

MEMORANDUM

TO: Governing Board Members

FROM: Carol Wehle, Executive Director

DATE: July 8, 2010

SUBJECT: Denial of Consumptive Use Permit Application Number 090501-7 for public water supply and irrigation for a project known as Turkey Hammock (Osceola County)

STAFF RECOMMENDATION

Staff recommends denial of a Consumptive Use Permit (CUP) for Application Number 090501-7 for an agricultural irrigation project known as Turkey Hammock (aka Hyatt Farm), in accordance with Section 40E-1.608, Florida Administrative Code (F.A.C.). The applicant has not provided reasonable assurance the project meets the Conditions for Issuance of Permits set forth in Rule 40E-3.301, F.A.C. and the Basis of Review for Water Use Permit Applications within the South Florida Water Management District (Basis of Review).

BACKGROUND

On May 1, 2009, Application Number 090501-7 was submitted requesting authorization of a CUP for agricultural use. The applicant had previously possessed a CUP for this project which expired on October 30, 2008. Since this application was received after the expiration date, the requested allocation is considered a new request. Accordingly, the applicant is currently operating the farm without a valid CUP.

In its request, the applicant proposed to increase the irrigated acreage from 400 acres of citrus to 566.4 acres and from 400 acres of small vegetable to 905.8 acres. The proposed total irrigated area would equal 1,472.2 acres. The applicant also requested an allocation to meet the public water supply demands of approximately 250 people that operate the farm.

The applicant proposed to withdraw water from Lake Kissimmee as its primary source for the agricultural operation and requested an allocation from the Upper Floridan aquifer to meet the demands associated with the public water supply use. Staff sent six Requests for Additional Information (RAIs) letters to the applicant. District staff also held several teleconferences with the applicant to resolve issues relating to the project. The most recent RAI letter was sent on April 30, 2010. The primary unresolved issue is related to the outstanding Notice of Violation (NOV) that was issued by the District on September 5, 2007, for the unauthorized filling of ditches, dredging of new ditches, and grading of a parcel of land later identified as a future residential lot on the subject property.

Governing Board Members

Page 2 of 2

July 8, 2010

These activities altered the topography for the sole or predominant purpose of impounding or obstruction of surface waters. Consequently, staff has determined that the agricultural exemption enumerated in Section 373.406(2), F.S., does not apply. In response to the RAI, the applicant asserted that an Environmental Resource Permit (ERP) is not necessary for the project based on Section 373.406(2), Florida Statutes (F.S.).

In order to obtain a permit, an applicant is required to provide reasonable assurances that the proposed use meets the conditions for issuance set forth in Rule 40E-3.301(1), F.A.C. To meet the conditions for issuance, an applicant must provide reasonable assurances that the criteria in the Basis of Review are met (See Rule 40E-3.301(2), F.A.C.). Section 1.4 of the Basis of Review states that an application for a CUP will not be considered complete until a surface water management or environmental resource permit for the project is deemed complete. Section 1.4 of the Basis of Review goes on to state that if a new or modified surface water management or environmental resource permit is required in conjunction with the proposed water use, the water use permit may only be issued concurrently with the applicable surface water management or environmental resource construction permit. An applicant must 1) evaluate the impacts associated with the proposed water use on its surface water management system; and, 2) evaluate the cumulative impacts as a result of the proposed water use with the cumulative drainage effects of its surface water management system.

Staff recommends denial of the application due to the fact that the applicant has failed to apply for and obtain an ERP in conjunction with this CUP. Therefore, reasonable assurances have not been provided that the criteria in the Basis of Review or that the conditions of issuance set forth in Rule 40E-3.301(1), F.A.C., have been met.

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