

**MEMORANDUM**

**TO:** Governing Board

**THROUGH:** Kirby B. Green III, Executive Director

David Fisk, Assistant Executive Director

**FROM:** Stanley Niego, Sr. Assistant General Counsel  
Office of General Counsel

Kris Davis, Assistant General Counsel  
Office of General Counsel

**DATE:** March 19, 2009

**SUBJECT:** Adoption of Final Order  
*St. Johns Riverkeeper, Inc., City of Jacksonville, and St. Johns County v. St. Johns River Water Management District and Seminole County*  
DOAH Case Nos. 08-1316, 08-1317; 08-1318  
SJRWMD F.O.R. No. 2008-33  
Consumptive Use Permit Application No. 95581

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**BACKGROUND**

In February 2008, the District issued a Notice of Intended District Decision for Consumptive Use Permit ("CUP") No. 95581 to Seminole County Environmental Services ("Seminole") for the project known as the Seminole County Regional Water Supply Facility at Yankee Lake. The CUP would authorize the consumptive use of 6.87 million gallons per day (mgd) of reclaimed water and up to 5.5 mgd of surface water from the St. Johns River for a period of 20 years.

St. Johns Riverkeeper, Inc., the City of Jacksonville, and St. Johns County filed petitions for an administrative hearing challenging the District's intended action. The matter was subsequently referred to the Division of Administrative Hearings to conduct a formal hearing pursuant to section 120.57(1), Florida Statutes ("F.S."). An Administrative Law Judge ("ALJ") presided over a formal ten-day administrative hearing in October 2008. On January 12, 2009, the ALJ entered a Recommended Order, which recommends that the District grant Seminole's application, with an additional permit condition that was agreed to by Seminole and the District during the hearing. This condition would prohibit Seminole from withdrawing water from the St. Johns River on any day between April 1 and September 15 that follows a day when the Iron Bridge wastewater treatment facility has discharged water to the St. Johns River.

During this process, District attorneys Tim Smith and Karen Coffman represented District staff. We have been assigned to represent and advise the Governing Board. To this end, we have drafted a proposed Final Order that adopts the ALJ's Recommended Order, except as discussed below. We are recommending that the Governing Board issue an CUP to Seminole, subject to the conditions in the Technical Staff Report dated February 12, 2008, and the additional permit condition agreed to by Seminole during the hearing.

## **DISCUSSION**

All of the Petitioners and Seminole filed exceptions to the ALJ's Recommended Order (attached). The District and Seminole filed responses to the Petitioners' exceptions (attached). Petitioner, Riverkeeper, filed a response to Seminole's exception. All exceptions and responses were timely filed. Those filings were considered in preparing the proposed Final Order (attached).

The proposed Final Order provides rulings on exceptions and adopts the Recommended Order in its entirety, except as modified by the following:

- (a) Finding of fact 37 is modified to read as follows:

37. With his adjustments, Dr. McCue projected a total potable water demand (for all sources and all kinds of uses) of ~~23.19~~ 23.71 mgd for 2013 and 28.1 mgd for 2027. Based on those assumptions, Dr. McCue projected a requirement for 0.46 mgd of AWS in ~~2012~~ 2014, none in ~~2013~~ 2015 and ~~2014~~ 2016, 0.18 mgd in ~~2015~~ 2017, with increasing AWS requirements each succeeding year, up to 4.39 mgd in 2027.

- (b) Conclusion of law 137 is modified to read as follows:

137. Riverkeeper alleges that Seminole's proposed use will impact the use and enjoyment of the St. Johns River by a substantial number of Riverkeeper's members. However, it was not proven that Seminole's proposed CUP will affect their use or enjoyment of ~~air, water, or natural resources of~~ the River.

- (c) Conclusion of law 141 is modified to substitute the text in section D.I. of the proposed Final Order.

In considering exceptions to findings of fact, the Governing Board must comply with section 120.57(1)(l), F.S., which provides that an agency may only reject the ALJ's findings of fact when it determines, after a review of the complete record, that there is no competent substantial evidence to support the finding of fact, or that the proceedings on which the finding was based did not comply with the essential requirements of law.

In considering exceptions to conclusions of law, please note that section 120.57(1)(l), F.S., states in pertinent part:

The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

In considering all exceptions, section 120.57(1)(k), F.S., states that an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order, does not identify the legal basis for the exception, or does not include appropriate and specific citations to the record. Some of Petitioners' exceptions do not conform to Section 120.57(1)(k), F.S., and therefore, the Governing Board does not need to rule on those exceptions. Nonetheless, the proposed Final Order provides rulings on all of the Petitioners' exceptions.

The Consumptive Use Technical Staff Report (Seminole Exhibit 364) is attached so that the Governing Board may be advised of the "Other Conditions" that will apply to this permit. As noted above, an additional "Other Condition 17" is recommended to be added to the permit, stating as follows:

17. For every year during the pendency of this permit, starting on April 1 and ending on September 15, permittee shall not withdraw any water from the St. Johns River on any day that follows a day when the Iron Bridge wastewater treatment facility has discharged water to the St. Johns River.

### **RECOMMENDATION**

We recommend that the Governing Board enter the attached proposed Final Order.

**Attachments:**

**Proposed Final Order**

**Recommended Order**

**Consumptive Use Technical Staff Report Dated February 12, 2008 (Seminole Exhibit 364)**

**Seminole's Exception to Recommended Order**

**Response by St. Johns Riverkeeper, Inc., to Seminole's Exception to Recommended Order**

**Exceptions to Recommended Order of the St. Johns Riverkeeper, Inc.**

**City of Jacksonville's Exceptions to Recommended Order**

**Exceptions of Petitioner St. Johns County to the Recommended Order**

**Seminole's Response to Petitioners' Exceptions to Recommended Order**

**District Response to Riverkeeper's Exceptions**

**District Response to City of Jacksonville's Exceptions**

**District Response to St. Johns County's Exceptions**