

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: May 1, 2012

RE: Disposition of Request to add Barbara Wray Suggs, Individually, and Barbara Wray Suggs, in her capacity as Trustee of the Barbara Wray Suggs Living Trust Dated the 14th day of October, 1999, from the Petition Requesting Administrative Hearing Regarding Water Use Permit Number 2-11-00063, Richard Douglas Farm, Gilchrist County

RECOMMENDATION

Staff recommends the Governing Board dismiss the above-referenced amendment to the petition, with prejudice, regarding Water Use Permit Number 2-11-00063, Richard Douglas Farm, Gilchrist County.

BACKGROUND

The water use permit application was received on December 28, 2011. The District received a letter stating that there were concerns by adjacent property owners on February 2, 2012. The District issued a notice of proposed agency action on February 28, 2012, stating the District intended to issue the Water Use Permit. A petition requesting an Administrative Hearing was received at the District on March 15, 2012. Due to lack of substantial interest by the party, the Board dismissed the Petition without prejudice at the March 26, 2012, intermediate Board meeting. An amended Petition was filed on April 11, 2012, adding Barbara Wray Suggs, Individually, and Barbara Wray Suggs, in her capacity as Trustee of the Barbara Wray Suggs Living Trust Dated the 14th day of October, 1999, as an interested party.

A copy of the petition and proposed Order dismissing the petition with prejudice follows this memorandum.

/rl
Attachment

BEFORE THE GOVERNING BOARD OF THE SUWANNEE RIVER
WATER MANAGEMENT DISTRICT

BARBARA WRAY SUGGS,
individually, and as Trustee of
THE BARBARA WRAY
SUGGS LIVING TRUST
DATED THE 14TH DAY OF
OCTOBER, 1999, and GINNIE
SPRINGS, OUTDOORS, LLC.,
a Florida limited liability company,

Petitioners,

v.

DISTRICT PERMIT NO. 2-11-00063

SUWANNEE RIVER WATER
MANAGEMENT DISTRICT,
JOSHUA D. MOORE and
RICHARD DOUGLAS,

Respondents,

_____ /

**FINAL ORDER OF DISMISSAL AS TO PETITIONERS BARBARA
WRAY SUGGS, INDIVIDUALLY, AND BARBARA WRAY
SUGGS, IN HER CAPACITY AS TRUSTEE OF THE
BARBARA WRAY SUGGS LIVING TRUST
DATED THE 14TH DAY OF OCTOBER, 1999, ONLY**

THIS CAUSE having come before the GOVERNING BOARD (the “BOARD”) of the
SUWANNEE RIVER WATER MANAGEMENT DISTRICT (the “DISTRICT”) on the
AMENDED PETITION FOR ADMINISTRATIVE HEARING (the “AMENDED PETITION”),
filed on April 11, 2012 by the petitioner(s), BARBARA WRAY SUGGS, individually,
 (“SUGGS”), BARBARA WRAY SUGGS, in her capacity as Trustee of THE BARBARA
WRAY SUGGS LIVING TRUST DATED THE 14TH DAY OF OCTOBER, 1999, (the
 “TRUSTEE”) and GINNIE SPRINGS, OUTDOORS, LLC., a Florida limited liability company,

(“GINNIE SPRINGS”) (SUGGS, the TRUSTEE and GINNIE SPRING may be referred to herein collectively as the “PETITIONERS”) concerning the DISTRICT’s Permit No. 2-11-00063 (the “PERMIT”) and the BOARD hereby finds as follows:

1. Upon receipt of a petition, the DISTRICT is required to review the petition to determine if the petition is timely and dismiss those petitions which are untimely. “A petition shall be dismissed if ... it has been untimely filed.” § 120.569(2)(c), Fla.Stat.

2. Further, the DISTRICT is not allowed to refer a petition to the Division of Administrative Hearings unless such petition is in substantial compliance with the applicable rules.

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).

§ 120.569(2)(d), Fla.Stat.

3. The applicable rules require a person to file a petition within 21 days after they receive written notice of the subject agency decision.

Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing with the agency within 21 days of receipt of written notice of the decision.

Fla. Admin. Code R. 28-106.111(2)

and that a person failing to so file a petition waives their right to a hearing.

Any person who receives written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters.

Fla. Admin. Code R. 28-106.111(4)

4. The AMENDED PETITION provides that the PETITIONERS received notice of the DISTRICT's decision to issue the PERMIT on February 24, 2012. (AMENDED PETITION at paragraph 9)

5. On March 15, 2012, GINNIE SPRINGS filed its PETITION FOR ADMINISTRATIVE HEARING (the "PETITION").

6. On March 26, 2012, the BOARD entered its ORDER DISMISSING PETITION, WITHOUT PREJUDICE in which the BOARD dismissed the PETITION, because the PETITION did not contain an "explanation of how the petitioner's substantial interests will be affected by the agency determination", as required under Fla. Admin. Code R. 28-106.201(2)(b).

7. The ORDER DISMISSING PETITION, WITHOUT PREJUDICE expressly allowed GINNIE SPRINGS to file an amended petition curing the above defect by a certain deadline.

8. The AMENDED PETITION was filed on April 11, 2012 and within the deadline set out in the ORDER DISMISSING PETITION, WITHOUT PREJUDICE. The AMENDED PETITION was therefore timely with respect to GINNIE SPRINGS.

9. However, SUGGS and the TRUSTEE have never filed any petition for hearing with the DISTRICT prior to the filing of the AMENDED PETITION.

10. The AMENDED PETITION is untimely with regards to SUGGS and the TRUSTEE as it was filed well over 21 days after the date they assert they received notice of the DISTRICT's decision.

11. As the untimely filing of a petition cannot be cured, this dismissal should be "with prejudice."

THEREFORE it is hereby ORDERED and ADJUDGED that:

1. The AMENDED PETITION is hereby DISMISSED, with prejudice, with regards to SCRUGGS and the TRUSTEE, only.
2. This order shall not affect GINNIE SPRINGS' ability to proceed with the AMENDED PETITION.
3. The Executive Director of the DISTRICT shall promptly provide a copy of this order to all parties.

DONE and ORDERED on _____, 2012.

GOVERNING BOARD OF THE SUWANNEE
RIVER WATER MANAGEMENT DISTRICT

By: _____
Don Quincey, Jr
Chair

ATTEST: _____
Ray Curtis
Secretary/Treasurer

NOTICE OF RIGHTS

1. Pursuant to §120.68, Fla. Stat., a person who is adversely affected by final DISTRICT action may seek review of the action in the District Court of Appeal by filing a notice of appeal pursuant to the Florida Rules of Appellate Procedure, within 30 days of the rendering of the final DISTRICT action.
2. A party to a proceeding before the DISTRICT who claims that a DISTRICT order is inconsistent with the provisions and purposes of Chapter 373, Fla. Stat., may seek review of the order pursuant to § 373.114, Fla. Stat., by the Florida Land and Water Adjudicatory Commission, by filing a request to review with the Commission and serving a copy on the Department of Environmental Protection and any person named in the order within 20 days of a rule or the rendering of the DISTRICT order.
3. For appeals to the District Court of Appeal, a District action is considered rendered after it is signed on behalf of the DISTRICT and is filed with the DISTRICT Clerk.

4. Failure to observe the relevant time frames for filing an appeal pursuant to §120.68, Fla. Stat., or for Commission review, will result in waiver of the right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this order has been furnished to the following persons by fax and mail:

Mr. Richard L. Maguire
Ms. Emily J. Pierce
Ms. Cristine M. Russell
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207
Fax No. (904) 396-0663
Attorneys for the Petitioners

and to the following persons by mail:

Mr. Richard Douglas
6524 NE 55 Street
High Springs, Florida 32643
Respondent

Mr. Joshua D. Moore
4520 River Close Boulevard
Valrico, Florida 33596
Respondent

on _____, 2012.

Tim Sagul
Deputy Agency Clerk

MEMORANDUM

TO: Governing Board

FROM: Tim Sagul, Senior Professional Engineer

DATE: May 1, 2012

RE: Referral of Amended Petition Requesting Administrative Hearing to Division of Administrative Hearings (DOAH) Regarding Water Use Permit Number 2-11-00063, Richard Douglas Farm, Gilchrist County

RECOMMENDATION

Staff recommends the Governing Board authorize the referral of the above-referenced petition to DOAH regarding Water Use Permit Number 2-11-00063, Richard Douglas Farm, Gilchrist County.

BACKGROUND

The water use permit application was received on December 28, 2011. The District received a letter stating that there were concerns by adjacent property owners on February 2, 2012. The District issued a notice of proposed agency action on February 28, 2012, stating the District intended to issue the Water Use Permit. On March 15, 2012, a Petition for Administrative Hearing was filed with the District. Due to lack of substantial interest by the party, the Board dismissed the Petition without prejudice at the March 26, 2012, intermediate Board meeting. An amended Petition was filed on April 11, 2012, including statements of substantial interest by the party.

A copy of the proposed Order and petition follows this memorandum.

KW/rl
Attachment

BEFORE THE GOVERNING BOARD OF THE SUWANNEE RIVER
WATER MANAGEMENT DISTRICT

BARBARA WRAY SUGGS,
individually, and as Trustee of
THE BARBARA WRAY
SUGGS LIVING TRUST
DATED THE 14TH DAY OF
OCTOBER, 1999, and GINNIE
SPRINGS, OUTDOORS, LLC.,
a Florida limited liability company,

Petitioners,

v.

DISTRICT PERMIT NO. 2-11-00063

SUWANNEE RIVER WATER
MANAGEMENT DISTRICT,
JOSHUA D. MOORE and
RICHARD DOUGLAS,

Respondents,

**ORDER REFERRING PETITION TO DIVISION OF ADMINISTRATIVE
HEARINGS AS TO PETITIONER GINNIE SPRINGS OUTDOOR, LLC, ONLY**

THIS CAUSE having come before the GOVERNING BOARD (the “BOARD”) of the
SUWANNEE RIVER WATER MANAGEMENT DISTRICT (the “DISTRICT”) on the
AMENDED PETITION FOR ADMINISTRATIVE HEARING (the “AMENDED PETITION”),
filed on April 11, 2012 by the petitioner(s), BARBARA WRAY SUGGS, individually,
 (“SUGGS”), BARBARA WRAY SUGGS, in her capacity as Trustee of THE BARBARA
WRAY SUGGS LIVING TRUST DATED THE 14TH DAY OF OCTOBER, 1999, (the
 “TRUSTEE”) and GINNIE SPRINGS, OUTDOORS, LLC., a Florida limited liability company,
 (“GINNIE SPRINGS”) (SUGGS, the TRUSTEE and GINNIE SPRING may be referred to herein

collectively as the “PETITIONERS”) concerning the DISTRICT’s Permit No. 2-11-00063 (the “PERMIT”) and the BOARD hereby finds as follows:

1. Upon receipt of a petition, the DISTRICT is required to review the petition to determine if the petition contains those items required by rule and is timely and dismiss those petitions which are not in substantial compliance with such requirements. § 120.569(2)(c-d), Fla.Stat.

2. On March 15, 2012, GINNIE SPRINGS filed its PETITION FOR ADMINISTRATIVE HEARING (the “PETITION”).

3. On March 26, 2012, the BOARD entered its ORDER DISMISSING PETITION, WITHOUT PREJUDICE in which the BOARD dismissed the PETITION, because the PETITION did not contain an “explanation of how the petitioner's substantial interests will be affected by the agency determination”, as required under Fla. Admin. Code R. 28-106.201(2)(b).

4. The ORDER DISMISSING PETITION, WITHOUT PREJUDICE expressly allowed GINNIE SPRINGS to file an amended petition curing the above defect by a certain deadline.

5. The AMENDED PETITION was filed on April 11, 2012 and within the deadline set out in the ORDER DISMISSING PETITION, WITHOUT PREJUDICE.

6. The AMENDED PETITION contains an explanation of how the GINNIE SPRINGS’ substantial interests will be affected by the agency determination.

7. With regard to GINNIE SPRINGS, the AMENDED PETITION is in substantial compliance with the requirement that a petition include those items required by the uniform rules adopted pursuant to § 120.54(5)(b), Fla.Stat.

8. With regard to GINNIE SPRINGS, the AMENDED PETITION was timely filed.

9. By entering this, or any other order, the DISTRICT does not intend to make any concession or relinquish any right to file responsive or defensive pleadings or motions as may be permitted concerning any matter, including without limitation, timeliness and standing, nor does this or any other order admit the validity of the allegations in any petition. This order is intended only to determine that the minimum pleading requirements have been met.

THEREFORE it is hereby ORDERED and ADJUDGED that:

1. With regard to GINNIE SPRINGS only, the AMENDED PETITION is hereby referred to the Division of Administrative Hearings to conduct all necessary proceedings pursuant to § 120.569 and 120.57(1), Fla.Stat.

2. The AMENDED PETITION has been dismissed, with prejudice, with regard to SUGGS and the TRUSTEE by separate order of the DISTRICT. This order shall not be deemed to refer any matter to the Division of Administrative Hearings with regard to SUGGS and the TRUSTEE.

3. The Executive Director of the DISTRICT shall promptly provide a copy of this order to all parties.

DONE and ORDERED on _____, 2012.

GOVERNING BOARD OF THE SUWANNEE
RIVER WATER MANAGEMENT DISTRICT

By: _____

Don Quincey, Jr
Chair

ATTEST: _____

Ray Curtis
Secretary/Treasurer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this order has been furnished to the following persons by fax and mail:

Mr. Richard L. Maguire
Ms. Emily J. Pierce
Ms. Cristine M. Russell
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207
Fax No. (904) 396-0663
Attorneys for the Petitioners

and to the following persons by mail:

Mr. Richard Douglas
6524 NE 55 Street
High Springs, Florida 32643
Respondent

Mr. Joshua D. Moore
4520 River Close Boulevard
Valrico, Florida 33596
Respondent

on _____, 2012.

Tim Sagul
Deputy Agency Clerk

MEMORANDUM

TO: Governing Board
FROM: Tim Sagul, Senior Professional Engineer
DATE: May 1, 2012
RE: Disposition of the Petition Requesting Administrative Hearing
Regarding Temporary Water Use Permit Number 2-11-00063,
Richard Douglas Farm, Gilchrist County

RECOMMENDATION

Staff recommends the Governing Board dismiss the above-referenced petition, with prejudice, regarding Temporary Water Use Permit Number 2-11-00063, Richard Douglas Farm, Gilchrist County.

BACKGROUND

The water use permit application was received on December 28, 2011. The District received a letter stating that there were concerns by adjacent property owners on February 2, 2012. The District issued a notice of proposed agency action on February 28, 2012, stating the District intended to issue the Water Use Permit. The Executive Director issued the first temporary permit on March 28, 2012, with an expiration date of April 11, 2012. At the April 10, 2012, Governing Board meeting, the Board reauthorized the temporary permit until May 9, 2012. A Petition for Administrative Hearing on the Temporary Water Use Permit was received on April 30, 2012.

Governing Board counsel has reviewed the petition and noted it was not in compliance. A copy of the petition and proposed Order dismissing the petition with prejudice follows this memorandum.

/rl
Attachment

BEFORE THE GOVERNING BOARD OF THE SUWANNEE RIVER
WATER MANAGEMENT DISTRICT

BARBARA WRAY SUGGS,
individually, and as Trustee of
THE BARBARA WRAY
SUGGS LIVING TRUST
DATED THE 14TH DAY OF
OCTOBER, 1999, and GINNIE
SPRINGS, OUTDOORS, LLC.,
a Florida limited liability company,

Petitioners,

v.

DISTRICT PERMIT NO. 2-11-00063

SUWANNEE RIVER WATER
MANAGEMENT DISTRICT,
JOSHUA D. MOORE and
RICHARD DOUGLAS,

Respondents,

**ORDER DISMISSING WITH PREJUDICE PETITION FOR ADMINISTRATIVE
HEARING CHALLENGING TEMPORARY WATER USE PERMIT
ISSUED ON APRIL 11, 2012**

THIS CAUSE having come before the GOVERNING BOARD (the “BOARD”) of the
SUWANNEE RIVER WATER MANAGEMENT DISTRICT (the “DISTRICT”) on the
PETITION FOR ADMINISTRATIVE HEARING (the “PETITION”) filed on April 30, 2012, by
the petitioners, BARBARA WRAY SUGGS, individually, and as Trustee of THE BARBARA
WRAY SUGGS LIVING TRUST DATED THE 14TH DAY OF OCTOBER, 1999, and GINNIE
SPRINGS OUTDOORS, LLC, a Florida limited liability company (the “PETITIONERS”),
related to the issuance of a temporary permit for the consumptive use of water issued by the
DISTRICT on April 11, 2012 (the “TEMPORARY PERMIT”) and the BOARD hereby finds as

follows:

1. The TEMPORARY PERMIT is a temporary permit for the consumptive use of water issued pursuant to § 373.244, Fla. Stat.

2. In the PETITION, the PETITIONERS have requested an administrative hearing pursuant to §§ 120.569(1) and 120.57(1), Fla. Stat., concerning the TEMPORARY PERMIT.

3. However, § 373.244, Fla. Stat., expressly excludes temporary permits for the consumptive use of water from the hearing requirements of chapter 120, as follows:

The notice and hearing that might otherwise be required pursuant to s. 373.116(2) and chapter 120 shall not be required prior to issuance or extension of a temporary permit pursuant to the provisions of this section.

§ 373.244(5), Fla. Stat.

THEREFORE it is hereby ORDERED and ADJUDGED that:

1. The PETITION is dismissed, with prejudice.
2. The Executive Director of the DISTRICT shall promptly provide a copy of this order to all parties.

DONE and ORDERED on _____, 2012.

GOVERNING BOARD OF THE SUWANNEE
RIVER WATER MANAGEMENT DISTRICT

By: _____
Don Quincey, Jr.
Chair

ATTEST: _____
Ray Curtis
Secretary/Treasurer

NOTICE OF RIGHTS

1. Pursuant to §120.68, Fla. Stat., a person who is adversely affected by final DISTRICT

action may seek review of the action is the District Court of Appeal by filing a notice of appeal pursuant to the Florida Rules of Appellate Procedure, within 30 days of the rendering of the final DISTRICT action.

2. A party to a proceeding before the DISTRICT who claims that a DISTRICT order is inconsistent with the provisions and purposes of Chapter 373, Fla. Stat., may seek review of the order pursuant to § 373.114, Fla. Stat., by the Florida Land and Water Adjudicatory Commission, by filing a request to review with the Commission and serving a copy on the Department of Environmental Protection and any person named in the order within 20 days of a rule or the rendering of the DISTRICT order.

3. For appeals to the District Court of Appeal, a District action is considered rendered after it is signed on behalf of the DISTRICT and is filed with the DISTRICT Clerk.

4. Failure to observe the relevant time frames for filing an appeal pursuant to §120.68, Fla. Stat., or for Commission review, will result in waiver of the right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this order has been furnished to the following persons by fax and mail:

Mr. Richard L. Maguire
Ms. Emily J. Pierce
Ms. Cristine M. Russell
1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207
Fax No. (904) 396-0663
Attorneys for the Petitioners

and to the following persons by mail:

Mr. Richard Douglas
6524 NE 55 Street
High Springs, Florida 32643
Respondent

Mr. Joshua D. Moore
4520 River Close Boulevard
Valrico, Florida 33596
Respondent

on _____, 2012.

Tim Sagul
Deputy Agency Clerk

MEMORANDUM

TO: Governing Board

FROM: Tim Sagul, Senior Professional Engineer

DATE May 1, 2012

RE: Dismissal of Petition for Administrative Hearing, Scott McNulty,
CE10-0045, Levy County

RECOMMENDATION

Staff recommends the Governing Board ratify the Executive Director's execution of Order Dismissing Petition Without Prejudice in the matter of Scott McNulty v. Suwannee River Water Management District.

BACKGROUND

The District served Mr. McNulty with an administrative complaint on March 29, 2012. Mr. McNulty's counsel responded with an Answer, Affirmative Defense and a Request for Hearing (the Petition) on April 19, 2012. Pursuant to 120.569, Florida Statutes, the District must take action on the Petition within 15 days of the filing with the District.

The proposed order is attached to this memorandum.

/dd

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

SCOTT MCNULTY,

Petitioner,

v.

DISTRICT CASE NO. CE 10-0045

SUWANNEE RIVER WATER
MANAGEMENT DISTRICT,

Respondent.

_____ /

ORDER DISMISSING PETITION, WITHOUT PREJUDICE

THIS CAUSE having come before the SUWANNEE RIVER WATER MANAGEMENT DISTRICT (the “DISTRICT”) on the ANSWER, AFFIRMATIVE DEFENSE AND REQUEST FOR HEARING, (the “PETITION”), filed on April 19, 2012, by the petitioner(s), SCOTT MCNULTY, (the “PETITIONER(S)”) concerning enforcement action brought by the DISTRICT under the above styled case number and the BOARD hereby finds as follows:

1. Upon receipt of a petition, the DISTRICT is required to review the petition to determine if the petition contains those items required by rule and dismiss those petitions which are not in substantial compliance with such requirements.

Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner’s filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended

petition if applicable. This paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition.

§ 120.569(2)(c), Fla.Stat.

2. Further, the DISTRICT is not allowed to refer a petition to the Division of Administrative Hearings unless such petition is in substantial compliance with the applicable rules.

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).

§ 120.569(2)(d), Fla.Stat.

3. The applicable rules require that a petition contain, the following:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action

petitioner wishes the agency to take with respect to the agency's proposed action.

Fla. Admin. Code R. 28-106.201(2)

4. The PETITION does not substantially comply with Fla. Admin. Code R. 28-106.201(2), because it does not contain the following:
 - A. An explanation of how the PETITIONER(S) substantial interests will be affected by the agency determination.
 - B. A statement of when and how the PETITIONER(S) received notice of the agency decision.
 - C. A statement of all disputed issues of material fact. If there are none, the PETITION must so indicate.
 - D. A concise statement of the ultimate facts alleged, including the specific facts the PETITIONER(S) contend warrant reversal or modification of the agency's proposed action.
 - E. A statement of the specific rules or statutes the PETITIONER(S) contend require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
 - D. A statement of the relief sought by the PETITIONER(S), stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

THEREFORE it is hereby ORDERED and ADJUDGED that:

1. The PETITION is hereby DISMISSED, without prejudice.
2. The PETITIONER(S) may file a timely amended petition curing the noted

defect(s).

3. The deadline for filing an amended petition curing the noted defect(s) is 15 days after the date of the service of this order.

4. Should the PETITIONER(S) fail to file an amended petition by the above deadline, the Governing Board of the DISTRICT may issue a final order dismissing the PETITION with prejudice, without any further notice to the PETITIONER(S).

5. Should the PETITIONER(S) file an amended petition (a) after the above deadline, (b) which fails to cure the noted defects, or, (c) which contains other defects making the PETITION insufficient, the Governing Board of the DISTRICT may issue a final order dismissing such amended petition, with prejudice, without any further notice to the PETITIONER(S).

6. The DISTRICT shall promptly provide a copy of this order to all parties.

DONE and ORDERED on _____, 2012.

THE SUWANNEE RIVER WATER
MANAGEMENT DISTRICT

By: _____
Charles H. Houder, III
Assistant Executive Director

(The remainder of this page was intentionally left blank.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this order has been furnished to the following persons:

BRUCE W. ROBINSON, ESQUIRE
582 West Duval Street
Lake City, Florida 32056-1178
Fax No. (386) 755-1336
Attorney for the DISTRICT

EDITH R. RICHMAN, ESQUIRE
Post Office Box 10
Archer, Florida 32618
Fax No. (352) 495-1400
Attorney for PETITIONER(S)

by fax and mail on _____, 2012.

Tim Sagul
Deputy Agency Clerk

MEMORANDUM

TO: Governing Board

FROM: Carlos Herd, Senior Hydrogeologist

DATE: May 1, 2012

RE: Upper Floridan Aquifer Regional Recharge Concepts and Feasibility Study

RECOMMENDATION

Staff recommends the Governing Board authorize the Executive Director to execute a contract with Atkins, Inc. for the Upper Floridan Aquifer Regional Recharge Concepts and Feasibility Study for a cost not to exceed \$265,000.

BACKGROUND

In October 2011, the Governing Board authorized the Executive Director to seek partners to fund the Upper Floridan Aquifer Regional Recharge Concepts and Feasibility Study (Study). The Governing Board selected Atkins, Inc. (ATKINS), based on staff recommendation that ATKINS was the most qualified firm to perform the Study.

The purpose of the Study is to conceptually develop four water resource development projects intended to recover Upper Floridan aquifer groundwater levels in a region that includes the northeast and east portions of the District, and the northwest portion of the St. Johns River Water Management District (SJRWMD). The four project concepts will include feasibility assessments with opinions of probable costs for planning-level analysis. As required in Florida Statutes Section 373.709, these projects are an important component of water supply planning.

The District and the SJRWMD are cooperatively developing solutions to restore or prevent harm to shared water resources through an Interagency Agreement

that was executed in September 2011. Therefore, the District has been working with the SJRWMD to be a funding partner to the Study. The SJRWMD has agreed to be an equal partner in the Study, and has informed the District that they will provide 50 percent of the funding (\$132,500). ATKINS will invoice the District on a percent complete basis, and the SJRWMD will reimburse the District through a Cooperative Funding Agreement (Agreement). The Agreement is currently being drafted for future approval by the respective district Governing Boards.

The staff of both districts has worked over the last several months to develop the attached revised scope of work and fee schedule for the Study. Pending Governing Board approval, staff will continue work on the Agreement for submittal to each district Governing Board. Following execution of the Agreement, staff will provide ATKINS the notice to proceed.

Funds associated with this contract are budgeted in the FY 2011/2012 Water Supply Planning budget in Fund 36.

CH/dd

INTRODUCTION AND BACKGROUND

The Suwannee River Water Management District (SRWMD), St. Johns River Water Management District (SJRWMD), and Florida Department of Environmental Protection (FDEP) have entered into an agreement that formalizes the coordination of water resource management and planning in north Florida. The agreement calls for coordinated action in a number of areas, including working with stakeholders, developing shared tools to predict and assess water resource impacts, jointly studying regional declines in groundwater levels, implementing consistent minimum flows and levels (MFL) methodology, and sharing science-based data, and developing a regional water supply plan.

In addition, the Districts are coordinating on the North Florida Aquifer Replenishment Initiative, a cooperative effort to protect and maintain regional aquifer levels by capturing significant quantities of water to recharge the Upper Floridan aquifer at strategic locations. Replenishment of the Upper Floridan aquifer would benefit lakes, springs, rivers and wetlands, and contribute to developing a sustainable water supply for the region.

OBJECTIVE

The objective of this scope of work is to develop conceptual methodologies to recharge the Upper Floridan aquifer including identifying key project components and associated capital costs. ATKINS North America, Inc. (ATKINS), the consultant, shall develop this information based on consideration of varying geologic conditions in the study area (shown in Figure 1) and typical water quality of potential sources for recharge. The potential sources of recharge water include reclaimed water and surface water within both Districts. Potential recharge areas will be focused on depressed Upper Floridan aquifer levels in the eastern central boundary of the SRWMD and the western central boundary of the SJRWMD. A total of four conceptual recharge concepts will be evaluated as part of this project and are listed as follows:

1. Treatment and recharge of reclaimed water from northeast Florida into the Upper Floridan aquifer within the study area;
2. Capture and storage of surface water from the upper Suwannee River for treatment and direct recharge into the Upper Floridan aquifer;
3. Capture of flood waters within the floodplain along the upper Suwannee River for storage and natural recharge; and
4. Capture and storage of surface water from within the SJRWMD for treatment and recharge into the Upper Floridan aquifer.

Task Descriptions

The four recharge concepts are the basis for the four tasks that will be completed by ATKINS for this project and which are described hereafter in more detail:

Task 1: 30% Completion; Develop Recharge Concepts for Study

1.1 Client Meetings

Attend a joint kick-off meeting, two monthly project status meetings and one end of task meeting with client as necessary and requested by District project manager. The kick-off meeting will be scheduled within a week of the Notice to Proceed issued by the Districts and held at the ATKINS office in Tampa, Florida. The monthly meetings will be held via teleconference (unless otherwise specified) to provide the Districts a monthly update of ongoing work and schedule updates. The end of task meeting will be held at the ATKINS office (Tampa) to discuss the draft technical memorandum, the selection of the four recharge concepts for study and items to consider prior to initiating Task 2.

1.2 Acquire Hydrologic/Hydrogeologic data

Obtain available relevant hydrologic/hydrogeologic data that will be used in the course of the study to establish the feasibility of each recharge concept. These data may include river flows, surface water/reclaimed water/groundwater quality, previous hydrogeologic and modeling studies, GIS data bases maintained by the Districts and publically accessible entities, and engineering plans and cost information generated for projects with similar conceptual design. Only existing data and information will be collected and no field work is included as part of this SOW. GIS data shall include (if available), but are not limited to:

- Satellite Imagery/Aerial Photography
- Geology/Soils
- Geophysical data
- Topography
- Hydrologic/Hydrogeologic data, models, maps and studies
- Piezometric and potentiometric water level data
- Sensitivity/Unique Vegetation and Wildlife Habitats
- Threatened and Endangered Species known occurrence information
- Recorded Cultural Resources sites
- National Wetland Inventory/Waters of the US
- Well and sinkhole locations
- Floodplains
- Land Use/Land Cover
- Prime Farmland
- Major Oil and Gas Fields/pipelines

- Mines/Quarries
- Surface water quality data (provided by SRWMD and SJRWMD)
- Reclaimed water quality characterization (provided by SJRWMD)
- Government-Owned Parks and Wildlife Managements Areas

1.3 Determine Treatment Process and Regulatory Constraints

Identify treatment alternatives, based on assumptions/considerations for anticipated surface water and reclaimed water quality (water quality data obtained in subtask 1.2), and combined with traditional groundwater water quality. Water treatment alternatives for selection of disinfectants, chemical coagulant, Flocculation/Sedimentation process, and contact times through treatment train, including evaluation of Total Organic Carbon (TOC) removal, will be evaluated with respect to the current Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and consideration for future regulations. Comparison of conventional treatment, and newer technologies including Ozone/GAC, and membrane technologies will be evaluated. The range of water quality for the new surface water source will be quantified in preparation for identification of water treatment process alternatives. Parameters such as silt index, barium, free chlorine vs. chloramines, etc., will be evaluated to assure that pretreatment required for membrane technologies are understood. A summary of results and anticipated treatment methods recommended for each source water selected and discussion of water quality and current FDEP/USEPA recharge water regulatory factors will be included in technical memorandum 1.

1.4 Draft Technical Memorandum 1

A draft technical memorandum (TM) summarizing the results of subtasks 1.1 through 1.3 will be prepared. The memorandum will identify water treatment processes for the ranges of surface water quality and reclaimed water quality in SRWMD and SJRWMD and regulatory constraints involved with the use of this water for aquifer recharge. A draft copy of the technical memorandum will be provided to each District in electronic format for review and comment. Submittal of TM No. 1 will constitute the 30% submittal.

Task 2: 60% Completion; Develop Conceptual Design of Recharge Concepts

2.1 Final Technical Memorandum 1

Thirty (30) days have been allocated for review of the draft of TM 1. The Districts review comments will be compiled into a single document by the WMD project manager and forwarded to the ATKINS PM for incorporation into the final TM. Two final paper copies of the technical memorandum and one electronic copy (pdf format) will be provided to each District.

2.2 Evaluate Hydrologic/Hydrogeologic data

- a. The available hydrologic/hydrogeologic data identified in task 1 will be evaluated as part of this subtask. The data will be evaluated taking into account the project concept criteria as a means of evaluating recharge concept feasibility. Parameters of recharge/discharge, aquifer confinement, potentiometric water levels, and aquifer characteristics will be considered in the hydrogeologic evaluation. For concept 1, reclaimed water availability and quality and suitable recharge locations will play a key role in feasibility evaluations. For concepts 2, 3 and 4 determining sustainable yields from the Suwannee River and other surface water bodies without ecological or MFL consequences will be an important aspect of the feasibility evaluation. Concepts 3 and 4 will also focus on finding public lands that are suitable to store flood waters within the study area. Statistical analysis of surface water flows will be performed as appropriate and may include: cumulative distribution frequency (CDF) curves, seasonal Kendall tau analyses (to evaluate seasonal and time series trends in flows), moving average analyses (also to evaluate trends), as well as simple statistics such as median, high, low, and other various flow percentiles to characterize surface water flows in the upper Suwannee River. Percentile flows may also be calculated based on a percentage of mean annual flow (MAF). Q90, 7Q2, and 7Q10 methods, especially for small streams, are not typically protective of instream flows, but can be examined.
- b. Identify data gaps and evaluate these gaps with regard to potential limitations on analyses.
- c. Use relevant existing hydrologic data to develop seasonal and yearly hydrographs and analyze data for presence of long term trends in flows.
- d. Use available data and long term trends in stream flows to identify surface water flow diversions available under proposed flow constraints. Flow data sets developed in association with the project may be analyzed. Differences in monthly and seasonal characteristics will be compared using appropriate statistical methods. If the Districts develop an MFL for a waterbody under evaluation by ATKINS during the Project, the MFL shall be used to determine allowable flow diversions.
- e. In potential recharge areas only, identify locations where the potentiometric surface elevation of the Upper Floridan aquifer is lower than land surface elevation and geologic conditions are conducive to recharge to the Upper Floridan aquifer.
- f. In potential recharge areas only, compile location data of sinkholes, depressions, locations with known surface water/ groundwater interaction, and/or lakes that may have a greater hydraulic connection to the Upper Floridan aquifer.
- g. In potential recharge areas only, develop a map showing areas of higher potential to recharge the Upper Floridan aquifer using the data collected in parts e and f above.

2.3 Develop Conceptual Design of Diversion/Recharge Concepts

- a. Establish Engineering Criteria (Raw Water and Reclaimed Water Facilities) – Develop preliminary criteria for facilities. Criteria to be developed under this task are for the purpose of documenting the design criteria which will be used in developing conceptual designs/sizing facilities and includes the following for four recharge concepts:
 - i. Establish typical range for diversion facilities design criteria for the following potential components or aspects: Low head channel dams, Sediment exclusion (capture path and velocities), Intake trash racks (spacing and velocity), Intake screens, including quantities and characteristics of screening, Pump sump design including consideration of Hydraulic Institute Standards, pump type and general pump station configuration, discharge lines to reservoir and electrical substations for sites (two main power users – diversion pump station and reservoir pump station).
 - ii. Establish typical range for reservoir design criteria for the following potential components or aspects: embankment typical section, evaporation and transpiration losses, wind data including velocity-duration, minimum pool elevation, maximum pool elevation from physiographic and cultural limitations, and sedimentation characteristics and yield.
 - iii. Establish typical range for reservoir pumping station design criteria for the following potential components or aspects: Intake, including screens, sump, multiple intake levels for optimizing water quality, optimize location of intake to optimize costs, water quality, ease of access, pump type and general pump station configuration.
 - iv. Establish typical range for transmission main design criteria for the following potential components or aspects: velocity in transmission main reflecting concerns for capital cost, electricity costs, and mitigation of hydraulic transients and materials of construction.
 - v. An engineering concept for taking reclaimed water from sources within SJRWMD will be developed and summarized. ATKINS will generate a schematic of the engineering concept along with a limited description of the reclaimed water system infrastructure that will be evaluated
 - vi. Develop conceptual transmission line sizes and route lengths and routes sufficient to calculate pipeline velocities and pump station heads from diversion structures to reservoirs and to water treatment plants and recharge wells (Concepts 2 and 3 only).
 - vii. Develop design criteria for Right-of-Way (ROW) corridors for water transmission facilities (Concepts 2 and 3 only).

- viii. Establish typical range of design criteria for Water Treatment Plant(s) that will be used to facilitate the costing analysis in Task 3.
- ix. Determine preliminary estimates of depth, diameter, and location of recharge wells designed to provide an average annual recharge of 5, 10, and 25 MGD to the Upper Floridan aquifer.

2.4 Determine Project Effectiveness with Groundwater Model

- a. ATKINS will evaluate the effectiveness of aquifer recharge concept 2 and 3 with the use of groundwater flow modeling. Only a pre-selected existing public domain non-proprietary groundwater flow model will be used in this analysis. Based on current available information, the North Florida Model will probably be used; however, other existing models will be identified and evaluated, including the USGS Mega Model, prior to conducting the evaluation. The SRWMD will ultimately approve the use of the appropriate groundwater flow model prior to conducting the analysis.
- b. The groundwater flow model will be used as a tool to assist in locating feasible area or areas in which to install each potential recharge mechanism. Some of the recharge mechanisms that will be simulated may include recharge wells, infiltration galleries, or rapid infiltration basins. Up to three locations per concepts 2 and 3 will be evaluated to establish the site or sites that would provide the most direct benefit to the potentiometric surface of the Upper Floridan aquifer in northeast Florida.

2.5 Develop Conceptual Design Drawings

Develop conceptual drawings showing general locations of intake, pumping and treatment facilities, surface water reservoirs and storage areas, pipeline routes (concepts 2 and 3 only) and recharge wells. Graphics delivered to Districts will be conceptual planning level information showing proposed general locations of surface water conveyance and storage facilities on aerial imagery. No drawings showing cross-section profiles of storage facilities are included in this work. Use existing topographic data to determine locations along the upper Suwannee River and other surface water sources on District lands that can store flood water with minimal structural alteration to the floodplain. GIS mapping will be provided to show constraints on aerial imagery such as; floodplains, District lands, wetlands, threatened and endangered species (T & E), habitat, cultural resources, oil/gas pipelines, recharge zones and any other readily available information obtained during data collection efforts.

2.6 Draft Technical Memorandum 2

A draft technical memorandum summarizing the results of subtasks 2.1 through 2.5 will be prepared. The memorandum will include tabular and graphical summary of hydrologic and hydrogeologic data evaluated in subtask 2.2. The results of the groundwater models and surface water analysis that demonstrate recharge concept effectiveness will be

presented with final model runs included. All conceptual design drawings for each of the four recharge concepts will be included as attachments to the memorandum. A draft copy of the technical memorandum will be provided to each District in electronic format for review and comment. Submission of TM No. 2 constitutes the 60% submittal

2.7 Client Meetings

Attend four monthly project status meetings and one end of task meeting with client. One of the monthly meetings shall be via webex or at the ATKINS (Tampa) office to discuss the approach and progress concerning statistical modeling and flow constraints discussed in Task 2.2. The remaining monthly meetings will be held via teleconference to provide the Districts a monthly update of ongoing work and schedule updates. The end of task meeting will be held at the ATKINS office (Tampa) to discuss the draft technical memorandum 2, the conceptual design of the four recharge concepts for study and items to consider prior to initiating Task 3.

Task 3: 90% Completion; Determine Recharge Concepts Costs and Feasibility

3.1 Final Technical Memorandum 2

Thirty (30) days have been allocated for review of the draft of TM 2. The Districts review comments will be compiled into a single document by the District project manager and forwarded to the ATKINS PM for incorporation into the final TM. Two final paper copies of the technical memorandum and one electronic copy (pdf format) will be provided to each District.

3.2 Determine Recharge Concepts Probable Costs

- a. Develop planning level cost estimates for each of the four recharge concepts including economic assumptions, anticipated project life, analysis period, unit capital, operations costs, discount rate, interest rate, inflation rates for capital and power costs. It is assumed that all water storage, treatment and recharge portions of the projects will be constructed on District land so land costs will not be factored.
- b. For each recharge concept, the following costs and applicable assumptions will be considered. Construction costs (assume costs will be based on 2012 dollars). Costs shall also be expressed as: (1) equivalent annual costs considering facilities service life, time value of money, and operation and maintenance costs, and (2) unit production costs considering average annual capacities of 5, 10, and 25 mgd. For purposes of this deliverable, Consultant shall use SJRWMD publication SJ2010-SP4 (Cost Estimating and Economic Criteria for 2010 District Water Supply Plan; link shown below) as a reference for cost estimating and economic criteria unless Districts and Consultant agree to other cost estimating and economic criteria.
(<http://www.sjrwmd.com/technicalreports/pdfs/SP/SJ2010-SP4.pdf>)
- c. Total capital costs,

- d. Operation and maintenance costs will be based on a percentage, however energy costs associated with pumping and treatment differences between, surface water reservoir, and direct withdrawal will be estimated based on this conceptual analysis.
- e. Total unit production costs (\$/1,000 gallons).

3.3 Develop Implementation Schedule

Based on the conceptual design of each recharge concept and taking into account the timing and amount of available funds (assume full funding for all concepts), work with the Districts to develop an implementation schedule for each feasible recharge concept. The schedule will include primary work elements from permitting thru final design, construction and testing. The schedule will identify each project work element to be completed within a District fiscal year and include estimated funds for each year.

3.4 Prepare Draft Feasibility Report

A draft feasibility report summarizing the work elements performed as part of this project will be prepared. The report will present the data evaluated for each of the four recharge concepts including a breakdown with respect to the feasibility factors: environmental, technical, regulatory and economic. Data will be discussed and presented in both graphic and tabular format. A draft copy of the report will be provided to each District in electronic format for review and comment. Submission of the draft feasibility report constitutes the 90% submittal.

3.5 Client Meetings

Attend two monthly project status meetings and one end of task meeting with client as necessary and requested by District project manager. The monthly meetings will be held via teleconference to provide the Districts a monthly update of ongoing work and schedule updates. The end of task meeting will be held at the ATKINS office (Tampa) to discuss the conceptual costs of the four recharge concepts, an implementation schedule and the draft report.

Task 4: 100% Completion; Feasibility Final Report

4.1 Feasibility Final Report

Thirty (30) days have been allocated for review of the draft of final report. The Districts review comments will be compiled into a single document by the District project manager and forwarded to the ATKINS PM for incorporation into the final report. Six final paper copies of the feasibility report and one electronic copy (pdf format) will be provided to each District.

4.2 Workshop with SRWMD Staff for Presentation

Attend a workshop with SRWMD staff to develop an outline and key elements for presentation of the feasibility study results. The workshop will be held at ATKINS office

(Tampa) and is anticipated to include key members of the SRWMD staff and consultant team. Following the workshop, ATKINS will prepare a power point presentation for SRWMD staff review and approval.

4.3 SRWMD Board Presentation

Following SRWMD staff approval of presentation materials, consultant team, with assistance from SRWMD staff, will present results of the feasibility study to SRWMD Governing Board Members at a regularly scheduled SRWMD Governing Board Meeting in Fiscal Year 2014.

Schedule

A project schedule that includes the work elements of this SOW is included as Attachment 1. The schedule assumes 14 months are required to complete all work elements from the notice to proceed to Board presentation.

Cost

The cost to complete the Project based upon the aforementioned considerations and SOW is a lump sum fee of \$264,766. A breakdown of subtask costs is shown in the attached Table.

SRMWD shall reimburse ATKINS for services rendered on a percent complete, not-to-exceed basis. Invoices shall be submitted on a monthly basis and will reflect the percent complete of the individual tasks. Each invoice submittal shall be accompanied by a project status memorandum. Following acceptance of the Final Report and ATKINS' presentation to the SRWMD Governing Board, the 100% complete invoice shall be submitted for payment.

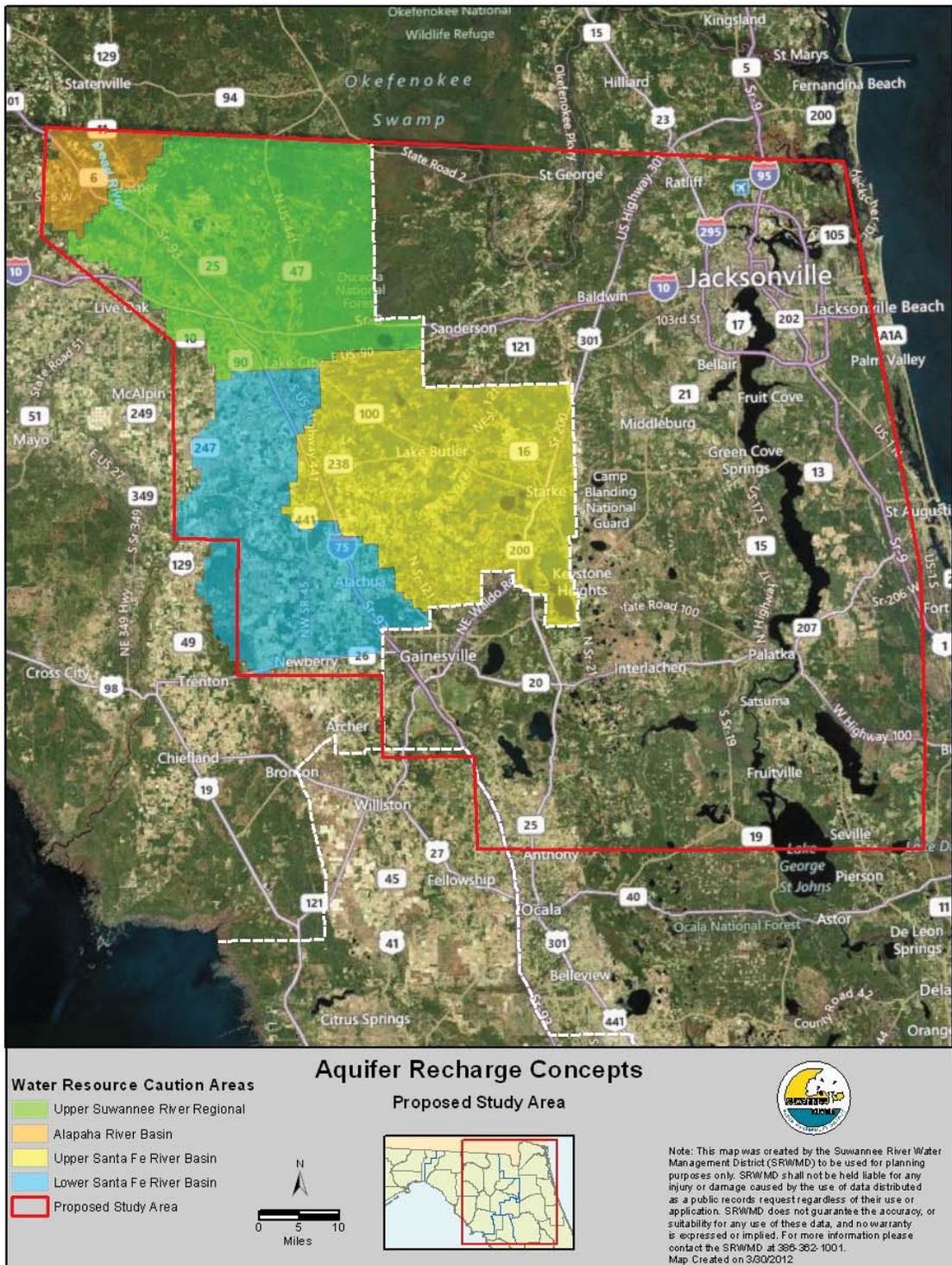
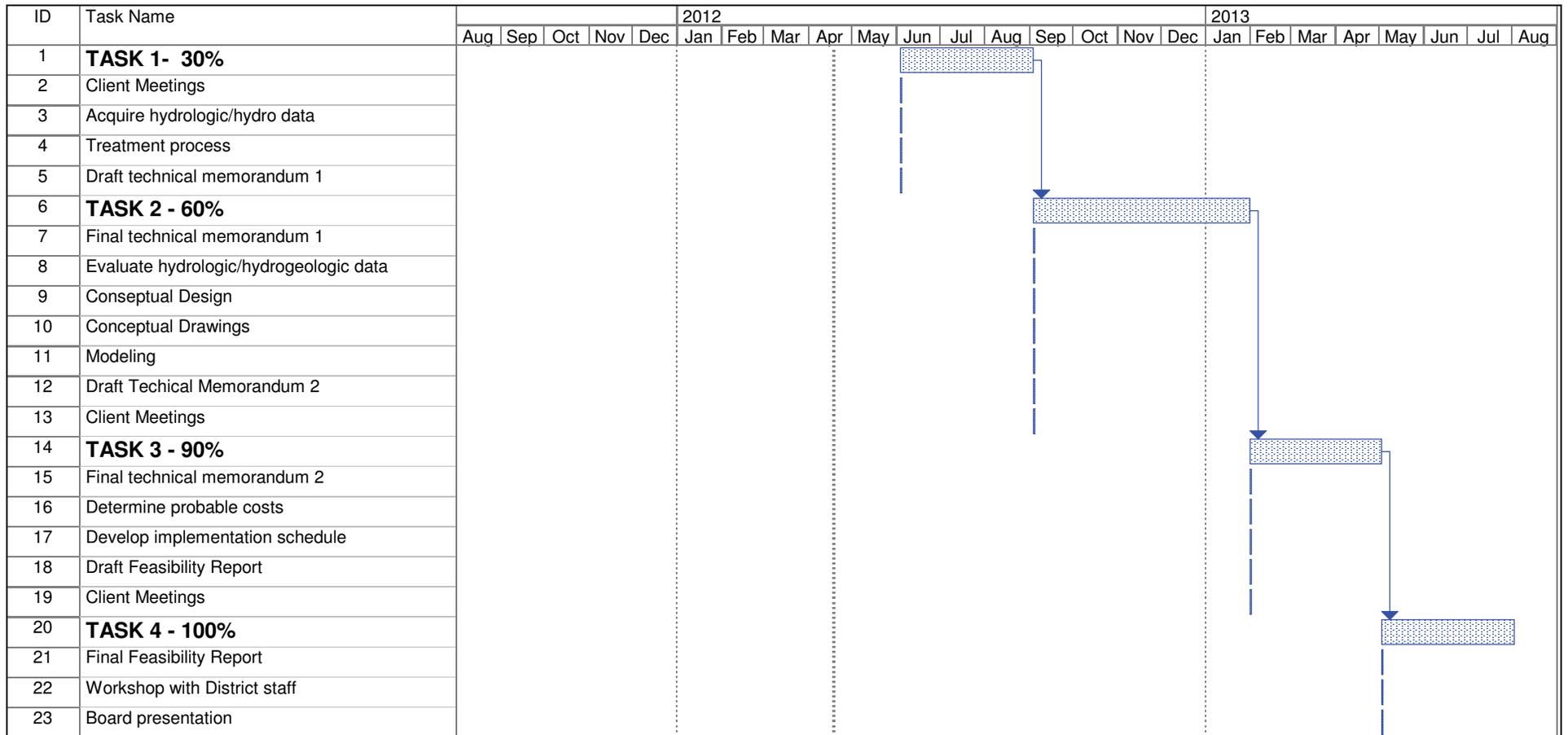
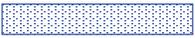


Figure 1 Study Area

TABLE B-1

Upper Floridan Aquifer Regional Recharge Concepts		
	Task Description	Totals by Task
TASK 1 30% COMPLETION		
1	Develop Recharge Concepts for Study	
	Client meetings (4)- kick-off, progress and end of task	\$19,761
	Acquire hydrologic/hydrogeologic data	\$18,804
	Determine treatment process and regulatory constraints	\$10,505
	Technical Memo 1 (Draft)	\$14,916
		\$0
		\$0
	TASK 1 TOTAL	\$63,986
TASK 2 60% COMPLETION		
2	Develop Conceptual Design of Recharge Concepts	
	Technical Memo 1- Final	\$8,466
	Evaluate hydrologic/hydrogeologic data	\$37,748
	Develop conceptual design of diversion/recharge concepts	\$18,778
	Determine project effectiveness with groundwater model	\$14,393
	Develop conceptual design drawings	\$10,194
	Technical Memo 2 (Draft)	\$16,348
	Client meetings (5) - monthly progress and end of task	\$10,844
		\$0
	TASK 2 TOTAL	\$116,772
TASK 3 90% COMPLETION		
3	Determine Project Costs and Feasibility	
	Technical Memo 2- Final	\$6,874
	Determine project probable costs	\$14,174
	Develop implementation schedule	\$4,670
	Prepare draft feasibility report	\$21,418
	Client meetings (3) - monthly progress and end of task	\$6,586
	TASK 3 TOTAL	\$53,722
TASK 4 100% COMPLETION		
4	Feasibility Final Report	
	Finalize final report	\$13,909
	Workshop with SRWMD Staff for presentation	\$8,461
	SRWMD Board Presentation	\$7,918
		\$0
	TASK 4 TOTAL	\$30,287
	PROJECT SUBTOTAL	\$264,766
	TOTAL CONTRACT	\$264,766



Project: Combined.mpp Date: Wed 4/18/12	Task		Milestone		External Tasks	
	Split		Summary		External Milestone	
	Progress		Project Summary		Deadline	