STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT,	)	
Petitioner,	)	
vs.	)	Case No. 00-1201
FLETCHER HOLT,	)	
Respondent.	)	

RECOMMENDED ORDER

A hearing was held in this case in Tampa, Florida, on May 31, 2000, before Arnold H. Pollock, an Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Margaret M. Lytle, Esquire
Southwest Florida Water
Management District
2379 Broad Street
Brooksville, Florida 34609-6899

For Respondent: Onofre Cintron, Esquire
305 North Parson Avenue
Brandon, Florida 33510

STATEMENT OF THE ISSUE

The issue for consideration in this matter is whether Respondent's license as a water well contractor should be disciplined because of the matters alleged in the Administrative Complaint and Order entered herein by the District.

PRELIMINARY MATTERS

By Administrative Complaint and Order dated December 21, 1999, the Southwest Florida Water Management District's (District) Executive Director seeks to discipline Respondent's license as a water well contractor within the District because of misconduct alleged therein. Specifically, the District alleges that sometime between June 1 and November 15, 1998, the Respondent cut-off the casing of a water well below the land surface; failed to seal the casing of the well with an approved substance; and improperly abandoned the well by failing to fill it from bottom to top with an approved grout. The District also alleges that Respondent also drilled two other wells on the same property, the first of which he covered with a cracked PVC cap and also failed to properly abandon. It is further alleged that the second of these two wells, which was the third drilled by Respondent on the property, was drilled without amending the permit he had received for the first well; without properly abandoning the well for which the permit had been taken; and without obtaining from the District a valid well construction permit (WCP) authorizing the construction of the third well. It is further alleged that the casing of the third well did not extend below the static water level of the producing aquifer, as required. If proven, Respondent's misconduct violates the provisions of Chapter 373, Florida Statutes, and Rules 40D-

3.521, 40D-3.531, 40D-3.517(3), and 62-532.500, Florida Administrative Code.

By Petition and Request for Hearing dated March 14, 2000, Respondent sought a formal administrative hearing on the allegations, and this hearing ensued.

At the hearing, Petitioner presented the testimony of Anthony E. Gilboy, manager of well construction for the District; Karen Anne Grant, owner of the property on which the subject wells were drilled by Respondent; Sharon Lee Vance, the District's acting field services supervisor; and Mark C. Pike, a water resources technician III for the District. Petitioner also introduced Petitioner's Exhibits 7 through 13. Respondent testified in his own behalf and presented the testimony of his brother, Anthony C. Holt, also a water well contractor.

Petitioner requested, and the undersigned officially recognized without objection, Chapter 373, Florida Statutes, and Rules 40D3, 62-531 and 62-532, Florida Administrative Code; and the District's Guidelines and Procedure Manual, as well as the District's Citation Dictionary.

A Transcript of the proceedings was filed June 14, 2000. Subsequent to the receipt thereof, counsel for both parties submitted matters in writing which were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times pertinent to the issues herein, the Southwest Florida Water Management District (SWFWMD) was the state agency responsible for the conservation, protection, management, and control of water resources within its boundaries, and consistent therewith, the licensing of water wells therein; and for the licensing and regulation of water wells and water well contractors within the district. The three wells in issue herein were within the jurisdiction of the Petitioner, and Respondent was a water well contractor licensed by the District.

2. On June 4, 1998, Respondent signed a contract with Karen Anne Grant, to drill a four-inch domestic water well on her property located at 33442 Larkin Road, Dade City, Florida. The property, on which Ms. Grant was building a residence, was a part of a pre-existing citrus grove. After application by the Respondent, SWFWMD issued WCP No. 606175.01 to him on June 1, 1998, and Respondent began construction of the well on June 15, 1998. His application reflected the well was to be drilled using the cable-tool method.

3. Construction was completed on the well on or about July 7, 1998, but because the well was vandalized during construction by the dropping of an unknown substance (probably a piece of casing) down the well, the well was unsatisfactory and was not

used. Respondent attempted to repair the well but was unable to do so. Respondent claimed the well was unusable and he would have to drill another one. Although he did not obtain a permit to close the well, he subsequently did so. He was paid $5,375.00 to dig this Well (No. 1).

4. Because of the failure of Well No. 1, Respondent applied to the District for and received WCP No. 613349.01 on December 9, 1998, to construct a second four-inch water well on Ms. Grant's property. This was Well No. 2. He began construction that day and completed it on January 27, 1999. From the time of its initial use, Well No. 2 produced water which contained unacceptable amounts of sediment, debris, and sand. In addition to the unsatisfactory quality of the water it produced, Well No. 2 also failed to produce a sufficient quantity of water for domestic potable water use or grove irrigation. Respondent admitted to Ms. Grant that Well No. 2 was not satisfactory for grove irrigation, and in an effort to fix the water quality problem, installed a sand filter and sedimentation tank.

5. Well No. 2 was not properly closed. It was covered with a PVC cap instead of a tamper-resistant watertight cap or valve as required, and Respondent did not properly seal the upper terminus of the well.

6. Without obtaining a third WCP, on February 25, 1999, Respondent started construction of a third well on the Grant property. Respondent contends WCP No. 613349.01, pulled for Well No. 2, was not for that well but for Well No. 3. He argues that the second well was so close to the first well that he did not feel another permit was required.

7. Though Well No. 3 was completed and produces water, the water quality is poor. It contains sand, sediment, debris, and rock, which results in clogging of plumbing fixtures at the Grant home. In addition, the volume of water produced is insufficient for comfortable home use. Well No. 3 is open down to 178 feet below land surface, beyond which point it is obstructed by sand. Use of a diagnostic tool available to the District reveals that the sand seems to be coming from around the well casing.

8. Ms. Grant initially contracted with Respondent to dig her well in June 1998. Although Petitioner disputes it, the location of the well near the new house she was building was, she claims, by mutual agreement. Respondent did not express any dissatisfaction with the location of this or either of the other wells, He said he was familiar with the area and had worked all around there.

9. Respondent started work on Well No. 1 on June 15, 1998 and it was completed on July 2, 1998. The house was not yet

completed, and electric service had not been installed, though it was being arranged for.

10. Before the well could be put in operation, however, Respondent claimed it was vandalized and his equipment, which he had left at the site, stolen. At this point, Respondent told Ms. Grant that he had run into an obstruction which he believed was pipe which had been dropped into the well at more than 100 feet. He said he had tried to get it out, but could not, and had to drill another well. The casing of Well No. 1 was not cut off at that time. Ms. Grant later discovered it had been cut off and plugged, but she does not know who did that.

11. Ms. Grant used Well No. 2, which was located about 20 to 30 feet west of Well No. 1, for just about two months but was never satisfied with the amount or quality of the water it produced. Not only was the water quality low, but there was also insufficient volume for grove irrigation, one of the intended uses of which she had advised Respondent. When Grant complained to Respondent about the water quality, he suggested she run hoses constantly to clear the sand out.

12. In February, 1999, just after Ms. Grant contacted the District to complain, Respondent said he would come by to cap Well Nos. 1 and 2, and start Well No. 3. On February 25, 1999, Respondent started Well No. 3 at a site about 200 feet north of Well Nos. 1 and 2, agreed upon by the parties after some

discussion, and on March 5, 1999, he completed it. Respondent billed Ms. Grant $3,271 for this well, in addition to the $5,375 paid for Well No. 1 and the $4,585 paid for Well No. 2. Whereas the builder paid for the first two wells, Ms. Grant paid for Well No. 3, but she had the same problems with Well No. 3 that she had had with the prior two wells. An irrigation company called in to see what could be done to get water to the citrus grove indicated there was too much sediment in the water and not enough flow.

13. About a year after Well No. 3 was completed, the Grants noticed the water pressure was dropping, and when they went to the well site, they noticed the pump was constantly running. As a result, they called another well driller who pulled the pump and replaced the impellers.

14. After that, Ms. Grant contacted Respondent about the fact that the wells he had drilled had never worked properly. All he would recommend was to keep the hoses running. He indicated he would try to develop the well to rid it of debris but when he tried, he was unsuccessful. As a result of the situation with the three wells, the Grants had no water to their home; the pumps they installed were destroyed; they were unable to irrigate their 8-acre citrus grove; they suffered a resultant loss of income; and, they were forced to drill a fourth well.

15. When Well No. 1 was closed, the casing was cut off at or below ground level. It did not extend one foot above the land surface, nor was the casing capped or sealed with a tamper-resistant watertight cap or valve. Examination of the well site by Sharon Lee Vance, then a technician IV for the District, on May 25, 1999, based on a complaint filed by Ms. Grant, revealed that the water quality was poor - cloudy with excessive sand and rock particles. Ms. Vance tried to contact Respondent, whose name appeared on the permit as contact, by phone but always got his voice mail. Though she left messages requesting him to call back, he never did.

16. Ms. Vance went back to the Grant site in July 1999 in the company of other District personnel. At this visit, Ms. Vance learned there were two wells. She located both and found that Well No. 1 was buried. When she first saw that well, she noted that it had been cut off below the surface, a fence post had been driven into the top, and the well had been buried. In Ms. Vance's discussions with Ms. Grant about this well, Ms. Grant categorically denied she was the one who cut off the top of Well No. 1 or buried it. She does not have access to the cutting equipment used to cut off the top of the well. Such equipment, however, is commonly used by well contractors.

17. It was obvious to Ms. Vance that Well No. 1 had several problems. It was clearly not suitable for its intended

use because it was cut off below ground level and was obstructed. It had not been properly abandoned. Though she dug down approximately one-and-a-half feet all the way around the casing, she could find no evidence of bentonite or any other approved closing medium.

18. Even though Respondent now claims the second permit he pulled was not for Well No. 2 but for Well No. 3 instead, the permit itself appears to authorize the construction of Well No. 2. Ms. Vance found several problems with this well, also. It was not properly sealed with bentonite or any other properly approved closure medium; a PVC cap had been applied to the top instead of a waterproof or tamperproof cap, and the PVC cap was cracked; the well was not suitable for its intended purpose because it was obstructed and produced both insufficient and poor quality water; and it was not properly abandoned. Ms. Vance observed a metal plate placed around the well top. She does not know what purpose it was to serve, but based on her experience and her examination of the site, she believes it was placed there to keep the casing from falling into the well.

19. Notwithstanding, Ms. Vance's opinion that the second permit was for Well No. 2, Respondent contends he believed the permit for Well No. 1 was adequate to permit drilling of Well No. 2 without a new permit. Though his belief is incorrect, he admitted to obtaining a permit for Well No. 3. Therefore, it is

found that Well No. 2 was not properly permitted. Well No. 3 was permitted.

20. The water in Well No. 3 was not of good quality. She examined the sand filter which had been installed by the Respondent and found it to be full of sand. So was the settling tank. She also noted debris and unusual sediment around the well head. Based on water samples taken at the well, and the observations made, it was clear to Ms. Vance that the well was not properly seated and was pumping sand. Further, the well casing did not extend down to the static water level, and the well was not properly permitted.

21. Ms. Vance further noted that the water from Well No. 3, in addition to the excessive sand, also had large pieces of rock and chunks of clay in it. This was unusual and indicated to her that there was a problem with the well's construction. The casing integrity as not good, which permitted an infusion of contaminant into the well. This condition is not unusual during the first day or so of a well's operation, but it usually clears up after that. In this case, it did not.

22. Ms. Vance admits she does not know who cut Well No. 1 off below ground level. She knows the well was not properly abandoned as required by rule, however, because it was not properly grouted with neat cement grout or bentonite. She dug down beside the well for a total of two and a half feet without

seeing any evidence of grout or bentonite. The fact that the well had pipe dropped into it, and the existence of the cutting off of the pipe below ground, made it inappropriate for the intended purpose of providing water for the home.

23. Ms. Vance she does not know who cut off the pump; Ms. Grant does not know who cut off the pipe; and Respondent denies having done it. Though the work was clearly done by someone with access to well drilling tools, Respondent was not the only driller to work at the site. Therefore, it cannot be found that Respondent cut the pipe off below ground. It is clear, however, that Respondent failed to properly abandon and close Well No. 1, when he found it unusable, and it was his responsibility to do so.

24. Well No. 2 also was not properly sealed by Respondent, according to Ms. Vance. A proper seal would include a good cap, not a cracked PVC cap, which would suffice only as a temporary cap. A proper cap would be one that is water tight and could not be readily removed. Ms. Vance admits she does not know who cracked the existing cap - only that it is cracked. This well, too, did not produce water fit for its intended purpose because of the existence of the tools which had been dropped into it. A permit was not obtained to abandon it. Under all these circumstances, Ms. Vance did not attempt to determine if it would produce sufficient water.

25. Finally, Ms. Vance concluded that Well No. 3 was not properly seated. According to rule, the casing has to seat to or below the static water level. Based on the debris in the water drawn from this well, she was satisfied this well was not properly cased.

26. Mack Pike, a water resources technician III for the District, does much of the well logging for the District. The equipment he uses goes to the bottom of the well and shows the diameter up to the point where the casing usually starts. Among other items, he uses a camera, which is what he used on the wells in issue here.

27. On July 22, 1999, he went to the Grant property to look at Well Nos. 1 and 2. His first efforts to get into these wells were unsuccessful, so he stopped his effort and returned on May 10, 2000 with the camera. On May 17, 2000, he also ran the camera down all three wells. In Well No. 3 he found the pump at 176 feet. He found Well No. 1 cut off about one and a-half feet below ground level, with a log jammed into the casing top down to the level of the casing. The pipe had been cut with a torch, but the casing had not been properly sealed with bentonite. Use of the log to stuff the pipe was an improper seal. He found the well open below the log down to 128 feet, but obstructed below that. There was no water in the well. Respondent adamantly insists he used bentonite in all three

wells, but since no trace of it was found in any of the wells by Mr. Pike or Ms. Vance, it is found that he did not.

28. At Well No. 2, Mr. Pike found a welded slab around the pipe to keep the casing from falling in. The cap was cracked and was no good. The camera showed the well was closed off. He hit sand at 158 feet. The presence of sand indicated to Mr. Pike that the casing was not properly sealed. The well was unusable.

29. Mr. Pike did not examine Well No. 3 until after he opened the sediment tank and found sand which appeared to have come from the surface. If the casing had been properly sealed, there should have been no surface sand. This means that the well was not properly seated.

30. Respondent has been a licensed well contractor since 1989 and has drilled approximately 300 wells since that time. Though he claims he suggested alternate locations for the wells to Ms. Grant, she insisted the well be placed near her irrigation line. Respondent claims he was against this because the site was a transition area which raised the possibility of the pipe bending. Notwithstanding the advice he got from others regarding the siting of the wells, he agreed to place the well where Ms. Grant wanted it.

31. Respondent claims he dug the first well and installed the pump, but the power was insufficient to run it. As a

result, he pulled out the pump and told Ms. Grant that when she got the proper power to run it, he'd come back and reinstall the pump. It was when he returned to the site in response to her call that he found that the site of Well No. 1 had been vandalized. Though he recommended the well be abandoned, Ms. Grant did not want to do that, so he moved over 20 feet and started to drill again. He categorically denies having cut off the casing of Well No. 1 below ground level. It has been found that the evidence shows Respondent that cut the pipe on Well No. 1, is insufficient.

32. Mr. Holt admits he did not seek a permit for this second well because his understanding was that one could drill like wells on the same premises without abandoning the pre-existing wells. He drilled the second well which, he claims, produced water for five to six months. However, it was impossible to stop the sand from infiltrating the well, and the well was not producing sufficient water to irrigate the grove. Because the water produced by Well No. 2 was insufficient in quantity to use the 5-horsepower pump called for in the contract, Respondent replaced it with a one and a-half horsepower pump.

33. According to Respondent, he and Ms. Grant discussed where to site Well No. 3. Finally, Ms. Grant agreed to move it up the hill on which Respondent wanted to site it, as this would

accommodate her irrigation system. Respondent was not comfortable with this because it was on the slope too close to the others, but he went along with it.

34. As Well No. 3 was being constructed, Respondent discussed with Ms. Grant the need to close Well Nos. 1 and 2. She did not want to pay for the closings, so he decided to cap the existing wells. As a result, Well No. 2 is still a viable well, and though it will not irrigate the grove, it will, Respondent claims, provide sufficient water for the house. He admits placing the PVC cap on Well No. 2, but claims it was not cracked when installed. He also admits to placing the plate around the top of Well No. 2 because the drive shoe was bent. It broke off, and he was afraid if he did not reinforce the area as he had the casing would collapse when he tried to ream out the drive shoe to recover it.

35. At the 126-foot mark of Well No. 3, Respondent hit a boulder through which the drill would not go. At that time, the hole below the casing was still good with no infusion. Respondent installed a pump and drew water, but, the pump soon began to pull sand. Respondent installed a filter, but it was insufficient. He ultimately drilled through the rock and placed the pump at 178 feet. That well is currently being used.

36. Respondent claims that all wells in that area pull sand to some degree. He insists that Ms. Grant's wells just

pull too much. He claims he could have quit, but because of his relationship with the builder, he felt obligated to drill a working well for Ms. Grant.

37. Anthony Gilboy, who has been with the District for 20 years, is currently the District's manager of well construction. He is familiar with the statutes and the rules of the District relating to water well construction and abandonment. According to Mr. Gilboy, they are loose enough to permit some latitude in their application. There is a freedom to amend methodology where circumstances so dictate.

38. A licensed water well contractor is required to obtain a permit to construct a water well. Once a permit is drawn, if the well needs to be changed, the permittee must apply for an amendment and then plug the old well consistent with District guidelines. Plugging is critical to prevent potential contamination of water and to preserve it.

39. Rule 40D-3.042, Florida Administrative Code, permits multiple (up to 8) wells under a single permit for similar types of wells that have diameters of 4 inches or less, but not domestic water wells.

40. There are different ways to drill a water well. One is by cable-tool drill in which a bit is hammered into the rock. As the casing is being driven down into the ground, it holds back the sediment. Another method involves the use of a rotary

drill which employs water and bentonite to hold back sediment. It is possible to tell whether bentonite was used in the drilling process just by looking at the well. The bentonite adheres to the well casing and looks different from the surrounding soil. In fact, there is no soil appearing naturally in Florida that looks like bentonite. In the instant case, Respondent applied to use the cable-tool method. Bentonite traces were not found at the sites.

41. When a well is drilled, the casing is to be poured in segments as drilling progresses. When a well is to be abandoned, one approved method of doing so involves the use of bentonite, a type of clay which swells to about 10 to 15 times its volume in dry form. Studies done by the District in conjunction with the University of Florida show that over all, bentonite is a better seal than natural soil, and it prevents surface water from settling down the side of the casing.

42. Rule 40D-3.517(3), Florida Administrative Code, requires bentonite's use for this purpose, and a rule of the Department of Environmental Protection, though not specifically mentioning bentonite, requires that casings be sealed.

43. The casing of a water well is used to seal off any unconsolidated materials. Rule 62-532, Florida Administrative Code, requires the casing be extended into the static water level at the time the well is drawn. If a well is not sealed,

debris and sand can slide into the well and damage the pump and other equipment. If debris is seen, it usually means the casing was not sealed properly.

44. After a well is completed, the rules of the District and the Department, Rules 40D-3.521(2) and 62-532.500(3)(a)4, Florida Administrative Code, respectively, require the upper part of the well to be sealed off to prevent infusion of contaminants. The seal must be tamper-proof and permanent. A fence post is not acceptable, nor is a cracked PVC cap. In addition, the upper terminus of a private well must extend at least 1 foot above the land surface. The purpose of this requirement is to allow the well to be found, and to prevent infusion of contaminant. (Rule 40D-3.53(2), Florida Administrative Code)

45. According to Rule 62-532-500(4), Florida Administrative Code, all abandoned or incomplete wells must be plugged from top to bottom with grout (neat cement). The Rule and Stipulation 39 of the permit provide that the well drilling contractor is responsible for proper abandonment of a well. This is not conditioned on the willingness of the owner to pay. The contractor has the responsibility to do it. An abandoned well is one which the use of which has been permanently discontinued or which is so in need of repair as to be useless. These determinations must be made by the District, hence the

need for the permit. In the instant case it was determined that Well Nos. 1 and 2 were not suited for their intended purpose, and they should have been properly abandoned.

46. The process for well abandonment is not complex, but it does require the obtaining of a permit. At least 24 hours in advance of initiation of the plugging process, the contractor must advise the District that the process will be implemented. Thereafter, the well hole is filled with neat cement or bentonite grout. To abandon a well by any other method would require a variance from the District. Neither permit nor variance was sought as to Well Nos. 1 and 2.

47. The standards adopted by the Department and the Water Management Districts are statewide in application. Construction of a water well without first obtaining a permit is classified as a major violation. The failure to properly abandon a well or the failure to use bentonite or neat cement in well closure are also major violations. Failure to construct a well so that the casing extends below the static water level is a major violation. Failure to seat or seal a casing into rock formation is a major violation. Failure to place a water-tight seal and failure to extend well casing at least one foot above the ground level are both major violations.

48. Penalties may be assessed for these violations according to a schedule set out in the Department rules.

However, these penalties may be adjusted based on such factors as the economic benefit to the contractor of his non-compliance; his history of non-compliance; the negligence or willfulness of his actions; and whether he acted in good faith. Under the circumstances of this case, Mr. Gilboy is of the opinion that the actions proposed by the District are appropriate.

CONCLUSIONS OF LAW

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

50. The construction of water wells are within the jurisdiction of the water management districts of the state. Well construction activities must be carried on consistent with the terms of applicable state statutes and the rules of the water management district in which the construction activity occurs. The water well construction activities carried on by Respondent in this case fall within the jurisdiction of the Department of Environmental Protection and the SWFWMD. The applicable statute is Chapter 373, Florida Statutes. The pertinent rules of the Department include Chapters 62-531 and 62-532, Florida Administrative Code, and the applicable District rule is Rule 40D-3.521, Florida Administrative Code.

51. Rules 40D-3.521(2) and 62-532.500(3)(a)4, Florida Administrative Code, require the upper terminus of a well casing

be sealed in a water-tight manner with a threaded, welded, or bolted cover or valve. The evidence of record is clear that the upper termini of Well No. 1 and Well No. 2 were not properly sealed. Well No. 1 was closed with a wooden dowel jammed into the opening, and Well No. 2 was closed with a cracked PVC cap which was not threaded, welded, or bolted. Neither process conformed to the requirements of the rules for well sealing. These two violations are classified as major and support a fine of $500 and assessment of five points each for a total of $1,000 fine and assessment of 10 points

52. The same provision of Rule 40D-3.52(2), Florida Administrative Code, also requires that a well casing extend at least 12 inches above the final ground level. Respondent contends he did not cut the well casing of Well No. 1 off below ground level, and considering all the evidence relevant to that issue, it cannot be found that he did. The failure to properly seal the well casing constitutes a major violation, which, under the provisions of the rule, carries an administrative fine of $500 and assessment of five points against the contractor's license.

53. Both the District's Rule 40D-531(2) and the Department's Rule 62-532.500(4) require that an incomplete well, or a well that is unsuitable for its intended purpose, must be properly abandoned by filling it from bottom to top with an

approved sealant. The evidence of record clearly shows that neither Well No. 1 nor Well No. 2 was sealed from bottom to top as required. This constitutes a major violation, and since two wells were involved, each violation is punishable by an administrative fine of $1,000 and assessment of ten points against the license for each of the violations, a total fine of $2,000 and assessment of 20 points.

54. Rules 40D-3.517(3) and 62-532.500(2)(d), Florida Administrative Code, both require that dry bentonite be used to seal the casing of a well during construction. The evidence of record indicates that Respondent failed to utilize bentonite in the construction of Well No. 1. This constitutes a major violation and subjects the offender to an administrative fine of $500 and assessment of 5 points.

55. The applicable Rules here, 40D-041(1) and 62-532.400(5), Florida Administrative Code, require a permit be obtained prior to commencement of construction of a water well not specifically exempted (the former); and establish procedures for moving the location of a permitted well (the latter). What is required is that the unsatisfactory well be properly abandoned prior to the construction of the new or relocated well. Here, the evidence indicated Respondent obtained a permit for Well No. 1 which was subsequently abandoned without first obtaining a permit to do so. Aside from the improper method of

abandonment use, previously discussed herein, Respondent then began construction of a second well without obtaining a permit, claiming he felt the prior issued permit was acceptable since the new well was so close to and a replacement for the older one. In this assumption, Respondent was in error. He also improperly abandoned Well No. 2 without a permit, and also improperly sealed it with a PVC cap which was unacceptable for that purpose.

56. Thereafter, Respondent began Well No. 3 located some distance from the prior two wells. The District contends he did not obtain a permit for this well, but the evidence of record shows that two permits were obtained. The District has failed to clearly show that the second permit did not pertain to Well No. 3. A second permit was obtained, and the evidence indicates it was for Well No. 3. Therefore, no penalty should be assessed for this alleged violation. However, no permit was obtained for Well No. 2. This is a major violation of Rule 40D-3.041(1), Florida Administrative Code, and supports assessment of an administrative fine of $100 and assessment of one point.

57. Still with reference to Well No. 3, the evidence of record clearly indicates that the casing of this well did not extend below the static water level in the well. This is a major violation of Rule 62-532.500(2)(b), Florida Administrative

Code, and permits the imposition of an administrative fine of $500 and assessment of five points.

58. The failure to seat or seal the casing of Well No. 3 into the rock level or other consolidated formation into which it extends with neat cement grout, as called for in Rule 62-532.500(2)(d)1, Florida Administrative Code, constitutes a major violation permitting the imposition of an administrative fine of $500 and assessment of five points.

59. Penalties considered under the terms of these rules may be mitigated if appropriate. The evidence of record indicates Respondent was previously disciplined by the district in 1996, but in light of the fact that the penalty imposed was rescinded or mitigated shortly thereafter, the prior discipline is not considered for the purpose of aggravation or mitigation of penalty in this case.

60. Taken together, the established violations by Respondent support an administrative fine and assessment of less than 50 points. This does not support a suspension of his license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that Respondent, Fletcher Holt be ordered to pay an administrative fine of $4,600; that 46 points be assessed against his water well contractor's license; and that

he be required to properly abandon Well Nos. 1, 2, and 3, which he drilled on the Grant property.

DONE AND ENTERED this 18th day of July, 2000, in Tallahassee, Leon County, Florida.

_____
ARNOLD H. POLLOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of July, 2000.

COPIES FURNISHED:

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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 agency that will issue the Final Order in this case.