STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IMC FERTILIZER INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT,	)	
	)	CASE NO. 90-2650
Respondent,	)	
	)	
and	)	
	)	
FAYE DOBBS,	)	
	)	
Intervenor.	)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, K. N. Ayers, held a public hearing in the above-styled case on November 15, 1990, at Bartow, Florida.

APPEARANCES

For Petitioner: Robert W. Sims, Esquire
Post Office Box 1526
Orlando, Florida 32802

For Respondent: Catherine D'Andrea, Esquire
2379 Broad Street
Brooksville, Florida 34699-6899

For Intervenor: Faye Dobbs, pro se
Post Office Box 7407
Lakeland, Florida 33802

STATEMENT OF THE ISSUES

Whether Petitioner's application for renewal of water use permit application #200781.02 should be granted to withdraw a combined average withdrawal of 9,320,000 gallons of water per day and a maximum combined withdrawal rate of 18,600,000 gallons per day, subject to the terms and conditions listed in proposed permit for use at applicant's Haynesworth Mane.

PRELIMINARY STATEMENT

After reviewing IMC Fertilizer Inc:. (IMCF), Petitioner's, application for renewal of consumption use permit application #200781.02, Southwest Florida Water Management District (SFWMD), Respondent, issued a notice to adjacent property owners that it intended to issue the requested renewal and advised these property owners of their right to challenge the issuance of this permit.

Faye Dobbs, Intervenor, who owns an orange grove surrounded by Haynesworth Mine property, by letter dated February 9, 1990, requested an informal hearing to challenge the issuance of this permit. SFWMD treated this as a factual challenge to the issuance of this permit and referred the matter to the Division of Administrative Hearings for a formal hearing. The case was initially scheduled to be heard August 1, 1990, but was continued twice at the request of the parties.

At the hearing, Petitioner called Lee Thurner, accepted as an expert in phosphate mining, Diedra Smith, accepted as an expert in phosphate mine water use, and Peter Schreuder, accepted as an expert in hydrogeology and computer modeling for surface waters; Respondent called Robert Viertel, accepted as an expert in ground water modeling, hydrogeology and water use permits; and Intervenor testified in her own behalf and called three additional witnesses, two of whom attempted' to testify to an overheard conversation to which objection was sustained.

Petitioner presented 24 exhibits, all of which were admitted into evidence; and Intervenor presented a package of 17 exhibits of which only 2, 3, 6 and 12a, 12b and 12 were admitted. Ruling on the admissibility of Exhibit 5a, 5b and 5c was reserved at the hearing. Objections to those exhibits are now sustained, as the exhibits are deemed irrelevant.

Proposed findings have been submitted by Petitioner. Those proposed findings are generally accepted. Those proposed findings not included below were deemed unnecessary to the conclusions reached.

Having considered all credible evidence and observed the demeanor of the witness, the following is submitted.

FINDINGS OF FACT

1. IMCF operates a phosphate mining facility known as the Haynesworth Mine located on SR 37 in western Polk County, south of Bradley Junction. IMCF leases this mine from Brewster Phosphates, which is a joint venture of American Cyanamid Corporation and Kerr-McGee Corporation. The mine includes approximately 14,100 acres. IMCF took control of the mine from Brewster in 1986.

2. At the time IMCF took control of this mine, a consumptive water use permit was extant which was due to expire in 1989. It is to renew this permit that the application here being considered was filed.

3. After requesting and obtaining additional information and evaluating the application, Respondent issued its notice of intent to issue the permit.

4. Phosphate ore is extracted by a dragline which opens mining cuts of 30 to 40 feet in depth at this facility. Seepage occurs into the mine cuts which must be removed in order to see and extract the phosphate ore. Dewatering is also necessary to protect the dragline from slope stability problems. Water pumped out of the mining cuts is introduced into the mine water recirculating system where it is used for numerous purposes, such as hydraulically pumping the extracted material to the beneficiation plant where clay and sand is extracted from the phosphate ore.

5. The beneficiation plant uses large quantities of water, utilizing supplies from within the mine system (surface waters) and some from deep wells. It is the water from the deep wells that is the primary concern of the Intervenor. The surface water comes primarily from rainfall, mine cut seepage and make up water from the deep wells.

6. Recycled water is of lower quality than well water due to the presence of organic materials or suspended solids, but it is used for many purposes, such as washing ore before being sent to settling ponds and later decanted from the top of the settling areas and returned to the water recirculating system.

7. By use of recircled water in the beneficiation plant, the quantity of well water needed in later stages of the mining process and for make up due to evaporation and transpiration losses is reduced. Evidence presented shows that IMCF, by improving the recirculation system, has reduced the amount of well water needed in the overall mining process from 1220 gallons of deep well water per ton of phosphate rock produced in 1987 to 775 gallons per ton in 1989.

8. The use here proposed is greater than was approved in the expiring permit; however, this increase is due almost entirely to the inclusion of the water pumped in the dewatering operation and the sealing water wells which were not counted in earlier years in determining the quantity permitted to be pumped.

9. Withdrawal of water from the mine cuts affects only the surficial aquifer and can result in a withdrawal of water from adjoining property. To mitigate this problem, a setback of 1100 feet from adjacent property has been established in which mining cannot be conducted. Additionally, a ditch is to be installed between the mining cut and the property line which is kept full of water to provide recharge to the surficial aquifer.

10. Phosphate mining is a reasonable and beneficial use of water, and is consistent with the public interest.

11. The use here proposed was grandfathered in long before the Intervenor received a consumptive use permit in 1986 and will not interfere with any legal use of water existing at the time of the application.

12. Considerable testimony was presented describing the computer modelling process used by IMCF and SFWMD in determining that the maximum drawdown of the water allowed by this proposed permit would not have a deleterious effect on adjacent property owners or on the Florida aquifer from which much of this water will be drawn.

13. As a result, it is found that the rate of flow in nearby streams or watercourse will not be lowered; the level of the potentiometric surface will not be lowered below the regulatory level established by SFWMD; the drawdown will not induce salt water encroachment; will not cause the water table to be lowered so that lake stages or vegetation will be significantly affected on property not owned by the applicant; will not cause the potentiometric surface to be lowered below sea level; and the granting of this permit is in the public interest.

14. The Intervenor's property consists of a 62 acre orange grove planted on reclaimed phosphate land that was mined more than 30 years ago and is surrounded by the 14,100 acres now controlled by IMCF. Her primary concern is that IMCF's mining operations will withdraw surficial water that would otherwise go to her orange grove, and that sufficient water will be withdrawn from the Florida aquifer that she will not have sufficient water to irrigate her grove.

15. To support this position, Intervenor presented evidence that prior to 1986 her grove prospered with only natural rainfall. However, in 1986 it was found necessary to install a well to provide irrigation to this grove; and a permit was obtained from SFWMD.

16. Subsequently, during a dry spell in April 1988 the surface pressure at Intervenor's pump dropped from 22 psi to less than 15 psi, and she was told the pumps would be burned out if pumping continued and the pressure dropped further. She attributed this low pressure at her pump to IMCF taking water from the aquifer from which her water also was drawn.

17. During the period around April 1988, the ground water level dropped 15 to 20 feet below the average level of the water from which Intervenor drew her irrigation water. This resulted in the submersible pump having to lift water 15 to 20 feet (or more) higher than it had to lift when the pressure of the pump was 22 psi. In other words, Intervenor's pump was completely submerged in the water in the upper Florida aquifer, but the pump was not powerful enough to provide 22 psi pressure at the earth's surface.

18. Changes in the ground water levels vary during each year depending on the amount of rainfall and the demands of those removing water from the aquifer. Spring time usage is normally heavy for agricultural purposes, and, as shown on Exhibit 25, each spring the ground water levels are closer to sea level than at any other time of the year.

19. Intervenor also contended that IMCF should retain all of the water used in the mining process on its land rather than allowing the excess during heavy rainfall periods to be discharged into the Alafia River. No evidence was presented by Intervenor to show this to be a feasible solution; nor was evidence presented that this discharge polluted the Alafia River as contended by Intervenor.

20. The Haynesworth Mine is a stationary installation which is reasonably expected to be a source of water pollution. Accordingly, it is required to obtain a permit from the Department of Environmental Regulation to discharge water into the Alafia River and is subject to various restrictions in so doing. No evidence was presented that IMCF or Haynesworth Mines violated any of the provisions of Chapter 403, Florida Statutes, in this regard.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

22. As the applicant, IMCF has the burden to establish its entitlement to the permit by a preponderance of the evidence. Florida Department of Transportation v. JWC, Co., 396 So.2d 778 (Fla. 1st DCA 1981).

23. Chapter 40D-2, Florida Administration Code, (Exhibit 21), established the requirements for obtaining a consumptive use permit for use of water. Rule 40D-2.301 establishes the conditions that an applicant for a consumptive use permit must meet. Without reciting those conditions, it is sufficient to say that competent substantial evidence was submitted that this application meets all of those conditions. No competent evidence was submitted to show the granting of this permit will adversely affect the Intervenor or other property owners in the vicinity of this mine. No evidence was submitted that conditions other than those contained in the draft permit are necessary or indicated.

24. From the foregoing, it is concluded that the application of IMCF for a consumptive use permit to withdraw water meets all of the statutory and rule requirements.

RECOMMENDATION

It is recommended that consumptive use permit #200781.02 be issued to IMC Fertilizer Inc., subject to the conditions contained in the draft permit.

ENTERED this 7th day of January, 1991, in Tallahassee, Florida.

_____

K. N. AYERS
Hearing Officer
Division of Administrative Hearings
The Desoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of January, 1991.

COPIES FURNISHED:

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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.