

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

WYATT S. BISHOP, JR. and	)	
JOAN JONES,	)	
	)	
Petitioners,	)	
	)	
vs.	)	CASE NO. 91-2704
	)	91-2706
SARASOTA COUNTY PUBLIC	)	
UTILITIES DEPARTMENT and	)	
SOUTHWEST FLORIDA WATER	)	
MANAGEMENT DISTRICT,	)	
	)	
Respondents.	)	
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RECOMMENDED ORDER

A hearing was held in this case in Sarasota, Florida on July 15 and 16, 1991, before Arnold H. Pollock, a Hearing Officer with the Division of Administrative Hearings.

APPEARANCES

For the Petitioners:

Wyatt S. Bishop, Jr.	Wyatt S. Bishop, Jr., pro se 5153 Tucumcari Trail Sarasota, Florida 34241
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Joan Jones

Joan Jones, pro se  
719 East Baffin Road  
Venice, Florida 34293

For the Respondents:

Sarasota County Utilities	William A. Dooley, Esquire Nelson, Hesse, Cyril, Smith, Widman, Herb, Causey & Dooley 2070 Ringling Boulevard Sarasota, Florida 34237
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Cathy Sellers, Esquire  
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215 South Monroe Street  
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Southwest Florida Water  
Management District

Edward B. Helvenston, Esquire  
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## STATEMENT OF THE ISSUES

The issue for consideration herein is whether Sarasota County Utilities should be issued a consumptive use permit to draw water from the 14 wells in issue here located in Sarasota County.

## PRELIMINARY STATEMENT

On March 26, 1991, the staff of the Southwest Florida Water Management District, (District), indicated its intention, (revised July 8, 1991), to recommend approval of Sarasota County's, (County's), Application No. 208836.00 for a consumptive use permit to draw water from wells located in the T. Mabry Carlton, Jr. Memorial Reserve. On April 8, 1991, after the initial recommendation was published, but before the filing of the revision thereto, Petitioner, Wyatt S. Bishop filed a Petition in opposition to the permit. On that same date, Petitioner Joan Jones filed her Petition in opposition to the granting of the permit and by letter dated April 29, 1991, the matter was forwarded to the Division of Administrative Hearings for appointment of a Hearing Officer. The City of Venice also filed a Petition in opposition, but that Petition was subsequently withdrawn, and subsequent to the parties' responses to the Initial Order herein, the case was set for hearing in Sarasota on July 15 and 16, 1991, at which time it was held as scheduled.

At the hearing, Sarasota County presented the testimony of several County utility employees; a consulting hydrologist expert in that field and in ground water modeling; a civil engineer expert in his field; and a County environmentalist expert in ecology and hydrology. It also presented witnesses in rebuttal to the matters presented by Petitioners. The County also introduced County Exhibits 1 through 19.

The District presented the testimony of an expert in hydrology and ground water modeling who reviewed the County's application and recommended its approval; and an environmental scientist expert in the area of wetland and wildlife habitats.

Both Mr. Bishop and Ms. Jones appeared pro se and both testified in their own behalf. Ms. Jones indicated she would allow Mr. Bishop to question the Respondents' witnesses on her behalf. Mr. Bishop also presented the testimony of a local well driller; the water division manager for Sarasota County Utilities; and a County Commissioner; and also called the District's hydrologist, Mr. Basso. Petitioners also introduced Petitioner's Exhibits 1, 3 - 5, 7, 9 - 12, and 14 - 18.

A transcript was furnished and subsequent to the hearing, the Petitioners submitted joint Proposed Findings of Fact. Respondents also submitted joint Proposed Findings of Fact. All submittals have been ruled upon in the Appendix to this Recommended Order.

## FINDINGS OF FACT

1. At all times pertinent to the issues herein, the Respondent, District, was the state agency responsible for the management of water resources within its area of geographical jurisdiction. Included therein was the responsibility for the permitting of consumptive water use. The Respondent, Sarasota County, is a political subdivision of the State of Florida and operates a public utilities division which is charged with meeting, among other things, the potable water needs of the residents of the County.

2. Petitioners Wyatt S. Bishop and Joan Jones are both residents of Sarasota County and both draw their potable water from wells which utilize the aquifers pertinent to the wells for which the permit in issue here relate. Mr. Bishop lives approximately 7.5 miles north of the Carlton Reserve, the property on which the wells in issue are located, and Ms. Jones lives approximately 7 miles from the Reserve, but in a different direction.

3. Sarasota County filed an application for a consumptive use permit with the District on January 28, 1987 requesting an average daily withdrawal of 10.71 million gallons per day, (mgd), and a peak monthly withdrawal of 15.55 mgd. This application, assigned number 208836.00, was, over the next three years, amended by the County four separate times. These amendments reflected revised water demand determinations and were submitted to provide additional information requested by the District.

4. The District issued a preliminary staff report and proposed intent on March 26, 1991 reflecting an approved withdrawal in the amount of 7.28 mgd average daily withdrawal and 11.1 mgd peak monthly withdrawal. These figures were revised, however, by an amendment by the District on July 8, 1991, and as amended, authorize 7.303 mgd average daily withdrawal and 9.625 mgd peak monthly withdrawal.

5. The County's application was reviewed by an experienced hydrologist in the District office with extensive permit review experience who utilized, in his evaluation of the permit, the pertinent District rules and policies.

6. By way of background, to more easily understand the circumstances here, Sarasota entered into a contract with Manatee County in 1973 which called for the latter to provide up to 10 mgd of water for a period of 40 years, up to and including the year 2013. However, in 1979, Manatee County's utilities director advised Sarasota County that it, Sarasota County, could not continue to rely on Manatee County's water after the expiration of the current contract, and would, therefore, have to become self sufficient in water. Since the MacArthur tract, now known as the Carlton Reserve, had just recently been identified by, inter alia, the United States Geological Service as a potential long term water source for Sarasota County, after Manatee County advised Sarasota County of its future expectations, Sarasota County and the Manasota Basin Board hired a consulting firm to conduct hydrological testing on the Carlton Reserve. This study concluded that the Reserve had sufficient water resources to satisfy the needs of the unincorporated areas of Sarasota County for an extended time into the future.

7. In 1985, because of its increased water needs and the time necessary to complete required studies on the utilization of the Myakka River, a surface water resource, Sarasota County concluded that it was suffering a water supply shortage and entered into a supplemental contract with Manatee County to provide 2 million gallons of water per day over a 5 year period which would expire in 1990.

8. Sarasota County had not, however, been idle with regard to the investigation of other water resources. Studies done included not only the Myakka River mentioned above but a reservoir owned by the City of Bradenton, and the Peace River. Nonetheless, it was determined that the Carlton Reserve was the best source available overall, and in 1987, the County filed the application in issue here.

9. The permit was under consideration for approximately 3 1/2 years before the initial decision by the District to grant it. During that time the County experienced a significant deficiency in its water sources and found it necessary, on February 5, 1991, to enter into another contract with Manatee County to supply an addition 5 mgd. Terms of that contract clearly indicate the expectations of both parties that Sarasota County will take reasonable steps to develop its own water resources. It is not as though Sarasota County sat quietly in the interim, however, and allowed the situation to develop. A building moratorium to halt additional construction was proposed and as a result, economic forces in the County indicated a potential loss of jobs to County residents. None of this would be desirable from an economic standpoint.

10. In the course of the permit application process, 12 test wells were sunk to conduct aquifer pump tests; to assess water quality, amounts and availability, aquifer characteristics and drawdown; and to determine the impact of withdrawal on water quality. Eight of these 12 wells are located on the Carlton Reserve. The other 4 are located on property owned by the MacArthur Foundation which is contiguous to the Carlton Reserve property and from which Sarasota has a right by easement to draw water. The 2 wells yet to be constructed will be on Sarasota County property.

11. Sarasota County currently receives 10 mgd of water under its contract with Manatee County; an additional 5 mgd under the February 5, 1991 contract; 2 mgd from the University wellfield, (with a peak withdrawal rate of 3 mgd); and .9 mgd from the Sorrento wellfield, (with a peak withdrawal rate of 1.1 mgd). This latter source is only producing currently .6 mgd of potable water due to constraints imposed by the water treatment requirements. Taken together, the current Sarasota County supply constitutes 18.6 mgd.

12. The above does not take into account the County's agreement with the City of Sarasota calling for the purchase of up to 2 mgd. Since this source is not reliable, it is not included in the total, and the City is not considered an available water source. In addition, the District and Sarasota County stipulated on July 15, 1991 that within 30 days, the County would apply to phase out routine water production from the Sorrento wellfield, relying on it only in emergency situations with District consent. For this reason, it, too, is not considered an available water supply source.

13. These currently existing sources, with modifications as described, will be the primary sources of potable water provided to 6 major service areas in Sarasota County when the County's water treatment plant and transmission system are complete in 1993. In attempting to define the County's future water requirements, two major criteria were considered. The first was the County's historical water demand, and the second, modifying it, relates to the demand arising as a result of new water users being added to the system as a result of the County's capital improvements and acquisition program. Water resources are not unlimited.

14. Current resources come primarily from Manatee County and there are constraints on this supply as it is made available to Sarasota County. For example, the 10 mgd contract expires in 2013. The 5 mgd contract expires in 2001. Though the latter is subject to renewal, renewal is contingent upon the availability of water supply at that time, and that is not a sure thing. It can, therefore, readily be seen that 15 out of the 18.6 mgd routinely available now comes from Manatee County, and those sources are not perpetual. In addition, it is conceivable that Manatee County may pre-blend the water it delivers to Sarasota County with water of lesser quality, so that the delivered

water may exceed the total dissolved solids standard of 500 ppm for potable water. If the water from Manatee County were reduced to that quality, the University wellfield supply, which currently exceeds standards itself, and which relies on blending with better quality Manatee County water to be potable, would also be removed as a source of potable water to Sarasota County.

15. In order to comply with the provisions of Section 373.171, Florida Statutes, which requires the District to regulate the use of water by apportionment, limitation, or rotating uses, to obtain the most beneficial use of water resources and to protect the public health, safety and welfare, the District analyzed the available water sources and determined that Sarasota County relies upon its 10 mgd supply from Manatee County and the 2 mgd supply from University wellfield to constitute 12 mgd usable water. The 5 mgd from Manatee County would be used only in an emergency situation, and the Sorrento wellfield would be abandoned.

16. Future water demands must be predicted relying in great part upon an historic record of prior water use. Utilizing a statistical procedure called linear regression, a methodology accepted by the District, indicated a water demand figure for the period from 1992 to 1997 based upon six use points extending from 1985 to 1990. These use records reflected a low of 9.733 mgd and a high of 12.808 mgd, the former being in 1985 and the latter in 1990. In addition, the County estimated that its capital improvement program would add between 10 and 12 thousand customers who presently use private wells, whose water use would constitute approximately 2 mgd of additional demand. The County's program to acquire some 42 private franchises now serving customers would add an additional demand of 2 mgd. Taken together, these programs would add in approximately 1.8 mgd per year to the need assessment, and it would therefore appear that by 1997, the County's average daily demand, considering all new users, would be 17.84 mgd.

17. The water to be drawn from the Carlton Reserve is not currently potable and will require some form of treatment to render it so. Sarasota County proposes to use the Electrodialysis Reversal process, (EDR), because, in the County's judgement, it is more efficient than others such as reverse osmosis and ion exchange. Whereas EDR is rated at up to 85% efficient, the others range between 50% to 75% efficient. In that regard, in order to determine the maximum amount of water to be drawn, providing a safety factor for a treatment plant operation that is not working up to peak capacity in computing the water needs, the EDR process was determined to be no more than 80% efficient. Factoring in that efficiency potential, when the 1997 average daily demand is subtracted from the County's projected water capacity, the withdrawal need in 1997 is determined to be 7.303 mgd.

18. However, as a part of its permitting process, the County also calculated its peak month daily demand. This is a figure which represents the maximum amount permitted to be drawn on a daily basis during the peak demand period. This peak period was determined under Section b 3.2 of the District's Basis of Review by taking the 1989 daily flow and using a sliding 31 day calendar to determine the highest historical 31 day flow. This resulted in a peak month coefficient of 6.16 which was then multiplied by the 1997 average daily demand of 17.842 mgd which resulted in a peak month daily demand of 20.7 mgd. When existing water supplies are removed and the 80% EDR treatment process factor is applied, the amount of raw water needed from the wellfield in issue on a peak monthly basis would be 9.625 mgd. This peak monthly basis figure is considered because of the intermittent periods of low rainfall and high water demand within the County.

19. Accepting the 1.8 gpd yearly increase; the peak factor of 1.16; and the assumed water supply capacity of 18.6 mgd; Sarasota County's need will exceed its available supplies by 1993. In fact, the County is already experiencing low water pressure in part of its service area during peak demand periods.

20. County experts estimate that without the requested water from the Carlton Tract, Sarasota County can expect to experience dry periods as early as 1993 during the periods of peak water usage, generally between April and June. For the above reason, when the application and its supporting information was reviewed by Mr. Basso, the District hydrologist with extensive experience reviewing more than 300 water use application, he determined that the water supplies requested are necessary to meet the County's certain reasonable demand, and that this meets the criteria set out in Rule 40D - 2.301(1)(a), F.A.C.

21. Turning to the issue of hydrologic and environmental impacts, the District's Basis For Review of Water Permit Applications provides for the use of a "water use model" in evaluating water needs and the appropriateness of a proposed withdrawal. In preparing its submittal to the District, Sarasota County performed certain tests and modeling to derive the statistical and scientific information used in support of its application. Specifically it used the USGS' MODFLOW model utilizing information obtained from the pump tests run on the wells in the pertinent areas. Consistent with the District's rule, the water data and aquifer drawdown were determined by simulated pumping. The tests run also provided the information on water quality in the aquifer and physical characteristics including transmissivity, storage coefficient, specific yield and leakance between aquifers. This data also helped in defining the hydrogeologic framework of the Carlton Reserve.

22. The Carlton Reserve's hydrogeology listed in descending order from the surface, includes a surficial aquifer which varies in depth between 19 and 70 feet across the Reserve; a semi-confining clay unit separating it from the intermediate aquifer; the upper intermediate and lower intermediate aquifer which range in depth from 140 to 180 feet across the Reserve; another confining layer, and the Upper and Lower Floridan aquifers.

23. The hydrology and groundwater modeling expert who constructed the model used in Sarasota County's permit application concluded that the water table drawdown at the Reserve property boundary in the surficial aquifer would be less than .3 of a foot; less than .4 of a foot in the intermediate aquifer; and 2.9 feet in the Upper Florida aquifer. The water to be drawn consistent with this instant permit, if approved, would come from the Upper Floridan aquifer on the Reserve.

24. The County's experts were conservative in the assumptions used in the groundwater model. It was assumed there would be no lateral water flow into the model area and no recharge. In addition, the model called for all pumps to run simultaneously at a maximum drawdown of 12.65 mgd for 90 days rather than at the requested quantity of 9.625 mgd. Utilization of these assumptions provided a scenario wherein "severe" impacts would be encountered. Based on the testing and the modeling done, expert opinion was that there would be no quantity or quality changes that would adversely effect water resources including ground and surface water. This meets the criteria of Rule 40D-2.301. This opinion was concurred in the District's hydrology expert. Nonetheless, in its proposed approval, the District has imposed special permitting conditions which require

the County to monitor, analyze, and report water quality and water table level information to the District on a monthly and annual basis.

25. When it evaluates the information supplied by an applicant relating to ground water monitoring, the District is required to consider certain presumptions set forth in its Basis For Review. For example, the District presumes that if there is a drawdown of more than 1 foot in the surficial aquifer at a wetland, adverse environmental impacts will occur. In the instant case, the County model concluded that the actual drawdown in the surficial aquifer at the Carlton Reserve is less than .6 of one foot and, therefore, there should be no adverse environmental impact resulting from the withdrawal. Nonetheless, the County has developed several plans designed to provide information on environmental impacts which will continuously monitor such parameters as rainfall and evaporation, wetlands hydroperiod changes and vegetative changes in the wetlands to detect any changes which might be attributed to the water pumping. These plans have been made special conditions to the water use permit, and in the opinion of the County's ecology and hydrology expert, would enable the County to adequately monitor and detect any pertinent changes to the pertinent factors concerned on the Carlton Reserve. If wetland changes are detected, a contingency plan will be in effect which will require an alteration of pumping schedules or other action to minimize any adverse impacts. The District expert in wetlands and wildlife habitat has opined that these measures, with which he is familiar, are adequate to insure that adverse impacts to the wetlands will not occur. This is consistent with the provisions of Rule 40D-2.301(1).

26. As was stated previously, the water to be drawn pursuant to this permit will be drawn from the Upper Floridan aquifer. This water is not potable but is treatable and is the lowest quality water which can be economically used by the County. Water of a lower quality does exist in the Lower Florida aquifer, but it is not economically treatable, and, in addition, use of this Lower Floridan aquifer might cause vertical movement of the poorer quality water into the upper strata. For all practical purposes, then, the lowest quality water available to it will be used by the County and this is consistent with the District's basis for review.

27. Expert testimony indicates that saline water will not be infused into the Upper Floridan aquifer. Salt water intrusion generally occurs when groundwater is brought to a level below sea level. Even at the point of maximum actual drawdown as a result of pumping on the Reserve, the fresh water level will remain at least 20 feet above sea level, and as a result of the difference in water level, no saline water intrusion into the fresh water supply will occur even though salt water intrusion can also occur as a result of upward vertical movement of lower quality water due to withdrawal. The District's hydrologist and reviewing official also concluded that because of the confining layer below the aquifer from which water will be withdrawn, there would not be any significant upward movement of lesser quality water.

28. The District's basis of review also envisions an aquifer pollution if a proposed withdrawal would spread an identified contamination plume. Here no contamination has been identified in the area from which the water will be drawn, and therefore, contamination would not be spread.

29. The Basis for Review also infers there will be adverse impact to off site land if there is a significant drawdown of surface water bodies or if damage to crops or other vegetation can be expected. Here, the water table drawdown at the boundary of the Carlton Reserve is anticipated at less than .3

of one foot and any drawdown further out from the Reserve can be expected to be even less. As a result, no adverse impact to existing off site land useage is expected.

30. With regard to Rule 40D-2.301(1)(i), relating to an adverse impact on existing legal uses, the District presumes that no adverse impact will exist if the drawdown in the water table is no more than 2 feet at an affected well, or the potentiometric surface at the well is not lowered by more than 5 feet. Here, again applying the County's groundwater modeling demonstrates that the drawdown at its worst, in the Upper Floridan aquifer, would be no more than 2.9 feet at the Reserve boundary and much less at the Petitioners' wells.

31. Both Mr Bishop's and Ms. Jones' wells are approximately 7.5 and 7 miles, respectively, from the closest well on the Reserve property. Ms. Jones' well is drilled into the intermediate aquifer which is above that which the County proposes to use and should not be impacted. Mr. Bishop draws water from the intermediate and surficial aquifers, both of which are above the Upper Florida aquifer identified for use here, and the groundwater modeling would suggest that his well would not be impacted either.

32. Sarasota County's application contains reference to numerous proposals for water conservation measures which it intends to implement or has already implemented. It has adopted ordinances to enforce the District's watering restrictions and is currently implementing a block inverted use rate structure to promote conservation. It has developed programs for use in the schools outlining water conservation efforts and is developing programs to promote the increased use of treated waste water for golf course irrigation. The requirement for a water conservation plan such as is described and envisioned by the County is a condition of the water use permit proposed, and in addition, the County has adopted an Ordinance, (90-38) which modifies its building code to require installation of water conservation devices in new buildings erected in the County. It has developed proposals for conservation measures such as water auditing, meter testing, leak detection, system looping, and pressure reduction, and has selected the EDR process of water purification as the most efficient use of groundwater resources.

33. Petitioner, Bishop, testified to his belief that approval of this permit and the resultant water withdrawal on the Carlton Reserve would necessitate an expansion of the boundaries of the District's Eastern Tampa Bay Water Use Caution Area to a point where his property would be encompassed therein. In support of his position, Mr. Bishop offered a notice to the effect that new ground water withdrawals would not be permitted within a certain "most impacted area" within the caution area. There was, however, no independent evidence from hydrologists, geologists, or other conservationists, or individuals familiar with the water conservation process, to support Mr. Bishop's contention that either the boundaries would be expanded or that withdrawal of the proposed permitted amounts of water from the Carlton Reserve would cause the boundaries to be expanded.

34. By the same token, Mr. Bishop's contention that the proposed withdrawal from the wells here in issue would adversely effect his ability to draw water from his existing well was not supported by any expert testimony or documentary evidence tending to support or confirm his contention. He had no evidence tending to contradict the County's and District's experts, all of whom indicated there would be no adverse impact on the environment or water resources as a result of the instant permit. Similarly, neither Petitioner offered any evidence of a demonstrative nature that would draw any connection between the



proposed permitted withdrawals and potential salt water intrusion and water level drawdown in their wells.

35. The County introduced construction permits issued by its own health department covering 8 of the 12 wells which have been drilled on the Carlton Reserve as test wells. These wells were clearly sunk pursuant to an agreement between the District and the County's public health unit which delegates authority for water well construction permitting to the County. Taken together the documentation indicates that these 12 wells on the Reserve were installed and permitted pursuant to and consistent with appropriate permitting processes, and the testimony of Mr. Bassarab, the County's expert who oversaw the installation of the wells, reflects they are appropriately grouted and sealed. Therefore, there will be no mixing of lower quality water from the lower portion of the Floridan aquifer with the better quality water from the upper portion of that aquifer. The County's evidence clearly refutes the allegation by Mr. Bishop that the 12 test wells currently existing on the Carlton Reserve were neither permitted nor inspected as required by the District.

36. County Commissioner Hill, who testified on behalf of the Petitioners, indicated that the wells applied for here are unnecessary and an inappropriate expenditure of County funds. She claimed there are other valid sources of water available to the County, including that extracted from excavated shell pits and seawater from the Gulf of Mexico which could be treated and desalinated. The Commissioner's comments as to alternate sources are not specifically rebutted. However, she is neither an expert in hydrology or hydrogeology, and her testimony is not persuasive. While other water sources may exist, the better evidence clearly indicates that those sources are not sufficient to meet the County's needs or are otherwise inappropriate for use by the County in sufficient quantity to satisfy those needs.

#### CONCLUSIONS OF LAW

37. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of these proceedings. Section 120.57(1), Florida Statutes.

38. The County has sought, and the District proposes to issue a permit for the withdrawal of 7.303 mgd average daily demand and 9.625 mgd peak month demand of water for public consumption from 14 wells located on or adjacent to the Carlton Reserve. A permit is required under the provisions of Rule 40D-2.041, F.A.C..

39. Under the provisions of Section 373.223, Florida Statutes, to successfully apply for a water consumptive use permit the applicant must demonstrate that the proposed water use is reasonable and beneficial, will not interfere with any presently existing legal use of water, and is consistent with the public interest.

40. In meeting these requirements, the applicant must provide reasonable assurances that the criteria set forth in Rule 40D-2.301(1)(a) - (n) are met. The criteria, all of which except (d) are applicable here, require a showing that the proposed water use:

- (a) is necessary to fulfill a certain reasonable demand;
- (b) will not cause quantity or quality changes which adversely impact ground water

resources, including both surface and ground water;

- (c) will not cause adverse environmental impacts to wetlands, lakes, streams, estuaries, fish and wildlife, or other natural resources;
- (d) will not cause water levels or rates of flow to deviate from the ranges set forth in Chapter 40D-8;
- (e) will utilize the lowest water quality the applicant has the ability to use;
- (f) will not significantly induce saline water intrusion;
- (g) will not cause pollution of the aquifer;
- (h) will not adversely impact off site land uses existing at the time of the application;
- (i) will not adversely impact an existing legal withdrawal;
- (j) will utilize local water resources to the greatest extent practicable;
- (k) will incorporate water conservation measures;
- (l) will incorporate reuse measures to the greatest extent practicable;
- (m) will not cause water to go to waste; and
- (n) will not otherwise be harmful to the water resources within the District.

41. The burden of proof rests upon the applicant to establish his entitlement to the permit, *Florida Department of Transportation v. J.W.C., Inc.*, 396 So.2d 778, 787 (Fla. 1DCA 1981). Once that burden has been met, the burden shifts to the protestant who must establish by competent, credible evidence that the applicant has not demonstrated it is entitled to the permit.

42. In meeting its burden, the applicant must "provide reasonable assurances which take into account contingencies which might reasonably be expected." *Cornwell v. Southwood Properties, Inc.*, 12 Fla. Admin. L. Rep. 4972, 4987 (DER Final Order December 6, 1990.) This requirement for "reasonable assurances", however, does not mean "absolute guarantees the permit requirements will be met", *Manasota-88, Inc. v. Agrico Chemical Co.*, 12 Fla. Admin. L. Rep. 319, 325 (DER Final Order February 19, 1990), nor does it require the applicant to eliminate all possibility of contrary result or those impacts which can not be detected or measured in real life.

43. Here, the County and the District, through the testimony of experts in those fields pertinent to the issues involved, have clearly demonstrated that within the reasonably foreseeable future, additional water supplies will be required to meet the reasonable anticipated needs of the County, increased as they may be expected to be, by population growth and the assumption of responsibility for current residents who now receive their water through other sources. Clearly the current water sources, especially those in Manatee County, can not be relied upon indefinitely. Manatee County has made it abundantly clear that while it expects to fulfill its obligations under the present contracts, it also expects Sarasota County to develop alternate water sources to assume the burden at the expiration of the existing contracts.

44. Further, the evidence is equally clear that even during the term of the present contracts, the quality of the water received may diminish and may not be of sufficient purity to be used successfully to blend with the lower quality water from some current Sarasota County sources as is the current practice.

45. Albeit Mr. Bishop and Ms. Jones have passionately disputed the need for the quantities of water proposed to be drawn under the terms of the permit, their arguments are not based on any empirical data or demonstrable evidence of a weight even approximating that of the concise and detailed expert testimony provided by the Respondents.

46. In short, what appears here is that the County and the District have done that which, unfortunately, is demonstrably seldom done by government; that is, to plan, sufficiently far in advance, for those contingencies which may be reasonably expected to occur. In this case, the issue involves the anticipated water needs of Sarasota County. That the projected action may increase costs to the taxpayers is regrettable but, reasonably, unavoidable, and in any case, this cost to the taxpayers is not relevant to the issues defined in the permitting of the consumptive use of water resources. Another arena is more appropriate for the addressing of that issue.

47. The issue in this forum is whether the permit applied for meets the criteria for approval as set out in the statute and the District's rule, and a thorough evaluation of the evidence as a whole, considering both that in support and that in opposition, reveals clearly that it does. Careful examination of the evidence and resolution of the differences therein indicates that the requested permit:

- Is necessary to fulfill a certain reasonable future demand for potable water for the County use;

- Is not likely to cause quantity or quality changes adversely impacting both surface and ground water supplies;

- Is not likely to cause adverse environmental impacts to those protected resources identified in the rule;

- Will provide the County with the lowest quality water it can use effectively;

- Is not likely to induce intrusion of saline water into the water resource;

- Is not likely to cause pollution of the aquifers from which usable water is currently or likely to be drawn;

- Will not adversely impact existing off site land uses;

- Will not adversely impact the existing legal withdrawals of either Petitioners or others;

- Will utilize local water resources;

- Will incorporate the County's water conservation and reuse measures to the greatest extent possible and will not cause a waste of water; and

- Will not likely be harmful in any way to the District's water resources.

48. In sum, the instant permit application is a reasonable projection of the County's water needs into the foreseeable future. The evidence presented by the parties, taken as a whole, reflects a clear and reasonable need for the water, and reasonable assurance have been given and are supported by the evidence that approval thereof is consistent with the District's criteria for approval and in harmony with the best interests of the public. Properly administered consistent with the conditions proposed for approval of the permit, the permitted withdrawal should not interfere with any legal existing use of water in Sarasota County or within the District.

#### RECOMMENDATION

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

RECOMMENDED that consumptive water use permit No. 208836.00, providing for authorized quantities as outlined in the intent to issue, subject to conditions contained therein, be issued to Sarasota County.

RECOMMENDED in Tallahassee, Florida this 5th day of September, 1991.

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ARNOLD H. POLLOCK  
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 5th day of September, 1991.

#### APPENDIX TO RECOMMENDED ORDER

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 PETITIONERS:

1. Rejected as not supported by the evidence.
2. Accepted.
3. Accepted.
4. - 8. Resolved against the Petitioners on the basis information presented by Respondents.
- 9.- 13. Accepted and incorporated herein.
14. - 16. Accepted and incorporated herein.
17. Accepted and incorporated herein.
18. & 19. Accepted and incorporated herein.
20. - 23. Accepted.
24. Accepted but not dispositive of any issue.
25. Accepted.
26. & 27. Noted as citation of authority.

- 28. Rejected.
- 29. & 30. Accepted as restatements of evidence but not as Findings of Fact.
- 31. Irrelevant.
- 32. Rejected
- 33. & 34. Not a error is, in fact, it is such.
- 35. - 38. Irrelevant.
- 39. - 43. Accepted.
- 44. Accepted.
- 45. Rejected.
- 46. Accepted and incorporated herein.
- 47. & 48. Rejected as a mere citation of testimony.
- 49. Not understandable. Not a Finding of Fact.
- 50. Accepted.
- 51. Evidence is acceptable.
- 52. Not sufficiently specific to rule upon.
- 53. Not proven.
- 54. Not specific.
- 55. & 56. Rejected.

FOR THE RESPONDENTS:

- 1. - 4. Accepted and incorporated herein.
- 5. & 6. Accepted and incorporated herein.
- 7. & 8. Accepted and incorporated herein.
- 9. - 14. Accepted and incorporated herein.
- 15. - 17. Accepted and incorporated herein.
- 18. - 21. Accepted and incorporated herein.
- 22. & 23. Accepted and incorporated herein.
- 24. Accepted.
- 25. - 27. Accepted and incorporated herein.
- 28. & 29. Accepted and incorporated herein.
- 30. - 32. Accepted and incorporated herein.
- 33. Accepted and incorporated herein.
- 34. Accepted.
- 35. Accepted.
- 36. - 37. Accepted and incorporated herein.
- 38. Accepted and incorporated herein.
- 39. Accepted.
- 40. Accepted and incorporated herein.
- 41. - 43. Accepted and incorporated herein.
- 44. Accepted.
- 45. Accepted and incorporated herein,
- 46. - 48. Accepted and incorporated herein.
- 49. Accepted - not a Finding of Fact.
- 50. Accepted and incorporated in substance herein.
- 51. Not correct as stated. Sarasota County will not be withdrawing saline water from the upper Floridan aquifer. The remaining discussion is accepted.
- 52. Accepted and utilized.
- 53. & 54. Accepted.
- 55. Accepted and incorporated herein.
- 56. Accepted.
- 57. - 59. Accepted and incorporated herein.
- 60. Accepted.
- 61 - 63. Not Findings of Fact but comments on the evidence.
- 64. Accepted and incorporated herein.
- 65. & 66. Not Findings of Fact.

COPIES FURNISHED:

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Edward B. Helvenston, Esquire  
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SWFWMD  
2379 Broad Street  
Brooksville, Florida 34609-6899

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 consult with the agency which will issue the Final Order in this case concerning its rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency which will issue the Final Order in this case.

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AGENCY FINAL ORDER

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BEFORE THE GOVERNING BOARD OF THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

ORDER NO. 91-43  
OGC File No. 03091

WYATT S. BISHOP, JR.,

Petitioner

vs.

SARASOTA COUNTY PUBLIC  
UTILITIES DEPARTMENT and  
SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT,

CASE NO. 91-2704

Respondents.

\_\_\_\_\_  
JOAN JONES,

Petitioner

vs.

SARASOTA COUNTY PUBLIC  
UTILITIES DEPARTMENT and  
SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT,

CASE NO. 91-2706

Respondents.

\_\_\_\_\_/

FINAL ORDER

This cause was heard by the Governing Board of the Southwest Florida Water Management District (District) pursuant to Section 120.57, Florida Statutes (F.S.), for the purpose of considering the Recommended Order of the Hearing Officer and the Exceptions filed by Wyatt S. Bishop, Jr. (Bishop) and issuing a Final Order in the above-styled proceedings. On September 5, 1991, the Hearing Officer submitted to all parties a Recommended Order, a copy of which is attached hereto and incorporated herein by reference as Exhibit A. Pursuant to Section 120.57(1)(b)9, F.S., and Rule 40D-1.564, Florida Administrative Code (F.A.C.), the parties are entitled to submit written exceptions to the Recommended Order. On September 20, 1991, Bishop timely filed Exceptions to the Recommended Order. On September 24, 1991, Bishop filed copies of the transcript as required by Rule 40D- 1.564(2), F.A.C.

The Governing Board has reviewed the Recommended Order and all Exceptions thereto and finds that it can address each Exception in the manner set forth in the Findings on Exceptions to Recommended Order, attached hereto and incorporated herein by reference as Exhibit B. Those preliminary portions of

the Recommended Order regarding date and place of hearing, appearances entered at the hearing, Statement of the Issues and Preliminary Statement are hereby adopted and incorporated herein by reference.

#### FINDINGS OF FACT

The Governing Board hereby adopts and incorporates by reference the Findings of Fact set forth in the Recommended Order, with the exception of Findings of Fact 16 and 18, which are rejected in part due to typographical errors which do not otherwise adversely affect the Hearing Officer's Findings of Fact.

#### CONCLUSIONS OF LAW

The Governing Board hereby adopts and incorporates by reference the Conclusions of Law set forth in the Recommended Order.

Whereas, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that Water Use Permit No. 208836.00 for Sarasota County be immediately issued in the same form as Exhibit C attached hereto and incorporated herein by reference for a period of six years from the date of issuance.

Done and Ordered this 24th day of September, 1991, in Brooksville, Hernando County, Florida.

By: \_\_\_\_\_  
Charles A. Black, Chairman

Attest: \_\_\_\_\_  
Sally Thompson, Secretary

(Seal)

Filed this 24th day of  
September, 1991.

\_\_\_\_\_  
Agency Clerk