

### SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

**SUBJECT:** Execute Consent Agreement between Seminole County Government and St. John's River Water Management District

**DEPARTMENT:** Environmental Services      **DIVISION:** Business Office/Administration

**AUTHORIZED BY:** *Robert G. Adolphe*      **CONTACT:** Robert Adolphe      **EXT.** 2012  
Robert G. Adolphe, P.E.

**Agenda Date** 3-11-2003    Regular     Consent     Work Session     Briefing   
Public Hearing – 1:30       Public Hearing – 7:00

**MOTION/RECOMMENDATION:**

Approve and authorize Chairman to execute Consent Agreement between Seminole County Government and St. John's River Water Management District as settlement for excess groundwater withdrawal under the Heathrow/Hanover Consumptive Use Permit issued January 11, 1994.

**BACKGROUND:**

St. John's River Water Management District (District) requires execution of the Consent Agreement (Agreement) before considering issuance of a renewed Consumptive Use Permit on the St. John's River Water Management District Board agenda on March 11, 2003 at 1:00 p.m.

Four (4) Corrective actions required of Seminole County are enumerated as items 15 through 18 in the attached Agreement. These actions are in addition to those included under the CUP to be granted by the District March 11, 2003 at 1:00 p.m. and include the following:

1. Adoption of an ordinance enforcing the District's water conservation requirements,
2. Hire a full-time water shortage enforcement officer,
3. Adopt certain provisions in the Seminole County Building Code for automatic sprinklers rain sensors, and
4. Fund \$50,000/year for three (3) years (\$150,000 total) for services to perform residential irrigation audits.

All of the above must be accomplished within six (6) months of rendition of the Agreement. Items 1 through 3 are complete. Item 4 requires budgetary adjustment.

Reviewed by:	
Co Atty:	<i>J. Dietrich</i> 3-5-03
DFS:	_____
Other:	_____
DCM:	_____
CM:	<i>[Signature]</i>
File No.	<u>CESA01</u>

## ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

IN RE:

Seminole County Public Works  
Seminole County  
Consumptive Use Permit No. 8230

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F.O.R. No. 2002-09

### CONSENT AGREEMENT

This Consent Agreement is entered into between Seminole County ("Respondent"), and the St. Johns River Water Management District ("District"), to settle certain matters at issue between them under Chapter 373, Florida Statutes (F.S.), and Chapter 40C-2, Florida Administrative Code (F.A.C.).

### FINDINGS OF FACT

1. The District, a special taxing district created by Chapter 373, F.S., is charged with the responsibility to prevent harm to the water resources of the District and to administer and enforce Part II, Chapter 373, F.S., and the rules promulgated thereunder.

2. The District is specifically authorized to administer and enforce the permitting programs in Sections 373.219 and 373.244, F.S. In part, the District has implemented these programs through Chapter 40C-2, F.A.C.

3. Respondent is a public supplier of water located in the northwestern area of Seminole County, Florida.

4. On January 11, 1994, the District issued Consumptive Use Permit (CUP) Number 8230 (f/k/a Permit No. 2-117-0023NGR3M2) (the "Permit") to Respondent. The Permit authorized the use of groundwater from the Floridan aquifer from the

Heathrow/Hanover Wellfields to serve an estimated population of 13,526 in seven years. A true and correct copy of Consumptive Use Permit Number 8230 is attached hereto as Exhibit "A" and incorporated by reference.

5. Under Condition 11 of the Permit, the Permit was to expire on December 31, 2000, but Respondent submitted a timely application for renewal. The permit renewal application has been combined with the previously issued CUP No. 8433 (which is not at issue in this consent agreement), and the combined permit renewal application is currently under review by District staff.

6. Condition 12 of the Permit states, in pertinent part:

Maximum annual withdrawals must not exceed the following:

\* \* \*

655.5 mgals/yr [million gallons/yr] in 1998;  
743.5 mgals/yr in 1999, and;  
831.8 mgals/yr in 2000.

7. Respondent's withdrawal of groundwater from 1998 to 2000 inclusive exceeded the amount allocated by the Permit, as stated in the table below:

<b>Year</b>	<b>Use (mgals)</b>	<b>Allocation</b>	<b>% Over</b>
1998	1033.56	655.5	58
1999	1203.33	743.5	62
2000	1399.89	831.8	68

**CONCLUSIONS OF LAW**

8. The District has jurisdiction over Respondent and its withdrawal of water. Sections 373.069(2)(c) and 373.219, F.S., and Chapter 40C-2, F.A.C.

9. Respondent's exceedances of its maximum annual groundwater withdrawals in 1998 through 2000 violated Condition 12 of CUP No. 8230 and are violations of Section 373.219, F.S., and Rule 40C-2.381(1), F.A.C.

10. The District is authorized to commence a cause of action in a court of competent jurisdiction and seek a civil penalty in an amount not exceeding Ten Thousand Dollars (\$10,000.00) per offense per day for each violation of Chapter 373, F.S., and Chapter 40C-2, F.A.C. Section 373.129(5), F.S.

11. The District is authorized to recover investigative costs and reasonable attorneys' fees expended in the enforcement of its programs. Section 373.129(6), F.S.

#### **CORRECTIVE ACTION**

12. Respondent shall not undertake any further withdrawals except as authorized by District permit.

13. In lieu of paying a settlement penalty, Respondent shall perform the corrective actions below. The District has determined that the cost of performing the corrective actions will exceed by 150% or more the monetary settlement penalty for the violations of the Permit.

14. Respondent agrees to reimburse the District for investigative costs and attorneys' fees incurred by the District in resolving this matter in the amount of Seven Hundred Twelve and 09/100 dollars (\$712.09). Respondent shall deliver to the District a cashier's check or money order in the total amount of Seven Hundred Twelve and 09/100 dollars (\$712.09), payable to the St. Johns River Water Management District,

P. O. Box 1429, Palatka, Florida 32178-1429, within ten (10) days of rendition of this Consent Order. Any sums unpaid within the time frame provided herein shall bear interest at the rate of 1.5 percent per month until paid.

15. Within six (6) months of rendition of this consent agreement, Respondent shall adopt an ordinance similar to the District's Model Water Shortage Ordinance that authorizes Respondent to enforce the District's permanent water conservation requirements and to enforce District issued Water Shortage Orders. This ordinance must include a provision for penalties for non-compliance. A sunset provision may be included in the ordinance that provides for a repeal of the ordinance with written approval of the District. A copy of the District's Model Water Shortage Ordinance is attached hereto as Exhibit "B".

16. Within six (6) months of rendition of this consent agreement, Respondent shall permanently hire a full-time water shortage enforcement officer to enforce the District's permanent water conservation requirements and water shortage orders pursuant to the ordinance adopted in paragraph 15 above. Respondent must track: (i) watering violation complaints; (ii) water shortage violations; and (iii) water shortage enforcement actions, and make these lists available to the District upon request.

17. Within six (6) months of rendition of this consent agreement, Respondent shall adopt provisions in the Seminole County Building Code that require:

a) For all automatic lawn sprinkler systems installed as part of new home construction, a rain sensor device or switch that complies with Section 373.62, F.S. This provision shall require Respondent to inspect for the rain sensor device or switch prior to issuing or granting a Certificate of

Occupancy. Respondent shall not issue or grant a Certificate of Occupancy if an operational rain sensor device or switch is not installed on automatic lawn sprinkler systems that will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred. This provision must apply to all permits issued by Respondent's Building Department that authorizes the installation of automatic lawn sprinklers at new homes.

b) For all automatic lawn sprinkler systems installed at an existing home site, a rain sensor device or switch that complies with Section 373.62, F.S. Every Seminole County building permit authorizing the installation of an automatic lawn sprinkler system at an existing home site shall require an operational rain sensor device or switch that complies with Section 373.62, F.S. This provision shall require Respondent to inspect the automatic lawn sprinkler system for the operational rain sensor device or switch. This provision shall also require that the final inspection of the system must not be approved if an operational rain sensor device or switch is not installed that will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred. This provision must apply to all permits issued by Respondent's Building Department that authorizes the installation of automatic lawn sprinklers at existing homes.

18. Respondent shall annually expend the sum of \$50,000 to fund a mobile irrigation lab for a minimum of three (3) years. The first funding expenditure shall occur within six (6) months of rendition of this consent agreement. Respondent shall

advertise that the mobile irrigation lab is available to all the residents of Seminole County and shall ensure that the lab is funded for the three-year period. Respondent shall submit an annual report to the District detailing the use of the mobile irrigation lab by the residents of Seminole County that shall include the number of lawn irrigation systems evaluated and assessed. The first annual report shall cover the calendar year of 2003 and is due to the District no later than January 31, 2004.

19. Within thirty (30) days of completing each of the corrective actions required in paragraphs 15 through 18 above, Respondent shall provide written proof to the District that it has complied with that corrective action.

20. The District agrees, for and in consideration of the complete and timely performance of the obligations set forth herein, that rendition of this consent agreement is dispositive of the violations contained herein, and the District waives its rights to seek judicial imposition of damages or civil or criminal penalties for the violations contained herein.

21. By executing this consent agreement, Respondent waives its rights to judicial review or an administrative hearing on the terms of this agreement and waives its rights, including defenses, under section 120.69, F.S.

22. This consent agreement will become effective after rendition (filing) by the District Clerk, which will occur after its execution by Respondent and the Executive Director on behalf of the District

23. Upon rendition, this consent agreement will constitute a final administrative action of the District, and the terms and conditions set forth herein may be enforced in a court of competent jurisdiction pursuant to Sections 373.129 and 120.69, F.S.

24. No modifications of the terms of this consent agreement shall be effective until reduced to writing and executed by both Respondent and the District.

RESPONDENT  
SEMINOLE COUNTY

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT

\_\_\_\_\_  
DATE

\_\_\_\_\_

RENDERED this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
SANDRA BERTRAM  
DISTRICT CLERK