

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE SIERRA CLUB,)	
)	
Petitioner,)	
)	
vs.)	Case No. 99-1905
)	
ST. JOHNS RIVER WATER MANAGEMENT)	
DISTRICT and HINES INTERESTS)	
LIMITED PARTNERSHIP,)	
)	
Respondents.)	
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BOBBIE C. BILLIE and SHANNON LARSEN,)	
)	
Petitioners,)	
)	
vs.)	Case No. 99-3933
)	
ST. JOHNS RIVER WATER MANAGEMENT)	
DISTRICT and HINES INTERESTS)	
LIMITED PARTNERSHIP,)	
)	
Respondents.)	
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THE SIERRA CLUB,)	
)	
Petitioner,)	
)	
vs.)	Case No. 99-3934
)	
ST. JOHNS RIVER WATER MANAGEMENT)	
DISTRICT and HINES INTERESTS)	
LIMITED PARTNERSHIP,)	
)	
Respondents.)	
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ORDER ON REMAND
ADDITIONAL CONCLUSIONS OF LAW

The Agency remanded these cases to the Administrative Law Judge for the addition of Conclusions of Law on the consumptive

use permit. Having reviewed the record, there is no need for further proceedings.

Additional Conclusions of Law

1. Hines' application for a consumptive use permit is governed by Chapter 40C-2, Permitting of Consumptive Uses of Water, Florida Administrative Code. Chapter 40C-2 implements, in part, Part II of Chapter 373, Florida Statutes. Pursuant to these laws and regulations, the District has regulatory jurisdiction over the permit applicant in these cases.

2. Section 40C-2.031, Florida Administrative Code, sets out the conditions for issuance of consumptive use permits. An applicant must provide reasonable assurances that the proposed consumptive use is a reasonable beneficial use, the proposed consumptive use will not interfere with any presently existing legal use of water, and the proposed consumptive use is consistent with the public interest. To be considered a reasonable beneficial use, the twelve criteria listed in Subsection 40C-2.301(4), must be met.

3. Subsection 40C-2.301(4), Florida Administrative Code, provides that in order for the use to be considered reasonable-beneficial, it must meet certain criteria. The first criteria is that the quantity to be used must be economic and utilization efficient. See Paragraph 40C-2.301(4)(a), Florida Administrative Code. The proposed quantity of water is consistent with the District's allocations to other golf courses. The golf course

will be irrigated in part using stormwater runoff. The quantity proposed is both used efficiently and economically. Therefore, this criterion is met.

4. The use must be for a purpose that is both reasonable and consistent with the public interest. The use of groundwater, together with stormwater, to irrigate the proposed golf course is reasonable and in the public interest. The temporary use of groundwater to supply household-type uses is both reasonable and consistent with the public interest. This criterion is met.

5. The source of the water must be capable of producing the requested amounts of water. The stormwater reuse system has been designed to satisfy over 100 percent of the golf course irrigation needs within three to four years, and the Floridan aquifer is capable of supplying the requested amounts in the interim. This criterion is met.

6. The environmental or economic harm caused by the consumptive use must be reduced to an acceptable amount. Groundwater modeling shows that projected draw-downs in the Floridan and surficial aquifers will not cause saltwater intrusion or adverse impacts to existing legal users or wetlands. There is no environmental or economic harm caused by the consumptive use. This criterion is met.

7. Hines has proposed to implement all available water conservation measures which are economically, environmentally, and technically feasible. These include stormwater reuse (the

lowest quality source available), a weather station, rain sensors and soil moisture monitors, and restricted irrigation hours. The criterion of Paragraph 40C-2.301(4)(e), Florida Administrative Code, has been met.

8. Hines has demonstrated that surface water and Floridan aquifer water are the lowest quality sources available to supply the golf course's irrigation needs. In addition, Hines has committed to the use of reclaimed water to irrigate the golf course when and if it becomes available. The criteria of Paragraphs 40C-2.301(4)(f) and (g), Florida Administrative Code, have been met.

9. The consumptive use shall not cause significant saline water intrusion or further aggravate currently existing saline water intrusion problems. In addition, the water quality of the source of the water shall not be seriously harmed by the consumptive use. Analyses performed by both the district and Hines indicate that the proposed groundwater withdrawals will not cause saltwater intrusion. The groundwater sources of water will not be seriously harmed if the conditions recommended are implemented. The criteria of Paragraphs 40C-2.301(4)(h) & (j), Florida Administrative Code, have been met.

10. The consumptive use shall not cause or contribute to flood damage. The proposed consumptive use will not cause or contribute to any flood damage. This criterion of Paragraph 40C-2.301(4)i has been met.

11. Hines has provided reasonable assurance that the consumptive use will not cause or contribute to a violation of state water quality standards in receiving waters of the state, as set forth in Chapters 62-3, 62-4, 62-302, 62-520, and 62-550, Florida Administrative Code, including any anti-degradation provisions of Paragraphs 62-4.242(12)(a) and (b), Subsections 62-4.242(2) and (3), and Section 62-302.300, Florida Administrative Code, and any special standards for Outstanding Natural Resource Waters set forth in Subsections 62-4.242(2) and (3), Florida Administrative Code, as required by Paragraph 40C-2.301(4)(k), Florida Administrative Code. Hines' and the District's analyses of the treatment efficiency of the stormwater management system and the potential for groundwater impacts show that state water quality standards will not be violated as a result of the consumptive use. This criterion is met.

12. Hines must demonstrate that the consumptive use will not cause water levels or flows to fall below the minimum limits set forth in Chapter 40C-8, Florida Administrative Code. No minimum levels or flows have been established for any water resources in the area of the proposed projects; therefore, this criterion is met.

13. Hines is proposing to use the lowest quality sources of water available while avoiding adverse impacts to existing legal users and the water resources. The criterion of Paragraph 40C-2.301(2)(c), Florida Administrative Code, is met.

14. In addition, none of the six specific reasons for denial listed in Subsection 40C-2.301(5), Florida Administrative Code, must be applicable to the applicant. Analyses performed by both the District and Hines indicate that the proposed groundwater withdrawals and the consequent drawdowns in the Florida and surficial aquifers will not cause saltwater intrusion in either of these aquifers. Therefore, Subparagraphs 40C-2.301(5)(a)1, and 40C-2.301(2), Florida Administrative Code, do not apply.

15. The projected maximum drawdown of approximately 0.01 feet from the proposed surficial aquifer withdrawals is insufficient to cause the water table or surface water level to be lowered so that stages or vegetation will be adversely and significantly affected on lands other than those owned, leased, or otherwise controlled by the applicant. Therefore, Subparagraph 40C-2.301(5)(a)2, and Subsection 40C-2.301(2), Florida Administrative Code, do not apply.

16. The groundwater modeling performed by Hines and the District provides reasonable assurance that existing legal uses will not be adversely affected by Hines' groundwater withdrawals. Therefore, the criterion of Paragraph 40C-2.301(2)(b) is met; and Subparagraph 40C-2.301(5)(a)3, and Subsection 40C-2.301(2), Florida Administrative Code, do not apply.

17. Subparagraph 40C-2.301(5)(a)4, Florida Administrative Code, states that a proposed consumptive use does not meet the

three-prong test in Subsection 40C-2.301(2), Florida Administrative Code, if such use will require the use of water which pursuant to Section 373.223(3), Florida Statutes, and Subsection 40C-2.301(6), Florida Administrative Code, the Governing board has reserved from use by permit. Since the Governing Board has not made a reservation of use, Subparagraph 40C-2.301(5)(a)4, and Subsection 40C-2.301(2), Florida Administrative Code, do not apply.

18. The modeling shows that the rate of flow of a surface water course will not be lowered below any minimum flow which has been established in Chapter 40C-8, Florida Administrative Code. This reason for denial is not applicable because no surface water flows have been established in the vicinity of the project.

19. Hines provided reasonable assurances that the proposed consumptive use is a reasonable beneficial use, will not interfere with any presently existing legal use of water, and is consistent with the public interest. Hines' application complies with the District's statutory and rule requirements related to the proposed consumptive uses of water, and should be granted.

The jurisdiction over this cause is relinquished to the agency for entry of its final order.

DONE AND ORDERED this 26th day of April, 2000, in
Tallahassee, Leon County, Florida.

STEPHEN F. DEAN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of April, 2000.

COPIES FURNISHED:

Deborah Andrews, Esquire
11 North Roscoe Boulevard
Ponte Vedra Beach, Florida 32082

Peter Belmont, Esquire
102 Fareham Place, North
St. Petersburg, Florida 33701

Veronika Theibach, Esquire
Jennifer Springfield, Esquire
St. Johns River Water
Management District
Post Office Box 1429
Palatka, Florida 32078-1429

John G. Metcalf, Esquire
Pappas, Metcalf, Jenks, Miller
& Reinsch
200 West Forsyth Street, Suite 1400
Jacksonville, Florida 32202

Marcia Parker Tjoflat, Esquire
Lynne Matson, Esquire
Rogers, Towers, Bailey,
Jones & Gay, P.A.
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207

Henry Dean, Executive Director
St. Johns River Water
Management District
Highway 100, West
Palatka, Florida 32177