

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS RIVER WATER	)	
MANAGEMENT DISTRICT,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 08-4359EF
	)	
FRANK H. AND LINDA M. MOLICA,	)	
	)	
Respondents.	)	
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SUPPLEMENTAL RECOMMENDED ORDER

After conducting an evidentiary hearing in this matter, on June 12, 2009, the undersigned issued his Recommended Order determining that the charges in an Administrative Complaint should be sustained, that Respondents should take the corrective actions described in District Exhibit 73, and that Respondents were not entitled to an agricultural exemption under Section 373.406(2), Florida Statutes.

On August 11, 2009, an Order of Remand (Order) was issued by the Governing Board of the St. Johns River Water Management District (District). The Order was filed with the Division of Administrative Hearings on August 14, 2009, together with the record of the underlying proceeding. That Order requested that the undersigned "make all necessary findings of fact and conclusions of law (along with an overall recommendation) on the issue whether the exemption in section 373.406(3) of the Florida

Statutes for closed agricultural systems exempts the activities at issue in this enforcement proceeding." On August 17, 2009, Respondents filed an Objection to Proceedings and Motion to Abate (Motion) on the ground they have secured a final declaratory judgment from the circuit court determining that the District "lacks authority to take administrative action under Chapter 373, Part IV, Florida Statutes, or ever has since its ownership by Plaintiffs." See Molica v. St. Johns River Water Management District, Case No. 05-2008-CA-051774 (Fla. 18th Cir. Ct., June 8, 2009). The parties do not expressly indicate whether that final judgment has been appealed, and if so, the status of the appeal. In any event, the Motion was denied by Order dated August 26, 2009, and this administrative proceeding reopened for the very limited purpose of complying with the Order of Remand.

Based on the evidence presented by the parties, the following additional findings of fact are determined:

SUPPLEMENTAL FINDINGS OF FACT

1. As previously found in the Recommended Order dated June 12, 2009, Respondents do not qualify for an exemption under Section 373.406(2), Florida Statutes. This is because they are not "engaged in the occupation of agriculture, silviculture, floriculture, or horticulture" on their property within the meaning of the law. In the parties' Prehearing Statement, however, they identified as an additional issue to be tried whether the closed agricultural system exemption in Section

373.406(3), Florida Statutes, exempted the activities at issue, even if the agricultural exemption in Section 373.406(2), Florida Statutes, did not apply.

2. A "closed system" is defined in Section 373.403(6), Florida Statutes, as "any reservoir or works located entirely within agricultural lands or controlled by the user and which requires water only for the filling, replenishing, and maintaining the water level thereof." The exemption generally provides that nothing in Chapter 373, Florida Statutes, or any rule adopted thereto, shall be construed to be applicable to the construction, operation, or maintenance of an agricultural closed system.

3. There is no evidence that Respondents capture, discharge, or use water for domestic use on their property. There is no residence on the property.

4. Although Respondents' witness Kern stated that he observed a closed system on the property, he indicated there was nothing on the property to keep stormwater from running off.

5. Respondents' witness Humphrey testified that there was no stormwater system or works on Respondents' property. He further indicated that if there was a system on the property, it was a closed system based on the District's definition. Like Mr. Kern, he acknowledged that there was nothing on the property to keep stormwater from running off. He also conceded there was

nothing on the property to take water into, to replenish water, or maintain water levels.

CONCLUSIONS OF LAW

6. Respondents have the burden to prove that their activities are exempt from District regulation. Compare, e.g., Key v. Trattman, 959 So. 2d 339, 345 (Fla. 1st DCA 2007). An exemption is strictly and narrowly construed against the person claiming the exemption. Pal-Mar Water Management District v. Board of County Commissioners of Martin County, et al., 384 So. 2d 232, 233 (Fla. 4th DCA 1980).

7. Section 373.406(3), Florida Statutes, provides in pertinent part:

(3) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to be applicable to construction, operation, or maintenance of any agriculture closed system. However, part II of this chapter shall be applicable as to the taking and discharging of water for filling, replenishing, and maintaining the water level in any such agricultural closed system . . . .

8. Section 373.403(6), Florida Statutes, defines the term "closed system" to mean "any reservoir or works located entirely within agricultural lands owned or controlled by the user and which requires water only for the filling, replenishing, and maintaining the water level thereof."

9. A closed system "requires water," requires a "reservoir or works," and requires that a water level be maintained in the

reservoir or works. Also, by its very nature, a closed system cannot discharge water off-site. See St. Johns River Water Management District v. Corporation of the President of the Church of Jesus Christ of Latter Day Saints, 489 So. 2d 59, 60 (Fla. 5th DCA 1986); Suggs, et al. v. Southwest Florida Water Management District, DOAH Case No. 08-3530 (DOAH Feb. 19, 2009, SWFWMD April 3, 2009).

10. The more persuasive evidence supports a conclusion that Respondents' property does not have a reservoir or works on it that require water or maintenance of a water level in it. Further, there is nothing on the property that prevents stormwater from discharging off-site. Therefore, there cannot be a closed system on the property.

11. Respondents' activities are not exempted from District regulation by virtue of Section 373.406(3), Florida Statutes.

#### RECOMMENDATION

Based on the foregoing Supplemental Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered sustaining the charges in the Complaint, requiring Respondents to take the corrective actions described in District Exhibit 73, and determining that Respondents are not entitled to any agricultural exemption under Section 373.406, Florida Statutes.

DONE AND RECOMMENDED this 21st day of September, 2009, in  
Tallahassee, Leon County, Florida.



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DONALD R. ALEXANDER  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of September, 2009.

COPIES FURNISHED:

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NOTICE OF RIGHT TO FILE EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.