate and Surficial Aquifers with only 3 extending through the lower Intermediate into the Floridan Aquifer. These include the Verna well field located in the northeast corner of Sarasota County where it abuts Manatee County; the Sarasota County well field located in northwest Sarasota County near the Manatee County line; and the Sorrento Utility, Inc., well field which is located near the Gulf Coast, approximately two-fifths of the way down between the Manatee and Charlotte County lines. With the exception of the Verna well field, all the municipal well fields in Sarasota County appear to be reverse osmosis systems and as of 1987, there were 28 reverse osmosis systems located within Sarasota County. Most are relatively small in their output measured in millions of gallons per day. With the exception of 3 public supply wells, 2 of which are permitted an average annual pumpage greater than 100,000 GPD and 1 of which is permitted less, all of the permitted public supply well fields in Sarasota County are located west and south of 1-75 as it extends from the Manatee County line in the north to the Charlotte County line in the south. The El Jobean well would be located east of the line, in that area occupied by the 3 public supply wells.

11. Generalized recharge areas for the upper Floridan Aquifer in the groundwater basin in issue here have been categorized from "high", with a rate of more than 10 inches per year, to "Generally none", with a recharge rate at 0. In 1980, the high recharge rates existed in the north-central part of Pasco, the eastern part of Polk County, and the northeastern part of Highlands County. Sarasota County is in an area wherein the recharge rate was either very low or generally none. In September 1986, the high recharge rate was found in a very small area of northeastern Pasco County, and small areas in both Polk and Highlands Counties. Sarasota County, for the most part, was classified as having no recharge. In May 1987, the high recharge rates were, again, a small area in eastern Pasco County, a small area in northeastern Hillsborough County, a small area in southeastern Polk and northwestern Highlands Counties, and a minuscule area in central Pinellas County. Again, Sarasota County had a recharge rate of 0.

12. Generalized estimated, calibrated, model-derived recharge and discharge values for the upper Floridan Aquifer in the ground water basin in issue here, as they pertain to Sarasota County, reflect positive 2 recharge to negative 1 discharge inches per year. Historically, however, the northeast portion of Sarasota County, where the El Jobean well in question would be located, evaluated by various individuals or agencies periodically from 1980 through 1988, reflects a recharge of anywhere from 0 to 2 inches per year. None of this documentation was supplemented, however, by direct testimony by an individual knowledgeable in this area, and Petitioner's main thrust appears to be an unsubstantiated fear that the sinking of El Jobean's well will have a negative impact on its membership's wells. Admittedly, the residents in the

area in question all rely on private wells for the majority of their water supply, other than through the catchment of rainwater, which is insignificant. It was also established that the area has been undergoing a severe water shortage and that conservation measures have been mandated.

13. On the other hand, El Jobean presented the testimony of a hydrogeologist, Mr. Moresi, who has extensive experience with the modeling process used to determine water consumption and recharge in southwest Florida and Sarasota County.

14. The aquifer system in Florida is made up of water bearing limestone layers below the surficial sand base. This aquifer system underlays the various zones throughout the state and reflects a surficial aquifer extending from ground level down approximately 70 feet to a confining bed which separates it from the lower strata. This top confining bed is approximately 20 feet thick, and below it is the Tamiami-Upper Hawthorn Aquifer, which is between 100 and 200 feet deep and which rests on another confining bed somewhat thicker than the upper one. Below the second confining bed is the Lower Hawthorn-Upper Tampa Aquifer which extends approximately from the 250 foot to the 450 foot level at the Manatee County line, and between the 320 foot and the 710 foot level at the Charlotte County line. Another confining bed lays between this aquifer and the Floridan Aquifer which starts at the 500 foot level and goes down well below the 900 foot level in the north and extends from the 730 foot level down in the south.

15. The confining bed below the surficial aquifer is made up of a clay material which retards the movement of water from one aquifer to another. The surficial aquifer is porous and saturated with water from the water table down. Since the confining beds are far less porous than the aquifers they separate, water moves much more slowly through them. The lower aquifers are made up of limestone and are also porous and contain water. The Tamiami-Upper Hawthorn formation consists of limestone and clay, but is water bearing. The Lower Hawthorn-Upper Tampa formation is similar and both make up the intermediate aquifer below which is the lower confining bed followed by the Floridan aquifer.

16. Respondent's well would be cased in steel down to an area approximately 100 feet into the Floridan Aquifer, through the Lower Hawthorn-Upper Tampa Aquifer and through the lower confining bed. Since the well would be cased to well below the lower confining bed, water existing in the upper aquifers, would be prevented from being drawn down by operation, of the Respondent's well either directly or by settling down to replace the water drawn out.

17. Generally, the deeper a well is drilled, the worse the quality of the water, and it becomes less potable. The Floridan Aquifer produces far more copious quantities of water than do the intermediate aquifers. However, since it is cheaper to drill to the intermediate zones as the wells need not be so deep, and since the water there is better, most domestic wells go no deeper than these aquifers. They go down approximately 150 to 180 feet.

18. The pressure in each level is separate from and different from that in the other aquifers. The upper intermediate system generally has a lower pressure than the lower intermediate system. As a result, water from the lower intermediate system tends to leak upward toward the upper intermediate aquifer, rather than the reverse. In addition, a recent survey tends to show that the Floridan aquifer also tends to leak upward into the lower intermediate level. It also shows that leakage through the confining beds amounts to .002 GPD per

cubic foot of aquifer. Petitioner claims that since the lower water is of lesser quality, and since withdrawal of water from the upper layers would promote leakage upward, thereby adding lower grade water to the better grade upper water, there could be a diminishment in upper level water quality as a result of water being drawn from the upper levels. However, according to Mr. Moresi, the .002 figure is so small it would result in an infinitesimally small drawdown of water level from the upper intermediate level aquifer and the potential for compromise of the water quality therein is remote. Clearly, this is not the result of drawing water from the Floridan Aquifer as the well in question would do but more the result of the residential wells extending into the upper levels.

19. The District ran a model for the proposed El Jobean well (a Jacob-Hantush model) which showed that drawdown at the wellhead would be just over 2 feet. This means that use of the Respondent's well would reduce the water level in the Floridan Aquifer at the well head by 2 feet. However, this drawdown is shown to decrease rapidly out to where, at distance, it is almost immeasurable. In fact, drawdown of the Floridan Aquifer at 24,000 feet from the well head (approximately 4.5 miles) would be .1 feet, slightly or 1 inch. The .1 foot drawdown relates to the lowest (Floridan) aquifer and the resultant drawdown in the upper intermediate aquifer, into which the majority of residential wells are sunk, would be relatively undetectable. Since the Petitioner's wells, at their deepest, go only into the upper intermediate level, and would be separated by 2 confining beds from the Floridan Aquifer, the impact on the domestic wells at 2 miles from the El Jobean wellhead would be immeasurable. Even at 1 mile, there would be minimal drawdown in the Floridan Aquifer and almost none in the upper intermediate aquifer. The potentiometric surface of the intermediate layer would not be adversely affected, nor would that of the surface water.

20. Recognizing the potential for saltwater intrusion which occurs all along the coast, based on his studies, Mr. Moresi concluded that the well in question here would not induce significant saltwater intrusion. He concluded as well that the permit is consistent with the requirements of the District rule; that the amount permitted for the use of irrigation of the golf course is reasonable, assuming a golf course is a reasonable and appropriate use of water; that the withdrawal by the well in issue would not have an adverse impact on users outside the property on which the well was located; that it would not impact existing users; that there is no other water available for the purpose intended; that the water taken from the Floridan Aquifer under this permit may be potable but is of poor quality; and that the applicant met rule standards.

21. Mr. Moresi also discussed the possible cumulative impact of the proposed well when operated along with the currently existing wells. If there are other drawdowns from the same cone into which El Jobean's well would be sunk, the withdrawals would be cumulative. However, as best he can determine, the only other significant drawdown from the cone pertinent here is that of the Verna well field. In his opinion, that well field's drawdown, which is from the northeast, would not be significant even when considered with the El Jobean well.

22. Mr. Moresi was also satisfied that while the confining bed separating the surficial aquifer from the next lower level might be disturbed, the deeper one goes, the less likely there is to be mixing of aquifers. The only instance where water could move from one level to another as a result of the well is where there is no casing on the bore hole. In the instant case, plans call for,

and permit conditions require, the well to be cased to below the lowest confining bed. Consequently, there should be no upward or downward flow of water as a result of the bore.

23. Mr. Tyson, who worked on the evaluation of El Jobean's application for permit, was of the opinion that the amount of water requested by El Jobean in its application was appropriate for a golf course. This does not mean that a golf course is an appropriate use of the property.

24. The special conditions imposed on the granting of the permit by the District are designed to reduce any impact possibly caused by the permitted activity. The Jacob-Hantush model used in analysis of the instant application is considered to be a conservative tool and showed minimal drawdown at all property boundaries. The use of other models in this case was considered neither necessary nor appropriate.

25. Mr. Tyson considers the proposed permit a reasonable beneficial use as defined in the Florida Administrative Code and statutes because it proposes use of reasonable amounts of water and the models indicate no unfavorable impact. Based on the past practice of permitting golf courses with subdivisions, he feels the proposed use is reasonable. He concludes, therefore, that it is in the public interest to grant this permit. In his opinion, the permit will not interfere with legal existing uses and meets all statute and rule requirements.

26. Considering the evidence as a whole, it is found that petitioner has presented insufficient evidence to support its claim that approval and operation of El Jobean's well as proposed would have an adverse impact on the property owners. It's concerns are no doubt sincere, but these concerns are not sufficiently confirmed by evidence of record.

27. At the hearing, the parties stipulated that if the permit were granted, it would be modified by the addition of two conditions:

- (a) The proposed well shall be constructed with a minimum of 600 feet of casing so as to prevent the unauthorized interchange of water between water bearing zones in order to prevent the deterioration of water quality in the shallower zones. If the well cannot be properly completed to prevent such an unauthorized interchange of water, the well shall be abandoned and plugged in accordance with Rule 17-21.10(2)(c), F.A.C.. Upon completion of the well, a copy of the well construction completion report shall be sent to the District.
- (b) The permittee shall line the bottom of the pond that will be used as the irrigation source, with clay to a thickness equal to 1.5 feet.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case. Section 120.57(1), Florida Statutes.

29. Respondents herein have contended that Petitioner has no standing to contest the District's proposed issuance of the consumptive use permit in question. The issue was previously resolved in favor of the Petitioner which was deemed to have established its standing at the hearing held herein in Sarasota, Florida on June 7, 1989. The potential for injury to the membership of the Petitioner was real, substantial, immediate, and different from that faced by the general public. *Grove Isle, Ltd. vs. Bayshore Homeowners*, 419 So.2d 1046, (Fla. 1st DCA, 1982); *Green vs. Department of Natural Resources*, 414 So.2d 251, (Fla. 1st DCA, 1982); *Agrico Chemical Company vs. Department of Environmental Regulation*, 406 So.2d 478, (Fla. 1st DCA, 1981).

30. Though the evidence of record failed to establish that an injury in fact was likely as a result of the proposed permit, this was due to a failure of the evidence in this case and not a result of a lack of potential injury. The resolution of the issue of standing, in favor of Petitioner at the time of hearing, stands.

31. The Florida Legislature signified its intent to provide a means for the reasonable regulation of the consumptive use of water in this state, and in furtherance thereof, provided, at Section 373.217, that Part II of the Florida Water Resources Action of 1972, (ss. 373.203 - 373.249, Florida statutes), shall provide the exclusive authority for requiring permits for the consumptive use of water. In Section 373.069, Florida Statutes, the state is divided into several water management districts of which the Southwest Florida Water Management District, co-respondent with El Jobean here, is one. At Section 373.044, Florida Statutes, the governing board of each district is authorized to make and adopt reasonable rules.

32. The fundamental guidelines for the obtaining of a consumptive use permit are outlined in Section 373.233, Florida Statutes, where, at subsection (1) it provides:

... 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.

The term "reasonable - beneficial use" means:

. . . 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.

33. Consistent with the provisions of Section 373.044, the District promulgated and adopted its rules relating to the consumptive use of water, at Chapter 40D-2, F.A.C., and the criteria for issuance of a permit under these rules are found at Rule 40D-2.301, F.A.C. Subsection (1)(a) - (c) of that section restates and parallels the criteria for permitting set forth in Section 373.223. Subsection (2) outlines bases for denial of a permit and, as pertinent, have been found not to require denial under the conditions shown to exist here. The remaining criteria for permitting also appear to have been met.

34. In the instant case, Petitioner presented the testimony of two homeowners in the community who draw their water from wells on their own property. To be sure, their wells have provided less than adequate water at diverse times in the past and have, in fact, periodically gone dry. Petitioner also produced documentary evidence tending to show the recharge rate for the aquifer from which Petitioner's membership draws its water, is not ample and that, due to a continuing rain shortfall, the area encompassed by the District has been on continuous water restrictions.

35. On the other hand, the testimony of the applicant's expert and that of the District, leads to the inescapable conclusion that because of the different water sources from which the pertinent wells (applicant's and residents') draw water, there is little likelihood that the applicant's use of its well to draw water in the amounts requested will in any way adversely impact or interfere with any legal use of water existing at the time of the application. The well in issue will draw water from the lowest strata of water. The steel casing of the well and the less porous confining beds between the poorer water in the lowest aquifer (from which El Jobean will draw) and the higher quality water in the intermediate aquifers (from which Petitioner's members will draw) will prevent any intermixing of this water to the detriment of the residents. The amount of drawdown in the upper and intermediate aquifers as a result of El Jobean's withdrawal will be minimal due to the stratification and the distances involved. Further, the likelihood of salt water intrusion is remote.

36. In addition, the quantity of water involved has been found to be reasonable, and the use to which it will be put, a golf course as a part of a subdivision, has been held in the past to be a reasonable use. In the instant case, even though the golf club will have limited and restricted membership, it is still considered a reasonable use and consistent with the public interest.

37. Further, none of the disqualifying criteria outlined in Rule 40D-2.301(2),(3) and (11) have been found to exist. The potentiometric surface in the Floridan aquifer will not be lowered below sea level. The rate of flow of any stream or watercourse would not be reduced by more than 5%, and the proposed well will withdraw the lowest quality water for the irrigation project.

38. None of the above in any way rebuts the sincerity or legitimacy of Petitioner's membership's concerns regarding the continued availability of potable water to their homes and gardens. Any reasonable person would have these same fears and questions. However, based on the evidence presented at this hearing dealing with the legal bases for issuance or denial of the permit applied for here, it is concluded that El Jobean has established its entitlement to the permit in issue here by legal and competence evidence of record.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is, therefore:

RECOMMENDED that the Southwest Florida Water Management District enter a Final Order issuing Consumptive Use Permit Number 209458, as modified by the conditions stipulated to at the hearing held herein on June 7, 1989, and outlined in Finding of Fact Number 27 herein, to El Jobean Philharmonic Group, Inc.

RECOMMENDED this 9th day of August, 1989 at Tallahassee, Florida.

ARNOLD H. POLLOCK, Hearing Officer
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of Division of
Administrative Hearings
this 9th day of August, 1989.

APPENDIX TO RECOMMENDED ORDER
IN CASE NO. 88-1176

The following constitutes my specific rulings pursuant to Section 120.59(2), Florida Statutes, on all of the Proposed Findings of Fact submitted by the parties to this case.

For the Petitioner:

1. Not a Finding of Fact but a statement of the ultimate issue of fact.
2. Accepted and incorporated herein.
- 3-6. Accepted and incorporated herein.
- 7-12. Accepted and incorporated herein.
13. Accepted as indicating original conditions.
- The parties stipulated to additional conditions at the hearing.
14. Accepted.
- 15 & 16. Accepted and incorporated herein.
- 17-33. Accepted and incorporated herein as pertinent.
- 34 & 35. Accepted.
- 36 & 37. Accepted.
- 38 & 39. Redundant.
- 40-43. Accepted.
44. Accepted.
- 45-51. Accepted.
- 52 & 53. Accepted.
- 54-56. Accepted.
- 57 & 58. Accepted and incorporated herein.
- 59-66. Accepted.
- 67-75. Accepted and incorporated herein.
- 76 & 77. Accepted and incorporated herein.
78. Accepted.
- 79-84. Accepted.
85. Accepted and incorporated herein.
86. Rejected.
- 87 & 88. Accepted.
- 89-93. Accepted and incorporated herein.
94. Accepted.
95. Accepted in the natural source sense suggested by Petitioner.
- 96-99. Accepted and incorporated herein.

100 & 101. Accepted and incorporated herein.
102-105. Accepted and incorporated herein.
106. Accepted.
107 & 108. Accepted.
109 & 110. Accepted.

For the Respondents:

1 & 2. Stipulation between the parties accepted and incorporated herein.
3-6. Accepted and incorporated herein.
7. Not a Finding of Fact but a comment on the evidence except for the second sentence which is incorporated herein as a Finding of Fact.
8. Not a Finding of Fact but a comment on the evidence.
9-11. Accepted and incorporated herein.
12. Accepted.
13-16. Accepted and incorporated herein.
17. Accepted and incorporated herein.
18 & 19. Accepted and incorporated herein.
20. Accepted and incorporated herein.
21. Accepted.
22-26. Accepted and incorporated herein.
27 & 28. Accepted and incorporated herein.
29. Accepted.
30-32. Accepted and incorporated herein.
33-40. Accepted and incorporated herein.
41. Accepted and incorporated herein.
42. Accepted and incorporated herein.
43. Accepted and incorporated herein.
44. Accepted and incorporated herein.
45. Not a Finding of Fact but a Conclusion of Law.

COPIES FURNISHED:

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