

6-3-02

BEFORE THE GOVERNING BOARD OF THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

Division of Administrative Hearings

FILED

ORDER No. SWF 02-042

Date 6-18-04

DESOTO CITIZENS AGAINST POLLUTION, INC.,

Petitioner,

vs.

DOAH Case No. 02-0232
WUP No. 20012185.000

FARMLAND HYDRO LIMITED
PARTNERSHIP; FRANK T. BASSO, JR.;
REDLAND GROWERS EXCHANGE, INC.;
and SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT,

AP CAS-CWS

Respondents.

FINAL ORDER

THIS CAUSE was heard by the Governing Board of the Southwest Florida Water Management District (District) pursuant to Sections 120.569 and 120.57(1), Florida Statutes (F.S.), for the purpose of issuing a final order in the above-styled proceeding, including consideration of the Administrative Law Judge's (ALJ's) Recommended Order and the exceptions filed by the Petitioner and the District.

1. On June 3, 2002, the ALJ issued his Recommended Order, a copy of which is attached hereto as Exhibit "A."
2. On June 5, 2002, Petitioner DeSoto Citizens Against Pollution, Inc. (DCAP), filed a Memorandum of Law in Support of Proposed Recommended Order. Rule 28-106.215, Florida Administrative Code (F.A.C.), provides that the ALJ may permit all parties to submit proposed findings of fact, conclusions of law

and memoranda on the issues within a time designated by the ALJ. DCAP was granted an extension of time to May 28, 2002 to submit a Proposed Recommended Order. DCAP filed its Proposed Recommended Order on May 28, 2002. DCAP's Memorandum of Law, filed *after* issuance of the Recommended Order, is not proper, is untimely filed, and is not considered by the Governing Board.

3. On June 12, 2002, the District filed an Exception to the Recommended Order.

4. On June 17, 2002, DCAP filed Exceptions to the Recommended Order.

5. The Governing Board has reviewed the Recommended Order and the exceptions filed by DCAP and by the District.

6. The Governing Board rejects the exceptions filed by DCAP, for the reasons expressed in the Rulings on Exceptions to Recommended Order, which is attached hereto and incorporated herein by reference as Exhibit "B."

7. The Governing Board accepts the exception filed by the District, for the reasons expressed in the Rulings on Exceptions to Recommended Order.

8. The Governing Board adopts the Recommended Order in its entirety, except for that portion of Conclusion of Law No. 88 which states that subsection 40D-2.301(1)(h), Florida Administrative Code (F.A.C), was previously invalidated. This statement is not adopted. The statement that subsection 40D-2.301(1)(j), F.A.C., was previously invalidated is adopted.

9. The ALJ recommended that the District determine that Farmland Hydro Limited Partnership, Frank T. Basso, Jr. and Redland Growers Exchange, Inc., have satisfied the requirements of Section 373.223, F.S., and Rule 40D-2.301, F.A.C. The Governing Board accepts the recommendation.

10. The ALJ advised in the Recommended Order that if the permit is issued, the method of irrigation and the names of the entities to whom the permit is granted should be clarified. The Governing Board accepts the recommendation. Water Use Permit 20012185.000 is hereby amended to specify that the Permittees are "Farmland Hydro Limited Partnership" and "Frank T. Basso, Jr. and Redland Growers Exchange, Inc.," and the approved irrigation method is "seepage with mulch." A copy of the corrected permit is attached hereto as Exhibit "C."

11. The Recommended Order found that DCAP did not prove its standing to challenge the issuance of the subject WUP because it failed to demonstrate that a substantial number of its members will suffer an injury in fact of sufficient immediacy as required by law and the alleged injuries are neither real nor immediate and are based solely on unproven allegations. The ALJ recommended that the District find that DCAP lacks standing to challenge the issuance of the Permit. The Governing Board accepts the recommendation.

STATEMENT OF ORDER

WHEREFORE, the Governing Board hereby orders that (1) Farmland Hydro Limited Partnership and Frank T. Basso, Jr. and Redland Growers Exchange, Inc. have satisfied the requirements of Section 373.223, F.S., and

Rule 40D-2.301, F.A.C.; (2) corrected Water Use Permit No. 20012185.000, attached hereto as Exhibit "C," is issued to Farmland Hydro Limited Partnership and to Frank T. Basso, Jr., and Redland Growers Exchange, Inc.; and (3) DCAP lacked standing to challenge the issuance of the Permit.

DONE AND ORDERED by the Governing Board of the Southwest Florida Water Management District this 25th day of June 2002, in Brooksville, Hernando County, Florida.

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

By: _____

Ronnie E. Duncan, Chair

Attest: _____

Heidi B. McCree, Secretary

Approved as to legal form
and content

Attorney

(Seal)



Filed this 26th day of
June 2002.

Deanne M. Lee
Deputy Agency Clerk

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