

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF FREEPORT; CITY OF)
DEFUNIAK SPRINGS; WALTON)
COUNTY; and FLORIDA COMMUNITY)
SERVICES CORPORATION OF)
WALTON COUNTY,)
)
)
Petitioners,)
)
vs.) Case No. 98-2917
)
)
NORTHWEST FLORIDA WATER)
MANAGEMENT DISTRICT and)
WRP, INC.,)
)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, this matter was heard on December 3, 4, 8, 9, and 10, 1998, in Tallahassee, Florida, and on December 15 and 16, 1998, in Freeport, Florida, by Donald R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether WRP, Inc.'s application for an Individual Water Use Permit to construct five 24-inch diameter wells in Walton County, Florida, and to withdraw an average of 4.84 million gallons per day for twenty years, should be issued, as proposed by the agency on June 5, 1998.

PRELIMINARY STATEMENT

This case began on June 5, 1998, when Respondent, Northwest Florida Water Management District, issued its Notice of Proposed Agency Action in which it advised Respondent, WRP, Inc., that its application for an individual water use permit had been approved. Thereafter, Petitioners, City of Freeport, City of DeFuniak Springs, Walton County, and Florida Community Services Corporation of Walton County, filed a Petition for Formal Administrative Hearing requesting an opportunity to contest the issuance of the permit. The matter was referred by the agency to the Division of Administrative Hearings on June 30, 1998, with a request that an Administrative Law Judge conduct a formal hearing.

By Notice of Hearing dated July 30, 1998, a final hearing was scheduled on December 2-4, 8-10, and 15-17, 1998, in Walton

County, Florida. At the request of the parties, the first portion of the hearing was conducted in Tallahassee, Florida. Continued hearings were held in Freeport, Florida, on December 15 and 16, 1998.

At final hearing, Petitioners presented the testimony of Dewey L. Wilson, General Manager of Florida Community Services Corporation of Walton County; Ronnie E. Bell, Walton County Administrative Supervisor; Michael G. Stanley, City Manager of the City of DeFuniak Springs; Mickey Marse, Mayor of the City of Freeport; Charles Drake, a geologist and accepted as an expert in hydrogeology, groundwater modeling, water well construction, and consumptive use regulation; and Gerald C. Hartman, a professional engineer and accepted as an expert in water resource engineering. Also, Petitioners offered Exhibits 1-3, 15, 20, 22a, 23a, 24a, 25, 35, 36, 43, 43a, 44, 45, 99, 104, and 105. All exhibits were received in evidence. WRP, Inc., presented the testimony of Peter E. DeBogory, General Manager of South Walton Utility Company, Inc., and Secretary of WRP, Inc., and accepted as an expert in utility operations and drinking water supplies; Eric T. Smith, General Manager of Destin Water Users, Inc.; Edward T. McMath, Jr., a professional engineer and accepted as an expert in civil and environmental engineering; Mark Maimone, project manager for groundwater work with Camp, Dressler and McKee and accepted as an expert in groundwater modeling; James W. McCartney, Vice-President of Baskerville-Donovan, Inc., and

accepted as an expert in water supply planning; Dr. Thomas M. Missimer, a professional geologist and accepted as an expert in hydrogeology, reverse osmosis, geology, groundwater modeling, and the development of water supplies; and Laura Ann Koon, a professional engineer and accepted as an expert in civil and environmental engineering. Also, WRP, Inc., offered WRP Exhibits 1-33, 35-37, 39-44, 46, 47, 52, 53, 56, 58-62, 64-67, 74-76, 78, 79, 81-86, 89, 101-103, 106, 107, 109, 111, 114-116, 118, 119, 124, 129, and 133. All exhibits were received in evidence. The Northwest Florida Water Management District presented the testimony of Fernando Recio, Deputy Executive Director and accepted as an expert in consumptive use regulation; Wallace Guy Gowens, Chief of the Bureau of Groundwater Regulation and accepted as an expert in the area of consumptive use permit regulation; and Thomas R. Pratt, Chief of the Bureau of Groundwater and accepted as an expert in hydrogeology, geology, and groundwater modeling. Also, it offered District Exhibits 1-15. All exhibits were received in evidence. Finally, the following members of the public offered testimony at the conclusion of the hearing: Gary Billingsly; J. W. Hollington; James H. Craig; John Crawford; Jean Arrant; Huron L. Crosby; and William L. McLean.

The Transcript of the hearing (fourteen volumes) was filed on February 18, 1999. By agreement of the parties, the time for filing Proposed Findings of Fact and Conclusions of Law was

extended to March 26, 1999. The same were timely filed by all parties, and they have been considered in the preparation of this Recommended Order.

Finally, on March 30, 1999, WRP, Inc., filed a Motion for the Award of Costs and Attorney's Fees under Sections 120.595(1) and 120.569(2)(e), Florida Statutes. A Motion to Strike and a reply to the motion were filed by Petitioners on April 12 and 19, 1999, respectively.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

A. The Parties

1. Respondent, Northwest Florida Water Management District (District), is an independent special district of the State of Florida created pursuant to Section 373.069, Florida Statutes. The District is charged with regulating consumptive uses of water in a sixteen-county area in Northwest Florida, including all of Walton and Okaloosa Counties.

2. Respondent, WRP, Inc. (WRP), is a not-for-profit Florida corporation with its headquarters in Walton County, Florida. It is jointly owned by Destin Water Users, Inc. (DWU) and South Walton Utility Company, Inc. (SWUC). Both DWU and SWUC are not-for-profit Florida corporations that own and operate water supply systems (with thirteen operating wells) in and around the southern portions of Okaloosa and Walton Counties. Established

in 1995, WRP was originally organized as a partnership made up of DWU, SWUC, and Petitioner, Florida Community Services Corporation of Walton County, d/b/a Regional Utilities of Walton County (RU). This partnership was established for the purpose of cooperating in the development of an alternate water supply for the utilities' service areas. Thereafter, the partnership was dissolved, which led to the establishment of WRP. RU is no longer a part of this organization.

3. Petitioner, City of DeFuniak Springs, is a municipal corporation in Walton County, Florida. The city owns and operates its own public water supply system. At the present time, it serves approximately 15,200 persons who reside both inside and outside the corporate limits of the city.

4. Petitioner, City of Freeport, is a municipal corporation in Walton County, Florida, and owns and operates its own public water supply utility.

5. RU is a not-for-profit Florida corporation which, pursuant to a lease, operates a public water supply system in the coastal area of Walton County under a permit issued by the District. It presently serves around 500 customers representing a population of 17,000. A portion of its water supply is also obtained from the City of Freeport.

6. Petitioner, Walton County (County), is a political subdivision of the State of Florida pursuant to Article 8, Section 1 of the Florida Constitution. The County owns the land

and facilities used by RU for its public water supply system. However, under a lease agreement between those parties, RU operates the system. In addition, the County also owns a small well recently constructed near the Rock Hill area.

B. Historical Background of the Area's Water Supply

7. The District's overall responsibility in the consumptive use program is to provide for all citizens the sustainability of the water resources of Northwest Florida. It also seeks to allocate the resource in a manner that is reasonable and beneficial, that is in the public interest, and that will not interfere with the use associated with other existing legal users. This is often referred to as the three prong test.

8. Ground water is measured by the location of its potentiometric surface in relation to sea level. The potentiometric surface is the level to which water will rise in a tightly cased well. In portions of coastal Okaloosa and Walton Counties, the potentiometric surface of the Floridan Aquifer is below sea level. At one coastal location the surface is at 110 feet below sea level as compared to elevations of more than 200 feet above sea level in the northern portions of those counties.

9. When the potentiometric surface is below sea level it is called a cone of depression. As shown on District Exhibit 1, the cone of depression in the coastal area of Okaloosa and Walton Counties has grown from 1974 to 1995.

10. The decline of these water levels in the coastal areas is further supported by the hydrographs found on the District's Exhibit 2 entitled Floridan Aquifer System Water Level Trends. These hydrographs document the reduction in the potentiometric surface over time. Of particular significance are the hydrographs of the "Okaloosa School Board" well which show the potentiometric surface to be 60 feet above sea level in the late 1930's when it was constructed and to be approximately 110 feet below sea level in 1996.

11. As early as 1982, the District recognized a threat to the continued existence of a long-term sustainable water supply for the coastal regions of Walton and Okaloosa Counties. Significantly, the pumping of water from the Floridan Aquifer in this coastal region has caused a degradation to the aquifer and the water resources. As a result, the District began taking affirmative steps to protect the water resources in the coastal area of Walton and Okaloosa Counties.

12. In 1982, the District undertook a regional water supply development plan entitled 1982 Regional Water Supply Development Plan (the 1982 Plan). The 1982 Plan assessed the sustainability of water resources in the coastal region of Okaloosa and Walton Counties, estimated the Floridan Aquifer's water supply capabilities in relation to expected long-term water demand, and addressed the need to find an alternative long-term water supply for these coastal regions. The 1982 Plan also discussed

strategies for alternate water resource development including inland well fields, desalinization, conservation measures, and use of surface water from the Choctawhatchee River.

13. In 1988, the District developed an addendum to the 1982 Plan, known as the 1988 Plan, which addressed similar issues. In particular, the 1988 Plan further emphasized the need for the coastal water utilities of DWU, SWUC, and RU to use inland well fields and/or desalinization as potential alternatives for the long-term water supply needs of the area. The 1988 Plan eliminated surface water from the Choctawhatchee River as a potential alternate source for the long-term water supply needs of the area because it was not technically, economically, and environmentally feasible. The thrust of these two studies is to encourage movement of withdrawals away from coastal areas.

14. In 1989, the District implemented Rule 40A-2.801, Florida Administrative Code, which authorizes the declaration of areas of the District as "water resource caution areas." In that same year the District adopted Rule 40A-2.802(1), Florida Administrative Code, which designates the coastal area of Walton and Okaloosa Counties as a water resource caution area. This designation means that the water resources of the coastal area are limited and will not be sufficient to meet the water needs of the area within a period of twenty years. In addition, the rule prohibits non-potable uses of the Floridan Aquifer as against the public interest.

15. Since 1989, the District has worked with DWU, SWUC, and other coastal water supply utilities to expedite the development of alternate water sources and implement water conservation measures. In Okaloosa County, the District has placed limitations on the diameters of wells and the amount of water that can be withdrawn from coastal wells.

16. To promote conservation of water, the District has imposed stricter requirements for the reuse of wastewater; promoted the adoption by coastal utilities of inverted rate structures; required that utilities implement retrofit programs to replace old water fixtures with more efficient water-saving devices; required that utilities account for losses due to system leakage; required that utilities provide for education programs and public service announcements on the need to conserve water; and encouraged utilities to seek adoption of water efficiency landscape and irrigation ordinance by the appropriate local governments.

17. The measures taken by the District are intended to address the harmful impacts to the Floridan Aquifer caused by increasing coastal water withdrawals. Because the District has determined that the water resources are limited, the District has mandated that alternative water supplies must be identified and developed in order to provide for a sustainable and long-term source of potable water in the coastal areas of Okaloosa and Walton Counties.

18. There is no evidence to refute the District's concerns regarding the impact of continued coastal withdrawal and the need to find an alternative source of potable water to meet the region's long term demands.

19. Based on the evidence, it is clear that coastal withdrawals of ground water cannot continue and that an alternate source of water must be found to meet the long-term water demands of the coastal areas of Walton and Okaloosa Counties.

C. The Application

20. In July 1996, WRP submitted a Consumptive Use Permit Application (CUPA) for the withdrawal of water from an inland wellfield in Walton County. The CUPA requested a maximum withdrawal of 7.2 million gallons of water per day (mgd) from two production wells with additional wells to be constructed on an as needed basis. The original application placed the wells along Highway 20 in the vicinity of the City of Freeport, or some twenty miles north of its present wellfields. This location concerned the District because of its proximity to the Choctawhatchee Bay and the saltwater/freshwater interface.

21. In response to the District's concerns, WRP relocated the proposed wellfield farther north and inland to a 4,900 acre site approximately five miles north of the City of Freeport, known as the Rock Hill site. Under the proposed permit, WRP may withdraw an average of 4.84 mgd from the Floridan Aquifer from five 24-inch diameter wells. All withdrawals of water are

authorized solely for public supply use. The proposed permit also authorizes a combined monthly withdrawal limit of 150,040,000 gallons. The permit is issued for a twenty-year period and has an expiration date of June 26, 2018.

22. The proposed permit contains numerous conditions to issuance. They are primarily intended to implement water conservation and efficiency measures as well as monitor and mitigate any impacts to the Floridan Aquifer and existing legal users caused by the permitted water withdrawals.

D. Compliance with Permitting Standards

23. The District's overall responsibility in the consumptive use program is to provide for the sustainability of the water resources of Northwest Florida. In allocating water resources, the District seeks to do so in a manner that is reasonable and beneficial, that is in the public interest, and that will not interfere with the use associated with other existing legal users. WRP's compliance with these broad standards will be discussed in detail below.

I. Reasonable and Beneficial Use of the Water

24. In determining whether a water use is reasonable and beneficial, the District must consider the criteria set forth in Rule 62-40.410(2)(a)-(r), Florida Administrative Code.

a. Quantity of Water Requested [62-40.410(2)(a)]

25. In its original application, WRP requested withdrawals of 7.2 mgd. Because of the District's concern that the amount of withdrawals and projected annual rate of growth were too great, the permitted amount has been revised downward to 4.84 mgd. This quantity is not excessive, and the actual pumping under the permit will be less than the amount modeled for evaluation of impacts.

b. Demonstrated Need [62-40.410.(2)(b)]

26. The current water source for both DWU and SWUC is coastal Walton and Okaloosa Counties. That source is insufficient for future needs, and the demand placed on that resource should be reduced.

27. As noted above, the need for coastal areas to develop an alternative wellfield was recognized by the District as early as 1982. This finding was reconfirmed in a District study completed in 1988. The record supports a finding that WRP has shown a demonstrated need for the alternative site.

c. Suitability and Value of Use [62-40.410(2)(c) and (d)]

28. WRP is requesting a withdrawal of water for public supply. This type of use within the Rock Hill area is a suitable use of that resource. Also, the Rock Hill area has long been identified as a good location for an inland wellfield.

29. The suitability of the use to the source of water is demonstrated by the high quality of the raw water which can be

easily treated for potable drinking water. The purpose is for domestic consumption, which is the highest use. The proposed wellfield is the closest available inland groundwater source with minimal impact.

30. In terms of value, WRP is proposing to withdraw water from the Floridan Aquifer to provide the public with drinking water. The provision of a long-term, reliable source of water is a high value. It also helps to sustain the resource in coastal Okaloosa and Walton Counties by reducing future demands on the source.

d. The Extent and Amount of Harm Caused [62-40.410(2)(e)]

31. The evidence establishes that neither the resource nor the existing legal users will be harmed by the proposed activity. Harm would occur, for example, when a domestic user would be permanently denied water as a result of a proposed pumping activity. Although this condition should not occur, the permit contains conditions to mitigate this event.

32. WRP conducted a test well program and extensive groundwater modeling at its proposed wellfield to establish the drawdown curve that would exist in the Floridan Aquifer. The extent and amount of harm caused is not significant, and WRP has demonstrated that there will be no significant environmental impact or impact to other users. There will not be any drawdown impacts in the surficial aquifer, nor should there be any discernible impact on the Floridan Aquifer. Drawdowns as a

result of WRP pumping in the potentiometric surface in the Freeport area are expected to be two feet in the year 2005, and around five feet in the year 2018. These are not considered significant drawdowns for a public supply well.

33. Under the proposed permit, WRP will be required to mitigate any impacts attributable to its withdrawal that interfere with domestic users in the vicinity of the wellfield. Any problems encountered in domestic wells in the area can be remedied by adding a length of pipe, or lowering the pumps in the wells.

34. The water resource will not be significantly impacted by saltwater intrusion as a result of the proposed use. The greatest part of the advance of the saltwater wedge is due to the City of Freeport's own pumping; WRP's contribution to the advance is minimal. This is because the City of Freeport is closer to the coast. Any impacts on wells within the City of Freeport from chlorides will be the result of their own pumping, and not that of WRP's proposed pumping.

e. Mitigation of Harm [62-40.410(2)(f)]

35. The District does not anticipate that any harm to other legal users will occur. Even assuming arguendo that some harm might occur, there are two conditions in the permit that can be invoked to ensure that the issues are addressed. Standard Condition 11 entitles the District to curtail permitted withdrawal rates if such withdrawal causes significant adverse

impacts on existing legal uses of water, or adjacent use, while Special Condition 17 requires that WRP mitigate any impacts to existing legal users if such interference should occur. The District envisions the latter condition to be implemented through a telephone hotline and arrangements with a water well contractor to remedy any adverse impact.

36. To the extent that any harm to area domestic wells may occur, WRP has agreed to correct any individual adverse impacts by either lowering the pump, deepening the well, replacing the well, or whatever may be necessary. This is consistent with Special Condition 17, which requires that WRP mitigate impacts attributable to its withdrawal which interfere with users of water in the vicinity of their wellfield. Finally, the proposed permit has a system of checks and balances by which the District can look at actual water uses over time and adjust them while still providing for coastal reductions.

f. Impacts on Other Lands [62-40.410(2)(g)]

37. Although WRP purchased approximately five thousand acres on which to site its wellfield, not all of the property is necessary to run the wellfield. The parcel was purchased so that any adverse effects from the pumping would not affect landowners, and the majority of the drawdown would be confined to the purchased property.

38. The test well program conducted at the remote wellfield, and the modeling conducted by WRP Witness Maimone,

establish that the greatest impacts will be on lands owned and controlled by WRP.

g. Method and Efficiency of Use [62-40.410(2)(h)]

39. The method and efficiency of use by WRP is demonstrated by its utilization of water conservation measures to ensure that efficiency is maximized throughout the system. The use of ground water from the inland wellfield is an efficient method of providing potable water for public supply.

h. Water Conservation Measures [62-40.410(2)(i)]

40. The District has mandated that certain conservation steps be taken to protect the resource in the Okaloosa and Walton County area. This is consistent with the District's efforts to require implementation of conservation measures by coastal water supply utilities. Reuse of treated wastewater has been encouraged, and it is used to irrigate golf courses and private landscapes. Also, the District is requiring DWU and SWUP to account for and correct water losses, and to undertake retrofit programs among homeowners and commercial establishments to install water-saving devices and other types of efficiency measures.

41. Except on rare occasions, all DWU treated effluent is used for irrigation. Indeed, DWU is currently achieving a 100 percent reuse rate. Reuse water currently supplied to customers of DWU is not available for aquifer storage.

42. As part of a general conservation effort, DWU has replaced almost 6,000 water meters in the last five years. The City of Destin, which is within DWU's service area, has distributed low-usage shower heads, and it has implemented a low volume toilet ordinance which requires these types of fixtures in all new construction. Currently, DWU has a 12 percent water loss and is attempting to meet the District's recommended goal of 10 percent.

43. SWUC has various programs in place to conserve potable water. The conservation methods include an inverted block structure, reuse, and public education. Currently, SWUC provides reuse irrigation water to golf courses and a subdivision.

44. The evidence supports a finding that the water use proposed by WRP will not be wasteful. Conditions 3 through 12 in the permit require WRP to implement a comprehensive series of water conservation and efficiency measures. Without the new wellfield, it would be impossible to conserve a sufficient amount of water to be able to provide for the future needs of the citizens to be served by WRP.

45. The District will require WRP to comply with a comprehensive water conservation and efficiency program. The conservation and efficiency program includes implementation of a retrofit program, reduction of unaccounted for losses to less than ten percent, five-year audits, landscape ordinances, and irrigation ordinances.

i. Feasibility of Other Sources [62-40.410(2)(j)]

46. The District has identified no available surface water body from which WRP could meet its anticipated demands. In 1988, the Choctawhatchee River was determined not to be a feasible source. Additionally, the Sand and Gravel Aquifer is not suitable for a large, public supply utility to access. In 1982, Eglin Air Force Base (Eglin) was projected to be a location for regional wellfields. The 1988 Plan, however, removed Eglin as a possible solution for long-term water supply problems due to Eglin's decision not to allow wells on the reservation.

47. SWUC, DWU, and WRP all produced water masterplans in order to identify options available to address the additional water supply needs in the area. Upon its formation, WRP undertook an investigation to determine whether additional water supplies could be provided best by a remote wellfield or by a reverse osmosis (RO) plant. The study was undertaken because the the available water supply clearly would be insufficient and other options should be considered. After being formed, WRP immediately purchased options from the Champion Paper Company for six well sites along Highway 20.

48. At considerable expense, WRP investigated the RO alternative as a water supply source along with other alternative sources such as reclaimed water, stormwater, brackish water, and saltwater. WRP constructed a RO test well to evaluate that option. The test well extended into the Lower Floridan Aquifer

since that aquifer was considered as a possible source of brackish water from which potable water could be produced. The District provided a \$30,000 grant toward the RO evaluation, and it also provided technical assistance and guidance to ensure that WRP obtained the type of data that the District desired.

49. Assumptions made in evaluating the cost of the RO option were designed to predict the lowest possible construction and operating costs. Also, a number of problems were identified with the RO process. These included long-term water quality, contamination, and disposal of the waste (reject water) produced. These concerns are addressed separately below.

50. The potential for long-term change in water quality is the most important factor in evaluating the feasibility of the RO option. WRP's test well showed chlorides at 1,800 parts per million; 200 feet below that, the test well was half seawater; and at another 200 feet below, the test well was full of seawater. These results indicated that saltwater upconing was a severe concern. The data strongly indicated that water quality would not remain constant for very long in the RO well.

51. An analysis made by WRP estimated that saltwater upconing would occur in less than a year and probably within a matter of months. The analysis considered only vertical movement for upconing within the RO test well, and it did not consider the effects of horizontal movement. These assumptions produce the most reliable result possible.

52. The possibility of lateral movement is an additional risk to the water quality in the RO test well. Together with the potential for upconing shown in the study conducted by WRP, a great amount of uncertainty existed in the raw water source in terms of long-term stability and water quality.

53. If seawater occurred within the aquifer at some close proximity to the RO test well, then ultimately the whole system could convert from brackish water to a seawater system. This would change the entire economics of the treatment process and plant design, and it would diminish WRP's ability to obtain a concentrate disposal permit. Without some certainty as to the quality of water over time, RO is not a viable alternative.

54. The data summarized in WRP's report demonstrates that copper values in excess of 2.9 micrograms per liter (mcg/l) were present in the water withdrawn from the well. Samples taken directly from the Lower Floridan Aquifer using the Packard Stem Test indicated that the copper came from the aquifer formation. The established water quality standard for copper in Class II waters is 2.9 mcg/l. As noted above, this standard would be violated.

55. The concentrate or reject water from the RO process utilizing the subject source would be expected to contain five times the copper concentration of the raw water. In addition to this concern, gross alpha, Radium 226, and Radium 228 were also present in grab samples and constituted another potential

problem. These types of contamination render the RO option unfeasible because of problems with disposal of the concentrate or reject water.

56. A RO option necessarily includes a brine disposal element. The disposal would be in the form of a reject stream that would be continuously discharged from the RO facility while in operation. The concentrate from the RO process is classified as an industrial waste. In Florida, the method for disposal for the reject water includes deep well injection and surface water disposal. However, the deep well injection of reject concentrate is not feasible for the RO well because the Lower Floridan Aquifer has no internal confinement between the zone of withdrawal and a proposed zone of injection. Moreover, there is no zone in Northwest Florida sufficient to be used for this type of injection in these volumes.

57. The only other remaining option would be surface water discharge which requires a National Pollutant Discharge Elimination System permit. Any surface water discharge with respect to RO would be to Class II waters, which would be far more difficult to permit than a Class III water, where such discharges have normally occurred. In addition, because of the high level of copper in the reject concentrate, it would be extremely difficult to receive a mixing zone for copper at the extended concentrations.

58. Since 1982, the District has recommended that an inland wellfield be developed in the area north of the City of Freeport. An inland wellfield is a more reliable source of water with a greater amount of certainty, can be permitted within a reasonable period of time, and is less expensive. WRP's proposal for a remote, inland well in the Rock Hill area is consistent with these goals.

j. Present and Projected Demand for Water [62-40.410(2)(k)]

59. The District relied upon two studies to reach the conclusion that the average growth rate for water would be three percent per year in WRP's service area. This contrasts with WRP's projection that a five percent growth rate would be more accurate. Due to the high degree of uncertainty in the area of growth and water demand, the District has provided a mechanism to deal with underestimated growth which includes periodic review of the withdrawal amounts by the District and corresponding adjustments, if necessary. It is clear that the supply of water is adequate to provide water for WRP as well as other users in the area.

k. Long-Term Yield Available from the Source of Water and Water Quality Degradation [62-40.410(2)(l) and (m)]

60. Sufficient water resources exist in the Rock Hill area to meet projected water demands through the year 2018. No impact to the surficial aquifer is expected, while only minimal impact to nearby surface water is projected to occur. The movement of the saltwater wedge is not a factor.

61. For some fifteen years, the District has taken steps to monitor and reduce coastal well withdrawals. More recently, it directed its staff to notify all existing non-potable users of the Floridan Aquifer that at the time of permit renewal, they may be required to find alternate sources. Starting two years ago, a number of these permits came up for renewal. In some cases, the applicants were given approximately two years to eliminate the Floridan Aquifer withdrawals, find an alternate source, and plug their wells.

62. The potential for water quality degradation is evaluated through computer modeling. A modeling plan is a document that describes the approach that a modeler is going to use to build a model. It specifies the various components of the model, boundary conditions, modeling techniques, model domain, and the modeler's conceptualization of the stratigraphy.

63. WRP's model demonstrates a lack of degradation of the water resources. The modeling of the saltwater wedge indicates that the wells in the Freeport area will not be threatened. There will be negligible impacts to base stream and river flow and no impact to surface wetlands. Based on the present and projected demand for the source of water, no significant impact to the environment or to existing users will occur. To the extent water quality degradation might occur, it will cause a minimal amount of change in the position of the diffused chlorides in the coastal zone. The predicted impacts to water

quality take into consideration the coastal reductions which will limit pumping of the coastal wells and switch withdrawals to the alternate inland source.

l. Proposed Flood Damage [62-40.410(2)(n)]

64. There is no indication that WRP's proposed withdrawal activity will cause any flood damage. The proposed use will not cause or contribute to flood damage due to its negligible affect on surface waters.

m. Significant Inducement of Saltwater Intrusion [62-40.410(2)(o)]

65. WRP's coastal saltwater intrusion model used worst case conditions when estimating the movement of the saltwater wedge. Indeed, the saltwater intrusion was computed so conservatively that the existing coastal wells were modeled pumping saltwater instead of the actual freshwater that they currently pump.

66. The movement of the saltwater wedge is not projected to be dramatic over the next 50 years. The location of the saltwater wedge in the year 2050 would still be 600 feet below sea level. The wedge does not approach, nor would it threaten, the City of Freeport's wells. In fact, any potential risk of saltwater contamination in Freeport's wells is due to that City's current pumping rates.

n. The Amount of Water Which Can be Withdrawn [62-40.410(2)(p)]

67. The amount of water withdrawn by WRP will have no significant impact on the resource. This finding is supported by

a WRP groundwater modeling study. The impacts of the wellfield on the potentiometric surface do not go below sea level. There will be no drawdown impact in the surficial aquifer or any discernable impact on the Floridan Aquifer.

o. Adverse Effect on Public Health [62-40.410(2)(q)]

68. No potential adverse effects on public health have been identified in the instant case, and there is no indication that WRP's withdrawals would affect public health. The resource is a high-quality use and would provide the public with a high-quality source of water for drinking purposes.

p. Significant Effects on Natural Systems [62-40.410(2)(r)]

69. The evidence established that there will be no impacts to surface wetlands and very minimal impacts to base stream flow. Base flow is the constant flow from groundwater into surrounding waters. Any reduction in the flow of groundwater to the Choctawhatchee River as a result of WRP pumping is negligible. Slight impacts were observed in the base flow of streams close to the proposed wellfield site. Impacts on the surface water are also minimal. Riparian wetlands would be unaffected by the water level decline that was simulated as a result of WRP pumping. Finally, any impacts associated with the construction of the transmission pipeline from the inland wellfield are temporary in nature and extend only through the period of construction.

II. Consistent with the Public Interest

70. The evidence demonstrates that the use of the water by WRP, as well as the water use reduction allocation, is consistent with the public interest. WRP is proposing to withdraw water from the Floridan Aquifer in the Rock Hill area to provide citizens with drinking water. The purpose of domestic consumption is the highest and best use of a water resource. The public interest is served through the proposed reduction in coastal groundwater withdrawals contained in the WRP permit. Reduction in the withdrawals from the coastal areas has been a long-term goal of the District in order to protect water resources in the area.

71. WRP's proposed use is also consistent with the public interest in that the use will not affect natural systems in the area. Similarly, the use proposed by WRP is consistent with regional water supply planning needs. Finally, the proposed use is consistent with the comprehensive planning goals of Walton County as expressed in its Evaluation and Appraisal Report (EAR). The EAR commends WRP's efforts to fully analyze the alternative sources and its selection of the Rock Hill area on which to site a remote wellfield.

III. Non-Interference with Existing Legal Users

72. WRP purchased 5,000 acres on which to site its wellfield so that pumping from the well sites would not adversely

affect adjacent landowners, and the majority of the drawdown would basically be confined to the property.

73. Pertinent District rules only require that an applicant consider existing legal uses of water. However, WRP considered all existing legal uses of water and their future increases until the year 2018, and these existing and potential impacts were considered in its groundwater model. Even with the anticipated pumpage in the year 2018, the potentiometric surface at the WRP wellfield site location will not be drawn below sea level.

74. The water level drawdowns associated with the withdrawal do not constitute a harm, they can be remedied, and the permit has been conditioned to provide for those remedies. For example, Standard Condition 11 and Specific Condition 17 provide protection to domestic wells users in the area. They should specifically address the legitimate concerns of public witnesses who testified at hearing.

E. The Local Sources First Statutory Provision

75. Section 373.223(3), Florida Statutes, (Supp. 1998), also known as the local sources first statutory provision, enumerates a number of factors which the District must consider when evaluating whether a proposed use of water is consistent with the public interest. However, the law provided that water use permit applications pending with the District as of April 1, 1998, were exempted. The legislation was not enacted until October 1, 1998, and the notice of proposed agency action on the

instant permit was issued in June 1998. Therefore, the District took the position that the legislation does not apply to the WRP permit. In an abundance of caution, however, the District reviewed the application as if the local sources first exception applied, and then again as if the exception did not apply. Under either scenario, the District concluded that the application met the criteria enumerated by the law.

76. Assuming arguendo that the new law applies, WRP has met all criteria necessary for the issuance of a permit. The proposed wellfield site is the best suitable site to move water withdrawals inland away from the coastal area, and other locations closer to the coast would have resulted in interference and impacts; there are no other impoundments in the vicinity of the proposed wellfield site that are technically and economically feasible for the proposed use; there are no economically and technically feasible alternatives to the proposed source; there are no potential environmental impacts from the wellfields; there are no adequate existing sources of water available on the peninsula; the District has had numerous interactions with area local governments; and the District did not allow WRP's investment in 4,900 acres of land to influence its decision.

F. Standing

77. The only alleged basis for standing which went to fact finding at hearing was an allegation in paragraph (5)(a) of the Petition that "[t]he withdrawal of up to 4.8 million gallons per

day of groundwater by WRP will adversely impact the quantity and quality of groundwater available for withdrawal by Petitioners."

78. As to RU, which currently serves 500 customers representing a population of 17,000, it has no wells in the vicinity of WRP's proposed wellfield; its wellfields are located along the coastal area of Highway 30-A from Santa Rosa Beach to the east of Inlet Beach, on the Bay County line, or some twenty-five to thirty miles south of the proposed wellfield. It also purchases 500,000 gallons of water per day from the City of Freeport to meet its customers' demand. Because of RU's own continued pumping, at least four of its coastal wells are "going bad" due to saltwater intrusion and upconing. This condition will continue to occur even if WRP's application is not granted. Although it has a permit application for new inland wellfields pending with the District, at the time of hearing the application was incomplete and is therefore irrelevant to a standing determination. There was no direct evidence that RU's coastal wellfields will be adversely affected by WRP's proposed operation. Indeed, the projected decline in water levels in that area will be less than one foot and will have a de minimus impact.

79. As to Walton County, it owns the land on which RU's coastal wells are located as well as the production facilities. Under a lease agreement between those parties, RU operates the system. The County also had one small exempt well in the

vicinity of WRP's proposed wellfields which was installed after this case was filed, but shortly before the hearing began. There was no evidence as to the depth of the well, the source of water, or the well's pumping capacity. Likewise, there was no evidence that the well has actually been used. In addition, there was no evidence that the County relies on groundwater from the Floridan Aquifer to supply potable water to its citizens or customers, or that WRP's proposed withdrawal will adversely impact the quantity or quality of groundwater available for withdrawal by the County.

80. As to the City of DeFuniak Springs, it operates its own public water supply system serving approximately 17,200 persons. It has four water supply wells located approximately nine miles north of WRP's proposed wellfields, and upstream from WRP's site. WRP's model predicts that the City's wellfields will be impacted, albeit very slightly, by WRP's pumping over the lifetime of the proposed permit. To this limited extent, the proposed activity affects its substantial interests.

81. Finally, the City of Freeport owns and operates its own public water supply utility. It has existing wells which are permitted by the District and which lie five miles directly south of WRP's proposed wellfield. Like the City of DeFuniak Springs, the City of Freeport will also experience drawdown impacts, although not considered significant, over the lifetime of the proposed permit. To this extent, the permit will impact the City of Freeport. This is true in spite of the City's admission that

its principal concern in this case is WRP's intention to sell water to customers outside Walton County.

CONCLUSIONS OF LAW

82. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

83. As the applicant in this proceeding, WRP must prove by a preponderance of the evidence that it is entitled to a permit. Fla. Dep't of Trans. v. J. W. C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

84. To obtain a consumptive use permit under Section 373.223, Florida Statutes, an applicant must establish that the proposed use of the water:

(a) Is a reasonable-beneficial use as defined in Section 373.019, Florida Statutes;

(b) Will not interfere with any presently existing legal use of water; and

(c) Is consistent with the public interest.

85. Rule 62-40.410(2), Florida Administrative Code, which is a part of the State Water Policy, establishes additional criteria for determining whether the proposed use of the water is a reasonable-beneficial use.

86. By a preponderance of the evidence, WRP has established that its proposed use of water is a reasonable-beneficial use, as defined by Section 373.019, Florida Statutes, and that the criteria in Rule 62-40.410(2), Florida Administrative Code, have

been satisfied. WRP has also established that its proposed use of water will not interfere with any presently existing legal use of water, and that such use is consistent with the public interest. This being so, its application should be approved.

87. Although WRP's application was pending with the District on April 1, 1998, and therefore is statutorily exempted from the requirements of Section 373.223(3), Florida Statutes (Supp. 1998), there is ample evidence in the record to show entitlement to the permit, even if the application was subject to the local sources first statutory provision.

88. In reaching these conclusions, the undersigned has considered, and rejected, Petitioners' contention that WRP failed to provide an "upfront mitigation" plan to demonstrate how it would implement Standard Condition 11 and Specific Condition 17, if circumstances warranted their invocation. It goes on to argue that without such a plan, WRP cannot provide reasonable assurances. The evidence shows, however, the steps that WRP is willing to undertake to remediate any harm, and in any event, an applicant is not required to formulate a plan or study for every eventuality covered by the standard and specific conditions. The undersigned has also considered Petitioners' argument that WRP's proposed withdrawals are excessive and will constitute "water banking" in violation of the reasonable-beneficial use of water standard. Besides running counter to the more credible evidence, this contention overlooks the District's ability to periodically

review and adjust WRP's withdrawal amounts so that banking will not occur. Finally, Petitioners argue that WRP will cause increased chlorine levels in RU's coastal wells in violation of Standard Condition 12. The evidence shows, however, that such impacts, if any, would be de minimus, and even if they were to occur, the same Condition allows the District to curtail WRP's permanent withdrawals to remediate this harm.

89. Because the Cities of Freeport and DeFuniak Springs will be impacted, albeit slightly, by the drawdown over the life of the proposed permit, they have standing to participate in this administrative action. There is, however, insufficient evidence that the substantial interests of Walton County and RU will be impacted by this application. Therefore, they should be dismissed as parties for lack of standing.

90. Finally, on March 30, 1999, WRP filed a Motion for the Award of Costs and Attorney's Fees pursuant to Sections 120.595(1) and 120.569(2)(e), Florida Statutes, on the ground that the petitions "filed in this case were frivolous in that they were not founded upon a reasonable factual basis and were filed for purposes to harass and delay the applicant." A Motion to Strike and a Memorandum in Response to the motion were filed by Petitioners on April 12 and 19, 1999, respectively.

91. A claim brought under Section 120.595(1), Florida Statutes, should ordinarily be addressed in the Recommended Order. On the other hand, a request for fees and costs under

Section 120.569(2)(c), Florida Statutes, is normally resolved by separate order. In either event, however, case law holds that the administrative law judge, rather than the agency, has the authority to impose sanctions, when appropriate. Dep't of Health and Rehab. Svcs. v. S. G., 613 So. 2d 1380, 1384 (Fla. 1st DCA 1993). Further, the theory underlying the motion is the same for both statutory claims, namely, that the initial petition was filed for an improper purpose. So that the issuance of this Recommended Order will not be delayed while the motion is being considered, the motion will be addressed by separate order.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is,

RECOMMENDED that the Northwest Florida Water Management District enter a Final Order granting Consumptive Water Use Permit No. I05349 to WRP, Inc., as proposed in its Notice of Proposed Agency Action issued on June 5, 1998.

DONE AND ENTERED this 22nd day of April, 1999, in Tallahassee, Leon County, Florida.

DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of April, 1999.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the Northwest Florida Water Management District.