

MEMORANDUM

TO: Governing Board Members

FROM: Chip Merriam

DATE: June 23, 2009

SUBJECT: Authorization to modify Consent Agreement concerning City of Stuart wellfield operation (Martin County)

Background

The City of Stuart ("City") is a municipality of the State of Florida, with its principal office located at 121 S.W. Flagler Street, Stuart, Martin County, Florida. The City is permitted under Water Use Permit No. 50-02120-W ("Permit") to withdraw water from the Surficial aquifer for public water supply use. On October 17, 1994, the City and South Florida Water Management District ("District") entered into Consent Agreement No. SFWMD 94-93-CO-WU. The Consent Agreement was incorporated by reference into the City's Permit, which was issued by the District on May 10, 2001.

The Consent Agreement required the City to implement a wellfield operation plan approved by the Florida Department of Environmental Protection ("FDEP"), a mitigation plan, and imposed monitoring requirements to remediate pollution of the Surficial aquifer located in close proximity to the City's wellfield. The Consent Agreement authorized the City to withdraw water at specified rates from Well Nos. 1 through 15 until such time as the District receives written confirmation from FDEP of completion of the Feasibility Study/Remediation Action Plan ("FS/RAP").

On or about January 28, 2005, the City submitted a water use permit application (Application No. 050128-14) to renew and modify its Permit. The City is seeking to modify the wellfield operation plan for Well Nos. 1 through 15 as well as increase its Surficial aquifer allocation. The City has informed the District that the revised wellfield operation plan was approved by FDEP and is consistent with the FS/RAP. The Consent Agreement requires modification in order to revise the wellfield operation plan. The modification of the Consent Agreement will be incorporated as a limiting condition of the renewed and modified permit when the District acts upon Application No. 050128-14.

How this helps meet the District's 10-year Strategic Plan: The District is authorized to implement regulatory recommendations to ensure that proposed and modified uses are reasonable-beneficial, will not interfere with any presently existing legal users, and are consistent with the public interest.

Governing Board Members
June 23, 2009
Page 2

Funding Source: There are no funding needs associated with the proposed modification of the Consent Agreement

This Board item impacts what areas of the District, both resource areas and geography: This item impacts the Surficial aquifer in the vicinity of the City's wellfield in Martin County, Florida.

What concerns could this Board item raise? This modification of the Consent Agreement is limited to modifying the City's wellfield operation plan and does not affect the other requirements for remediation under the Consent Agreement.

Why should the Governing Board approve this item?

The City of Stuart will continue to implement the remediation of volatile organic compound contaminants from the Surficial aquifer through operation of its Public Water Supply Well Nos. 1 through 15 and the City's VOC Treatment System.

Contact: Jim Harmon, Director, Water Use Regulation Division
(561) 682-6777

**BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

ORDER NO. SFWMD -CO-WU

In re:

CITY OF STUART,

Respondent.
_____ /

MODIFICATION OF CONSENT AGREEMENT NO. SFWMD 94-93-CO-WU

Pursuant to Chapter 373, Florida Statutes, and the rules promulgated thereunder, this Modification of Consent Agreement NO. SFWMD 94-93-CO-WU is entered into between the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT** ("District" or "SFWMD") and **CITY OF STUART** ("City") by mutual consent, without trial or adjudication of any issue of fact or law.

FINDINGS OF FACT

The District and City stipulate to the following Findings of Fact.

1. The District is a public corporation of the State of Florida existing by virtue of Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code, as a multi-purpose water management district with its principal office in West Palm Beach, Florida.
2. The City is a municipality of the State of Florida, with its principal office located at 121 S.W. Flagler Street, Stuart, Martin County, Florida.
3. On October 17, 1994, the parties entered into Consent Agreement No. SFWMD 94-93-CO-WU, which was incorporated by reference into the City's Water Use Permit No. 43-00053-W ("Permit") issued by the District on May 10, 2001. A true

and correct copy of Consent Agreement No. 94-93-WU-CO is attached hereto as Exhibit "A."

4. Consent Agreement No. 94-93-WU-CO required the City to implement a wellfield operation plan approved by the Florida Department of Environmental Protection ("FDEP"),¹ mitigation plan, and monitoring requirements to remediate pollution of the Surficial aquifer located in close proximity to the City's wellfield. For a detailed description of the events necessitating the execution of Consent Agreement No. 94-93-WU-CO, please refer to Exhibit "A."

5. The City is authorized by Consent Agreement No. 94-93-WU-CO to withdraw water at specified rates from Well Nos. 1 through 15 until such time as the District receives written confirmation from FDEP of completion of the Feasibility Study/Conceptual Remediation Action Plan ("FS/RAP").

6. Prior to the expiration of Consent Agreement No. 94-93-WU-CO, Consent Agreement No. 94-93-WU-CO could be modified or extended by the District, or the District would consider taking action on any then pending water use permit application by the City based on the District's permitting criteria in effect at that time. Additionally, nothing in Consent Agreement No. 94-93-WU-CO would bind the Governing Board from approving such application.

7. The District has not received written notification from FDEP that the FS/RAP has been completed.

8. On or about January 28, 2005, the City submitted a water use permit application (Application No. 050128-14) to renew and modify its Permit. The City is

¹ FDEP is the state agency with jurisdiction to require remediation of ground water contaminant sites pursuant to Chapter 403, Florida Statutes.

presently seeking to modify the wellfield operation plan for Well Nos. 1 through 15, which was set forth in Consent Agreement No. 94-93-WU-CO and incorporated by reference into its Permit, as well as an increase in its Surficial aquifer allocation. A map depicting the locations of Well Nos. 1 through 15 is attached hereto as Exhibit "B."

9. The City has informed the District that the revised wellfield operation plan it proposed for Well Nos. 1 through 15 was approved by FDEP and is consistent with the FS/RAP.

10. The City seeks authorization from the District to modify the wellfield operation plan in continuation of its implementation of the remediation in the FS/RAP to remove volatile organic compound ("VOC") contaminants in the Surficial aquifer through operation of its Public Water Supply Well Nos. 1 through 15 and the City's VOC Treatment System. FDEP entered into a Consent Order with Turbocombustor Technologies ("TCT") to remediate the contaminant plume and approved TCT's FS/RAP which involves offsite remediation through operation of the City's Public Water Supply Wells Nos. 1 through 15 and the City's VOC Treatment System.

11. The City received District authorization to use water in conjunction with the FS/RAP operations through the execution of Consent Agreement No. 94-93-CO-WU and the issuance of its May 10, 2001 Permit. The City also executed an Agreement with TCT, dated May 27, 1992, in order to implement the FS/RAP. The District accepted said Agreement insofar as it was found to be consistent with the requirements of Consent Agreement 94-93-CO-WU.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. The District has regulatory authority over consumptive uses of water in the District pursuant to Part II of Chapter 373, Fla. Stat.

13. Rule 40E-2.301(1)(d), F.A.C., requires an applicant for a consumptive use permit to provide reasonable assurances that the proposed water use will not cause pollution of the aquifer. It is the position of the District that the requested water withdrawals to implement the FS/RAP will cause movement of contaminants into a previously uncontaminated portion of the Surficial aquifer. Therefore, pursuant to the above-cited District rules, a water use permit may not be issued by the District to institute this remediation. The City contends that area-wide VOC contamination from known and unknown sources has existed within said Surficial aquifer since as early as 1986 and a water use permit may be issued to implement the FS/RAP.

~~14. In addition to its permitting authority, Section 373.171(1), Fla. Stat.,~~ authorizes the water management districts to issue orders affecting the use of water, as conditions warrant to "obtain the most beneficial use of the water resources of the state and to protect the public, health, safety, and welfare and the interests of the water user affected...."

15. Chapter 373, Fla. Stat., gives deference to water management district governing boards in defining how to maximize reasonable-beneficial uses of the State's water resources, including the balance of various missions to address harm to the water resources while developing water resources for consumptive uses. *Village of Tequesta v. Jupiter Inlet Corp.*, 371 So. 2d 663 (Fla. 1979); *Harloff v. City of Sarasota and*

SFWMD, 575 So. 2d 1324 (Fla. 2d DCA 1991); Osceola County v. St. Johns River Water Management District, 486 So. 2d 616 (Fla. 5th DCA 1986), aff'd, 504 So. 2d 385 (Fla. 1987).

16. The District is authorized to issue orders pursuant to Section 373.083, Fla. Stat.

17. The Governing Board finds that approval of the water withdrawals is necessary to implement the FS/RAP for removal of VOC contaminants from the aquifer and to allow the City to operate its wellfield in order to meet its public water supply demands. As a result, execution of this order modifying the Consent Agreement is authorized pursuant to Section 373.171, Fla. Stat.

18. Considering the above findings of fact, it is necessary and appropriate to modify the wellfield operational plan and allocation set forth in Consent Agreement No. SFWMD 94-93-CO-WU.

ORDER

Based upon the above Findings of Fact, Ultimate Facts and Conclusions of Law, the Governing Board orders that:

19. The City shall continue to implement and enforce all actions required under Consent Agreement No. SFWMD 94-93-WU-CO and all miscellaneous provisions incorporated in said Consent Agreement shall remain in effect, except as provided herein.

20. The wellfield operation plan as set forth in Paragraph 2 of the Order Section of Consent Agreement No. SFWMD 94-93-WU-CO is hereby modified to reflect the following:

Public Water Supply Wells Nos. 1 through 15 shall be operated according to the following schedule. At times of average daily demand, the wells shall be operated in three groups at the following average rates:

Group 1

Well Number	Withdrawal Rate
4	0.175 MGD (123 GPM for 24 hours continuously)
6	0.133 MGD (94 GPM for 24 hours continuously)
10	0.200 MGD (140 GPM for 24 hours continuously)
13	0.242 MGD (169 GPM for 24 hours continuously)

Group 2

Well Number	Withdrawal Rate
1	0.200 MGD (140 GPM for 24 hours, 7 day cycle)
3	0.191 MGD (138 GPM for 24 hours, 7 day cycle)
5	0.133 MGD (94 GPM for 24 hours, 7 day cycle)
7	0.166 MGD (116 GPM for 24 hours, 7 day cycle)
9	0.166 MGD (116 GPM for 24 hours, 7 day cycle)
11	0.208 MGD (146 GPM for 24 hours, 7 day cycle)
15	0.242 MGD (169 GPM for 24 hours 7 day cycle)

Group 3

Well Number	Withdrawal Rate
2	0.191 MGD (138 GPM for 24 hours, 7 day cycle)
8	0.166 MGD (116 GPM for 24 hours, 7 day cycle)
12	0.230 MGD (161 GPM for 24 hours, 7 day cycle)
14	0.250 MGD (175 GPM for 24 hours 7 day cycle)

A. Group 1 wells will be pumped continuously. Wells 4, 6, 10, and 13 are scheduled to be run continuously for the purpose of optimizing the ability of the wellfield to capture the TCT contaminant plume, with the exception of up to two weeks of scheduled maintenance per year.

B. Group 2 wells will be pumped for 7 days, and then rested for 7 days. When Group 2 wells are resting, Group 3 wells will be pumped for 7 days, and then rested for seven days. The pumping sequence shall then be repeated.

C. At times of peak day demand, all wells may be operated. If Group 2 wells are operating and Group 3 wells are resting, Wells 2 and 14 will be placed into service before Wells 8 and 12. If Group 3 wells are operating and Group 2 wells are resting, Wells 1, 3, 11, and 15 will be placed into service before Wells 5, 7, and 9.

21. The allocations set forth in Paragraph 3 of the Order Section of Consent Agreement No. 94-93-WU-CO are hereby modified to reflect the following: The ~~MAXIMUM ANNUAL ALLOCATION shall not exceed 1,341 MG (3.67 MGD).~~ The MAXIMUM DAILY ALLOCATION shall not exceed 5.22 MG.

22. Persons who are not parties to this Order, but whose substantial interests may be affected by the Order, may have a right to petition this Order. A notice of rights is attached and incorporated as Exhibit "C."

23. This is a final order from the District, pursuant to Section 120.52(7), F.S., and is final and effective on the date filed with the Clerk of the District unless a petition for administrative hearing is filed in accordance with Chapter 120, F.S., or any other applicable state law. Upon the timely filing of a petition, this order modifying Consent Agreement No. 94-93-CO-WU will not be effective until further order from the District.

DONE AND SO ORDERED in West Palm Beach, Palm Beach County, Florida,
on this _____ day of _____ 2009.

**SOUTH FLORIDA WATER
MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD**

By: _____
Executive Director or designee

Attested:

Legal Form Approved:

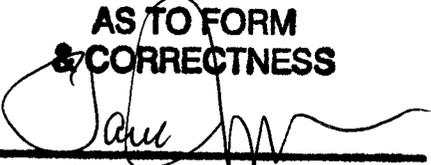
By: _____
Assistant Secretary
Dated: _____, 2009

By: _____
Jennifer Bokankowitz, Esq.

RESPONDENT: CITY OF STUART

By: James A. Christie, Jr.
Print Name: James A. Christie, Jr.
Print Title: Mayor

**APPROVED
AS TO FORM
& CORRECTNESS**



**PAUL J. NICOLETTI
CITY ATTORNEY**

City of Stuart

Sailfish Capital of the World



BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 47-09

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A MODIFICATION OF CONSENT AGREEMENT NO. SFWMD 94-93-CO-WU WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT DATED OCTOBER 17, 1994 PERTAINING TO THE OPERATION OF WELLS 1 THROUGH 15 WHILE REMEDIATING A CONTAMINATION AS PART OF THE FORTHCOMING 20-YEAR CONSUMPTIVE USE PERMIT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: The Mayor and City Clerk are hereby authorized and directed to execute a modification of consent agreement No. SFWMD 94-93-CO-WU with the South Florida Water Management District dated October 17, 1994 pertaining to the operation of wells 1 through 15 while remediating a contamination as part of the forthcoming 20-year consumptive use permit. A copy of the agreement is on file in the office of the City Clerk.

SECTION 2: This resolution shall take effect upon adoption.

Resolution 47-09
Modification of SFWMD
consent agreement

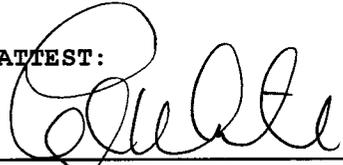
Commissioner Krauskopf offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner Waxler. upon being put to a roll call vote, was as follows.

JAMES A. CHRISTIE, JR., MAYOR
MICHAEL J. MORTELL, VICE MAYOR
JEFFREY A. KRAUSKOPF, COMMISSIONER
MARY L. HUTCHINSON, COMMISSIONER
CAROL S. WAXLER, COMMISSIONER

YES	NO	ABSENT
✓		
✓		
✓		
✓		
✓		

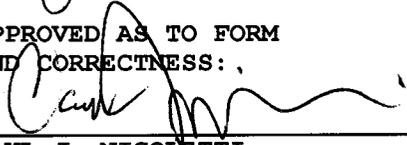
ADOPTED this 11th day of May 2009.

ATTEST:


CHERYL WHITE
CITY CLERK


JAMES A. CHRISTIE, JR.
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:


PAUL J. NICOLETTI
CITY ATTORNEY



**CITY OF STUART, FLORIDA
COMMISSION MEETING
AGENDA ITEM REQUEST**

Meeting Date: 5/11/2009

Prepared by: David D. Peters

Ordinance/Resolution No. 47-09

Title of Item:

Modification of Consent Agreement SFWMD 94-93-CO-WU

Summary Explanation/Background Information on Agenda Request:

The City executed Consent Agreement No. SFWMD 94-93-CO-WU with the South Florida Water Management District on October 17, 1994 that permitted the City to operate wells 1 through 15 while remediating a contamination plume associated TCT. In order to better manage the entire wellfield the City has requested this agreement be modified so that an odd and even wellfield pumping protocol can be implemented as a part of the forthcoming 20-Year Consumptive Use Permit. Prior to issuing the proposed Consumptive Use Permit, District staff has requested Consent Agreement No. SFWMD 94-93-CO-WU be modified.

Funding Source:

N/A

Recommended Action:

Adopt Resolution authorizing the Mayor to execute the Modification Of Agreement No. SFWMD 94-93-CO-WU, subsequent to review and approval by the City Attorney.

4/24/2009

X *Scott Dawson*

Department Director

5/6/2009

X *David D. Peters*

City Attorney

5/6/2009

X *David D. Peters*

City Manager