

Suwannee River Water Management District

Governing Board Materials

## Supplemental

The following materials have been reviewed and approved for distribution to the Governing Board and the public.

Assistant Executive Director

Executive Director

## MEMORANDUM

TO: Governing Board

FROM: Tim Sagul, Senior Professional Engineer

DATE: January 6, 2012

RE: Referral of Petition Requesting Administrative Hearing to Division of Administrative Hearings (DOAH) Regarding Water Use Permit Number 2-11-00040, Loncala Dairies, Gilchrist County

### RECOMMENDATION

**Staff recommends the Governing Board authorize the referral of the above-referenced petition to DOAH regarding Water Use Permit Number 2-11-00040, Loncala Dairies, Gilchrist County.**

### BACKGROUND

The water use permit was approved at the December 13, 2011, Governing Board meeting. A petition requesting an Administrative Hearing was received at the District on January 3, 2012.

### DISCUSSION

Paragraph 120.569(2)(d), Florida Statutes states, *"The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c)."* Paragraph (c) references the information requirements in the Uniform Rules of Procedure, which are also referenced in the District's Rule 40B-1.100, Florida Administrative Code. Additionally, paragraph (c) allows the agency to dismiss a petition if it is not in substantial compliance with the requirements or if has been untimely filed.

Initial staff review reveals the petition contains the required information. Staff and board counsel will continue to review the petition and if deficiencies are noted, the board will be informed. A copy of the petition follows this memorandum.

/rl  
Attachment

Petition Requesting an Administrative Hearing Review of the Approval of Permit  
Application No: 2-11-00040 by the Suwannee River Water Management District  
Governing Board on December 13, 2011

**a. Agency**

Suwannee River Water Management District

9225 C.R. 49

Live Oak, Florida

32060

Permit Application No: 2-11-00040

**b. Petitioner**

Paul Still

14167 SW 101<sup>st</sup> Ave

Starke, FL

32091

904 368-0291

The petitioner's substantial interests will be affected by this permit in the following ways:

The petitioner has used Christmas and Waters Lakes for recreational purposes including canoeing, swimming, hiking, and nature observation. Should these lakes be allowed to return to their normal water levels similar use in the future could be possible.

The petitioner resides in the Suwannee River watershed and is impacted by Suwannee River Water Management District (SRWMD) actions such as declarations of Water Resource Caution Areas.

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The petitioner resides in the Santa Fe River Basin and is directly impacted by actions taken by the Florida Department of Environmental Protection through the Santa Fe River Basin Management Action Plan relative to nutrients in springs. This permit can impact the nitrate levels in springs.

The petitioner has a long standing interest in protecting both the quality and quantity of both ground and surface waters in the Suwannee River Basin.

As a resident of the State of Florida, the petitioner has a Public Interest in the proceedings as defined in Florida Administrative Code 40B-2.021 Definitions (21) "Public Interest" means those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State. Florida Statutes 373.223 Conditions for a Permit and FAC 40B-2-301 Conditions for Issuance of Permits both require the applicant provide reasonable assurances that the proposed use of water is consistent with the public interest.

**c. Notice of Suwannee River Water Management District (SRWMD) Decision**

The petitioner did not receive notice of the SRWMD's decision but attended the meeting in which the permit was approved. The petitioner later learned via an email communication with a SRWMD staff person that the SRWMD does not publish decisions.

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**d. Disputed Issues of Material Facts**

The wells on the map in the permit are not labeled. Well location is needed to evaluate impacts.

In the memo to the Governing Board dated November 23, 2011, regarding Permit Application No: 2-11-00040, it is stated "Staff has determined that the application is complete and satisfies the conditions for issuance in Chapter 40B-2, Florida Administrative Code."

The petitioner feels the application does not satisfy the conditions in Chapter 40B-2, Florida Administrative Code (FAC 40B-2).

No information is provided in the permit that would indicate the applicant met the Conditions for Issuance of Permits listed in FAC 40B-2-301 or that SRWMD staff evaluated the following parts of

FAC 40B-2-301 Conditions for Issuance of Permits.

(1) To obtain a water use permit, renewal, or modification pursuant to the provisions of this chapter, the applicant must provide reasonable assurances that the proposed use of water:

- (a) Is a reasonable-beneficial use;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

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(2) Reasonable assurances must be provided that the following criteria are met in order for a use to be considered reasonable-beneficial:

(b) The use must be for a purpose that is both reasonable and consistent with the public interest.

(d) The use will not degrade the source from which it is withdrawn.

(f) The use will not harm offsite land uses.

(g) The use will not cause harm to wetlands or other surface waters. Harm to wetlands or other surface waters must be mitigated after completion of reduction or elimination of harm in accordance with sections 3.1.8. through 3.1.10. of the Water Use Permitting Guide.

The language is clear in FAC 40B-2-301 and Florida Statutes 373.223 that conditions must be met for issuance of permits.

**e. Statement of specific facts petitioner contends warrant modification of the SRWMD's action**

This project is just east of Christmas and Waters Lakes and the wetlands in the Waccasassa flats. Waters Lake has lake front homes including some with docks. Christmas Lake and Waters Lake are almost dry. Groundwater levels near the project are near or at record lows. The project is in the springshed for springs on the Lower Santa Fe River and these springs support the flow in the Santa Fe and Suwannee Rivers. The

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SRWMD is scheduled to develop Minimum Flows and Levels (MFL) for the Lower Santa Fe River and some of the springs during 2012. Those MFLs could be impacted by this permit. The project is in the area covered by the Santa Fe River Basin Management Action Plan which is to address nitrates in springs. The water use included in this permit has the potential to increase nitrate levels in the springs on the Lower Santa Fe River. The project is located in a Water Resource Caution Area declared by the SRWMD in October, 2011.

All the above and the quantity (3.7927 MGD) of use granted in this permit require a very complete and stringent analysis of the impacts of the permitted groundwater withdrawals as required by FAC 40B-2-301.

The permit does not indicate that such an analysis was done. The permit references only one of the requirements of FAC 40B-2-301 which is the impacts on MFLs.

The petitioner believes "FAC 40B-2-301 (d) The use will not degrade the source from which it is withdrawn." would require the applicant to provide assurance that the use of the water will not result in increased levels of nitrate entering the Florida Aquifer as a result of the use of the water. No such assurance is noted in the permit.

There is no indication in the permit that the criteria set forth in the Water Use Permitting Guide were used to evaluate the permit application. The following sections would apply to this permit:

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## WATER USE PERMITTING GUIDE

### 2.9. Staff Review and Requests for Additional Information

Proposed water uses for general and individual permits must meet the conditions for issuance of permits pursuant to section 40B-2.301, FAC.

Pursuant to section 40B-1.703, FAC, the District shall require the applicant to submit additional information if the application is incomplete. The need for additional information will be based, in part, on the amount of the proposed withdrawal, characteristics of the requested water source in the region, potential for environmental harm, potential for interference with existing legal uses, and feasibility of providing data.

### 3.1.3. Evaluation of Impacts to Wetlands and Surface Waters

#### 3.1.4. Wetlands and Other Surface Waters

#### 3.1.5. Permit Application Submittals

#### 3.1.6. No-Harm Standards and Thresholds

Performance Standards for Wetlands

Performance Standards for Estuaries, Rivers, Streams, and their Tributaries

Performance Standards for Springs

#### 3.1.7. Site-Specific Considerations

The No-Harm Standards and Thresholds are important to this application. The site is close to Waters and Christmas Lakes and other wetlands in the Waccasassa Flats. The

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site lies in the springshed for a number of springs on the Santa Fe River. These springs support the flow of the Santa Fe River.

Under the No-Harm Standards the applicant must provide assurances that listed standards are satisfied. The listed standards address changes to wetlands, rivers, lakes and springs and how these changes impact habitats, and endangered species. For rivers, lakes and springs, the standards include impacts on recreational use or aesthetic qualities.

Since no reference is made to the No-Harm Standards and Thresholds or the other elements of the Water Use Permitting Guide in the permit it is not known if and how they were evaluated and if the Water Use Permitting Guide was used to determine that "the application is complete and satisfies the conditions for issuance in Chapter 40B-2, Florida Administrative Code."

**f. Statement of the specific rules or statutes the petitioner contends require modification of the SRWMD's action**

FAC 40B-2-301 Conditions for Issuance of Permits.

(1) To obtain a water use permit, renewal, or modification pursuant to the provisions of this chapter, the applicant must provide reasonable assurances that the proposed use of water:

- (a) Is a reasonable-beneficial use;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

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(2) Reasonable assurances must be provided that the following criteria are met in order for a use to be considered reasonable-beneficial:

(b) The use must be for a purpose that is both reasonable and consistent with the public interest.

(d) The use will not degrade the source from which it is withdrawn.

(f) The use will not harm offsite land uses.

(g) The use will not cause harm to wetlands or other surface waters. Harm to wetlands or other surface waters must be mitigated after completion of reduction or elimination of harm in accordance with sections 3.1.8. through 3.1.10. of the Water Use Permitting Guide.

(3) The standards and criteria set forth in the Water Use Permitting Guide, effective January 6, 2010, hereby incorporated by reference into this chapter, if met, will provide the reasonable assurances required in this section. This document is available at District headquarters and on the District's website at [www.mvsuwanneeriver.com](http://www.mvsuwanneeriver.com).

(The relevant portions of the Water Use Permitting Guide, effective January 6, 2010, are copied below. Formatting changes may have occurred in the process of copying the guide)

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## WATER USE PERMITTING GUIDE

### 2.9. Staff Review and Requests for Additional Information

Proposed water uses for general and individual permits must meet the conditions for issuance of permits pursuant to section 40B-2.301, FAC.

Pursuant to section 40B-1.703, FAC, the District shall require the applicant to submit additional information if the application is incomplete. The need for additional information will be based, in part, on the amount of the proposed withdrawal, characteristics of the requested water source in the region, potential for environmental harm, potential for interference with existing legal uses, and feasibility of providing data.

### 3.1.3. Evaluation of Impacts to Wetlands and Surface Waters

This section establishes the standards and thresholds for protection of wetlands and other surface waters from harm pursuant to the condition for permit issuance in paragraph 40B-2.301(2)(j), FAC. The standards and thresholds shall apply to all water uses regulated by the District.

This section requires assessment of whether the projected impacts of a proposed water use constitute harm. If the assessment shows that a water use is likely to cause or contribute to harm, then the applicant must comply with the elimination or reduction of harm provisions in section 3.1.8 and, if necessary, the mitigation requirements of section 3.1.9.

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Impacts to wetlands and surfacewater bodies whether or not associated with wetland enhancement, restoration, creation, preservation or other mitigation permitted pursuant to Part IV of chapter 373, FS, or other wetland regulatory program implemented by a local, regional, or federal governmental entity, shall be considered under this section.

The hydrologic characteristics resulting from construction or alterations undertaken in violation of chapter 373, FS, or District rule, order or permit, shall be evaluated based on historic, pre-violation conditions, as if the unauthorized hydrologic alteration had not occurred.

In the evaluation of the impacts from proposed withdrawals on adopted minimum flows and levels for surface and ground waters within chapter 40B-8, FAC, the best available information including the technical documents developed or adopted by the District in support of the minimum flows and levels, will be used.

#### 3.1.4. Wetlands and Other Surface Waters

(a) Delineation. Wetlands and other surface waters within the area of influence of a water use, delineated pursuant to sections 62-340.100 through 62-340.600, FAC, as ratified by section 373.4211, FS, are subject to this section, except as provided in section (b) below.

In accordance with subsection 62-340.300(1), FAC, reasonable scientific judgment shall be used to evaluate the existence and extent of a wetland or other surface water, including all reliable information, such as visual site inspection and

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aerial photo interpretation, in combination with ground-truthing. In addition, relevant information submitted pursuant to chapter 62-340, FAC, in support of an Environmental Resource Permit/Surface Water Management Permit shall be considered. Field delineations of wetlands and other surfacewater boundaries shall be required if such boundaries are in dispute.

In determining the location of wetlands and surface waters, the applicant may use staff reports of previously issued Environmental Resource and Surface Water Management permits for the site and adjacent sites, National Wetland Inventory (NWI) Maps, Land Use/Land Cover maps, Natural Resource Conservation Service soils maps, formal wetland determinations conducted by the District, and wetland maps produced by local governments. District staff may inspect the site to confirm the location and delineation of wetlands and surface waters, and other site-specific information. In the event that access to offsite wetlands or surface waters is denied by the property owner, the District and the applicant shall agree on a method of establishing the locations and delineations of the offsite wetlands or surface waters.

(b) Exclusions. Harm to the following wetlands and surface waters shall not require elimination or reduction of harm or, if necessary, mitigation, under this section:

1. Wetlands or surface waters which have been authorized to be impacted under an Environmental Resource Permit or designated in chapter 403, FS.

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2. Artificial water bodies including borrow pits, mining pits, canals, ditches, lakes, ponds, and water management systems, not part of a permitted wetland creation, preservation, restoration or enhancement program.

However, impacts to the design functions of water management systems shall be considered under section 3.1.14., Existing Offsite Land Uses.

3. Wetlands or surface waters to the extent impacts have been specifically authorized or mitigated pursuant to section 3.1.9., in a water use permit, unless the applicant is proposing additional impacts.

### 3.1.5. Permit Application Submittals

The applicant shall submit the following information, if requested by the District:

(a) For purposes of determining whether the wetland or surface water is excluded under section 3.1.4(b) above, the applicant shall provide documentation supporting the reason for exclusion under section 3.1.4(b), including a scaled map and recent aerial photograph marked with the wetland or surface water location. If it is demonstrated that the wetland or surface water is excluded under section 3.1.4(b), no additional information will be required under this section.

(b) For wetlands or surface waters that are not excluded under section 3.1.4(b) above, the applicant shall provide

1. scaled maps and recent aerial photographs that identify:

a. The area of influence of the water use;

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b. In accordance with section 3.1.4(a), the locations of all wetlands and surface waters that occur within the area of influence of the water use, including wetlands and surface waters located outside the applicant's property boundaries; and

c. The locations of existing and proposed withdrawal facilities.

2. Information about the hydrology and the current condition of the wetlands and surface waters.
3. Information regarding the potential impact of the water use on the wetland or surface water in its current condition.
4. Information regarding site-specific considerations required to be submitted pursuant to section 3.1.7 below.
5. Where there is potential for harm, information necessary to determine the extent of elimination or reduction of harm pursuant to section 3.1.8 and mitigation required under section 3.1.9, including an assessment of the use of the wetlands and surface waters by listed species.
6. A monitoring plan to assess the effects of the water use, if requested. A monitoring plan shall be required to provide continued verification that no harm is occurring as a result of the water use.

(c) If the applicant asserts that the exclusions in section 3.1.4(b) apply to wetlands or surface waters within the area of influence of the proposed water use, the applicant must provide sufficient information supporting this assertion.

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### 3.1.6. No-Harm Standards and Thresholds

To demonstrate that no harm will occur to wetlands and surface waters, reasonable assurances must be provided by the applicant that the standards below are satisfied.

#### Performance Standards for Wetlands

- (a) Withdrawals must not cause or contribute to a change in wet season water levels from their normal range.
- (b) Withdrawals must not cause or contribute to a change in wetland hydroperiods from their normal range and duration to the extent that wetland plant species composition and community zonation are adversely impacted.
- (c) Wetland habitat functions, such as providing cover, breeding, and feeding areas for obligate and facultative wetland animals must be temporally and spatially maintained and not adversely impacted as a result of withdrawals.
- (d) Withdrawals must not cause or contribute to habitat alteration for threatened or endangered species to the extent that use by these species is impaired.

#### Performance Standards for Estuaries, Rivers, Streams, and their Tributaries

- (a) Withdrawals must not cause or contribute to a change in flow rates from the normal rate and range of fluctuation to the extent that water quality, vegetation, and animal populations and their habitat are adversely impacted.
- (b) Withdrawals must not cause or contribute to a change in temporal and spatial distribution of flows to downstream waterbodies to the extent that the water resources are adversely impacted.

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(c) Withdrawals must not cause or contribute to a reduction in flow rates from the existing level of flow to the extent that salinity distributions in tidal streams and estuaries are altered resulting in adverse impacts to water quality, vegetation, and animal populations and their habitat.

(d) Withdrawals must not cause or contribute to a change in flow rates from the normal rate and range of fluctuation to the extent that recreational use or aesthetic qualities of the water resource are adversely impacted.

#### Performance Standards for Lakes

Withdrawals must not cause or contribute to a change in water levels from the normal rate and range of fluctuation, to the extent that:

- (a) Water quality, vegetation, or animal populations and their habitat are adversely impacted;
- (b) Flows to downgradient watercourses are adversely impacted;
- (c) Recreational use or aesthetic qualities of the water resource are adversely impacted.

#### Performance Standards for Springs

Withdrawals must not cause or contribute to a change in water levels or flows from the normal rate and range of fluctuation, to the extent that:

- (a) Water quality, vegetation, or animal populations and their habitat are adversely impacted;
- (b) Flows to downgradient watercourses are adversely impacted;
- (c) Recreational use or aesthetic qualities of the water resource are adversely impacted;

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(d) Frequency and/or duration of surfacewater flow back into the spring exceeds historical conditions.

The analysis for determining harm shall include an assessment of the projected hydrologic alterations caused by the water use and cumulatively with other existing legal uses, and the resulting impacts on wetlands and other surface waters. In circumstances of cumulative contributions to harm, an applicant shall only be required to address its relative contribution of harm to the wetlands and other surface waters.

In evaluating the applicant's water use, the District shall consider the extent of hydrologic alterations to wetlands and other surface waters caused by the applicant's water use based upon analytical or numerical modeling, or monitoring data, as required by this section.

The determination of harm shall consider the temporary nature of water use drawdowns and the seasonal application of certain water uses in assessing whether the hydrologic alteration is constant or recovers seasonally.

### 3.1.7. Site-Specific Considerations

Site-specific information shall be submitted by the applicant for determining whether the performance standards are met. The applicant shall provide site-specific information on the local hydrology, geology, actual water use, or unique seasonality of water use, including, but not limited to:

(a) Evaluation of site-specific hydrologic or geologic features that affect the projected drawdown, including the existence of clay layers that impede the vertical movement of water under the wetland, preferential flow paths, seepage face wetlands that receive high rates of inflow, or the effects of soil depth and type on moisture retention, to the degree that actual field data support how these

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factors affect the potential for impacts of the water use on the wetland or other surface water.

(b) Information required to assess the potential for harm to wetlands and surface waters, such as the condition, size, depth, uniqueness, location, and fish and wildlife use, including listed species, of the wetland or surface water.

If the applicant asserts that actual water use has not caused harm to wetlands or surface waters, site-specific information on the condition of the wetlands or surface waters must be provided in conjunction with pumpage records or other relevant evidence of actual water use to substantiate the assertion. Applicable monitoring data as described in section 3.4 shall also be submitted, if available.

#### 3.1.8. Elimination or Reduction of Harm

The applicant shall modify the project design or proposed water use, to the extent practicable, to eliminate or reduce harm to protected wetlands and surface waters if the District determines that harm will occur.

Modifications to the project or water use include, but are not limited to, developing alternative water supply sources, modification of pumping, relocation of withdrawal facilities, implementation of water conservation measures, and creation of hydrologic barriers.

A proposed modification that is not technically capable of being implemented, not economically feasible, or adversely affects public safety through the endangerment of lives or property, is not considered practicable. In determining whether a proposed modification is practicable, consideration shall be given to:

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- (a) Whether the wetlands and other surface waters have been impacted by authorized activities other than the water use (such as development, adjacent land use, drainage activities, or an Environmental Resource or Surface Water Management Permit), and will continue to be impacted by such activities;
- (b) The cost of the modification for elimination or reduction of harm compared to the environmental benefit such modification would achieve, including consideration of existing infrastructure; and
- (c) If a permit renewal, the considerations in section 3.1.10.

### 3.1.9. Mitigation of Harm

When the District determines that elimination or reduction of harm is not practicable, the District shall consider proposals for mitigation. Mitigation is required to offset the harm to the functions of wetlands and surface waters caused by the water use.

In certain cases, mitigation cannot offset impacts sufficiently to yield a permissible project. Such cases often include activities that harm Outstanding Florida Waters, established minimum flows and levels water bodies, habitat for listed species, or wetlands or surface waters not likely to be successfully recreated.

Mitigation shall not be required for impacts to wetlands and surface waters previously mitigated through federal, state or local permit authorizations, such as other water use permits or Environmental

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3.1.9.1. Mitigation Requirements

(a) Mitigation to offset the proposed harm shall be provided within the same watershed or recharge area as the proposed harm, unless the applicant demonstrates that mitigation proposed outside of the watershed or recharge area can fully offset the harm. Watershed and recharge area boundaries shall be based on best available.

(b) In determining whether mitigation proposed outside of the watershed or recharge area fully offsets the harm, consideration shall be given to the effect on the values of the remaining wetland and surfacewater functions within the watershed or recharge area.

3.1.11. Pollution of the Water Resources

A water use permit application shall be denied if the withdrawals would cause degradation of surface or groundwater quality through the induced movement of pollutants into a water source to the extent that sources are rendered unusable for reasonable-beneficial uses of water or pollutants interfere with an existing legal use.

The District shall not consider water quality impacts from wastewater discharges permitted by the Florida Department of Environmental Protection.

3.1.12. Existing Offsite Land Uses

The permit application shall be denied based on inconsistency with the public interest if the proposed withdrawals of water would cause an unmitigated adverse impact on an adjacent land use existing at the time of the permit application. This section does not establish a property right in water, but prohibits harm from withdrawals to land uses that

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are dependent on water being on or under the land surface, based on the considerations set forth below. If unanticipated adverse impacts occur, the District shall revoke the permit in whole or in part to curtail or abate the adverse impacts, unless the impacts can be mitigated by the permittee.

Adverse impacts include, but are not limited to:

- (a) Reduction in water levels or water quality in an adjacent surfacewater body such as lakes, impoundments, springs, streams, wetlands, or other water bodies that impairs the water body;
- (b) Land collapse or subsidence caused by a reduction in water levels;
- (c) Damage to crops and other types of vegetation, including wetlands and other surface waters; and
- (d) Damage to the habitat of endangered or threatened species.

An applicant for a new water use permit must provide reasonable assurances that the proposed withdrawal of water will not cause an unmitigated adverse impact on an adjacent land use existing at the time of the permit application.

### 3.1.13. Interference with Existing Legal Uses

Presently existing legal uses at the time of application are protected from interference by proposed uses of water. Existing legal uses are all uses of water which are exempt under chapter 373, FS, or 40B-2, FAC, or which have a valid chapter 373, Part II, FS, permit.

Pursuant to paragraph 373.223(1)(b), FS, the applicant must provide reasonable assurance that it will not interfere with any presently existing legal use of water.

Interference is considered to occur when the requested use would impair the withdrawal

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capability of an existing legal use to a degree that the existing use would require modification or replacement of the withdrawal facilities.

An applicant for a new water use must provide reasonable assurances that the proposed withdrawal of water, together with other exempt or permitted withdrawals within the cone of influence of the proposed withdrawal, will not result in interference with existing legal uses.

Mitigation may include, but shall not be limited to, pumpage reduction, replacement of the impacted user's equipment, relocation of wells, change in withdrawal source, or other means.

The permittee must mitigate interference with existing legal uses caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. The mitigation plan will either require a permittee to mitigate immediately or at the time of the actual interference. The determination of when mitigation is required is based upon the likelihood that the interference is projected to occur.

40B-2.101 Content of Application.

Applications for permits required by this chapter shall be filed with the District and contain the following:

- (1) The information specified in Section 373.229, F.S.;

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(2) The appropriate application form incorporated by reference in Rule 40B-2.041, F.A.C., which is available at District headquarters and on the District's website at [www.mysuwanneeriver.com](http://www.mysuwanneeriver.com).

(3) Best available technical and other supporting information sufficient to demonstrate that the use meets the conditions for issuance as specified in Section 373.223(1), F.S., and section 40B-2.301, F.A.C. Any supporting information or calculations required to be prepared by a professional regulated under Florida law shall bear the certification of such professional.

(4) The relevant information required by section 2.0, Water Use Permitting Guide.  
40B-2.381 Limiting Conditions.

(1) The Governing Board shall impose such reasonable conditions upon any water use permit as are necessary to assure that the proposed use of water is consistent with the overall objectives, policy, and purpose of the District as set forth in Chapter 373, F.S., and will not be harmful to the water resources of the District.

(2) Standard limiting conditions which will be placed on every water use permit are contained in section 3.6.1., Water Use Permitting Guide.

(3) Special limiting conditions for each water use class designated in Rule 40B-2.501, F.A.C., are contained in section 3.6.2., Water Use Permitting Guide.

Florida Statutes 373.223 Conditions for a permit.—

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

(a) Is a reasonable-beneficial use as defined in s. 373.019;

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- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

**g. Statement of relief sought by petitioner**

The permit resulting from Permit Application No: 2-11-00040 should not be issued.

The agency action of approving Permit Application No: 2-11-00040 should be reversed because the permit application does not meet the requirements of Florida Statutes 373 and 40B-2. The application was incomplete at the time the agency approved the permit.

The applicant should be allowed to provide the information required by the Statutes and Rules covered above so that SRWMD staff can determine if the amended application meets the requirements of the applicable Statutes and Rules.

The wells on the permit map should be labeled.

Incorporating permit language that would reduce or stop withdrawals when the Floridan Aquifer was lowered to defined levels that would be expected to harm, lakes, wetlands, springs, or rivers or impact other permitted users or land use, could protect the resource and provide the assurance of no harm during low ground water periods. These automatic restrictions would allow use when groundwater levels are adequate to support the permitted use. Such language could also benefit applicants because they could better judge if the capital cost to install wells and pumps is worthwhile given the conditions that would prevent their use. The current system of using conditions to a permit leaves a

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great deal of doubt as to when or if the use of water will be prohibited. For example, during a period of low levels in the Floridan Aquifer a complaint that the permit conditions were not being met could force costly changes in well locations or reduction in water use.

The issue of providing assurance that the withdrawal use will not degrade the source from which it is withdrawn relates to increased concentrations of nitrate in the Floridan Aquifer and the impact this has on springs. The permit needs to be more direct in its requirement that nutrients be managed in a way that does not degrade the Floridan Aquifer by increasing nitrate levels. This could be done by requiring that agricultural operations receiving permits follow the Best Management Practices for the activities on the site. The permit holders would also be required to allow their operation's records to be reviewed to confirm compliance with the Best Management Practices.

In addition to the Best Management Practices, dairy operations should be required to manage the water withdrawn from the Floridan Aquifer in a way that will not result in an increase in nitrate above levels in the water withdrawn from the Floridan Aquifer. The nitrate levels of the Floridan Aquifer would be determined by up gradient and down gradient monitoring wells.

This requirement for dairies may appear to be inconsistent with the statement in Water Use Permit Guide 3.1.11. Pollution of the Water Resources, "The District shall not

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consider water quality impacts from wastewater discharges permitted by the Florida Department of Environmental Protection.”

However, more aggressive control of nitrates is the only way the SRWMD can meet the Water Use Permit Guide Performance Standards for Springs that states, “Withdrawals must not cause or contribute to a change in water levels or flows from the normal rate and range of fluctuation, to the extent that:

- (a) Water quality, vegetation, or animal populations and their habitat are adversely impacted;”

The flow from the springs and water quality are interrelated. If nitrate levels are not controlled more flow will be required at springs to decrease the impacts of nitrate. More flow can only be achieved during periods of low rainfall by reducing groundwater withdrawal in the springsheds.

*Paul Still*

Paul Still

14167 SW 101<sup>st</sup> Ave

Starke, FL 32091

*1/3/2012*

Date

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## MEMORANDUM

TO: Governing Board

FROM: Tim Sagul, Senior Professional Engineer

DATE: January 6, 2012

RE: Referral of Petition Requesting Administrative Hearing to Division of Administrative Hearings (DOAH) Regarding Water Use Permit Number 2-11-00041, Piedmont Farms Dairy, Gilchrist County

### RECOMMENDATION

**Staff recommends the Governing Board authorize the referral of the above-referenced petition to DOAH regarding Water Use Permit Number 2-11-00041, Piedmont Farms Dairy, Gilchrist County.**

### BACKGROUND

The water use permit was approved at the December 13, 2011, Governing Board meeting. A petition requesting an Administrative Hearing was received at the District on January 3, 2012.

### DISCUSSION

Paragraph 120.569(2)(d), Florida Statutes states, *"The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c)."* Paragraph (c) references the information requirements in the Uniform Rules of Procedure, which are also referenced in the District's Rule 40B-1.100, Florida Administrative Code. Additionally, paragraph (c) allows the agency to dismiss a petition if it is not in substantial compliance with the requirements or if has been untimely filed.

Initial staff review reveals the petition contains the required information. Staff and board counsel will continue to review the petition and if deficiencies are noted, the board will be informed. A copy of the petition follows this memorandum.

/rl  
Attachment

Petition Requesting an Administrative Hearing Review of the Approval of Permit  
Application No: 2-11-00041 by the Suwannee River Water Management District  
Governing Board on December 13, 2011

**a. Agency**

Suwannee River Water Management District

9225 C.R. 49

Live Oak, Florida

32060

Permit Application No: 2-11-00041

**b. Petitioner**

Paul Still

14167 SW 101<sup>st</sup> Ave

Starke, FL

32091

904 368-0291

The petitioner has a long standing interest in protecting both the quality and quantity of  
both ground and surface waters in the Suwannee River Basin.

As a resident of the State of Florida, the petitioner has a Public Interest in the proceedings  
as defined in Florida Administrative Code 40B-2.021 Definitions (21) "Public Interest"  
means those broad-based interests and concerns that are collectively shared by members  
of a community or residents of the District or the State. Florida Statutes 373.223

Conditions for a Permit and FAC 40B-2-301 Conditions for Issuance of Permits both

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require the applicant provide reasonable assurances that the proposed use of water is consistent with the public interest.

**c. Notice of Suwannee River Water Management District (SRWMD) Decision**

The petitioner did not receive notice of the SRWMD's decision but attended the meeting in which the permit was approved. The petitioner later learned via an email communication with a SRWMD staff person that the SRWMD does not publish decisions.

**d. Disputed Issues of Material Facts**

The map presented as part of the permit does not label the wells with the numbers, letters, or names in the permit. The location of the wells is important in evaluating impacts.

In the memo to the Governing Board dated November 23, 2011, regarding Permit Application No: 2-11-00041, it is stated "Staff has determined that the application is complete and satisfies the conditions for issuance in Chapter 40B-2, Florida Administrative Code."

The petitioner feels the application does not satisfy the conditions in Chapter 40B-2, Florida Administrative Code (FAC 40B-2).

No information is provided in the permit that would indicate the applicant met the Conditions for Issuance of Permits listed in FAC 40B-2-301 or that the staff evaluated the following parts of

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FAC 40B-2-301 Conditions for Issuance of Permits.

(1) To obtain a water use permit, renewal, or modification pursuant to the provisions of this chapter, the applicant must provide reasonable assurances that the proposed use of water:

- (a) Is a reasonable-beneficial use;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

(2) Reasonable assurances must be provided that the following criteria are met in order for a use to be considered reasonable-beneficial:

(b) The use must be for a purpose that is both reasonable and consistent with the public interest.

(d) The use will not degrade the source from which it is withdrawn.

(f) The use will not harm offsite land uses.

(g) The use will not cause harm to wetlands or other surface waters. Harm to wetlands or other surface waters must be mitigated after completion of reduction or elimination of harm in accordance with sections 3.1.8. through 3.1.10. of the Water Use Permitting Guide.

The language is clear in FAC 40B-2-301 and Florida Statutes 373.223 that conditions must be met for issuance of permits.

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**e. Statement of specific facts petitioner contends warrant modification of the SRWMD's action**

This project appears to be on the eastern edge of the Fanning Springs springshed, and is east of Otter Springs. Flow from these springs has an impact on Suwannee River flows and levels. The project is south and west of lakes and wetlands in the Waccasassa Flats. All the above could be impacted by this project. The project is near the City of Trenton. During periods of low Floridan Aquifer levels private wells could be impacted by this projects water use.

All the above and the quantity (2.6513 MGD) of use granted in this permit require an analysis of the impacts of this future groundwater withdrawal as required by FAC 40B-2-301.

The permit does not indicate that such an analysis was done. The permit references only one of the requirements of FAC 40B-2-301 which is the impacts on MFLs.

The petitioner believes "FAC 40B-2-301 (d) The use will not degrade the source from which it is withdrawn." would require that the applicant to provide assurance that the use of the water will not result in increased levels of nitrate entering the Florida Aquifer as a result of the use of the water. No such assurance is noted in the permit.

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There is no indication in the permit that the criteria set forth in the Water Use Permitting Guide were used to evaluate the permit application. The following sections would apply to this permit:

**WATER USE PERMITTING GUIDE**

**2.9. Staff Review and Requests for Additional Information**

Proposed water uses for general and individual permits must meet the conditions for issuance of permits pursuant to section 40B-2.301, FAC.

Pursuant to section 40B-1.703, FAC, the District shall require the applicant to submit additional information if the application is incomplete. The need for additional information will be based, in part, on the amount of the proposed withdrawal, characteristics of the requested water source in the region, potential for environmental harm, potential for interference with existing legal uses, and feasibility of providing data.

**3.1.3. Evaluation of Impacts to Wetlands and Surface Waters**

**3.1.4. Wetlands and Other Surface Waters**

**3.1.5. Permit Application Submittals**

**3.1.6. No-Harm Standards and Thresholds**

Performance Standards for Wetlands

Performance Standards for Estuaries, Rivers, Streams, and their Tributaries

Performance Standards for Springs

**3.1.7. Site-Specific Considerations**

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The No-Harm Standards and Thresholds are important to this application. The site is close to lakes and wetlands in the Waccasassa Flats. The project or parts of the project may be in the springshed for Fanning and Otter Springs. These springs support the flow of the Suwannee River.

Under the No-Harm Standards the applicant must provide assurances that listed standards are satisfied. The listed standards address changes to wetlands, rivers, lakes and springs and how these changes impact habitats, endangered species. For rivers, lakes and Springs the standards include impacts on recreational use or aesthetic qualities.

Since no reference is made to the No-Harm Standards and Thresholds or the other elements of the Water Use Permitting Guide in the permit it is not known if and how they were evaluated and if the Water Use Permitting Guide was used to determine that "the application is complete and satisfies the conditions for issuance in Chapter 40B-2, Florida Administrative Code."

**f. Statement of the specific rules or statutes the petitioner contends require modification of the SRWMD's action**

FAC 40B-2-301 Conditions for Issuance of Permits.

(1) To obtain a water use permit, renewal, or modification pursuant to the provisions of this chapter, the applicant must provide reasonable assurances that the proposed use of water:

- (a) Is a reasonable-beneficial use;
- (b) Will not interfere with any presently existing legal use of water; and

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(c) Is consistent with the public interest.

(2) Reasonable assurances must be provided that the following criteria are met in order for a use to be considered reasonable-beneficial:

(b) The use must be for a purpose that is both reasonable and consistent with the public interest.

(d) The use will not degrade the source from which it is withdrawn.

(f) The use will not harm offsite land uses.

(g) The use will not cause harm to wetlands or other surface waters. Harm to wetlands or other surface waters must be mitigated after completion of reduction or elimination of harm in accordance with sections 3.1.8. through 3.1.10. of the Water Use Permitting Guide.

(3) The standards and criteria set forth in the Water Use Permitting Guide, effective January 6, 2010, hereby incorporated by reference into this chapter, if met, will provide the reasonable assurances required in this section. This document is available at District headquarters and on the District's website at [www.mysuwanneeriver.com](http://www.mysuwanneeriver.com).

(The relevant portions of the Water Use Permitting Guide, effective January 6, 2010, are copied below. Formatting changes may have occurred in the process of copying the guide)

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## WATER USE PERMITTING GUIDE

### 2.9. Staff Review and Requests for Additional Information

Proposed water uses for general and individual permits must meet the conditions for issuance of permits pursuant to section 40B-2.301, FAC.

Pursuant to section 40B-1.703, FAC, the District shall require the applicant to submit additional information if the application is incomplete. The need for additional information will be based, in part, on the amount of the proposed withdrawal, characteristics of the requested water source in the region, potential for environmental harm, potential for interference with existing legal uses, and feasibility of providing data.

### 3.1.3. Evaluation of Impacts to Wetlands and Surface Waters

This section establishes the standards and thresholds for protection of wetlands and other surface waters from harm pursuant to the condition for permit issuance in paragraph 40B-2.301(2)(j), FAC. The standards and thresholds shall apply to all water uses regulated by the District.

This section requires assessment of whether the projected impacts of a proposed water use constitute harm. If the assessment shows that a water use is likely to cause or contribute to harm, then the applicant must comply with the elimination or reduction of harm provisions in section 3.1.8 and, if necessary, the mitigation requirements of section 3.1.9.

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Impacts to wetlands and surfacewater bodies whether or not associated with wetland enhancement, restoration, creation, preservation or other mitigation permitted pursuant to Part IV of chapter 373, FS, or other wetland regulatory program implemented by a local, regional, or federal governmental entity, shall be considered under this section.

The hydrologic characteristics resulting from construction or alterations undertaken in violation of chapter 373, FS, or District rule, order or permit, shall be evaluated based on historic, pre-violation conditions, as if the unauthorized hydrologic alteration had not occurred.

In the evaluation of the impacts from proposed withdrawals on adopted minimum flows and levels for surface and ground waters within chapter 40B-8, FAC, the best available information including the technical documents developed or adopted by the District in support of the minimum flows and levels, will be used.

#### 3.1.4. Wetlands and Other Surface Waters

(a) Delineation. Wetlands and other surface waters within the area of influence of a water use, delineated pursuant to sections 62-340.100 through 62-340.600, FAC, as ratified by section 373.4211, FS, are subject to this section, except as provided in section (b) below.

In accordance with subsection 62-340.300(1), FAC, reasonable scientific judgment shall be used to evaluate the existence and extent of a wetland or other surface water, including all reliable information, such as visual site inspection and

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aerial photo interpretation, in combination with ground-truthing. In addition, relevant information submitted pursuant to chapter 62-340, FAC, in support of an Environmental Resource Permit/Surface Water Management Permit shall be considered. Field delineations of wetlands and other surfacewater boundaries shall be required if such boundaries are in dispute.

In determining the location of wetlands and surface waters, the applicant may use staff reports of previously issued Environmental Resource and Surface Water Management permits for the site and adjacent sites, National Wetland Inventory (NWI) Maps, Land Use/Land Cover maps, Natural Resource Conservation Service soils maps, formal wetland determinations conducted by the District, and wetland maps produced by local governments. District staff may inspect the site to confirm the location and delineation of wetlands and surface waters, and other site-specific information. In the event that access to offsite wetlands or surface waters is denied by the property owner, the District and the applicant shall agree on a method of establishing the locations and delineations of the offsite wetlands or surface waters.

(b) Exclusions. Harm to the following wetlands and surface waters shall not require elimination or reduction of harm or, if necessary, mitigation, under this section:

1. Wetlands or surface waters which have been authorized to be impacted under an Environmental Resource Permit or designated in chapter 403, FS.

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2. Artificial water bodies including borrow pits, mining pits, canals, ditches, lakes, ponds, and water management systems, not part of a permitted wetland creation, preservation, restoration or enhancement program.

However, impacts to the design functions of water management systems shall be considered under section 3.1.14., Existing Offsite Land Uses.

3. Wetlands or surface waters to the extent impacts have been specifically authorized or mitigated pursuant to section 3.1.9., in a water use permit, unless the applicant is proposing additional impacts.

### 3.1.5. Permit Application Submittals

The applicant shall submit the following information, if requested by the District:

(a) For purposes of determining whether the wetland or surface water is excluded under section 3.1.4(b) above, the applicant shall provide documentation supporting the reason for exclusion under section 3.1.4(b), including a scaled map and recent aerial photograph marked with the wetland or surfacewater location. If it is demonstrated that the wetland or surface water is excluded under section 3.1.4(b), no additional information will be required under this section.

(b) For wetlands or surface waters that are not excluded under section 3.1.4(b) above, the applicant shall provide

1. scaled maps and recent aerial photographs that identify:

- a. The area of influence of the water use;
- b. In accordance with section 3.1.4(a), the locations of all wetlands and surface waters that occur within the area of influence of the

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water use, including wetlands and surface waters located outside the applicant's property boundaries; and

c. The locations of existing and proposed withdrawal facilities.

2. Information about the hydrology and the current condition of the wetlands and surface waters.
3. Information regarding the potential impact of the water use on the wetland or surface water in its current condition.
4. Information regarding site-specific considerations required to be submitted pursuant to section 3.1.7 below.
5. Where there is potential for harm, information necessary to determine the extent of elimination or reduction of harm pursuant to section 3.1.8 and mitigation required under section 3.1.9, including an assessment of the use of the wetlands and surface waters by listed species.
6. A monitoring plan to assess the effects of the water use, if requested. A monitoring plan shall be required to provide continued verification that no harm is occurring as a result of the water use.

(c) If the applicant asserts that the exclusions in section 3.1.4(b) apply to wetlands or surface waters within the area of influence of the proposed water use, the applicant must provide sufficient information supporting this assertion.

### 3.1.6. No-Harm Standards and Thresholds

To demonstrate that no harm will occur to wetlands and surface waters, reasonable assurances must be provided by the applicant that the standards below are satisfied.

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#### Performance Standards for Wetlands

- (a) Withdrawals must not cause or contribute to a change in wet season water levels from their normal range.
- (b) Withdrawals must not cause or contribute to a change in wetland hydroperiods from their normal range and duration to the extent that wetland plant species composition and community zonation are adversely impacted.
- (c) Wetland habitat functions, such as providing cover, breeding, and feeding areas for obligate and facultative wetland animals must be temporally and spatially maintained and not adversely impacted as a result of withdrawals.
- (d) Withdrawals must not cause or contribute to habitat alteration for threatened or endangered species to the extent that use by these species is impaired.

#### Performance Standards for Estuaries, Rivers, Streams, and their Tributaries

- (a) Withdrawals must not cause or contribute to a change in flow rates from the normal rate and range of fluctuation to the extent that water quality, vegetation, and animal populations and their habitat are adversely impacted.
- (b) Withdrawals must not cause or contribute to a change in temporal and spatial distribution of flows to downstream waterbodies to the extent that the water resources are adversely impacted.
- (c) Withdrawals must not cause or contribute to a reduction in flow rates from the existing level of flow to the extent that salinity distributions in tidal streams and estuaries are altered resulting in adverse impacts to water quality, vegetation, and animal populations and their habitat.

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(d) Withdrawals must not cause or contribute to a change in flow rates from the normal rate and range of fluctuation to the extent that recreational use or aesthetic qualities of the water resource are adversely impacted.

#### Performance Standards for Lakes

Withdrawals must not cause or contribute to a change in water levels from the normal rate and range of fluctuation, to the extent that:

- (a) Water quality, vegetation, or animal populations and their habitat are adversely impacted;
- (b) Flows to downgradient watercourses are adversely impacted;
- (c) Recreational use or aesthetic qualities of the water resource are adversely impacted.

#### Performance Standards for Springs

Withdrawals must not cause or contribute to a change in water levels or flows from the normal rate and range of fluctuation, to the extent that:

- (a) Water quality, vegetation, or animal populations and their habitat are adversely impacted;
- (b) Flows to downgradient watercourses are adversely impacted;
- (c) Recreational use or aesthetic qualities of the water resource are adversely impacted;
- (d) Frequency and/or duration of surfacewater flow back into the spring exceeds historical conditions.

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The analysis for determining harm shall include an assessment of the projected hydrologic alterations caused by the water use and cumulatively with other existing legal uses, and the resulting impacts on wetlands and other surface waters. In circumstances of cumulative contributions to harm, an applicant shall only be required to address its relative contribution of harm to the wetlands and other surface waters.

In evaluating the applicant's water use, the District shall consider the extent of hydrologic alterations to wetlands and other surface waters caused by the applicant's water use based upon analytical or numerical modeling, or monitoring data, as required by this section.

The determination of harm shall consider the temporary nature of water use drawdowns and the seasonal application of certain water uses in assessing whether the hydrologic alteration is constant or recovers seasonally.

### 3.1.7. Site-Specific Considerations

Site-specific information shall be submitted by the applicant for determining whether the performance standards are met. The applicant shall provide site-specific information on the local hydrology, geology, actual water use, or unique seasonality of water use, including, but not limited to:

- (a) Evaluation of site-specific hydrologic or geologic features that affect the projected drawdown, including the existence of clay layers that impede the vertical movement of water under the wetland, preferential flow paths, seepage face wetlands that receive high rates of inflow, or the effects of soil depth and type on moisture retention, to the degree that actual field data support how these factors affect the potential for impacts of the water use on the wetland or other surface water.

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(b) Information required to assess the potential for harm to wetlands and surface waters, such as the condition, size, depth, uniqueness, location, and fish and wildlife use, including listed species, of the wetland or surface water.

If the applicant asserts that actual water use has not caused harm to wetlands or surface waters, site-specific information on the condition of the wetlands or surface waters must be provided in conjunction with pumpage records or other relevant evidence of actual water use to substantiate the assertion. Applicable monitoring data as described in section 3.4 shall also be submitted, if available.

### 3.1.8. Elimination or Reduction of Harm

The applicant shall modify the project design or proposed water use, to the extent practicable, to eliminate or reduce harm to protected wetlands and surface waters if the District determines that harm will occur.

Modifications to the project or water use include, but are not limited to, developing alternative water supply sources, modification of pumping, relocation of withdrawal facilities, implementation of water conservation measures, and creation of hydrologic barriers.

A proposed modification that is not technically capable of being implemented, not economically feasible, or adversely affects public safety through the endangerment of lives or property, is not considered practicable. In determining whether a proposed modification is practicable, consideration shall be given to:

(a) Whether the wetlands and other surface waters have been impacted by authorized activities other than the water use (such as development, adjacent land

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use, drainage activities, or an Environmental Resource or Surface Water Management Permit), and will continue to be impacted by such activities;

(b) The cost of the modification for elimination or reduction of harm compared to the environmental benefit such modification would achieve, including consideration of existing infrastructure; and

(c) If a permit renewal, the considerations in section 3.1.10.

### 3.1.9. Mitigation of Harm

When the District determines that elimination or reduction of harm is not practicable, the District shall consider proposals for mitigation. Mitigation is required to offset the harm to the functions of wetlands and surface waters caused by the water use.

In certain cases, mitigation cannot offset impacts sufficiently to yield a permittable project. Such cases often include activities that harm Outstanding Florida Waters, established minimum flows and levels water bodies, habitat for listed species, or wetlands or surface waters not likely to be successfully recreated.

Mitigation shall not be required for impacts to wetlands and surface waters previously mitigated through federal, state or local permit authorizations, such as other water use permits or Environmental

#### 3.1.9.1. Mitigation Requirements

(a) Mitigation to offset the proposed harm shall be provided within the same watershed or recharge area as the proposed harm, unless the applicant demonstrates that mitigation proposed outside of the watershed or recharge area

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can fully offset the harm. Watershed and recharge area boundaries shall be based on best available.

(b) In determining whether mitigation proposed outside of the watershed or recharge area fully offsets the harm, consideration shall be given to the effect on the values of the remaining wetland and surfacewater functions within the watershed or recharge area.

### 3.1.11. Pollution of the Water Resources

A water use permit application shall be denied if the withdrawals would cause degradation of surface or groundwater quality through the induced movement of pollutants into a water source to the extent that sources are rendered unusable for reasonable-beneficial uses of water or pollutants interfere with an existing legal use.

The District shall not consider water quality impacts from wastewater discharges permitted by the Florida Department of Environmental Protection.

### 3.1.12. Existing Offsite Land Uses

The permit application shall be denied based on inconsistency with the public interest if the proposed withdrawals of water would cause an unmitigated adverse impact on an adjacent land use existing at the time of the permit application. This section does not establish a property right in water, but prohibits harm from withdrawals to land uses that are dependent on water being on or under the land surface, based on the considerations set forth below. If unanticipated adverse impacts occur, the District shall revoke the permit in whole or in part to curtail or abate the adverse impacts, unless the impacts can be mitigated by the permittee.

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Adverse impacts include, but are not limited to:

- (a) Reduction in water levels or water quality in an adjacent surfacewater body such as lakes, impoundments, springs, streams, wetlands, or other water bodies that impairs the water body;
- (b) Land collapse or subsidence caused by a reduction in water levels;
- (c) Damage to crops and other types of vegetation, including wetlands and other surface waters; and
- (d) Damage to the habitat of endangered or threatened species.

An applicant for a new water use permit must provide reasonable assurances that the proposed withdrawal of water will not cause an unmitigated adverse impact on an adjacent land use existing at the time of the permit application.

### 3.1.13. Interference with Existing Legal Uses

Presently existing legal uses at the time of application are protected from interference by proposed uses of water. Existing legal uses are all uses of water which are exempt under chapter 373, FS, or 40B-2, FAC, or which have a valid chapter 373, Part II, FS, permit.

Pursuant to paragraph 373.223(1)(b), FS, the applicant must provide reasonable assurance that it will not interfere with any presently existing legal use of water.

Interference is considered to occur when the requested use would impair the withdrawal capability of an existing legal use to a degree that the existing use would require modification or replacement of the withdrawal facilities.

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An applicant for a new water use must provide reasonable assurances that the proposed withdrawal of water, together with other exempt or permitted withdrawals within the cone of influence of the proposed withdrawal, will not result in interference with existing legal uses.

Mitigation may include, but shall not be limited to, pumpage reduction, replacement of the impacted user's equipment, relocation of wells, change in withdrawal source, or other means.

The permittee must mitigate interference with existing legal uses caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. The mitigation plan will either require a permittee to mitigate immediately or at the time of the actual interference. The determination of when mitigation is required is based upon the likelihood that the interference is projected to occur.

40B-2.101 Content of Application.

Applications for permits required by this chapter shall be filed with the District and contain the following:

- (1) The information specified in Section 373.229, F.S.;
- (2) The appropriate application form incorporated by reference in Rule 40B-2.041, F.A.C., which is available at District headquarters and on the District's website at [www.mysuwanneeriver.com](http://www.mysuwanneeriver.com).
- (3) Best available technical and other supporting information sufficient to demonstrate that the use meets the conditions for issuance as specified in Section

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2-11-00041

**Piedmont Farms Dairy**

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373.223(1), F.S., and section 40B-2.301, F.A.C. Any supporting information or calculations required to be prepared by a professional regulated under Florida law shall bear the certification of such professional.

(4) The relevant information required by section 2.0, Water Use Permitting Guide.  
40B-2.381 Limiting Conditions.

(1) The Governing Board shall impose such reasonable conditions upon any water use permit as are necessary to assure that the proposed use of water is consistent with the overall objectives, policy, and purpose of the District as set forth in Chapter 373, F.S., and will not be harmful to the water resources of the District.

(2) Standard limiting conditions which will be placed on every water use permit are contained in section 3.6.1., Water Use Permitting Guide.

(3) Special limiting conditions for each water use class designated in Rule 40B-2.501, F.A.C., are contained in section 3.6.2., Water Use Permitting Guide.

Florida Statutes 373.223 Conditions for a permit.—

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

- (a) Is a reasonable-beneficial use as defined in s. 373.019;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

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**g. Statement of relief sought by petitioner**

The permit resulting from Permit Application No: 2-11-00041 should not be issued.

The agency action of approving Permit Application No: 2-11-00041 should be reversed because the permit application does not meet the requirements of Florida Statutes 373 and 40B-2. The application was incomplete at the time the agency approved the permit application.

The applicant should be allowed to provide the information required by the applicable Statutes and Rules so that SRWMD staff can determine if the amended application meets the requirements of the applicable Statutes and Rules.

The wells on the permit map should be labeled.

Incorporating permit language that would reduce or stop withdrawals when the Floridan Aquifer was lowered to defined levels that would be expected to harm, lakes, wetlands, springs, or rivers or impact other permitted users or land use, could protect the resource and provide the assurance of no harm during low ground water periods. These automatic restrictions would allow use when groundwater levels are adequate to support the permitted use. Such language could also benefit applicants because they could better judge if the capital cost to install wells and pumps is worthwhile given the conditions that would prevent their use. The current system of using conditions to a permit leaves a great deal of doubt as to when or if the use of water will be prohibited. For example,

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during a period of low levels in the Floridan Aquifer a complaint that the permit conditions were not being met could force costly changes in well locations or reduction in water use.

The issue of providing assurance that the withdrawal use will not degrade the source from which it is withdrawn relates to increased concentrations of nitrate in the Floridan Aquifer and the impact this has on springs. The permit needs to be more direct in its requirement that nutrients be managed in a way that does not degrade the Floridan Aquifer by increasing nitrate levels. This could be done by requiring that agricultural operations receiving permits follow the Best Management Practices for the activities on the site. The permit holders would also be required to allow their operation's records to be reviewed to confirm compliance with the Best Management Practices.

In addition to the Best Management Practices, dairy operations should be required to manage the water withdrawn from the Floridan Aquifer in a way that will not result in an increase in nitrate above levels in the water withdrawn from the Floridan Aquifer. The nitrate levels of the Floridan Aquifer would be determined by up gradient and down gradient monitoring wells.

This requirement for dairies may appear to be inconsistent with the statement in Water Use Permit Guide 3.1.11. Pollution of the Water Resources, "The District shall not consider water quality impacts from wastewater discharges permitted by the Florida Department of Environmental Protection."

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However, more aggressive control of nitrates is the only way the SRWMD can meet the Water Use Permit Guide Performance Standards for Springs that states, "Withdrawals must not cause or contribute to a change in water levels or flows from the normal rate and range of fluctuation, to the extent that:

- (a) Water quality, vegetation, or animal populations and their habitat are adversely impacted;"

The flow from the springs and water quality are interrelated. If nitrate levels are not controlled more flow will be required at springs to decrease the impacts of nitrate. More flow can only be achieved during periods of low rainfall by reducing groundwater withdrawal in the springsheds.

*Paul Still*

*1/3/2012*

Paul Still

Date

14167 SW 101<sup>st</sup> Ave

Starke, FL 32091

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## MEMORANDUM

TO: Governing Board

FROM: Tim Sagul, Senior Professional Engineer

DATE: January 6, 2012

RE: Referral of Petition Requesting Administrative Hearing to Division of Administrative Hearings (DOAH) Regarding Water Use Permit Number 2-97-00005M2, William Douberly Farm, Levy and Gilchrist Counties

### RECOMMENDATION

**Staff recommends the Governing Board authorize the referral of the above-referenced petition to DOAH regarding Water Use Permit Number 2-97-00005M2, William Douberly Farm, Levy and Gilchrist Counties.**

### BACKGROUND

The water use permit was approved at the December 13, 2011, Governing Board meeting. A petition requesting an Administrative Hearing was received at the District on January 3, 2012.

### DISCUSSION

Paragraph 120.569(2)(d), Florida Statutes states, *“The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c).”* Paragraph (c) references the information requirements in the Uniform Rules of Procedure, which are also referenced in the District’s Rule 40B-1.100, Florida Administrative Code. Additionally, paragraph (c) allows the agency to dismiss a petition if it is not in substantial compliance with the requirements or if has been untimely filed.

Initial staff review reveals the petition contains the required information. Staff and board counsel will continue to review the petition and if deficiencies are noted, the board will be informed. A copy of the petition follows this memorandum.

/rl  
Attachment

Petition Requesting an Administrative Hearing Review of the Approval of Permit  
Application No: 2-97-00005M2 by the Suwannee River Water Management District  
Governing Board on December 13, 2011

**a. Agency**

Suwannee River Water Management District

9225 C.R. 49

Live Oak, Florida

32060

Permit Application No: 2-97-00005M2

**b. Petitioner**

Paul Still

14167 SW 101<sup>st</sup> Ave

Starke, FL

32091

904 368-0291

The petitioner's substantial interests will be affected by this permit in the following ways:

The petitioner has used Watermelon Pond for recreational purposes including canoeing, fishing, hiking, and nature observation. Should this lake be allowed to return to its normal water level similar use in the future could be possible.

The petitioner has a long standing interest in protecting both the quality and quantity of both ground and surface waters in the area.

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SUP 53 2-97-00005M2  
*William Douberly Farm*

As a resident of the State of Florida, the petitioner has a Public Interest in the proceedings as defined in Florida Administrative Code 40B-2.021 Definitions (21) "Public Interest" means those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State. Florida Statutes 373.223 Conditions for a Permit and FAC 40B-2-301 Conditions for Issuance of Permits both require the applicant provide reasonable assurances that the proposed use of water is consistent with the public interest.

**c. Notice of Suwannee River Water Management District (SRWMD) Decision**

The petitioner did not receive notice of the SRWMD's decision but attended the meeting in which the permit was approved. The petitioner later learned via an email communication with a SRWMD staff person that the SRWMD does not publish decisions.

**d. Disputed Issues of Material Facts**

The permit states the, "The project is located within the middle Suwannee River basin. This is not correct.

The map presented as part of the permit does not label the wells with the numbers, letters or names in the permit. The location is important in evaluating impacts.

In the memo to the Governing Board dated November 23, 2011, regarding Permit Application No: 2-97-00005M2, it is stated "Staff has determined that the application is complete and satisfies the conditions for issuance in Chapter 40B-2, Florida Administrative Code."

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The petitioner feels the application does not satisfy the conditions in Chapter 40B-2, Florida Administrative Code (FAC 40B-2).

No information is provided in the permit that would indicate the applicant met the Conditions for Issuance of Permits listed in FAC 40B-2-301 or that the staff evaluated the following parts of

FAC 40B-2-301 Conditions for Issuance of Permits.

(1) To obtain a water use permit, renewal, or modification pursuant to the provisions of this chapter, the applicant must provide reasonable assurances that the proposed use of water:

- (a) Is a reasonable-beneficial use;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

(2) Reasonable assurances must be provided that the following criteria are met in order for a use to be considered reasonable-beneficial:

(b) The use must be for a purpose that is both reasonable and consistent with the public interest.

(d) The use will not degrade the source from which it is withdrawn.

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2-97-00005M2

*William Douberly Farm*

- (f) The use will not harm offsite land uses.
- (g) The use will not cause harm to wetlands or other surface waters. Harm to wetlands or other surface waters must be mitigated after completion of reduction or elimination of harm in accordance with sections 3.1.8. through 3.1.10. of the Water Use Permitting Guide.

The language is clear in FAC 40B-2-301 and Florida Statutes 373.223 that conditions must be met for issuance of permits.

**e. Statement of specific facts petitioner contends warrant modification of the SRWMD's action**

The Watermelon Pond area contains lakes and wetlands that are part of the Goethe State Forest and the Watermelon Pond Wildlife and Environmental Area. The wetlands and lakes in this area have been impacted by low levels. The project site is just west of Watermelon Pond area.

The above and the quantity (1.1691 MGD) of use granted in this permit require analysis of the impacts of this future groundwater withdrawal as required by FAC 40B-2-301.

The permit does not indicate that such an analysis was done. The permit references only one of the requirements of FAC 40B-2-301 which is the impacts on MFLs

The petitioner believes "FAC 40B-2-301 (d) The use will not degrade the source from which it is withdrawn." would require the applicant provide assurance that the use of the

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water will not result in increased levels of nitrate entering the Florida Aquifer as a result of the use of the water. No such assurance is noted in the permit.

There is no indication in the permit that the criteria set forth in the Water Use Permitting Guide were used to evaluate the permit application. The following sections would apply to this permit:

#### WATER USE PERMITTING GUIDE

##### 2.9. Staff Review and Requests for Additional Information

Proposed water uses for general and individual permits must meet the conditions for issuance of permits pursuant to section 40B-2.301, FAC.

Pursuant to section 40B-1.703, FAC, the District shall require the applicant to submit additional information if the application is incomplete. The need for additional information will be based, in part, on the amount of the proposed withdrawal, characteristics of the requested water source in the region, potential for environmental harm, potential for interference with existing legal uses, and feasibility of providing data.

##### 3.1.3. Evaluation of Impacts to Wetlands and Surface Waters

##### 3.1.4. Wetlands and Other Surface Waters

##### 3.1.5. Permit Application Submittals

##### 3.1.6. No-Harm Standards and Thresholds

Performance Standards for Wetlands

Performance Standards for Lakes

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### 3.1.7. Site-Specific Considerations

The No-Harm Standards and Thresholds are important to this application because of its location near the Watermelon Pond area. Under the No-Harm Standards the applicant must provide assurances that listed standards are satisfied. The listed standards address changes to wetlands, and lakes and how these changes impact habitats, endangered species. For lakes the standards include impacts on recreational use or aesthetic qualities.

Since no reference is made to the No-Harm Standards and Thresholds or the other elements of the Water Use Permitting Guide in the permit it is not known if and how they were evaluated and if the Water Use Permitting Guide was used to determine that “the application is complete and satisfies the conditions for issuance in Chapter 40B-2, Florida Administrative Code.”

**f. Statement of the specific rules or statutes the petitioner contends require modification of the SRWMD’s action**

FAC 40B-2-301 Conditions for Issuance of Permits.

(1) To obtain a water use permit, renewal, or modification pursuant to the provisions of this chapter, the applicant must provide reasonable assurances that the proposed use of water:

- (a) Is a reasonable-beneficial use;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

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2-97-00005M2

**William Douberly Farm**

(2) Reasonable assurances must be provided that the following criteria are met in order for a use to be considered reasonable-beneficial:

(b) The use must be for a purpose that is both reasonable and consistent with the public interest.

(d) The use will not degrade the source from which it is withdrawn.

(f) The use will not harm offsite land uses.

(g) The use will not cause harm to wetlands or other surface waters. Harm to wetlands or other surface waters must be mitigated after completion of reduction or elimination of harm in accordance with sections 3.1.8. through 3.1.10. of the Water Use Permitting Guide.

FAC 40B-2-301 Conditions for Issuance of Permits.

(3) The standards and criteria set forth in the Water Use Permitting Guide, effective January 6, 2010, hereby incorporated by reference into this chapter, if met, will provide the reasonable assurances required in this section. This document is available at District headquarters and on the District's website at [www.mysuwanneeriver.com](http://www.mysuwanneeriver.com).

(The relevant portions of the Water Use Permitting Guide, effective January 6, 2010, are copied below. Formatting changes may have occurred in the process of copying the guide)

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## WATER USE PERMITTING GUIDE

### 2.9. Staff Review and Requests for Additional Information

Proposed water uses for general and individual permits must meet the conditions for issuance of permits pursuant to section 40B-2.301, FAC.

Pursuant to section 40B-1.703, FAC, the District shall require the applicant to submit additional information if the application is incomplete. The need for additional information will be based, in part, on the amount of the proposed withdrawal, characteristics of the requested water source in the region, potential for environmental harm, potential for interference with existing legal uses, and feasibility of providing data.

### 3.1.3. Evaluation of Impacts to Wetlands and Surface Waters

This section establishes the standards and thresholds for protection of wetlands and other surface waters from harm pursuant to the condition for permit issuance in paragraph 40B-2.301(2)(j), FAC. The standards and thresholds shall apply to all water uses regulated by the District.

This section requires assessment of whether the projected impacts of a proposed water use constitute harm. If the assessment shows that a water use is likely to cause or contribute to harm, then the applicant must comply with the elimination or reduction of harm provisions in section 3.1.8 and, if necessary, the mitigation requirements of section 3.1.9.

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Impacts to wetlands and surfacewater bodies whether or not associated with wetland enhancement, restoration, creation, preservation or other mitigation permitted pursuant to Part IV of chapter 373, FS, or other wetland regulatory program implemented by a local, regional, or federal governmental entity, shall be considered under this section.

The hydrologic characteristics resulting from construction or alterations undertaken in violation of chapter 373, FS, or District rule, order or permit, shall be evaluated based on historic, pre-violation conditions, as if the unauthorized hydrologic alteration had not occurred.

In the evaluation of the impacts from proposed withdrawals on adopted minimum flows and levels for surface and ground waters within chapter 40B-8, FAC, the best available information including the technical documents developed or adopted by the District in support of the minimum flows and levels, will be used.

#### 3.1.4. Wetlands and Other Surface Waters

(a) Delineation. Wetlands and other surface waters within the area of influence of a water use, delineated pursuant to sections 62-340.100 through 62-340.600, FAC, as ratified by section 373.4211, FS, are subject to this section, except as provided in section (b) below.

In accordance with subsection 62-340.300(1), FAC, reasonable scientific judgment shall be used to evaluate the existence and extent of a wetland or other surface water, including all reliable information, such as visual site inspection and

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aerial photo interpretation, in combination with ground-truthing. In addition, relevant information submitted pursuant to chapter 62-340, FAC, in support of an Environmental Resource Permit/Surface Water Management Permit shall be considered. Field delineations of wetlands and other surfacewater boundaries shall be required if such boundaries are in dispute.

In determining the location of wetlands and surface waters, the applicant may use staff reports of previously issued Environmental Resource and Surface Water Management permits for the site and adjacent sites, National Wetland Inventory (NWI) Maps, Land Use/Land Cover maps, Natural Resource Conservation Service soils maps, formal wetland determinations conducted by the District, and wetland maps produced by local governments. District staff may inspect the site to confirm the location and delineation of wetlands and surface waters, and other site-specific information. In the event that access to offsite wetlands or surface waters is denied by the property owner, the District and the applicant shall agree on a method of establishing the locations and delineations of the offsite wetlands or surface waters.

(b) Exclusions. Harm to the following wetlands and surface waters shall not require elimination or reduction of harm or, if necessary, mitigation, under this section:

1. Wetlands or surface waters which have been authorized to be impacted under an Environmental Resource Permit or designated in chapter 403, FS.

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2. Artificial water bodies including borrow pits, mining pits, canals, ditches, lakes, ponds, and water management systems, not part of a permitted wetland creation, preservation, restoration or enhancement program.

However, impacts to the design functions of water management systems shall be considered under section 3.1.14., Existing Offsite Land Uses.

3. Wetlands or surface waters to the extent impacts have been specifically authorized or mitigated pursuant to section 3.1.9., in a water use permit, unless the applicant is proposing additional impacts.

### 3.1.5. Permit Application Submittals

The applicant shall submit the following information, if requested by the District:

(a) For purposes of determining whether the wetland or surface water is excluded under section 3.1.4(b) above, the applicant shall provide documentation supporting the reason for exclusion under section 3.1.4(b), including a scaled map and recent aerial photograph marked with the wetland or surfacewater location. If it is demonstrated that the wetland or surface water is excluded under section 3.1.4(b), no additional information will be required under this section.

(b) For wetlands or surface waters that are not excluded under section 3.1.4(b) above, the applicant shall provide

1. scaled maps and recent aerial photographs that identify:

a. The area of influence of the water use;

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b. In accordance with section 3.1.4(a), the locations of all wetlands and surface waters that occur within the area of influence of the water use, including wetlands and surface waters located outside the applicant's property boundaries; and

c. The locations of existing and proposed withdrawal facilities.

2. Information about the hydrology and the current condition of the wetlands and surface waters.
3. Information regarding the potential impact of the water use on the wetland or surface water in its current condition.
4. Information regarding site-specific considerations required to be submitted pursuant to section 3.1.7 below.
5. Where there is potential for harm, information necessary to determine the extent of elimination or reduction of harm pursuant to section 3.1.8 and mitigation required under section 3.1.9, including an assessment of the use of the wetlands and surface waters by listed species.
6. A monitoring plan to assess the effects of the water use, if requested. A monitoring plan shall be required to provide continued verification that no harm is occurring as a result of the water use.

(c) If the applicant asserts that the exclusions in section 3.1.4(b) apply to wetlands or surface waters within the area of influence of the proposed water use, the applicant must provide sufficient information supporting this assertion.

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### 3.1.6. No-Harm Standards and Thresholds

To demonstrate that no harm will occur to wetlands and surface waters, reasonable assurances must be provided by the applicant that the standards below are satisfied.

#### Performance Standards for Wetlands

- (a) Withdrawals must not cause or contribute to a change in wet season water levels from their normal range.
- (b) Withdrawals must not cause or contribute to a change in wetland hydroperiods from their normal range and duration to the extent that wetland plant species composition and community zonation are adversely impacted.
- (c) Wetland habitat functions, such as providing cover, breeding, and feeding areas for obligate and facultative wetland animals must be temporally and spatially maintained and not adversely impacted as a result of withdrawals.
- (d) Withdrawals must not cause or contribute to habitat alteration for threatened or endangered species to the extent that use by these species is impaired.

#### Performance Standards for Lakes

Withdrawals must not cause or contribute to a change in water levels from the normal rate and range of fluctuation, to the extent that:

- (a) Water quality, vegetation, or animal populations and their habitat are adversely impacted;
- (b) Flows to downgradient watercourses are adversely impacted;
- (c) Recreational use or aesthetic qualities of the water resource are adversely impacted.

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The analysis for determining harm shall include an assessment of the projected hydrologic alterations caused by the water use and cumulatively with other existing legal uses, and the resulting impacts on wetlands and other surface waters. In circumstances of cumulative contributions to harm, an applicant shall only be required to address its relative contribution of harm to the wetlands and other surface waters.

In evaluating the applicant's water use, the District shall consider the extent of hydrologic alterations to wetlands and other surface waters caused by the applicant's water use based upon analytical or numerical modeling, or monitoring data, as required by this section.

The determination of harm shall consider the temporary nature of water use drawdowns and the seasonal application of certain water uses in assessing whether the hydrologic alteration is constant or recovers seasonally.

### 3.1.7. Site-Specific Considerations

Site-specific information shall be submitted by the applicant for determining whether the performance standards are met. The applicant shall provide site-specific information on the local hydrology, geology, actual water use, or unique seasonality of water use, including, but not limited to:

- (a) Evaluation of site-specific hydrologic or geologic features that affect the projected drawdown, including the existence of clay layers that impede the vertical movement of water under the wetland, preferential flow paths, seepage face wetlands that receive high rates of inflow, or the effects of soil depth and type on moisture retention, to the degree that actual field data support how these factors affect the potential for impacts of the water use on the wetland or other surface water.

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(b) Information required to assess the potential for harm to wetlands and surface waters, such as the condition, size, depth, uniqueness, location, and fish and wildlife use, including listed species, of the wetland or surface water.

If the applicant asserts that actual water use has not caused harm to wetlands or surface waters, site-specific information on the condition of the wetlands or surface waters must be provided in conjunction with pumpage records or other relevant evidence of actual water use to substantiate the assertion. Applicable monitoring data as described in section 3.4 shall also be submitted, if available.

#### 3.1.8. Elimination or Reduction of Harm

The applicant shall modify the project design or proposed water use, to the extent practicable, to eliminate or reduce harm to protected wetlands and surface waters if the District determines that harm will occur.

Modifications to the project or water use include, but are not limited to, developing alternative water supply sources, modification of pumping, relocation of withdrawal facilities, implementation of water conservation measures, and creation of hydrologic barriers.

A proposed modification that is not technically capable of being implemented, not economically feasible, or adversely affects public safety through the endangerment of lives or property, is not considered practicable. In determining whether a proposed modification is practicable, consideration shall be given to:

(a) Whether the wetlands and other surface waters have been impacted by authorized activities other than the water use (such as development, adjacent land

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use, drainage activities, or an Environmental Resource or Surface Water Management Permit), and will continue to be impacted by such activities;

(b) The cost of the modification for elimination or reduction of harm compared to the environmental benefit such modification would achieve, including consideration of existing infrastructure; and

(c) If a permit renewal, the considerations in section 3.1.10.

### 3.1.9. Mitigation of Harm

When the District determines that elimination or reduction of harm is not practicable, the District shall consider proposals for mitigation. Mitigation is required to offset the harm to the functions of wetlands and surface waters caused by the water use.

In certain cases, mitigation cannot offset impacts sufficiently to yield a permissible project. Such cases often include activities that harm Outstanding Florida Waters, established minimum flows and levels water bodies, habitat for listed species, or wetlands or surface waters not likely to be successfully recreated.

Mitigation shall not be required for impacts to wetlands and surface waters previously mitigated through federal, state or local permit authorizations, such as other water use permits or Environmental

#### 3.1.9.1. Mitigation Requirements

(a) Mitigation to offset the proposed harm shall be provided within the same watershed or recharge area as the proposed harm, unless the applicant demonstrates that mitigation proposed outside of the watershed or recharge area

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can fully offset the harm. Watershed and recharge area boundaries shall be based on best available.

(b) In determining whether mitigation proposed outside of the watershed or recharge area fully offsets the harm, consideration shall be given to the effect on the values of the remaining wetland and surfacewater functions within the watershed or recharge area.

#### 3.1.11. Pollution of the Water Resources

A water use permit application shall be denied if the withdrawals would cause degradation of surface or groundwater quality through the induced movement of pollutants into a water source to the extent that sources are rendered unusable for reasonable-beneficial uses of water or pollutants interfere with an existing legal use.

The District shall not consider water quality impacts from wastewater discharges permitted by the Florida Department of Environmental Protection.

#### 3.1.12. Existing Offsite Land Uses

The permit application shall be denied based on inconsistency with the public interest if the proposed withdrawals of water would cause an unmitigated adverse impact on an adjacent land use existing at the time of the permit application. This section does not establish a property right in water, but prohibits harm from withdrawals to land uses that are dependent on water being on or under the land surface, based on the considerations set forth below. If unanticipated adverse impacts occur, the District shall revoke the

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permit in whole or in part to curtail or abate the adverse impacts, unless the impacts can be mitigated by the permittee.

Adverse impacts include, but are not limited to:

- (a) Reduction in water levels or water quality in an adjacent surfacewater body such as lakes, impoundments, springs, streams, wetlands, or other water bodies that impairs the water body;
- (b) Land collapse or subsidence caused by a reduction in water levels;
- (c) Damage to crops and other types of vegetation, including wetlands and other surface waters; and
- (d) Damage to the habitat of endangered or threatened species.

An applicant for a new water use permit must provide reasonable assurances that the proposed withdrawal of water will not cause an unmitigated adverse impact on an adjacent land use existing at the time of the permit application.

### 3.1.13. Interference with Existing Legal Uses

Presently existing legal uses at the time of application are protected from interference by proposed uses of water. Existing legal uses are all uses of water which are exempt under chapter 373, FS, or 40B-2, FAC, or which have a valid chapter 373, Part II, FS, permit.

Pursuant to paragraph 373.223(1)(b), FS, the applicant must provide reasonable assurance that it will not interfere with any presently existing legal use of water.

Interference is considered to occur when the requested use would impair the withdrawal capability of an existing legal use to a degree that the existing use would require modification or replacement of the withdrawal facilities.

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An applicant for a new water use must provide reasonable assurances that the proposed withdrawal of water, together with other exempt or permitted withdrawals within the cone of influence of the proposed withdrawal, will not result in interference with existing legal uses.

Mitigation may include, but shall not be limited to, pumpage reduction, replacement of the impacted user's equipment, relocation of wells, change in withdrawal source, or other means.

The permittee must mitigate interference with existing legal uses caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. The mitigation plan will either require a permittee to mitigate immediately or at the time of the actual interference. The determination of when mitigation is required is based upon the likelihood that the interference is projected to occur.

40B-2.101 Content of Application.

Applications for permits required by this chapter shall be filed with the District and contain the following:

- (1) The information specified in Section 373.229, F.S.;
- (2) The appropriate application form incorporated by reference in Rule 40B-2.041, F.A.C., which is available at District headquarters and on the District's website at [www.mysuwanneeriver.com](http://www.mysuwanneeriver.com).

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(3) Best available technical and other supporting information sufficient to demonstrate that the use meets the conditions for issuance as specified in Section 373.223(1), F.S., and section 40B-2.301, F.A.C. Any supporting information or calculations required to be prepared by a professional regulated under Florida law shall bear the certification of such professional.

(4) The relevant information required by section 2.0, Water Use Permitting Guide.  
40B-2.381 Limiting Conditions.

(1) The Governing Board shall impose such reasonable conditions upon any water use permit as are necessary to assure that the proposed use of water is consistent with the overall objectives, policy, and purpose of the District as set forth in Chapter 373, F.S., and will not be harmful to the water resources of the District.

(2) Standard limiting conditions which will be placed on every water use permit are contained in section 3.6.1., Water Use Permitting Guide.

(3) Special limiting conditions for each water use class designated in Rule 40B-2.501, F.A.C., are contained in section 3.6.2., Water Use Permitting Guide.

Florida Statutes 373.223 Conditions for a permit.—

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

- (a) Is a reasonable-beneficial use as defined in s. 373.019;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

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**g. Statement of relief sought by petitioner**

The permit resulting from Permit Application No: 2-97-00005M2 should not be issued.

The agency action of approving Permit Application No: 2-97-00005M2 should be reversed because the permit application does not meet the requirements of Florida Statutes 373 and 40B-2. The application was incomplete at the time the agency approved the permit.

The applicant should be allowed to provide the information required by the applicable Statutes and Rules so that SRWMD staff can determine if the amended application meets the requirements of the applicable Statutes and Rules.

A correction to river basin of the project should be made on the permit.

Maps showing well locations should identify wells with name, number, or letter used in the permit.

Incorporating permit language that would reduce or stop withdrawals when the Floridan Aquifer was lowered to defined levels that would be expected to harm, lakes, wetlands, springs, or rivers or impact other permitted users or land use, could protect the resource and provide the assurance of no harm during low ground water periods. These automatic restrictions would allow use when groundwater levels are adequate to support the permitted use. Such language could also benefit applicants because they could better

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**2-97-00005M2**  
**William Douberly Farm**

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judge if the capital cost to install wells and pumps is worthwhile given the conditions that would prevent their use. The current system of using conditions to a permit leaves a great deal of doubt as to when or if the use of water will be prohibited. For example, during a period of low levels in the Floridan Aquifer a complaint that the permit conditions were not being met could force costly changes in well locations or reduction in water use.

The issue of providing assurance that the withdrawal use will not degrade the source from which it is withdrawn relates to increased concentrations of nitrate in the Floridan Aquifer and the impact this has on springs. The permit needs to be more direct in its requirement that nutrients be managed in a way that does not degrade the Floridan Aquifer by increasing nitrate levels. This could be done by requiring that agricultural operations receiving permits follow the Best Management Practices for the activities on the site. The permit holders would also be required to allow their operations records to be reviewed to confirm compliance with the Best Management Practices.

*Paul Still*

Paul Still

1/3/2012

Date

14167 SW 101<sup>st</sup> Ave

Starke, FL 32091

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## MEMORANDUM

TO: Governing Board

FROM: Tim Sagul, Senior Professional Engineer

DATE: January 6, 2012

RE: Authorization to Grant a Forty-Five Day Time Extension in which to Request an Administrative Hearing regarding Water Use Permits 2-11-00040 and 2-11-00041

### RECOMMENDATION

**Staff recommends the Governing Board grant an extension of time in which to request an administrative hearing regarding Water Use Permit Numbers 2-11-00040 and 2-11-00041. The proposed extension will be granted until February 17, 2012.**

### BACKGROUND

The referenced water use permits were approved at the December 13, 2011, Governing Board meeting. The request for a time extension was received at the District on January 3, 2012. A copy of the request follows this memorandum.

### DISCUSSION

The District has received petitions by another third party requesting an administrative hearing regarding these permits. If the 45-day extension is granted and petitions are received during that period, District counsel may recommend that the Division of Administrative Hearings consolidate the new petitions with the others previously received.

/r/  
Attachment

**BEFORE THE GOVERNING BOARD OF THE SUWANNEE RIVER  
WATER MANAGEMENT DISTRICT**

**SAVE OUR SUWANNEE, INC.  
&  
STEVE GLADIN**

**Petitioner**

**v.**

**DISTRICT PERMIT NO. 2-11-00040  
DISTRICT PERMIT NO. 2-11-00041**

**SUWANNEE RIVER WATER  
MANAGEMENT DISTRICT**

**Respondent**

**PETITIONERS' MOTION FOR EXTENSION OF TIME IN WHICH TO  
REQUEST AN ADMINISTRATIVE HEARING**

By and through undersigned counsel, Petitioners Save Our Suwannee, Inc. and Steve Gladin, pursuant to Rule 28-106.111, Fla. Admin. Code, request an enlargement of time of 45 days in which to file a petition for administrative hearing regarding Water Use Permit No. 2-11-00040 for a new withdrawal of 3.7927 million gallons per day average, maximum daily withdrawal of 17.7120 million gallons per day for a project known as Loncala Dairies, and/or Water Use Permit No. 2-11-00041 for a withdrawal of 1.733 million gallons per day average, maximum daily withdrawal of 2.8613 million gallons per day for a project known as Piedmont Dairy.

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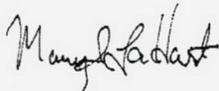
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As good cause Petitioners state that the issues presented by the above referenced agency actions present complicated and novel factual and regulatory issues that require additional time for legal and technical review and consideration so that the Petitioners may make a fully informed evaluation of the impacts of the permitted withdrawals on their substantial interests before making a final determination as to whether to pursue an administrative challenge.

Undersigned counsel contacted Ron St. John, Managing Partner and Agent for the permit applicants, Alliance Grazing Group and Piedmont Dairy Inc. via telephone to ascertain whether this request for extension is opposed, but was unable to speak with Mr. St John and has not received a return phone call.

Respectfully submitted this 3rd day of January, 2012.



---

Attorney for Petitioners  
4804 SW 45th Street  
Gainesville, FL 32608  
Florida Bar No. 0967009  
(352) 224-5699  
(888) 400-1464 (Facsimile)

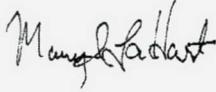
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile on Tim Sagul, Deputy Agency Clerk @ 386-362-1056 this 3rd day of January, 2012.



\_\_\_\_\_  
Marcy LaHart, Esq.

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