

AGENDA
SUWANNEE RIVER WATER MANAGEMENT DISTRICT
GOVERNING BOARD MEETING AND PUBLIC HEARING

YouTube Link: <https://www.youtube.com/@SRWMD>

Open to Public

December 12, 2023
9:00 a.m.

District Headquarters
Live Oak, Florida

1. Call to Order
2. Roll Call
3. Announcement of any Amendments to the Agenda by the Chair
Amendments Recommended by Staff: None
4. Public Comment
5. Consideration of the following Items Collectively by Consent:
 - Agenda Item No. 6 - November 14, 2023, Governing Board Meeting and Workshops Minutes
 - Agenda Item No. 12 - October 2023 Financial Report
 - Agenda Item No. 15 - Memorandum of Agreement with Florida Department of Environmental Protection Regarding Concurrent Permit Review of Indirect Potable Reuse Projects
 - Agenda Item No. 19 – 2024 Florida Forever Workplan
 - Agenda Item No. 24 - 2023 Federal Emergency Management Agency Risk Mapping and Planning Program Five-Year Business Plan
 - Agenda Item No. 25 - Amendment to Contract 22/23-168 with Ladedo, LLC.
 - Agenda Item No. 26 - Task Work Assignment 19/20-031.16 with Water and Air Research, Inc.
 - Agenda Item No. 27 - Order Number 23-007 – 2023 North Florida Regional Water Supply Plan (2020-2045)

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6. November 14, 2023, Governing Board Meeting and Workshops Minutes - **Recommend Consent**
7. Items of General Interest for Information/Cooperating Agencies and Organizations
 - A. Hydrologic Conditions Report
 - B. Cooperating Agencies and Organizations

GOVERNING BOARD LEGAL COUNSEL
Tom Reeves

8. Update on Legal Activities

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9. Final Order Number 23-006, Florida Springs Council v. Seven Springs Water Company and Suwannee River Water Management District; SRWMD Renewal WUP App. No. 2-041-218202-3; DOAH Case Nos. 21-1180

BUSINESS AND COMMUNITY SERVICES
Tim Alexander, Deputy Executive Director

Administration

- BCS Page 1 10. Land Acquisition and Disposition Activity Report
- BCS Page 4 11. Request for Qualifications 23/24-002 Design-Build Construction Services for Renovation of the Field Services Building

Finance

- BCS Page 5 12. October 2023 Financial Report – **Recommend Consent**
- BCS Page 10 13. Fiscal Year 2024-2025 Preliminary Budget

Resource Management

- BCS Page 11 14. Permitting Summary Report
- BCS Page 14 15. Memorandum of Agreement with Florida Department of Environmental Protection Regarding Concurrent Permit Review of Indirect Potable Reuse Projects – **Recommend Consent**
- BCS Page 15 16. Brandon Creasy, Unlicensed Water Well Contracting Administrative Complaint and Order
- BCS Page 18 17. Environmental Resource Permit Number ERP-023-244379-1, Gwynn Farms Subdivision, Columbia County

OUTREACH AND OPERATIONS
Katelyn Potter, Division Director

Outreach and Operations

- OPS Page 1 18. Outreach and Communications Activity Summary
- OPS Page 3 19. 2024 Florida Forever Work Plan – **Recommend Consent**

Land Management

- OPS Page 13 20. Land Management Update

Hydrologic Data Services

- OPS Page 16 21. Agricultural Water Use Monitoring Report

WATER RESOURCES
Amy Brown, Deputy Executive Director

22. Water Resources Division Updates

Definitions:

- "Lobbies" is defined as seeking to influence a district policy or procurement decision or an attempt to obtain the goodwill of a district official or employee. (112.3261(1)(b), Florida Statutes [F.S.]
- "Lobbyist" is a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. (112.3215(1)(h), F.S.)

The Board may act upon (including reconsideration) any agenda item at any time during the meeting. The agenda may be changed only for good cause as determined by the Chair and stated in the record. If, after the regular time for Public Comment, the agenda is amended to add an item for consideration, the Chair shall allow public comment on the added agenda item prior to the Board taking action thereon.

All decisions of the Chair concerning parliamentary procedures, decorum, and rules of order will be final, unless they are overcome by a majority of the members of the Board in attendance.

If any person decides to appeal any decision with respect to any action considered at the above referenced meeting and hearing, such person may need to ensure a verbatim record of the proceeding is made to include testimony and evidence upon which the appeal is made.

**SUWANNEE RIVER WATER MANAGEMENT DISTRICT
MINUTES OF GOVERNING BOARD MEETING AND PUBLIC HEARING(S)**

GoTo Webinar Link: <https://attendee.gotowebinar.com/register/7087909784033871447>

Public Comment Form Link: www.MySuwanneeRiver.com/Comments

Open to Public

Note: A digital recording system was used to record these proceedings and is on file in the permanent files of the District. A copy of the materials and handouts are a part of the record as set out in full herein and are filed in the permanent files of the District.

November 14, 2023
9:00 a.m.

District Headquarters
Live Oak, Florida

Agenda Item No. 1 – Call to Order. The meeting was called to order at 9:00 a.m.

Agenda Item No 2 – Roll Call

Governing Board

Seat	Name	Office	Present	Not Present
Aucilla Basin	Vacant		-	-
Coastal River Basin	Richard Schwab	Vice Chair	X	
Lower Suwannee Basin	Larry K. Thompson		X	
Santa Fe & Wacc. Basins	William Lloyd		X	
Upper Suwannee Basin	Larry Sessions		X	
At Large	Virginia H. Johns	Chair	X	
At Large	Charles Keith	Sec./Treas.		X
At Large	Harry Smith		X	
At Large	Vacant		-	-

Governing Board Legal Counsel

Name	Firm	Present	Not Present
George T. Reeves	Davis, Schnitker, Reeves & Browning, P.A.	X	

Leadership Team

Position	Name	Present	Not Present
Executive Director	Hugh Thomas	X	
Deputy Executive Director	Tim Alexander	X	
Deputy Executive Director	Amy Brown	X	
Executive Office & Board Coordinator	Robin Lamm	X	

Agenda Item No. 3 - Announcement of any Amendments to the Agenda by the Chair. None

Agenda Item No. 4 – Public Comment. None

Agenda Item No. 5 - Consideration of the Following Items Collectively by Consent:

- Agenda Item No. 6 - October 10, 2023 Governing Board Meeting and Workshop Minutes
- Agenda Item No. 11 - September 2023 Financial Report
- Agenda Item No. 14 - Statement of Agency Operation and Organization Updates
- Agenda Item No. 15 - Amend Rule 40B-400.091, Florida Administrative Code
- Agenda Item No. 24 - Amendment to Contract 21/22-040 with Alliance Dairies, LLP, Levy and Gilchrist Counties

Mr. Lloyd announced a conflict of interest and abstained from voting on Agenda Item No. 5, which includes Agenda Item No. 24 - Amendment to Contract 21/22-040 with Alliance Dairies, LLP, Levy and Gilchrist Counties. The Conflict of Interest form was completed and signed by Mr. Lloyd for this item. This form is hereby made part of these minutes and is filed in the permanent Governing Board Meeting minutes files of the District.

MOTION WAS MADE BY SCHWAB, SECONDED BY SESSIONS TO APPROVE THE ITEM.
MOTION CARRIED WITH THE EXCEPTION OF LLOYD.

Katelyn Potter, Division Director, Outreach and Operations Division, informed the Board that we will be live streaming our Board meetings via YouTube beginning in December to enhance ADA regulations. All public comments will need to be made in person, or in writing prior to the Board meeting.

Agenda Item No. 6 -- October 10, 2023 Governing Board Meeting and Workshop Minutes. Approved on Consent.

Agenda Item No. 7 - Items of General Interest for Information/Cooperating Agencies and Organizations.

- A. Robbie McKinney, Chief, Office of Water Resources, gave a presentation of hydrologic conditions of the District.
- B. Cooperating Agencies and Organizations. Mr. Thomas recognized Justin Garland and Daniel Penniman, with Florida Department of Transportation. Board Member Sessions provided a video regarding the damage from Hurricane Idalia with respects to the agricultural impacts in our area.

GOVERNING BOARD LEGAL COUNSEL

Agenda Item No. 8 – Legal Activities Update. Tom Reeves, Board Legal Counsel, updated the Board on the following:

- Seven Springs Administrative Order
- William Merryman – Petition for Declaratory Statement
- Jeff Hill - Quiet Title court case

BUSINESS AND COMMUNITY SERVICES

Administration

Agenda Item No. 9 – Land Acquisition and Disposition Activity Report. This report was provided as an informational item in the Board materials.

Agenda Item No. 10 – Olustee Creek Conservation Ingress/Egress Easement Exchange, Columbia County. Steve Schroeder, Chief, Office of Administration, presented this item to the Board.

MOTION WAS MADE BY SMITH, SECONDED BY SCHWAB TO APPROVE THE ITEM. MOTION CARRIED UNANIMOUSLY.

Finance

Agenda Item No. 11 – September 2023 Financial Report. Approved on Consent.

Resource Management

Warren Zwanka, Director, Resource Management Division, updated the Board on issues relating to the E-Permitting system being unavailable.

Agenda Item No. 12 – Permitting Summary Report. This report was provided as an informational item in the Board materials.

Agenda Item No. 13 – Statement of Agency Operation and Organization Updates. Approved on Consent.

Agenda Item No. 14 – Amend Rule 40B-400.091, Florida Administrative Code. Approved on Consent.

Agenda Item No. 15 – Amend Rules 40B-2.301, 40B-2.331, and 40B-2.351, Florida Administrative Code. Mr. Zwanka presented this item to the Board.

MOTION WAS MADE BY THOMPSON, SECONDED BY LLOYD TO APPROVE THE ITEM. MOTION CARRIED UNANIMOUSLY.

Agenda Item No. 16 – Works of the District Permit Application Number WOD-121-208958-4, Reichard Dock Restoration, Suwannee County. Mr. Zwanka presented this item to the Board.

MOTION WAS MADE BY THOMPSON, SECONDED BY SESSIONS TO APPROVE THE ITEM. MOTION CARRIED UNANIMOUSLY.

OUTREACH AND OPERATIONS

Communications and Outreach

Agenda Item No. 17 – Outreach and Communications Activity Summary. This summary was provided as an informational item in the Board materials.

Land Management

Agenda Item No. 18 – Land Management Update. This summary was provided as an informational item in the Board materials.

Agenda Item No. 19 – Contract with RES Environmental Operating Company LLC for Starke Bypass Mitigation Area Services. Mrs. Potter presented this item to the Board.

MOTION WAS MADE BY THOMPSON, SECONDED BY SCHWAB TO APPROVE THE ITEM. MOTION CARRIED UNANIMOUSLY.

Hydrologic Data Services

Agenda Item No. 20 – Agricultural Water Use Monitoring Report. This report was provided as an informational item in the Board materials.

**SUWANNEE RIVER WATER MANAGEMENT DISTRICT
GOVERNING BOARD WORKSHOPS**

Workshop began at 10:35 a.m.

Fiscal Year 2024-25 Preliminary Budget Workshop

Christina Green, Budget Manager, Office of Finance, provided a powerpoint presentation on the Fiscal Year 2024-25 Preliminary Budget.

2023 Draft North Florida Regional Water Supply Plan Discussion

Dr. Amy Brown provided a powerpoint presentation on the 2023 Draft North Florida Regional Water Supply Plan.

Workshop adjourned at 11:36 a.m.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board.

FROM: George T. Reeves, Governing Board Legal Counsel.

DATE: November 30, 2023.

RE: Final Order Number 23-006, Florida Springs Council v. Seven Springs Water Company and Suwannee River Water Management District; SRWMD Renewal WUP App. No. 2-041-218202-3; DOAH Case Nos. 21-1180

RECOMMENDATION

Approve the proposed final order enclosed as Final Order Number 23-006, Florida Springs Council v. Seven Springs Water Company and Suwannee River Water Management District; SRWMD Renewal Water Use Permit Application No. 2-041-218202-3; DOAH Case Nos. 21-1180.

DOCUMENTS ENCLOSED

1. Recommended Order (the "RO") dated October 17, 2023 in DOAH Case Nos. 21-1180.
2. Exceptions to the RO filed by Florida Springs Council ("Springs Council") on November 1, 2023.
3. Responses to Springs Council's Exceptions filed by Seven Springs Water Company ("Seven Springs") on November 13, 2023.
4. Responses to Springs Council's Exceptions filed by the District on November 13, 2023.
5. Proposed Final Order Number 23-006, Florida Springs Council v. Seven Springs Water Company and Suwannee River Water Management District; SRWMD Renewal WUP App. No. 2-041-218202-3; DOAH Case Nos. 21-1180.

RECORD

The record in this case is available on the Division of Administrative Hearings ("DOAH")'s website <https://www.doah.state.fl.us/ALJ/> on the online docket for Case No. 21-1180. This online docket contains the record before the Administrative Law Judge ("ALJ") except for the transcript of the final hearing which can be found on the District's website at: <https://mysuwanneeriver.com/DocumentCenter/Index/502>

BACKGROUND

In March 2019, Seven Springs Water Company ("Seven Springs") applied to the District for a renewal of Seven Springs' water use permit ("WUP"). The requested WUP would allow the withdrawal of water in Gilchrist County, Florida for sale to an adjacent water bottling facility owned by Nestle Waters North America, Inc. (now owned by BlueTriton Brands, Inc. ("BlueTriton")) in Gilchrist County, Florida.

On March 3, 2020, after conducting the Request for Additional Information process and extensive review of the application, the District issued proposed agency action, in the form of a Water Use Technical Staff Report, recommending denial of Seven Springs' application.

On March 6, 2020, Seven Springs responded by filing a petition for formal administrative hearing.

On March 9, 2020, the District referred the petition to DOAH to conduct a formal administrative hearing and the proceeding was assigned DOAH Case No. 20-3581.

On October 19-21, 2020, a final hearing was held.

On January 20, 2021, a recommended order was entered by the administrative law judge ("ALJ").

On February 23, 2021, the governing board held a special meeting to consider issuing a final order on the recommended order issued in DOAH Case No. 20-3581. (The Board Packet for that meeting is available online at <https://mysuwanneeriver.com/ArchiveCenter/ViewFile/Item/1421>)

On February 24, 2021, a final order was entered by the District adopting the recommended order and issuing renewal Water Use Permit No. 2-041-218202-3 (the "Permit") to Seven Springs.

On March 16, 2021, Springs Council filed its petition for administrative hearing (Petition) in this matter, challenging the Final Order issuing the Permit.

On March 30, 2021, the District referred the Petition to DOAH, and DOAH dismissed the Petition.

Springs Council appealed the dismissal of the petition to the First District Court of Appeal. The court reversed DOAH's the dismissal and ruled that Springs Council was entitled to a hearing on the Petition. *See Fla. Springs Council v. Suwannee River Water Mgmt. Dist.*, 354 So. 3d 622 (Fla. 1st DCA 2023).

On February 6, 2023, the District again referred the Petition to DOAH.

On May 10, 2023, a final hearing was held before DOAH.

On October 17, 2023, the ALJ issued the RO. In the RO, the ALJ recommends that the District issue the WUP as ordered in the District's previously entered Final Order dated February 24, 2021, except that BlueTriton is to be added as a co-permittee.

On November 1, 2023, Springs Counsel timely filed their exceptions to the RO.

On November 13, 2023, Seven Springs and the District timely filed responses to Springs Council's exceptions.

PROCEEDINGS AFTER ISSUANCE OF RO

Under the legal process set forth in Ch. 120, F.S., once the ALJ issues an RO and submits it to the District, the parties (including the District) may file exceptions to the RO with the District. After reviewing the exceptions and responses to exceptions, if any, the District will issue a final order.

EX PARTE COMMUNICATIONS PROHIBITED

Since October 17, 2023 (the date of the RO), District staff has not forwarded to the members Governing Board any communications received from the public. This is because Florida law prohibits certain *ex parte* communications with the Governing Board as follows:

120.66 Ex parte communications --

(1) In any proceeding under ss.120.569 and 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the presiding officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding, the party's authorized representative or counsel, or any person who, directly or indirectly, would have a substantial interest in the proposed agency action.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

Section 120.66, F.S.

Ex parte communications mean communications by one party without notice to the other parties. *H.B.A. Mgmt., Inc. v. Estate of Schwartz*, 693 So. 2d 541, 542, Footnote 1 (Fla. 1997) (“‘Ex parte’ means in behalf of or on the application of one party or by or for one party. Barron’s Law Dictionary 174 (3d ed.1991). Thus, an *ex parte* communication would be without notice to or challenge by an adverse party. *Id.*”) In this context, communications means all communications or all types (oral, written and otherwise) and includes without limitation by enumeration, in personal conversations, telephone calls, letters, faxes, emails, texts and relaying messages through third parties.

To ensure compliance with the above statute, we have not forwarded communications as set out above, and have advised the Governing Board members not to communicate with others about this case.

However, this meeting is an open publically noticed meeting of the Governing Board at which the public and all parties have been advised that Public Comment will be allowed. Therefore, communications you receive during the special meeting are not *ex parte* and are therefore permissible.

TIME LIMIT TO ENTER THE FINAL ORDER

Under Section 120.60(1), F.S., the final order must be issued by the District no later than 45 days after the date of the RO. The 45th day after the date of the RO is December 1, 2023. However, on October 24, 2023, the parties all executed and filed a CONSENT TO WAIVE STATUTORY AND RULE DEADLINES TO CONSIDER RECOMMENDED ORDER, RENDER FINAL AGENCY ORDER, AND APPROVE OR DENY PERMIT APPLICATION, in which the parties waived such statutory deadlines and stipulated and agreed that the District’s Governing Board would (1) consider and act upon the RO at its regularly-scheduled December 12, 2023 meeting, and (2) issue its final order no later than December 15, 2023.

DISCRETION OF THE GOVERNING BOARD TO ENTER THE FINAL ORDER

The Governing Board must enter a final order on the RO. However, the Governing Board's discretion in entering the final order is limited by statute. In entering the final order, the Governing Board must either:

1. Adopts the RO with no modifications;
2. Rejects or modifies some or all of the conclusions of law over which the District has substantive jurisdiction and/or interpretations of the District’s rules. However, the District may not reject or modify conclusions of law or interpretations of rules over which the District does not have substantive jurisdiction;
3. Rejects or modifies some or all of the findings of fact made in the RO. However, the District may not reject or modify the findings of fact made in the RO unless the District first determines from a review of the entire record, and states with particularity in the final order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law; or,
4. Is some combination of the above.

See, Section 120.57(1)(l), F.S.

PROPOSED FINAL ORDER

The proposed final order makes an explicit ruling denying each exception, adopts and incorporates the RO and directs staff to issue the renewal water use permit as provided in the RO. The proposed final order sets out the legal standards, authority and reasons for the approval of the RO in detail and should be carefully reviewed. However, some of the important points provided in the proposed final order are summarized below.

Permitting Criteria

In the RO, the ALJ found that the parties had entered into a stipulation which limited the issues the ALJ could consider. (RO at paragraphs 75-80) The ALJ then found that the only permit criterion disputed before DOAH was the "consistent with the public interest" criterion in Section 373.223(1)(c), F.S. (RO at paragraph 78)

Springs Counsel argued that the District was required to consider the over 19,000 public comments in order to determine whether the "consistent with the public interest" criterion in Section 373.223(1)(c), F.S. was met.

However, the ALJ did not consider such public comments. The ALJ found that, "the District cannot deny the Permit based on non-rule criteria" and then found that, "There is no provision in the rules or statutes that the basis of issuance of a water use permit is determined by the number of public comments received." (RO at paragraph 90)

Additionally, the ALJ excluded all testimony and other evidence concerning the contents of the public comments finding it to be impermissible hearsay. (RO at paragraph 51 and note 4) Since all evidence of the contents of the public comments was excluded, the record in this case does not show whether those comments were in favor of the Permit, against the Permit or addressed the Permit at all. Therefore, even if the District could legally consider the public comments, the District would have nothing to consider and could not modify or reject the RO on that basis.

Please remember that in entering its final order, the District is limited to the record that was made before the ALJ. *Lawnwood Medical Center, Inc. v. Agency for Health Care Admin.*, 678 So. 2d 421, 425 (Fla. 1st DCA 1996) ("Chapter 120, Florida Statutes, directs an agency to review a recommended order based on the record that was before the hearing officer. An agency is not authorized . . . to reopen the record, receive additional evidence and make additional findings.") So, at this point, the District is not allowed to look into its files and determine the contents of the public comments.

Ownership and Control of the Water Bottling Plant

A previous issue in this case was that the District asserted that the owner of the bottling plant (then Nestle and now BlueTriton) which receives the allocation of groundwater should have been a co-permittee on the Permit. During the proceedings before DOAH, the parties and BlueTriton all stipulated that BlueTriton would be added as a co-permittee on the Permit and the RO recommends the same. (RO at page 29) So by adopting the RO, the Governing Board will be requiring the adding of BlueTriton as a co-permittee.

Duration of the Permit

Concerning the duration of the Permit, the proposed final order provides that the five-year term of the Permit shall run from the original date of issuance of Permit (February 24, 2021). However, the time from the date of referral of Springs Council's petition to DOAH (March 30, 2021) though the date of the issuance of the final order, shall not be counted against the five-year term of the permit. This is because the referral of Springs Council's petition to DOAH converted the District's final agency action on the Permit to proposed agency action rendering the Permit no longer in effect. See *Town of Davie v. State of*

Florida, Department of Environmental Regulation and Broward County, 1984 WL 54268, *5, OGC File No.: 83-0509; DOAH Case No.: 83-2824 (FDER Final Order dated Jan. 13, 1984) (“[T]he impact of granting the request for a hearing and remanding the cause to the hearing officer would be significant. Upon referral to DOAH, the Department's final action would be converted into proposed agency action. *Cappeletti Brothers, Inc. v. Department of Transportation*, 362 So. 2d 346 (Fla. 1st DCA 1978), cert. denied, 368 So. 2d 1374 (Fla. 1979). The County would then be left without a valid Department permit.”) (Emphasis supplied)

Any pumping of groundwater by Seven Springs after referral of Springs Council's petition to DOAH was allowed pursuant to the statutory extension of Seven Springs' previous permit provided in Section 120.60(4), F.S.

/tr

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

FLORIDA SPRINGS COUNCIL, INC.,

Petitioner,

vs.

Case No. 21-1180

SEVEN SPRINGS WATER COMPANY AND
SUWANNEE RIVER WATER MANAGEMENT
DISTRICT,

Respondents.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted on May 10, 2023, before Administrative Law Judge Francine M. Ffolkes at the Division of Administrative Hearings (DOAH) in Tallahassee, Florida.

APPEARANCES

For Petitioner Florida Springs Council, Inc.:

Douglas Harold MacLaughlin, Esquire
319 Greenwood Drive
West Palm Beach, Florida 33405

John R. Thomas, Esquire
Law Office of John R. Thomas, P.A.
6493 Emerson Avenue South
St. Petersburg, Florida 33702

John D. Jopling, Esquire
5323 Northwest 92nd Way
Gainesville, Florida 32653

For Respondent Seven Springs Water Company:

Douglas P. Manson, Esquire
Paria Shirzadi Heeter, Esquire
Manson Bolves Donaldson Varn, P.A.
109 North Brush Street, Suite 300
Tampa, Florida 33602-2637

For Respondent Suwannee River Water Management District:

Frederick T. Reeves, Esquire
Frederick T. Reeves, P.A.
5709 Tidalwave Drive
New Port Richey, Florida 34652

STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent Seven Springs Water Company's (Seven Springs) renewal Water Use Permit No. 2-041-218202-3 (Permit) should be issued by Respondent Suwannee River Water Management District (District); and whether Petitioner Florida Springs Council, Inc. (FSC), has standing.

PRELIMINARY STATEMENT

On March 3, 2020, the District issued a notice of proposed agency action denying Seven Springs' application for the Permit and notice of rights, which includes the right to file a petition challenging the proposed agency action. Notice of the proposed agency action was provided through publication on March 6, 2020.

Seven Springs filed its Petition for Administrative Hearing challenging the proposed agency action with the District on March 6, 2020, which was assigned DOAH Case No. 20-3581. No other timely petitions were filed. A hearing was held October 19 through 21, 2020, a Recommended Order was

issued on January 20, 2021, and a Final Order, adopting the Recommended Order in total and issuing the subject Permit, was entered on February 24, 2021 (Final Order). *See Seven Springs Water Co. v. Suwannee River Water Mgmt. Dist.*, Case No. 20-3581 (Fla. DOAH Jan. 20, 2021; Fla. SRWMD Feb. 24, 2021).

In March of 2021, FSC filed its petition for administrative hearing (Petition) in this matter, challenging the Final Order issuing the Permit. The District referred the Petition to DOAH, and the Petition was dismissed. FSC appealed the dismissal to the First District Court of Appeal. In its opinion, the court held that the District's Florida Administrative Code Rule 40B-1.1010(2)(a) allowed FSC's Petition, and that FSC was entitled to an administrative hearing. *See Fla. Springs Council v. Suwannee River Water Mgmt. Dist.*, 354 So. 3d 622 (Fla. 1st DCA 2023). Subsequently, the District's rule was invalidated in a rule challenge proceeding brought by Seven Springs. *See Seven Springs Water Co. v. Suwannee River Water Mgmt. Dist.*, Case No. 22-3908RX (Fla. DOAH Feb. 6, 2023).

On remand, the District referred FSC's Petition to DOAH. The final hearing was scheduled for May 10 through 12, 2023. On May 2, 2023, the parties filed their Joint Pre-hearing Stipulation (JPHS) that included a comprehensive stipulation of facts and an identification of issues of law on which there was agreement. Each stipulated fact is adopted and incorporated herein. The JPHS also identified the disputed issues of fact and law remaining for disposition in this proceeding. As agreed, the specific disputed issues of fact litigated in this proceeding were set forth in section VII, paragraphs 1 and 2 of the JPHS.

On April 11, 2023, all of the parties in this case and BlueTriton Brands, Inc., entered into a Stipulation (District Exhibit 2, in evidence), agreeing that BlueTriton Brands, Inc., the owner and operator of the bottling facility at which Seven Springs' permitted withdrawals is bottled, would be added as a co-permittee to the Permit. With the addition of BlueTriton Brands, Inc., as a co-permittee, it was the District's position that Seven Springs had provided reasonable assurance that the Permit application satisfied all applicable water use permitting criteria, including without limitation the public interest criteria. With the parties' entry into the Stipulation and the addition of BlueTriton Brands, Inc., as a co-permittee on the Permit, all of the factual and legal issues raised in paragraphs 9 through 14 of FSC's Petition were resolved.

The final hearing convened and was concluded on May 10, 2023. At the final hearing, Seven Springs and the District offered Joint Exhibits 1.a. through i., 2 through 6, 7.a. through c., 8, 9.a. and b., and 10 through 21, consisting of the Permit application and supporting documents, as well as the District's February 24, 2021, Technical Staff Report and Final Order, and they were admitted into evidence. In support of its case Seven Springs also offered the testimony of David J. Brown and Risa Wray, Seven Springs' corporate representative. Mr. Brown was accepted as an expert in hydrogeology and groundwater modeling. Seven Springs' Exhibit 1 was admitted into evidence. The District offered the testimony of Warren Zwanka. Mr. Zwanka was accepted as an expert in geology and hydrogeology. District Exhibits 1 and 2 were admitted into evidence.

FSC offered the testimony of fact witnesses Ryan Smart, Jane Blais, and Kristin Rubin and the expert testimony of Mr. Zwanka. FSC Exhibit 6 was

admitted into evidence. FSC Exhibits 1 through 4 and 8 were proffered as exhibits but were not admitted into evidence.

By Order on Deposition and Exhibit Designations and Written Objections dated July 19, 2023, portions of FSC Exhibits 9 (Deposition of Warren Zwanka) and 10 (Deposition of David Brown) were admitted into evidence.

The two-volume Transcript was filed on June 6, 2023. The parties timely filed their proposed recommended orders on July 31, 2023.

References to the Florida Statutes are to the 2023 version, unless otherwise indicated.¹

FINDINGS OF FACT

The following Findings of Fact are based on the parties' stipulations, on matters officially recognized, and the evidence adduced at the final hearing.

The Parties

1. FSC is a Florida not-for-profit corporation, whose mission is to protect and restore Florida's springs and spring-fed rivers. FSC has almost 5,000 members. It provides education for both the public and decision-makers, including working on legislation and regulatory matters affecting springs. FSC deals with permits and local land use issues affecting springs. Members of FSC rely on the organization to pursue their interests in protecting and restoring Florida's springs.

¹ See *Lavernia v. Dep't of Pro. Regul.*, 616 So. 2d 53, 54 (Fla. 1st DCA 1993)(reflecting that a permit application is governed by the law in effect at the time the final licensing or permitting decision is made).

2. Three members of the FSC testified that they use and enjoy the Lower Santa Fe River and its associated springs, and have concerns with water levels in the river. One member testified she has a business that relies on her customers being able to use and enjoy the river. These FSC members kayak, canoe, and swim in the river and springs along with many other members, and are relying on FSC to protect their concerns about the river and springs.

3. In order to determine whether a significant number of FSC's members used the Santa Fe River and its associated springs and were concerned with the issuance of the Permit, FSC surveyed its members in April 2021. Six hundred and sixty-one members responded. At that time, the total membership was approximately 2,500. Fifty-nine percent reported they used the river one to ten times per year. Twenty-six percent reported they use the river one to three times per month. Eleven and one-half percent reported they use the river multiple times per week. Those surveyed reported they used the river for nature and scenic beauty, swimming and snorkeling, kayaking, photography and art, and fishing. About 15 members reported they own a business that depends on the river.

4. Those surveyed were provided with already scripted choices as to how certain actions would affect their use and enjoyment of the river. Ninety-five percent of the 661 members responded positively that "the pumping of water that should remain in the basin to help recover the Santa Fe River's natural flow" would affect their use and enjoyment of the river. Ninety percent of the 661 members responded positively that the District's failure to address whether the Permit is "consistent with the broad-based interest and concerns that are collectively shared by members of the community or residents of the District or State" would affect their use and enjoyment of the river.

5. Seven Springs is a Florida corporation that was first issued a water use permit in 1994. The water use is for commercial bottled water. In this proceeding, Seven Springs seeks renewal of the Permit.

6. The District is a water management district created by section 373.069(1), Florida Statutes. Under section 373.219(1), the District is authorized to review and issue water use permits.

The Permit Application

7. Seven Springs' existing Water Use Permit No. 2-041-218202-2 (Existing Permit) was originally issued in 1994. The Existing Permit authorized withdrawal of 1.152 million gallons per day (MGD) annual average of groundwater for a bottled water use type. The first version of the Existing Permit, issued in 1994, was for 1.7 MGD annual average. This was voluntarily reduced in a 1995 permit modification to 1.152 MGD annual average for a bottled water use type.

8. Through an exclusive water sales and extraction agreement and subsequent amendments, Seven Springs has the right to withdraw water from wells located on 7300 Northeast Ginnie Springs Road, High Springs, Florida (the Property). The water withdrawn by Seven Springs is piped to the adjacent High Springs bottled water facility (High Springs Plant). The High Springs Plant is located at 7100 Northeast County Road 340, High Springs, Florida. Both properties are located in Gilchrist County within the District's boundaries.

9. On or about March 18, 2019, Seven Springs submitted an application to renew the Permit (Application). The Application requested renewal of the Existing Permit for a term of five years, with no change in use type or location, and did not request any increase in the currently permitted allocation of water. Seven Springs requested a reduction from the currently

permitted allocation of 1.152 MGD to 0.984 MGD annual average. This constituted a 0.1680 MGD annual average decrease from the Existing Permit's allocation.

10. The District's application forms and technical staff reports demonstrate that the Application's "use category" and "use type" are Commercial/Industrial and Beverage Processing, respectively. The "detailed description of the type of business and/or operation" in the Application states "Seven Springs Water Company sells spring water for beverage processing to local facility."

11. Groundwater from two ten-inch diameter production wells (P-1 and P-2) is withdrawn on the Property. A third production well (P-3) is proposed and would replace well P-1 once placed into service.

12. All water withdrawn by Seven Springs is piped to and processed at the High Springs Plant. The High Springs Plant was originally designed for four production lines and was constructed and in operation by 1998. The High Springs Plant is currently owned by BlueTriton Brands, Inc. Seven Springs has been the sole provider and source of spring water for the High Springs Plant since it was built in 1998.

13. The District's review of the Application resulted in three extensive requests for additional information (RAIs). Seven Springs timely and fully responded to each RAI.

14. Seven Springs' response to the first RAI included the following: a project area map showing the withdrawal facilities, spring location, bottling facility, and parcel boundaries; a market analysis; an explanation and schematic of water uses from the withdrawal point to the facility; schedule of construction and completion for the proposed bottling facility expansion; a facility water budget; and a conservation plan detailing any water losses and conservation practices for the High Springs Plant.

15. Seven Springs' response to the second RAI was comprehensive and included a significant amount of information regarding the permittee, permit, and bottling plant history; bottled spring water market growth; the plant operator and High Springs Plant improvements/expansion; water quality, geology, and hydrogeology of the site, including the Ginnie Springs complex and Lower Santa Fe River; groundwater modeling; and evaluation of potential impacts to source springs and project wetlands.

16. The second RAI response also explained that, based on the pumping test and analytical modeling, the requested withdrawal would not cause adverse impacts to the source spring from its normal rate and fluctuation; that there would not be perceptible changes to flows from springs resulting from the withdrawal; and no adverse impact to water quality, flows downgradient, or recreational or aesthetic qualities.

17. Seven Springs' response to the third RAI provided additional information regarding additional modeling; the bottled spring water market and demand; justification for the allocation; the positive economic impact in the state and locally; and the High Springs Plant renovations and planned buildout. The analysis and groundwater modeling showed that there would only be a *de minimus* change in spring discharge resulting from withdrawals under the Permit.

Uncontested Permitting Criteria²

18. Seven Springs submitted a conservation plan as part of its Application that satisfies the requirements of section 2.3.8, "Water Conservation Plans for Commercial, Industrial, Institutional, and Mining/Dewatering Uses," District's Water Use Applicant's Handbook (A.H.).

² Based on the parties' stipulations in the JPMS and April 11, 2023, Stipulation.

19. Seven Springs provided reasonable assurance that its proposed consumptive use of water would not interfere with any presently existing legal use of water, in accordance with Florida Administrative Code Rule 40B-2.301(1)(b).

20. Seven Springs provided reasonable assurance that its proposed consumptive use of water would utilize a water source that is suitable for the consumptive use, in accordance with rule 40B-2.301(2)(c).

21. Seven Springs provided reasonable assurance that its proposed consumptive use of water would utilize a water source that is capable of producing the requested amount, in accordance with rule 40B-2.301(2)(d).

22. Seven Springs provided reasonable assurance that its proposed consumptive use of water would utilize the lowest quality water source that is suitable for the purpose and is technically, environmentally, and economically feasible, in accordance with rule 40B-2.301(2)(e).

23. Seven Springs provided reasonable assurance that its proposed consumptive use of water would not cause harm to existing offsite land uses resulting from hydrologic alterations, in accordance with rule 40B-2.301(2)(f).

24. Seven Springs provided reasonable assurance that its proposed consumptive use of water is not expected to cause harm to the water resources of the area, in accordance with rule 40B-2.301(2)(g).

25. Seven Springs provided reasonable assurance that its proposed consumptive use of water would not cause harmful water quality impacts to the water source resulting from the withdrawal or diversion, in accordance with rule 40B-2.301(2)(g)1.

26. Seven Springs provided reasonable assurance that its proposed consumptive use of water would not cause harmful water quality impacts from dewatering discharge to receiving waters, in accordance with rule 40B-2.301(2)(g)2.

27. Seven Springs provided reasonable assurance that its proposed consumptive use of water would not cause harmful saline water intrusion or harmful upconing, in accordance with rule 40B-2.301(2)(g)3.

28. Seven Springs provided reasonable assurance that its proposed consumptive use of water would not cause harmful hydrologic alterations to natural systems, including wetlands or other surface waters, in accordance with rule 40B-2.301(2)(g)4.

29. Seven Springs provided reasonable assurance that its proposed consumptive use of water would not otherwise cause harmful hydrologic alterations to the water resources of the area, in accordance with rule 40B-2.301(2)(g)5.

30. Seven Springs provided reasonable assurance that its proposed consumptive use of water would not use water reserved under section 373.223(4), in accordance with rule 40B-2.301(2)(i).

31. Seven Springs provided reasonable assurance that its proposed consumptive use of water is in accordance with any minimum flow or level (MFL) and implementation strategy established under sections 373.042 and 373.0421, in accordance with rule 40B-2.301(2)(h).

32. Seven Springs provided reasonable assurance as to the requirements set forth in sections 2.1.1 and 2.3.1, A.H., regarding ownership and control.

33. All parties and BlueTriton Brands, Inc., stipulated that BlueTriton Brands, Inc., would be added to the Permit as a co-permittee. Upon regaining jurisdiction, the District will add BlueTriton Brands, Inc., to the Permit as a co-permittee.

Facts Not Disputed at Final Hearing

34. Seven Springs provided sufficient information for the District to consider, under section 2.3.4.1(a), A.H., with regard to the need for the requested amount of water.

35. Seven Springs provided sufficient information for the District to consider, under section 2.3.4.1(b), A.H., with regard to the location of the withdrawal.

36. Seven Springs provided sufficient information for the District to consider, under section 2.3.4.1(c), A.H., with regard to the location of the beverage processing facility.

37. Seven Springs provided sufficient information for the District to consider, under section 2.3.4.1(d), A.H., with regard to the plan to convey water from the withdrawal facility to the beverage processing facility.

38. Seven Springs provided sufficient information for the District to consider, under section 2.3.4.1(e) and (f), A.H., with regard to a site plan for the beverage processing facility and existing land use and zoning designations.

39. Seven Springs' Application included a market analysis that satisfied the requirements of section 2.3.4.1(g), A.H.

40. Seven Springs provided sufficient information for the District to consider, under section 2.3.4.1(h), A.H., with regard to the schedule for completion of construction of the beverage processing facility.

41. Seven Springs' Application and supporting documents, including its Memorandum of Agreement (MOA) and Amended MOA, provided reasonable assurance that there is a contractual obligation for Seven Springs to provide water for beverage processing under section 2.3.4.1(i), A.H.

42. Seven Springs provided sufficient evidence for District consideration under section 2.3.4.1(j), A.H., of the physical ability of the High Springs Plant to process the requested amount of water.

43. The District found that the Application met all applicable statutory and rule permitting criteria and recommended issuance of the Permit.

44. There was no challenge to the permit term of five years from date of permit issuance, as requested in the Application and proposed in the District's Technical Staff Report. Nor was any evidence or testimony presented that the permit term should be anything other than the requested five years from date of permit issuance.

Challenged Permit Criterion

45. FSC raised only one statutory and rule permit criterion, which it contended should be a basis for denying the Permit: The "consistent with the public interest" criterion set forth in section 373.223(1)(c) and rule 40B-2.301(1)(c).

46. Mr. Zwanka, the District's Resource Management Division Director in charge of all the permitting programs at the District, persuasively testified about how applications for water use permits were evaluated.

47. Mr. Zwanka testified that section 2.3.4.1, A.H., is the only rule addressing the information required to evaluate whether a proposed beverage processing use is consistent with the public interest. FSC even stated in its Petition that there were no additional third-prong "public interest" tests identified in the District's rules.

48. Mr. Zwanka's expert testimony was that the Permit met all applicable permitting criteria, including section 2.3.4.1, A.H. FSC did not present any testimony or evidence on any of the information listed in section 2.3.4.1(a) through (j) of the A.H.

49. In fact, Mr. Zwanka's understanding was that consideration of the public interest, as defined by District rule,³ was already a part of the existing special rules for beverage processing in section 2.3.4.1, A.H. Even consideration of "other documentation necessary to complete the application" under section 2.3.4.1(k), A.H., is limited to the criteria adopted by rule for issuing water use permits. The District cannot deny the Permit based on non-rule criteria.

50. FSC contended that subsection (k) supported its argument that the Permit should be found inconsistent with the public interest because of the number of public comments submitted to the District, and because the withdrawal is from a waterbody that has an MFL and MFL Recovery Strategy in place.

51. While testimony was presented at the final hearing that approximately 19,000 public comments (including several duplicates) exist in the District's file for this Permit, any testimony regarding the contents or substance of those public comments, was excluded as impermissible hearsay that did not qualify for any statutory hearsay exception.⁴

52. FSC did not present any competent and substantial evidence that the Permit should be denied based on the number of public comments submitted. FSC could not point to any rule or statute supporting its contention that the large number of public comments meant that the Permit was not consistent with the public interest. There is no provision in the rules or statutes that the

³ "'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." Fla. Admin. Code R. 40B-2.021(7).

⁴ FSC's attempts to introduce into evidence, examples/samples of the public comments, for the truth of the matters asserted therein were subjected to hearsay objections. No direct testimony adduced at the hearing allowed the undersigned to make Findings of Fact on the contents of these public comments. *See* § 120.57(1)(c), Fla. Stat.

basis of issuance of a water use permit is determined by the number of public comments received.

53. Mr. Zwanka testified that he personally reviewed some of the public comments received and that the District "made our public comments available to all the reviewers, everybody at the [D]istrict knew they were coming in, we made them available to the governing board members as well." He explained that any substantive comments on applicable rule criteria would have been brought to his attention and considered during the application review process. He also explained that the number or nature of public comments were "not part of the rule that I follow to determine whether a -- an application meets the conditions for issuance" and that "the public interest is contained in our special rules for beverage processing," which the District is required to follow.

54. FSC also attempted to argue that there was a "broad-based public interest in avoiding significant harm to the ecology of the Santa Fe River." However, FSC stipulated that Seven Springs provided reasonable assurance of all the rule criteria relating to harm to water resources, and did not present any expert testimony on potential harm to the Santa Fe River or any other water resources of the area.

55. All parties stipulated that there was no challenge to the statutory and rule criteria that contain the technical analysis regarding impact to the water resources and compliance with the applicable MFL rule. FSC cannot ambush the parties by challenging whether the Seven Springs Application met the same criteria by arguing that those very same issues can be evaluated again under the public interest criterion.

56. Specifically, FSC stipulated that Seven Springs provided reasonable assurance of meeting the permit criteria in rule 40B-2.301(2). This includes that the Permit's proposed use of water: "(h) is in accordance with any [MFL]

and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S."; and (g) "is not expected to cause harm to the water resources of the area." Even with this definitive stipulation, FSC attempted throughout the hearing to elicit testimony regarding the fact that there is an MFL for the Lower Santa Fe River.

57. Even so, regardless of the above stipulation, the Santa Fe/Ichetucknee MFL Recovery Strategy, which is an adopted rule, expressly states that "renewal applicants that demonstrate a potential impact to the MFL water bodies based on the requested allocation shall be considered consistent with the recovery strategy and shall be issued a permit for duration of no more than five years, provided the applicant meets all other existing conditions for issuance." Because this is a permit renewal with a five-year term with no increase in allocation, the District must follow the adopted rules and consider the Permit to be consistent with the MFL Recovery Strategy.

58. Further, even if a potential impact to the MFL water bodies were demonstrated, the Permit still could not be denied based on the MFL or MFL Recovery Strategy, so long as it satisfied all other applicable permitting criteria, since it is a five-year permit renewal with no increase in allocation. Any evidence or testimony relating to MFL issues for the Lower Santa Fe River and associated priority springs was irrelevant and immaterial based on the parties' stipulations, and the Permit cannot be denied on that basis pursuant to the adopted rules.

59. Regardless, as explained in the Conclusions of Law below, Seven Springs presented its prima facie case demonstrating entitlement to the Permit by entering into evidence the application and supporting materials for the Permit. FSC did not present any competent and substantial evidence that the Permit failed to comply with, or should otherwise be denied based on, any MFL or related MFL Recovery Strategy. FSC's conclusory suggestion that

because there is an MFL and MFL Recovery Strategy in place for the Lower Santa Fe River, no withdrawal from that area can be considered consistent with the public interest is without any support. FSC did not point to any legal or factual support for its contention that the existence of an MFL and Recovery Strategy for the Lower Santa Fe River means that the Permit cannot be considered consistent with the public interest.

60. In summary, FSC did not, by a preponderance of the competent and substantial evidence, rebut Seven Springs' prima facie case of reasonable assurance, including the "consistent with the public interest" criterion set forth in section 373.223(1)(c) and rule 40B-2.301(1)(c).

CONCLUSIONS OF LAW

Jurisdiction

61. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. *See* §§ 120.569 and 120.57, Fla. Stat.

Nature of the Proceeding

62. This is a de novo proceeding, intended to formulate final agency action and not to review action taken earlier and/or preliminarily. *See Young v. Dep't of Cmty. Aff.*, 625 So. 2d 831, 833 (Fla. 1993); *Hamilton Cnty. Bd. of Cnty. Comm'rs v. Dep't of Env't Regul.*, 587 So. 2d 1378, 1387 (Fla. 1st DCA 1991).

Standing

63. It is well-established that to demonstrate an entity has a substantial interest in the outcome of a proceeding, two things must be shown. First, there must be an injury-in-fact of sufficient immediacy to entitle one to a hearing. Second, it must be shown that the substantial injury is of a type or

nature which the proceeding is designed to protect. The first has to do with the degree of injury, and the second with the nature of the injury. *See Agrico Chem. Co. v. Dep't of Env't Regul.*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), *rev. den.*, 415 So. 2d 1359 (Fla. 1982).

64. *Agrico* was not intended as a barrier to the participation in proceedings under chapter 120, Florida Statutes, by persons who are affected by the potential and foreseeable results of agency action. *See Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1082-1083 (Fla. 2d DCA 2009)("[s]tanding is a legal concept that requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly."). Rather, the intent of *Agrico* was to preclude parties from intervening in a proceeding where those parties' substantial interests are remote and speculative. *See Vill. Park Mobile Home Ass'n v. Dep't of Bus. Regul.*, 506 So. 2d 426, 433 (Fla. 1st DCA 1987).

65. Standing is a forward-looking concept, not to be confused with prevailing on the merits. In substantial interest cases, the question is whether the party's substantial interests "could be" affected by the proposed agency action, or whether the party's substantial interests "could reasonably be affected by the proposed activities." *See Palm Beach Cnty. Env't Coal. v. Dep't of Env't Prot.*, 14 So. 3d 1076, 1078 (Fla. 4th DCA 2009); *St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist.*, 54 So. 3d 1051, 1054 (Fla. 5th DCA 2011).

66. FSC must prove its associational standing by satisfying the three-pronged test for environmental associational standing established in *Friends of the Everglades, Inc. v. Board of Trustees of the Internal Improvement Trust Fund*, 595 So. 2d 186 (Fla. 1st DCA 1992). In *Friends*, the court held that an environmental organization must meet both the two-pronged test for

standing of *Agrico*, and the test for standing of associations under *Florida Homebuilders Ass'n v. Department of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982).

67. FSC proved its environmental associational standing by demonstrating: 1) that a substantial number of its members, although not necessarily a majority, were substantially affected by the challenged agency action concerning issuance of the Permit; 2) that the agency action it sought to challenge was within FSC's general scope of interest and activity; and 3) that the relief it requested was of the type appropriate for it to receive on behalf of its members. *See St. Johns Riverkeeper*, 54 So. 3d at 1054.

68. Florida appellate courts have ruled there is no bright-line test for determining the "substantial number" requirement. *See Hillsborough Cnty. v. Fla. Rest. Ass'n*, 603 So. 2d 587 (Fla. 2d DCA 1992)("[w]e do not find that a specific number or percentage is required in order to meet the standing requirement of *Florida Home Builders*"). Courts have found associational standing where a small fraction of the owners represented by the organization alleged that they would be affected by the proposed agency action. *See Fed'n of Mobile Home Owners of Fla., Inc. v. Dep't of Bus. Regul.*, 479 So. 2d 252, 254 (Fla. 2d DCA 1985).

69. The preponderance of the record evidence demonstrated that FSC has standing. When weighing the record evidence, the issue of standing should not be mixed with the issue of prevailing on the merits. *See St. Johns Riverkeeper*, 54 So. 3d at 1054; *see also Reily Enters., LLC v. Fla. Dep't of Env't Prot.*, 990 So. 2d 1248 (Fla. 4th DCA 2008). The record evidence showed that FSC's members are involved in the organization to protect Florida's springs for their use and enjoyment. The challenged proposed agency action could reasonably affect springs and a spring-fed river. Many FSC members

use the river and springs that could be affected, and 661 surveyed members expressed concern about the proposed agency action.

Burden and Standard of Proof

70. Section 120.569(2)(p) provides that:

For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding is for the permit applicant to present a prima facie case demonstrating entitlement to the license, permit, or conceptual approval, followed by the agency. This demonstration may be made by entering into evidence the application and relevant material submitted to the agency in support of the application, and the agency's staff report or notice of intent to approve the permit, license, or conceptual approval. Subsequent to the presentation of the applicant's prima facie case and any direct evidence submitted by the agency, the petitioner initiating the action challenging the issuance of the permit, license, or conceptual approval has the burden of ultimate persuasion and has the burden of going forward to prove the case in opposition to the license, permit, or conceptual approval through the presentation of competent and substantial evidence.

71. Under section 120.569(2)(p), Seven Springs had the initial burden of going forward to demonstrate its prima facie entitlement to the Permit. The burden then shifted to FSC to prove its case in opposition and to demonstrate, by a preponderance of the competent substantial evidence, that Seven Springs did not provide reasonable assurance of entitlement to the Permit.

72. Seven Springs met its burden under section 120.569(2)(p) to present a prima facie case demonstrating entitlement to the Permit by entering into evidence the Application and supporting materials, as well as the District's Technical Staff Report. In addition, Seven Springs and the District presented persuasive, competent, and substantial evidence through the testimony of the experts, Mr. Brown and Mr. Zwanka.

73. Seven Springs having demonstrated its prima facie case for entitlement to the Permit, the burden shifted to FSC to prove its case in opposition, and the ultimate burden of persuasion rested with FSC to prove its case in opposition by a preponderance of the competent substantial evidence. Speculation about what "might" occur is not sufficient to satisfy FSC's burden to show, by a preponderance of the evidence, that Seven Springs did not provide reasonable assurance regarding the grounds on which FSC challenged the Permit. *See FINR II, Inc. v. CF Indus., Inc.*, Case No. 11-6495 (Fla. DOAH Apr. 30, 2012; Fla. DEP June 8, 2012), *aff'd*, 118 So. 3d 809 (Fla. 1st DCA 2013); *see also Menorah Manor, Inc. v. Ag. for Health Care Admin.*, 908 So. 2d 1100, 1104 (Fla. 1st DCA 2005). FSC's failure to meet this ultimate burden of persuasion would mean that Seven Springs prevailed in this proceeding. *See Washington Cnty. v. Bay Cnty. & Nw. Water Mgmt. Dist.*, Case Nos. 10-2983, 10-2984, and 10-10100 (Fla. DOAH July 26, 2012; Fla. NFWFMD Sept. 27, 2012).

74. The standard of proof for a finding of fact is a preponderance of the evidence. *See* § 120.57(j), Fla. Stat. ("Findings of fact shall be based upon a preponderance of the evidence, ... and shall be based exclusively on the evidence of record and on matters officially recognized.).

Scope of the Proceeding

75. The parties' JPHS limited the issues of fact and law for adjudication in this proceeding.

76. No party challenged that Seven Springs provided reasonable assurance that its consumptive use of water is a reasonable-beneficial use, in accordance with rules 40B-2.301(1)(a) and (2).

77. No party challenged that Seven Springs provided reasonable assurance that its consumptive use of water would not interfere with any presently existing legal use of water, in accordance with rule 40B-2.301(1)(b).

78. The only permit criterion disputed in this proceeding by FSC was the "consistent with the public interest" criterion in section 373.223(1)(c).

79. Rule 40B-2.301(2), for which the parties stipulated that Seven Springs provided reasonable assurance of compliance, includes the following criteria:

(2) In order to provide reasonable assurances that the consumptive use is reasonable-beneficial, an applicant shall demonstrate that the consumptive use:

(a) Is a quantity that is necessary for economic and efficient use;

(b) Is for a purpose and occurs in a manner that is both reasonable and consistent with the public interest;

(c) Will utilize a water source that is suitable for the consumptive use;

(d) Will utilize a water source that is capable of producing the requested amount;

(e) Except when the use is for human food preparation and direct human consumption, will utilize the lowest quality water source that is suitable for the purpose and is technically, environmentally, and economically feasible;

(f) Will not cause harm to existing offsite land uses resulting from hydrologic alterations;

(g) Will not cause harm to the water resources of the area in any of the following ways:

1. Will not cause harmful water quality impacts to the water source resulting from the withdrawal or diversion;

2. Will not cause harmful water quality impacts from dewatering discharge to receiving waters;

3. Will not cause harmful saline water intrusion or harmful upconing;

4. Will not cause harmful hydrologic alterations to natural systems, including wetlands or other surface waters; and

5. Will not otherwise cause harmful hydrologic alterations to the water resources of the area.

(h) Is in accordance with any minimum flow or level and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S.; and

(i) Will not use water reserved pursuant to Section 373.223(4), F.S.

Based on the stipulations of the parties, none of the above-listed criteria in rule 40B-2.301(2)(a) through (i) were at issue in this proceeding. In addition, the criteria in rule 40B-2.301(1)(a) and (b) were also not at issue in this proceeding based on the stipulations of the parties.

80. FSC is bound by the stipulations limiting the issues to be tried in this case. *See Gunn Plumbing, Inc. v. Dania Bank*, 252 So. 2d 1, 4 (Fla. 1971); *Delgado v. Ag. for Health Care Admin.*, 237 So. 3d 432, 437 (Fla. 1st DCA 2018)(reflecting that a stipulation that limits the issues to be tried amounts

to a binding waiver and elimination of all issues not included). Thus, the scope of this proceeding was limited to whether Seven Springs provided reasonable assurance regarding the public interest criterion in section 373.223(1)(c).

Permitting Criteria and Reasonable Assurance

81. Permit issuance depends on Seven Springs' showing of reasonable assurance that the proposed use of water would meet applicable statutory and rule criteria. Reasonable assurance means "a substantial likelihood that the project will be successfully implemented." *See Metro. Dade Cnty. v. Coscan Fla., Inc.*, 609 So. 2d 644, 648 (Fla. 3d DCA 1992). Reasonable assurance does not require absolute guarantees. Speculation or subjective beliefs are not sufficient to carry the burden of presenting contrary evidence or proving a lack of reasonable assurance necessary to demonstrate that a permit should not be issued. *See FINR II, Inc. v. CF Indus., Inc.*, Case No. 11-6495 (Fla. DOAH Apr. 30, 2012; Fla. DEP June 8, 2012), *aff'd*, 118 So. 3d 809 (Fla. 1st DCA 2013).

82. Section 373.223(1)(c) sets forth a three-pronged test for issuance of water use permits by the District. It provides, in relevant part, that:

- (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.

83. The District adopted rules to comply with this statutory three-prong test. *See Marion Cnty. v. Greene*, 5 So. 3d 775, 777 (Fla. 5th DCA 2009)("The Legislature has granted the District the authority to adopt rules to implement the provisions of law regarding permitting of consumptive uses of water."); *see, e.g.*, Fla. Admin. Code R. 40B-2.301. The District's rules include definitions for "existing legal use," "public interest," and "reasonable-beneficial use" in rule 40B-2.021(4), (7), and (8), respectively.

84. The water use permitting rules include the A.H., which provides details and specifics on how to determine if a water use permit meets the three-prong test. The reasonable assurance required in rule 40B-2.301 is met through application of the standards and criteria set forth in the District's A.H. Rule 40B-2.301(3) provides that "[t]he standards and criteria set forth in the Water Use Permit Applicant's Handbook ... hereby incorporated by reference into this chapter, if met, will provide the reasonable assurances required in Rule 40B-2.301, F.A.C."

85. To determine whether a proposed beverage processing use is reasonable-beneficial and consistent with the public interest, the District adopted section 2.3.4.1, A.H.

86. Section 2.3.4.1, A.H., provides:

In determining whether a proposed beverage processing use is **reasonable-beneficial** and **consistent with the public interest**, the Governing Board will consider the following information:

- (a) Whether there is a need for the requested amount of water;
- (b) The location of the withdrawal;
- (c) The location of the beverage processing facility;

- (d) Plan to convey water from withdrawal facility to beverage processing facility;
- (e) A site plan for the beverage processing facility;
- (f) Existing land use and zoning designations;
- (g) A market analysis;
- (h) Schedule for completion of construction of the beverage processing facility;
- (i) Contractual obligation to provide water for beverage processing;
- (j) Other evidence of physical and financial ability to process the requested amount; and
- (k) Other documentation necessary to complete the application. (Emphasis added).

87. Seven Springs provided reasonable assurance that its proposed use of water is a reasonable-beneficial use and would not interfere with any presently existing legal use of water. *See Fla. Admin. Code R. 40B-2.301(2)* and Findings of Fact 7 through 44, above.

88. Seven Springs provided reasonable assurance that its proposed use is reasonable-beneficial and consistent with the public interest. *See § 2.3.4.1, A.H.,* and Findings of Fact 7 through 44, above.

89. FSC argued that the definition of "public interest" in the District's rules allowed, under subsection (k), consideration of information beyond what is detailed in section 2.3.4.1(a) through (j), A.H. Subsection (k) states that the District will consider "[o]ther documentation necessary to complete the application." This type of permitting requirement is consistently interpreted to mean the type of information that would satisfy section 120.60(1). *See § 120.60(1), Fla. Stat.* ("An application is complete upon receipt of all

requested information ... "). In fact, Mr. Zwanka's understanding was that consideration of the public interest, as defined by District rule, was already a part of the existing special rules for beverage processing in section 2.3.4.1, A.H. Even consideration of "other documentation necessary to complete the application" under subsection (k) is limited to the criteria adopted by rule for issuing water use permits.

90. The undersigned agrees with Mr. Zwanka that the District cannot deny the Permit based on non-rule criteria. *See Collier Cnty. Bd. of Cnty. Comm'rs v. Fla. Fish & Wildlife Cons. Comm'n*, 993 So. 2d 69, 72 (Fla. 2d DCA 2008) ("[A]n agency is required to follow its own rules."). FSC could not point to any rule or statute supporting its contention that the large number of public comments meant that the Permit was not consistent with the public interest. There is no provision in the rules or statutes that the basis of issuance of a water use permit is determined by the number of public comments received.

91. FSC argued that, based on its interpretation of the rules of statutory construction and language in an agency final order, *City of Groveland v. St. Johns River Water Management District and Niagara Bottling Co., LLC*, Case No. 08-4201, FO at pp. 37-39 (Fla. DOAH Aug. 7, 2009; Fla. SJRWMD Sep. 25, 2009), separate and different meanings of "consistent with the public interest" must apply to the first prong (reasonable-beneficial use) and third prong (consistent with the public interest) of the three-prong test.

92. The flaw in FSC's argument is that no search for a different or additional definition of "consistent with the public interest" is necessary since that permit criterion was implemented by the District's adoption of section 2.3.4.1, A.H. The plain language of section 2.3.4.1, A.H., resolved any issues of interpretation of the "reasonable-beneficial" and "consistent with the public interest" prongs with respect to beverage processing permit

applications by defining both in terms of compliance with the specifically-delineated provisions of section 2.3.4.1, A.H. The undersigned agrees with Mr. Zwanka that consideration of the public interest, as defined by District rule, is already a part of the existing special rules for beverage processing in section 2.3.4.1, A.H.

Conclusion

93. For the reasons set forth herein, FSC failed to prove, by a preponderance of competent and substantial evidence, that the proposed use of water is not consistent with the public interest. The only testimony or evidence presented by FSC in support of its allegation that Seven Springs' proposed use of water is not consistent with the public interest were: 1) that the District received approximately 19,000 submittals that purport to be or are labeled as public comments on the Permit application; and 2) that an MFL and MFL Recovery Strategy was adopted for the Lower Santa Fe River.

94. FSC's argument that section 2.3.4.1(k), A.H., is a catch-all that allowed the Permit to be denied based on these issues is without merit. The District's consideration of information under section 2.3.4.1(k), A.H., is still limited to the criteria adopted by rule for the issuance of water use permits, and it cannot deny the Permit based on non-rule criteria. *See, e.g., Council of the Lower Keys v. Charley Toppino & Sons, Inc.*, 429 So. 2d 67 (Fla. 3d DCA 1983) (issuance of a permit must be based solely on compliance with applicable standards and rules); *Port Antigua Townhouse Ass'n v. Dep't of Env't Prot.*, Case No. 00-0137 (Fla. DOAH Nov. 13, 2000; Fla. DEP Dec. 12, 2000), *aff'd*, 806 So. 2d 490 (Fla. 3d DCA 2001)(a permit application will not be denied based on narrow permitting standards, criteria, or requirements that have not been promulgated as a rule).

95. Neither issue raised by FSC is relevant or material to the District's adopted permitting criteria for determining whether a proposed beverage processing use of water is consistent with the public interest. Further, as explained previously, the MFL issue is no longer relevant or material in this proceeding based on the stipulations of the parties.

96. Even so, if any of the issues raised by FSC were relevant to the applicable permitting criteria, the preponderance of competent and substantial evidence in this proceeding still supports a conclusion that the water use proposed by Seven Springs is consistent with the public interest.

97. FSC did not meet its ultimate burden of persuasion under section 120.569(2)(p) in this proceeding to overcome Seven Springs' demonstration of reasonable assurance for issuance of the Permit.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Suwannee River Water Management District enter a final order issuing Water Use Permit No. 2-041-218202-3 to Seven Springs Water Company on the terms and conditions set forth in the Suwannee River Water Management District's February 24, 2021, Technical Staff Report and with the addition of BlueTriton Brands, Inc., as a co-permittee in accordance with the April 11, 2023, Stipulation.

DONE AND ENTERED this 17th day of October, 2023, in Tallahassee, Leon County, Florida.



FRANCINE M. FFOLKES
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2023.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

FLORIDA SPRINGS COUNCIL, Inc.,

Petitioner,

DOAH Case No. 21-1180

vs.

SEVEN SPRINGS WATER COMPANY AND
SUWANNEE RIVER WATER MANAGEMENT
DISTRICT,

Respondents.

_____ /

FLORIDA SPRINGS COUNCIL’S EXCEPTIONS TO THE RECOMMENDED ORDER

Florida Springs Council, Inc., (“FSC”) pursuant to Sections 120.57(1)(b) and 120.57(1)(k), Fla. Stats., hereby files its Exceptions to the Recommended Order filed on October 17, 2023, in the above-styled case, and states as follows:

Statutory Requirements for Consideration of Exceptions

Sections 120.57(1)(b) and 120.57(1)(k) of the Florida Statutes authorize the parties to file Exceptions to the Recommended Order submitted in this Case. Specifically, Section 120.57(1)(k) requires the Suwannee River Water Management District (“District”) to include in its final order an explicit ruling on each of the following exceptions, providing the exception identifies the disputed portion of the recommended order by page number or paragraph, identifies the

legal basis for the exception, and includes appropriate and specific citations to the record. Failure to rule explicitly on each properly filed exception can result in remand to the District to provide such rulings. See Boundy v. School Bd. Of Miami-Dade County, 994 So.2d 433 (Fla. 3d DCA 2008).

Introduction

In this case FSC is challenging whether Seven Springs Water Company's ("Seven Springs") proposed water use renewal permit is "consistent with the public interest" as required in Section 373.223(1)(c), Fla. Stat., and District Rule 40B-2.301(1)(c). In this proceeding FSC has raised two main issues as to why this public interest requirement has not been met and is taking exception to the Recommended Order's conclusions of law on each issue.

First, FSC will be taking exception to the Recommended Order's conclusions of law that there is no District rule that requires consideration of public comments and that Section 2.3.4.1., A.H., prevents consideration of Rule 40B-2.301(1)(c) when determining whether the proposed water use is consistent with the public interest.

Under Rule 40B-2.301(1) the District has adopted a three-part test for water use permitting, as set forth in Section 373.223(1), Fla. Stat. The third-prong of the three-part test is that the proposed water use must be "consistent with the

public interest.” The District has defined the term “public interest” in District Rule 40B-2.021(7) to mean “those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or State.” FSC contends that the public comments on this Permit are a good barometer of “those broad-based interests and concerns” and therefore must be considered. FSC also contends that Section 2.3.4.1 of the Administrative Handbook establishes different public interest requirements and is in addition to the requirement in Rule 40B-2.301(1)(a).

Second, FSC will be taking exception to the Recommended Order’s conclusions of law that “there is no legal or factual support that the existence of an MFL or MFL Recovery Strategy for the Lower Santa Fe River means that the Permit cannot be consistent with the public interest.”

Under Section 373.042(1)(a), Fla. Stat., “[t]he minimum flow for a given watercourse is the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.” The Lower Santa Fe River and its associated have a designated MFL. The evidence in this case shows that there will be an increase in the actual withdrawal of water at the Seven Springs site, even though there is not an increase in the permitted allocation. Therefore, by the definition of MFL, this actual increase, or further withdrawal, is a

significant harm to the water resources or ecology of the area. Because there is a very significant amount of public interest in this Permit, the existence of additional harm is very relevant and material in determining whether this proposed water use is consistent with the public interest.

The third-prong “consistent with the public interest” test must be distinguished from the first-prong “reasonable-beneficial” test. Because there is no increase in the permitted allocation, District rules for the first-prong test (requiring the water use be “reasonable-beneficial”) allow a limited-duration permit of 5 years even though the proposed withdrawal demonstrates a potential impact to the MFL water bodies. There is no such exception for these potential impacts in the rules under the third-prong public interest requirements.

Exceptions

Exception 1 – FSC takes exception to the statement in Paragraphs 52 and 90 of the Recommended Order which reads as follows:

“FSC could not point to any rule or statute supporting its contention that the large number of public comments meant that the Permit was not consistent with the public interest. There is no provision in the rules or statutes that the basis of issuance of a water use permit is determined by the number of public comments received.”

The Recommended Order is incorrect. There are provisions in the statutes and rules that require consideration of public comments when determining

whether a water use permit should be issued. In paragraphs 6 and 37-43 of its Proposed Recommended Order (PRO), FSC points to Section 373.223(1)(c) of the Florida Statutes and Rule 40B-2.301(1)(c) of the Florida Administrative Code which require that persons seeking a permit to use water must show that the use is “consistent with the public interest.” FSC’s PRO points out Rule 40B-2.021(7) that defines the term “public interest” as “those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or State.” Therefore, the District established criteria on how to interpret Rule 40B-2.301(1)(c). Consequently, Rule 40B-2.301(1)(c) requires that reasonable assurance must be provided that the proposed water use is consistent with “those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or State.”

The receipt of 19,000 comments from the public concerning the Permit is certainly a material and relevant barometer of the “broad-based interests and concerns that are collectively shared by members of a community or residents of the District or State.”

FSC’s PRO argues Section 373.016(3) of the Florida Statutes provides that the public “interests and concerns” expressed in the public comments to be

considered must be relevant to the statutory policies to be addressed under the water use permitting program.

Exception 2 – FSC takes exception to the conclusions of law in Paragraphs 88 and 92 of the Recommended Order which state as follows:

88. Seven Springs provided reasonable assurance that its proposed use is consistent with the public interest. See Section 2.3.4.1., A.H., and Findings of Fact 7 through 44, above.

92. The flaw in FSC’s argument is that no search for a different or additional definition of “consistent with the public interest” is necessary since that permit criterion was implemented by the District’s adoption of section 2.3.4.1., A.H. The plain language of section 2.3.4.1., A.H., resolved any issues of interpretation of the “reasonable-beneficial” and “consistent with the public interest” prongs with respect to beverage processing permit applications by defining both in terms of compliance with specifically delineated provisions of section 2.3.4.1, A.H. The undersigned agrees with Mr. Zwanka that consideration of the public interest, as defined by District rule, is already a part of the existing special rules for beverage processing in section 2.3.4.1., A.H.

Thus, the Recommended Order concludes that District Rule 4.3.2.1. in the Administrative Handbook is the only rule to consider when determining whether a Permit is “consistent with the public interest.” The Recommended Order concludes that Rule 40B-2.301(1)(c), requiring the District consider “broad-based interests and concerns that are collectively shared by members of a community or residents of the District or State”

has no effect and must be ignored when considering whether the Permit is “consistent with the public interest.”¹ This is an incorrect conclusion of law.

Section 2.3.4.1 reads as follows:

2.3.4.1

In determining whether a proposed beverage processing use is reasonable- beneficial and consistent with the public interest, the Governing Board will consider the following information:

- (a) Whether there is a need for the requested amount of water;
- (b) The location of the withdrawal;
- (c) The location of the beverage processing facility;
- (d) Plan to convey water from the withdrawal facility to the beverage processing facility;
- (e) A site plan for the beverage processing facility;
- (f) Existing land use and zoning designations;
- (g) A market analysis;
- (h) Schedule for completion of construction of the beverage processing facility;
- (i) Contractual obligation to provide water for beverage processing;
- (j) Other evidence of physical and financial ability to process the requested amount; and
- (k) Other documentation necessary to complete the application.

Section 2.3.4.1 does not state that it is implementing Rule 40B-2.301(1)(c).

Nor does Section 2.3.4.1 state that it replaces or eliminates the requirement in

Rule 40B-2.301(1)(c) that reasonable assurance must be shown that the proposed

¹ See paragraph 53 of the Recommended Order, where Zwanka, the District Division Manager, explains that the number or nature of the public comments “were not part of the rule I follow to determine whether an application meets the conditions for issuance” and that “the public interest is contained in our special rules for beverage processing” which the District is required to follow.

water use is consistent with the broad-based interest and concerns of a community or residents of the District or the State.

There are several reasons why Section 2.3.4.1 should not be considered a replacement or elimination of the third prong requirement in Rule 40B-2.301(1)(c). First, there is nothing in Section 2.3.4.1 that specifically addresses whether the Permit is consistent with “broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State” as the term “public interest” is defined in Rule 40B-2.021(7). The criteria in Section 2.3.4.1 make no evaluation of the broad-based interests and concerns of the public. Also, Section 2.3.4.1 does not have criteria about whether there is public interest from a community or from persons in the District or State.

Second, Section 2.3.4.1 simply requires that the Governing Board “will consider” items (a) through (k) when considering whether a water use is “consistent with the public interest” and whether the use is reasonable-beneficial (Section 2.3.4.1. indicates that the items are criteria for both “consistent with the public interest” and “reasonable-beneficial”). This Handbook Section does not limit the Governing Board to “only consider” items (a) through (k) when determining whether the proposed water use for a water bottling facility is “consistent with the public interest.” This Handbook Section does not state that

the test under Section 373.223(1)(c), Fla. Stat., and Rule 40B-2.301(1)(c) can be ignored if (a) through (k) is met. In this case, there are extensive “broad-based interests and concerns” expressed by residents of the District and the State that do not fit neatly within one of these considerations. Section 2.3.4.1 does not preclude consideration of these other interests and concerns. See Dept. of Transportation v. Southtrust Bank, 886 So.2d 393, 395 (1st DCA 2004) ([A] rule should not be construed in such a way as not to make another rule meaningless); See also Kirk v. State, 303So.3d 604, 606 (Fla. 1st DCA 2020) (Under the doctrine of *in pari materia*, statutes [and rules] should be interpreted in a manner that would harmonize the applicable law.)

Third, even if Section 2.3.4.1 could be interpreted to limit consideration of whether a proposed water use is “consistent with the public interest” as to items (a) through (j), item (k) directs the Governing Board to consider “other documentation necessary to complete the application.” “Other documentation” can reasonably be interpreted to mean documentation necessary to satisfy Section 373.223(1)(c), Fla. Stat., and Rule 40B-2.301(1)(c), documentation of the concerns and interests of the approximately 19,000 comments from the public concerning this proposed use of water. It was acknowledged by District and Seven Springs witnesses that section (k) requires consideration of all the other

criteria in Rule 40B-2. Tr. 60, 75; Zwanka depo 31, 68, 106, 113; Brown depo 60, 73-75.

Because Rule 40B-2.301(1)(c) is separate from and in addition to Section 2.3.4.1 of the Handbook, it cannot be ignored. See Gulfstream Park Racing Ass'n, Inc., v. Tampa Bay Downs, Inc., 948 So.2d 599, 606 (Fla. 2006) (citing Hechtman v. Nations Title Ins. of N.Y., 840 So.2d 996 (Fla. 2003) (“It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase and sentence, and part of [a] statute, if possible, and words in a statute should not be construed as mere surplusage.”). See also State v. Goode, 830 So.2d 817, 824 (Fla. 2002) (“a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that will render part of a statute meaningless.”).

Finally, if the District ignores the application of Rule 40B-2.301(1)(c) in this case, it is violating the due process rights of members of FSC and the public who sought to have the District to consider their concerns about this Permit, as is their right under Rule 40B-2.301(1)(c). See Armesto v. Florida State University, 615 So.2d 707, 709 (Fla. 3d DCA 1993) ((An agency violates a person’s due process rights if it ignores rules it promulgated which affect individual rights.)).

In this case, the approximately 19,000 public comments that the District received on its website that overwhelmingly opposed the Permit indicate that the Permit is not consistent with the public interest, that it is not consistent with “those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State.” Neither Seven Springs nor the District has done an evaluation of what these “interests and concerns” are in this case, nor whether the “interests and concerns” are relevant to the overall objectives of the District, including any harm or potential impacts to the water. Such an evaluation was not done despite the separate “third prong” requirement of the water use permitting test. Therefore, reasonable assurance has not been provided that Rule 40B-2.301(1)(c) has been met.

Exception 3 – FSC takes exception to the failure of the Recommended Order to make findings of fact as to whether Seven Springs’ proposed use of water was consistent with “those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State” as required in Rule 40B-2.301(1)(c).

In paragraphs 7 through 12 of its Proposed Recommended Order FSC proposes findings of fact based on the record concerning the approximate 19,000 public comments received by the District concerning Seven Springs’ proposed water use. The proposed findings of fact included that approximately 19,000 comments were submitted to the District; that an overwhelming amount of the

public comments opposed the Permit; that the District did not review most of the comments; and that the public comments did not factor into the District's evaluation of the Permit and public interest issue. The Recommended Order did not make findings of fact addressing these matters.

An evaluation of the public comments is necessary to determine if Rule 40B-2.301(1)(c) is met – that is, whether reasonable assurances have been provided that the proposed water use is consistent with “those broad-based concerns that are collectively shared by members of a community or residents of the District or the State.”

The failure to address these relevant and material findings of fact adversely impacts the due process and equal protection rights of members of FSC and the public. See Gentry v. Dep't of Prof. and Occupational Regulations, State Bd. Of Med. Examiners, 283 So.2d 386, 387 (Fla. 1st DCA 1973) (“It has been repeatedly held by the courts of this state that in order to assure due process and equal protection of the law, every final order entered by an administrative agency in the exercise of its quasi-judicial functions must contain specific findings of fact upon which its ultimate action is taken.”). Therefore, the District should provide findings of fact on these matters based on the record.

Exception 4 – FSC takes exception to paragraphs 54 through 59 of the Recommended Order that is summarized by the statement at the end of paragraph 59 – “FSC did not point to any legal or factual support for its contention that the existence of an MFL and MFL Recovery Strategy for the Lower Santa Fe River means that the Permit cannot be consistent with the public interest.”

Factual and legal support was provided as to why the designation of an MFL for the lower Santa Fe River Basin and the resulting MFL Recovery Strategy is material and relevant concerning whether the proposed water use is “consistent with the public interest,” the third-prong of the water use permitting test. The evidence shows that because of this MFL designation, and because actual increases in withdrawals will occur, under the definition of MFL there is significant harm to Lower Santa Fe River and its associated springs. While this potential impact is allowed under the prong-one reasonable-beneficial test if the duration of the Permit is limited to 5 years, this impact can be considered under the third-prong “consistent with the public interest” test.

The record in this case establishes that a “minimum flow and level” (“MFL”) has been established for the Lower Santa Fe River and its associated springs. Zwanka depo p. 36, 37; “Recovery Strategy: Lower Santa Fe River Basin” pages 1,2 (Pet. Ex. 5, officially recognized by order issued May 10,2023). The MFL is the limit at which further withdrawals from the Lower Santa Fe River and its

associated springs will be significantly harmful to the water resources or the ecology of the area. Zanka depo p. 36, 37; "Recovery Strategy: Lower Santa Fe River Basin" pages 1, 2; Section 373.042(1)(a), Fla. Stat.

As recognized by the Recommended Order in paragraph 57, there is an MFL Recovery Strategy for the Lower Santa Fe River and associated springs that has been adopted by rule. (See Rule 62-42.300(1)(d) that adopts by reference Section 6.0 of the Lower Santa Fe River Basin Recovery Strategy). As noted in paragraph 57 of the Recommended Order, that rule (Section 6.0-5d)ii expressly states that for renewal permits with no increase in allocation "[r]enewal applicants **that demonstrate a potential impact to the MFL water bodies based on the requested allocation** shall be considered consistent with the recovery strategy and shall be issued a permit for duration of no more than five years, provided the applicant meets all other existing conditions for issuance." (Emphasis supplied).

In paragraph 57 and 58 the Recommended Order goes on to find that Seven Springs is seeking a permit renewal for only a five-year term with no increase in allocation. The relevance of this five-year limitation is identified below.

DEP has determined that the MFL for the Lower Santa Fe River and its associated springs is not being met. Zwanka depo p. 36, 37; "Recovery Strategy:

Lower Santa Fe River Basin” pages 2, 17. Therefore, by law any further withdrawals from the Lower Santa Fe River or its associated springs may be considered to cause significant harm to the water resources or ecology of the area. Zwanka depo p. 36, 37; “Recovery Strategy: Lower Santa Fe River Basin” page 1, 2.

Initially, Seven Springs had requested renewal of a water use permit for withdrawal of groundwater close to Ginnie Springs and the Lower Santa Fe River for a duration of 20 years. Dist./SS Jt Ex. 1a. In paragraph 7 of its request for additional information concerning the Permit Renewal application (Dist/SS Jt. Ex 2, page 2) the District stated the following:

7. Minimum Flows and Levels (MFLs) for the Lower Santa Fe and Ichetucknee Rivers limit groundwater withdrawals in the region to those that have no impact on the MFL water bodies. Provide an analysis of river flow changes at the Santa Fe River near Ft. White and Ichetucknee River at U.S. 27 guages (sic) from the requested allocation and modify the requested allocation or duration as set forth below:

- a. Permit renewals with no increase in allocation which demonstrate an impact to the Lower Santa Fe River Minimum Flow and Level shall be considered consistent with the Recovery Strategy and shall be issued a permit for a duration of no more than 5 years.
- b. An applicant shall be issued a permit for the duration of no more than 20 years if the impact to the MFL waterbody will be eliminated or offset. [62-42.300(1)(d). F.A.C.]

Seven Springs responded to RAI request number 7 as follows (Dist/SS Jt. Ex, 3, page 3):

No increase in allocation is requested in conjunction with the current permit renewal. The applicant has reduced the requested permit duration to 5 years.

Therefore, Seven Springs opted to seek a 5-year permit renewal with no increase in the permitted allocation, but which demonstrated a potential impact to the Lower Santa Fe River MFL instead of the 20 year permit in which the impact to the MFL would be eliminated or offset.

The average withdrawal by Seven Springs under its previous Permit was between 300,000 to 400,000 gallons per day (“gpd”). T. 169, Brown depo p. 93. The allowed allocation for withdrawal under the proposed Permit is 984,000 gpd. T. 169, SS/Dist. Jt. Ex. 18 (Permit)

The bottling plant has recently been renovated to increase its ability to use the water in its requested allocation and meet the District’s requirement that Seven Springs provide evidence of its physical ability to process the requested allocation of water. See SS/Dist. Jt. Ex. 10, page 3 (District Staff March 2, 2020 email to the Governing Board that originally recommended denial of the Permit, wherein the District Staff stated that “[t]he applicant has asserted that the facility

is being renovated to have the physical ability to process the requested allocation” but has failed to provide such evidence.)

Such evidence has now been provided. See SS/Dist. Jt. Ex. 13 (July 30, 2020 Thibodeau Report, in which Seven Springs provides evidence that the bottling plant will be expanded, replacing existing packaging lines with higher speed lines and adding additional lines with room for further expansion. See also Recommended Order, pages 14, 15 in Seven Springs Water Company v. Suwannee River Water Management District, DOAH Case No. 20-3581, issued January 20, 2021, citing Seven Springs’ responses to requests for information concerning the capacity of the facility to use the requested allocation: that over \$40 million has been spent on updating and renovating the water processing facility; that the old production line was replaced and could produce more bottled water; and that additional lines are being added that “will have the capacity to utilize all of the proposed/permitted annual average daily water allocation of 1,152,000 gallons.”

Because of the renovations at the bottling facility, the actual withdrawals of groundwater near the Lower Santa Fe would increase from 300,000 to 400,000 gallons a day to close to its permitted allocation of 984,000 gallons per day. T. 169. Such an increase would cause a larger potential impact to the Lower Santa

Fe River and associated springs than has historically occurred, and result in further significant harm to the water resources or ecology of the area.

The key issue in this case is that although renewal of this Permit is not a request to increase the permitted allocated amount of water withdrawn for use, the actual amount of water that will be withdrawn as authorized by this Permit will increase because of the expanded plant capacity. An MFL has been established for the Lower Santa Fe River and its associated springs. Therefore, by law, this increase in withdrawals will cause a significant harm to the MFL water bodies.

The District and Seven Springs contend that the proposed use of water in this case is in accordance with the MFL recovery strategy for the Lower Santa Fe River and its associated springs based on compliance with Section 6.0-5d)ii of the Santa Fe River Basin Recovery Strategy, which was adopted by reference in Rule 62-42.300(1)(d). They are correct. Compliance with this MFL strategy is a requirement of the first prong of the water use permitting requirement, that the water use must be “reasonable-beneficial” under District Rule 40-2.301(2)(h). But compliance with the prong one “reasonable-beneficial” requirement allows potential impacts to the Lower Santa Fe River and its associated springs as long as the permitted allocated withdrawal is not increased and the duration of the

permit is limited to 5 years. In this case, because the actual amount of withdrawal will be increased, additional harm will occur. This additional harm is not addressed by the first prong “reasonable-beneficial” requirement. However, this potential impact can be considered on an individual and cumulative basis under the third prong “consistent with the public interest” requirement if it is one of “those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State”

The Recommended Order noted that the analysis and groundwater monitoring showed that there would be a *di minimus* change in spring discharge from withdrawals under the Permit (paragraph 17). However, it was enough of a change that the District required a 5 year renewal permit instead of a 20 year permit, indicating there is a potential impact from this proposed water withdrawal.

Exception 5 – FSC takes exception to the Recommended Order’s finding in paragraph 59 that “FSC’s conclusionary suggestion that because there is an MFL and MFL Recovery Strategy in place for the Lower Santa Fe River, no withdrawal from that area can be considered consistent with the public interest is without support.”

Although awkwardly stated, the Recommended Order is apparently finding that FSC is contending that there must be no withdrawal of water at this site because of the existence of the MFL and MFL Recovery Strategy. This finding is

directly contrary to FSC's position as stated in paragraphs 65 through 69 of FSC's Proposed Recommended Order.

Specifically, FSC noted that pursuant to Department of Environmental Protection Rule 62-42.300(1)(e), the MFL for the Lower Santa Fe River and its associated springs is being re-evaluated. Therefore, FSC recommended that Seven Springs' water use renewal permit be issued, but with a condition to either limit withdrawal to the historical withdrawal rates (300 to 400 mgd), or require Seven Springs to offset any withdrawals above the historical withdrawal rates until the adoption of the new MFL.

Exception 6 – FSC takes exception to paragraphs 54 through 56 of the Recommended Order. The ALJ concluded that because FSC stipulated that it would not challenge whether Seven Springs has provided reasonable assurance that its proposed use of water was a reasonable-beneficial use under Rule 40B-2.301(1)(a), FSC could not address issues concerning the MFL, the MFL Recovery Strategy, or matters relating to harm to water resources under Rule 40B-2.301(1)(c).

Paragraph V. 12 of the Pre-Hearing Stipulation under a Section entitled "A Concise Statement of Those Facts Which Are Admitted and Will Require No Proof at Hearing" has a statement related to the first prong of three-part water use permitting test. It states that "No party challenges that Seven Springs has provided reasonable assurances that its consumptive use of water is a reasonable-beneficial use, in accordance with Rule 40B-2.301(1)(a) and (2),

F.A.C.” Paragraph 13 also has similar language concerning no party challenging the second prong of the water use permitting test, that use of the water will not interfere with any presently existing legal use under Rule 40B-2.301(1)(b). These stipulations indicate that FSC’s challenge is limited to the third prong issue. But these stipulations do not preclude FSC from pursuing its third prong challenge under Rule 40B-2.301(1)(c), or any facts related to the third-prong issue that may be relevant because of the existence of the MFL. Actually, Section VIII 3 of the Pre-Hearing Stipulation specifically reserved for determination “[w]hether the consideration of the Minimum Flows and Levels (MFLs) for the Lower Santa Fe River and the public comments received by the District are relevant and material to this proceeding.”

It is basic statutory construction that if a statute or rule contains a three-part test to achieve the statutory goal, each test must be given significance, and must not be construed as mere surplusage. See Gulfstream Park Racing Ass’n, Inc., v. Tampa Bay Downs, Inc., 948 So.2d 599, 606 (Fla. 2006) (citing Hechtman v. Nations Title Ins. of N.Y., 840 So.2d 996 (Fla. 2003). See also State v. Goode, 830 So.2d 817, 824 (Fla. 2002) (“a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that will render part of a statute meaningless.”). This cannon of

statutory construction has specifically been applied to the three-pronged water use permitting requirement in Section 373.223(1)(c), Fla. Stat. See City of Groveland v. St. Johns River Water Management District and Niagara Bottling Company, LLC, DOAH Case No. 08-4201, SJRWMD Final Order 2009-59 Sept. 25, 2009 at 37-39. Consequently, the third-prong “consistent with the public interest” requirement must be different, or in addition to, the first-prong reasonable-beneficial test.

At the hearing, it was argued by Seven Springs and the District that because FSC stipulated it would not challenge the first prong of the water use permitting test, it was precluded from raising requirements that may relate to both the first and third prongs. Specifically, it was noted that District Rule 40B-2.301(2), which lists the requirements to show the Permit meets the first prong “reasonable-beneficial” test, includes paragraph (h), which requires that the consumptive use of water to be “in accordance with any minimum flow or level and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S.” Seven Springs may be “in accordance with” the MFL strategy as required in Section 6.0-5d)ii and therefore meet the first prong “reasonable-beneficial” test. But that does not preclude consideration under the third-prong public interest test of MFL facts and issues not addressed by the “reasonable-beneficial”

requirement under Rule 40B-2.301(2)(h), such as the impacts and harm caused by the additional actual withdrawals that will occur if the Renewal Permit is issued (as described above in Exception 4). By law, any further withdrawals from an MFL-designated water body such as the Lower Santa Fe River and its associated springs will be significantly harmful to the water resources or ecology of the area. See Section 373.042(1)(a), Fla. Stat.

Likewise concerning the “reasonable-beneficial” requirement under paragraph (g) of the reasonable-beneficial test in Rule 40B-2.301(2), which states that the consumptive use of water “will not cause harm to the water resources of the area.” While FSC did not challenge the reasonable-beneficial test, FSC did not stipulate that as a matter of law harm to water resources could not be considered under the separate third prong “consistent with the public interest” test. Again, because an MFL has been established for Lower Santa Fe River and its associated springs, a limit has been established at which “any further withdrawals would be significantly harmful to the water resources and or ecology of the area.” Section 373.042(1)(a), Fla. Stat. The record in this case shows that there will be an actual increase in withdrawals in this case because of the plant renovations. Also, the record shows that the District determined a 5 year permit is appropriate in this

case for a renewal permit that demonstrates “a potential impact to the MFL water bodies” in accordance with Section 6.0-5d)ii of the MFL Recovery Strategy.

Interestingly, this case reveals an inconsistency in the rules concerning how to address harm to water resources in a renewal of a water use permit withdrawing water from an MFL-designated water body. The MFL Recovery Strategy, Section 6.0-5d)ii (adopted by rule in Rule 42-300(1)(d), Fla. Admin. Code) allows renewal permits that “demonstrate a potential impact to MFL water bodies” if the permit is limited to 5 years. Yet, under the reasonable-beneficial test under Rule 40B-2.301(2)(g), water use permits are not to be issued to withdrawals that will cause harm to the water resources.

FSC is not challenging this inconsistent interpretation of the first prong reasonable-beneficial requirement. But as has been stated above, the evidence shows that Seven Springs will be increasing its actual withdrawal of water, resulting in more impact to the water resources or ecology of the area than is already occurring. Such an increase in actual withdrawal is allowed under the first prong “reasonable-beneficial” test in the District rules because it is in compliance with the MFL Recovery Strategy since the Permit is limited to 5 years. However, any further withdrawal from an MFL water body by law under Section 373.223(1)(a), Fla. Stat., is a significant harm. Approximately 19,000 public

comments have overwhelmingly expressed opposition to this proposed withdrawal. A proposed withdrawal of water that is legally a significant harm to the water resources is relevant and material as to whether the proposed Permit Renewal is “consistent with the public interest” under the separate third prong of the water use test.

FSC’s acknowledgment under the Pre-Hearing Stipulation that it was not challenging the criteria under first prong “reasonable-beneficial” test does not preclude consideration of the MFL issues that are relevant and material to the third prong “consistent with the public interest” test.

Because the Recommended Order’s conclusions of law interpreting the Pre-Hearing Stipulation are based on the improper interpretation of the applicability of the third-prong water test requirement under District Rule 40B-2.301(1)(c), as opposed to the applicability of the first-prong requirement under District Rule 40B-2.301(1)(a), the District has substantive jurisdiction to rule on this exception. See Section 120.57(1)(k), Fla. Stat.

Conclusion

The Recommended Order erred by ignoring Section 373.223(1)(c), Fla. Stat., and Rule 40B-2.301(1)(c), the third-prong of the water use permitting test. Under this statute and rule, the large amount of public interest in this Permit

should be considered when deciding upon this Permit. Limiting consideration of whether the Permit meets the third-prong public interest test to only the beverage processing requirements in 2.3.4.1., A.H., leaves the District with no permitting criteria for the third-prong public interest test for all other water uses. As stated on page 27 of the Recommended Order "[a]n agency must follow its own rules."

Also, the District must recognize that an MFL Recovery Strategy has been adopted for the Lower Santa Fe River and its associated springs, and so, by rule, any further withdrawals will cause significant harm to these waters. Here, the proposed withdrawal of water is not precluded under the first-prong reasonable-beneficial test for a limit of 5 years because it is not an increase in permitted allocated withdrawal. Yet the evidence shows there will be an increase in the actual withdrawals from these MFL waters. Considerable public interest has been expressed opposing this Permit. A new MFL that may be more limiting or less limiting on withdrawals is to be adopted soon. An appropriate application of Rule 40B-2.301(1)(c) in this case is to issue the Permit with a condition that the water withdrawal be limited to its actual historical withdrawals, or off-set any increase in its actual withdrawals, until the new MFL is adopted.

WHEREFORE, Petitioner FSC requests that the above Exceptions be considered and incorporated into the District's final order, and that the Permit be conditioned such that water withdrawals be limited to historical withdrawal rates, or that any proposed increases in withdrawals above historical levels be off-set, until adoption of the re-evaluated MFL as identified in Rule 62-42.300(1)(e), Fla. Admin. Code, at which time the Permit may be modified accordingly.

Respectfully submitted this first day of November, 2023.

/s/ Douglas H. MacLaughlin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via email to Warren Zwanka, Suwannee River Water Management District Agency Clerk, at Warren.Zwanka@srwmd.org; Douglas Manson at dmanson@mansonbolves.com, and Paria Shirzadi Heeter at pheeter@mansonbolves.com, counsel for Seven Springs Water Company; and Fredrich T. Reeves at freeves@tbaylaw.com, attorney for the Suwannee River Water Management District, on this first day November, 2023.

/s/ Douglas H. MacLaughlin

Douglas H. MacLaughlin

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

FLORIDA SPRINGS COUNCIL, INC.,

Petitioner,

vs.

DOAH Case No. 21-1180

SUWANNEE RIVER WATER MANAGEMENT
DISTRICT, and SEVEN SPRINGS WATER
COMPANY,

Respondents.

SEVEN SPRINGS WATER COMPANY'S RESPONSE TO FLORIDA SPRINGS
COUNCIL'S EXCEPTIONS TO THE RECOMMENDED ORDER

By and through the undersigned counsel, Seven Springs Water Company ("Seven Springs") hereby submits its Response to Florida Springs Council's ("FSC") Exceptions to the Recommended Order, and states as follows:

STANDARD OF REVIEW FOR EXCEPTIONS

Section 120.57(1)(I), Florida Statutes ("F.S."), sets forth the standard for exceptions to findings of fact and provides that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence" or that the proceedings on which the findings were based did not comply with essential requirements of law. *Charlotte Cnty. v. IMC Phosphates Co.*, 18 So. 3d 1089 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm'n*, 955 So. 2d 61 (Fla. 1st DCA 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" is explained as: "the evidence relied upon to sustain the ultimate finding should be sufficiently

relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.” *Dep’t of Highway Safety & Motor Vehicles v. Wiggins*, 151 So. 3d 457 (Fla. 1st DCA 2014), quoting *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). Thus, the issue is not whether the record contains evidence contrary to the findings of fact in the Recommended Order, but whether the finding is supported by any competent substantial evidence. *Fla. Sugar Cane League v. State Siting Bd.*, 580 So. 2d 846, 851 (Fla. 5th DCA 1991). Overall in its exceptions, FSC does not contend that the record is devoid of competent substantial evidence to support the ALJ’s findings. While mandated to provide “specific citations to the record” in the exceptions, FSC consistently simply argues its unsupported theory of the case that was rejected. See rule 28-106.217(1), F.A.C.

Section 120.57(1), F.S., expressly prohibits the agency from rejecting findings of fact that are based upon competent substantial evidence. *Stokes v. State, Bd. of Prof’l Eng’rs*, 952 So. 2d 1224 (Fla. 2007). Furthermore, a reviewing agency may not reweigh the evidence presented at a Division of Administrative Hearings (“DOAH”) final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of the administrative law judge as the trier of fact. See, e.g., *Rogers v. Dep’t of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep’t of Env’tl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cnty. Sch. Bd.*, 652 So. 2d 894 (Fla. 2d DCA 1995). “Credibility of the witnesses is a matter that is within the province of the administrative law judge, as is the weight to be given the evidence. The judge is entitled to rely on the testimony of a single witness even if that testimony contradicts the testimony of a number of other witnesses.” *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

Even if there were conflicting or differing evidence, an agency is bound by the ALJ's reasonable inference based on the conflicting inferences arising from the evidence. *Greseth v. Dep't of Health & Rehab. Servs.*, 573 So. 2d 1004, 1006–1007 (Fla. 4th DCA 1991). Furthermore, if there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986). In addition, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994). Therefore, if the DOAH record has any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the Final Order. *See, e.g., Walker v. Bd. of Prof'l Eng'rs*, 946 So. 2d 604 (Fla. 1st DCA 2006); *Fla. Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987).

Section 120.57(1)(I), F.S., sets forth the standard for exceptions to conclusions of law and provides that:

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

Stokes v. State, Bd. of Prof'l Eng'rs, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007); *See also Kinney v. Dep't of State, Div. of Licensing*, 501 So.2d 129, 132 (Fla. 5th DCA 1987) (“Erroneously labeling what is essentially a factual determination a “conclusion of law” whether by the hearing officer or the agency does not make it so, and the obligation of the agency to honor the hearing

officer's findings of fact may not be avoided by categorizing a contrary finding as a “conclusion of law”).

Finally, only findings of fact may be excepted to on the grounds that the proceeding on which the findings were based did not comply with the essential requirements of law. *See* §120.57(1)(1), F. S. To the extent FSC’s Exceptions are implicitly alleging that the proceeding on which the conclusion of law was based did not comply with the essential requirements of the law, the Exception(s) does not state a valid basis as required by section 120.57(1)(k), F.S., and the District need not provide a ruling on the Exception(s).

BRIEF SUMMARY OF ARGUMENT APPLICABLE TO ALL OF FSC’S EXCEPTIONS

All of FSC’s Exceptions relate to one of two issues: the minimum flows and levels (“MFL”) for the Lower Sante Fe River or the public comments received by the District in the Seven Springs Permit file.

In regards to the MFL issue, it is crucial to first explain the stipulations of the Parties that were filed in the DOAH proceeding. On May 2, 2023, the Parties filed their Joint Pre-hearing Stipulation (“PHS”), which included a comprehensive stipulation of facts, and an identification of issues of law on which there was agreement¹. The PHS also identified the disputed issues of fact and law remaining for disposition. Those issues identified in the PHS are those upon which the case proceeds, with other issues being waived. *Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.*, 174 So. 3d 1037 (Fla. 4th DCA 2015). The binding effect of pretrial stipulations on the parties was aptly expressed in *Broche v. Cohn*, 987 So.2d 124 (Fla. 4th DCA 2008):

A stipulation that limits the issues to be tried “amounts to a binding waiver and elimination of all issues not included.” *Esch v. Forster*, 123 Fla. 905, 168 So. 229, 231 (1936). “Pretrial stipulations prescribing the issues on which a case is to be

¹ Additionally, earlier in the proceeding, the Parties also executed and filed another Stipulation on April 11, 2023 similarly limiting the disputed issues of fact in this proceeding.

tried are binding upon the parties and the court, and should be strictly enforced.” *Lotspeich Co. v. Neogard Corp.*, 416 So.2d 1163, 1165 (Fla. 3d DCA 1982) (citing *Gunn Plumbing, Inc. v. Dania Bank*, 252 So.2d 1 (Fla.1971)). Further, “[i]t is the policy of the law to encourage and uphold stipulations in order to minimize litigation and expedite the resolution of disputes.” *Spitzer v. Bartlett Bros. Roofing*, 437 So.2d 758, 760 (Fla. 1st DCA 1983).

Id. at 127; see also *Delgado v. Agency for Health Care Admin.*, 237 So. 3d 432, 437 (Fla. 1st DCA 2018). The Parties stipulated in the PHS that the only remaining specific disputed issues of fact to be litigated in this proceeding were set forth in the PHS at section VII, paragraphs 1 and 2. In this proceeding, it was stipulated by all Parties, and therefore undisputed, that Seven Springs provided the evidence necessary to prove it has provided reasonable assurances of all applicable criteria required for the issuance of a water use permit in accordance with Chapter 373, Part IV, F.S., and rule 40B-2.301, F.A.C., except: FSC disputed “whether Seven Springs has provided reasonable assurance that the beverage processing use of water authorized under the Permit is ‘consistent with the public interest’ pursuant to Section 373.223(1)(c), Fla. Stat., and Rule 40B-2.301(1)(c), F.A.C.” See PHS at page 12.

FSC stipulated that Seven Springs provided reasonable assurance of all the rule criteria prohibiting harm to the water resources. Additionally, FSC presented no expert testimony, or any competent or substantial evidence, that the Permit is expected to cause harm to the Lower Santa Fe River or any other water resources of the area. In fact, Springs Council stipulated that the renewal of the Permit withdrawal meets rule 40B-2.301(2)(g) and (h), F.A.C., which state that the water use: “is not expected to cause harm to the water resources of the area” and “is in accordance with any [MFL] and implementation strategy established.” Despite these binding stipulations, throughout its Exceptions FSC improperly attempts to argue issues relating to harm to the water resources based on the MFL for the Lower Santa Fe River. However, the District lacks the power to overturn rulings concerning procedural and evidentiary issues, or other matters outside of the

agency's field of expertise, such as the scope and effect of the stipulations filed by the Parties in this proceeding. *See, e.g., Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep't of Env'tl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cnty. Sch. Bd.*, 652 So. 2d 894 (Fla. 2d DCA 1995).

Additionally, throughout its Exceptions to Findings of Fact in the Recommended Order, FSC does not contend that the findings are not supported by any competent substantial evidence, instead it merely argues that there is evidence supporting a contrary finding. As explained above, if there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986).

FSC's Exceptions relating to the public comments received by the District for this Permit all either argue that there is evidence supporting a contrary finding of fact or request the District to make additional, independent findings of fact. However, "when competent substantial evidence in the record supports the ALJ's findings of fact, 'the agency may not reject them, modify them, substitute its findings, or make new findings.'" *Walker v. Bd. of Prof'l Eng'rs*, 946 So.2d 604, 605 (Fla. 1st DCA 2006) (quoting *Gross v. Dep't of Health*, 819 So.2d 997, 1001 (Fla. 5th DCA 2002)); *Hamilton Downs Horsetrack, LLC v. State Dep't of Bus. & Pro. Regul., Div. of Pari-Mutuel Wagering*, 226 So. 3d 1046, 1050 (Fla. 1st DCA 2017).

Further, in several of its Exceptions, FSC fails to comply with the requirement that a party provide "specific citations to the record" in their exceptions. See rule 28-106.217(1), F.A.C. ("Exceptions shall identify the disputed portion of the recommended order by page number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and

specific citations to the record”). An agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. Section 120.57(1)(k), F.S.

Finally, an agency “may not base agency action that determines the substantial interests of a party on an unadopted rule” Section 120.57(1)(e)1., *Kanter Real Est., LLC v. Dep't of Env't Prot.*, 267 So. 3d 483, 488 (Fla. 1st DCA 2019). Throughout its Exceptions, just as it did at the hearing and in its proposed recommended order, FSC once again seeks essentially this very thing—to have the District base its action on an unadopted rule.

RESPONSES TO FSC EXCEPTIONS 1-6

Response to FSC Exception 1:

In its first Exception, FSC takes exception to the following statement from Finding of Fact Paragraph 52 and Conclusion of Law Paragraph 90 of the Recommended Order: “FSC could not point to any rule or statute supporting its contention that the large number of public comments meant that the Permit was not consistent with the public interest. There is no provision in the rules or statutes that the basis of issuance of a water use permit is determined by the number of public comments received.”

Paragraph 52 is a Finding of Fact (and FSC does not argue otherwise in its Exception). That same statement is repeated in Paragraph 90, and although it is part of a paragraph also containing conclusions of law, that particular statement is still a finding of fact. Section 120.57(1), F.S., expressly prohibits the agency from rejecting findings of fact that are based upon competent substantial evidence. *Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So. 2d 1224 (Fla. 2007). The issue is not whether the record contains evidence contrary to the findings of fact in the Recommended Order, but whether the finding is supported by any competent substantial evidence. *Fla. Sugar*

Cane League v. State Siting Bd., 580 So. 2d 846, 851 (Fla. 5th DCA 1991). FSC does not contend in its Exception that the record is devoid of any competent substantial evidence to support the ALJ's finding, but instead improperly argues that there is contrary evidence or that a different conclusion should have been reached. Even if there were conflicting or differing evidence, an agency is bound by the ALJ's reasonable inference based on the conflicting inferences arising from the evidence. *Greseth v. Dep't of Health & Rehab. Servs.*, 573 So. 2d 1004, 1006–1007 (Fla. 4th DCA 1991). Furthermore, if there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986). There is competent substantial evidence in the record to support the quoted statement in Finding of Fact Paragraph 52 and repeated in Paragraph 90. See Hearing Transcript at pages 122, 126, 146-147; 188-189. Therefore, this Exception must be denied.

Response to FSC Exception 2:

FSC takes exception to Conclusions of Law Paragraphs 88 and 92 of the Recommended Order, which provide:

88. Seven Springs provided reasonable assurance that its proposed use is consistent with the public interest. See Section 2.3.4.1., A.H., and Findings of Fact 7 through 44, above.

92. The flaw in FSC's argument is that no search for a different or additional definition of "consistent with the public interest" is necessary since that permit criterion was implemented by the District's adoption of section 2.3.4.1., A.H. The plain language of section 2.3.4.1., A.H., resolved any issues of interpretation of the "reasonable-beneficial" and "consistent with the public interest" prongs with respect to beverage processing permit applications by defining both in terms of compliance with specifically delineated provisions of section 2.3.4.1, A.H. The undersigned agrees with Mr. Zwanka that consideration of the public interest, as defined by District rule, is already a part of the existing special rules for beverage processing in section 2.3.4.1., A.H.

To begin with, the Recommended Order does not state that Section 2.3.4.1 is a “replacement or elimination of the third prong requirement in Rule 40B-2.301(1)(c),” or that Rule 40B-2.301(1)(c) should be ignored, as FSC is alleging it does throughout this Exception. Rather, it explains that “that permit criterion was implemented by the District's adoption of section 2.3.4.1, A.H.” The water use permitting statutes and rules include the Applicant’s Handbook, which provides details and specifics on how to determine if a water use permit meets the three-prong test set forth in Rule 40B-2.301(1), F.A.C., and Section 372.223(1), F.S. See Hearing Transcript at pages 53-56 & 115; see Rule 40B-2.301(3), F.A.C. The reasonable assurances required in rule 40B-2.301, F.A.C., are met through application of the standards and criteria set forth in the District’s Applicant’s Handbook. Rule 40B-2.301(3), F.A.C. (“The standards and criteria set forth in the Water Use Permit Applicant’s Handbook ... hereby incorporated by reference into this chapter, if met, will provide the reasonable assurances required in Rule 40B-2.301, F.A.C.”); See Parties’ PHS, p. 12; see also Hearing Transcript at pages 53-60, 94 & 115. To determine whether a proposed beverage processing use is reasonable-beneficial and consistent with the public interest, the District has adopted Applicant’s Handbook Section 2.3.4.1. Thus, FSC’s argument or suggestion that Rule 40B-2.301(1)(c) is somehow being ignored is without merit. For that same reason, FSC’s allegation that “if the District ignores the application of Rule 40B-2.301(1)(c) in this case, it is violating the due process rights of members of FSC and the public,” is also without merit. The ALJ expressly found that “FSC did not, by a preponderance of the competent and substantial evidence, rebut Seven Springs' prima facie case of reasonable assurance, including the ‘consistent with the public interest’ criterion set forth in section 373.223(1)(c) and rule 40B-2.301(1)(c).” See Recommended Order at Paragraph 60. Regardless, as explained below in the

Response to Exception 3, the District does not have jurisdiction to dispose of constitutional due process or equal protection issues in administrative proceedings.

Further, this Exception again essentially requests the District to re-weigh the evidence and/or make additional findings of fact regarding the evidence on the 19,000 public comments, in order to support FSC's contrary conclusion, which the District has no authority to do.

For the reasons stated above, FSC has not shown that its substituted conclusion of law (which it has not even provided an actual substitute conclusion of law in its Exception) or interpretation of administrative rule is as or more reasonable than that of the ALJ.

Response to FSC Exception 3:

In this Exception, FSC asks the District to make independent or additional findings of fact regarding the public comments received by the District concerning Seven Springs' Permit. See Exception 3 ("The Recommended Order did not make findings of fact addressing these matters.....the District should provide findings of fact on these matters."). However, as explained above, it is a well-established principle of administrative law that an agency reviewing a recommended order pursuant to section 120.57, F.S., has no authority to make independent or supplemental findings of fact. *See, e.g., North Port v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994); *Walker v. Bd. of Prof'l Eng'rs*, 946 So.2d 604, 605 (Fla. 1st DCA 2006). For this reason alone, this Exception must be denied.

In addition, FSC's statements in this Exception claiming that the Recommended Order does not include any findings "**that approximately 19,000 comments were submitted to the District,**" are false²--the Recommended Order (at Paragraph 51) includes a finding that

² FSC states in this Exception that:

"In paragraphs 7 through 12 of its Proposed Recommended Order FSC proposes findings of fact based on the record concerning the approximate 19,000 public comments received by the District

“testimony was presented at the final hearing that approximately 19,000 public comments (including several duplicates) exist in the District's file for this Permit.” However, while there was testimony presented at the final hearing that approximately 19,000 public comments (including numerable duplicates) exist in the District’s file for this Permit, FSC provided no corroborating testimony from any person regarding their public comments. Therefore, any testimony regarding the contents or substance of those public comments was properly excluded by the ALJ as impermissible hearsay that does not qualify for any statutory hearsay exception and therefore cannot be a basis for a finding of fact. As explained above, the District lacks the power to overturn rulings concerning evidentiary issues, as evidentiary matters are within the province of the ALJ as the trier of fact. *See, e.g., Rogers v. Dep’t of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep’t of Env’tl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cnty. Sch. Bd.*, 652 So. 2d 894 (Fla. 2d DCA 1995).

In this Exception, FSC also alleges that “the failure to address these relevant and material findings of fact adversely impacts the due process and equal protection rights of members of FSC and the public. *See Gentry v. Dep’t of Prof. and Occupational Regulations, State Bd. Of Med. Examiners*, 283 So.2d 386, 387 (Fla. 1st DCA 1973).” However, the sole case cited by FSC in this

concerning Seven Springs’ proposed water use. **The proposed findings of fact included that approximately 19,000 comments were submitted to the District;** that an overwhelming amount of the public comments opposed the Permit; that the District did not review most of the comments; and that the public comments did not factor into the District’s evaluation of the Permit and public interest issue. **The Recommended Order did not make findings of fact addressing these matters.**

See FSC Exception 3 (emphasis added). It should also be noted that, contrary to what FSC suggests in this Exception, the Recommended Order also includes findings regarding the District’s review of the public comments and how they factor into the District’s permitting decision in Finding of Fact Paragraph 53.

allegation is easily distinguishable and inapplicable here. In that case, the final order failed to contain or adopt even a single finding of fact:

A careful examination of the final order sought to be reviewed affirmatively discloses that it contains no findings of fact by respondent nor does it adopt, ratify, or confirm the findings of fact expressed in the special examiner's report and recommendations. The order merely recites that respondent has considered the recommendations of the hearing examiner, the exceptions filed thereto, the rules of the Florida State Board of Medical Examiners, and thereupon orders that the exceptions be overruled, that three of the special examiner's recommendations be adopted, and that the fourth be modified to provide different conditions.

Id. In this case, the Recommended Order contains 60 paragraphs of findings of fact. Further, it is a settled rule of administrative law in Florida that a state agency does not have jurisdiction to dispose of constitutional due process or equal protection issues in administrative proceedings. See *State Dep't of Admin., Div. of Personnel v. State, Dep't of Admin., Div. of Admin. Hearings*, 326 So. 2d 187 (Fla. 1st DCA 1976); *Meyers v. Hawkins*, 362 So.2d 926 (Fla. 1978); *Gulf Pines Memorial Park v. Oaklawn Memorial Park*, 361 So.2d 695, 699 (Fla. 1978); *Dep't of Revenue of Fla. v. Young Am. Builders*, 330 So. 2d 864, 865 (Fla. 1st DCA 1976). Such constitutional issues are for the courts alone to determine and are not for administrative resolution. *Metro. Dade County v. Dept. of Commerce*, 365 So.2d 432, 435 (Fla. 3d DCA 1978). Because the District lacks jurisdiction to resolve constitutional due process issues, FSC's due process and equal protection claims in this Exception and Exception 2 must be denied.

Response to FSC Exception 4:

FSC takes exception to Findings of Fact Paragraphs 54 through 59 of the Recommended Order that it states is summarized by the statement at the end of Paragraph 59, which provides: "FSC did not point to any legal or factual support for its contention that the existence of an MFL and MFL Recovery Strategy for the Lower Santa Fe River means that the Permit cannot be consistent with the public interest."

To begin with, Paragraphs 54 through 59 are Findings of Fact (and FSC does not argue otherwise in its Exception) and FSC does not contend in its Exception that the record is devoid of any competent substantial evidence to support the ALJ's findings. Rather, FSC merely argues that the record contains evidence supporting a contrary finding. However, if there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986). If the DOAH record discloses any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the Final Order. *See, e.g., Walker v. Bd. of Prof'l Eng'rs*, 946 So. 2d 604 (Fla. 1st DCA 2006); *Fla. Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987). Because there is competent substantial evidence supporting the challenged factual findings of the ALJ, this Exception must be denied. *Id.*; See Hearing Transcript at pages 165 & 198-199; FSC Exhibit 9, Deposition of Warren Zwanka at page 74 lines 17-24, page 76 lines 1-12, page 79 lines 1-9, and page 93 lines 1-2.

Further, on pages 16 through 19 of this Exception, in order to support its position, FSC is essentially asking the District to make independent, additional findings of fact regarding the "actual amount of withdrawal" by Seven Springs and the "average withdrawal by Seven Springs under its previous Permit", which the ALJ did not make any factual findings on in the Recommended Order³. However, the District has no authority to make independent or

³ It should also be noted that FSC did not present any evidence on or dispute that Seven Springs provided sufficient information for the District to consider, under section 2.3.4.1(a), A.H., regarding the need for the requested amount of water. See Recommended Order at Paragraphs 32-22.

supplemental findings of fact. *See, e.g., North Port v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994).

Finally, as explained previously, the MFL issue/argument is not relevant or material in this proceeding based on the stipulations of the parties. All parties stipulated that there is no challenge to whether Seven Springs met the statutory and rule criteria that contain the technical analysis regarding impact to the water resources and compliance with the applicable MFL rule. Additionally, regardless of the stipulation, the Santa Fe/Ichetucknee MFL Recovery Strategy, which is an adopted rule, expressly states that "renewal applicants that demonstrate a potential impact to the MFL water bodies based on the requested allocation **shall be considered consistent with the recovery strategy and shall be issued** a permit for duration of no more than five years, provided the applicant meets all other existing conditions for issuance." (emphasis supplied) See Hearing Transcript at pages 260-262; Santa Fe/Ichetucknee MFL Recovery Strategy, Section 6.0.5.d. Any contention that the existence of an MFL and MFL Recovery Strategy for the Lower Santa Fe River means that the Permit cannot be consistent with the public interest is entirely without merit.

Response to FSC Exception 5:

FSC takes exception to the finding in the Recommended Order's Finding of Fact Paragraph 59 that provides the following: "FSC's conclusionary suggestion that because there is an MFL and MFL Recovery Strategy in place for the Lower Santa Fe River, no withdrawal from that area can be considered consistent with the public interest is without support." Once again, Paragraph 59 is a Finding of Fact (and FSC does not argue otherwise in its Exception) and FSC does not contend in its Exception that the record is devoid of any competent substantial evidence to support the ALJ's finding—instead it improperly argues that there is contrary evidence in the record.

Therefore, for this reason alone (as further explained above in the Response to Exception 4) this Exception must be denied.

Response to FSC Exception 6:

In Exception 6, FSC takes exception with the ALJ's Findings of Fact Paragraphs 54-56 of the Recommended Order regarding the effect of the Parties stipulations filed in the proceeding on the scope of the issues to be determined in the 120.57(1), F.S. proceeding. Those paragraphs provide:

54. FSC also attempted to argue that there was a "broad-based public interest in avoiding significant harm to the ecology of the Santa Fe River." However, FSC stipulated that Seven Springs provided reasonable assurance of all the rule criteria relating to harm to water resources, and did not present any expert testimony on potential harm to the Santa Fe River or any other water resources of the area.

55. All parties stipulated that there was no challenge to the statutory and rule criteria that contain the technical analysis regarding impact to the water resources and compliance with the applicable MFL rule. FSC cannot ambush the parties by challenging whether the Seven Springs Application met the same criteria by arguing that those very same issues can be evaluated again under the public interest criterion.

56. Specifically, FSC stipulated that Seven Springs provided reasonable assurance of meeting the permit criteria in rule 40B-2.301(2). This includes that the Permit's proposed use of water: "(h) is in accordance with any [MFL] and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S."; and (g) "is not expected to cause harm to the water resources of the area." Even with this definitive stipulation, FSC attempted throughout the hearing to elicit testimony regarding the fact that there is an MFL for the Lower Santa Fe River.

Despite expressly stipulating that Seven Springs provided reasonable assurance of meeting all the permit criteria listed in Rule 40B-2.301(2), including that the Permit's proposed use of water: "(h) is in accordance with any [MFL] and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S."; and "(g) is not expected to cause harm to the water resources of the area," FSC still argues in this Exception that the ALJ should have allowed FSC to "address issues concerning the MFL, the MFL Recovery strategy, or matters relating to harm to water

resources.” However, the stipulations filed by the Parties are binding and the ALJ properly limited the scope of the issues and evidence in the proceeding based on the Parties’ stipulations. *Broche v. Cohn*, 987 So.2d 124 (Fla. 4th DCA 2008). The agency (here the District) lacks the power to overturn rulings concerning procedural and evidentiary issues, or other matters outside of the agency’s field of expertise, such as the scope and effect of the stipulations filed by the Parties in this proceeding. *Fla. Pub. Employees Council 79 v. Daniels*, 646 So. 2d 813, 816 (Fla 1st DCA 1994); *State Contr’g & Eng’g Corp. v. Fla. Dept. of Transp.*, 709 So. 2d 607, 610 (Fla. 1st DCA 1998); *Heifetz v. Dept. of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Martuccio v. Fla. Dept. of Professional Regulation*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Barfield v. Fla. Dept. of Health*, 805 So. 2d 1008, 1011-12 (Fla. 1st DCA 2001); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140 (Fla. 2d DCA 2001).

In addition, Paragraphs 54-56 are Findings of Fact, and FSC does not contend in its Exception that the record is devoid of any competent substantial evidence to support the ALJ’s findings. Because there is competent substantial evidence in the record to support these findings, the Exception must be denied. See PHS at paragraph 12; see also Hearing Transcript at pages 171-172.

Finally, FSC’s argument that the ALJ’s findings in paragraphs 54-56 are “based on the improper interpretation of the applicability of the third-prong water test requirement...as opposed to the first-prong requirement,” is without merit. The ALJ’s findings in paragraphs 54-56 do not contain any interpretation of the third-prong or first-prong water permit rule criteria. Rather, they merely state what the Parties stipulated to and the effect of those stipulations on the scope of the proceeding. Regardless, this same argument (regarding the first prong versus third prong of the water use permit rule) was already made numerous times throughout the hearing by FSC and in

FSC's Proposed Recommended Order and was rejected and addressed by the District's Proposed Recommended Order, Mr. Zwanka's testimony in the proceeding, and the ALJ in her Recommended Order. See Recommended Order at Paragraphs 91-92⁴. Therefore, this Exception must be denied for the reasons stated above.

CONCLUSION

WHEREFORE, Seven Springs requests that the Suwannee River Water Management District issue a Final Order rejecting each of FSC's Exceptions and adopting the ALJ's Recommended Order in its entirety.

Respectfully submitted this 13th day of November 2023.

MANSON BOLVES DONALDSON TANNER, P.A.

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⁴ "91. FSC argued that, based on its interpretation of the rules of statutory construction and language in an agency final order, *City of Groveland v. St. Johns River Water Management District and Niagara Bottling Co., LLC*, Case No. 08-4201, FO at pp. 37-39 (Fla. DOAH Aug. 7, 2009; Fla. SJRWMD Sep. 25, 2009), separate and different meanings of "consistent with the public interest" must apply to the first prong (reasonable-beneficial use) and third prong (consistent with the public interest) of the three-prong test.

92. The flaw in FSC's argument is that no search for a different or additional definition of "consistent with the public interest" is necessary since that permit criterion was implemented by the District's adoption of section 2.3.4.1, A.H. The plain language of section 2.3.4.1, A.H., resolved any issues of interpretation of the "reasonable-beneficial" and "consistent with the public interest" prongs with respect to beverage processing permit applications by defining both in terms of compliance with the specifically delineated provisions of section 2.3.4.1, A.H. The undersigned agrees with Mr. Zwanka that consideration of the public interest, as defined by District rule, is already a part of the existing special rules for beverage processing in section 2.3.4.1, A.H."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via electronic mail to Warren Zwanka, Agency Clerk, Suwannee River Water Management District, at warren.zwanka@srwmd.org, and served by electronic mail to counsel of record on the service list below this 13th day of November 2023.

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**STATE OF FLORIDA
SUWANNEE RIVER WATER MANAGEMENT DISTRICT**

FLORIDA SPRINGS COUNCIL, INC.,

Petitioner,

v.

DOAH Case No. 21-1180

**SEVEN SPRINGS WATER COMPANY
and SUWANNEE RIVER WATER
MANAGEMENT DISTRICT,**

**SRWMD WUP No.
2-041-218202-3**

Respondents.

_____ /

**RESPONDENT SUWANNEE RIVER WATER MANAGEMENT DISTRICT'S
RESPONSE TO FLORIDA SPRINGS COUNCIL'S EXCEPTIONS
TO THE RECOMMENDED ORDER**

Respondent, Suwannee River Water Management District (the "District"), through counsel, responds to Florida Springs Council's ("FSC") Exceptions to the Recommended Order as follows:

STANDARD OF REVIEW FOR EXCEPTIONS

Section 120.57(1)(I), Florida Statutes ("F.S."), sets forth the standard for exceptions to findings of fact and provides that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence" or that the proceedings on which the findings were based did not comply with essential requirements of law. Section 120.57(1)(I), F.S.; *Charlotte Cnty. v. IMC Phosphates Co.*, 18 So. 3d 1089 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm'n*, 955 So. 2d 61 (Fla. 1st DCA 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent

substantial evidence” is explained as: “the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.” *Dep’t of Highway Safety & Motor Vehicles v. Wiggins*, 151 So. 3d 457 (Fla. 1st DCA 2014), quoting *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). Thus, the issue is not whether the record contains evidence contrary to the findings of fact in the Recommended Order, but whether the finding is supported by any competent substantial evidence. *Fla. Sugar Cane League v. State Siting Bd.*, 580 So. 2d 846, 851 (Fla. 5th DCA 1991). Overall in its exceptions, FSC does not contend that the record is devoid of competent substantial evidence to support the ALJ’s findings. While mandated to provide “specific citations to the record” in the exceptions, FSC consistently simply argues their unsupported theory of the case that was rejected. See rule 28-106.217(1), F.A.C.

Section 120.57(1), F.S., expressly prohibits the agency from rejecting findings of fact that are based upon competent substantial evidence. *Stokes v. State, Bd. of Prof’l Eng’rs*, 952 So. 2d 1224 (Fla. 2007). Furthermore, a reviewing agency may not reweigh the evidence presented at a division of administrative hearings (“DOAH”) final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of the administrative law judge as the trier of fact. See, e.g., *Rogers v. Dep’t of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep’t of Envtl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cnty. Sch. Bd.*, 652 So. 2d 894 (Fla. 2d DCA 1995). “Credibility of the witnesses is a matter that is within the province of the administrative law judge, as is the weight to be given the evidence. The judge is entitled to rely on the testimony of a single witness even if that testimony contradicts the testimony of a number of other witnesses.” *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006).

Even if there were conflicting or differing evidence, an agency is bound by the ALJ's reasonable inference based on the conflicting inferences arising from the evidence. *Greseth v. Dep't of Health & Rehab. Servs.*, 573 So. 2d 1004, 1006–1007 (Fla. 4th DCA 1991). Furthermore, if there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986). In addition, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994). Therefore, if the DOAH record has any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the Final Order. *See, e.g., Walker v. Bd. of Prof'l Eng'rs*, 946 So. 2d 604 (Fla. 1st DCA 2006); *Fla. Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987).

Section 120.57(1)(I), F.S., sets forth the standard for exceptions to conclusions of law and provides that:

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

Stokes v. State, Bd. of Prof'l Eng'rs, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007); *See also Kinney v. Dep't of State, Div. of Licensing*, 501 So.2d 129, 132 (Fla. 5th DCA 1987) (“Erroneously labeling what is essentially a factual determination a “conclusion of law” whether by the hearing officer or the agency does not make it so, and the obligation of the agency to honor the hearing

officer's findings of fact may not be avoided by categorizing a contrary finding as a “conclusion of law”).

Finally, only findings of fact may be excepted to on the grounds that the proceeding on which the findings were based did not comply with the essential requirements of law. *See* §120.57(1)(1), F. S. To the extent FSC’s Exceptions implicitly allege that the proceeding on which the conclusion of law was based did not comply with the essential requirements of the law, the Exception(s) does not state a valid basis as required by section 120.57(1)(k), F.S., and the District need not provide a ruling the Exception(s).

SUMMARY OF ARGUMENT APPLICABLE TO ALL OF FSC’S EXCEPTIONS

All of FSC’s Exceptions relate to one of two issues: the minimum flows and levels (“MFL”) for the Lower Sante Fe River or the public comments received by the District in the Seven Springs Permit file.

Regarding the MFL issue, it is crucial to first explain the stipulations of the Parties that were filed in the DOAH proceeding. On May 2, 2023, the Parties filed their Joint Pre-hearing Stipulation (“PHS”), which included a comprehensive stipulation of facts, and an identification of issues of law on which there was agreement¹. The PHS also identified the disputed issues of fact and law remaining for disposition. Those issues identified in the PHS are those upon which the case proceeds, with other issues being waived. *Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.*, 174 So. 3d 1037 (Fla. 4th DCA 2015). The binding effect of pretrial stipulations on the parties was aptly expressed in *Broche v. Cohn*, 987 So.2d 124 (Fla. 4th DCA 2008):

A stipulation that limits the issues to be tried “amounts to a binding waiver and elimination of all issues not included.” *Esch v. Forster*, 123 Fla. 905, 168 So. 229, 231 (1936). “Pretrial stipulations prescribing the issues on which a case is to be

¹ Additionally, earlier in the proceeding, the Parties also executed and filed another Stipulation on April 11, 2023 similarly limiting the disputed issues of fact in this proceeding.

tried are binding upon the parties and the court, and should be strictly enforced.” *Lotspeich Co. v. Neogard Corp.*, 416 So.2d 1163, 1165 (Fla. 3d DCA 1982) (citing *Gunn Plumbing, Inc. v. Dania Bank*, 252 So.2d 1 (Fla.1971)). Further, “[i]t is the policy of the law to encourage and uphold stipulations in order to minimize litigation and expedite the resolution of disputes.” *Spitzer v. Bartlett Bros. Roofing*, 437 So.2d 758, 760 (Fla. 1st DCA 1983).

Id. at 127; *see also Delgado v. Agency for Health Care Admin.*, 237 So. 3d 432, 437 (Fla. 1st DCA 2018). The Parties stipulated in the PHS that the only remaining specific disputed issues of fact to be litigated in this proceeding were set forth in the PHS at section VII, paragraphs 1 and 2. In this proceeding, it was stipulated by all Parties, and therefore undisputed, that Seven Springs provided the evidence necessary to prove it has provided reasonable assurances of all applicable criteria required for the issuance of a water use permit in accordance with Chapter 373, Part IV, F.S., and rule 40B-2.301, F.A.C., except: FSC disputed “whether Seven Springs has provided reasonable assurance that the beverage processing use of water authorized under the Permit is ‘consistent with the public interest’ pursuant to Section 373.223(1)(c), Fla. Stat., and Rule 40B-2.301(1)(c), F.A.C.” See PHS at page 12.

FSC stipulated that Seven Springs provided reasonable assurance of all the rule criteria prohibiting harm to the water resources. Additionally, FSC presented no expert testimony, or any other competent or substantial evidence, that the Permit is expected to cause harm to the Lower Santa Fe River or any other water resources of the area. In fact, FSC stipulated that the renewal of the Permit withdrawal meets rule 40B-2.301(2)(g) and (h), F.A.C., which state that the water use: “is not expected to cause harm to the water resources of the area” and “is in accordance with any [MFL] and implementation strategy established.” Despite these binding stipulations, throughout its Exceptions FSC improperly attempts to argue issues relating to harm to the water resources based on the MFL for the Lower Santa Fe River. The District should not overturn rulings concerning procedural and evidentiary issues, or other matters outside of the agency’s field of

expertise, such as the scope and effect of the stipulations filed by the Parties in this proceeding. *See, e.g., Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep't of Env'tl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cnty. Sch. Bd.*, 652 So. 2d 894 (Fla. 2d DCA 1995).

Additionally, throughout its Exceptions to Findings of Fact in the Recommended Order, FSC does not contend that the findings are not supported by any competent substantial evidence, instead it merely argues that there is evidence supporting a contrary finding. As explained above, if there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986).

FSC's Exceptions relating to the public comments received by the District for this Permit all either argue that there is evidence supporting a contrary finding of fact or request the District to make additional, independent findings of fact. However, "when competent substantial evidence in the record supports the ALJ's findings of fact, 'the agency may not reject them, modify them, substitute its findings, or make new findings.'" *Walker v. Bd. of Prof'l Eng'rs*, 946 So.2d 604, 605 (Fla. 1st DCA 2006) (quoting *Gross v. Dep't of Health*, 819 So.2d 997, 1001 (Fla. 5th DCA 2002)); *Hamilton Downs Horsetrack, LLC v. State Dep't of Bus. & Pro. Regul., Div. of Pari-Mutuel Wagering*, 226 So. 3d 1046, 1050 (Fla. 1st DCA 2017).

Further, in several of its Exceptions, FSC fails to comply with the requirement that a party provide "specific citations to the record" in their exceptions. *See* rule 28-106.217(1), F.A.C. ("Exceptions shall identify the disputed portion of the recommended order by page number or

paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record”).

Finally, an agency “may not base agency action that determines the substantial interests of a party on an unadopted rule” Section 120.57(1)(e)1., *Kanter Real Est., LLC v. Dep't of Env't Prot.*, 267 So. 3d 483, 488 (Fla. 1st DCA 2019). Throughout its Exceptions, just as it did at the hearing and in its proposed recommended order, FSC once again seeks essentially this very thing—to have the District base its action on an unadopted rule.

RESPONSES TO FSC EXCEPTIONS 1-6

Response to FSC Exception 1:

In its first Exception, FSC takes exception to the following statement from Finding of Fact Paragraph 52 and Conclusion of Law Paragraph 90 of the Recommended Order: “FSC could not point to any rule or statute supporting its contention that the large number of public comments meant that the Permit was not consistent with the public interest. There is no provision in the rules or statutes that the basis of issuance of a water use permit is determined by the number of public comments received.”

Paragraph 52 is a Finding of Fact (and FSC does not argue otherwise in its Exception). That same statement is repeated in Paragraph 90, and although it is part of a paragraph also containing conclusions of law, that particular statement is still a finding of fact. Section 120.57(1), F.S., expressly prohibits the agency from rejecting findings of fact that are based upon competent substantial evidence. *Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So. 2d 1224 (Fla. 2007). The issue is not whether the record contains evidence contrary to the findings of fact in the Recommended Order, but whether the finding is supported by any competent substantial evidence. *Fla. Sugar Cane League v. State Siting Bd.*, 580 So. 2d 846, 851 (Fla. 5th DCA 1991). FSC does not contend in its Exception that the record is devoid of any competent substantial evidence to support the

ALJ's finding, but instead improperly argues that there is contrary evidence or that a different conclusion should have been reached. Even if there were conflicting or differing evidence, an agency is bound by the ALJ's reasonable inference based on the conflicting inferences arising from the evidence. *Greseth v. Dep't of Health & Rehab. Servs.*, 573 So. 2d 1004, 1006–1007 (Fla. 4th DCA 1991). Furthermore, if there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986). There is competent substantial evidence in the record to support the quoted statement in Finding of Fact Paragraph 52 and repeated in Paragraph 90. See Hearing Transcript at pages 122, 126, 146-147; 188-189. Therefore, this Exception must be denied.

Response to FSC Exception 2:

FSC takes exception to Conclusions of Law Paragraphs 88 and 92 of the Recommended Order, which provide:

88. Seven Springs provided reasonable assurance that its proposed use is consistent with the public interest. See Section 2.3.4.1., A.H., and Findings of Fact 7 through 44, above.

92. The flaw in FSC's argument is that no search for a different or additional definition of "consistent with the public interest" is necessary since that permit criterion was implemented by the District's adoption of section 2.3.4.1., A.H. The plain language of section 2.3.4.1., A.H., resolved any issues of interpretation of the "reasonable-beneficial" and "consistent with the public interest" prongs with respect to beverage processing permit applications by defining both in terms of compliance with specifically delineated provisions of section 2.3.4.1, A.H. The undersigned agrees with Mr. Zwanka that consideration of the public interest, as defined by District rule, is already a part of the existing special rules for beverage processing in section 2.3.4.1., A.H.

To begin with, the Recommended Order does not state that Section 2.3.4.1 is a "replacement or elimination of the third prong requirement in Rule 40B-2.301(1)(c)," or that Rule

40B-2.301(1)(c) should be ignored, as FSC is alleging it does throughout this Exception. Rather, it explains that “that permit criterion was implemented by the District's adoption of section 2.3.4.1, A.H.” The water use permitting statutes and rules include the Applicant’s Handbook, which provides details and specifics on how to determine if a water use permit meets the three-prong test set forth in Rule 40B-2.301(1), F.A.C., and Section 372.223(1), F.S. *See* Hearing Transcript at pages 53-56 & 115; see Rule 40B-2.301(3), F.A.C. The reasonable assurances required in rule 40B-2.301, F.A.C., are met through application of the standards and criteria set forth in the District’s Applicant’s Handbook. Rule 40B-2.301(3), F.A.C. (“The standards and criteria set forth in the Water Use Permit Applicant’s Handbook ... hereby incorporated by reference into this chapter, if met, will provide the reasonable assurances required in Rule 40B-2.301, F.A.C.”); *See* Parties’ PHS, p. 12; *see also* Hearing Transcript at pages 53-60, 94 & 115. To determine whether a proposed beverage processing use is reasonable-beneficial and consistent with the public interest, the District has adopted Applicant’s Handbook Section 2.3.4.1. Thus, FSC’s argument or suggestion that Rule 40B-2.301(1)(c) is somehow being ignored is without merit. For that same reason, FSC’s allegation that “if the District ignores the application of Rule 40B-2.301(1)(c) in this case, it is violating the due process rights of members of FSC and the public,” is also without merit. The ALJ expressly found that “FSC did not, by a preponderance of the competent and substantial evidence, rebut Seven Springs' prima facie case of reasonable assurance, including the ‘consistent with the public interest’ criterion set forth in section 373.223(1)(c) and rule 40B-2.301(1)(c).” *See* Recommended Order at Paragraph 60. Regardless, as explained below in the Response to Exception 3, the District does not have jurisdiction to dispose of constitutional due process or equal protection issues in administrative proceedings.

Further, this Exception again essentially requests the District to re-weigh the evidence and/or make additional findings of fact regarding the evidence on the 19,000 public comments, in order to support FSC's contrary conclusion, which the District has no authority to do.

For the reasons stated above, FSC has not shown that its substituted conclusion of law (which it has not even provided an actual substitute conclusion of law in its Exception) or interpretation of administrative rule is as or more reasonable than that of the ALJ.

Response to FSC Exception 3:

In this Exception, FSC asks the District to make independent or additional findings of fact regarding the public comments received by the District concerning Seven Springs' Permit. See Exception 3 ("The Recommended Order did not make findings of fact addressing these matters...the District should provide findings of fact on these matters"). However, as explained above, it is a well-established principle of administrative law that an agency reviewing a recommended order pursuant to section 120.57, F.S., has no authority to make independent or supplemental findings of fact. *See, e.g., North Port v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994); *Walker v. Bd. of Prof'l Eng'rs*, 946 So.2d 604, 605 (Fla. 1st DCA 2006). For this reason alone, this Exception must be denied.

In addition, FSC's statements in this Exception claiming that the Recommended Order does not include any findings "**that approximately 19,000 comments were submitted to the District,**" are false²--the Recommended Order (at Paragraph 51) includes a finding that "testimony

² FSC states in this Exception that:

"In paragraphs 7 through 12 of its Proposed Recommended Order FSC proposes findings of fact based on the record concerning the approximate 19,000 public comments received by the District concerning Seven Springs' proposed water use. **The proposed findings of fact included that approximately 19,000 comments were submitted to the District;** that an overwhelming amount of the public comments opposed the Permit; that the District did not review most of the comments; and that the public comments did not factor into the District's evaluation of the Permit and public

was presented at the final hearing that approximately 19,000 public comments (including several duplicates) exist in the District's file for this Permit.” However, while there was testimony presented at the final hearing that approximately 19,000 public comments (including numerable duplicates) exist in the District’s file for this Permit, FSC provided no corroborating testimony from any person regarding their public comments. Therefore, any testimony regarding the contents or substance of those public comments was properly excluded by the ALJ as impermissible hearsay that does not qualify for any statutory hearsay exception and therefore cannot be a basis for a finding of fact. As explained above, the District lacks the power to overturn rulings concerning evidentiary issues, as evidentiary matters are within the province of the ALJ as the trier of fact. *See, e.g., Rogers v. Dep’t of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep’t of Env’tl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cnty. Sch. Bd.*, 652 So. 2d 894 (Fla. 2d DCA 1995).

In this Exception, FSC also alleges that “the failure to address these relevant and material findings of fact adversely impacts the due process and equal protection rights of members of FSC and the public,” and, as authority, cites to *Gentry v. Dep’t of Prof. and Occupational Regulations, State Bd. Of Med. Examiners*, 283 So.2d 386, 387 (Fla. 1st DCA 1973). However, *Gentry*, the sole case cited by FSC in this allegation, is easily distinguishable and inapplicable here. In *Gentry*, the final order failed to contain or adopt even a single finding of fact:

A careful examination of the final order sought to be reviewed affirmatively discloses that it contains no findings of fact by respondent nor does it adopt, ratify, or confirm the findings of fact expressed in the special examiner’s report and

interest issue. **The Recommended Order did not make findings of fact addressing these matters.**

See FSC Exception 3 (emphasis added). It should also be noted that, contrary to what FSC suggests in this Exception, the Recommended Order also includes findings regarding the District’s review of the public comments and how they factor into the District’s permitting decision in Finding of Fact Paragraph 53.

recommendations. The order merely recites that respondent has considered the recommendations of the hearing examiner, the exceptions filed thereto, the rules of the Florida State Board of Medical Examiners, and thereupon orders that the exceptions be overruled, that three of the special examiner's recommendations be adopted, and that the fourth be modified to provide different conditions.

Id. In this case, the Recommended Order contains 60 paragraphs of findings of fact. Further, it is a settled rule of administrative law in Florida that a state agency does not have jurisdiction to dispose of constitutional due process or equal protection issues in administrative proceedings. *See State Dep't of Admin., Div. of Personnel v. State, Dep't of Admin., Div. of Admin. Hearings*, 326 So. 2d 187 (Fla. 1st DCA 1976); *Meyers v. Hawkins*, 362 So.2d 926 (Fla. 1978); *Gulf Pines Memorial Park v. Oaklawn Memorial Park*, 361 So.2d 695, 699 (Fla. 1978); *Dep't of Revenue of Fla. v. Young Am. Builders*, 330 So. 2d 864, 865 (Fla. 1st DCA 1976). Such constitutional issues are for the courts alone to determine and are not for administrative resolution. *Metro. Dade County v. Dept. of Commerce*, 365 So.2d 432, 435 (Fla. 3d DCA 1978). Because the District lacks jurisdiction to resolve constitutional due process issues, FSC's due process and equal protection claims in this Exception and Exception 2 must be denied.

Response to FSC Exception 4:

FSC takes exception to Findings of Fact Paragraphs 54 through 59 of the Recommended Order that it states is summarized by the statement at the end of Paragraph 59, which provides: "FSC did not point to any legal or factual support for its contention that the existence of an MFL and MFL Recovery Strategy for the Lower Santa Fe River means that the Permit cannot be consistent with the public interest."

To begin with, Paragraphs 54 through 59 are Findings of Fact (and FSC does not argue otherwise in its Exception) and FSC does not contend in its Exception that the record is devoid of any competent substantial evidence to support the ALJ's findings. Rather, FSC merely argues that

the record contains evidence supporting a contrary finding. However, if there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986). If the DOAH record discloses any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the Final Order. *See, e.g., Walker v. Bd. of Prof'l Eng'rs*, 946 So. 2d 604 (Fla. 1st DCA 2006); *Fla. Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987). Because there is competent substantial evidence supporting the challenged factual findings of the ALJ, this Exception must be denied. *Id.*; See Hearing Transcript at pages 165 & 198-199; FSC Exhibit 9, Deposition of Warren Zwanka at page 74 lines 17-24, page 76 lines 1-12, page 79 lines 1-9, and page 93 lines 1-2.

Further, on pages 16 through 19 of this Exception, in order to support its position, FSC is essentially asking the District to make independent, additional findings of fact regarding the "actual amount of withdrawal" by Seven Springs and the "average withdrawal by Seven Springs under its previous Permit", which the ALJ did not make any factual findings on in the Recommended Order³. However, the District has no authority to make independent or supplemental findings of fact. *See, e.g., North Port v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994).

Finally, as explained previously, the MFL issue/argument is not relevant or material in this proceeding based on the stipulations of the parties. All parties stipulated that there is no challenge

³ It should also be noted that FSC did not present any evidence on or dispute that Seven Springs provided sufficient information for the District to consider, under section 2.3.4.1(a), A.H., regarding the need for the requested amount of water. *See* Recommended Order at Paragraphs 32-22.

to whether Seven Springs met the statutory and rule criteria that contain the technical analysis regarding impact to the water resources and compliance with the applicable MFL rule. Additionally, regardless of the stipulation, the Santa Fe/Ichetucknee MFL Recovery Strategy, which is an adopted rule, expressly states that "renewal applicants that demonstrate a potential impact to the MFL water bodies based on the requested allocation **shall be considered consistent with the recovery strategy and shall be issued** a permit for duration of no more than five years, provided the applicant meets all other existing conditions for issuance." (emphasis supplied) *See* Hearing Transcript at pages 260-262; Santa Fe/Ichetucknee MFL Recovery Strategy, Section 6.0.5.d. Any contention that the existence of an MFL and MFL Recovery Strategy for the Lower Santa Fe River means that the Permit cannot be consistent with the public interest is entirely without merit.

Response to FSC Exception 5:

FSC takes exception to the finding in the Recommended Order's Finding of Fact Paragraph 59 that provides the following: "FSC's conclusionary suggestion that because there is an MFL and MFL Recovery Strategy in place for the Lower Santa Fe River, no withdrawal from that area can be considered consistent with the public interest is without support." Once again, Paragraph 59 is a Finding of Fact (and FSC does not argue otherwise in its Exception) and FSC does not contend in its Exception that the record is devoid of any competent substantial evidence to support the ALJ's finding—instead it improperly argues that there is contrary evidence in the record. Therefore, for this reason alone (as further explained above in the Response to Exception 4) this Exception must be denied.

Response to FSC Exception 6:

In Exception 6, FSC takes exception with the ALJ's Findings of Fact Paragraphs 54-56 of the Recommended Order regarding the effect of the Parties stipulations filed in the proceeding on the scope of the issues to be determined in the 120.57(1), F.S. proceeding. Those paragraphs provide:

54. FSC also attempted to argue that there was a "broad-based public interest in avoiding significant harm to the ecology of the Santa Fe River." However, FSC stipulated that Seven Springs provided reasonable assurance of all the rule criteria relating to harm to water resources, and did not present any expert testimony on potential harm to the Santa Fe River or any other water resources of the area.

55. All parties stipulated that there was no challenge to the statutory and rule criteria that contain the technical analysis regarding impact to the water resources and compliance with the applicable MFL rule. FSC cannot ambush the parties by challenging whether the Seven Springs Application met the same criteria by arguing that those very same issues can be evaluated again under the public interest criterion.

56. Specifically, FSC stipulated that Seven Springs provided reasonable assurance of meeting the permit criteria in rule 40B-2.301(2). This includes that the Permit's proposed use of water: "(h) is in accordance with any [MFL] and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S."; and (g) "is not expected to cause harm to the water resources of the area." Even with this definitive stipulation, FSC attempted throughout the hearing to elicit testimony regarding the fact that there is an MFL for the Lower Santa Fe River.

Despite expressly stipulating that Seven Springs provided reasonable assurance of meeting all the permit criteria listed in Rule 40B-2.301(2), including that the Permit's proposed use of water: "(h) is in accordance with any [MFL] and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S."; and "(g) is not expected to cause harm to the water resources of the area," FSC still argues in this Exception that the ALJ should have allowed FSC to "address issues concerning the MFL, the MFL Recovery strategy, or matters relating to harm to water resources." However, the stipulations filed by the Parties are binding and the ALJ properly limited the scope of the issues and evidence in the proceeding based on the Parties' stipulations. *Broche*

v. Cohn, 987 So.2d 124 (Fla. 4th DCA 2008). The agency (here the District) should not overturn rulings concerning procedural and evidentiary issues, or other matters outside of the agency's field of expertise, such as the scope and effect of the stipulations filed by the Parties in this proceeding. *Fla. Pub. Employees Council 79 v. Daniels*, 646 So. 2d 813, 816 (Fla 1st DCA 1994); *State Contr'g & Eng'g Corp. v. Fla. Dept. of Transp.*, 709 So. 2d 607, 610 (Fla. 1st DCA 1998); *Heifetz v. Dept. of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Martuccio v. Fla. Dept. of Professional Regulation*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Barfield v. Fla. Dept. of Health*, 805 So. 2d 1008, 1011-12 (Fla. 1st DCA 2001); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140 (Fla. 2d DCA 2001).

In addition, Paragraphs 54-56 are Findings of Fact, and FSC does not contend in its Exception that the record is devoid of any competent substantial evidence to support the ALJ's findings. Because there is competent substantial evidence in the record to support these findings, the Exception must be denied. *See* PHS at paragraph 12; *see also* Hearing Transcript at pages 171-172.

Finally, FSC's argument that the ALJ's findings in paragraphs 54-56 are "based on the improper interpretation of the applicability of the third-prong water test requirement...as opposed to the first-prong requirement," is without merit. The ALJ's findings in paragraphs 54-56 do not contain any interpretation of the third-prong or first-prong water permit rule criteria. Rather, they merely state what the Parties stipulated to and the effect of those stipulations on the scope of the proceeding. Regardless, this same argument (regarding the first prong versus third prong of the water use permit rule) was already made numerous times throughout the hearing by FSC and in FSC's Proposed Recommended Order and was rejected and addressed by the District's Proposed Recommended Order, Mr. Zwanka's testimony in the proceeding, and the ALJ in her

Recommended Order. See Recommended Order at Paragraphs 91-92⁴. Therefore, this Exception must be denied for the reasons stated above.

CONCLUSION

WHEREFORE, Respondent, Suwannee River Water Management District, respectfully requests the Suwannee River Water Management District Governing Board to issue a Final Order rejecting each of FSC's Exceptions and adopting the ALJ's Recommended Order in its entirety.

Respectfully submitted on November 13, 2023.

/s/ Frederick T. Reeves

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SUWANNEE RIVER WATER

MANAGEMENT DISTRICT

⁴ “91. FSC argued that, based on its interpretation of the rules of statutory construction and language in an agency final order, *City of Groveland v. St. Johns River Water Management District and Niagara Bottling Co., LLC*, Case No. 08-4201, FO at pp. 37-39 (Fla. DOAH Aug. 7, 2009; Fla. SJRWMD Sep. 25, 2009), separate and different meanings of "consistent with the public interest" must apply to the first prong (reasonable-beneficial use) and third prong (consistent with the public interest) of the three-prong test.

92. The flaw in FSC's argument is that no search for a different or additional definition of "consistent with the public interest" is necessary since that permit criterion was implemented by the District's adoption of section 2.3.4.1, A.H. The plain language of section 2.3.4.1, A.H., resolved any issues of interpretation of the "reasonable-beneficial" and "consistent with the public interest" prongs with respect to beverage processing permit applications by defining both in terms of compliance with the specifically delineated provisions of section 2.3.4.1, A.H. The undersigned agrees with Mr. Zwanka that consideration of the public interest, as defined by District rule, is already a part of the existing special rules for beverage processing in section 2.3.4.1, A.H.”

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed by electronic mail with Warren Zwanka, Agency Clerk, Suwannee River Water Management District, at warren.zwanka@srwmd.org, and served by electronic mail to counsel of record on the service list below on November 13, 2023.

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STATE OF FLORIDA
SUWANNEE RIVER WATER MANAGEMENT DISTRICT

FLORIDA SPRINGS COUNCIL, INC.,

Petitioner,

v.	Final Order No.	23-006
	Renewal WUP App. No.	2-041-218202-3
SEVEN SPRINGS WATER COMPANY, and SUWANNEE RIVER WATER MANAGEMENT DISTRICT,	DOAH Case Nos.	21-1180

Respondent.

_____ /

FINAL ORDER

This case comes to the Suwannee River Water Management District (the “District”) upon a Recommended Order (“RO”) from Administrative Law Judge, FRANCINE M. FFOLKES (the “ALJ”) with the State of Florida, Division of Administrative Hearings (“DOAH”). A copy of the RO is attached as Exhibit A. The RO was submitted on October 17, 2023, following a formal administrative hearing held on May 10, 2023.

Pursuant to Section 120.57(1)(k), Florida Statutes (F.S.) and Rule 28-106.217, Florida Administrative Code, (F.A.C.), the parties were allowed to file exceptions to the RO. The Petitioner, Florida Springs Council, Inc. (“Springs Council”), timely filed exceptions to the RO. No other party filed exceptions to the RO. The Respondent, Seven Springs Water Company (“Seven Springs”) timely filed responses to Springs Council’s exceptions. The District also timely filed responses to Springs Council’s exceptions.

The matter is now before the District's Governing Board, for final agency action: entry of a final order. In the RO, the ALJ recommended that the District enter a final order issuing Water Use Permit No. 2-041-218202-3 (the “Permit”) to Seven Springs on the terms and conditions set forth in the District's February 24, 2021, Technical Staff Report and with the addition of BlueTriton Brands, Inc., as a co-permittee.

STATUTORY TIME LIMITS FOR ISSUING THE FINAL ORDER

Section 120.60(1), F.S., provides that the District must issue a final order no later than 45 days after the date of the RO. The 45th day after the date of the RO was December 1, 2023. However, on October 24, 2023, the parties all executed and filed a CONSENT TO WAIVE STATUTORY AND RULE DEADLINES TO CONSIDER RECOMMENDED ORDER,

RENDER FINAL AGENCY ORDER, AND APPROVE OR DENY PERMIT APPLICATION, in which the parties waived such statutory deadlines and stipulated and agreed that the District's Governing Board would (1) consider and act upon the RO at its regularly-scheduled December 12, 2023 meeting, and (2) issue its final order no later than December 15, 2023.

STANDARD OF REVIEW

Findings of Fact

Section 120.57(1)(1), F.S., prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of the ALJ, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." *See also, Charlotte Cty. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1082 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm'n*, 955 So. 2d 61, 62 (Fla. 1st DCA 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence as to each essential element and as to its admissibility under legal rules of evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996); *Nunez v. Nunez*, 29 So. 3d 1191, 1192 (Fla. 5th DCA 2010). To find that the findings of fact were not "based upon competent substantial evidence" the agency must find there is no competent, substantial evidence in the record from which the findings could reasonably be inferred. *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002)

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers v. Dept of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belle au v. Dep't of Envtl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cty. School Bd.*, 652 So. 2d 894, 896 (Fla. 2d DCA 1995). If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622, 623 (Fla. 1st DCA 1986).

The ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See, e.g., Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State. Dep't of HRS*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm.*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983).

If there is competent substantial evidence to support the findings of fact in the record, the agency may not reject them, substitute its findings, or make new findings. *Packer v. Orange*

County School Bd., 881 So. 2d 1204, 1207 (Fla. 5th DCA 2004) Further, the agency is not allowed to make independent or supplemental findings of fact, even on issues about which the ALJ failed to make any findings. *Florida Power & Light Co. v. State*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997) (“It is not proper for the agency to make supplemental findings of fact on an issue about which the hearing officer made no findings.”); An agency may not reject the ALJ's finding of fact or otherwise interpret the evidence to fit its desired ultimate conclusion unless there is no competent, substantial evidence in the record from which the finding could reasonably be inferred. *Amador v. Sch. Bd. of Monroe Cty.*, 225 So. 3d 853, 857 (Fla. 3d DCA 2017)

Conclusions of Law

Section 120.57(1)(1), F.S., authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules “over which it has substantive jurisdiction.” See *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1012 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. Sch. Bd. of Broward Cty.*, 746 So. 2d 1194, 1197 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club. Ltd. v. Sheridan*, 784 So. 2d 1140 1141-142 (Fla. 2d DCA 2001). However, the agency should not label what is essentially an ultimate factual determination as a “conclusion of law” to modify or overturn what it may view as an unfavorable finding of fact. See, e.g., *Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are “permissible” ones. See, e.g., *Suddath Van Lines, Inc. v. Dep't of Env'tl. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

RULING ON EXCEPTIONS

In reviewing a recommended order and any written exceptions, the agency's final order “shall include an explicit ruling on each exception.” Section 120.57(1)(k), F.S. The agency, however, need not rule on an exception that “does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” *Id.* A party that files no exceptions to certain findings of fact “has thereby expressed its agreement with, or at least waived any objection to, those findings of fact.” *Env'tl. Coal, of Fla., Inc. v. Broward Cty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); see also *Colonnade Med. Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So. 2d 540, 542 (Fla. 4th DCA 2003). However, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction, even when exceptions are not filed. Section 120.57(1)(1), F.S.; *Barfield*, 805 So. 2d at 1012; *Fla. Pub. Emp. Council, v. Daniels*, 646 So. 2d 813, 816 (Fla. 1st DCA 1994).

RULINGS ON THE SPRINGS COUNCIL'S EXCEPTIONS

1. Exception 1.

Springs Council takes exception to the statement in Paragraphs 52 and 90 of the RO which provide that Springs Council, “could not point to any rule or statute supporting its contention that the large number of public comments meant that the Permit was not consistent with the public interest. There is no provision in the rules or statutes that the basis of issuance of a water use permit is determined by the number of public comments received.” Springs Council asserts that in its proposed recommended order Springs Council asserted that Section 373.223(1)(c) F.S. and Rule 40B-2.301(1)(c) F.A.C. require that persons seeking a permit to use water must show that the use is “consistent with the public interest.” Springs Council asserts that consideration of the large number of public comments is required under such authorities to determine if the use is “consistent with the public interest.”

Ruling.

Issue 1. At paragraphs 88-92 of the RO, the ALJ expressly found that the District’s rules (including its applicant’s handbook) implemented the statutory “consistent with the public interest” requirements and did not provide that the basis of issuance of a water use permit is determined by the number of public comments received.

The District finds this to be a correct statement of the applicable law. Florida law sets out the following factors for the District to consider when deciding whether to issue a consumptive use permit:

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.

Section 373.223(1), F.S. (Emphasis supplied); These three requirements are commonly referred to as the “three-prong test.” *See Southwest Fla. Water Mgmt. Dist. v. Charlotte County*, 774 So. 2d 903, 911-912 (Fla. 2d DCA 2001) The statutory definition for “reasonable beneficial use” in the first prong is, “‘Reasonable-beneficial use’ means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.” Section 373.019(16), F.S. (Emphasis supplied) Therefore the term “consistent with the public interest” is contained in both the first prong definition of “reasonable-beneficial use” and in the third prong.

Rule 40B-2.301(1), F.A.C., is substantially the same as Section 373.223(1), F.S.:

To obtain a water use permit, renewal, or modification, an applicant must provide reasonable assurance that the proposed consumptive use of water, on an individual and cumulative basis:

- (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.

Rule 40B-2.301(1), F.A.C. (Emphasis supplied) The rule definition for “reasonable beneficial use” in the first prong is, “‘Reasonable-beneficial Use’ means the use of water in such quantity as is necessary for economic and efficient consumption for a purpose and in a manner which is both reasonable and consistent with the public interest.” Rule 40B-2.021(8), F.A.C. (Emphasis supplied) Therefore the term “consistent with the public interest” is contained in both the first prong definition of “reasonable-beneficial use” and in the third prong.

Concerning the beverage processing use, which is the use at issue here, the District has promulgated a rule which provides what the District reviews in considering whether an application for beverage processing is “reasonable-beneficial” and “consistent with the public interest.” This rule provides:

Beverage Processing

In determining whether a proposed beverage processing use is **reasonable-beneficial** and **consistent with the public interest**, the Governing Board will consider the following information:

- (a) Whether there is a need for the requested amount of water;
- (b) The location of the withdrawal;
- (c) The location of the beverage processing facility;
- (d) Plan to convey water from withdrawal facility to beverage processing facility;
- (e) A site plan for the beverage processing facility;
- (f) Existing land use and zoning designations;
- (g) A market analysis;
- (h) Schedule for completion of construction of the beverage processing facility;
- (i) Contractual obligation to provide water for beverage processing;
- (j) Other evidence of physical and financial ability to process the requested amount; and
- (k) Other documentation necessary to complete the application.

Section 2.3.4.1 of the District's Water Use Permit Applicant's Handbook (adopted by reference in Rule 40B-2.301(3), F.A.C.)

Therefore, in determining whether an application for a beverage processing use, is "reasonable-beneficial" and is "consistent with the public interest" (as provided in prongs one and three of Section 373.223(1), F.S., and Rule 40B-2.301(1), F.A.C.), the District considers the matters set out in Section 2.3.4.1 of the Applicant's Handbook. Of course other matters expressly set out in District rules, such as "Water Resource Impact Evaluation" in Ch. 3 of the Applicant's Handbook, are also considered in the District's determination of whether to ultimately grant the application.

At paragraph 89-90 of the RO, the ALJ further found that since the number of public comments was not one of the factors to be considered under the District's rules, any consideration of the number of public comments would be the application of non-rule criteria to the consideration of an application for a permit and therefore impermissible. *Cleveland Clinic Florida Hospital v. Agency for Health Care Administration*, 679 So. 2d 1237, 1242 (Fla. 1st DCA 1996) ("Without question, an agency must follow its own rules,"); *Save the St. Johns River v. St. Johns River Water Management District*, 623 So. 2d 1193, 1198 (Fla. 1st DCA 1993) (finding with regards to the issuance of a permit that, "[t]he District was required in this proceeding to determine only whether Smith's application met the requirements imposed by the existing statutes and rules the District is charged with enforcing at this time.")

The ALJ's findings in this regard are conclusions of law over which the District has substantive jurisdiction and the interpretation of administrative rules over which the District has substantive jurisdiction. The District agrees with the ALJ's findings and therefore declines to modify or reject them.

Issue 2. As a separate matter, even if this exception were legally well founded (which it is not), it would provide no basis for modifying or rejecting the RO. At paragraph 51 and note 4 of the RO, the ALJ found that approximately 19,000 public comments exist in the District's files, but the ALJ excluded all evidence of the contents of the public comments as inadmissible hearsay. As a result, the ALJ made no findings of fact concerning the contents of the public comments. "No direct testimony adduced at the hearing allowed the undersigned to make Findings of Fact on the contents of these public comments." Note 4 of the RO.

No exception was filed concerning the ALJ's ruling excluding evidence of the contents of the public comments and therefore all objections to this ruling has been waived. *See Env'tl. Coal, of Fla., Inc. v. Broward Cty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991) (holding that a party that files no exceptions to certain findings of fact "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact.") Further, even had an exception to this ruling been filed, the District lacks jurisdiction to

modify or reject the RO based on the allegedly erroneous exclusion of evidence as inadmissible hearsay. *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1010 (Fla. 1st DCA 2001) (holding that a reviewing agency lacks substantive jurisdiction to reject the ALJ's conclusion of law excluding evidence as inadmissible hearsay.)

Finally, the District may not add facts to the record that was made before the ALJ. *Lawnwood Medical Center, Inc. v. Agency for Health Care Admin.*, 678 So. 2d 421, 425 (Fla. 1st DCA 1996) (“Chapter 120, Florida Statutes, directs an agency to review a recommended order based on the record that was before the hearing officer. An agency is not authorized . . . to reopen the record, receive additional evidence and make additional findings.”) So at this point, the District is not allowed to look into its files and determine the contents of the public comments.

Therefore, even assuming *arguendo* that there were statutes or rules supporting Springs Council’s contention that the public comments could be considered in determining whether the Permit, “Is consistent with the public interest” as provided in Section 373.223(1)(c), F.S., and Rule 40B-2.301(1)(c), F.A.C., the public comments would provide no basis for modifying or rejecting the RO. The record, as it now stands, only shows that a relatively large number of public comments were made. The record does not show the contents of the public comments. Without knowledge of the contents of the public comments, the District cannot know whether any or all of public comments were in support of the Permit, in opposition to the Permit or addressed the Permit at all. So, even if the District were allowed to consider the public comments in this case, the public comments could not provide any basis for modifying or rejecting the RO.

Accordingly, the exception is denied.

2. Exception 2.

Springs Council takes exception to the conclusions of law set out in paragraphs 88 and 92 of the RO. Springs Council asserts that the conclusions of law set out in these paragraphs improperly limit the consideration of the public comments made on this matter.

Ruling.

As explained more fully in the ruling on Exception 1, (a) the District agrees with the ALJ conclusion of law that in determining whether the Permit, “Is consistent with the public interest” as provided in Section 373.223(1)(c), F.S., and Rule 40B-2.301(1)(c), F.A.C., the District was limited to considering only the applicable permitting criteria set out in the District’s rules and that the number of public comments received is not part of such criteria and therefore cannot be considered, and (b) even if legally permissible, the consideration of public comments could not result in any rejection or modification of the RO in this case because no evidence of the contents of the public comments is in the

record. The District otherwise fully incorporates and restates the District's ruling on Exception 1 herein.

Additionally, Springs Council asserts that if the District fails to construe the applicable statutes and rules as asserted by Springs Council, that the District is violating the due process rights of members of Springs Council and the public "who sought to have the District consider their concerns about this Permit." However, the District lacks authority to consider constitutional issues. *See Fla. Hosp. v. Agency for Health Care Admin.*, 823 So. 2d 844, 849 (Fla. 1st DCA 2002) ("Administrative agencies lack the power to consider or determine constitutional issues.")

Accordingly, the exception is denied.

3. Exception 3.

Springs Council takes exception "to the failure of the Recommended Order to make findings of fact as to whether Seven Springs' proposed use of water was consistent with 'those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State' as required in Rule 40B-2.301(1)(c)." Springs Council further asserts that an evaluation of the public comments is necessary to determine if Rule 40B-2.301(1)(c) is met - that is, whether reasonable assurances have been provided that the proposed water use is consistent with "those broad-based concerns that are collectively shared by members of a community or residents of the District or the State."

Ruling

As explained more fully in the ruling on Exception 1, (a) the District agrees with the ALJ conclusion of law that in determining whether the Permit, "Is consistent with the public interest" as provided in Section 373.223(1)(c), F.S., and Rule 40B-2.301(1)(c), F.A.C., the District was limited to considering only the applicable permitting criteria set out in the District's rules and that the number of public comments received is not part of such criteria and therefore cannot be considered, and (b) even if legally permissible, the consideration of public comments could not result in any rejection or modification of the RO in this case because no evidence of the contents of the public comments is in the record. The District otherwise fully incorporates and restates the District's ruling on Exception 1 herein.

Additionally, Springs Council asserts that if the District fails to construe the applicable statutes and rules as asserted by Springs Council, that the District is violating the due process and equal protection rights of members of Springs Council and the public "who sought to have the District consider their concerns about this Permit." However, the District lacks authority to consider constitutional issues. *See Fla. Hosp. v. Agency for*

Health Care Admin., 823 So. 2d 844, 849 (Fla. 1st DCA 2002) (“Administrative agencies lack the power to consider or determine constitutional issues.”)

Accordingly, the exception is denied.

4. Exception 4.

Springs Council takes exception to the issuance of the Permit because Springs Council asserts that the Minimum Flow or Level and MFL Recovery Strategy for the Lower Santa Fe River are being violated. Springs Council asserts that even though the permitted allocation of the Permit has not increased that actual use will increase and that such an increase in actual use will necessarily cause harm. Exceptions pages 17-19.

Ruling.

First, the ALJ found that Springs Council could not raise this issue because Springs Council had, “stipulated that Seven Springs provided reasonable assurance of all the rule criteria relating to harm to water resources, and did not present any expert testimony on potential harm to the Santa Fe River or any other water resources of the area.” RO at paragraph 54. The ALJ also found that, “All parties stipulated that there was no challenge to the statutory and rule criteria that contain the technical analysis regarding impact to the water resources and compliance with the applicable MFL rule.” RO at paragraph 55.

The ALJ’s finding of a binding stipulation and finding that Springs Council did not present any relevant expert testimony on potential harm to the water resources of the area are either findings of fact or conclusions of law.

To the extent that these findings are findings of fact, Springs Council has not asserted that there is no competent substantial evidence in the record to support the findings. Therefore the District may not reject or modify these findings. Section 120.57(1)(l), F.S. *See Amador v. Sch. Bd. of Monroe Cty.*, 225 So. 3d 853, 857 (Fla. 3d DCA 2017) (“[T]he agency may not reject the ALJ's finding [of fact] or otherwise interpret the evidence to fit its desired ultimate conclusion unless there is no competent, substantial evidence from which the finding could reasonably be inferred.”) (Emphasis supplied); *Prysi v. Department of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002) (“An ALJ's findings [of fact] cannot be rejected unless there is no competent, substantial evidence from which the findings could reasonably be inferred.”) (Emphasis supplied)

To the extent that these findings are conclusions of law, they are not a conclusion of law over which the District has substantive jurisdiction. Therefore the District may not reject or modify these findings. *See* Section 120.57(1)(l), F.S. (“The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and

interpretation of administrative rules over which it has substantive jurisdiction.”) *See Barfield v. Dep't of Health*, 805 So. 2d 1008, 1010 (Fla. 1st DCA 2001) (holding that a reviewing agency cannot reject or modify conclusions of law over which it lacks substantive jurisdiction and finding that evidentiary matters were outside the agency’s jurisdiction.)

Second, the minimum flow for the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs was adopted by rule of the Florida Department of Environmental Protection at Rule 62-42.300(1)(a-c) F.A.C. (the “MFL”). The recovery strategy for the MFL is designated as Supplemental Regulatory Measures 6.0 and was also adopted by rule of the Florida Department of Environmental Protection at Rule 62-42.300(1)(d) F.A.C. (the “Recovery Strategy”).

Springs Council admits that the Permit complies with the Recovery Strategy:

The District and Seven Springs contend that the proposed use of water in this case is in accordance with the MFL recovery strategy for the Lower Santa Fe River and its associated springs based on compliance with Section 6.0-5d)ii of the Santa Fe River Basin Recovery Strategy, which was adopted by reference in Rule 62-42.300(1)(d). They are correct.

Exceptions at page 18. (Emphasis supplied)

Springs Council then asserts that even though the Permit is in accordance with the Recovery Strategy, the Permit may still violate the MFL. This is incorrect.

As found by the ALJ (RO at paragraphs 57-58), the applicable portion of the Recovery Strategy provides that renewal applicants, who do not request an increase in allocation, that demonstrate a potential impact to the MFL water bodies, “shall be considered consistent with the Recovery Strategy and shall be issued a permit. . .” (Emphasis supplied) SUPPLEMENTAL REGULATORY MEASURES 6.0(5)(d)(ii) (Emphasis supplied) (This portion of the Recovery Strategy is consistent with the statutory mandate that a, “recovery or prevention strategy must include a phased-in approach or a timetable which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses. . .” Section 373.0421(2) F.S.)

To the extent that the ALJ’s findings in this regard are conclusions of law over which the District has substantive jurisdiction or the interpretation of administrative rules over which the District has substantive jurisdiction, the District agrees with the ALJ’s findings. Therefore the District declines to modify or reject them.

Accordingly, the exception is denied.

5. Exception 5.

Springs Council takes exception to the ALJ's finding in paragraph 59 that "FSC's conclusory suggestion that because there is an MFL and MFL Recovery Strategy in place for the Lower Santa Fe River, no withdrawal from that area can be considered consistent with the public interest is without any support."

Ruling.

As explained more fully in the District's ruling on Exception No. 4, (a) the District may not reject or modify the portion of the RO which finds that Springs Council had, "stipulated that Seven Springs provided reasonable assurance of all the rule criteria relating to harm to water resources, and did not present any expert testimony on potential harm to the Santa Fe River or any other water resources of the area" and that, "All parties stipulated that there was no challenge to the statutory and rule criteria that contain the technical analysis regarding impact to the water resources and compliance with the applicable MFL rule" and (b) the District agrees with the ALJ conclusion of law that where the requirements of the Recovery Strategy are met, the requirements of the MFL are met. The District otherwise fully incorporates and restates the District's ruling on Exception 4 herein.

Accordingly, the exception is denied.

6. Exception 6.

Springs Council takes exception to paragraphs 54 through 56 of the RO in which the ALJ concluded that because Springs Council stipulated that it would not challenge whether Seven Springs has provided reasonable assurance that its proposed use of water was a reasonable-beneficial use under Rule 40B-2.301(1)(a), Springs Council could not address issues concerning the MFL, the MFL Recovery Strategy, or matters relating to harm to water resources under Rule 40B-2.301(1)(c).

Ruling.

As explained more fully in the District's ruling on Exception No. 4, (a) the District may not reject or modify the portion of the RO which finds that Springs Council had, "stipulated that Seven Springs provided reasonable assurance of all the rule criteria relating to harm to water resources, and did not present any expert testimony on potential harm to the Santa Fe River or any other water resources of the area" and that, "All parties stipulated that there was no challenge to the statutory and rule criteria that contain the technical analysis regarding impact to the water resources and compliance with the applicable MFL rule" and (b) the District agrees with the ALJ conclusion of law that where the requirements of the Recovery Strategy are met, the requirements of the MFL

are met. The District otherwise fully incorporates and restates the District's ruling on Exception 4 herein.

Accordingly, the exception is denied.

ORDER

Having reviewed the RO and having considered the applicable law and being otherwise duly advised, it is ORDERED that:

A. The RO is adopted and incorporated herein by reference.

B. The District shall issue a permit to Seven Springs and BlueTriton Brands, Inc., on the same terms and conditions as renewal permit no. No. 2-041-218202-3, except for the addition of BlueTriton Brands, Inc., as a co-permittee. Further the five year term of the permit shall run from the original date of issuance of renewal permit no. No. 2-041-218202-3 (February 24, 2021). However, upon referral of Springs Council's petition to DOAH, the District's final agency action on renewal permit no. No. 2-041-218202-3 was converted to proposed agency action and renewal permit no. No. 2-041-218202-3 was no longer in effect. *See Town of Davie v. State of Florida, Department of Environmental Regulation and Broward County*, 1984 WL 54268, *5, OGC File No.: 83-0509; DOAH Case No.: 83-2824 (FDER Final Order dated Jan. 13, 1984) (“[T]he impact of granting the request for a hearing and remanding the cause to the hearing officer would be significant. Upon referral to DOAH, the Department's final action would be converted into proposed agency action. *Cappeletti Brothers, Inc. v. Department of Transportation*, 362 So. 2d 346 (Fla. 1st DCA 1978), *cert. denied*, 368 So. 2d 1374 (Fla. 1979). The County would then be left without a valid Department permit. . .”) (Emphasis supplied) Therefore the time from the date of referral of Springs Council's petition to DOAH (March 30, 2021) though the date of the issuance of this final order, shall not be counted against the five year term of the permit.

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

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Suwannee River Water Management District, 9225 CR 49, Live Oak, Florida 32060; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal.

The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Suwannee River Water Management District.

DONE and ORDERED on _____, 2023.

GOVERNING BOARD OF THE SUWANNEE
RIVER WATER MANAGEMENT DISTRICT

By: _____
Virginia H. Johns
Chair

ATTEST: _____
Charles Keith
Secretary / Treasurer

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

CERTIFICATE OF FILING

I HEREBY CERTIFY that the above order was filed with the Suwannee River Water Management District on _____, 2023.

Warren Zwanka
Deputy Agency Clerk
Suwannee River Water Management District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above order was provided to:

Frederick T. Reeves
5709 Tidalwave Drive
New Port Richey, Florida 34652
Email: freeves@tbaylaw.com
jeckelkamp@tbaylaw.com

Douglas P. Manson
Craig Varn
Paria Shirzadi Heeter
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Email: jrthomasesq@gmail.com

John D Jopling
5323 NW 92nd Way
Gainesville, FL 32653
Email: jjopling@uww-adr.com

by email on _____, 2023.

Warren Zwanka
Deputy Agency Clerk
Suwannee River Water Management District

EXHIBIT "A"

(A copy of the RECOMMENDED ORDER will be attached to this Final Order as Exhibit "A")

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board
FROM: Stephen Schroeder, Chief, Office of Administration
THRU: Tim Alexander, Deputy Executive Director, Business and Community Services
DATE: December 1, 2023
RE: Land Acquisition and Disposition Activity Report

Attached for your information is the Land Acquisition and Disposition Activity Report.

SS/tm
Attachments

LAND ACQUISITION AND DISPOSITION ACTIVITY REPORT

Owner	Tract	Acres	County	Submittal Date	Asking Price	Acquisition Type	Comments
Approved for Detailed Assessment							
Owner	Project Name	Acres	County	Submittal Date	Asking Price	Acquisition Type	Comments
Camp and Abel	Camp and Abel	266	Hamilton	09.23.20	\$948,000	Fee	Approved for detailed assessment and negotiations 12.8.20. Property being tasked to NFLT for negotiation and assessment. Transaction will be processed in house and not contracted. ESA Phase 1 ordered. Appraisal ordered. Delayed completion due to flooding. ESA Phase 1 site visit scheduled 5.18. 2022. ESA report received and reported no concerns. Appraisal pending. Appraisal received. Offer being extended to offeror. On March 2023 Board for action. Approved by GB March 2023 meeting. Contract being drafted. Resolution on April 2023 GB Agenda. Resolution approved. In closing pending termination of timber lease. Owner is having an OGM (Mineral Rights) title search completed. Final closing anticipated October 6. Closing to be extended - mineral right releases still being obtained by seller. Closing extended to December 19 but expected sooner.
Pfleiger	Riverbend Estates	1.1	Dixie	03.20.20	\$11,000/Possible exchange	Fee	Staff recommendation to proceed with detailed assessment and negotiations. Approved by LC on 6.9.20. Approved by GB on 7.14.20. In discussions with Offeror to exchange for Timber River parcel in Madison County. Offeror has tentatively agreed to exchange. Draft contract submitted to Counsel for review on 3.3.21. Awaiting additional guidance from Counsel regarding appraisals. Contract revised and submitted to Pflieger. Staff will order an ESA Phase 1 and appraisal of the Riverbend property; Pflieger will order an appraisal on the District land in Timber River. Signed contract received from Pflieger to be submitted for GB Chair signature. Satisfactory Phase 1 ESA was received. Appraisal in process. Final exchange approved by LC 1.11.22. . Approved by GB 2.8.22. Will proceed to closing. Pending Closing. Closing in process. Closing date pending - likely March 2023. Closing scheduled to be completed April 3, 2023. Closing complete. Closing delayed due to one owner being out of the Country. Awaiting final documentation for closing. 10.11.23 - awaiting final action on closing.
Florida Department of Transportation	Quail Heights	40.63	Columbia		\$651,105	Fee	Staff review on 8.8.19 recommended purchase in partnership with FDOT. Approved by LC on 2.11.20. Approved by GB 3.10.20. Submitted for Springs Grant funding but not obtained for FY 20. Property acquired by FDOT on 9.10.20. LC approved contribution to acquisition costs 11.10.20. GB approved on consent agenda 12.8.20. FDOT contract completed. Resolution for acquisition on GB agenda 5.11.21 and was approved. Final revisions and resolution of all contingencies complete and satisfied. Funds will be distributed to FDOT before 6.1.21. Agreement with FDOT executed. Funds referred after due diligence. Staff is working on obtaining appropriate surveys and negotiating agreement with Columbia County. Interlocal agreement being drafted with Columbia County. Survey received from Columbia County. Determining next steps for completion of transaction. Staff met with County representatives 9.13.22 - MOA should be completed by 10.1.22. Still awaiting MOA from County. District has assumed responsibility for MOA anticipate completion by April 2023. Staff is meeting with County on May 18, 2023 to discuss. Awaiting comments from County legal counsel on MOA.
Waldo Tree Farm, LLC	Waldo Tree Farm	38 +/-	Alachua	5.10.22	TBD based on appraisal	Fee	8.9.22 LC authorized staff to expend not more than \$5,000 to acquire an appraisal and negotiate a price with the sellers. Recommended acquisition price to be presented to LC when available for further approval and recommendations to the Governing Board. Quotes pending for appraisal. Appraisal pending. Anticipated completion in February 2023. Appraisal received. Proposed acquisition price being submitted to LC March 2023. LC approved acquisition price at March 2023 meeting. On April 2023 GB Agenda. Contract being prepared. ESA Phase 1 being ordered. Phase 1 report anticipated in late August. Phase 1 underway (delayed due to contractor personell issues) due by November 20.
Hodges	Hodges	753 +/-	Levy	3.2023	TBD based on appraisal	Conservation Easement	5.9.23 Staff recommendation approved by LC. On June 2023 Governing Board agenda. Discussion of terms of CE in process.
Tanner Springs (Dixon)	Dixon	40 +/-	Hamilton	1.2023	TBD based on appraisal	Conservation Easement	5.9.23 Staff recommendation approved by LC. On June 2023 Governing Board agenda. Discussion of terms of CE in process.
Long Pond	Williams Family Investments, LLC.	947 +/-	Levy	6.2023	TBD based on appraisal	Conservation Easement	9.25.23 staff recommendation approved by Lands Committee. 10.10.23 LC action approved by Governing Board. CE terms being negotiated.
Rawson	Matthew Rawson	140 +/-	Lafayette	5.2023	TBD based on appraisal	Conservation Easement	9.25.23 staff recommendation approved by Lands Committee. 10.10.23 LC action approved by Governing Board. CE terms being negotiated.
Taylor	Johnny Taylor	941 +/-	Gilchrist	7.2023	TBD based on appraisal	Conservation Easement	9.25.23 staff recommendation approved by Lands Committee. 10.10.23 LC action approved by Governing Board. CE terms being negotiated.

LAND AND DISPOSITION ACTIVITY REPORT
SURPLUS

Proposed for Surplus

Tract	Acres	County	Acquired Date	Funding	Appraisal Date	Price	Comments
None pending.							

Authorized for Surplus

Tract	Acres	County	Acquired Date	Funding	Appraisal Date	Price	Comments
Forest Woodlands	11	Gilchrist	10.11.1996	Save Our Rivers	TBD	To be determined by appraisal.	Staff recommended for surplus. Approved by Lands Committee (LC) on 10.10.19. Approved by Governing Board (GB) 11.12.19. Will be offered to adjacent property owners.
Santa Fe Oasis	1	Gilchrist	4.28.1998	Save Our Rivers	TBD	TBD by appraisal update.	Approved by LC on 4.14.20. Approved by GB 5.12.20. Offered for sale to adjacent owners, two offers received. Approved by LC 8.11.20 to accept highest offer. Withdrawn from GB on 9.8.20. Being resubmitted to LC for its 9.21.20 meeting for staff recommendation to reject all offers and offer for sale to the general public. GB approved LC recommendation on 10.13.20. All bids rejected and property will be offered for sale to the general public. Staff is trying to obtain a review appraisal to reconcile disparate appraisals received and determine minimum price for bids. Awaiting legal guidance on establishing minimum price for public notice of intent to sell.
Suwannee Run Shores	1.175	Dixie	12.30.1997	Save Our Rivers	TBD	To be determined by appraisal.	Staff recommended for surplus. Approved by LC 7.9.19. Approved by GB 8.13.19. Adjacent Property owners notified, responses/bids with appraisals due 4.15.20. No responses received, will be posted on website and offer for sale to general public.
Three Rivers Estates	1	Columbia	12.30.1997	Save Our Rivers	N/A	TBD by appraisal update.	Staff recommended for surplus. Approved by LC 7.9.19. Approved by GB 8.8.19. Adjacent Property owners notified, responses/bids with appraisals due 4.15.20. Two offers received, highest offer approved by LC 6.9.20. On GB agenda for 7.14.20 and approved. Contract being drafted.
Turtle Spring Surplus Tract	32	Lafayette	5.13.2015	Florida Forever	5.24.2015	TBD by appraisal update.	Suspended until further review. Attempting to verify final surplus status/approval by GB.
Newberry Wellfield	58.66	Alachua	1.11.2000	P-2000	N/A	\$0	3.9.21 LC recommended surplus and conveyance to the City of Newberry with specified conditions. Approved by GB 4.13.21. Conveyance documents being drafted for legal review. Conveyance on hold pending resolution of issues relating to timber operations by the District. Timber operations underway. Once complete, transaction will be closed.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Stephen Schroeder, Chief, Office of Administration

THRU: Tim Alexander, Deputy Executive Director, Business and Community Services

DATE: December 1, 2023

RE: Request for Qualifications 23/24-002 Design-Build Construction Services for Renovation of the Field Services Building

RECOMMENDATION

District staff recommends the Governing Board approve the list of qualified general contractors and authorize the Executive Director to execute a contract with the number one ranked firm for an amount not to exceed \$1,000,000.

BACKGROUND

On October 24, 2023, Suwannee River Water Management District (District) published a request for qualifications (RFQ) for design-build construction services for renovation of the Field Services Building (former Lab Building). The RFQ was advertised and published on the DemandStar electronic bidding system, the District’s website, and the State of Florida vendor bid system.

The project will remodel the old lab building to create a functional workspace for hydrologic data collection and will include freight receiving and storage. The addition of storage space will free up space within other District facilities for more productive use.

The qualification packages were due and opened on November 15, 2023, at 3:00 p.m. Five packages were submitted. On November 21, 2023, the selection committee met and ranked each firm one through five. Scores were then averaged, resulting in an overall firm ranking. The top three firms are listed below in ranked order.

Staff recommends that the District enter into negotiations with the top firm listed below and contract for services in an amount not to exceed \$1,000,000; and if unable to reach agreeable terms with the top firm, enter into negotiations with the second. A performance bond will be required as part of the agreement and retainage will be deducted from each incremental payment until completion and acceptance of the final project, including “as-built” drawings. The selected contractor will be responsible for obtaining all permits, maintaining appropriate levels of insurance, and competitively soliciting subcontractor bids to achieve the most cost-effective completion.

General Construction Firm Name	Primary Office Location	Ranking
Gateway Contracting, Inc.	Jacksonville, FL	1
Gary Johnston Construction, Inc.	Lake City, FL	2
Gray Construction Services, Inc.	Lake City, FL	3

The project is funded by an appropriation in the amount of \$1,000,000 from the Florida Legislature in the 2023 General Appropriations Act. Funding for this project is included in the Fiscal Year 2023-2024 Final Budget.

SS/tm

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Pam Shaw, Chief, Office of Finance

THRU: Tim Alexander, Deputy Executive Director, Business and Community Services

DATE: December 1, 2023

RE: October 2023 Financial Report

RECOMMENDATION

Approve the October 2023 Financial Report and confirm the expenditures of the District.

BACKGROUND

Section 373.553(1), Florida Statutes (F.S.), authorizes the delegation of authority by the Governing Board to the Executive Director to disburse District funds, providing certification is made to the Board at the next regular meeting that such disbursement is proper, in order, and within budgetary limits. In compliance with the statutory provisions in Chapter 373, F.S., the Governing Board of the Suwannee River Water Management District has directed staff to prepare a financial report as attached.

PS/tm
Attachments

**Suwannee River Water Management District
Cash Report
October 2023**

Financial Institution/Account	Monthly Interest	Interest Rate %	Closing Balance
First Federal Permit Fee	\$0.00		\$500.00
First Federal Accounts Payable	\$0.00		\$35,000.00
First Federal EFT Disbursements	\$0.00		\$171,801.50
First Federal Depository	\$743.34	0.09%	\$795,410.07
Special Purpose Investment Account (SPIA)*	<u>\$79,903.29</u>	2.28%	<u>\$38,388,337.99</u>
TOTAL	<u><u>\$80,646.63</u></u>		<u><u>\$39,391,049.56</u></u>

*SPIA is part of the Treasury Investment Pool administered by Florida Department of Financial Services.

**Suwannee River Water Management District
Statement of Sources and Uses of Funds
For the Month ending October 31, 2023
(Unaudited)**

	Current Budget	Actuals Through 10/31/2023	Variance (Under)/Over Budget	Actuals As A % of Budget
Sources				
Ad Valorem Property Taxes	\$ 6,889,956	\$ 4,805	\$ (6,885,151)	0.1%
Intergovernmental Revenues	\$ 51,272,469	\$ 77,562	\$ (51,194,907)	0.2%
Interest on Invested Funds	\$ 130,000	\$ 80,822	\$ (49,178)	62.2%
License and Permit Fees	\$ 223,000	\$ 33,565	\$ (189,435)	15.1%
Other	\$ 1,390,000	\$ 60,429	\$ (1,329,571)	4.3%
Fund Balance ¹	\$ 11,728,665	\$ 50,000	\$ (11,678,665)	0.4%
Total Sources	\$ 71,634,090	\$ 307,184	\$ (71,326,906)	0.4%

	Current Budget	Expenditures	Encumbrances ²	Available Budget	%Expended	%Obligated ³
Uses						
Water Resources Planning and Monitoring	\$ 12,182,776	\$ 322,598	\$ 6,449,874	\$ 5,410,304	3%	56%
Acquisition, Restoration and Public Works	\$ 46,444,966	\$ 1,689,620	\$ 35,307,548	\$ 9,447,798	4%	80%
Operation and Maintenance of Lands and Works	\$ 8,457,072	\$ 255,143	\$ 3,175,400	\$ 5,026,529	3%	41%
Regulation	\$ 2,368,342	\$ 106,585	\$ 44,128	\$ 2,217,629	5%	6%
Outreach	\$ 227,719	\$ 17,069	\$ 1,492	\$ 209,158	7%	8%
Management and Administration	\$ 1,953,215	\$ 126,958	\$ 133,435	\$ 1,692,821	6%	13%
Total Uses	\$ 71,634,090	\$ 2,517,972	\$ 45,111,878	\$ 24,004,240	4%	66%

¹ Actual Fund Balance used is recorded at the end of the fiscal year. This amount represents Fund Balance used for the Agricultural and RIVER Cost-Share, Regional Water Resource Development, and Project Effectiveness Metrics Programs.

² Encumbrances represent unexpended balances of open purchase orders, contracts, and task work assignments.

³ Represents the sum of expenditures and encumbrances as a percentage of the available budget.

This financial statement is prepared as of October 31, 2023 and covers the interim period since the most recent audited financial statements.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT
STATEMENT OF ACTIVITY - REVENUE AND EXPENSE ROLLUP (UNAUDITED)
FOR 10/31/2023

	Y-T-D ACTUAL	ENCUMBRANCE	ANNUAL BUDGET
<u>Report Recap -</u>			
REVENUES			
DISTRICT REVENUES	179,622	0	8,632,956
LOCAL REVENUES	0	0	0
STATE REVENUES	0	0	35,994,469
FEDERAL REVENUES	77,562	0	15,278,000
FUND BALANCE UTILIZATION	50,000	0	11,728,665
TOTAL REVENUES	307,184	0	71,634,090
EXPENDITURES			
SALARIES AND BENEFITS	532,726	0	8,426,206
CONTRACTUAL SERVICES	1,662,521	15,376,577	26,544,876
OPERATING EXPENDITURES	222,872	249,531	2,334,500
OPERATING CAPITAL OUTLAY	160	0	343,044
FIXED CAPITAL OUTLAY	0	378,805	5,816,000
INTERAGENCY EXPENDITURES	99,693	29,106,965	28,169,464
TOTAL EXPENDITURES	2,517,972	45,111,878	71,634,090
EXCESS REVENUES OVER (UNDER) EXPENDITURES	(2,210,788)	(45,111,878)	0
<u>General Fund -</u>			
REVENUES			
DISTRICT REVENUES	104,171	0	5,135,254
LOCAL REVENUES	0	0	0
STATE REVENUES	0	0	4,740,000
FEDERAL REVENUES	0	0	0
FUND BALANCE UTILIZATION	0	0	3,066,077
TOTAL REVENUES	104,171	0	12,941,331
EXPENDITURES			
SALARIES AND BENEFITS	420,784	0	6,482,354
CONTRACTUAL SERVICES	2,923	843,793	4,019,204
OPERATING EXPENDITURES	71,860	86,161	1,452,457
OPERATING CAPITAL OUTLAY	0	0	226,816
FIXED CAPITAL OUTLAY	0	0	0
INTERAGENCY EXPENDITURES	0	565,859	760,500
TOTAL EXPENDITURES	495,567	1,495,813	12,941,331
EXCESS REVENUES OVER (UNDER) EXPENDITURES	(391,396) *	(1,495,813)	0
<i>*To be covered by Ad Valorem and State Appropriations</i>			
<u>Land Management Operations -</u>			
REVENUES			
DISTRICT REVENUES	60,429	0	2,707,020
LOCAL REVENUES	0	0	0
STATE REVENUES	0	0	3,691,119
FEDERAL REVENUES	0	0	40,000
FUND BALANCE UTILIZATION	0	0	2,253,933
TOTAL REVENUES	60,429	0	8,692,072
EXPENDITURES			
SALARIES AND BENEFITS	60,468	0	1,081,015
CONTRACTUAL SERVICES	43,503	2,285,868	3,914,672
OPERATING EXPENDITURES	151,011	163,370	807,543
OPERATING CAPITAL OUTLAY	160	0	116,228
FIXED CAPITAL OUTLAY	0	145,133	1,816,000
INTERAGENCY EXPENDITURES	0	586,042	956,614
TOTAL EXPENDITURES	255,142	3,180,413	8,692,072
EXCESS REVENUES OVER (UNDER) EXPENDITURES	(194,713) *	(3,180,413)	0
<i>*To be covered by State Appropriations</i>			

SUWANNEE RIVER WATER MANAGEMENT DISTRICT
STATEMENT OF ACTIVITY - REVENUE AND EXPENSE ROLLUP (UNAUDITED)
FOR 10/31/2023

	Y-T-D ACTUAL	ENCUMBRANCE	ANNUAL BUDGET
<u>District Special Revenue -</u>			
REVENUES			
DISTRICT REVENUES	0	0	0
LOCAL REVENUES	0	0	0
STATE REVENUES	0	0	0
FEDERAL REVENUES	0	0	0
FUND BALANCE UTILIZATION	50,000	0	3,820,000
TOTAL REVENUES	50,000	0	3,820,000
EXPENDITURES			
SALARIES AND BENEFITS	0	0	0
CONTRACTUAL SERVICES	0	1,036,063	1,300,000
OPERATING EXPENDITURES	0	0	30,000
OPERATING CAPITAL OUTLAY	0	0	0
FIXED CAPITAL OUTLAY	0	0	0
INTERAGENCY EXPENDITURES	50,000	1,329,862	2,490,000
TOTAL EXPENDITURES	50,000	2,365,925	3,820,000
EXCESS REVENUES OVER (UNDER) EXPENDITURES	0	(2,365,925)	0
<u>State Special Revenue -</u>			
REVENUES			
DISTRICT REVENUES	15,021	0	790,682
LOCAL REVENUES	0	0	0
STATE REVENUES	0	0	27,563,350
FEDERAL REVENUES	0	0	0
FUND BALANCE UTILIZATION	0	0	2,588,655
TOTAL REVENUES	15,021	0	30,942,687
EXPENDITURES			
SALARIES AND BENEFITS	50,658	0	846,837
CONTRACTUAL SERVICES	1,538,533	6,412,010	12,624,000
OPERATING EXPENDITURES	0	0	36,500
OPERATING CAPITAL OUTLAY	0	0	0
FIXED CAPITAL OUTLAY	0	233,672	4,000,000
INTERAGENCY EXPENDITURES	49,693	13,260,966	13,435,350
TOTAL EXPENDITURES	1,638,884	19,906,648	30,942,687
EXCESS REVENUES OVER (UNDER) EXPENDITURES	(1,623,863) *	(19,906,648)	0
<i>*To be reimbursed by State Grants</i>			
<u>Federal Special Revenue -</u>			
REVENUES			
DISTRICT REVENUES	0	0	0
LOCAL REVENUES	0	0	0
STATE REVENUES	0	0	0
FEDERAL REVENUES	77,562	0	15,238,000
FUND BALANCE UTILIZATION	0	0	0
TOTAL REVENUES	77,562	0	15,238,000
EXPENDITURES			
SALARIES AND BENEFITS	816	0	16,000
CONTRACTUAL SERVICES	77,562	4,798,844	4,687,000
OPERATING EXPENDITURES	0	0	8,000
OPERATING CAPITAL OUTLAY	0	0	0
FIXED CAPITAL OUTLAY	0	0	0
INTERAGENCY EXPENDITURES	0	13,364,235	10,527,000
TOTAL EXPENDITURES	78,378	18,163,079	15,238,000
EXCESS REVENUES OVER (UNDER) EXPENDITURES	(816) *	(18,163,079)	0
<i>*To be reimbursed by Federal Grants</i>			

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board
FROM: Pam Shaw, Chief, Office of Finance
THRU: Tim Alexander, Deputy Executive Director, Business and Community Services
DATE: December 1, 2023
RE: Fiscal Year 2024-2025 Preliminary Budget

RECOMMENDATION

Approve the Preliminary Budget for Fiscal Year 2024-2025 of \$64,895,922 and authorize the Executive Director to make recommended adjustments, as necessary, to submit the standard format preliminary budget by January 15, 2024, in accordance with Section 373.535, Florida Statutes.

BACKGROUND

Section 373.535, Florida Statutes, requires the water management districts to submit a standard format preliminary budget for the next fiscal year for legislative review by January 15 of each year. The preliminary budget must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the chair of committees and subcommittees with substantive or fiscal jurisdiction over the water management districts.

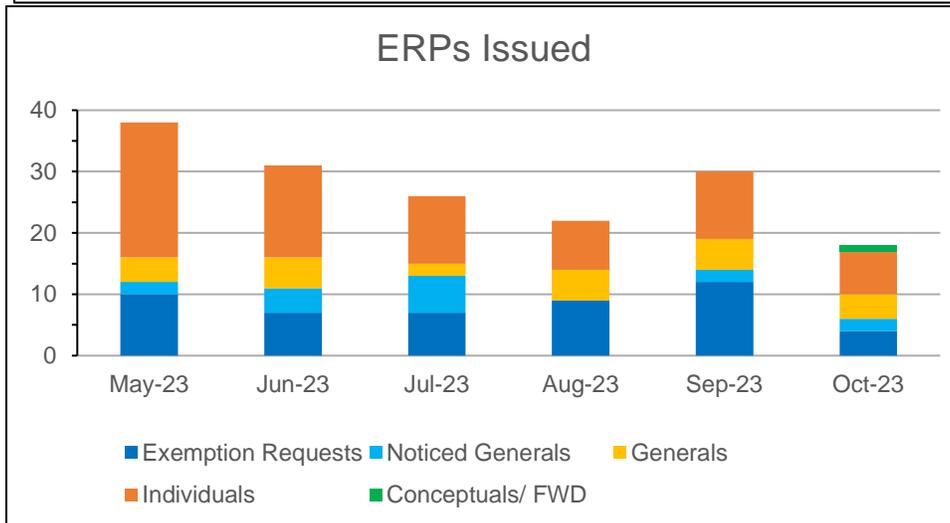
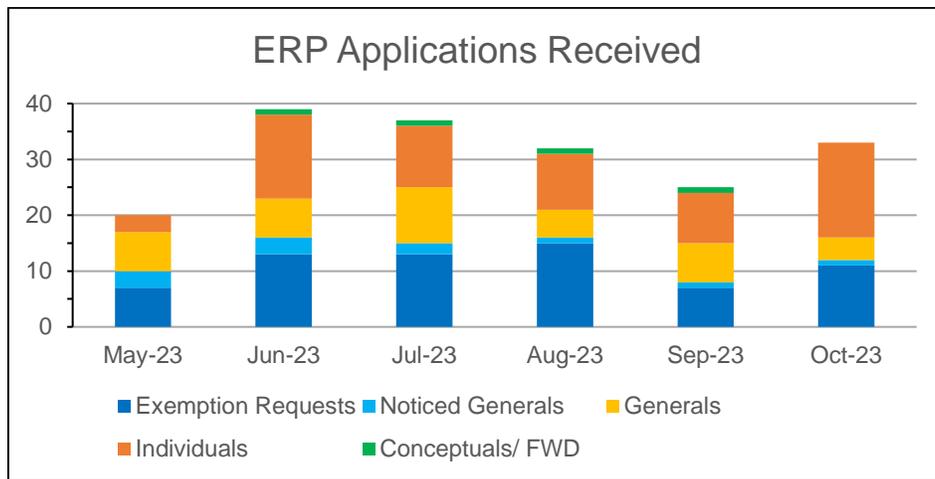
The preliminary budget submitted for review is balanced by fund, properly utilizes restricted funds, and provides for expenditures as designated and as defined by the Governmental Accounting Standards Board Statement No. 54.

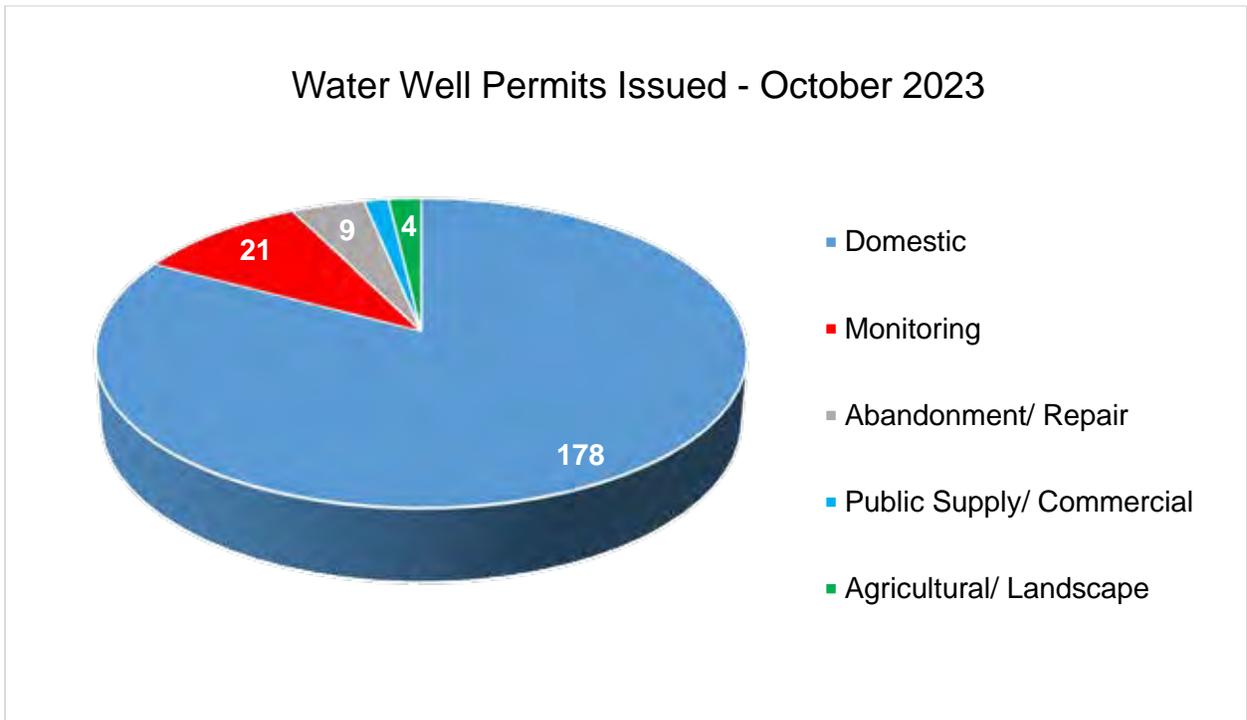
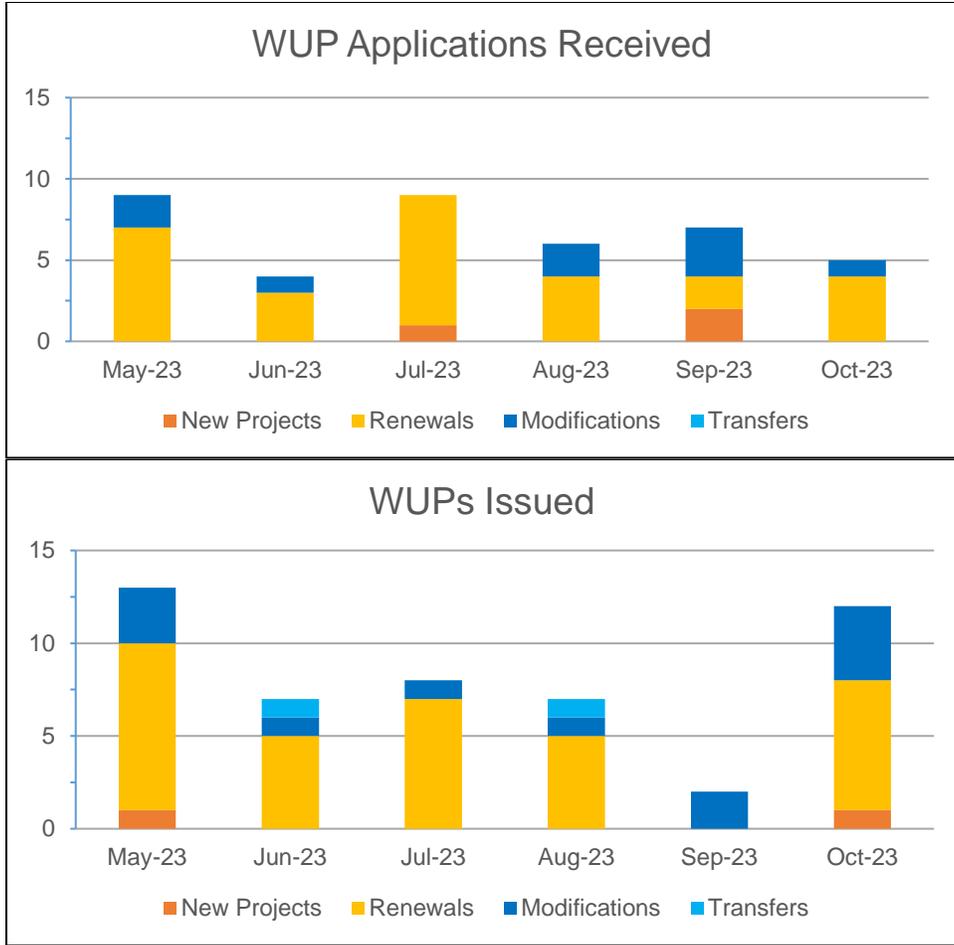
PS/tm

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board
FROM: Warren Zwanka, Director, Division of Resource Management
THRU: Tim Alexander, Deputy Executive Director, Business and Community Services
DATE: December 1, 2023
RE: Permitting Summary Report





40B-1.1010 Point of Entry into Proceedings

GB Authorized Rulemaking	2/14/2023
Notice of Rule Development	
Public Workshop	
Notice of Proposed Rule	
Notice of Correction/ Change	
File with DOS	
Effective Date	

40B-400.091 Statewide FDEP Stormwater

GB Authorized Rulemaking	11/14/2023
Notice of Rule Development	
Public Workshop	
Notice of Proposed Rule	
Notice of Correction/ Change	
File with DOS	
Effective Date	

40B-2.301 AH Water Use Monitoring

GB Authorized Rulemaking	11/14/2023
Notice of Rule Development	
Public Workshop	
Notice of Proposed Rule	
Notice of Correction/ Change	
File with DOS	
Effective Date	

40B-2.331 Modification of WUPs

GB Authorized Rulemaking	11/14/2023
Notice of Rule Development	
Public Workshop	
Notice of Proposed Rule	
Notice of Correction/ Change	
File with DOS	
Effective Date	

40B-2.351 Transfer of WUPs

GB Authorized Rulemaking	11/14/2023
Notice of Rule Development	
Public Workshop	
Notice of Proposed Rule	
Notice of Correction/ Change	
File with DOS	
Effective Date	

GB Authorized Rulemaking	
Notice of Rule Development	
Public Workshop	
Notice of Proposed Rule	
Notice of Correction/ Change	
File with DOS	
Effective Date	

ERP/ WUP Compliance Agreements: None to report

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Warren Zwanka, Director, Division of Resource Management

THRU: Tim Alexander, Deputy Executive Director, Business and Community Services

DATE: December 1, 2023

RE: Memorandum of Agreement with Florida Department of the Environmental Protection Regarding Concurrent Permit Review of Indirect Potable Reuse Projects

RECOMMENDATION

Authorize the Executive Director to enter into a Memorandum of Agreement with the Florida Department of Environmental Protection and all water management districts regarding concurrent permit review of indirect potable reuse projects.

BACKGROUND

As set forth in paragraph 403.064(18)(e), Florida Statutes, the Florida Department of Environmental Protection and the water management districts shall develop and execute, by December 31, 2023, a memorandum of agreement (MOA) providing for the procedural requirements of a coordinated review of water use permits associated with the construction and operation of an indirect potable reuse project. The MOA must provide that the coordinated review will occur only if requested by a permittee.

The purpose of the coordinated review is to share information, avoid the redundancy of information requested from the permittee, and ensure consistency in the permit for the protection of the public health and the environment. The MOA is currently under review by legal staff from all water management districts and is anticipated to be executed by the statutory deadline.

WZ/tm

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Warren Zwanka, Director, Division of Resource Management

THRU: Tim Alexander, Deputy Executive Director, Business and Community Services

DATE: December 1, 2023

RE: Brandon Creasy, Unlicensed Water Well Contracting Administrative Complaint and Order

RECOMMENDATION

Authorize the Executive Director to execute an Administrative Complaint and Order with Brandon Creasy for unlicensed water well contracting.

BACKGROUND

The District has been delegated the responsibility of administering and enforcing water well regulations as set forth in Part III of Chapter 373, Florida Statutes. The District's program, implemented through Chapter 40B-3, Florida Administrative Code (F.A.C.), includes permitting all water well construction, repair, and abandonment, and licensing and training of water well contractors. The District's greatest responsibility within the water well permitting program for protecting public health, preventing harm to the resource, and preserving program integrity is the investigation and prosecution of unlicensed water well contractors. Unlicensed water well contracting is a violation of Section 373.336, Florida Statutes (F.S.), and is subject to an administrative penalty of up to \$5,000 for each count or separate offense.

In March 2021, an unpermitted 8-inch diameter well was found during the review of a water use permit in Gilchrist County. The well was drilled by Brandon Creasy from Hahira, Georgia. Mr. Creasy does not hold a Florida water well contractor license and, as a result of our investigation, he paid to have the well abandoned by a licensed contractor in lieu of the \$5,000 penalty. At the time, the process for obtaining a Florida license was discussed with Mr. Creasy, but he never pursued this option. Instead, he continued drilling large-diameter agricultural wells under other water well contractors' licenses, which is authorized. However, since the 2021 incident, District staff have investigated four more occurrences of unlicensed water well contracting and unpermitted well construction by Mr. Creasy that were done after he had gained the producer's trust from previous work performed under a licensed driller. Details about these water wells are attached.

Because of his preference for unlawfully drilling large-diameter agricultural wells, Mr. Creasy's actions have also negatively impacted the District's water use permitting program, agricultural cost-share program, legitimate drilling companies, and the lives of producers who not only paid him to drill these wells, but then need to pay a licensed contractor to abandon them. All of Mr. Creasy's unpermitted wells fail to meet Chapter 40B-3, F.A.C. criteria for casing material and sealing the borehole, and have been deemed by the District to be hazards to our groundwater resource. As a result, staff recommends the full statutory penalty of \$20,000 in addition to permanent ineligibility for licensure in Florida.

WZ/tm
Attachment

Improper casing material (0.25" wall thickness), no casing seal material, and improper abandonment (right photo), Alachua County



No casing seal material, Alachua and Gilchrist counties



SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Warren Zwanka, Director, Division of Resource Management

THRU: Tim Alexander, Deputy Executive Director, Business and Community Services

DATE: December 1, 2023

RE: Environmental Resource Permit Application Number ERP-023-244379-1, Gwynn Farms Subdivision, Columbia County

RECOMMENDATION

Approve Environmental Resource Permit application number ERP-023-244379-1, Gwynn Farms Subdivision, Columbia County.

BACKGROUND

This environmental resource permit (ERP) authorizes the construction of 17.61 acres of impervious surfaces within a 122-acre subdivision project located approximately one mile east of the Town of Ft. White, on the south side of County Road 18. The proposed stormwater system consists of four drainage basins that send stormwater to four dry retention ponds, which treat the first two inches of rainfall as required for discharge to a sinkhole. The project is located in a closed basin and the design engineer has demonstrated that stormwater discharge rates and volumes will not exceed pre-development rates and volumes for all design storm events.

The District received an objection to the application based on the presence of sinkholes and their concern for water quality impacts from the development. The project meets all applicable stormwater design requirements contained in sections 3.0 and 4.0 of the ERP Applicant's Handbook (AH) Volume II; and a sinkhole repair plan has been provided in accordance with Section 5.9, AH Volume II. Therefore, staff recommends issuance of the ERP.

WZ/tm
Attachment



Gwynn Farms Subdivision Project

ERP-023-244379-1

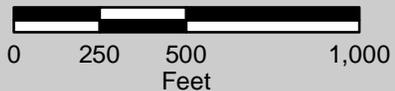
December 2023



 244379-1



Note: This map was created by the Suwannee River Water Management District (SRWMD) to be used for planning purposes only. SRWMD shall not be held liable for any injury or damage caused by the use of data distributed as a public records request regardless of their use or application. SRWMD does not guarantee the accuracy, or suitability for any use of these data, and no warranty is expressed or implied. For more information please contact the SRWMD at 386-362-1001.



SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board
FROM: Troy Roberts, Communications and Outreach Manager
THRU: Katelyn Potter, Director, Outreach and Operations
DATE: November 8, 2023
RE: Outreach and Communications Activity Summary

The following information summarizes Outreach and Communications activities for the month of October 2023:

Facebook	Twitter	Instagram
Total Posts: 16 Total Reach: 12,760 Total Likes: 238 Total Comments: 4 Total Shares: 72	Total Posts: 18 Total Impressions: 1,209 Total Engagement: 21 Engagement Rate: 1.1 percent	Total Posts: 11 Total Reach: 486 Total Engagement: 150

Press Releases
<ul style="list-style-type: none">October 3 – Governing Board MeetingOctober 11 – SWIM Plan UpdatesOctober 12 – Hydrological Conditions Report

Media Inquiries / Responses
<ul style="list-style-type: none">October 2 – Troy Roberts conducted an interview with WCJB TV 20 regarding updated flood risk maps.October 13 – Troy Roberts worked with the Florida Specifier for an upcoming article in their next issue highlighting District work.October 27 – Troy Roberts responded to a request from the New York Times regarding water use permits.October 31 – Troy Roberts responded to a request from POLITICO regarding the Seven Springs permit renewal.

Meetings with Vendors / Consultants / Public
<ul style="list-style-type: none">October 11 – Troy Roberts met with Strategic Digital Services regarding an upcoming TWA for work during Fiscal Year 2023-2024.October 12 – Troy Roberts met with SKYE regarding an upcoming TWA for work during the Fiscal Year 2023-2024.October 18 – Troy Roberts and staff met with Atkins regarding upcoming flood risk review meetings.October 20 – Troy Roberts attended the quarterly communications meeting with the other water management districts.

- October 21 – Troy Roberts attended the “BBQ from the Hart” located at Hart Springs, to raise awareness about water conservation and resource protection.
- October 25 – Troy Roberts attended the monthly touch base meeting with FDEP and other water management districts.

October Photo Highlight:

Cooler temperatures have brought fall colors to our region. This photo of the Suwannee River was taken by Chelsea Dinon (MFLs).



SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board
FROM: Katelyn Potter, Director, Division of Outreach and Operations
DATE: December 05, 2023
RE: 2024 Florida Forever Work Plan

RECOMMENDATION

Accept the 2024 Florida Forever Work Plan.

BACKGROUND

An annual update of the Florida Forever Work Plan is required by subsection 373.199(7), Florida Statutes (F.S.). The Florida Forever Act provides funding for land acquisition projects and water resource development and restoration projects. Currently, no land acquisition or water resource development projects are planned for Florida Forever funding as the District has exhausted all Florida Forever funding resources. The update also reports on District land acquisition, land management, restoration projects, and water quality improvement projects.

Each year, the Florida Forever Work Plan Update is included in the District's Consolidated Annual Report due March 1, for submission to the Governor, the President of the Senate, the Speaker of the House of Representatives, Office of Economic and Demographic Research and the Department of Environmental Protection, as required by subsection 373.036(7), F.S.

Specific actions and expenditures are considered and approved separately from, but in support of, the plan. Updates are made to the plan in draft form throughout the year and accepted annually by the Governing Board.

KCP/ao
Attachment



2024 Florida Forever Work Plan

Suwannee River Water Management District

Contents

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ADA Statement

Americans with Disabilities Act: The District does not discriminate upon the basis of any individual's disability status. This nondiscrimination policy involves every aspect of the District's functions including one's access to, participation, employment, or treatment in its programs or activities. Anyone requiring reasonable accommodation as provided for in the Americans with Disabilities Act should contact the District at 386.362.1001 or 800.226.1066 (Florida only). The District's fax number is 386.362.1056.

Introduction

The Suwannee River Water Management District (District) is required by section 373.199(7), Florida Statutes (F.S.), to update the Florida Forever Work Plan annually. This annual update is presented as a separate chapter in the Consolidated Annual Report pursuant to section 373.036(7), F.S.

The Florida Forever Act also provides funding opportunities for land acquisition projects and water resource development and restoration projects. Florida Forever funding must be used to achieve the following goals, as set out in section 259.105, F.S.:

Enhance the coordination and completion of land acquisition projects.

Increase the protection of Florida's biodiversity at the species, natural community, and landscape levels.

Protect, restore, and maintain the quality and natural functions of land, water, and wetland systems of the state.

Ensure that sufficient quantities of water are available to meet the current and future needs of natural systems and the citizens of the state.

Increase natural resource-based public recreational and educational opportunities.

Preserve significant archaeological or historic sites.

Increase the amount of forestland available for sustainable management of natural resources.

Increase the amount of open space available in urban areas.

The Florida Forever Work Plan annual update presents projects the District has identified as eligible for funding under the Florida Forever Act and reports on District land acquisition and management activities.

Proposed Florida Forever Funding

This annual update has been prepared with the assumption that there will be no new Florida Forever fund allocations through the planning period from FY 2023-2024 to FY 2027-2028.

Table 1 lists Florida Forever expenditures for each fiscal year (FY) since the program's inception. The District fully utilized its total allocation of \$72,139,868 of Florida Forever funding by the end of FY 2022.

Table 1. Actual Florida Forever Expenditures

Fiscal Year	Fee Acquisition Expenditures	Fee Acres Acquired	Conservation Easement Expenditures	Conservation Easement Acres Acquired	Water Resource Development	Restoration
2000-2001	-	-	-	-	-	-
2001-2002	\$4,117,869	30,477	\$5,643,127	12,960	-	-
2002-2003	\$1,158,661	564	\$3,382,632	5,026	-	-
2003-2004	\$3,565,225	1,761	\$1,517,048	2,023	-	-
2004-2005	\$3,792,645	2,661	-	-	-	-
2005-2006	\$648,440	123	-	-	-	-
2006-2007	\$13,082,288	4246	-	-	-	-
2007-2008	\$4,041,930	493	\$6,379,514	3,294	-	\$210,510
2008-2009	\$10,965,200	2,171	-	-	-	-
2009-2010	\$494,000	84	\$1,789,725	786	\$23,500	\$309,080
2010-2011	\$5,426,437	1,201	\$1,557,593	682	\$400,000	-
2011-2012	-	-	\$250,710	167	-	-
2012-2013	-	-	-	-	\$20,825	-
2013-2014	-	-	-	-	-	-
2014-2015	\$628,145	85	\$707,850	35	\$97,918	-
2015-2016	\$7,160	-	-	-	\$26,398	-
2016-2017	\$20,073	-	-	-	-	-
2017-2018	\$1,760,918	329	\$8,045	199	-	-
2018-2019	\$12,828	5.41	\$1,795	-	-	-
2019-2020	-	9.8	\$25,000	-	-	-
2020-2021	-	-	-	-	-	-
2021-2022	-	-	\$66,779	313	-	-
Total	\$49,721,819	44,210	\$21,329,818	25,485	\$568,641	\$519,590

Modifications and Additions to the 2001 Florida Forever Work Plan

Water Resource Development

The District does not plan to use any new Florida Forever funds for water resource development projects during the planning period from FY 2023-2024 through FY 2027-2028. Past program expenditures for water resources development projects total \$568,641.

A comprehensive list of current District water resource development projects is available in the Consolidated Annual Report located on www.MySuwanneeRiver.com. Projects identified for Florida Forever funding will be added to future plans as funding is sought.

Restoration Projects

The District does not plan to use any new Florida Forever funds for restoration projects during the planning period from FY 2023-2024 through FY 2027-2028. Past program expenditures for water resources development projects totals \$519,590

A comprehensive list of current District restoration projects is available in the Consolidated Annual Report located on www.MySuwanneeRiver.com Projects identified for Florida Forever funding will be added to future plans as funding is sought.

Land Acquisition and Land Management

Land acquisition and management activities protect water resources and the overall ecological health of communities within the District. The Save Our Rivers, Preservation 2000, federal, District and Florida Forever programs have preserved approximately 289,343 acres to protect the region's river systems and groundwater resources.

The District does not plan to use any new Florida Forever funding for land acquisition-related expenses during the plan period from FY 2023-2024 through FY 2027-2028 as the funds have been exhausted. Past program expenditures total \$71,051,637 for land acquisition.

The District coordinates with the state's Florida Forever program to evaluate projects within the District's boundary. The state's Florida Forever Priority List of projects is developed by the Florida Department of Environmental Protection, Acquisition and Restoration Council (ARC) and approved by the Governor and Cabinet. The 2023 Florida Forever Project list is available at <https://storymaps.arcgis.com/stories/9a0295dcce9a4368bb5132c32b60c161>.

The District maintains a land acquisition project map that includes parcels advantageous to the District for fee or less than fee purchase. These parcels are focused on floodplain management, improved ingress/egress, enhanced land management, and meet the criteria of the Florida Forever program. View the interactive 2024 Land Acquisition Project map online for District land information at <https://experience.arcgis.com/experience/71ba92f4431f486986934beccdf3321/>.

Lands approved for potential acquisition by the Governing Board are listed as "Approved for Detailed Assessment." Other land information, such as current ownership and FDEP Florida Forever Projects, may be included as well for reference.

Table 3 summarizes fee and less than fee acres owned by the District as of November 2023.

*Table 3. Protected Lands by River Basins**

Basin	Fee Acres	Less Than Fee Acres	Potential Acquisition Project Acres
Alapaha	2,875	1,544	7,331
Aucilla/Wacissa	15,750	12,036	28,013
Coastal River/Econfina/Steinhatchee	49,995	52,675	38,424
Santa Fe/Ichetucknee	15,430	8,418	49,941
Suwannee	66,291	28,839	72,093
Waccasassa	5,267	24,160	12,549
Withlacoochee	6,422	16	12,017
Total	162,030	127,688	220,368

*Acreage updated to reflect best data available via GIS and land database

Land Acquisitions Completed

The District’s land acquisition efforts focus on areas for springs protection and to support potential water resource development projects. Water resource development project areas are located in two broad zones:

- Areas of high recharge adjacent to the Cody Escarpment: These areas provide the highest potential for identifying and/or locating natural recharge features in the vicinity of possible upgradient recharge water sources, with the intent of minimizing eventual water resource development project transmission and treatment costs.
- Areas of potentiometric high groundwater: These areas constitute the greatest relative benefit with respect to the duration of time that recharged or otherwise retained waters remain in the UFA, as well as maximizing groundwater gradients in springsheds.

The land acquisition program is strictly voluntary – all land acquisition projects are negotiated with willing sellers within the constraints of appraised market value. Lands offered for sale are evaluated by District staff and contractors, who then make recommendations to the Governing Board Lands Committee for review and approval to send the proposed acquisition to the full Governing Board for consideration. The following objectives guide the District’s evaluation of potential acquisition areas:

- Preserving floodplain to maintain storage capacity, attenuate floodwaters, and mitigate flood risk;
- Protecting groundwater quality by maintaining low intensity land uses;
- Preserving natural buffers along water bodies where adjacent uses have a high potential to degrade surface water quality;
- Preserving and protecting springs and surrounding areas to protect and improve surface and

groundwater;

- and increasing recharge to the UFA via water resource development projects restoring natural hydrology in headwater swamps and increasing water retention for recharge enhancement.

The following table summarizes land acquisition transactions for FY2023.

Table 4. Acquisition Projects Approved for Detailed Assessment

Seller	Project	Acres	County
Waldo Tree Farms	Fee Acquisition	44.5	Alachua
Pflieger	Riverbend Estates (exchange for District Surplus property)	1.1	Dixie
Camp and Abel	Camp and Abel	366	Hamilton
Florida Department of Transportation	Quail Heights	40.63	Columbia
Hodges	Hodges (C/E)	753	Levy
Dixon	Tanner Springs (C/E)	40	Hamilton
Williams Family Investments, LLC	Long Pond (C/E)	947	Levy
Rawson	Rawson	140	Lafayette
Taylor	Taylor	941	Gilchrist

Table 5. Acquisitions Closed in FY2023

Seller	Acres	County	Date	Transaction	Funding
Lasky	351.74	Gilchrist	09.29.23	Fee	Save Our Rivers
Lukens Tract Exchange	0.49 exchanged for 1.0	Levy	09.29.23	Fee for Fee	N/A

Surplus Lands

The District reviews its land holdings to identify any areas that may not be critical for floodplain management, aquifer recharge, and the protection of surface waters, wetlands, and springs. Such lands are declared surplus and either sold or exchanged on the private market or conveyed to other units of government. The proceeds of any sales and exchanges are dedicated to the acquisition of lands with higher water resource and conservation values. Table 6 lists lands declared no longer needed for conservation and to be surplused during FY 2023. Table 7 lists lands surplused in FY 2023.

Table 6. Lands Approved for Surplus FY 2023

Tract	Acres	County	Acquired Date	Funding
Branford Bend	50	Suwannee	06.30.2004	Florida Forever
Country Club Road	80	Columbia	07.01.2015	Enforcement Action
Forest Woodlands	11	Gilchrist	10.11.1996	Save Our Rivers
Santa Fe Oasis	1	Gilchrist	04.28.1998	Save Our Rivers
Suwannee Run Shores	1.175	Dixie	12.30.1997	Save Our Rivers
Three Rivers Estates	1	Columbia	12.30.1997	Save Our Rivers
Turtle Spring Surplus Tract	32	Lafayette	05.13.2015	Florida Forever
Newberry Wellfield	58.66	Alachua	01.11.2000	P-2000

Table 7. Surplus Lands and Easement Activity FY 2023

Surplus/Easement Parcels	Acres	County	Disposition Date	Transaction	Proceeds
No surplus activity in FY 2023					

Land Management Activities

Descriptions of land management activities for each property owned by the District is outlined in the Land Management Plan. The plan is available online at www.mysuwanneeriver.com/76/Land-Stewardship. Management activities are based on desired future conditions specific to each natural community and maximizing public use to the greatest degree possible. A matrix of available public use activities on District lands is also available in the plan.

A summary of annual land management activities is available in the Strategic Plan Annual Update within the Consolidated Annual Report on www.mysuwanneeriver.com.

Special Use Authorizations

As authorized in 40B-9 Florida Administrative Code, District staff may issue special use authorizations (SUA) which are meant to provide individuals or groups to use District lands on a temporary basis for compatible activities that are either not covered in District’s Land Management Plan (DLMP) or which require special access. Governing Board Program Directives 90-1 and 90-2 provides guidance on how the public can apply for an SUA and enables District staff to respond to requests received from the public in a fair, consistent and timely manner.

District staff must also incorporate the specific criteria for the activity which the public must adhere to when using the SUA. This SUA criteria includes Standard Conditions, Rules for Public Use, and Warnings.

A total of 734 SUAs were issued during FY 2023.

Recreation SUA	Temporary Ingress/Egress	Non-Recreational	Goose Pasture Camping	Mallory Swamp ATV Trail
305	44	25	280	80

Progress of Funding, Staffing and Land Management

The following table depicts the District’s budget for funding and staffing for land management and public use.

Budget Area	FY2020 Budget	FY2021 Budget	FY2022 Budget	FY2023 Budget	FY2024 Budget	FY25 Budget
FTEs	7	7	7	7	7	7
Land Management	\$3,796,003	\$4,547,449	\$4,681,665	\$4,617,181	\$5,583,052	\$5,888,037

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Bill McKinstry, Chief, Office of Land Management

THRU: Katelyn Potter, Director, Outreach and Operations

DATE: November 10, 2023

RE: Land Management Update

BACKGROUND

The following information summarizes land management activities for October 2023, Fiscal Year 2023-2024 (FY 2024).

Natural Communities Management: The following tables represent activities that support overall natural community restoration and management across District lands.

Vegetative Management (acres)	FY 2024 Planned	Reporting Period Completed	Percent Complete
Herbicide	250	0	0
Roller Chop Uplands	200	0	0
Mallory Swamp Mow/Chop	1,300	0	0
Woods Mowing	1,500	0	0
Totals	3,250	0	0

Prescribed Fire (acres)	FY 2024 Planned	Reporting Period Completed	Percent Complete
SRWMD	12,300	0	0
FFS - Twin Rivers State Forest	2,000	0	0
Totals	14,300	0	0

Invasive Plant Treatment	FY 2024 Planned	Reporting Period Completed	Percent Complete
SRWMD Staff Treat (# mapped infestations)	0	0	0
Edwards Bottomland (acres)	30	0	0
Contractors (acres)	0	0	0

FWC Uplands Program-Grant funded (acres)	0	0	0
Starke Bypass (acres)	100	0	0

Ecological Services Monitoring (locations)	FY 2024 Planned	Reporting Period Completed	Percent Complete
Rare Plants Monitoring	0	0	0
Gopher Tortoise Surveys	0	0	0
Wading Bird Rookeries	13	0	0
Natural Community Mapping (acres)	1,200	0	0

Timber Harvests	County	Acreage	Type	Status or Revenue
Gilchrist Wellfield #1	Gilchrist	100	Thinning and Chipping	Inactive
Adams Tract #4	Lafayette	90	Thinning and Clearcut	Active
Sandlin Bay #9	Columbia	374	Thinning	Active
Devils Hammock #2	Levy	144	Thinning	Inactive
Shelly #1	Jefferson	121	Thinning	Inactive
Hurricane Idalia Ellaville Salvage	Madison	154	Salvage Clearcut	Complete
Hurricane Idalia Mill Creek North Salvage	Madison	92	Salvage Clearcut	Active
Woods Ferry #7	Suwannee	155	Thinning	Out for Bid
Jerry Branch #2	Hamilton	191	Clearcut, Thinning, & Chipping	Out for Bid
Fiscal Year 2024 Revenue as of November 15, 2023				\$71,085.76
<i>*Estimated for this report only. Official accounting records have not yet been finalized.</i>				

Land Management: The following tables represent tract and land management activities on the District's fee and less-than-fee owned properties.

Conservation Easements	FY 2024 Planned	Reporting Period Completed	Percent Complete
Monitor Current Easements	7	0	0

Hydrologic & Road Maintenance	FY 2024 Planned	Reporting Period Completed	Percent Complete
Culvert Replacements	5	0	0
Road maintenance (miles)	290	2.13	.7

Tract Maintenance	FY 2024 Planned	Reporting Period Completed	Percent Complete
Mowing (total miles)	1,748	19.03	0.01
Site Maintenance (total visits)	2,736	228	12%
Enhanced Patrols (hours)	1,172	0	0
Sign Replacements	0	0	0
Boundary Line Painting (miles)	115.4	0	0 ¹

Special Projects: The following information provides a status update on special projects within the Office of Land Management.

Pinehatchee Tract (Steinhatchee Springs Tract addition): Survey work with WSP Environmental & Infrastructure, Inc. continues. Road repairs on the Pinehatchee Pond Road continue, currently the repairs are 75% complete.

Rock Bluff: The site application has been submitted to Gilchrist County for review and approval, which should take place at the January Gilchrist County Commission meeting. The sanitation system permit will be issued after the site approval is received.

Aucilla River Access Improvement Project: The project is 100% complete.

Pot Springs Road Improvements: Task work assignment approved and work to begin December 1, 2023, with an expected completion time of 2.5 months.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Alejandro Arteaga Garcia, Senior Data Analyst, Water Resources Office

THRU: Katelyn Potter, Director, Outreach and Operations

DATE: November 16, 2023

RE: Agricultural Water Use Monitoring Report

BACKGROUND

In September 2012, the District began a program of water use monitoring for agricultural water use reporting on wells 8 inches in diameter or greater.

As of October 16, 2023, the District is monitoring 1,606 (238.0 MGD) of a total of 1,700 active permitted wells (248.7 MGD). The remaining 94 active wells not yet monitored are scheduled for site visits to determine the type of monitoring that will be implemented. An additional 256 proposed wells have yet to be drilled.

The District offers three options for monitoring: electric provided by the power company, telemetry on diesel systems, and self-reporting. To date, farmer electric agreements from cooperatives are in effect on 843 (151.7 MGD) monitoring points. The District currently employs telemetry on 312 (51.5 MGD) diesel-powered systems. There are currently 18 (1.4 MGD) self-monitored points.

Additionally, there are currently 433 (33.4 MGD) sites for which monitoring is currently not feasible. Staff visit these sites each year to reevaluate the feasibility of monitoring.

The attached figures show the current well status and monitoring type for all wells with water use monitoring conditions (Figure 1), and the status of flow data collection by source within the Districts' agricultural monitoring network (Figure 2).

Agricultural Water Use Stations with Monitoring Conditions

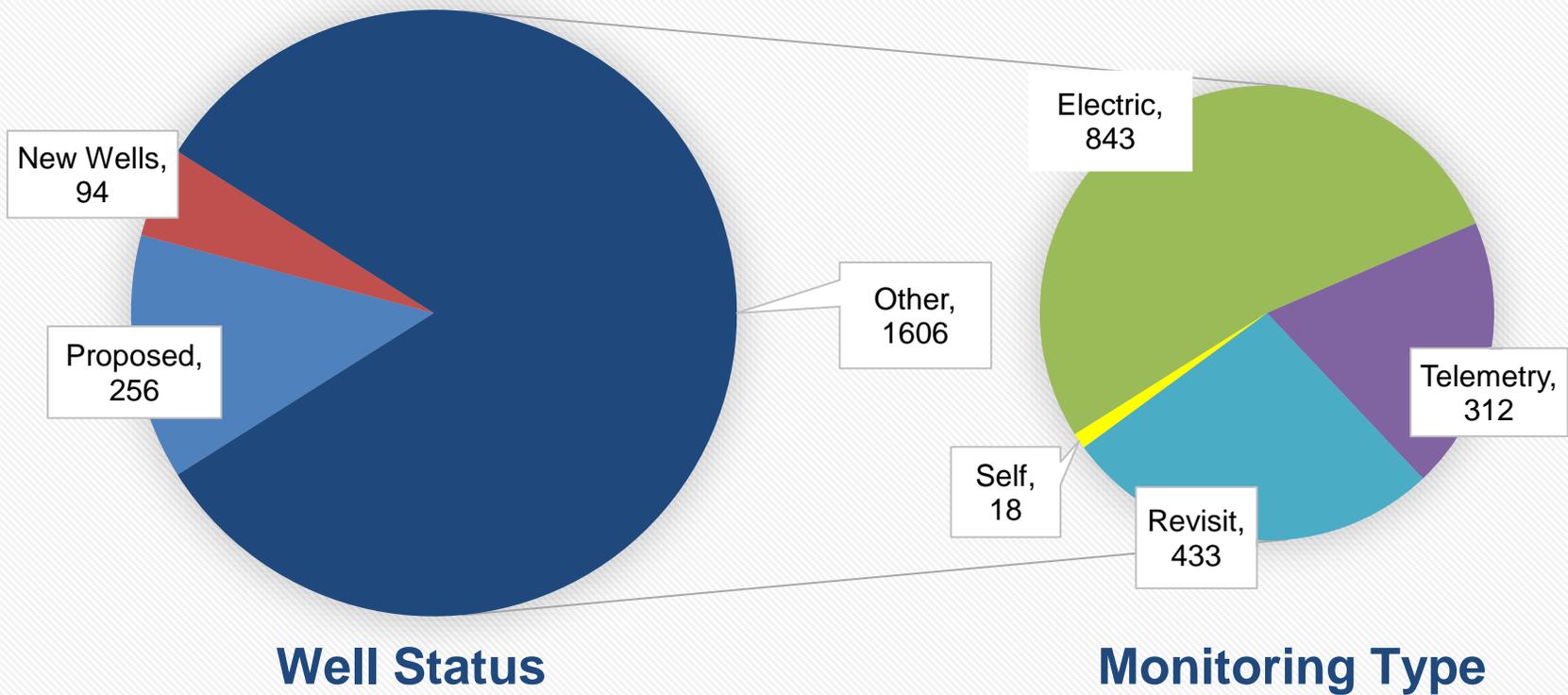
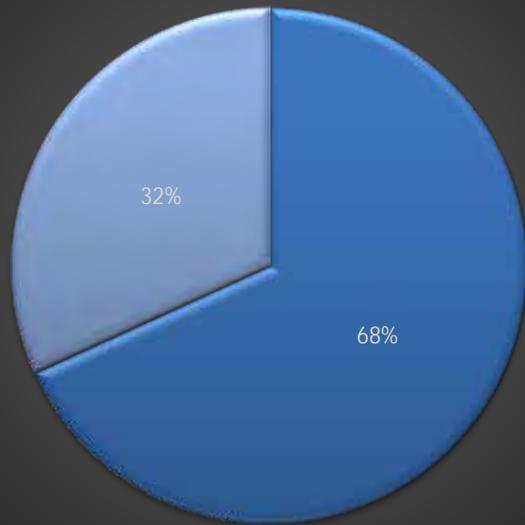


Figure 1. Well status and monitoring type for all wells with water use monitoring conditions as of October 16, 2023.

Flow Data Collection Status



■ Sites with Unique Flow Recorded, 1046
■ Sites Needing Flow Information, 488

Flows Recorded by Source

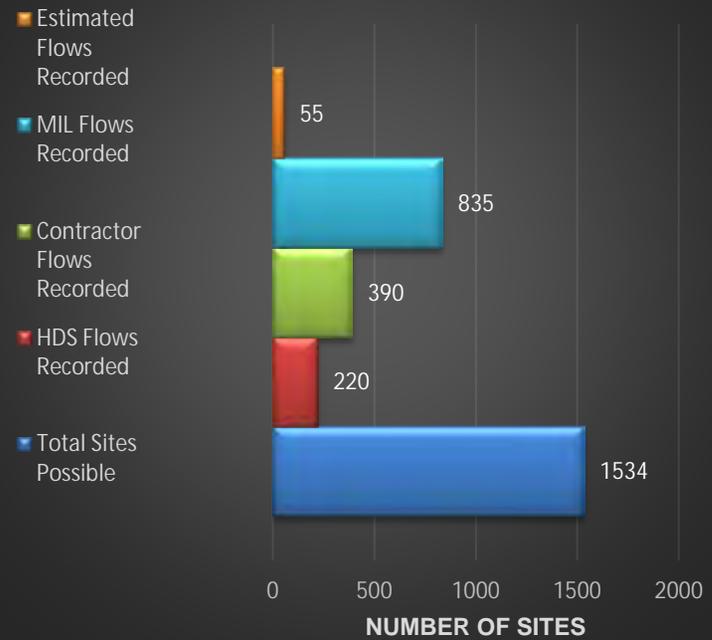


Figure 2. Status of flow data collection by source within the District's agricultural monitoring network as of October 16, 2023.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board
FROM: Leroy Marshall, Chief, Office of Agriculture and Environmental Projects
THRU: Amy Brown, Deputy Executive Director, Water Resources
DATE: December 1, 2022
RE: Agriculture and Environmental Projects Monthly Report Through October 2023

Attached for your information is the Agriculture and Environmental Projects Monthly Report.

LMII/tm
Attachment

ENVIRONMENTAL PROJECTS PROGRAM		
	Number of Contracts	Amount under contract
Active Contracts	55	\$ 76,453,318
Completed within the last 6 months	4	\$ 2,294,478
Totals	59	\$ 78,747,796

AGRICULTURAL COST-SHARE PROGRAM		
	Number of Contracts	Amount under contract
Active Contracts	118	\$ 12,549,393
Completed within the last 6 months	18	\$ 996,428
Totals	136	\$ 13,545,821

FLOOD RISK OUTREACH AND MAPPING PROGRAM		
	Number of Contracts	Amount under contract
Number of Contracts (TWAs)	13	\$ 7,670,606
Completed within the last 6 months	0	
Totals	13	\$ 7,670,606
TOTAL CONTRACTS / TWAs	208	\$ 99,964,223

AEP APPLICATIONS	
	Number of Projects
Agriculture Applications under review	34
AWS and Springs	0
Conceptual Projects under review	27
Projects in Queue	2
TOTAL	63

AEP FUNDING SOURCES		
	Number of Grants	Grant amount provided
District	3	\$ 10,461,592
FDEP	36	\$ 58,683,926
Federal through FDEP	5	\$ 14,600,000
Federal (CTP Program)	7	\$ 11,359,417
Cooperator Match	-	\$ 12,666,986
TOTAL	51	\$ 107,771,921

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Leroy Marshall, Chief, Office of Agriculture and Environmental Projects

THRU: Amy Brown, Deputy Executive Director, Division of Water Resources

DATE: December 1, 2023

RE: 2023 Federal Emergency Management Agency Risk Mapping and Planning Program Five-Year Business Plan

RECOMMENDATION

Accept the District's Fiscal Year 2023 Federal Emergency Management Agency Risk Mapping and Planning Program Five-Year Business Plan and authorize staff to submit the plan to the Federal Emergency Management Agency.

BACKGROUND

The District has been a Cooperating Technical Partner (CTP) implementing Federal Emergency Management Agency (FEMA)'s Map Modernization and Risk MAP programs for more than 20 years. Last year's update was approved by FEMA and proposed spending for Fiscal Year 2023 has been granted.

The business plan is the guidance District staff uses to plan and prioritize work within the District each year. District staff have worked with Atkins North America to produce this year's update, which outlines projected work for five years and provides a more detailed description of work authorized under the FY2023 grant and the proposed work to be authorized under the FY2024 grant.

The District's vision for the next five years is to address data gaps in the flood hazard data, improve flood risk delineation where new LiDAR is available, increase public awareness, lead engagement in mitigation planning, provide an enhanced digital platform for risk information and align risk analysis programs while improving the quality of Risk MAP products. The District plans to complete discovery with community stakeholders and resulting studies in all eight of the District's watersheds within the next five years.

LM/tm
Attachment



SUWANNEE RIVER

WATER MANAGEMENT DISTRICT

FEMA Risk MAP Program Multi-year Mapping Plan Update

FY24-FY28

Last Revised November 13, 2023

Prepared for Suwannee River Water Management District by



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Executive Summary

The Federal Emergency Management Agency's (FEMA) flood hazard mapping program provides essential tools for flood mitigation in the United States. FEMA has engaged in providing communities with flood information and tools they can use to enhance their mitigation plans and take action to better protect their citizens through the Risk Mapping, Assessment, and Planning (Risk MAP) program.

As part of a Cooperating Technical Partner (CTP) Agreement with FEMA, the Suwannee River Water Management District (the District) has accepted delegation and responsibility for the Risk MAP program for areas it governs within North Florida. There are fifteen counties, including Alachua, Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union, which are partially or completely within the District's boundaries. Because Putnam and Baker counties very slightly overlap the District boundary, and those two counties are covered by the national FEMA Production and Technical Services (PTS) program, the District shares any relevant findings with the PTS contractor to incorporate into their county maps. In addition to accepting the delegation for the Risk MAP program, the District previously accepted delegation and responsibility for the Map Modernization program for all of the area it governs and has been a CTP since 1999.

As part of the Risk MAP program, FEMA requested that all partners participating, including the District, update the Multi-year Mapping Plan. This plan is the combined FEMA Business Plan and the Community Outreach and Mitigation Strategy (COMS) Engagement Plan. It details the District's approach to implementing the initiative, past history, and how the activities will contribute to FEMA's Risk MAP goals and objectives. This FY24-FY28 Plan update provides District program highlights and funding requests for FY24 and beyond.

The vision for the 2000-2009 Map Modernization initiative was to develop a District-wide program that provides more accurate and complete flood hazard information for counties and communities within the District. At the end of the Map Modernization process in 2009, counties within the District had updated Digital Flood Insurance Rate Maps (DFIRMs) that incorporated selected new detailed studies, approximate studies and/or existing FIRM maps converted to digital format.

During Risk MAP the District initially coordinated between FEMA and the communities to identify areas of greatest concern for an initial pass of updates to the models and flood risk maps. As of FY18 all the watersheds of the District received the initial pass to identify areas of greatest concern and received funding to address them.

Starting in FY 18 as the first of the initial studies started releasing new effective flood risk maps, the program began revisiting each watershed with a new round of Discovery and a plan to utilize LiDAR coverage to update or replace old or missing flood risk models with new LiDAR-based 2D models in each watershed. The plan is using 2-D modeling on LiDAR for broad areas of Zone A and consolidating new detailed 1-D HEC-RAS models where Zone AE mapping is currently based on unverified or unconnected models. At the same time, SRWMD is coordinating closely with the communities, starting with the Discovery updates, to ensure their needs are met and they

are included in the RiskMAP process from kick-off through to new effective maps. With these digital FIRMs and flood depth analyses, the District's ongoing emphasis on protection and acquisition of flood prone areas is further supported, and the flood protection goals and the non-structural floodplain management strategy of the SRWMD are being achieved.

Key drivers of this year's SRWMD FEMA business plan continue to be to increase the level of outreach, community interaction, mitigation support, climate resilience, and social equity in our RiskMAP program. The heart of this plan is building a reliable and trusted flood risk model library that covers all land in the District. This foundation will provide non-regulatory flood depth and flood risk rasters for all properties. This coverage will also support FEMA's new Risk Rating 2.0 models to assess risk more accurately for each property. The newly awarded FY23 grant funds will support the next steps in: building and expanding this model library; expanding and improving existing functions on the well-regarded District Flood Risk website (srwmdfloodreport.com); strategic planning for and execution of community engagement; and a special project focused on specifically helping under-funded communities in the District become more resilient.

Strategic planning will continue identifying key influencers and use a broader footprint to include and reach out to a broader cross-section of stakeholders. Integrating the District's planned climate resilience tool into the website will add another dimension to support community and citizens both for long-range thinking and planning in regard to flood risk. Seeking multiple paths to support community mitigation actions, especially making data needed for grants and planning easily available, will stretch our mitigation support investment as well. The net result intended is a broader network of stakeholders, users and influencers who are engaged and understand how and where to find what they need to plan for and mitigate flood risk for themselves and their communities, both near-term and long-term.

An important element of the plan is taking advantage of new LiDAR, available February 2023, covering the District. New watershed-wide studies that have been funded in the Econfina-Steinhatchee, Waccasassa, Withlacoochee, Aucilla and Alapaha watersheds were waiting on the new LiDAR and are getting underway during FY23-FY24. Current watershed-wide studies are already underway in the Suwannee and Santa Fe watersheds. Additionally, the new LiDAR will be used to add a page to the District's flood risk reporting tool allowing property owners to also see the latest LiDAR topography for their property.

At the same time, a District 3-year public relations campaign funded by FEMA and conducted by the District's communications office is underway in parallel with specific ongoing outreach to stakeholders in the current studies underway in the Suwannee River, Santa Fe and Aucilla watersheds. FEMA funding is being applied to increase public awareness, support FDEM with engagement in mitigation planning, provide an enhanced digital platform for risk information, and align risk analysis programs while improving the quality of Risk MAP products.

By conducting Discovery in each of the District watersheds on a five-to-seven-year cycle, and performing the resulting studies, resiliency outreach, panel revisions, and distribution of improved data; the District will both serve its own mission and help FEMA meet its Risk MAP objectives. The District has revisited Discovery a second time in each watershed prior to conducting a watershed-wide 2D approximate mapping study. Aucilla and Alapaha are waiting for the current

initial study to wrap up before the second and final Discovery in that watershed. A third round of Discovery in each watershed has been tabled based on the experience to date that each watershed-wide 2D study is providing the necessary input and recommendations for where to focus on detailed 2D analysis if needed, as well as maintenance needs. Additional funding will be sought on that basis rather than slow progress with an additional round of Discovery.

The status of all the above projects is shown in Figure 3-1 of Chapter 3.

The District will facilitate the implementation of FEMA's Risk MAP Program through direct management and support of all regulatory, engineering, and mapping activities within the District's area. The District is committed to developing a fully integrated program that incorporates:

- Discovery where needed
- engineering and mapping (watershed level updates)
- independent QA/QC
- community outreach
- outreach via websites and training
- mitigation planning support in collaboration with Florida Department of Emergency Management

The results of these efforts are an ongoing program that allows for delivery of quality data that increases public awareness and leads to action that reduces risk to life and property. This will continue to be accomplished primarily through the use of FEMA grants to hire qualified consultants retained and overseen by the District.

For its management plan to be effectively implemented, the District will need the full support and involvement of all user communities, including local governments. To ensure the full engagement of its partners, the District will commit significant resources to manage stakeholder expectations through up front coordination, outreach, and customer service. Based upon our ongoing assessment, we anticipate that our current IT system will require ongoing upgrades to maintain and deliver products as 2D mapping and detailed LiDAR increase the level of detail and data storage requirements. The District is committed to providing the resources required to maintain the IT system within the District or make resources available as needed during program development and implementation.

Chapter 1

INTRODUCTION

1.1 SRWMD Risk MAP Program Description

This Cooperating Technical Partner (CTP) Business Plan describes District CTP multi-year flood risk map planning through the end of FY28 (September 30, 2028).

The Federal Emergency Management Agency's (FEMA) flood hazard maps are one of the essential tools for flood mitigation in the United States. Unfortunately, many of these maps have become outdated, especially in high growth and development areas including Florida. FEMA has established a broad goal of updating flood hazard maps nationwide. In addition, FEMA has engaged in providing communities with flood information and tools they can use to enhance their mitigation plans and take action to better protect their citizens through the Risk Mapping, Assessment, and Planning (Risk MAP) program. To achieve this goal, FEMA has acknowledged that collaborative partnerships with state, regional and local/organizations will be necessary.

As part of a Cooperating Technical Partner (CTP) Agreement with FEMA the Suwannee River Water Management District (District) has accepted delegation and responsibility for the Risk MAP program for areas it governs within North Florida. There are fifteen counties, including Alachua, Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union, that are partially or completely within the District's boundaries. Prior to accepting the delegation for the Risk MAP program, the District had accepted delegation and responsibility for the Map Modernization program for all of the area it governs.

At this time, the small portions of Putnam County and Baker County within the District have not been included in the updates. Putnam and Baker Counties primarily fall within the Saint Johns River Water Management District and their map updates are being handled by FEMA directly. Where small portions of these counties fall within District watersheds any relevant map updates are provided to FEMA for incorporation in their maps and studies.

The District transitioned from Map Modernization to the Risk Map initiative beginning with FY10 Mapping Activities. The District's vision for the Risk MAP initiative was initially to address data gaps in flood hazard data, improve flood risk delineation as new LiDAR becomes available, increase public awareness, assist the Florida Department of Emergency Management in mitigation planning, provide an enhanced digital platform for risk information, and align risk analysis programs while improving the quality of Risk MAP products. The District completed Discovery and all resulting studies (through preliminary mapping) in all 8 (eight) of the major FEMA HUC-8 Watersheds within the District; the District is continuing the Risk MAP cycle by returning to watersheds that have already completed their first round of Risk MAP updates and identifying any new community needs or data needs that have been revealed during subsequent mitigation actions, new growth, and/or flooding experience. For this second cycle of RiskMAP,

currently underway, 2-D watershed-wide models based on LiDAR are being funded and executed in order to provide all properties with model-backed flood risk reports. The District has sought and approved funding for Discovery and 2D studies in the Upper and Lower Suwannee Watersheds, the Santa Fe Watershed, the Withlacoochee, Econfina-Steinhatchee, Waccasassa, Aucilla and Alapaha watersheds.

2D Studies in the Suwannee, Santa Fe and Waccasassa watersheds are underway. With the release of newly updated District-wide LiDAR, provided to the District in February 2023, 2D studies are also getting underway during FY24 in Econfina-Steinhatchee and Withlacoochee watersheds. Lastly, the Aucilla and Alapaha watershed were the last two watersheds studied during the first round of RiskMAP, and a portion of these watersheds were able to be studied with 2D mapping during round one (as well as a detailed study of the Little Aucilla). The Aucilla and Alapaha have all passed preliminary mapping and are due to go effective in FY25, at which time they are already funded for the new LiDAR to be used to develop a comprehensive Aucilla River detailed flood model, and a watershed-wide 2D model.

The Risk MAP Multi-year Mapping Plan for FY24 through FY28 is based on extending the Risk MAP cycle into a third round of studies in each watershed focused on areas identified in the current approximate 2D studies.

Key elements of the 3rd cycle are:

- Based on the current 2D approximate studies in each watershed, identify and execute localized, more detailed flood risk modeling where needed;
- Support the current investment in watershed-wide 2D modeling by keeping the models up to date as development and mitigation projects alter the landscape;
- Address specific requests/needs identified by stakeholder communities during the outreach process and at resilience meetings when potential mitigation actions are discussed (based on the model results and the new flood risk maps, combined with stakeholder input).

As new patterns of growth emerge, and outreach reveals any needs for additional funding, it is possible that one watershed may be swapped with another in future plans; but all watersheds will be revisited in the third cycle starting in FY24.

1.2 SRWMD Risk MAP Program History

A brief history of the District Cooperating Technical Partnership with FEMA could begin with completion of FY04 Mapping Activities Statement (MAS) projects (Dixie, Gilchrist and Lafayette Counties- total amount \$904,000- leverage amount \$180,800*), FY05 MAS projects (Suwannee and Columbia Counties – total amount \$1,060,000), FY06 MAS projects (Taylor and Union Counties – total amount \$1,000,000), and FY07 MAS projects (Hamilton, Levy and Madison Counties – total amount \$1,025,000). The District also completed management of the FY08 MAS project (Bradford County - total amount \$300,000), and the FY09 MAS for updating panels in Suwannee County in the vicinity of

Live Oak total amount \$106,835. These map updates and conversion of paper maps to digital were accomplished under the FEMA Map Modernization Program, which ended in FY09 with the transition to Risk MAP in FY10. All work on these grants have been completed and the grants have closed.

Note that Fiscal Year grants are awarded at the end of the Fiscal Year and become available in the following year. For instance, the FY20 grant became available in FY21.

The District integrated 3 other FY09 Map Modernization projects (Dixie, Gilchrist and Lafayette Counties -- total \$810,000 – leverage amount \$20,000) into the FY10 Risk MAP project for the Lower Suwannee Watershed (HUC8-03110205) which included detailed studies and redelineation in portions of Dixie, Gilchrist, Lafayette, and Levy Counties total funded amount \$1,354,000 – leverage amount \$129,000*. The Lower Suwannee Risk MAP study completed the Physical Map Revisions for these counties and the new panels are effective. All work on this grant has been completed and the grant has been closed.

The District managed implementation of the FY11 FEMA Mapping Activities Statement (MAS) with detailed studies in the Santa Fe Watershed (HUC8 03110206) which includes portions of Union, Bradford, Columbia, Gilchrist, and Suwannee Counties (total amount \$1,022,920 – leverage amount \$347,920), as well as detailed studies for the Upper Suwannee Watershed (HUC8 03110201) which includes portions of Suwannee, Columbia, and Hamilton Counties (total amount \$1,043,799 – leverage amount \$246,467). The Upper Suwannee and Santa Fe watershed studies have also been completed and the updated panels became effective in 2018. All work on this grant has been completed and the grant closed out.

The FY12 MAS, consisting of Discovery for the Waccasassa Watershed and riverine studies in the Econfina-Steinhatchee Watershed (03110102) (total amount \$985,780; leverage amount \$285,780). Also funded under FY12 was integrating the Econfina-Steinhatchee riverine studies with Big Bend coastal modeling for a combined Preliminary map release and Post Preliminary Processing (\$420,000; leverage amount: \$0). The Big Bend coastal modeling was conducted by FEMA’s Professional Services contractors -- the models and resulting coastal flood risk mapping include coastal portions of Econfina-Steinhatchee Watershed, Lower Suwannee Watershed and Waccasassa Watershed.

*Risk MAP leverage amounts are based on District contributions of District and/or State-funded Orthophotos, LiDAR, GIS data, and staff time to the Risk MAP projects.

The resulting preliminary maps under the FY12 MAS merged coastal and riverine panel revisions in Econfina-Steinhatchee watershed with coastal panel revisions spanning Econfina-Steinhatchee, Lower Suwannee and Waccasassa watersheds. (Note the coastal panels in the Waccasassa watershed are distinct from the riverine studies recommended under the FY12 Waccasassa Discovery grant. The Waccasassa riverine studies were funded under the FY14 grant, see below). The combined panel revisions in the Econfina-Steinhatchee watershed include portions of Taylor, Dixie, Levy, Gilchrist and Levy

County, and went effective in FY18. All work on this grant has been completed and the grant closed out.

Managed under the FY13 MAS is the Withlacoochee Watershed (03110203), which includes portions of Madison and Hamilton Counties (total amount \$430,000 – leverage amount \$130,000); and funding for Discovery in the Alapaha watershed. The Withlacoochee is a split study, with funding for preliminary panels and post-preliminary processing approved under the FY14 MAS (\$175,000 – leverage amount \$75,000); and additional modeling on the Withlacoochee River funded under FY15 (\$65,000). A recent study undertaken by the District for minimum flows and levels in the Withlacoochee provided leverage allowing the FY15 Withlacoochee funds to be reallocated under a Special Problem Report (and MAS amendment) for conversion of this leverage study into Risk MAP, and the excess funds to help cover additional costs associated with the inclusion of FY09 Map Mod counties in the FY10 Lower Suwannee Risk MAP release. All work on the FY13 grant has been completed and the grant closed out.

The FY14 MAS funded the Waccasassa watershed studies as well (\$350,000 from FEMA plus leverage comprising LiDAR, aeriels, existing models of \$152,000). Waccasassa studies are complete and went effective January 28, 2022. Additional funding of \$45,000 to cover 19 additional panels impacted by the Waccasassa river modeling was approved under the FY18 grant. All work on the FY14 grant has been completed.

The FY15 MAS funded Discovery in the Aucilla Watershed (\$85,500; leverage \$4,500); as well as additional panel updates in the Econfina-Steinhatchee watershed based on increased extent of the coastal risk mapping (\$60,000); and the additional modeling on the Withlacoochee River (\$65,000) referenced above. All work on this grant has been completed.

The FY16 MAS represents a milestone in the Risk MAP program. With the FY16 grant the District completed its goal for reviewing and updating flood risk studies in all the major watersheds in its jurisdiction. The final two watersheds being studied are the Alapaha and Aucilla watersheds. Alapaha has completed Preliminary Mapping and Aucilla is expecting Preliminary submittal in 2022. Aucilla was the first watershed to include 2D mapping of a portion of the watershed and has been the test case for the best approaches to use for updating the existing Zone A (much of which is not model backed and has no depth data) with modern 2D modeled approximate Zone A which includes a depth grid. In addition, the District is leveraging the completion of these studies under Risk MAP and expanding its well-received flood risk reporting website to encompass many of the new Risk MAP digital products, such as depth grids, designed to improve community understanding of flood risk.

FY17 through FY22 grants have provided the District with a 2nd cycle of studies and the opportunity to complete its goal of fully updating the modeling that was started in the 1st round watersheds: Upper and Lower Suwannee, Santa Fe, Econfina-Steinhatchee, Withlacoochee, Waccasassa, Alapaha and completion of 2D modeling in the Aucilla watershed – addressing all models that were identified by FEMA as unverified as well as any new community needs. FEMA also increased funding over this period for further public relations and outreach to accompany the new 2D watershed-wide modeling, as well as expansion of the website to incorporate the 2D depth grids and related products into the flood risk report. Most recently, FY23 funding focused on enhancing the outreach for all of the ongoing round 2 studies, with special emphasis on helping under-funded communities become more resilient. The funding also supports website updates to serve the models on which the new products are based. The amounts funded under these new grants are: FY17-\$1,018,000; FY18-\$1,718,594; FY19-\$1,873,150; FY20-\$2,136,750; FY21-\$1,904,527; FY22-\$1,620,396; and FY23-\$607,500.

Additional funding is included in the FY20 grant for expanded public relations and outreach in collaboration with the District communications office and a public relations firm selected by the District.

Note – the Upper and Lower Suwannee River Watersheds in this context are referring to two USGS HUC basins of that name spanning the entire Suwannee River in Florida, separated at the Withlacoochee confluence. Not to be confused with the SRWMD internal designations of upper, middle and lower Suwannee River areas of responsibility.

FEMA requested that all partners participating, including the District, update the Risk MAP Multi-year Mapping Plan (Business Plan) detailing their approach to implementing the initiative and how the activities will contribute to FEMA’s Risk MAP goals and objectives. This Plan update provides District program highlights and funding requests through FY28. The broad objectives of the Risk MAP program as stated by FEMA and supported under this business plan are as follows:

- Flood Hazard Data. Address gaps in flood hazard data to form a solid foundation for risk assessment, floodplain management, and actuarial soundness of the [National Flood Insurance Program](#) (NFIP).
- Public Awareness/Outreach. Engage communities and ensure that a measurable increase of the public’s awareness and understanding of risk results in a measurable reduction of current and future vulnerability.
- Hazard Mitigation Planning. Lead and support States, local, and Tribal communities to effectively engage in risk-based mitigation planning resulting in sustainable actions that reduce or eliminate risks to life and property from natural hazards.
- Enhanced Digital Platform. Provide an enhanced digital platform that improves management of Risk MAP, steward’s information produced by Risk MAP, and improves communication and sharing of risk data and related products to all levels of government and the public.

- Alignment and Synergies. Align Risk Analysis programs and develop synergies to enhance decision-making capabilities through effective risk communication and management.
- Consideration of FEMA's strategic plan to consider climate change impacts and equity concerns in program delivery
- Consideration of Risk Rating 2.0 in the design and delivery of outreach and training
- Inclusion of program changes in reporting CTP performance measures

Chapter 2 VISION FOR SUPPORTING Risk MAP

2.1 Suwannee River Water Management District (SRWMD) Vision

The Suwannee River Water Management District was created by the Florida Legislature with the passage of the Water Resources Act of 1972, codified in Chapter 373 of the Florida Statutes. The District covers over 7,600 square miles of north central Florida. A listing of the Counties, population and flood insurance policy holders is shown in Table 2-1.

**Table 2-1
SRWMD Counties Population and Flood Insurance Policies**

County	Population**	# of Policies*
Alachua	278,468	2458
Baker	28,259	173
Bradford	28,303	443
Columbia	69,698	673
Dixie	16,759	439
Gilchrist	17,864	182
Hamilton	14,004	47
Jefferson	14,510	75
Lafayette	8,226	132
Levy	40,915	887
Madison	17,968	89
Suwannee	43,474	478
Taylor	21,796	582
Union	16,147	57

* Policy Information, August 31, 2022 <https://nfipservices.floodsmart.gov/reports-flood-insurance-data>

**Population estimates, 2020 Census – <http://Data.Census.gov>

2.1.1 Vision Overview

The District has been a cooperating technical partner with FEMA since 1999. Our vision from the outset is to build relationships with communities and community leaders that promote common understanding of flood risk, water quality risk and promote a common purpose of mitigating flood risk while protecting the waters of the District. We view steady improvement in flood risk forecasting and an equally steady improvement in the means to communicate risk as key. We are seeing improvement in regard to community understanding and trust in our FEMA flood risk maps, as well as acknowledgment of the importance of flood risk insurance and recognition of opportunities to mitigate flood risk at local and regional levels. The District currently provides individual flood risk reports to constituents at the parcel level through srwmdfloodreport.com. Over the next five years, we look forward to a range of expanded capabilities to help fulfill our missions, including the improvement of digital flood risk modeling to encompass the entire District with model-backed flood risk data, robust Risk MAP data infrastructure; stronger links from Risk MAP to flood mitigation actions; better 3-dimensional depictions of flooding; deeper understanding of public perceptions and how best to communicate and motivate diverse segments of the public to learn their risk and take actions to mitigate it; GIS

integration of models and recorded flood elevations; and links to help property owners obtain elevation certificates and flood insurance, in complement to the goals and strategies that follow.

2.1.2 Flood Protection Goals

The mission of the District is to implement the provisions of Chapter 373, Water Resources, and chapter 403, Environmental Control, Florida Statutes, to ensure the continued welfare of the residents and natural systems of north central Florida. Two of the major goals of the District are to minimize harm from flooding and to enhance public awareness, understanding and participation in water resource management.

Per Florida Administrative Code 62-40.458, Floodplain Protection, related District objectives are:

- Coordination with local, State and Federal governments;
- Pursue development of adequate floodplain protection information including flood level data;
- Jointly develop programs to acquire, protect and enhance floodplain functions and associated natural systems;
- Minimize incompatible activities; and
- Provide available floodplain delineation information.

The District operates under a nonstructural floodplain management policy adopted in 1979¹. The policy was adopted to avoid the expense of constructing and maintaining flood control works as well as the environmental damage caused by such works. The nonstructural flood protection strategy is founded on accurate floodplain delineation and has been implemented through the following primary program activities:

- Mapping and modeling the floodplains and regulatory floodways of the five major rivers and tributaries;
- Regulating fill and development activity within designated regulatory floodways and floodplains;
- Acquiring and managing lands for floodwater storage, conveyance, and other conservation objectives;
- Assisting local governments with floodplain management responsibilities such as land use planning, development regulation, restoration activities, and public education and outreach;
- Providing Geographic Information System (GIS) data, technical assistance, and leadership within the region;
- Providing technical and funding assistance to local governments in addressing flooding and stormwater management problems.

¹ The District Water Management Plan describes the nonstructural flood protection policy and the approach used by the District to implement the policy.

The key elements of the nonstructural floodplain management policy have been very successful to date in reducing and eliminating environmental harm and the threat of flood damage. These key elements are regulations, land acquisition, GIS development, and public outreach and assistance. The District's Vision is to initiate a dedicated 5-year public relations outreach campaign focused on flood awareness at every level. Funding for implementing this vision is addressed under the FY2020 funding request.

2.1.3 District Water Management Regulations for Flood Protection

District regulations currently prohibit activities that diminish floodwater conveyance in designated Works of the District Rivers using an innovative approach to implement the authorities granted under Chapter 373, Florida Statutes. Instead of constructing physical works to address flood hazards, the District's program reserves from use that land area necessary to convey the highest velocity flood waters from a 100-year flood event. In addition, District stormwater management regulations require use of the 100-year critical duration storm event as the primary engineering and design criterion for stormwater management facilities.

The second component of the District's non-structural floodplain management strategy is land acquisition and management. The Save Our Rivers, Preservation 2000 and Florida Forever programs have protected over 300,000 acres and 384 miles of river corridor lands, much of it in the 100-year flood plain, protecting the region's river systems, the public, and the public water supply.

2.1.4 District and Other Public Conservation Lands

One of the major objectives of the District is to promote non-structural approaches to achieve flood protection and to protect and restore the natural features and functions of the 100-year floodplain. To that end, the District has undertaken acquisition of floodplain areas for the major rivers and natural storage areas throughout the District. Public ownership in perpetuity of these flood hazard areas assures the ability to retain and attenuate floodwaters, precludes inappropriate development or use of the flood hazard areas, and protects important environmental features of the lands.

The District acquires and manages lands for water management purposes, as authorized and directed by Chapter 373, Part V, Florida Statutes. Since 1983, the acquisition priority has been the voluntary sale of lands within the 100-year floodplain of the Suwannee River and its tributaries, and the floodplains of other rivers in the District. To date, the District has protected over 286,000 acres of land, most of which is floodplains, flood prone, hazardous, and/or environmentally sensitive. Figure 2-1 shows the public conservation lands in the District.

The public, through the District, is the single largest landowner of land along the Suwannee River and its tributaries. Many land tracts of significance have been acquired; current and future land acquisition priorities target in holdings, adjacent lands, and lands that enhance or improve the management of current holdings. Future priorities will target specific areas

to mitigate past flood damage and prevent inappropriate use or development of flood hazard areas.

Modernized flood hazard maps that use more detailed and accurate information are essential to the District's continued future success in its land acquisition and management program. The updated and revised maps resulting from this project will allow the District to identify and target the most important flood hazard areas for public ownership and management.

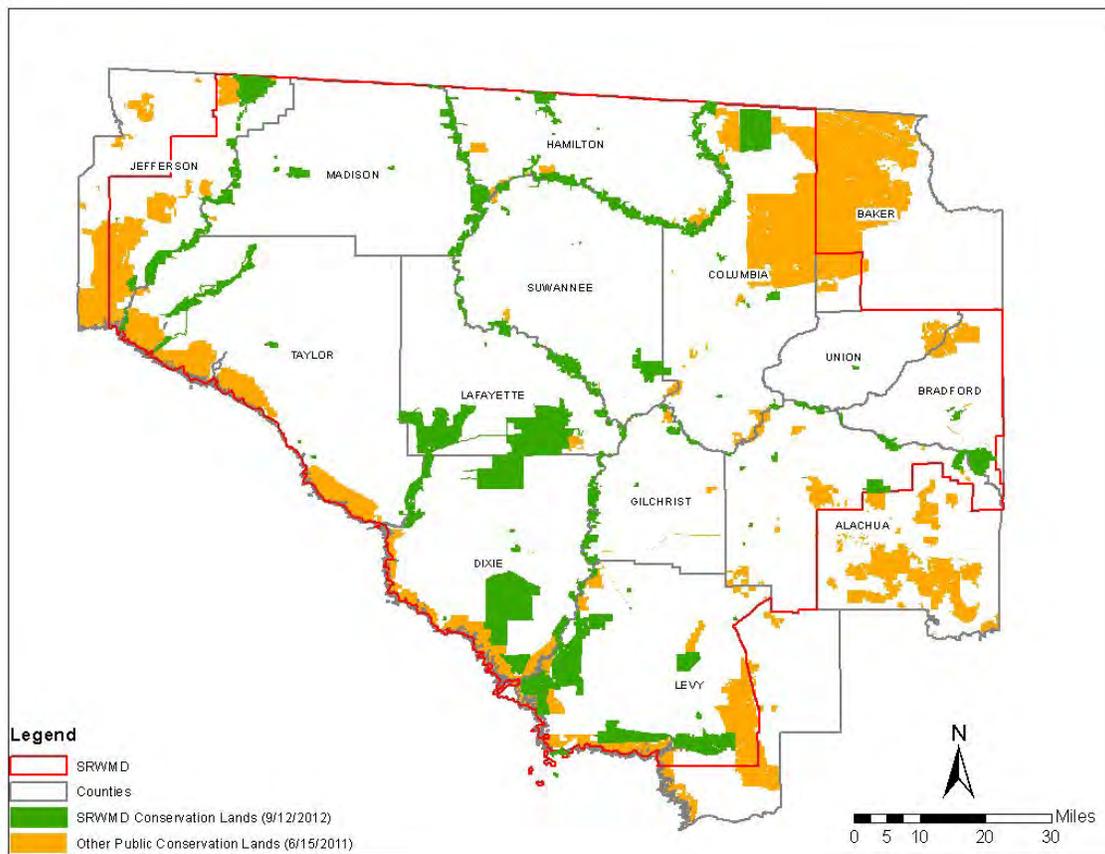


Figure 2-1 SRWMD Public Conservation Lands

2.1.5 Geographic Information Systems Development and Public Outreach, and Assistance

Providing maps and other information is a cornerstone of the District's nonstructural flood protection policy. When landowners and local building officials are aware of the location and extent of flood hazard areas, preventive strategies can be more easily implemented. The District has been a regional leader in the development and application of Geographic Information Systems (GIS) since 1983, when the District was selected as a beta test site for ArcInfo, the industry standard GIS developed by Environmental Systems Research Institute, Inc. (ESRI). Since that time the District has developed an extensive geographic

data inventory, developed in-house and external capabilities, and provides leadership and assistance to local units of government in the region. Through District efforts, many county property appraisers now have compatible GIS capabilities that will assist in disseminating flood hazard maps and data at the local level resulting from the map modernization and Risk MAP projects.

Public outreach and assistance are an important component of the nonstructural flood protection policy not just by providing flood maps, but in helping the public gain an understanding of flooding and flood hazards. The District has established a website (<http://www.srwmdfloodreport.com/>) with enhanced flood elevation data for the Suwannee River and its tributaries, Preliminary floodplains; Changes Since Last Firm, and linkage to FEMA. The website enables users to view, query, and analyze flood risk assessment data in an intuitive and user-friendly framework. End-users are able to easily locate any parcel of interest, view the Flood Insurance Study (FIS) and effective Flood Insurance Rate Map (FIRM), and create a Flood Risk Report that provides the user with flood zone data, including flood elevations; flood depth and 30-year flood risk where available; and descriptions of how to interpret the specific FEMA flood zones. All of this assists the user in determining if their property is affected by a flood zone, and how it is affected. The websites will continue to be updated and populated with information on Risk MAP and flood risk data generated during DFIRM studies produced in the course of the Risk MAP program. This interface is intended to be used by the general public, community officials, and Cooperating Technical Partner staff who may not be familiar with a typical GIS interface. A significant update to the Flood Risk Report was completed in FY20-21 with input from the District Communications Office, adding non-regulatory products such as 30-yr risk of flooding and flood depth maps in addition to the regulatory flood insurance zones. During FY22 the capability to search and download flood risk models was added, and in FY23 the ongoing population of a virtual meeting room where watershed outreach meetings are held in parallel with live in-person meetings (<https://srwmdfloodreport.com/virtual>).

GIS partnerships with most of the local governments within the District have been established. The GIS partnerships provide local governments with environmental sensitive data such as special flood hazard areas. This outreach tool assists local governments in advising property owners and potential property owners about flood risks and other environmental features associated with a parcel of land.

Since a core mission area of the District is flood information, protection, and mitigation, the District is undertaking an expansion of its outreach beyond the tools and training described above to engage in an active outreach campaign using a public relations firm. This is expanded in Section 2.2.4 below.

2.2 SRWMD Risk MAP Level of Participation

The District vision for the Risk MAP initiative is to address data gaps in flood hazard data, increase public awareness, lead engagement in mitigation planning, provide enhanced

digital platform for risk information, and align risk analysis programs while improving the quality of Risk MAP products. These goals are explained in further detail below.

- Goal 1: Address gaps in flood hazard data to form a solid foundation for risk assessment, floodplain management, and actuarial soundness of the National Flood Insurance Program
 - Initiate Risk MAP flood map update projects to address flood hazard data needs in high flood risk areas affected by coastal flooding, levees and other riverine flood hazards
 - Develop flood depth grids based on updated or validated engineering flood studies for use in risk communication outreach products and flood risk assessments
- Goal 2: Ensure that a measurable increase of the public's awareness and understanding of risk results in a measurable reduction of current and future vulnerability to flooding. Overarching outreach strategy will:
 - Convey risk in terms of consequences and probability, and conveys the social impacts of flood risk
 - Follow the entire Risk MAP life cycle from the continuous update of flood hazard data to the continuous update of a jurisdiction's hazard mitigation plan
 - Establish a baseline of local understanding of local risk. Communities can use this baseline to measure progress annually
 - Keep the message simple so that the information is easily conveyed to the public
- Goal 3: Lead and support state, local and tribal communities to effectively engage in risk-based mitigation planning resulting in sustainable actions to reduce or eliminate risks to life and property from hazards
 - Assist state, local and tribal entities to develop, adopt and implement FEMA-approved hazard mitigation plans
 - Communicate the benefits of mitigation planning messages in an overarching Risk MAP outreach strategy
 - Promote the integration of mitigation planning into other state, local and tribal planning processes
- Goal 4: Provide an enhanced digital platform that improves management of Risk MAP, stewards the information produced by Risk MAP and improves the communication and sharing of risk data and related products with all levels of government and public
 - Improve tracking of state and local hazard mitigation plans
 - Improve map production tools
 - Find and invest in accurate digital geospatial data to support improved flood hazard and flood risk analysis
 - Provide simplified access to updated flood risk models emerging from the Risk MAP program
- Goal 5: Align Risk Analysis programs and develop synergies to enhance decision making capabilities through effective risk communication and management

It is the objective of the District to be the full-service provider for all engineering, mapping, and administrative requirements within the District boundaries. For its management plan to be effectively implemented, the District will need the full support and involvement of other CTPs and user communities. To ensure the full engagement of its partners, the District will commit a significant amount of resources to manage stakeholder expectations through upfront coordination, outreach, and customer service. In addition, the District will execute Memorandums of Agreement (MOA) with each County and participating community.

Through its three branches, technical management, IT systems, and customer service (see Figure 2-3); the District will satisfy its five goals outlined above. Furthermore, the District will continuously assess the effectiveness of its program and make the necessary changes to ensure the highest quality service and deliverables. Details of the District’s level of participation follows.

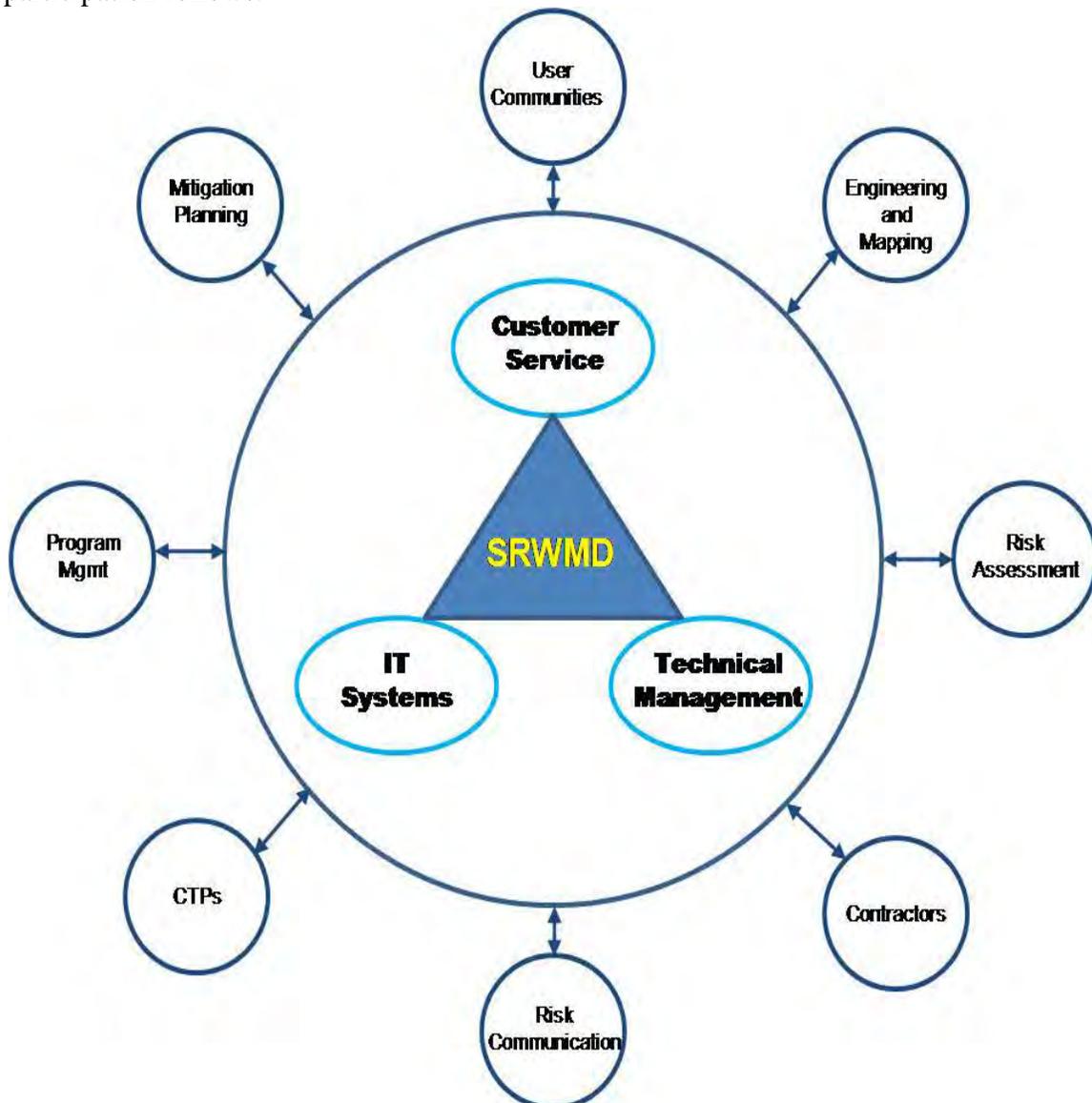


Figure 2-2 District Comprehensive Management Support of Risk MAP Needs

2.2.1 Engineering and Mapping

The District will continue to support all activities associated with identifying flood hazards and the technical production of accurate Digital Flood Insurance Rate Maps (DFIRM) and Flood Insurance Studies (FIS). Following the Risk MAP program, the District and its contractors propose to perform all the activities listed below:

- Discovery activities: field visits, CNMS updates, review mitigation plans, discovery reports and maps, conduct community interviews, coordination and attendance at County and community Discovery meetings, and development of project scope
- Data collection activities: field surveys, topographic data/LiDAR, existing H&H studies and digital basemaps;
- Engineering activities: 1D and 2D hydraulic, hydrologic, riverine analyses;
- Floodplain delineation activities: detailed and enhanced-approximate floodplain delineations
- Public outreach for feedback on initial flood maps and identification of areas that may require additional public outreach and communication for smooth map adoption
- DFIRM Production activities: Preliminary DFIRM, QA/QC, and database development; and
- Flood risk dataset activities: development of changes since last Flood Insurance Rate Map, flood depth and analysis grids, flood risk assessment data, areas of mitigation interest;
- Post Preliminary Processing: Community Meetings and Map Adoption

The District's strategy to implement the engineering and mapping component will utilize the District's existing engineering, mapping, and GIS technical infrastructure along with outsourcing of the majority of the engineering and mapping to consultants. The District has extensive experience in water resource related activities, which provides an ideal staging point for the implementation of the District's mapping and engineering role. The District will also provide ongoing floodplain management coordination with the local communities participating in the NFIP to allow for a more local management of the issues that concern FEMA. As part of its management strategy, the District will manage and coordinate all consultant's activity in the District.

The District will use detailed topography (LiDAR) of the floodplain and coastal areas likely to experience significant development pressures in the coming years at it becomes available. As of FY18, the District completed LiDAR mapping of all areas. As of November 2022, LiDAR collected under a statewide initiative at higher resolution has completed USGS Quality checks and will be included into all new watershed studies initiating in 2023 and after (Econfina-Steinhatchee, Waccasassa, Withlacoochee, Aucilla, and Alapaha) and into the website's flood risk report.

2.2.2 Risk Assessment and Risk Communication

The District will assess and communicate risk to ensure that a measurable increase of the public's awareness and understanding of risk results in a measurable reduction of current and future vulnerability to flooding.

Risk assessment data and analyses are defined as processes for analyzing or evaluating the risk associated with a hazard and using that information to make informed decisions on the appropriate ways to reduce the impacts of the hazard on people and property. As part of the Risk MAP Program, non-regulatory Flood Risk Products shall be developed for study areas based upon the latest guidance available. Flood Risk Products that will be created include Flood Risk Reports and Flood Risk Maps.

Flood Risk Products serve as the delivery mechanisms for the Flood Risk Datasets and information developed within a flood risk study. Typically, these Flood Risk Datasets include but are not limited to:

- Changes Since Last FIRM
- Depth & Analysis
- Flood Risk Assessment

Although this program is conceived on a HUC-8 watershed flood hazard and flood risk analysis framework, it is also recognized that there will be occasions where a watershed approach is not appropriate. Examples include coastal analysis. As a result, Flood Risk Products and Flood Risk Datasets are intended to be scalable to support the variability of project requirements and available funding.

2.2.3 Mitigation Planning and Actions

The District will assist and support the state and local communities to effectively engage in risk-based mitigation planning resulting in sustainable actions to reduce or eliminate risks to life and property from hazards. FEMA considers mitigation planning to be critical, and mitigation planning technical assistance will be identified starting at Discovery. During initial plan development there are four phases of the planning process:

- Planning Process
- Risk Assessment
- Mitigation Strategy
- Plan Maintenance

Hazard Mitigation Planning technical assistance and training provided through Risk MAP will focus on building a community's capability to plan for and reduce risk. The following steps are to be emphasized:

- Incorporating new flood hazard and risk information;
- Updating and refining mitigation strategies, especially as related to new flood hazard/risk information;
- Training mitigation planning teams; and
- Incorporating mitigation into existing community plans, programs, and policies.

Throughout the Risk MAP cycle, the District will utilize Region IV best practice templates to track and report Actions.

2.2.4 Community Outreach and Mitigation Strategy

An essential component of the District Risk MAP program is community outreach and customer service to ensure stakeholder support and public awareness. Outreach begins during the Discovery phase of a watershed-level Risk MAP project and continues through final community meetings. The primary goals of the outreach component are to:

- Engage communities early and often of Risk MAP projects;
- Increase public awareness of risk and education of flood hazards;
- Communicate the benefits of the hazard mitigation planning process;
- Ensure stakeholder support and proper management of expectations;
- Establish two-way communication with stakeholders impacted by the floodplain remapping, as well as the NFIP in general;
- Ensure compliance with due process and other regulatory requirements;
- Minimize the number of technical appeals and protests;
- Ensure public understanding of the benefits of new maps;
- Interact with technical representatives to ensure production of quality maps;
- Enhance ownership and use by communities;
- Ensure that other users know how to use the new maps; and
- Track/monitor/evaluate outreach activities and adjust efforts according to feedback received and evolving project needs.

To accomplish these goals, the District provides: an interactive website for the public to view flood risk data and obtain DFIRMs, FIS reports and risk reports; the ability for the public to add comments to preliminary map layers under review; stakeholder notification to each County and community included in the Risk MAP project; public education and information through public meetings; informational brochures/newsletter article; PowerPoint presentations to interested organizations; press releases; flood risk products. With current FEMA funding, the District is initiating a new online video webinar series to provide user guidance on available products, planning a public relations campaign with spots on local stations and social media, and working with a public relations firm to plan the first District Flood Risk Conference for spring of 2024.

Since a core mission of the District includes flood information, protection and mitigation, the District is undertaking an expansion of its outreach beyond the tools and training described above. Flooding and high-water events pose significant threats to communities throughout the District; and these threats are magnified as land use changes and development continues within the floodplain. To further serve our constituents, the District is planning to enlist a dedicated public relations company to develop an active outreach campaign with the goal of increasing knowledge and awareness of flooding impacts and risks. The desired result of this campaign will be a behavior change to increase flood knowledge, preparedness and mitigation, as well as stop unlawful flooding impacts. The District plans to accomplish this behavior change through a multi-media campaign involving videography, photography, print materials, and advertising. Special additional funding of \$200,000 for this multi-year public relations initiative was obtained under the FY20 grant awarded September 2020.

An initial pilot to develop the first public relations video and materials was completed in FY21 and is available at <https://www.srwmfloodreport.com/virtual>. With the implementation of the Task Work Assignment for the FY20 grant in 2021 the stage was set, and the communications department developed an RFQ and brought multiple public relations firms on board for both the current Risk MAP PR project and District public relations in general. A public relations firm was selected from the RFQ selections and is currently planning a combined media campaign and District flood risk conference scheduled for spring of 2024.

2.2.5 Independent QA/QC

The District will continue to oversee all necessary QA/QC functions for both engineering and mapping products associated with the DFIRM projects in the District. QA/QC activities will be performed either by District personnel or one of the District's consultants. QA/QC reviews will be performed by qualified personnel other than those who performed the work. FEMA guidelines will be followed for all engineering and mapping reviews along with standard engineering QA/QC guidelines. QA/QC activities will be funded by FEMA to the District through the Risk MAP funding grant process.

2.3 Program Management

The District will provide a program management structure that will motivate partners to share responsibilities and align the District's, FEMA's and the local community missions to reduce vulnerability to floods and other hazards and increase public awareness of risk and education of flood hazards. The objective of Program Management activities is to recognize the activities undertaken by CTPs as part of the active process of managing multiple projects for the District. All process and deliverables shall be completed in accordance with FEMA's Guidelines and Specifications for Flood Hazard Mapping Partners (G&S) and effective Procedure Memoranda (PMs).

Program management for the District's participation in Risk MAP program will be accomplished through the combined use of District staff and the use of contractors. The contractor will implement the following program management action items:

- Define program management goals including those associated with prioritization and execution of program elements;
- Assist in the annual update of the Risk MAP Business Plan;
- Assist in outreach activities (community meetings, media coordination and mailings);
- Coordinate and/or administer training for Communities affected by the proposed DFIRM updates regarding Risk MAP, the Community Rating System, and Flood Insurance
- Continued development of website to provide widespread access to Risk MAP data, improved risk analysis reporting and generation of reports consistent with Risk MAP goals and datasets
- Maintenance of the SharePoint site and calendars
- Identify roles and responsibilities for all entities contributing to the District's mapping efforts;
- Develop and manage data standards, product specifications, and quality of the products to be used by the communities and other end users;
- Manage and track the progress of the DFIRM projects against schedules and budgets;
- Develop monthly status reports for District and FEMA Region IV.
- Provide quarterly status reports that are to be supplied to FEMA Region 4; as of FY23 this will include participation in using the new CTP Performance measures tool.
- Evaluate program performance and recommend improvements;
- Promote partnerships with local communities through meetings and data mining;
- Provide for program management staff time;
- Development of continuous improvement strategies and innovative technical and building practices;
- Manage Risk MAP discovery and prioritization of projects in collaboration with the District;
- Track production of DFIRM products of District study contractors;
- Assist as needed with interpretation and implementation of Risk Map requirements;
- General support activities including those defined in 44CFR, Part 66;
- Risk MAP reviews;
- FEMA mapping coordination;
- CTP pre-discovery activities.

2.3.1 IT Management System

The IT management systems will be the foundation that the technical management and outreach service components will be built upon. The system is composed of three major modules: the public websites (mentioned in the outreach section), the data management system, and the data repository. Of the three modules, the data repository, accessible through FEMA's MIP, will be the core component. Figure 2-3 illustrates the relationship among the three modules.

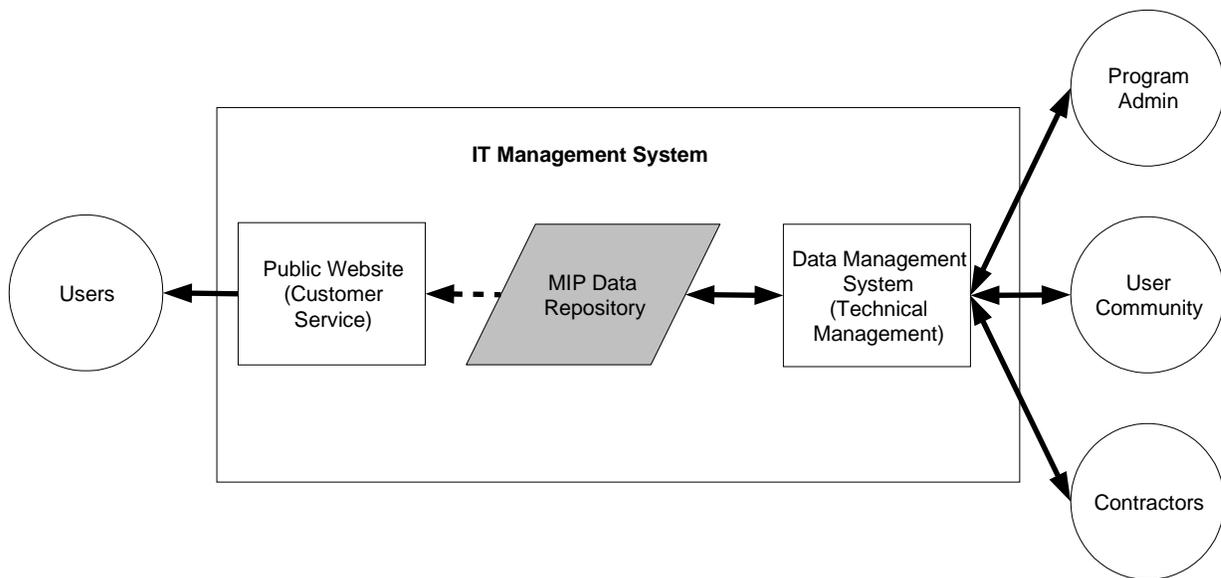


Figure 2-3 The IT Management System

Development of the public websites will continue to be updated for the duration of the Risk MAP program. Of the three modules the public websites have an immediate impact to generate public awareness and manage public expectations. Elements of the MIP data repository will be made available to the public by way of these websites. The District is using an offsite hosting service for the public website through a study consultant to store, disseminate and maintain DFIRM data, and Risk MAP products. In addition, the District website provides links to FEMA for electronic versions of the DFIRMs and Flood Insurance Studies.

2.3.2 Program Level Community Outreach

An essential component of the District Risk MAP program is community outreach and customer service to ensure stakeholder support and the proper management of expectations of the overall program. The District will focus its customer service activities through various mechanisms, including interactive websites with community information and status of ongoing projects, in-house and community training programs, and public outreach activities. The website (<http://www.srwmdfloodreport.com/>) is a GIS-enabled system that will allow users to review the current status of existing projects, announcements, complete informational tutorials, and download fact sheets, issue papers, news releases, and other documents. The site also includes a data viewer where DFIRM data is available for viewing and printing maps. All of this assists the user in determining if their property is affected by a flood zone, and descriptions of how to interpret the specific FEMA flood zones. An added feature of the site is the ability of the user to view preliminary flood data that is available. The goal of this site is to help the user identify their flood risk. The objectives for the site are to provide the user with flood zone data, identify risk, and assist the user in determining how far they are from the flood zone. The website will continue to be populated with flood risk data generated during DFIRM studies produced in the course of the Risk MAP program.

In addition to the above activities that promote the ownership of FEMA's flood hazard maps by user communities, there will be additional activities by the District to raise public awareness and participation in the study process. These activities include such activities as a quarterly newsletter, you-tube videos, fact sheets, posts for the District Facebook page, updates to the FEMA material on the District website, advertisements, and outreach meetings with local government officials and the public at each stage of the mapping process. By providing more outreach opportunities directed toward local governments, the District leverages existing data and analyses from local levels. Furthermore, due to increased involvement of citizens and local officials, there is a reduction in the number of appeals and protests to DFIRM products.

The District also proposes continued outreach and coordination with the Northwest Florida Water Management District (NFWFMD) for Risk MAP activities that affect Jefferson County; with the Southwest Florida Water Management District (SWFWMD) for activities that affects Levy and Alachua Counties (these counties lie partially within the jurisdiction of the District). The District and its consultants will also continue coordination with FEMA's contractors assigned to study adjacent watersheds in shared counties with Saint Johns River Watershed Management District (SJRWMD) and continue coordination with the state of Georgia for watersheds that span state boundaries.

Chapter 3 RECOMMENDATIONS FOR MAPPING THROUGH FY28

Unmet needs continue to be documented throughout the Risk MAP Program Cycle. Status of recommendations and actions for each watershed are listed below in Figure 3-1.

Figure 3 -1 District Multi-year Plan showing studies in progress and planned studies.

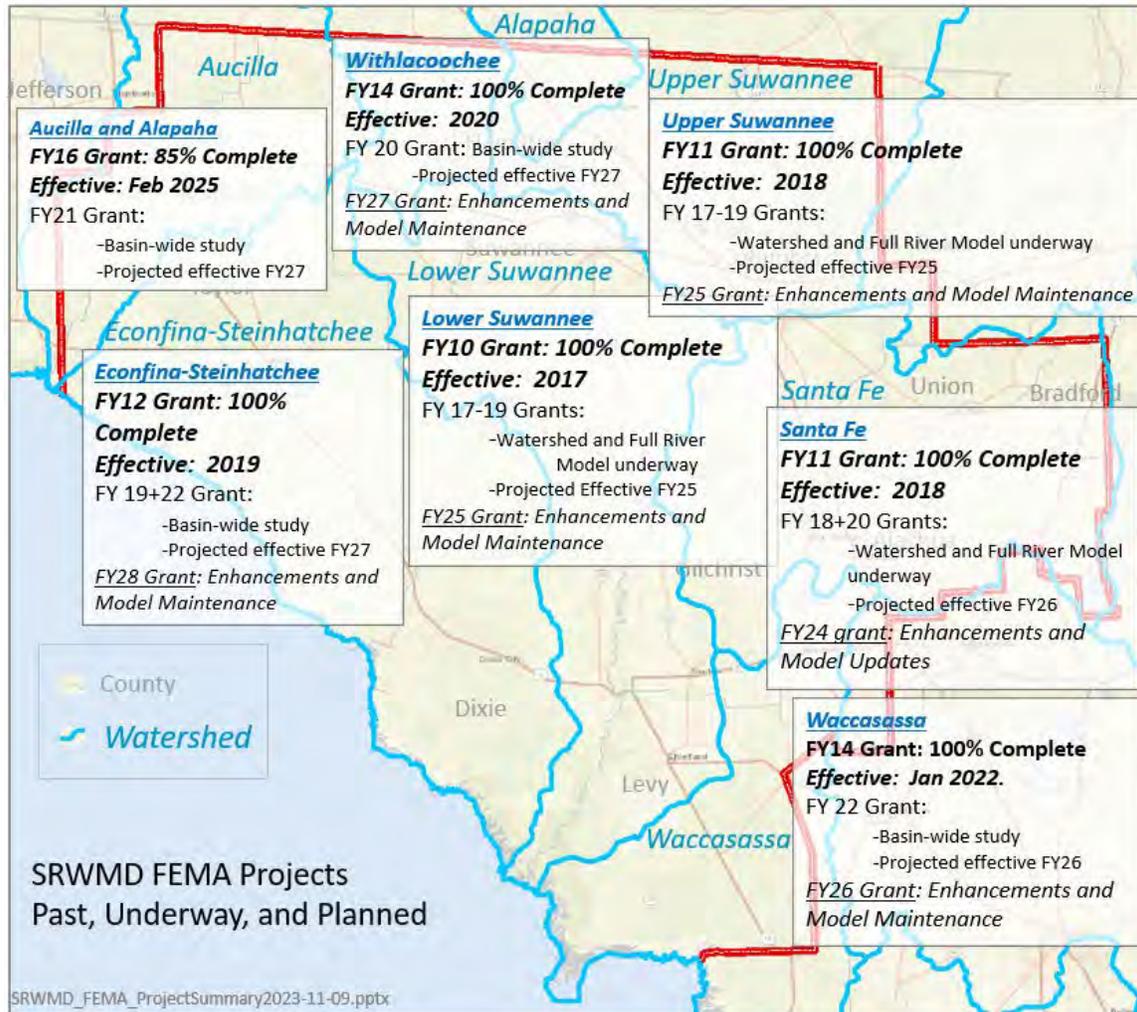


Figure 3-1 shows each watershed of the District. They are being studied for flood risk under RiskMAP in a cycle of 4-7 years per study. The initial cycle comprised smaller study areas, based on limited funding from FEMA, and was focused on community needs. These initial studies are now complete with exception for Aucilla which acted as the first 2D study pilot as well. These initial studies are shown in bold in Figure 3-1. For the second cycle in each watershed, a larger study is approved to do a basin-wide study combining approximate 2D modeling for the overall watershed and detailed 1D modeling of the major river(s) in that watershed if needed. This 2nd cycle of studies is also shown in Figure 3-1. Upon completion of the second cycle already funded, a 3rd cycle of RiskMAP is proposed, focusing on any new needs

discovered with the basin-wide studies, as well as maintenance of the new models, incorporating impacts of mitigation actions and changes in the communities over the coming years. Over the coming years (FY24-FY28) this 3rd cycle of study is proposed for the watersheds shown above in Figure 3-1. The 3rd cycle studies are described below for each coming fiscal year—these proposed studies play a critical role in maintaining the models with up-to-date conditions as well as refining specific areas as needed with more detailed modeling.

Aucilla and Alapaha are the last of the studies funded in cycle 1, and as a result were able to incorporate 2D modeling in a portion of those watersheds. These watersheds went through preliminary map releases in 2023 and were well received. Because they already include 2D studies in the first cycle, the second cycle studies of Aucilla and Alapaha are included (FY21 Funding shown below) to provide a complete list of proposed future 2D study enhancements.

Upper Suwannee, Lower Suwannee, Santa Fe, Econfina-Steinhatchee, Waccasassa and Withlacoochee studies have completed effective map releases under the initial cycle of RiskMAP. Upper and Lower Suwannee, Santa Fe and Waccasassa are in Risk MAP cycle two, combining community needs with validating all modeled NVUE mileage to ensure watershed-wide, up-to-date valid models for all major streams and approximate studies in the watershed. The current 2024-2028 funding requests are proposed to support additional detailed studies and model maintenance identified during these current studies in each watershed. These future studies will protect the investment in 2D models by keeping them current, as well as provide additional detailed models where needed. They will account for changes in flooding due to mitigation actions recommended under cycle one, as well as changes due to growth and development, and also incorporate the planned update to the NOAA Rainfall atlas, accounting for revisions to the 100-year and 500-year rainfall amounts.

FY23 FUNDING ALREADY APPROVED

FY23 Funding (Approved) – Enhanced Current Studies Outreach to Under-Funded Communities

The FY22 Risk MAP grant (above) completed the funding for 2D watershed-wide modeling of all 8 HUC-8 watersheds in the District (Upper and Lower Suwannee, Santa Fe, Waccasassa, Econfina-Steinhatchee, Withlacoochee, Aucilla, Alapaha). FY23 funding focused on enhancements to those eight studies, as described in item 1:

1. Supplemental MAS funding for all 8 watersheds currently being studied or pending study. Funding to cover enhanced project outreach with a deeper dive for Flood Risk Review(FRR) and/or Resilience meetings - matching mitigation opportunities to grants, linking resilience efforts to social vulnerability data, and including additional training for community flood plain managers and support staff. This deeper dive is to be added to all FRR and

Resilience meetings during the next 3 years, at least one for each watershed.
Ensure compliance with Justice40 Initiative (\$319,500).

Additionally, funds were approved for enhanced Program Management and Community Outreach and Mitigation Strategy (COMS) statements of work. These will fund continuation of district-wide outreach activities and incorporate training, tracking and web-based map and model management capabilities for 2D models into the District website. Funding also approved to partially fund District staff attending flood risk conference and training. (COMS: \$200,000; Program Management: \$88,000).

Total Funding: \$607,500

FY24-FY28 FUNDING PROPOSED

FY24 Funding – Santa Fe Watershed Studies (03110206) and Special Project Phase 1 (Watershed Master Plan)

The current FY18+FY20-funded studies in the Santa Fe Watershed will result in approved preliminary maps in FY24. Funding approval to continue the Risk MAP cycle of studies in Santa Fe Watershed is being sought to add a separate Physical Map Revision to the current study, providing detailed 2D modeling of selected areas to both enhance the existing 2D models and keep them current.

1. Additional study, map updates, and mitigation action recommendations anticipated for map maintenance to keep studies current due to Risk MAP mitigation actions enacted to change flood risk during previous five years, plus substantial new growth, community needs, and any flooding experienced in the Santa Fe Watershed. (\$750,000)

Community Outreach and Mitigation Strategy (COMS) budget: in response to new FEMA directives addressing climate change, resilience, mitigation, and social equity, the following special project is proposed for inclusion in the FY24 COMS budget:

2. COMS Special Project. Phase 1. Continuation of Justice 40 Initiative activities through watershed master plans. The Regional Watershed Master Plan project will produce a Districtwide Vulnerability Assessment with Future Flood Risk scenarios that both satisfy the State of Florida's Resilience Goals and advance Justice40 Goals. Watershed Master Plans (WMPs), as conceived by the National Flood Insurance Program (NFIP) Community Rating System (CRS) program, provide an outline for communities to reduce local flood risk. According to

the CRS Coordinator’s Manual 2021 Addendum (FEMA, 2021), “the objective of watershed master planning is to provide communities within a watershed with a tool they can use to make decisions that will reduce flooding from development on a watershed-wide basis.”

The SRWMD Watershed Master Plan project will follow the standard format established by the Florida Division of Emergency Management (FDEM), through the Phase 1 Partnership with Florida Atlantic University (FAU). This format will over three consecutive grants spanning 3 years include all eight watersheds: Aucilla Watershed, Withlacoochee Watershed, Alapaha Watershed, Upper Suwannee Watershed, Lower Suwannee Watershed, Econfina – Steinhatchee Watershed, Santa Fe Watershed, and Waccasassa Watershed. Phase 1. Withlacoochee, Upper Suwannee, Alapaha Watersheds Upper Suwannee Watersheds (\$299,800).

Additionally, the enhanced Program Management and COMS Statements of Work to continue program administration and planning, outreach activities, training, tracking and web-based map and model management capabilities and digital infrastructure for 2D models in the District website. Compatibility revisions to flood risk website to address new Esri Application Programming Interface (old API no longer supported after 2025). (COMS: \$250,000 + Special Project Phase 1 \$299,800 = \$549,800; Program Management: \$93,000).

Total Funding: \$1,392,800

FY25 Funding – Upper Suwannee (03110201) and Lower Suwannee (03110205) Physical Map Revisions

Anticipating the completion of the FY17-19-funded studies in the Upper and Lower Suwannee watersheds in FY25, the Risk MAP cycle in these watersheds should circle back and be ready to model areas identified by communities as needing further study. FY25 funding would be approved and awarded by the end of FY25, allowing for governing board approval of contracts to initiate map revisions as needed based on the findings of the current study. This gives the communities assurance that their voices are being heard and responded to in a timely manner.

1. Upper Suwannee and Lower Suwannee Watersheds: Additional study of each watershed is anticipated for map maintenance due to any flood reduction attributable to mitigation actions over the previous 5 years, new growth, other community needs, new data; or new flooding experienced since last studies. (Upper Suwannee: \$405,000; Lower Suwannee: \$495,000).

Community Outreach and Mitigation Strategy (COMS) budget: in response to new FEMA directives addressing climate change, resilience, mitigation, and social equity, the following special project Phase 2 is proposed for inclusion in the FY25 COMS budget:

Special Project Phase 2: See Special Project Phase 1 description above under FY 24. Watershed Master Plans (WMPs), as conceived by the National Flood Insurance Program (NFIP) Community Rating System (CRS) program. Phase 2 includes Santa Fe and Lower Suwannee Watersheds (\$278,300).

Enhanced Program Management and the Community Outreach and Mitigation Strategy (COMS) to continue outreach activities and incorporate training; tracking; updates to the online regulatory and non-regulatory products; 2D model management; maintenance and upgrades to digital infrastructure; as well as fund District staffing needs for attending annual FEMA Partners training and ASFPM conferences (COMS \$200,000 + \$278,300 Special Project Phase 2 = \$478,300; Program Management \$98,000).

Total Funding: \$1,476,300

FY26 Funding – Waccasassa Watershed (03110101) Physical Map Revision

Completion of FY22-funded studies in the Waccasassa Watershed should result in new effective maps early 2027. Waccasassa Physical Map Revision funded under the FY26 grant (Fall FY26 approval) will be ready to commence immediately. A new cycle of studies, based on the findings of the FY22-funded study; on new community needs, and on impacts of mitigation actions and growth over the preceding 5 years can then commence in late 2027.

1. Additional studies, map updates, and mitigation action recommendations anticipated for map maintenance due to mitigation actions enacted to change flood risk during previous five years, new growth, community needs, and any flooding experienced in the Waccasassa Watershed. \$480,000)

Community Outreach and Mitigation Strategy (COMS) budget: in response to new FEMA directives addressing climate change, resilience, mitigation, and social equity, the following Special Project Phase 3 is proposed for inclusion in the FY26 COMS budget:

Special Project Phase 3: See Special Project Phase 1 description above under FY 24. Watershed Master Plans (WMPs), as conceived by the National Flood Insurance Program (NFIP) Community Rating System (CRS) program. Phase

3 includes Waccasassa, Econfina-Steinhatchee, and Aucilla Watersheds (\$426,938).

Enhanced Program Management and COMS to continue outreach activities and incorporate training, tracking and web-based map and model management into the District website, as well as partially fund District staffing needs for Risk MAP programs (Program Management \$103,000; COMS \$210,000).

Total Funding: \$1,219,938

FY27 Funding – Withlacoochee Watershed Studies (03110203)

Completion of FY20-funded studies in the Withlacoochee Watershed should result in new effective maps by Spring 2026. The findings of this study will feed the funding request to continue the Risk MAP cycle in the Withlacoochee Watershed to be sought during FY27, anticipating approval of grant by September 2027, would allow the project to commence at the end of 2027 (Q1 FY28). The new cycle of studies, based on the findings of the FY20-funded study and on new community needs, will allow for ongoing map and model maintenance based on changes to the watershed over the preceding 5 years.

1. Additional studies, map updates, and mitigation action recommendations anticipated for map maintenance due to mitigation actions enacted to change flood risk during previous five years, new growth, community needs, and any flooding experienced in the Withlacoochee Watershed. \$350,000)

Enhanced Program Management and COMS SOWs to continue outreach activities and incorporating training, tracking and web-based map and model management capabilities into the District website, as well as partially fund District staffing attendance at Risk MAP training programs (Program Management \$106,000; COMS \$220,000).

Total Funding: \$676,000

FY28 Funding – Econfina-Steinhatchee Watershed Studies (03110102)

Completion of FY19/FY22-funded studies in the Econfina-Steinhatchee Watershed should result in new effective maps by FY27. FY28 Funding approval to continue the Risk MAP cycle in the Watershed in early FY29.

1. Additional studies, map updates, and mitigation action recommendations anticipated for map maintenance due to mitigation actions enacted to change

flood risk during previous five years, new growth, community needs, and any flooding experienced in the Econfina-Steinhatchee Watershed. (\$700,000)

Enhanced Program Management and COMS MAS to continue outreach activities and incorporating training, tracking and web-based map and model management capabilities into the District website, as well as partially fund District staffing needs for Risk MAP programs (Program Management \$110,000; COMS \$230,000).

Total Funding: \$1,040,000

Chapter 4

GEOSPATIAL DATA COORDINATION

Through Circular A-16, the Office of Management and Budget (OMB) directs Federal agencies that produce, maintain or use spatial data to participate in the development of the National Spatial Data Infrastructure (NSDI). The goal of the NSDI is to reduce duplication of effort among agencies; improve quality and reduce costs related to geographic information; make geographic data more accessible to the public; increase the benefits of using available data; and establish key partnerships with cities, counties, states, tribal nations, academia and the private sector to increase data availability.

To help realize this goal, FEMA has developed a Geospatial Data Coordination Policy and a plan for implementing that policy. In support of the policy, metadata catalogs and other tools will provide access to the data holdings of FEMA's flood mapping program through various portals of the NSDI.

4.1 SRWMD Geospatial Coordination

The District is currently implementing portions of the items contained in the Geospatial Data Coordination Policy. The District is acquiring existing data for use in the development of the DFIRM and ensuring that the data is FGDC compliant.

As part of the Map Modernization and Risk MAP process, the District is also developing digital database and metadata information for use by other agencies or the public. In addition to providing this information on the MIP, the District will also provide this information to the NSDI clearinghouse.

In accordance with FEMA's *Geospatial Data Coordination Policy*, dated August 23, 2005, and FEMA's current *Geospatial Data Coordination Implementation Guide*, all District geospatial data will be "coordinated, collected, documented and reported with standardized, complete and current information in compliance with Federal geospatial data reporting standards." This will entail the following:

- Posting planned projects to appropriate systems for coordination;
- Identifying existing data;
- Acquiring existing data;
- Building partnerships for the creation of new data; and
- Documenting and standardizing data.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Leroy Marshall, Chief, Office of Agriculture and Environmental Projects

THRU: Amy Brown, Deputy Executive Director, Water Resources

DATE: December 1, 2023

RE: Amendment to Contract 22/23-168 with Ladedda, LLC

RECOMMENDATION

Amend Contract 22/23-168 with Ladedda, LLC. for additional agricultural cost-share funding not to exceed \$350,600, for a total contract amount not to exceed \$374,000.

BACKGROUND

The Suwannee River Water Management District (District) has provided agricultural cost-share funds along with the Florida Department of Agriculture and Consumer Services and the Florida Department of Environmental Protection as part of the Suwannee River Partnership to help agricultural producers implement best management practices. Best management practices help farmers conserve water and improve water quality in the District.

Ladedda, LLC. has applied for agricultural cost-share under the District Agricultural Cost-Share Program for a project in Hamilton and Madison counties. The original contract was approved by the Deputy Executive Director on October 13, 2023, and contained soil moisture probe service agreements for an amount not to exceed \$23,400. This first amendment is to implement center pivot retrofits, grid soil sampling, stationary fertigation equipment, variable rate nutrient application, tissue sampling, and soil moisture probes for use across 2,180 acres of corn, peanuts, carrots and rye for an amended cost not to exceed \$350,600 and a total contract amount not to exceed \$374,000. There are two different funding sources that will be used to execute this contract. The amount allocated by each funding source will not exceed \$300,000.

This project is located in the Suwannee River Basin Management Action Plan Area, Madison Blue Priority Focus Area, and Eastern and Western Water Supply Planning Areas. The associated water savings estimate is 0.6067 mgd and the estimated nutrient savings is 109,000 lb. reduction of nitrogen to land surface.

Attachment A lists the amended cost share item and funding breakdown. Funding for this project is included in the Fiscal Year 2024 Final Budget.

JC/tm
Attachments

ATTACHMENT A

PRODUCER Ladeda LLC.
 WATER USE PERMIT 220105, 220595, 221754, 221718, 220536
 BMAP SUWA
 PFA Madison Blue
 COUNTY Madison
 COUNTY Hamilton

Reimbursable Rates for Cost-Share Equipment and Precision Agriculture Practices

Item	Percent Cost-Share	Maximum Cost-Share per Unit	Producer quote per Unit if provided	No. of Units	Estimated Cost-Share Total	Producer Share	Completion Due Date
LPS0087 Program Agricultural Springs Protection					\$294,900.00		
GBD Stationary Fertigation System	75%	\$9,000.00		3	\$27,000.00	\$9,000.00	1 year from effective date
GBD Soil Moisture Probe Purchase	90%	\$2,100.00		19	\$39,900.00	\$4,433.33	1 year from effective date
GBD Center Pivot Retrofit	90%	\$12,000.00		19	\$228,000.00	\$25,333.33	1 year from effective date
LP6103K Program Precision Ag					\$55,700.00		
Tissue Sampling per Ac.	75%	\$20.00		60	\$1,200.00	\$400.00	1 year from effective date
Grid Soil Sampling with VRNA	75%	\$7.00		2180	\$15,260.00	\$5,086.59	1 year from effective date
GBD Variable Rate Nutrient Application	75%	\$9.00		4360	\$39,240.00	\$13,080.00	1 year from effective date

FUNDING

DEP Funding \$350,600.00 Estimated PRODUCER Funds \$57,333.26

Amendment Amount \$350,600.00

ATTACHMENT A

District Specifications

The PRODUCER shall not purchase, install, implement or complete the above authorized EQUIPMENT and/or PRECISION AGRICULTURE PRACTICES prior to the EFFECTIVE DATE of the CONTRACT.

The PRODUCER shall complete the purchase, installation and/or implementation of the authorized EQUIPMENT and/or PRECISION AGRICULTURE PRACTICES in accordance with the above schedule.

The PRODUCER shall be actively participating in the DISTRICT'S AUTOMATED WATER USE MONITORING PROGRAM prior to reimbursement.

The PRODUCER shall maintain compliance with the associated Water Use Permit(s) for the duration of the contract.

All invoices and payments shall have dates showing when they were invoiced and paid. The dates for all financial transactions must coincide within the contract term to be eligible for reimbursement.

The PRODUCER shall own or have control of the property where the EQUIPMENT and/or PRECISION AGRICULTURAL PRACTICES are located for the duration of the CONTRACT.

The PRODUCER has executed and maintains a current FDACS Notice of Intent (NOI) to comply with Best Management Practices.

District Terms and Conditions

Center Pivot Retrofits

The producer must first select a Mobile Irrigation Lab (MIL) vendor to test the irrigation system. The MIL selected must follow the latest version of the MIL Handbook as developed by the Florida Department of Agriculture and Consumer Services (FDACS), Office of Agricultural Water Policy. Deliverables should include at a minimum: A uniformity score (Weighted Distribution and Christiansen's), recommendations to improve irrigation uniformity, and a laminated sprinkler chart with center pivot information. The selected MIL must also update the State of Florida MIL program website in accordance with FDACS Office of Agricultural Water Policy guidelines. The District will only reimburse for equipment recommended by the MIL and only for equipment considered newer technology. The District will not reimburse for equipment considered maintenance. Equipment eligible for reimbursement includes more efficient nozzle packages, such as Senninger IWOBs or Nelson Rotators, pressure regulators, drop down hoses, adjusting end guns and other associated water savings features. For reimbursement, the producer must provide a copy of the paid invoice, cancelled check (front and back) or some verifiable form of payment, copies of the pre- and post-MIL evaluations, and pictures of the pivot before, during and after the retrofit.

Fertigation Tank System

A fertigation tank system allows the producer to apply fertilizer through their existing irrigation infrastructure. The fertigation system should include a chemical storage tank, injector pump, safety valves, backflow prevention, trailer (for portable units) and associated plumbing. For reimbursement, the producer must provide a copy of the paid invoice and cancelled check (front and back) or some verifiable form of payment to vendor providing the equipment. District staff must also verify and photo document the equipment.

ATTACHMENT A

Grid Soil Sampling

Grid soil sampling allows growers to manage nutrient application in as small a unit as 2.5 acres by having a soil nutrient analysis taken on 2.5-acre grids. Grid sampling can be conducted in straight grids, or alternatively to scientifically delineated zones. Grid-based soil analysis assists growers with applying the needed nutrient in the right amount, at the right time, in the right place, and the right source. Cost-share is limited to 75% up to \$7/acre/year. Straight grids shall be no larger than 10 acres and no smaller than 2.5 acres. When cost-sharing this item, the applicant must variable rate apply nutrients (see below: Variable Rate Nutrient Application) at least once in the season if the sample analysis recommends a variable rate application. For reimbursement, the producer must provide a copy of the sampling map, lab report for the sampling event, the paid invoice, and canceled check (front and back) or some verifiable form of payment to the vendor providing the service. For this item one unit is one acre.

Soil Moisture Probes Purchase

Soil moisture probes (or sensors) measure the soil moisture and electrical conductivity at varying depths within the soil profile, providing real-time data that allows the producer to make informed decisions on when to irrigate and how much irrigation water is needed. This technology when applied properly results in a more efficient and effective use of irrigation water in responding to the crops moisture needs. Probe installation should provide a remote access data platform and a service agreement to help the producer implement the technology. For reimbursement, the producer must provide a copy of the paid invoice, cancelled check (front and back) or some verifiable form of payment to the vendor, installation locations, proof of data reporting, and pictures of the installed probe. For this item one unit is one probe.

Tissue Sampling

Tissue sampling is a crop management tool that allows growers to make informed decisions with regard to nutrient application by determining their crops nutrient need at various stages of development. This practice assists growers in putting the right source and amount at the right time and place reducing unnecessary nutrient application while maximizing production efficiency. Cost-share is limited to 75% up to \$20/sample, 1 sample/5 acres. These samples must be geo-referenced. For reimbursement, the producer must provide a copy of the sampling map, lab report for the sampling event, the paid invoice, and canceled check (front and back) or some verifiable form of payment to the vendor providing the service. For this item one unit is one acre.

Variable Rate Nutrient Application

Variable rate nutrient application allows growers to have nutrients applied to their fields at a variable rate based upon the results and recommendations of a grid soil sample analysis (see above: Grid Soil Sampling). Variable rate nutrient application allows growers to put the right source and amount at the right time and place, thus eliminating unnecessary nutrient application, and optimizing plant growth efficiency. Cost-share is limited to 75% up to \$7/acre/application, 2 applications/year. For reimbursement, the producer must provide a copy of the prescription map, the paid invoice, and canceled check (front and back) or some verifiable form of payment to the vendor providing the service. For this item one unit is one acre.

ATTACHMENT A

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Grid soil sampling allows growers to manage nutrient application in as small a unit as 2.5 acres by having a soil nutrient analysis taken on 2.5-acre grids. Grid sampling can be conducted in straight grids, or alternatively to scientifically delineated zones. Grid-based soil analysis assists growers with applying the needed nutrient in the right amount, at the right time, in the right place, and the right source. Cost-share is limited to 75% up to \$7/acre/year. Straight grids shall be no larger than 10 acres and no smaller than 2.5 acres. When cost-sharing this item, the applicant must variable rate apply nutrients (see below: Variable Rate Nutrient Application) at least once in the season if the sample analysis recommends a variable rate application. For reimbursement, the producer must provide a copy of the sampling map, lab report for the sampling event, the paid invoice, and canceled check (front and back) or some verifiable form of payment to the vendor providing the service. For this item one unit is one acre.

Soil Moisture Probes Purchase

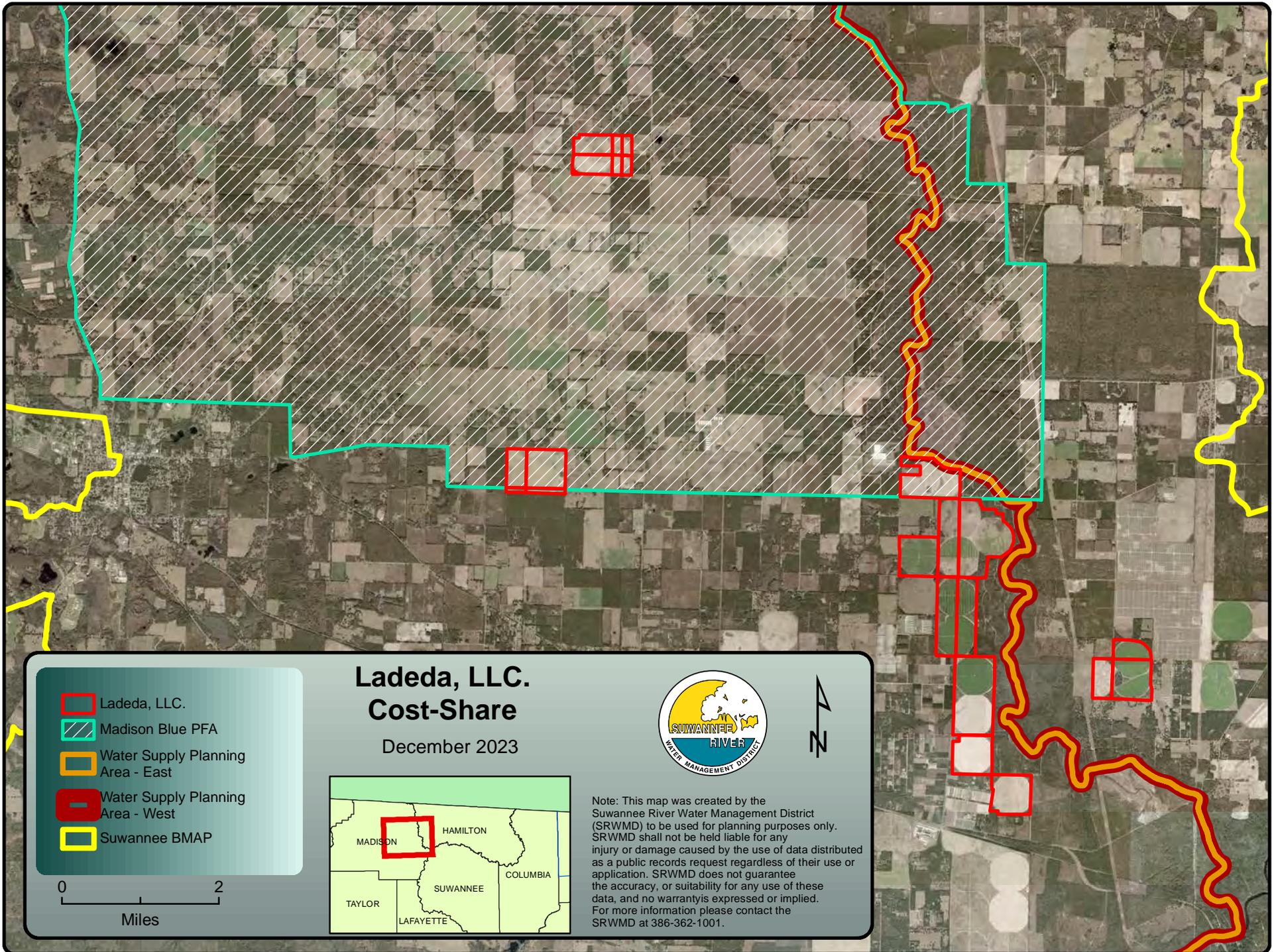
Soil moisture probes (or sensors) measure the soil moisture and electrical conductivity at varying depths within the soil profile, providing real-time data that allows the producer to make informed decisions on when to irrigate and how much irrigation water is needed. This technology when applied properly results in a more efficient and effective use of irrigation water in responding to the crops moisture needs. Probe installation should provide a remote access data platform and a service agreement to help the producer implement the technology. For reimbursement, the producer must provide a copy of the paid invoice, cancelled check (front and back) or some verifiable form of payment to the vendor, installation locations, proof of data reporting, and pictures of the installed probe. For this item one unit is one probe.

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Variable Rate Nutrient Application

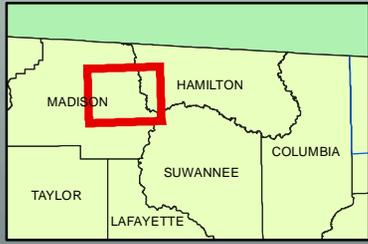
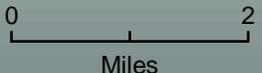
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-  Ladedda, LLC.
-  Madison Blue PFA
-  Water Supply Planning Area - East
-  Water Supply Planning Area - West
-  Suwannee BMAP

Ladedda, LLC. Cost-Share

December 2023



Note: This map was created by the Suwannee River Water Management District (SRWMD) to be used for planning purposes only. SRWMD shall not be held liable for any injury or damage caused by the use of data distributed as a public records request regardless of their use or application. SRWMD does not guarantee the accuracy, or suitability for any use of these data, and no warranty is expressed or implied. For more information please contact the SRWMD at 386-362-1001.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Sean King, Chief, Office of Minimum Flows and Minimum Water Levels

THRU: Amy Brown, Deputy Executive Director, Water Resources

DATE: November 9, 2023

RE: Task Work Assignment 19/20-031.16 with Water and Air Research, Inc

RECOMMENDATION

Authorize the Executive Director to approve Task Work Assignment 19/20-031.16 with Water and Air Research, Inc for algae and aquatic vegetation monitoring for an amount not to exceed \$79,326.45.

BACKGROUND

The District is in the process of developing new approaches to establish minimum flows and minimum water levels (MFLs) for priority springs that address characteristics specific to each spring. Emerging evidence indicates that spring flow can substantially affect algae and aquatic vegetation communities within springs, including limiting the accumulation of nuisance algae. The District requires the continued assistance of Water and Air Research, Inc (WAR) to collect algae and aquatic vegetation data at priority springs in the Suwannee River basin to support the development of springs specific MFLs.

During the 2022-2023 Fiscal Year, the District contracted with WAR for one year of monitoring, which included six sampling events at five priority springs: Madison Blue, Allen Mill Pond, Hornsby, Gilchrist Blue, and Little Fanning Springs. These springs were selected because of their potential for developing relationships between flows and the amounts of algae and aquatic vegetation. The task work assignment (TWA) for the 2023-2024 Fiscal Year includes bi-monthly sampling events from January to September 2024 (five events at each site). At least one additional year of monitoring may be required to collect sufficient data to develop the necessary relationships.

This information will be used to develop springs specific MFL metrics to limit nuisance algae and prevent significant harm to aquatic habitats in priority springs in the Suwannee River Basin. These MFL metrics will address water resource values for aesthetic and scenic attributes and fish and wildlife habitats as set forth in rule 62-40.473, Florida Administrative Code. The algae and aquatic vegetation monitoring data can also be used for assessing improvements or degradation of spring ecosystems over time and for detection of harmful algal blooms.

Funding for this TWA is included in the Fiscal Year 2023-2024 Final Budget. This TWA will expire on September 30, 2024.

SK/ao

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: Emily Ducker, Chief, Office of Water Supply

THRU: Hugh Thomas, Executive Director, Suwannee River Water Management District

DATE: December 1, 2023

RE: Order Number 23-007 – 2023 North Florida Regional Water Supply Plan (2020-2045)

RECOMMENDATION

Approve the 2023 North Florida Regional Water Supply Plan (2020-2045) and associated appendices through Order Number 23-007.

BACKGROUND

Staff from the SRWMD and SJRWMD, along with the Florida Department of Environmental Protection, have been working collaboratively since 2020 to update the North Florida Regional Water Supply Plan (NFRWSP). The NFRWSP encompasses 14 counties, including Alachua, Baker, Bradford, Clay, Columbia, Duval, Flagler, Gilchrist, Hamilton, Nassau, Putnam, St. Johns, Suwannee, and Union. The purpose of the partnership is to protect natural resources and water supplies in North Florida. This goal is being achieved through collaborative planning, scientific-tool development, and related efforts. The NFRWSP has identified sufficient sources of water to meet the needs of the environment and the projected demands through 2045.

Over the past three years, the Districts held two technical methods workshops, two water resource constraint workshops, and two draft 2023 NFRWSP workshops consistent with subsection 373.709(1), F.S. The Districts also held focused stakeholder meetings with local governments, regional organizations, agricultural entities, and other stakeholders in the NFRWSP area to share an overview of the water supply planning process, discuss concerns regarding water supply, and answer questions.

Additionally, the North Florida-Southeast Georgia regional groundwater flow model was used to assess potential resource constraints, if all projected reasonable-beneficial demands are met by fresh groundwater. The results of that assessment determined that fresh groundwater alone will not meet the projected future demand of 135 million gallons per day (mgd) through 2045 without causing unacceptable impacts to the water resources. To address this potential concern, the plan identifies over 160 mgd of water conservation, water supply development, and water resource development projects to meet the projected demand, while protecting the environment.

The NFRWSP also identifies conceptual project options that are being developed and may become feasible if they address and satisfy environmental, technical, or permit criteria. Comments received during the public comment period from September 12, 2023, through October 5, 2023, were responded to in Appendix A and where appropriate, incorporated into the final draft of the plan. The final draft 2023 North Florida Regional Water Supply Plan (2020-2045) and associated appendices are located on the North Florida website at

<https://www.northfloridawater.com/watersupplyplan/index.html>.

District staff recommends that the Governing Board approve Order Number 23-007 – 2023 North Florida Regional Water Supply Plan (2020-2045), recognizing each District's authority for water supply planning extends to water supply planning regions within its boundaries as established in section 373.069, F.S.

ED/ao