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

February 23, 2021 Information:
Webinar Registration Link for Visuals:
https://attendee.gotowebinar.com/register/6247826803644123151
Call-In Number for Audio: Toll Free 1-888-585-9008 - **Conference Room Number**: 704-019-452 #
Public Comment Form Link: www.MySuwanneeRiver.com/Comments

February 24, 2021 Information (If Needed)
Webinar Registration Link for Visuals:
https://attendee.gotowebinar.com/register/4576738454215302671
Call-In Number for Audio: Toll Free 1-888-585-9008 - **Conference Room Number**: 704-019-452 #
Public Comment Form Link: www.MySuwanneeRiver.com/Comments

Participation in this meeting by the "GoTo Webinar" and "Call-In Number" may be limited at times due to high participation volumes. If you are temporarily unable to participate using one of the above methods, please try the other method or try again later.

Open to Public
Limited Seating Capacity and Following CDC Guidelines Regarding Social Distancing

February 23, 2021 — District Headquarters
9:00 a.m. — 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 (Public comment will be allowed on the agenda item only. Breaks may be called by the Chair from time to time including a lunch break. If needed, public comments will be received until 3:00 p.m.

5. Consideration of the Recommended Order Issued in Seven Springs Water Company v. Suwannee River Water Management District; SRWMD Renewal WUP App. No. 2-041-218202-3; DOAH Case Nos. 20-1329, 20-3581 (Consolidated) and Issuance of a Final Order

6. Adjournment (If the Governing Board determines that the circumstances so warrant, the Governing Board may continue this meeting to February 24, 2021. Should this meeting be so continued, the Governing Board does not anticipate reopening public comment.)

Any member of the public, who wishes to address the Board during Public Comment must sign up (including the completion of the required speaker forms) with the Executive Director or designee before the time designated for Public Comment. During Public Comment, the Chair shall recognize those persons signed up to speak. Unless, leave is given by the Chair, (1) all speakers will be limited to three minutes per topic, (2) any identifiable group of three persons or more shall be required to

choose a representative, who shall be limited to five minutes per topic. Speakers may not "give" their time to others.

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.

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

MEMORANDUM

TO: Governing Board.

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

DATE: February 15, 2021

RE: Final Order Number 21-003, Seven Springs Water Company v. Suwannee River Water Management District; SRWMD Renewal WUP App. No. 2-041-218202-3; DOAH Case Nos. 20-1329, 20-3581 (Consolidated)

RECOMMENDATION - APPROVE PROPOSED FINAL ORDER (UNDER PROTEST)

Approve, under protest, the proposed final order enclosed as Final Order Number 21-003, Seven Springs Water Company v. Suwannee River Water Management District (District); SRWMD Renewal WUP App. No. 2-041-218202-3; DOAH Case Nos. 20-1329, 20-3581 (consolidated).

DOCUMENTS ENCLOSED

1. Recommended Order (the "RO") dated January 20, 2021 in DOAH Case Nos. 20-1329, 20-3581 (consolidated).

2. Exceptions to the RO filed by District staff on February 1, 2021.

3. Responses to the District's Exceptions filed by Seven Springs Water Company ("Seven Springs") Springs on February 8, 2021.

4. Proposed Final Order Number 21-003, Seven Springs Water Company v. Suwannee River Water Management District; SRWMD Renewal WUP App. No. 2-041-218202-3; DOAH Case Nos. 20-1329, 20-3581 (consolidated).

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. 20-1329 and Case No. 20-3581. These online dockets contain 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://www.mysuwanneeriver.com/DocumentCenter/View/17852/Seven-Springs-Water-Co-vs-Suwannee-River-Water-Management-Transcripts-Final-Hearing-ALL-VOLUMES-COMBINED.

BACKGROUND

In March 2019, Seven Springs Water Company ("Seven Springs") applied to the District for a renewal of Seven Springs' consumptive use permit ("CUP"). The requested CUP would allow the withdrawal of 1.152 million gallons of water per day ("mgd") in Gilchrist County, Florida for sale to an adjacent water bottling facility owned by Nestle Waters North America, Inc. ("Nestle") 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.

On July 31, 2020, District staff and Seven Springs jointly proposed that the ALJ relinquish jurisdiction to the District to consider a proposed settlement of these matters and such jurisdiction was relinquished.

On August 11, 2020, the Governing Board declined to consider the proposed settlement. The reason given for declining to consider the proposed settlement was that Seven Springs did not own or control the water bottling plant as required by District rule.

On August 24, 2020, Our Santa Fe River, Inc., Merrillee Malwitz-Jipson, and Michael Roth filed a Petition (the "Our Santa Fe Petition") opposing Seven Springs' application.

On September 25, 2020, the ALJ entered his order dismissing the Our Santa Fe Petition for, among other reasons, being untimely. However, in such order, the ALJ provided that Our Santa Fe River, Inc., Merrillee Malwitz-Jipson, and Michael Roth could appear in this action as intervenors.

On September 28, 2020, Our Santa Fe River, Inc., filed a petition to intervene.

On October 6, 2020, Our Santa Fe River, Inc., filed a Notice of Voluntary Dismissal.

On October 19 through 21, 2020, a final hearing was held in this matter. On October 21, 2020, public comment was allowed. Both Merrillee Malwitz-Jipson, and Michael Roth gave public comment.

On January 20, 2021, the ALJ issued the RO. In the RO, the ALJ recommends that the District issue the CUP for a total of 0.9840 mgd (0.168 mgd less than was originally requested) and that the CUP not authorize the water to be withdrawn to be transported to anywhere other than the Gilchrist County plant. In the RO, the ALJ did not allow consideration of whether Seven Springs had complied with the District's rules requiring that the permit holder to own or control the water bottling facility.

On February 1, 2021, District staff filed exceptions to the RO.

On February 8, 2021, Seven Springs filed responses to the District'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 January 20, 2021 (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 special meeting is an open, publicly noticed meeting of the Governing Board at which the public and all parties have been advised that Public Comment will be allowed. Therefore communications received 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 Saturday, March 6, 2021. The next regular meeting of the governing board is March 9, 2021, so this special meeting was called.

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. Adopt the RO with no modifications;

2. Reject or modify 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. Reject or modify 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.

ISSUES RELATED TO ENVIRONMENTAL IMPACTS OF THE WITHDRAWAL

The RO does not address any environmental impacts of the proposed withdrawal. This is because the RO may only address issues raised before the ALJ and the District did not raise environmental issues before the ALJ.

District staff reviewed the application for compliance with the District's rules addressing environmental impacts (Rule 40B-2.301(2), F.A.C., as well as Section 3.0 Water Resource Impact Evaluation of the District's Applicant's Handbook) and found no evidence that the application would not meet the criteria set out therein.

Further, while this application is subject to the Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs minimum flow and minimum water level which is set out in Rule 62-42.300, F.A.C., this application is for a renewal permit for a duration of five years with no increase in allocation. Therefore, pursuant to Section 5(d)(ii) of its Recovery Strategy, the application may not be denied based on an impact to Lower Santa Fe and Ichetucknee Rivers and Associated Priority Springs minimum flow and minimum water level.

As the District had no evidence that the application would not meet the criteria set out in its rules concerning environmental impacts, the District could not raise any such issues before the ALJ. In the proceedings before the ALJ, the District is only allowed to raise issues which it can support by competent evidence.

As the administrative hearing before the ALJ is now closed and the RO issued, environmental issues cannot be raised before Governing Board nor can the Governing Board consider these issues in issuing its final order. This is because the District 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.")

Further, the Governing Board may not take additional evidence at this special meeting. *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.")

ISSUES RELATING TO "PUBLIC INTEREST"

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 third requirement provides that the applicant must establish that the proposed use of water, "Is consistent with the public interest." This term on its face seems quite broad and could possibly be interpreted to include a great number of things. Therefore, the District's is required to set out its criteria for evaluating this third prong test in its adopted rules.

> An agency statement that "implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency" is considered a "rule." §§ 120.52(16), 120.56(4)(a), F.S. Statements that are rules cannot be enforced unless they are formally adopted in accordance with requirements set forth in chapter 120. See § 120.54, F.S. If an agency statement meets the definition of a rule but hasn't been adopted as a rule under chapter 120, then it is considered an "unadopted rule." § 120.52(20), F.S. Agencies may not enforce an unadopted rule against a party's substantial interests. § 120.57(e)1., F.S.

Grabba-Leaf, LLC v. Department of Business and Professional Regulation, 257 So. 3d 1205, 1208 (Fla. 1st DCA 2018) (Emphasis supplied)

In this case, the District has promulgated a rule which provides what the District reviews in considering whether an application for beverage processing is 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, F.A.C.)

Therefore, in determining whether an application for a beverage processing use is consistent with the public interest, 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.

Finally, limiting the consideration of whether an application is "consistent with the public interest" to rule based criteria has been approved by the courts with regard to permits to withdraw groundwater for water bottling. In *Marion Cnty. v. Greene,* 5 So. 3d 775 (Fla. 5th DCA 2009) the Fifth District Court of Appeals considered an appeal from a final order issued by the St. Johns Water Management District approving an application for a permit to withdraw groundwater for bottling and distribution as drinking water. *Marion Cnty.,* at 776-777. In *Marion Cnty,* the appellants challenged the final order asserting that the record evidence did not demonstrate the proposed use was consistent with the public interest as set out in the third prong of the above test. The court approved the District's construction of the term "public interest" which was limited to the criteria set out in the District's rules. "In examining whether an application is consistent with the public interest, the District considers whether the use of water is efficient, whether there is a need for the water requested, and whether the use is for a legitimate purpose. The inquiry focuses on the impact of the use on water resources and existing legal users. The evidence presented was sufficient to support the District's decision to approve the permit application." *Marion Cnty.,* at 779.

Therefore, in considering the issuance of its final order, the Governing Board cannot consider whether the application is "consistent with the public interest" for reasons other than those set out in the District's adopted rules. Further, as this application has already been through the administrative process and the RO issued, the Governing Board is limited to the review of whether the findings of fact concerning those rule based factors are supported by competent substantial evidence.

OWNERSHIP AND CONTROL OF THE WATER BOTTLING PLANT

At its August 11, 2020 meeting, the Governing Board declined to consider District staff's proposed settlement of this application. The reason verbalized at that time was that Seven Springs did not have ownership and control over the water bottling facility.

After this action was returned to DOAH, the District requested that it be allowed to raise the issue of whether Seven Springs has the legal right to conduct the water use at the water bottling facility as required by the District's Water Use Permitting Applicant's Handbook §§ 2.1.1. and 2.3.1. The ALJ denied this request asserting that the raising of this issue was barred because it was not raised earlier and, according to the ALJ, this was required under Section 120.60, F.S.

The District believes that the ALJ erred in his construction of Section 120.60, F.S. This is because the failure to comply with Section 120.60, F.S., does not mandate the issuance of a permit where the application fails to meet the minimum licensure requirements of the agency. *MedPure, LLC v. Dep't of Health,* 295 So. 3d 318, 323 (Fla. 1st DCA 2020) Failing to meet the ownership and control requirements in §§ 2.1.1. and 2.3.1 of the District's Water Use Permitting

Applicant's Handbook constitutes a failure to meet the District's minimum requirements for a water use permit. As the ALJ found in the RO, that Seven Springs does not own or control the High Springs plant, were the District empowered to reject or modify the ALJ's conclusion of law concerning Section 120.60, F.S., the District would recommend rejecting this conclusion of law and enter a final order denying Seven Springs' application for a permit.

However, Section 120.60, F.S., is not a statute over which the District has substantive jurisdiction. Thus, the District is not authorized to reject or modify a conclusion of law dealing with Section 120.60, F.S. *See,* Section 120.57(1)(l), F.S.

Therefore, the District recommends the Governing Board issue the proposed final order directing issuance of the permit, under protest. The reason for issuing the final order, under protest, is to preserve the District's right to appeal the final order for the reasons the protest was made as provided in *Barfield v. Dep't of Health,* 805 So. 2d 1008, 1012-1013 (Fla. 1st DCA 2001). This does not bind the District to appeal but allows the District to appeal if it so desires.

NESTLE'S PWS PERMIT

In the Exceptions, District staff raised the fact that Nestle has obtained a Public Water System Permit (the "PWS Permit"). The PWS Permit permits a public water system to convey potable and industrial water to the water bottling facility from a well located on Nestle's property. In its Response to the Exceptions, Seven Springs asserts that the PWS Permit is a permit to operate the system but does not authorize the withdrawal of groundwater. Further Seven Springs asserts that any quantity of withdrawal could only be authorized by a water use permit apart from the PWS Permit.

To resolve this issue the District has added a permit condition to the proposed permit which provides that, unless exempted by rule (such as for fire suppression) or unless a modification or separate permit is issued by the District, only the allocation provided in the Seven Springs permit may be used at the water bottling facility. (This is condition No. 27 on the form permit attached to the final order.)

PROPOSED FINAL ORDER - ISSUED UNDER PROTEST

The proposed final order directs staff to issue the renewal water use permit as provided in the RO and in substantial conformance with the example attached as Exhibit "B" but provides that the final order is being issued "under protest" as set out above.

/tr
Attachments

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEVEN SPRINGS WATER COMPANY,

Petitioner,

vs. Case No. 20-3581

SUWANNEE RIVER WATER MANAGEMENT DISTRICT,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted in Tallahassee, Florida, on October 19 through 21, 2020, before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Douglas P. Manson, Esquire
Paria Shirzadi Heeter, Esquire
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Tampa, Florida 33602

Craig D. Varn, Esquire
Manson Bolves Donaldson Varn, P.A.
106 East College Avenue, Suite 820
Tallahassee, Florida 32301

For Respondent: Frederick T. Reeves, Esquire
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New Port Richey, Florida 34562

George T. Reeves, Esquire
Davis, Schnitker, Reeves and Browning, P.A.
Post Office Drawer 652
Madison, Florida 32341

STATEMENT OF THE ISSUE

The issue is whether the Suwannee River Water Management District ("the District") should renew Seven Springs Water Company's ("Seven Springs") water use permit.

PRELIMINARY STATEMENT

On March 3, 2020, the District issued a proposed agency action, in the form of a Water Use Technical Staff Report, recommending denial of Seven Springs' application to renew a permit to withdraw 1.152 millions gallons of water per day ("mgd") in Gilchrist County, Florida for bulk sale to an adjacent water bottling facility. Seven Springs responded by petitioning for a formal administrative hearing, and the District referred this matter to DOAH on March 9, 2020. DOAH Case No. 20-1329 was assigned to this matter.

On July 31, 2020, the parties filed a "Stipulation and Joint Motion to Relinquish Jurisdiction" ("the Motion to Relinquish") stating that the District's staff would recommend to the District's governing board that a water use permit renewal be issued to Seven Springs. Based on the representations set forth in the Motion to Relinquish, the undersigned relinquished jurisdiction to the District. In doing so, it was noted that if the District "does not issue the proposed water-use permit renewal as set out in the Motion to Relinquish by August 12, 2020, then it is expected that [the District] will refer this matter back to DOAH by August 17, 2020."

On August 12, 2020, the District notified DOAH that Seven Springs' permit had not been renewed. DOAH Case No. 20-3581 was assigned to this matter, and a final hearing was scheduled for October 19 through 21, 2020.

On August 24, 2020, Our Santa Fe River, Inc., Merrillee Malwitz-Jipson, and Michael Roth filed a Petition opposing Seven Springs' application, and that Petition was assigned DOAH Case No. 20-3830. The undersigned issued an Order of Consolidation on August 27, 2020, consolidating DOAH Case Nos. 20-3581 and 20-3830.

On September 25, 2020, the undersigned issued an Order dismissing Our Santa Fe River, Inc., Merrillee Malwitz-Jipson, and Michael Roth from this proceeding. The aforementioned Order stated the following:

> The instant case is before the undersigned based on the Seven Springs Water Company's "Motion to Dismiss Our Santa Fe River, Inc., Merrillee Malwitz-Jipson, and Michael Roth's Petition" ("the Motion to Dismiss") filed on September 8, 2020. After considering the Response thereto filed on September 22, 2020, it is, therefore, ORDERED that the Motion to Dismiss is GRANTED. However, this dismissal is without prejudice to Santa Fe River, Inc., Merrillee Malwitz-Jipson, and Michael Roth filing a motion to intervene pursuant to Florida Administrative Code Rule 28-106.205 and section 403.412(5). *See* § 403.412(5), Fla. Stat. (providing that "[i]n any administrative, licensing, or other proceeding authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction . . . a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of this state.").

Our Santa Fe River, Inc., filed a Petition to Intervene on September 28, 2020, and the undersigned ruled as follows via an Order issued on October 2, 2020:

> The instant case is before the undersigned based on a "Petition to Intervene" ("the Motion to Intervene") filed by Our Santa Fe River, Inc. on September 28, 2020. After considering the verified assertions therein, the Motion to Intervene is GRANTED. However, Our Santa Fe River will not enjoy the same status as the Seven Springs Water Company and the Suwannee River Water Management District. *See Envtl. Confederation of Southwest Fla., Inc. v. IMC Phosphates, Inc.*, 857 So. 2d 207, 210-11 (Fla. 1st DCA 2003)(noting that "Florida courts have held that the rights of an intervenor are subordinate to the rights of the parties" and that "[i]ntervention is a dependent remedy in the sense that an intervenor may not inject a new issue into the case. The Confederation and Manasota-88 might be able to make an argument that would persuade the Department to deny the permit, but that would not be of any benefit to them if the argument did not fit within an issue raised by one of the parties.")(internal citations omitted). The case style shall be amended to reflect this ruling.

On October 6, 2020, Our Santa Fe River, Inc., filed a Notice of Voluntary Dismissal.

The final hearing was commenced as scheduled. Seven Springs offered testimony from David J. Brown, Adam Thibodeau, and Risa Wray. Seven Springs introduced the following exhibits into evidence: 1, 4, 5, 7 through 10, 12 through 15, 20, 23, 27 through 30, 36, and 37. The District offered testimony from Stefani Weeks, Warren Zwanka, and Thomas S. Rutledge. The District introduced Exhibit AA into evidence, and Joint Exhibits 1a through 1i and 2 through 12 were accepted into evidence.

The six-volume final hearing Transcript was filed on November 9, 2020. After being granted one extension, the parties filed timely proposed recommended orders that have been considered in the preparation of this Recommended Order.

Unless stated otherwise, all statutory references shall be to the 2020 version of the Florida Statutes.

FINDINGS OF FACT

Based on the evidence adduced at the final hearing, the record as a whole, and matters subject to official recognition, the following Findings of Fact are made:

The Parties

1. The District is a water management district created by section 373.069(1), Florida Statutes. It is responsible for conserving, protecting, managing, and controlling water resources within its geographic boundaries. *See* § 373.069(2)(a), Fla. Stat. The District, in concert with the Department of Environmental Protection, is authorized to administer and enforce chapter 373, including statutes pertaining to the permitting of consumptive water uses. The District also administers and enforces rules set forth in Florida Administrative Code Chapter 40B.

2. Seven Springs is a fourth generation, family-owned company. Through an exclusive water sales and extraction agreement and subsequent amendments thereto, Seven Springs has the right to withdraw water from wells[1] located on 7300 Northeast Ginnie Springs Road, High Springs, Florida 32643-9102. The water withdrawn by Seven Springs is piped to the adjacent High Springs bottled water facility. Both of the aforementioned properties are located in Gilchrist County and within the District's boundaries.

[1] Groundwater is withdrawn from two 10-inch diameter production wells. A third production well is proposed and would replace one of the aforementioned wells once placed into service.

3. Seven Springs' existing water use permit was originally issued by the District in 1994. On March 15, 2019, Seven Springs submitted its application for a five-year renewal of that permit.

4. In 1996, the property where the High Springs bottled water facility is located was sold by Seven Springs to AquaPenn. The parties executed a contract making Seven Springs the exclusive provider of water to the bottled water facility. The bottling plant was then constructed in 1998.

5. After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Waters of North America ("Nestle" or "NWNA"). Each time the High Springs plant was sold, the aforementioned contract with Seven Springs was also sold to the purchaser. Seven Springs has thus been the sole source of spring water for the High Springs plant since its construction in 1998.

Seven Springs Applies for a Permit Renewal

6. Seven Springs submitted an application to the District on March 15, 2019, to renew its water use permit. In a section of the application entitled "Water Use Category," Seven Springs marked a box indicating its intended water use was "commercial/industrial." The application gave the following examples of commercial/industrial uses: "service business, food and beverage production, cooling and heating, commercial attraction, manufacturing, chemical processing, [and] power generation."[2]

7. Seven Springs included supporting information with its application. With regard to "impact evaluation," Seven Springs stated that:

> [n]o increase from the current permitted groundwater withdrawal volumes is requested. The current permitted withdrawal of 420.48 million gallon[s] per year (MGY) and average annual daily rate (ADR) of 1.152 million gallons per day (MGD) represents between 0.6% and 0.9% of the combined

[2] That was the only Water Use Category that had any connection to extracting water and piping it to a facility for bottling. The other categories were agricultural, landscape/recreation, mining/dewatering, public supply, environmental/other, institutional, and diversions/impoundments.

> Ginnie Springs complex flow rate which has been approximated to range between 131 and 191 MGD. For reference, the 2018 Suwannee River Water Management District (SRWMD) permitted groundwater withdrawals within the Ginnie Springs complex springshed for agriculture is approximately 29 MGD which represents between 15% and 22% of the approximated spring flow.

8. Seven Springs identified the "requested water use" by stating "Seven Springs is a bulk water provider to the adjacent bottled water facility. Additional information will be provided upon request."

9. Seven Springs completed a "Water Balance Worksheet" indicating it planned to withdraw 1.152 mgd from an aquifer and use 1.152 mgd as "bottled water for consumer consumption."

10. The District issued its first request for additional information ("RAI") on April 2, 2019, requesting that Seven Springs:

> [p]rovide the following information in order to justify that the requested beverage processing allocation is [a] reasonable-beneficial [use] and [consistent] with the public interest:
>
> a. A market analysis;
>
> b. A schematic of water uses from the withdrawal point to the facility; and
>
> c. Schedule of construction and completion for any proposed bottling facility expansion

11. The District also asked Seven Springs to provide the following information in order to justify the requested beverage processing demand:

> a. A facility water budget, indicating water used for each individual process, potable uses, and fire suppression (if fire suppression does not come from an isolated source; and
>
> b. An account of all water losses and conservation practices throughout the facility.

12. Seven Springs responded via a letter dated June 27, 2019. In response to the District's request for information justifying that the requested beverage processing allocation is a reasonable-beneficial use and consistent with the public interest, Seven Springs stated, in pertinent part, that:

> [w]ater sourced from the withdrawal locations P-1 and P-2 is routed via underground pipeline to the 127,992 square foot Nestle Waters of North America (NWNA) High Springs Bottling Facility (Facility) . . . The underground pipeline supplies water only to the NWNA Facility. The NWNA Facility also utilizes two fire wells as shown on Figure 1 for fire suppression supply.

13. As for the District's request for a facility water budget and an account of all water losses and conservation practices throughout the facility, Seven Springs stated, in pertinent part, that "all but between 3-4% of the requested water withdrawal will be used within the NWNA Facility for bottled water use." Seven Springs also stated that "[w]ater losses at the NWNA Facility range from 3-4% and are from net fills, cleaning and leaks."

14. Seven Springs attached a letter from Nestle's Natural Resources Manager describing the market for bottled water and the Nestle-owned facility to which the water at issue was to be piped:

> Nestle Waters North America (NWNA) reports to Nestle Waters and is the world's leading bottled water company with an estimated 11 percent of the world's market share with 51 bottled water brands while employing nearly 31,000 at over 91 factories as of 2017. NWNA is the third largest non-alcoholic beverage company in the United States by volume and offers 11 bottled water brands.
>
> Production volumes at the NWNA High Springs Bottling Facility (Facility) are influenced by a variety of factors including (but not limited to) weather, market demand, the cost of fuel and electricity, and overall production efficiency. As a result, it is difficult to predict a "straight-line"

> trend for long-term usage volumes over time. However, NWNA continues to project steady, solid market annual growth rates for bottled water in the neighborhood of 2.1% over the next ten years.
>
> The Facility is in the process of adding bottling capacity, and expects significant increase in production volumes equal to the requested annual average daily withdrawal volume of approximately 1.152 million gallons of spring water by Seven Springs Water Company.

15. The District issued a second RAI on July 12, 2019, asking Seven Springs to provide the following information:

> The market analysis and the planned facility expansion must justify the requested groundwater demand of 1.1520 mgd. The highest reported water use at the facility over the last 4 years was 0.2659 mgd. Please provide the data used to calculate the 2.1% projected market growth and a schedule of construction/implementation for the bottling facility expansion reported [in] Attachment A as justification for the requested groundwater use.
>
> Please provide a facility water budget, indicating water used for each individual process, potable uses, and fire suppression. The water budget should include water losses throughout the facility. A facility water budget may be submitted in the form of a schematic or table and all water uses must add to the requested groundwater demand of 1.1520 mgd.

16. Seven Springs submitted a response on October 31, 2019, providing the following explanation regarding the projected market growth and the bottling facility expansion:

> On 28 December 2018, Nestle Waters North America ("NWNA") purchased the High Springs Plant ("Plant") that Seven Springs has supplied with spring water by pipeline for over twenty years. See Attachment A to this letter. Seven Springs has contracted with NWNA to continue to supply the

> Plant with spring water. NWNA has agreed to purchase spring water from Seven Springs up to the permitted allocation of 1.152 million gallons per day ("mgd") annual average for a period of time that exceeds the requested 5-year permit duration. NWNA is one of the largest non-alcoholic beverage companies in the United States by volume and offers 11 bottled water brands. The industry growth projections for bottled water consumption described in Section III of the attached Seven Springs Report show that demand is enough to utilize the requested/permitted amount with the 5-year duration of the proposed permit.
>
> Originally the Plant was designed to have four production lines for bottled water, but only two have been built to date. NWNA began operating the Plant in February of this year and has already completely renovated one production line and has begun work on the second line. When all four lines are up and running, the Plant will be capable of using all of the proposed/permitted annual average daily water allocation of 1,152,000 gallons. A schedule of construction/implementation for the Plant expansion is set forth in Section IV of the attached Seven Springs Report.

17. Seven Springs attached a revised water balance worksheet reaffirming that it planned to extract 1.152 mgd from an aquifer.

18. The District issued a third RAI on November 25, 2019, seeking the following information and citing pertinent portions of the Water Use Permit Applicant's Handbook ("the Handbook") that has been incorporated by the District into chapter 40B:

> In the RAI response dated October 31, 2019, reference was made to a contract between Nestle Waters North America (NWNA) and Seven Springs Water Company. If this contract is a written document (paper or electronic), please provide a copy of the contract (with proprietary or sensitive information redacted, if necessary). The non-redacted portion of the contract [or] other document

provided must, at a minimum, demonstrate the asserted reasonable-beneficial use and the parties' respective obligations to supply and purchase water and the term thereof. [Section 2.3.4.1 (i), A.H.]

The reported maximum use at the facility is 0.2659 mdg (SRWMD Water Use Reports for permit # 2-041-218202). When the 4.7% annual growth rate is applied to the reported use, it does not result in 1.152 mgd at the end of the requested permit duration. Please provide justification for the requested 1.152 mgd allocation. [Subections 2.3.4.1 (a) and (g), A.H.]

The proposed capacity of product lines three and four is inconsistent with both the previous reported water use at this facility (0.24 mgd per product line, page 4 of the Geosyntec Report) and the current NWNA business practice (0.183-0.202 mdg per product line) at the Lee, FL facility. Please provide an explanation of why the capacities for product lines three and four are higher than previous business practices. [Subsections 2.3.4.1 (a) and (j), A.H.]

The water budget provided (table 1 in section IV of the Geosyntec report) is unclear as to whether the entire requested allocation will be bottled within the facility located at 7100 NE CR340 in High Springs, FL, or if a portion of the requested allocation will be transported in bulk to another facility to be bottled. If bulk water transfer is anticipated, please provide the following information to demonstrate reasonable-beneficial use at the facility receiving the bulk transported water (tanker truck):

a. Whether there is a need for the requested amount of water at the receiving facility;

b. The location of the receiving beverage processing facility;

> c. Plan to convey water (quantity and frequency of transport) from withdrawal facility to the receiving beverage processing facility;
>
> d. A site plan for the receiving beverage processing facility;
>
> e. Schedule for completion of construction of the receiving beverage processing facility (if applicable);
>
> f. Contractual obligation to provide water for beverage processing (if applicable);
>
> g. Other evidence of physical and financial ability to process the requested amount at the receiving beverage processing facility; and
>
> h. Documentation (references, studies, contracts, etc.) that support the materials provided for [in] a. through g. (above). [Section 2.3.4.1., A.H.]

19. Seven Springs responded to the third RAI on January 14, 2020. With regard to the contract sought by the District, Seven Springs stated the following:

> Please note that the District has not previously requested any information concerning a contract between Seven Springs and Nestle Waters North America ("NWNA") in either the first RAI dated April 2, 2019 ("First RAI") or the second RAI dated July 12, 2019 ("Second RAI"). Furthermore, Subsection 2.3.4.1, A.H., does not require contractual information [to] be submitted as part of a Water Use Permit application, but rather states that the District will consider certain information, which may include contractual obligations. Seven Springs has previously provided information in accordance with Subsection 2.3.4.1, A.H., demonstrating that the continued use is reasonable, beneficial, and in the public interest. Therefore, pursuant to Section 120.60(1), F.S., the District is not authorized by law or rule to require a copy of the contract for issuance of this straight

> renewal permit request. The contract contains information that is subject to a non-disclosure agreement between the parties and has propriety business information within it.
>
> As we discussed at our meeting with District staff regarding this matter, in order to address the specific terms in the contract that District staff inquired about, the parties have executed a Memorandum of Agreement ("MOA") summarizing pertinent terms of the contract regarding exclusivity, duration and water quantity. The MOA is attached as Exhibit A. This MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility (the "Plant" or "High Springs Plant"), which NWNA owns and operates, up to the full permitted allocation for a period of time that significantly exceeds the requested 5-year permit duration.

20. Seven Springs attached its Memorandum of Agreement ("the MOA") with Nestle, but the MOA description of the parties' contract was limited to the following:

> 1. The term of the Contract extends to 2096.
>
> 2. The Contract requires NWNA to purchase from Seven Springs ***all*** water pumped, extracted, processed or sold by NWNA through the High Springs Plant, with such amounts only being limited by the average and maximum daily limits set forth in water use permit No. 2-93-00093 (together with any modifications and renewals thereof) ("Permit").
>
> 3. The Contract requires Seven Springs to be the exclusive source for all water bottled at the High Springs Plant.[3]

[3] The MOA was amended on May 27, 2020, to add a provision stating that "[a]s long as NWNA meets its payment obligations under the Contract, the Contract requires Seven Springs to exclusively provide all water withdrawn under the Permit to NWNA's High Springs Plant."

21. With regard to the request for information regarding product lines 3 and 4 at Nestle's High Springs plant, Seven Springs stated in the January 14, 2020, letter that:

> as explained in the Second RAI response, NWNA is expanding the High Springs Plant and has already completed the renovation of one production line and has begun work on the second. As previously explained, when all four (4) lines are up and running, the High Springs Plant will have the production capacity to utilize all of the proposed/permitted annual average daily water allocation of 1,152,000 gallons. NWNA intends on utilizing the entire permitted quantity for its product distribution throughout the proposed five-year permit term and beyond. The justification for the requested 1.152 million gallons per day ("mgd") is the agreement by NWNA to purchase the spring water from the applicant for the permit duration as well as the expansion of the production lines at the High Springs Plant.
>
> * * *
>
> To date, NWNA has spent over $40 million on updating, renovating and other work at the High Springs Plant. Additionally, Phase I of the High Springs Plant expansion project, which has not yet been completed, is budgeted to have a projected construction budget of $27.6 million. The large amount of capital invested and expended by NWNA on the Plant is a clear indication that the use is both real and of NWNA's intent to utilize the full renewal quantities.

22. Seven Springs offered more information regarding the capacity of the High Springs plant:

> Bottled water lines are designed for each facility and are not purchased "off the shelf," but designed specifically for each facility and use. Through time, increasingly better and more efficient bottling technology and equipment has been developed.

> NWNA has already completely renovated the first line at the Plant, as seen by the District staff at the recent site tour, which has increased the efficiency, speed, and production capacity at the Plant. The old line that was replaced could produce approximately 700 bottles per minute, whereas the new line produces up to approximately 1,300 bottles per minute. Current projections indicate that the renovation of the second line will be completed in year 2020. This will complete Phase 1 of the renovation and expansion of the Plant. Phase 2 of the Plant expansion will include two additional lines that will be engineered and custom designed to further meet the capacity and product needs for the facility.
>
> In the second RAI response, it was stated that NWNA is expanding the High Springs Plant to add proposed lines 3 and 4, has already completely renovated one production line and begun work on renovating the second. This information was provided in response to RAI item 1 of the Second RAI which, in relevant part, asked for "a schedule of construction/implementation for the bottling facility expansion reported [in] Attachment A as justification for the requested groundwater use." The increase in capacity in new lines 3 and 4 is planned as part of the Phase 2 expansion. As explained above, each line can be designed for the capacity needed.

23. As for the District's inquiry about whether a portion of the requested allocation was to be tankered to another facility, Seven Springs stated the following:

> There is no amount of water included in the water budget for tankering water. Seven Springs (the applicant) does not tanker any water to the Plant; all spring water is conveyed by pipeline to the Plant. Nor does Seven Springs have any plans to tanker water during the term of the permit.[4] Please note that the District did not request any

[4] As will be discussed herein, Seven Springs subsequently changed its position on tankering.

> information regarding bulk transported water (tanker truck) in either its First RAI dated April 2, 2019 or its Second RAI dated July 12, 2019.

24. Finally, Seven Springs concluded its response to the third RAI by stating it was not going to respond to any more requests for information:

> The information Seven Springs has submitted to the District to date demonstrates reasonable assurance that the Application meets the conditions for issuance for renewal of an existing water use permit at the same allocation of water quantities, and the Application is complete. Some of the questions asked in the Third RAI as indicated are not authorized by law or rule. Therefore, pursuant to Section 120.60(1), F.S., Seven Springs hereby requests that the District deem the Application complete and proceed to process its proposed agency action to renew its water use permit.

25. On March 2, 2020, Warren Zwanka, the Director of the Division's Resource Management Division, wrote a memorandum to the District's Deputy Executive Director for Business and Community Services stating that the District's staff was recommending that the District's Governing Board deny Seven Springs' renewal application. In doing so, Mr. Zwanka gave the following explanation:

> Section 40B-2.361(2), Florida Administrative Code (F.A.C.) provides that all permit renewal applications shall be processed as new permits, and shall contain reasonable assurances that the proposed water use meets all of the conditions for issuance in rule 40B-2.301, F.A.C., and the Water Use Permit Applicant's Handbook (Handbook). Section 2.3.4.1 of the Handbook contains factors that must be considered for beverage processing water uses. The definition of "beverage processing use" set out in section 1.1 of the Handbook specially includes the sealing of drinkable liquids (including bottled water, as defined in section 500.03(1)(d),

> F.S.) in bottles, packages, or other containers and offered for sale for human consumption.
>
> The application as submitted does not provide reasonable assurances that the proposed beverage processing use is reasonable-beneficial and consistent with the public interest as described in the attached staff report.

26. The staff report referenced by Mr. Zwanka described the Handbook provisions that Seven Springs' renewal application supposedly failed to satisfy:

> Section 2.3.4.1(i) requires the District to consider the contractual obligation to provide water for beverage processing. The applicant declined to provide a copy of its contract with NWNA and, instead, provided a memorandum of this contract. This memorandum does not show that [the] applicant is obligated to provide any or all of the requested allocation to NWNA. Therefore, the required reasonable assurance has not been provided.
>
> Section 2.3.4.1(j) requires the District to consider evidence of the physical and financial ability to process the requested amount of water. The applicant has requested an allocation of 1.1520 mgd. As part of the application, the applicant reported the actual use of water at the facility for the years 1995 through 2019. The highest reported actual use of water at the facility was for 2006, which showed an average annual water use of 0.3874 mgd (page 63 of the January 14, 2020 RAI response). As the highest reported actual use of water in the facility was significantly less than the requested allocation, the previous use does not provide evidence of the physical ability to process the requested allocation. The applicant has asserted that the facility is being renovated to have the physical ability to process the requested allocation. But the applicant has failed to provide sufficient evidence showing that such renovations will create the necessary physical ability.

> Therefore, the required reasonable assurance has not been provided.
>
> Section 2.3.4.1(c) through (f) and (h) require the District to consider certain matters concerning the beverage processing facility or facilities where the use will occur. The applicant has only provided information for the High Springs facility, but has provided no reasonable assurance that the High Springs facility is the only beverage processing facility where the use of the requested allocation will occur. Therefore, the required reasonable assurance has not been provided.

The DOAH Proceedings

27. On March 6, 2020, Seven Springs filed a Petition seeking to challenge the District's preliminary decision to deny the renewal application.[5] The District referred this matter to DOAH on March 9, 2020, DOAH Case No. 20-1329 was assigned to this matter, and the undersigned issued a Notice on March 24, 2020, scheduling a final hearing for July 21 through 23, 2020.

28. Seven Springs filed a Motion in Limine on June 18, 2020, seeking to prohibit the District from raising grounds for denial that were not set forth in the staff report referenced by Mr. Zwanka. Based on its review of discovery responses, Seven Springs argued that the District was preparing to provide testimony or evidence on issues that were not identified in the staff report.

29. On June 29, 2020, the undersigned issued an Order partially granting Seven Springs' Motion in Limine:

> The instant case is before the undersigned based on a "Motion in Limine" filed by Petitioner on June 18, 2020. After considering the arguments set forth in the Motion in Limine and the Response thereto, the undersigned rules that, at this point, the potential

[5] The staff recommendation in the District's March 3, 2020, notice and the enclosed Water Use Technical Staff Report is a proposed agency action which Seven Springs could challenge by petitioning for a formal administrative hearing under section 120.57, Florida Statutes. *See generally Hillsboro-Windsor Condo. Ass'n v. Dep't of Nat. Res.*, 418 So. 2d 359, 361–62 (Fla. 1st DCA 1982) (treating a DNR staff recommendation as the equivalent of a notice of intent of proposed final agency action).

> grounds for denying Petitioner's renewal application shall be limited to the reasons set forth in the "Water Use Technical Staff Report" dated February 27, 2020. *See M.H. v. Dep't of Children & Fam. Svcs.*, 977 So. 2d 755, 763 (Fla. 1st DCA 2008)(stating that "in this case, DCF offered a precisely formulated reason for its denial of the renewal of the Foster Parents' license. At the administrative hearing, the ALJ properly restricted his consideration of the matter to the specific question that DCF itself had framed as the issue to be decided."). In order for Respondent to properly raise additional reasons for denying Petitioner's renewal application, it is incumbent on Respondent to promptly set forth those grounds in a formal pleading and demonstrate that Petitioner will suffer no prejudice. *See generally Cottrill v. Dep't of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996)(stating that "[p]redicating disciplinary action against a licensee on conduct never alleged in an administrative complaint or some comparable pleading violates the Administrative Procedure Act. To countenance such a procedure would render nugatory the right to a formal administrative proceeding to contest the allegations of an administrative complaint.") Respondent fails to cite any controlling authority to support its argument that disclosure of additional grounds of denial during the discovery process amounts to sufficient notice.

30. On July 8, 2020, the parties filed a joint motion requesting that the final hearing be continued for at least 30 days, and the undersigned issued an Order on July 23, 2020, rescheduling the final hearing for October 14 through 16, 2020.

31. The parties filed another joint motion on July 31, 2020, asking that jurisdiction be relinquished to the District. In support thereof, the parties stated that Seven Springs and the District's staff had reached a proposed settlement agreement that was contingent on the approval of the District's governing board. After the relinquishment of jurisdiction, the District's staff

would recommend to the governing board that "a proposed water use permit renewal be issued to [Seven Springs] consistent with [the] Water Use Technical Staff Report which is attached hereto as Exhibit 'A.'"
The aforementioned exhibit indicated that Seven Springs was seeking a permit for "beverage processing" and set forth 27 "conditions for issuance of permit number 2-041-218202-3." The seventh and eight conditions respectively specified that the "[u]se classification is Beverage Processing" and that the "[s]ource classification is 'Groundwater.' Among the proposed conditions was that Seven Springs "is authorized to withdraw a maximum of 0.9840 mdg of groundwater for beverage processing use." During the course of the final hearing, Seven Springs committed to the reduction of the withdrawal to 0.9840 mgd and to a corresponding permit limitation.

32. The 25th and 26th conditions addressed where the water could be bottled:

> 25. Except as may be expressly provided in the permit conditions, the entire groundwater allocation authorized by this permit shall be bottled at the Gilchrist County facility or otherwise used at the Gilchrist County facility for potable uses, equipment cooling, line flushing, and other industrial uses. As used in the permit conditions, the term "bottled" means sealed in bottles, jugs, and/or similar containers that are intended to be later offered for retail sale for human consumption. As used in the permit conditions, the term "Gilchrist County facility" means the manufacturing facility located at 7100 NE CR 340, High Springs, Florida 32643 in Gilchrist County, Florida.
>
> 26. A portion of the groundwater allocation authorized by the permit may be bottled at the Madison County facility. As used in the permit conditions, the term "Madison County facility" means the manufacturing facility located at 690 and 1059 NE Hawthorn Avenue, Lee, Florida 32059 in Madison County, Florida. (The

> groundwater allocation authorized by the permit is not based on any use at the Madison County facility. The permit allocation is being granted based on the expectation that the product line build-out at the Gilchrist County facility will be completed in accordance with the schedule provided in the application documents submitted on November 1, 2019.)[6]

33. The District's Governing Board held a public meeting on August 11, 2020. When Seven Springs' application came up for consideration, the following comments were made:

> Vice Chairperson Quincey: I would – I would like to move that we table the Seven Springs permit application. And the reason why I'm asking to table this is because we've looked at the application; and, as you look through, other water bottling facilities that's in our district, we have always had the actual user of the water bottling permit on the application.
>
> So, in my opinion, we need to have Nestle as a co-applicant for – for this permit. So I think them being – if I understand it correctly, the well is on one property; but then, once it leaves there, it enters into a pipeline which goes to a facility. And the water – all of the water is actually used by Nestle and utilized by Nestle. So, with that being said, I think that they need to be co-applicants where we can be directly relating to them as we go through this process.
>
> * * *
>
> Board Member Schwab: I think that the science is sound on this permit. Seven Springs has gone through the process of applying for it, and they've met all the criteria. To have another person co-apply on the permit, I personally don't think it's necessary. I think the ones that are -- just because

[6] Seven Springs' proposed consumptive use of water, even with the proposed tankering of water to the Madison County Plant, is not an interdistrict transfer of water that is regulated by section 373.2295.

you're using the water somewhere else other than who is – who owns the property that the water is being pumped off of as well as the – that is applying for the permit and who hasn't had the permit in the past, I just don't necessarily agree with that right there. I'd rather --- I'd rather go ahead and do – take a vote and use what we've done right now in the way it is.

* * *

Chairperson Johns: Is there a rule or is there a legality that we need to look at? I mean, is there a rule that would need for Nestle to be a co-applicant or have their name on an application? And I don't know whether you can help us with that or not.

Mr. Reeves[7]: I think there is certainly – there is certainly support for that in our rules. I think that's certainly something we would look at in the Board's discretion. I think they're – the issue I guess is what you've got is you've got a situation where the applicant owns the real property where the water is coming off of. To get the right to use the real – the water, they have to show a use; and they have to show what is going to be done with that water.

In this case, the ultimate user is not on the permit. I think that's Mr. Quincy's point is that ultimate user is not on the permit, and so does that ultimate user need to be an applicant? Yeah, I think that is within the Board's discretion in my opinion.

* * *

Vice Chairperson Quincy: I think that we should have that co-applicant, and I think they need to be part of when we say, [these are] the restrictions, they're the ones using it, they need to agree to the restrictions. If they're – whatever – whatever it is because, if you don't have them, they're the ones –

[7] Mr. Reeves is the Governing Board's counsel. However, the transcript from the August 11, 2020, Governing Board meeting does not give Mr. Reeves's first name

> actually the ones using the water. It's not the folks that we're giving the permit to. They're just pumping it out of the ground.
>
> * * *
>
> Chairperson Johns: This is a difficult vote. And I know everyone has looked at this on the Board. It's a very important decision in many ways. I do feel like that [for] all of the reasons that Mr. Richard has said that I feel like that permit has been vetted well. But I do think that the – having their name on the permit is not a bad idea if we are going to – if theirs is going to be the ones that are using the water and have to respect the – the permit and the permit obligations.

34. The Governing Board then took a vote and elected to table Seven Springs' application. On August 12, 2020, the District referred this matter back to DOAH where it was assigned DOAH Case No. 20-3581.

35. On August 14, 2020, the District filed a "Motion to Amend Grounds for Denial" ("the Motion to Amend") arguing that Seven Springs' application fails to satisfy section 2.1.1 of the Handbook entitled "Legal Control Over Project Site":

> Applicants shall demonstrate the legal right to conduct the water use on the project lands or site. Legal right is demonstrated through property ownership or other property interest, such as a lease, at the project site. Applicants shall provide copies of legal documents demonstrating ownership or control of property through the requested permit duration. The recommended permit duration shall take into consideration the time period of the legal interest in the property. The requirements of this section shall not apply to proposed water uses reviewed in accordance with 40B-2.025(2), F.A.C., under the Florida Power Plant Siting Act.

36. The District also argued that Seven Springs' application fails to satisfy section 2.3.1 of the Handbook entitled "General Criteria":

> Under section 373.223, F.S., in order to receive an individual permit, an applicant must demonstrate that the proposed water use is a reasonable-beneficial use of water. As part of the demonstration that a water use is reasonable-beneficial, the applicant must show demand for the water in the requested amount. This section describes the factors involved in determining whether there is demand and the appropriate permit allocation for a proposed water use.
>
> Demonstration of need requires the applicant to have legal control over the project site, facilities, and for potable water supply, the proposed service area, as required in sections 2.1.1 and 2.1.2. The allocation permitted to serve the applicant's need for water must be based on the demonstrated need. Sections 2.3.2 through 2.3.4 identify the components of demand that must be identified by applicants for individual permits for each water use type.

37. The District argued that Seven Springs' application for a renewal permit should be denied because it:

> does not meet the above quoted provisions of the Applicant's handbook because such application does not demonstrate (or even assert) that SEVEN SPRINGS has the legal right to conduct the water use on the project lands or site and further does not show (or even assert) that SEVEN SPRINGS has legal control over the project site and/or facilities.

38. Seven Springs responded to the Motion to Amend, in part, by stating the following:

> In March 2019, Seven Springs submitted its application for the renewal of its existing permit. The requested renewal is for the same water allocation. In other words, the application does not propose any change in the use type, permittee, or allocation from what is currently permitted. Yet, just short of a year and five months after the application was filed, the District has developed a

> new theory to reject the renewal. On August 12, 2020, the District's counsel notified Seven Springs that if Nestle Waters North America did not agree to be a co-applicant on the permit, the District would file its Motion to Amend.
>
> * * *
>
> Assuming arguendo that the District's new position is correct, as the District's motion makes clear, this alleged "error or omission" is glaringly obvious, and, therefore, there is no excuse for the District's failure to timely raise the issue. More importantly, regardless of whether the District is otherwise permitted to amend its 120.60(3) agency action notice letter, the District is still prohibited by section 120.60(1) from denying Seven Springs' permit for failure to correct this "error or omission" found in the initial application and continuing from the issuance of the original permit.

39. After being granted leave to file a reply, the District replied, in pertinent part, as follows:

> SEVEN SPRINGS asserts that the DISTRICT cannot amend its notice of denial under the provisions of § 120.60(1), Fla. Stat., which provides, "An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period." The problem with this argument is that the DISTRICT is not seeking to amend the notice of denial to assert any, "failure to correct an error or omission or to supply additional information." As far as the requested amendment is concerned, there is no error or omission nor additional information to be supplied.
>
> SEVEN SPRINGS has represented numerous times that Nestle Waters of North America owns the facility which will be bottling the water allocation. The applicable rules of the DISTRICT require the applicant to have control of the site where the water use will occur (Handbook at 2.1.1 Legal

> Control over Project Site, "Applicants shall demonstrate the legal right to conduct the water use on the project lands or site.") (Handbook at 2.3.1 General Criteria, "Demonstration of need requires the applicant to have legal control over the project site, facilities, . . ."). The use of the water occurs where it is bottled (Handbook at 1.1(13) Beverages Processing Use – The sealing of drinkable liquids (including bottled water, as defined in section 500.03(1)(d), F.S.) in bottles, packages, or other containers and offered for sale for human consumption").
>
> The amendment requested by the DISTRICT is not an amendment to assert a failure to correct an error or omission or to supply additional information. Rather, it is an amendment to assert that a particular DISTRICT rule should be applied to the application which, for the purposes of the amended grounds, has no error [or] omission or need of additional information. As all the amendment seek[s] to do is apply an additional DISTRICT rule[,] the proscriptions of § 120.60(1), Fla. Stat., do not apply.

40. The undersigned issued an Order on September 16, 2020, denying the Motion to Amend based on the following reasoning:

> In the course of arguing that Seven Springs' application should be denied, the District and Petitioners are not necessarily limited to the grounds set forth in the District's March 3, 2020, letter. *See generally DeCarion v. Dep't of Envtl Reg.*, 445 So. 2d 619, 620 (Fla. 1st DCA 1984)(rejecting an argument that the Department of Environmental Regulation was "locked in" to the reasons for denial set forth in its letter of intent to deny a permit application).
>
> However, section 120.60(1), Florida Statutes (2020), forecloses certain grounds for denial from being raised at this stage of Seven Springs' permit application proceeding. The aforementioned statute provides in pertinent part that:

> [u]pon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period . . . An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.

Whether the Motion to Amend and Petitioner's Motion to Amend will be granted turns on whether Seven Springs' alleged failure to demonstrate legal right and legal control in its application is a pure substantive deficiency undermining the merits of Seven Springs' application or a paperwork deficiency that could possibly have been corrected via the provision of additional documentation. That distinction was described by the Honorable John G. Van Laningham in *MVP Health v. Agency for Health Care Administration*, Case No. 09-6021 (Fla. DOAH April 22, 2010), *rejected in part*, Case No. 2009012001 (Fla. AHCA May 26, 2010)):

> Simply put, the failure of an applicant to meet the criteria for a license, which results in a denial on the merits, is not, as a logical matter, equal to the failure of an applicant to timely provide requested information (or correct an identified error or omission), which results, as a procedural matter, in a refusal to consider (or to deny) an application consequently deemed to be incomplete. It is one thing, in other words, to say,

> based on all the necessary information, that a person is ineligible for licensure. It is another thing to say that the person's eligibility cannot and will not be determined because the person has failed to provide all of the necessary information upon which such a determination must be based.

The Water Use Permit Applicant's Handbook indicates that the new grounds for denial urged by the District and Petitioners are issues that Seven Springs could have potentially corrected if it had been provided the timely notice required by section 120.60(1). For instance, Section 2.1.1. indicates that "legal right" can be demonstrated by providing a legal document such as a lease. Section 2.3.1. refers to demonstrating "legal control," and that requirement could certainly be satisfied by the provision of legal documents.

In sum, the new grounds for denial urged by the District and Petitioners are in the nature of alleged deficiencies that Seven Springs could have potentially corrected if it had been given the notice and opportunity required by section 120.60(1). While the District asserts that Seven Springs has represented numerous times that Nestle owns the facility that will be bottling the water allocation, that assertion (even if true) does not excuse the District from timely notifying Seven Springs of the perceived omission in its application and giving Seven Springs an opportunity to correct that perceived omission. Now that the 30-day notification period in section 120.60(1) has passed, the District is foreclosed from basing denial of Seven Springs' application on a failure to submit documentation to demonstrate compliance with Sections 2.1.1. and 2.3.1. *See* § 120.60(1), Fla. Stat. (mandating that "[a]n agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period.").

41. In a Motion for Reconsideration, the District argued that:

> SEVEN SPRINGS does not bottle the water and does not propose to bottle the water. SEVEN SPRINGS sells the water to a local facility, apparently owned or legally controlled by someone else, to be bottled. As SEVEN SPRINGS does not bottle the water, it is not possible for SEVEN SPRINGS to "demonstrate the legal right to conduct the water use" as required by 2.1.1 of the Applicant's Handbook. This is not a "paperwork deficiency." This is a "substantive deficiency" which is shown on the face of SEVEN SPRINGS' application. The DISTRICT's motion to amend should be granted so this issue can be conducted at the final hearing.

42. The undersigned issued an Order on September 25, 2020, denying the District's Motion for Consideration:

> The instant case is before the undersigned based on Respondent's "Motion for Reconsideration of Order Denying Motion to Amend" ("the Motion for Reconsideration") filed on September 21, 2020. After considering the arguments set forth therein, the Motion for Reconsideration is DENIED based on the reasoning set forth in the "Order Denying Motions to Amend" issued on September 16, 2020. However, the undersigned provides this clarification. The issue in the instant case is decided by the fact that all of the information available to the undersigned demonstrates that the alleged deficiency in the Seven Springs Water Company's ("Seven Springs") application is of the type that potentially could have been corrected by the provision of additional information. Thus, this alleged deficiency is something that could have, and should have, been the subject of a notice to Seven Springs within 30 days of Respondent receiving Seven Springs' application. *See* § 120.60(1), Fla. Stat. (2020). Regardless of whether Seven Springs was actually capable of correcting that alleged deficiency, any other ruling would render the pertinent requirement set forth in section 120.60(1) meaningless.

43. The District filed a "Second Motion in Limine" ("the Second Motion in Limine") on September 28, 2020, arguing that:

> The only testimony and evidence allowed at the final hearing herein should be required to be related to SEVEN SPRINGS' presently filed permit application, and the permit terms and conditions requested by SEVEN SPRINGS therein. Testimony and evidence of any permit terms and conditions not included or requested in SEVEN SPRINGS' presently-filed application should be precluded from being introduced into evidence or considered at the final hearing.

44. Seven Springs responded, in part, as follows:

> 4. Further, the District's position that "the only testimony and evidence allowed at the final hearing should be required to be related to SEVEN SPRINGS' presently filed permit application" ignores the fact that the District has already received multiple documents addressing the few issues raised by the District in its March 3, 2020 proposed agency action. In fact, some of those documents are currently available in the District's online permitting file for the Seven Springs' permit. This publicly accessible permit file includes Seven Springs' engineering report titled "NWNA High Springs Water Consumption Viability Analysis" prepared by Adam Thibodeau and dated July 30, 2020, and the District's engineering report titled "NWNA High Springs Water Consumption Annual Daily Usage Estimate" prepared by Tom Rutledge for the District and dated July 30, 2020. Additionally, the District's own summary/description in its online permit file identifies the requested allocation as 0.984 MGD (*See* Exhibit A), which is the reduced allocation contained in the July 30, 2020 Seven Springs' expert report and accepted in the District's expert report.
>
> 5. Additional information already reviewed or prepared by the District as part of this proceeding

should not be precluded from being considered as evidence, including the amended memorandum of agreement between Seven Springs and NWNA dated May 27, 2020, provided to SRWMD in June 2020, and the additional permit conditions contained in the Technical Staff Report attached to the Stipulation and Joint Motion for Relinquishment of Jurisdiction and published online by the District in its August 4, 2020 Governing Board Agenda Package. No statute, rule or case law supports limiting or precluding consideration of this information which has been in the District's possession for months and is directly relevant to the issues in this proceeding (i.e., providing reasonable assurances of the applicable permitting criteria). Nor is there any rule or statute limiting the information which may be considered in a de novo administrative hearing to only the information "presently on file with the DISTRICT" based upon some arbitrary date chosen by the District.

6. The District's argument that "amendments may not be made at the last minute and under circumstances which prejudice other parties," is without merit as any "changes" to the Seven Springs' application have already been discussed with, reviewed by, and accepted by the District months before the final hearing date. The District's reliance upon *City of West Palm Beach v. Palm Beach County*, 253 So. 3d 623 (Fla. 4th DCA 2018), the only case cited to in the District's Motion, is misplaced. In *City of West Palm Beach*, "[t]he amended application included revised construction plans, a redesigned storm water management system, a nutrient loading analysis, a compensatory mitigation plan addendum, and a new cumulative impact assessment" that were submitted only one week prior to the final hearing. *Id.* at 625. To the extent there has been any "amendment" or additional evidence provided to support issuance of the Seven Springs permit, it is Seven Springs responding to the District's three alleged basis for denial, all asserting more

> information was required. The Amended Memorandum of Agreement provided the response the District found sufficient to address the first basis for denial; the Seven Springs expert report dated July 30, 2020 provided the response to address the District's second basis for denial; and the two additional permit conditions (quoted below in footnote 4) were provided by the District to address the third basis for denial. The District's expert report also provides evidence that the High Springs Plant, as proposed, has the capacity and ability to use the 984,000 gpd annual average water allocation and satisfies the second basis for denial. None of the [grounds] for denial at issue in this proceeding include any environment or resource protection criteria, nor do they require any new complex evidence to be developed.
>
> 7. Unlike *City of West Palm Beach*, here the District is aware of Seven Springs' acceptance of the reduced allocation and there are no "highly technical" amendments being proposed. The District is fully aware of, and has had ample opportunity to review the responses to the basis of denial that have been provided to, or suggested by, it in this proceeding. It is ironic that the District is continuing to request new information (discussed below) to satisfy one of the basis for denial while, at the same time, attempting to limit Seven Springs to only what is in its "current" permit file.

45. The undersigned issued an Order on October 13, 2020, denying the District's Second Motion in Limine on the basis that the District had failed to demonstrate that it was in danger of being prejudiced.

Findings Specifically Relating to the Grounds for Denial

46. The District's first basis for denial asserts that the MOA failed to show that Seven Springs is obligated to provide "any or all of the requested allocation to NWNA." When one considers the MOA, the amended MOA, and the 25th and 26th conditions negotiated between Seven Springs and the District's staff, the greater weight of the evidence demonstrates that the

entire groundwater allocation will be bottled at the Nestle plants at High Springs and Madison. As a result, this first basis cannot support denial of Seven Springs' permit application.

47. With regard to the second ground for denial, the 21st condition negotiated between Seven Springs and the District's staff reduced the requested allocation from 1.152 mgd to 0.984 mgd. The testimony and evidence presented at the final hearing demonstrated that there are currently two bottling lines in operation in the High Springs plant. Line 1 has been replaced since NWNA acquired the facility with a new "high–speed" line (at a cost of approximately $15 million) that fills 81,000 half-liter bottles per hour ("bph"), and Line 2 is an older 54,000 bph line that is undergoing renovations to a high–speed line.

48. Although there are currently only two lines, NWNA has plans to buildout the High Springs plant so that it will have four high-speed lines. Seven Springs presented evidence and credible expert testimony of Adam Thibodeau, P.E., demonstrating that the High Springs plant will have four high-speed lines in operation within the proposed permit term of five years. The third high-speed line will be installed within the existing building. A building expansion will allow the addition of a fourth high-speed line.

49. It is expected that the third and fourth lines added to the High Springs plant will be capable of producing at least 90,000 bottles per hour. The greater weight of the evidence supports a finding that the plans for expansion of the bottling plant production lines are sufficiently established.

50. Mr. Thibodeau calculated the estimated daily water usage at the High Springs Plant using two separate assumed average line efficiency rates: 85 percent (the original number proposed by Mr. Thibodeau) and 77 percent (the number arrived at after discussions with the District's expert). Mr Thibodeau testified that, on average, high-speed lines can operate at an overall 80 to 85 percent efficiency, and that both 85 and 77 percent are reasonable efficiency rates for the proposed lines. His testimony is accepted.

51. Ultimately, the 77 percent efficiency rate was chosen, meaning water demand was calculated at 77 percent of the maximum line production (accounting for mechanical efficiency and planned and unplanned downtime/maintenance) for the four lines at the High Springs Plant once it is built out. This resulted in a demonstration of a 0.8740 mgd water demand for product water, and a 0.1100 mgd water demand for equipment cooling, line flushing, and other uses. Those numbers result in a cumulative total expected daily water usage of 0.984 mgd annual average for the High Springs plant.

52. The District's expert authored a report stating that his "evaluation would support a proposed average water usage of 0.984 million gallons per day annually." In addition, the District's expert testified that the 0.984 mgd figure was in the range of possible outcomes.

53. In sum, the greater weight of the evidence demonstrated that the High Springs plant will have sufficient physical capacity to use the full requested allocation of water within the proposed five-year permit term.[8]

54. The District's third basis for denial asserts that Seven Springs "has provided no reasonable assurance that the High Springs facility is the only beverage processing facility where the use of the requested allocation will occur."

55. The issue of tankering water to Madison is not part of the application, was subject to no RAI, and was not part of the original denial. It was raised, apparently, as part of settlement negotiations that were not accepted by the District.

56. In keeping with the previous rulings limiting the District from adding grounds for denial, the undersigned does not accept that Seven Springs can simply amend its application at the hearing to add activities and add uses for the water that were not proposed.

[8] The physical ability to process 0.984 mgd is satisfied by the High Springs plant without any reliance on tankering water to the Madison County plant.

57. If Seven Springs wants to use the water from its High Springs wells at a facility other than the adjacent Nestle bottling plant, then it may propose that use in a request for a permit modification. However, because that use is not a part of either the application or the notice of agency action properly before this tribunal, it is not authorized by anything contained in this Recommended Order.

CONCLUSIONS OF LAW

58. DOAH has jurisdiction over the relevant subject matter and the parties to this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

59. Section 373.216 provides that "[t]he governing board of each water management district shall . . . implement a program for the issuance of permits authorizing the consumptive use of particular quantities of water covering those areas deemed appropriate by the governing board."

60. Section 373.219 provides that "[t]he governing board or [the Department of Environmental Protection] may require such permits for consumptive use of water and may impose reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of the district or [the Department of Environmental Protection] and is not harmful to the water resources of the area."

61. Section 373.223 sets forth the conditions for obtaining a permit. An application must establish that the proposed use of water: (a) is a reasonable-beneficial use as defined in section 373.019; (b) will not interfere with any presently existing legal use of water; and (c) is consistent with the public interest.[9]

[9] Section 373.223(2) states that the governing board of a water management district or the Department of Environmental Protection ("DEP") "may authorize the holder of a use permit to transport and use ground or surface water beyond overlying land, across county boundaries, or outside the watershed from which it is taken if the governing board or [DEP] determines that such transport and use is consistent with the public interest, and no local

62. Section 373.019(16) defines a "reasonable-beneficial use" as "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."

63. Florida Administrative Code Rule 40B-2.301(1) mirrors section 373.223 by providing that "[t]o obtain a water use permit, renewal, or modification, an applicant must provide reasonable assurance that the proposed consumptive use of water": (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.

64. Rule 40B-2.301(1) further provides that:

> [t]he standards and criteria set forth in the Water Use Permit Applicant's Handbook, http://www.flrules.org/Gateway/reference.asp?No=Ref-11315, effective December 4, 2019, hereby incorporated by reference into this chapter, if met, will provide the reasonable assurances required in rule 40B-2.301, F.A.C.

65. As the applicant seeking to renew a water use permit so that water can be withdrawn from an aquifer and bottled for consumer consumption, Seven Springs has the burden of proving, by a preponderance of the evidence, that the reasonable assurances required by rule 40B-2.301 exist. As noted above, an applicant demonstrates the existence of those reasonable assurances by satisfying the standards and criteria set forth in the Handbook. The dispute in the instant case concerns whether Seven Springs' application satisfies certain standards and criteria set forth in the Handbook. Each of the three grounds for denial cited in the staff report referenced by Mr. Zwanka in his March 2, 2020, memorandum recommending denial of Seven Springs' renewal application shall be discussed below.

government shall adopt or enforce any law, ordinance, rule, regulation, or order to the contrary."

Handbook Section 2.3.4.1(i)

66. As the first basis for denial, the District's staff noted that:

> Section 2.3.4.1(i) requires the District to consider the contractual obligation to provide water for beverage processing. The applicant declined to provide a copy of its contract with NWNA and, instead, provided a memorandum of this contract. This memorandum does not show that [the] applicant is obligated to provide any or all of the requested allocation to NWNA. Therefore, the required reasonable assurance has not been provided.

67. The District sets forth multiple arguments in its Proposed Recommended Order related to this basis for denial: (a) Seven Springs does not own or control the property from which the water will be withdrawn; (b) Seven Springs does not own or control the Nestle bottling plant at High Springs; (c) Seven Springs has no ownership or control over Nestle's Madison bottling facility.

68. Because Seven Springs does not own or control the High Springs facility, the District argues that "there will be no way for [it] to ensure compliance with any conditions for issuance limiting the bottling/packaging use – the District will not be able to enforce the permit [conditions] against Nestle." To the contrary, Seven Springs stated in response to an RAI, and agreed in the proposed settlement, that all water extracted will be bottled at the adjacent bottling plant. If that representation, and the allowable permit condition incorporating that representation, is violated, then the District would be well within its authority to take enforcement action against Seven Springs up to and including revocation of the permit.

69. As for why the District did not raise Seven Springs' lack of ownership in the High Springs facility sooner, the District asserts in its Proposed Recommended Order that:

> 23. The District did not pursue the issue of ownership and control of the High Springs Facility

> with Seven Springs because Nestle Waters North America Inc. filed an application for a public supply water use (the water use type category chosen by the applicant should have been Beverage Processing Use) for the High Springs Facility shortly after the Seven Springs Application was filed. The District attempted to address the ownership and control issue in this Nestle application and intended to consolidate the Seven Springs and the Nestle applications to connect the groundwater withdrawal with the bottling/packaging of the requested allocation (the Beverage Processing Use)
>
> 24. After the District issued the first Request for Additional Information ("RAI") related to the Seven Springs Application on April 2, 2019 (and in which it did not raise the issue of the ownership or control of the High Springs Facility), Nestle withdrew its application (which was actually for a Beverage Processing Use, not a public supply use), thereby foreclosing the ability of the District to address this issue with Seven Springs.

70. The District's position is that the water use will occur at the High Springs facility where the water will be bottled for personal consumption. Therefore, the District argues in its Proposed Recommended Order that:

> Seven Springs must account for the use of the requested water allocation after it is withdrawn, and was required to present evidence at hearing that it was and is capable of sealing the water allocation in bottles, packages, or other containers for sale for human consumption *on Seven Springs' property or at a location under the ownership or control of Seven Springs*. (emphasis added)

71. All of the arguments set forth amount to alleged errors or omissions in Seven Springs' application that could have been raised as grounds for denial. In other words, it should have been readily apparent to the District staff who reviewed the application that Seven Springs either omitted or erroneously failed to include information demonstrating that Seven Springs: (a) owned or

controlled the land from which the water was to be withdrawn; or (b) owned or controlled the facilities where the water at issue was to be bottled.[10]

72. Seven Springs does not own or control either of Nestle's bottling facilities. Nonetheless, section 120.60(1) does not set forth any circumstances in which noncompliance can be excused, nor is there anything in the statute indicating the District's failure to inquire about ownership should be excused based on the District's purported intent to consolidate Seven Springs' application with the since withdrawn application of Nestle. *See* § 120.60(1), Fla. Stat. (mandating that: "[u]pon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. *An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period.* The agency may establish by rule the time period for submitting any additional information requested by the agency. For good cause shown, the agency shall grant a request for an extension of time for submitting the additional information. If the applicant believes the agency's request for additional information is not authorized by law or rule, the agency, at the applicant's request, shall proceed to process the application. *An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.* An application for a license must be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.")(emphasis added)

[10] The evidence establishes, clearly and without contradiction, that the District and its staff were well aware that the water extracted by Seven Springs was to be bottled by Nestle at the adjacent plant, a relationship recognized by the District since 1998 and accepted through permit renewals since then.

73. Nevertheless, section 2.3.4.1(i) of the Handbook still requires an evaluation of the contractual obligation to provide water for beverage processing, and Seven Springs still bears the burden of demonstrating by a preponderance of the evidence the existence of reasonable assurances that the proposed consumptive use of water is a reasonable-beneficial use. As noted above, District staff recommended denial, in part, based on their determination that a memorandum of agreement between Seven Springs and Nestle did not show that Seven Springs was obligated to provide any or all of the requested allocation to Nestle.

74. In response to the District's third RAI, Seven Springs attached its Memorandum of Agreement with NWNA, and the Memorandum of Agreement's description of the parties' contract was limited to the following:

> 1. The term of the Contract extends to 2096
>
> 2. The Contract requires NWNA to purchase from Seven Springs ***all*** water pumped, extracted, processed or sold by NWNA through the High Springs Plant, with such amounts only being limited by the average and maximum daily limits set forth in water use permit No. 2-93-00093 (together with any modifications and renewals thereof) ("Permit").
>
> 3. The Contract requires Seven Springs to be the exclusive source for all water bottled at the High Springs Plant.

75. Seven Springs and Nestle executed an amended MOA containing the same information as the first and adding that "as long as NWNA meets its payment obligations under the Contract, the Contract requires Seven Springs to exclusively provide all water withdrawn under the Permit to NWNA's High Springs Plant."

76. As this is a *de novo* proceeding, Seven Springs provided competent, substantial, and unrebutted evidence of the contractual obligation between it

and Nestle, and of the obligation for all water to be used at the High Springs bottling plant. Thus, the District now has reasonable assurances that all of the water withdrawn by Seven Springs will be utilized for a beneficial use, i.e., bottled water for personal consumption. *See Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778, 786-87 (Fla. 1st DCA 1981)(explaining "there was no final agency action by DER in this proceeding prior to the petitioning landowners' request for a hearing. Their request for a hearing commenced a de novo proceeding, which, as previously indicated, is intended to formulate final agency action, not to review action taken earlier and preliminarily."); *Hamilton Cnty. Bd. of Cnty. Comm'rs v. Dep't of Envtl Reg.*, 587 So. 2d 1378, 1387 (Fla. 1st DCA 1991)(noting that "[a]ny additional information necessary to provide reasonable assurance that the proposed facility would comply with the applicable air emission standards could be properly provided at the hearing."); As a result, Seven Springs has satisfied its burden of proof as to the District's first basis for denial.

Handbook Section 2.3.4.1(j)

77. As the second basis for denial, the District's staff noted that:

> Section 2.3.4.1(j) requires the District to consider evidence of the physical and financial ability to process the requested amount of water. The applicant has requested an allocation of 1.1520 mgd. As part of the application, the applicant reported the actual use of water at the facility for the years 1995 through 2019. The highest reported actual use of water at the facility was for 2006, which showed an average annual water use of 0.3874 mgd (page 63 of the January 14, 2020 RAI response). As the highest reported actual use of water in the facility was significantly less than the requested allocation, the previous use does not provide evidence of the physical ability to process the requested allocation. The applicant has asserted that the facility is being renovated to have the physical ability to process the requested allocation. But the applicant has failed to provide sufficient evidence showing that such renovations

> will create the necessary physical ability. Therefore, the required reasonable assurance has not been provided.

78. Seven Springs agreed to, and has, lowered the requested allocation from 1.1520 mgd to a "maximum of 0.9840 mdg of groundwater for beverage processing use." Seven Springs provided reasonable assurances, supported by competent, substantial evidence during the final hearing, that the High Springs plant will be able to process the newly-revised requested allocation. As a result, Seven Springs has satisfied its burden of proof as to the District's second basis for denial.

Handbook Sections 2.3.4.1(c) through (f) and (h)

79. With regard to the third basis for denial, the District's staff noted that:

> Section 2.3.4.1(c) through (f) and (h) require the District to consider certain matters concerning the beverage processing facility or facilities where the use will occur. The applicant has only provided information for the High Springs facility, but has provided no reasonable assurance that the High Springs facility is the only beverage processing facility where the use of the requested allocation will occur. Therefore, the required reasonable assurance has not been provided.[11]

80. As discussed above, the undersigned does not accept that Seven Springs can simply amend its application at the hearing to add activities and uses for the water that were not proposed.

81. If Seven Springs wants to use the water from its High Springs wells at a facility other than the adjacent Nestle bottling plant, then it may propose that use in a request for a permit modification. However, because that use is

[11] The parties stipulated prior to the final hearing that the only remaining question pertaining to the third basis for denial was "whether Seven Springs has provided sufficient information under Section 2.3.4.1(c), for the District to consider regarding the location of the beverage processing facility." The aforementioned Handbook provision provides that "[i]n determining whether a proposed beverage processing use is reasonable-beneficial and consistent with the public interest, the Governing Board will consider the following information . . . (c) The location of the beverage processing facility."

not a part of either the application or the notice of agency action properly before this tribunal, it is not authorized by anything contained in this Recommended Order.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Suwannee River Water Management District render a Final Order granting permit No. 2-041-218202-3 to the Seven Springs Water Company.

DONE AND ENTERED this 20th day of January, 2021, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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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.

STATE OF FLORIDA
SUWANNEE RIVER WATER MANAGEMENT DISTRICT

SEVEN SPRINGS WATER COMPANY,

Petitioner,

v.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT,

Respondent.
_____/

Renewal WUP App. No. 2-041-218202-3

DOAH Case Nos. 20-1329 and 20-3581 (consolidated)

RESPONDENT SUWANNEE RIVER WATER MANAGEMENT DISTRICT's EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to §120.57(1)(k), Fla. Stat. (2020) and Florida Administrative Code Rule 28-106.217, Respondent, SUWANNEE RIVER WATER MANAGEMENT DISTRICT (the "DISTRICT"), submits the following exceptions to the Administrative Law Judge's Recommended Order dated January 20, 2021 ("RO") as follows:

1. The DISTRICT takes exception to **RO paragraph 8** as follows: while RO paragraph 8 is correct that Seven Springs identified itself as a "bulk water provider to the adjacent bottled water facility" in its application, Chapter 373, Fla. Stat., District Rule Chapter 40B-2, F.A.C., and the District's Applicant's Handbook do not recognize (or even mention) such a use, and, pursuant to Chapter 373, Fla. Stat., Chapter 40B-2, F.A.C., and the Applicant's Handbook, such a use does not exist (***Joint Ex. 1., Tr. 393:20-24, 394:3-10, 500:17-25, 501:1-6, 561:4-25, 562:1-3)***. Since there is no definition of "bulk water" or "bulk water provider" in Chapter 373, Fla. Stat., Chapter 40B-2, F.A.C., or the Applicant's Handbook – the Application was processed under the statutes and rules applicable to a Beverage Processing Use (***Tr. 561:4-25, 562:1-3***), pursuant to which Seven Springs' application was recommended for denial.

2. The DISTRICT takes exception to **RO paragraph 10** as follows: only part of the first request for additional information ("RAI") is quoted in RO paragraph 10. The entire first request for additional information ("RAI") was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 2).***

3. The DISTRICT takes exception to **RO paragraph 11** as follows: only part of the first request for additional information ("RAI") is quoted in RO paragraph 11. The entire first request for additional information ("RAI") was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 2).***

4. The DISTRICT takes exception to **RO paragraph 15** as follows: only part of the second RAI is quoted in RO paragraph 15. The entire second RAI was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 4).***

5. The DISTRICT takes exception to **RO paragraph 18** as follows: only part of the third RAI is quoted in RO paragraph 18. The entire third RAI was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 8).***

6. The DISTRICT takes exception to **RO paragraph 25** as follows: only part of the Zwanka memorandum is quoted in RO paragraph 25. The entire Zwanka memorandum was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2021 ***(Joint Ex. 10).***

7. The DISTRICT takes exception to **RO paragraph 26** as follows: only part of the staff report is quoted in RO paragraph 26. The entire staff report was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 10).***

8. The DISTRICT takes exception to **RO paragraph 29** as follows: while that part of the Order partially granting Seven Springs' Motion in Limine is accurately quoted, the Order is legally incorrect for the reasons set forth in (1) Respondent's Response to Petitioner's Motion in Limine filed on June 25, 2020, in DOAH Case No. 20-1329 and (2) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

9. The DISTRICT takes exception to **RO paragraph 33** as follows: only part of the comments of the DISTRICT Governing Board are quoted in RO paragraph 33. The entire transcript of the August 11, 2020, public hearing was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(SS Ex. 15).***

10. The DISTRICT takes exception to **RO paragraph 38** as follows: while that part of Seven Springs' response to the DISTRICT's Motion to Amend is accurately quoted, the response is legally incorrect for the reasons set forth in (1) the DISTRICT's Motion to Amend Grounds for Denial filed on August 14, 2020, in DOAH Case No. 20-3581; (2) the DISTRICT's Reply to Petitioner's Response to the District's Motion to Amend Grounds for Denial filed on September 4, 2020 in DOAH Case No. 3581; and (3) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

11. The DISTRICT takes exception to **RO paragraph 40** as follows: while that part of the Administrative Law Judge's Order issued on September 16, 2020 is accurately quoted, the Order is legally incorrect for the reasons set forth in (1) the DISTRICT's Motion to Amend Grounds for Denial filed on August 14, 2020, in DOAH Case No. 20-3581; (2) the DISTRICT's Reply to Petitioner's Response to the District's Motion to Amend Grounds for Denial filed on

September 4, 2020 in DOAH Case No. 3581; and (3) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

12. The DISTRICT takes exception to **RO paragraph 42** as follows: while that part of the Administrative Law Judge's Order issued on September 25, 2020 denying the DISTRICT's Motion for Reconsideration is accurately quoted, the Order is legally incorrect for the reasons set forth in (1) the DISTRICT's Motion to Amend Grounds for Denial filed on August 14, 2020, in DOAH Case No. 20-3581; (2) the DISTRICT's Reply to Petitioner's Response to the District's Motion to Amend Grounds for Denial filed on September 4, 2020 in DOAH Case No. 3581; (3) the DISTRICT's Motion for Reconsideration of Order Denying Motion to Amend filed on September 21, 2020, in DOAH Case No. 20-3581; and (4) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

13. The DISTRICT takes exception to **RO paragraph 44** as follows: while that part of the Seven Springs response is accurately quoted, the response is legally incorrect for the reasons set forth in (1) the DISTRICT's Second Motion in Limine filed on September 28, 2020, in DOAH Case No. 20-3581 and (2) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

14. The DISTRICT takes exception to **RO paragraphs 47, 48 and 49** as follows: these findings of fact were not based upon competent substantial evidence. As of the date of the formal administrative hearing, only one beverage processing product line was fully operational at the High Springs facility and the second line was being renovated and, as testified to by Seven Springs' expert witness Adam Thibodeau, P.E., is not always operational ***(Tr. 666:16-20).*** Additionally, after the conclusion of the final hearing in this matter, Nestle Waters North America, Inc.

("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

15. The DISTRICT takes exception to **RO paragraph 51** as follows: based on a "raw data work up," the DISTRICT's expert, Tom Rutledge, testified that an acceptable water allocation is 0.892 mgd or 0.862 mgd on an annual average basis, not the 0.984 mgd requested by Seven Springs and approved in the Recommended Order ***(Tr. 648:13-25, 649:1-2).*** Additionally, the actual use of water at the High Springs facility has always been significantly less that the allocation presently requested, 0.984 mgd ***(Tr. 201:15-21; Joint Ex. 10, p. 3).*** Seven Springs has reported the actual use of water at the High Springs facility for the years 1995 through 2019, and the highest

reported actual use of water was for 2006, which showed an average annual water use of 0.3874 mgd, significantly less than the 0.984 mgd requested allocation ***(Joint Ex. 10, p. 3, Tr. 428:24-25, 429:1-3).*** Hence, the 0.984 mgd request should not be approved. Additionally, after the conclusion of the final hearing in this matter, Nestle Waters North America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

16. The DISTRICT takes exception to **RO paragraph 52** as follows: based on a "raw data work up," the DISTRICT's expert, Tom Rutledge, testified that an acceptable water allocation is 0.892 mgd or 0.862 mgd on an annual average basis, not the 0.984 mgd requested by Seven

Springs and approved in the Recommended Order ***(Tr. 648:13-25, 649:1-2).*** Additionally, after the conclusion of the final hearing in this matter, Nestle Waters North America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

17. The DISTRICT takes exception to **RO paragraph 53** as follows: this finding of fact as to the physical capacity of the High Springs plant is legally irrelevant because Seven Springs does not have the legal right to conduct the water use at the High Springs plant. Such right must be demonstrated through property ownership or other property interest, such as a lease, at the project site (SRWMD Water Use Permitting Applicant's Handbook §§2.1.1. and 2.3.1). It is

undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plant or the real property on which the High Springs plant is located **(*Tr. 270:7-10, 271:12-23, 425:8-12, Joint Ex. 10, p. 2, SS Ex. 36 [Amended Memo. of Agmt.], Joint Ex. 7a, p. 1, Tr. 156:6-10, 552:7-10, 552:16-25, 553:1-3, Joint Ex. 7a, p. 1, Joint Ex. 10, p. 2, Joint Ex. 7a, p. 1, SS Ex. 36 [Amended Memo. of Agmt., which states "…the Contract provides for the sale and purchase of water between the parties for bottling at the High Springs Plant, a water bottling plant recently purchased and operated by (Nestle Waters North America)…"], Tr. 425:8-12)*.** In the RO, the Administrative Law Judge also finds that Seven Springs does not own or control the High Springs plant ***(RO paragraph 5 ["After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Water of North America"]; paragraph 14; paragraph 19 [recounting that Seven Springs responded to the third RAI by stating "this MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility … which NWNA owns and operates"]; paragraph 68 ["Because Seven Springs does not own or control the High Springs facility…"];and paragraph 72 ["Seven Springs does not own or control either of Nestle's bottling facilities"].*** Additionally, after the conclusion of the final hearing in this matter, Nestle Waters North America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs

plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

18. The DISTRICT takes exception to **RO paragraph 65** as follows: the issues of ownership and control of the project site and related matters pursuant to SRWMD Water Use Permitting Applicant's Handbook §§2.1.1. and 2.3.1 was properly raised below and should have been addressed by the Administrative Law Judge in the Recommended Order (See paragraph 19 of these exceptions). It is undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plant or the real property on which the High Springs plant is located **(*Tr. 270:7-10, 271:12-23, 425:8-12, Joint Ex. 10, p. 2, SS Ex. 36 [Amended Memo. of Agmt.], Joint Ex. 7a, p. 1, Tr. 156:6-10, 552:7-10, 552:16-25, 553:1-3, Joint Ex. 7a, p. 1, Joint Ex. 10, p. 2, Joint Ex. 7a, p. 1, SS Ex. 36 [Amended Memo. of Agmt., which states "…the Contract provides for the sale and purchase of water between the parties for bottling at the High Springs Plant, a water bottling plant recently purchased and operated by (Nestle Waters North America)…"], Tr. 425:8-12).*** In the RO, the

Administrative Law Judge also finds that Seven Springs does not own or control the High Springs plant ***(RO paragraph 5 ["After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Water of North America"]; paragraph 14; paragraph 19 [recounting that Seven Springs responded to the third RAI by stating "this MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility … which NWNA owns and operates"]; paragraph 68 ["Because Seven Springs does not own or control the High Springs facility…"]; and paragraph 72 ["Seven Springs does not own or control either of Nestle's bottling facilities"].***

19. The DISTRICT takes exception to **RO paragraph 68** as follows: because Seven Springs does not own or control the High Springs facility, it does not and cannot qualify for a "beverage processing" use because:

A. The "use" of the water for beverage processing is defined in the Applicant's Handbook as:

> Beverage Processing Use – The sealing of drinkable liquids (including bottled water, as defined in section 500.03(1)(d), F.S.) in bottles, packages, or other containers and offered for sale for human consumption.

Applicant's Handbook at § 1.1(13).

B. Therefore the "use" in this instance is the "bottling" of the water and the entity who will "conduct the water use" is the bottler:

> The District deems water incorporated into a commercial or industrial product as "**used**" at the place where the product is made. Therefore, the District's position is that the water Niagara has requested would be used at its bottling facility in Lake County, . . . That is a reasonable interpretation and application of Chapter 373, Florida Statutes, and Florida Administrative Code Rule 40C-2.301[1].

[1] This rule is substantially similar to the District rule 40B-2.301.

City of Groveland v. Niagara Bottling Company, LLC, DOAH Case No. 08-4201 (Recommended Order, August 7, 2009) at paragraphs 112 and 114 (Canter, ALJ).

C. It is equally clear that the "withdrawal" of the water cannot be the "use."

If the "withdrawal" of the water were the proposed "use" then Seven Springs application would have to be denied. This is because the "use" must be "reasonable-beneficial" § 373.223(1)(a), Fla. Stat., and there is no benefit associated with just the withdrawal[2]:

> [I]t is clear that the statutory requirement that water uses be "reasonable-beneficial" is directed to more than the withdrawal of water. "Reasonable-beneficial" is defined in 373.019(16) to require that the "purpose" of the use be both reasonable and consistent with the public interest. See also Maloney, Ausness, and Morris, A Model Water Code 170-173 (1972)(explaining the authors' intent in creating the reasonable-beneficial standard). The "beneficial" element of the reasonable-beneficial standard is related to the use of the water after it is withdrawn. There is no benefit associated with just the withdrawal of water.

Tropical Audubon Society, Inc., v. Florida Power & Light Company and South Florida Water Management District, DOAH Case No. 15-3845, paragraph 91 (Recommended Order, December 31, 2015)(Canter, ALJ).

D. So, to comply with Applicant's Handbook § 2.1.1., Seven Springs was required to demonstrate the legal right to bottle the water at the bottling plant.

E. Seven Spring has not demonstrated the legal right to bottle the water at the bottling plant; so Seven Springs' application for a water use permit would have to be denied.

F. The Administrative Law Judge should not have applied §120.60, Fla. Stat., to these proceedings. This statute provides:

> Upon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period.

* * *

[2] Specifically, there is no way to determine if a withdrawal is economic, efficient, and the lowest-quality source for each purpose without consideration to use. *See* Rule 40B-2.301(2)(a) and (e).

> An application for a license must be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. . . Any application for a license which is not approved or denied within the 90-day or shorter time period . . . is considered approved . . .

§ 120.60(1), F.S. According to the ALJ, since the District did not first raise Seven Springs failure to comply with Applicant's Handbook §§ 2.1.1 and 2.3.1. within the 30-day time limit provided in Section 120.60(1), F.S., the District could not raise this issue in the final hearing. **This ruling was in error**.

G. In *MedPure, LLC v. Dep't of Health,* 295 So. 3d 318 (Fla. 1st DCA 2020), the court held that a default permit under Section 120.60(1), F.S. may not be issued where the application fails to meet the "minimum licensure requirements of the agency." Like Seven Springs, the applicant in *Medpure* asserted that they were entitled to a permit without complying with certain licensure requirements, due to the failure of the agency to comply with Section 120.60(1), F.S.:

> The petitions argued, among other things, that the petitioners were "entitled to a default license under section 120.60(1) because the Agency allowed more than thirty (30) days to elapse without requesting any additional information from [the petitioner], and also allowed more than ninety (90) days to elapse without approving or denying [petitioner's] MMTC registration application." The petitions sought "prompt issuance of a license to operate as an MMTC in the state of Florida, by default under section 120.60(1), Florida Statutes, or otherwise."

Medpure at 321.

The *Medpure* court found that issuance of a default license was not appropriate because the application did not demonstrate compliance with the "minimum licensure requirements of the agency." The *Medpure* court held:

> In *Dixie Lodge Assisted Living Facility v. Agency for Health Care Administration*, 273 So. 3d 272, 274 (Fla. 1st DCA 2019), this court found that while the deemer provision[3] was implicated because the agency had not timely denied the license, **the applicant was not entitled to default licensure because it failed to meet the minimum licensure requirements of the agency**. Here, the appellants' letter merely states that they "will meet" all the requirements, without offering any actual documentation showing its ability to do so. Merely stating that an applicant will meet various requirements, including security, safety, and record keeping, without specifically identifying how the applicant will operate to meet the requirements does not meet the minimum requirement of a license application. Similarly, **the deemer provision cannot apply because the appellants failed to meet the minimum licensure requirements of the agency** and were on notice as a result of a departmental rule that applications were not being accepted.

Medpure at 323.

H. In *Medpure,* the court found that the applicant was not entitled to a default permit due to the applicant failing to meet the "minimum licensure requirements of the agency" and then gave examples of such minimum requirements by listing, "various requirements, including security, safety, and record keeping." *Medpure* at 323. The demonstration of the legal right to conduct the water use on the project lands or site as required by Applicant's Handbook §§ 2.1.1 and 2.3.1 are certainly no less the "minimum licensure requirements of the agency" than generalized "security, safety, and record keeping" as provided in *Medpure* at 323.

I. *Medpure* held that an agency's failure to comply with Section 120.60(1), F.S., does not relieve an applicant from meeting the "minimum licensure requirements of the agency." *Medpure* at 323. As Seven Springs has failed to meet the "minimum licensure requirements" of the District contained in Applicant's Handbook §§ 2.1.1 and 2.3.1, Seven Springs Application must be denied.

J. Given the foregoing, the DISTRICT will not be able to enforce compliance with any conditions for issuance limiting the bottling/packaging use since Seven Springs has no

[3] The term "deemer provision" means Section 120.60(1), F.S. *Medpure* at footnote 4.

ownership or control over the High Springs facility, where the beverage processing use will occur, the DISTRICT will be unable to enforce the permit against the owner and operator of the High Springs facility, Nestle Waters North America, Inc.

20. The DISTRICT takes exception to **RO paragraph 71** for the reasons stated in paragraph 19 of these exceptions.

21. The DISTRICT takes exception to **RO paragraph 72** for the reasons stated in paragraph 19 of these exceptions.

22. The DISTRICT takes exception to **RO paragraph 74** on the grounds that the Memorandum of Agreement is a contract for the sale of water. The Memorandum of Agreement does not convey to Seven Springs any legal rights of ownership or control of the High Springs facility as required by the DISTRICT's Water Use Permit Applicant's Handbook §§ 2.1.1 and 2.3.1. **(Applicant's Handbook §§ 2.1.1. and 2.3.1., *SS Ex. 36, Tr. 515:2-9, 600:4-13, 602:9-23*)**. It is undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plant or the real property on which the High Springs plant is located **(*Tr. 270:7-10, 271:12-23, 425:8-12, Joint Ex. 10, p. 2, SS Ex. 36 [Amended Memo. of Agmt.], Joint Ex. 7a, p. 1, Tr. 156:6-10, 552:7-10, 552:16-25, 553:1-3, Joint Ex. 7a, p. 1, Joint Ex. 10, p. 2, Joint Ex. 7a, p. 1, SS Ex. 36 [Amended Memo. of Agmt., which states "…the Contract provides for the sale and purchase of water between the parties for bottling at the High Springs Plant, a water bottling plant recently purchased and operated by (Nestle Waters North America)…"], Tr. 425:8-12).*** In the RO, the Administrative Law Judge also finds that Seven Springs does not own or control the High Springs plant ***(RO paragraph 5 ["After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Water of North America"]; paragraph 14; paragraph 19***

[recounting that Seven Springs responded to the third RAI by stating "this MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility … which NWNA owns and operates"]; paragraph 68 ["Because Seven Springs does not own or control the High Springs facility…"]; and paragraph 72 ["Seven Springs does not own or control either of Nestle's bottling facilities"].

23. The DISTRICT takes exception to **RO paragraph 75** for the reasons set forth in paragraph 22 of these exceptions.

24. The DISTRICT takes exception to **RO paragraph 76** for all of the reasons stated in paragraph 19 of these exceptions, including without limitation that Seven Springs has no rights to ownership or control of the High Springs facility pursuant to the DISTRICT's Water Use Permit Applicant's Handbook §§ 2.1.1 and 2.3.1. It is undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plant or the real property on which the High Springs plant is located **(*Tr. 270:7-10, 271:12-23, 425:8-12, Joint Ex. 10, p. 2, SS Ex. 36 [Amended Memo. of Agmt.], Joint Ex. 7a, p. 1, Tr. 156:6-10, 552:7-10, 552:16-25, 553:1-3, Joint Ex. 7a, p. 1, Joint Ex. 10, p. 2, Joint Ex. 7a, p. 1, SS Ex. 36 [Amended Memo. of Agmt., which states "…the Contract provides for the sale and purchase of water between the parties for bottling at the High Springs Plant, a water bottling plant recently purchased and operated by (Nestle Waters North America)…"], Tr. 425:8-12).*** In the RO, the Administrative Law Judge also finds that Seven Springs does not own or control the High Springs plant ***(RO paragraph 5 ["After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Water of North America"]; paragraph 14; paragraph 19 [recounting that Seven Springs responded to the third RAI by***

stating "this MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility … which NWNA owns and operates"]; paragraph 68 ["Because Seven Springs does not own or control the High Springs facility…"]; and paragraph 72 ["Seven Springs does not own or control either of Nestle's bottling facilities"].

25. The DISTRICT takes exception to **RO paragraph 77.** After the conclusion of the final hearing in this matter, Nestle Waters North America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

26. The DISTRICT takes exception to **RO paragraph 78** for the reasons stated in paragraphs 15 and 16 of these exceptions (Rutledge testimony) and because Seven Springs has no rights to ownership or control of the High Springs facility pursuant to the DISTRICT's Water Use Permit Applicant's Handbook §§ 2.1.1 and 2.3.1. It is undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plant or the real property on which the High Springs plant is located ***(Tr. 270:7-10, 271:12-23, 425:8-12, Joint Ex. 10, p. 2, SS Ex. 36 [Amended Memo. of Agmt.], Joint Ex. 7a, p. 1, Tr. 156:6-10, 552:7-10, 552:16-25, 553:1-3, Joint Ex. 7a, p. 1, Joint Ex. 10, p. 2, Joint Ex. 7a, p. 1, SS Ex. 36 [Amended Memo. of Agmt., which states "…the Contract provides for the sale and purchase of water between the parties for bottling at the High Springs Plant, a water bottling plant recently purchased and operated by (Nestle Waters North America)…"], Tr. 425:8-12).*** In the RO, the Administrative Law Judge also finds that Seven Springs does not own or control the High Springs plant ***(RO paragraph 5 ["After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Water of North America"]; paragraph 14; paragraph 19 [recounting that Seven Springs responded to the third RAI by stating "this MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility … which NWNA owns and operates"]; paragraph 68 ["Because Seven Springs does not own or control the High Springs facility…"]; and paragraph 72 ["Seven Springs does not own or control either of Nestle's bottling facilities"].*** Additionally, after the conclusion of the final hearing in this matter, Nestle Waters North America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19),

applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

Respectfully submitted,

/s/ Frederick T. Reeves

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Attorneys for Respondent, SUWANNEE RIVER WATER MANAGEMENT DISTRICT

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by e-mail on **Douglas P. Manson, Esq., Craig Varn, Esq., and Paria Shirzadi Heeter, Esq.**, Manson Bolves Donaldson Varn, P.A., 109 N. Brush Street, Suite 300, Tampa, Florida 33602 (dmanson@mansonbolves.com; cvarn@mansonbolves.com; pheeter @mansonbolves.com; drodriguez@mansonbolves.com), on February 1, 2021.

/s/ Frederick T. Reeves
Frederick T. Reeves, Esquire

November 25, 2020

In the Matter of an
Application for Permit by:

Mr. Kent Koptiuch, Natural Resource Manager
Nestle Waters North America, Inc.
690 NE Hawthorne Avenue
Lee, Florida 32059
Email: kent.koptiuch@waters.nestle.com

Permit Number.: 0395114-001-WC
Project Name: NWNA-High Springs PWS
County: Gilchrist

NOTICE OF PERMIT ISSUANCE

Enclosed is Permit Number 0395114-001-WC to construct a public water system to supply water to an industrial facility. This permit is issued pursuant to Chapter 403.087(1), Florida Statutes.

This permit is final and effective on the date filed with the clerk of the Department unless a petition is filed in accordance with the paragraphs below or unless a request for extension of time in which to file a petition is filed within the required timeframe and conforms to Rule 62-110.106(4), F.A.C. Upon timely filing of a petition or a request for an extension, this permit will not be effective until further Order of the Department.

A person whose substantial interests are affected by this permit may petition for an administrative proceeding (hearing) in accordance with sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) with the Agency Clerk for the Department of Environmental Protection, Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, within 14 days of receipt of this Notice. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, F.A.C.

A petition must contain the following information:

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

A petition that does not dispute the materials facts on which the Department's action is based shall state that no such facts are in dispute and otherwise contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any such final decision of the Department on the petition have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

When the Order (Permit) is final, any party to the Order has the right to seek judicial review of the Order pursuant to section 120.68 of the Florida Statutes, by filing a Notice of Appeal pursuant to Rule 9.110 of the Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; 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 when the final order is filed with the Clerk of the Department.

Executed in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jeffrey S. Martin, P.E.
Chief Engineer
Water and Wastewater Permitting

CERTIFICATION OF SERVICE/ FILING AND ACKNOWLEDGEMENT

FILED, on November 25, 2020, under Section 120.52, Florida Statutes, with the designated Deputy Clerk, receipt of which is hereby acknowledged. The undersigned hereby certifies that this NOTICE OF PERMIT ISSUANCE and all copies were mailed before the close of business on November 25, 2020, to the listed persons.

Clerk November 25, 2020
Date

c:
Anthony M. Holley, P.E., Tholley@jsna.com
Arturo Aranda, DEP/NED
Joni Petry, DEP/NED
Dave Lubinski, DEP/NED
Brian Durden, DEP/NED
Jeff Martin, P.E., DEP/NED

PERMITTEE:
Mr. Kent Koptiuch, Natural Resource Manager
Nestle Waters North America, Inc.
690 NE Hawthorne Avenue
Lee, Florida 32059
Email: kent.koptiuch@waters.nestle.com:

PUBLIC WATER SYSTEM ID: 2214206
PERMIT NUMBER: 0395114-001-WC
EFFECTIVE DATE: November 25, 2020
EXPIRATION DATE: November 24, 2025
COUNTY: Gilchrist
PROJECT: NWNA-High Springs PWS

This permit is issued under the provisions of Chapter 403, Florida Statutes (F.S.), and Florida Administrative Code (F.A.C.) Chapters 62-4, 62-550, 62-555 and 62-560. The above named permittee is hereby authorized to perform the work or operate the facility shown on the application and approved drawings, plans, and other documents attached hereto or on file with the Department and made a part hereof and specifically described as follows:

TO CONSTRUCT: to construct a public water system to supply water to an industrial facility.

PROPOSED CONSTRUCTION INCLUDES:

The components that will be installed as part of the permit consist of the construction of a new well, 6-inch casing with a submersible pump with 100 gpm, 10 HP and 280' of Total Dynamic Head. In addition, there is construction of a 2,000 gallon hydropneumatic ASME tank, hypochlorite pump with 8 gpd capacity, 1 1/2 inch electromagnetic flow meter, associated valves and appurtenances. The permitted maximum daily capacity for this public water system will be 100,000 gpd.

IN ACCORDANCE WITH: Permit application package received on November 25, 2020.

LOCATION: The project is located at NE 70 Avenue, High Springs , Florida, 32643, in Gilchrist County.

Work must be conducted in accordance with the General and Specific Conditions, attached hereto.

This space intentionally left blank

GENERAL CONDITIONS:

The permittee shall be aware of and operate under the Permit Conditions below. These applicable conditions are binding upon the permittee and enforceable pursuant to Chapter 403, Florida Statutes. *[F.A.C. Rule 62-555.533(1)]*

1. The terms, conditions, requirements, limitations and restrictions set forth in this permit, are "permit conditions" and are binding and enforceable pursuant to Sections 403.141, 403.727, or 403.859 through 403.861, F.S. The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.

2. This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.

3. As provided in subsections 403.087(6) and 403.722(5), F.S., the issuance of this permit does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This permit is not a waiver of or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in this permit.

4. This permit conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

5. This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

6. The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this permit, are required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.

7. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to:
   a. Have access to and copy any records that must be kept under conditions of the permit;
   b. Inspect the facility, equipment, practices, or operations regulated or required under this permit; and
   c. Sample or monitor any substances or parameters at any location reasonable necessary to assure compliance with this permit or Department rules.
   Reasonable time may depend on the nature of the concern being investigated.

8. If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:
   a. A description of and cause of noncompliance; and
   b. The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to educe, eliminate, and prevent recurrence of the noncompliance. The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

9. In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Section 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

10. The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance; provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules. A reasonable time for compliance with a new or amended surface water quality standard, other than those standards addressed in Rule 62-302.500, shall include a reasonable time to obtain or be denied a mixing zone for the new or amended standard.

11. This permit is transferable only upon Department approval in accordance with Rule 62-4.120 and 62-730.300 F.A.C., as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.

12. This permit or a copy thereof shall be kept at the work site of the permitted activity.

13. This permit also constitutes:
   a. Determination of Best Available Control Technology (BACT)
   b. Determination of Prevention of Significant Deterioration (PSD)
   c. Certification of compliance with state Water Quality Standards (Section 401, PL 92-500)
   d. Compliance with New Source Performance Standards

14. The permittee shall comply with the following:
   a. Upon request, the permittee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.
   b. The permittee shall hold at the facility or other location designated by this permit records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by the permit, copies of all reports required by this permit, and records of all data used to complete the application for this permit. These materials shall be retained at least three years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule.
   c. Records of monitoring information shall include:
      1. the date, exact place, and time of sampling or measurements;
      2. the person responsible for performing the sampling or measurements;
      3. the dates analyses were performed;
      4. the person responsible for performing the analyses;
      5. the analytical techniques or methods used;

6. the results of such analyses.

15. When requested by the Department, the permittee shall within a reasonable time furnish any information required by law which is needed to determine compliance with the permit. If the permittee becomes aware the relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

SPECIFIC CONDITIONS:

1. All construction must be in accordance with this permit. Before commencing work on project changes for which a construction permit modification is required per 62-555.536(1), the permittee shall submit to the Department a written request for a permit modification. Each such request shall be accompanied by one copy of a revised construction permit application, the proper processing fee and one copy of either a revised preliminary design report or revised drawings, specifications and design data. *[F.A.C. Rule 62-555.536]*

2. Permitted construction or alteration of public water supply systems must be supervised during construction by a professional engineer registered in the State of Florida if the project was designed under the responsible charge of a professional engineer licensed in the State of Florida. The permittee must retain the service of a professional engineer registered in the State of Florida to observe that construction of the project is in accordance with the engineering plans and specifications as submitted in support of the application for this permit. *[F.A.C. Rule 62-555.520(3)]*

3. If prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoe remains, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, should contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section at 850.245.6333 or 800.847.7278, as well as the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources and the permitting agency. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

4. In accordance with General Condition #11 of this permit, this permit is transferable only upon Department approval. Persons proposing to transfer this permit must apply jointly for a transfer of the permit within 30 days after the sale or legal transfer of ownership of the permitted project that has not been cleared for service by the Department using form, 62-555.900(8), Application for Transfer of a PWS Construction Permit along with the appropriate fee. *[F.A.C. Rule 62-555.536(5)]*

5. This permit satisfies Drinking Water permitting requirements only and does not authorize construction or operation of this facility prior to obtaining all other necessary permits from other program areas within the Department, or required permits from other state, federal, or local agencies.

6. Permittee shall ensure that the well and drinking water treatment facilities will be protected to prevent tampering, vandalism, and sabotage as required by Rule 62-555.315(1) & 62-555.320(5), F.A.C.

7. All products, including paints, which shall come into contact with potable water, either directly or indirectly, shall conform with National Sanitation Foundation (NSF) International, Water Chemicals Codex, Food Chemicals Codex, American Water Works Association (AWWA) Standards and the Food and Drug Administration, as provided in Rule 62-555.320(3), F.A.C.

8. Water supply facilities, including mains, pipe, fittings, valves, fire hydrants and other materials shall be installed in accordance with the latest applicable AWWA Standards and Department rules and regulations. The system shall be pressure and leak tested in accordance with AWWA Standard C600 C603, or C605, as applicable, and disinfected in accordance with AWWA Standard C651-653, as well as in accordance with Rule 62-555.340, F.A.C.

9. The installation or repairs of any public water system, or any plumbing in residential or nonresidential facilities providing water for human consumption, which is connected to a public water system shall be lead free in accordance with Rule 62-555.322, F.A.C.

10. The new or altered aboveground piping at the drinking water treatment plant shall be color coded and labeled as recommended in Section 2.14 of "Recommended Standards for Water Works, 1997 Edition". *[F.A.C. Rule 62-555.320(10)]*

11. Permittee shall ensure that there shall be no cross-connection with any non-potable water source in accordance with Rule 62-555.360, F.A.C.

12. The supplier of water shall operate and maintain the public water system so as to comply with applicable standards in F.A.C. Rule 62-550 and 62-555.350.

13. The permittee shall provide an operation and maintenance manual for the new or altered treatment facilities to fulfill the requirements under subsection 62-555.350(13), F.A.C. The manual shall contain operation and control procedures, and preventative maintenance and repair procedures, for all plant equipment and shall be made available for reference at the plant or at a convenient location near the plant. Bound and indexed equipment manufacturer manuals shall be considered sufficient to meet the requirements of the subsection.

14. The permittee shall submit a monthly operations report (MOR) DEP Form 62-555.900(3), to the Department no later than the tenth of each succeeding month.

15. Permittee shall follow the guidelines of Chapters 62-550, 62-555, and 62-560, F.A.C., regarding public drinking water system standards, monitoring, reporting, permitting, construction, and operation.

16. The permittee shall have complete record drawings produced for the project in accordance with Rule 62-555.530(4), F.A.C.

17. The permittee or suppliers of water shall telephone the State Warning Point (SWP), at 1-800-320-0519 immediately (i.e., within two hours) after discovery of any actual or suspected sabotage or security breach, or any suspicious incident, involving a public water system in accordance with the F.A.C. Rule 62-555.350(10).

18. The permittee must instruct the engineer of record to request system clearance from the Department within sixty (60) days of completion of construction, testing and disinfecting the system. Bacteriological test results shall be considered unacceptable if the test were completed more than 60 days before the Department received the results. *[F.A.C. Rule 62-555.340(2)(c)]*

19. This facility is a Non-Transient Non-Community Water System as defined in F.A.C. Rule 62-550.200(63) and shall comply with the applicable chemical, lead and copper, and bacteriological monitoring requirements of F.A.C. Rule 62-550. Such requirements shall be initiated within the quarter that the water treatment facility is placed into service (i.e. January—March or April—June, the preceding are examples of quarters) and the results submitted to the Department.

20. The water treatment plant shall maintain throughout the distribution system a minimum continuous and effective free chlorine residual of 0.2 mg/l or its equivalent. A minimum system pressure of 20 psi must be maintained throughout the system. Also, safety equipment shall be provided and located outside of chlorine room.

21. The facility has been classified as a Category V, Class D water treatment plant. Accordingly, the lead or chief operator must be Class D or higher. Proof of staffing by a Class D or higher operator for 3 visits/week on nonconsecutive days for a total of 0.3 hour/week must be provided. *[F.A.C. Rule 62-699.310]*

22. Suppliers of water shall notify the appropriate DEP District Office or ACHD and affected water customers by no later than the previous business day before initiating any planned permanent or temporary conversion from free chlorine to chloramines or vice versa for disinfection. *[F.A.C. Rule 62-555.350(10)(c)]*

23. Setback distances between potable water wells and sanitary hazards shall be in accordance with 62-555.312, F.A.C.

24. The hydropneumatic tank that will be utilized for this project must meet ASME code requirements for the construction and installation of unfired pressure vessels, as provided in Rule 62-555.320(20), F.A.C., and Section 7.2 of *Recommended Standards for Water Works*, a manual adopted by reference in Rule 62-555.330(3), F.A.C.

25. All new systems or systems that use a new source of water, including a new well, shall demonstrate compliance with all maximum contaminant levels. The system shall comply with the initial sampling frequencies as specified in chapter 62-555, F.A.C. Initial monitoring for Lead & Copper may be waived if the new source is verified, by a signed and sealed statement, documenting a Professional Geologist's judgment that the new source is the same as the existing source, for existing facilities. *[F.A.C. Rule 62-550.500]*

    Initial monitoring frequencies are as specified below:
    - Synthetic Organic Contaminants (SOCs) – Quarterly
    - Volatile Organic Contaminants (VOCs) – Quarterly
    - Radionuclides – Quarterly
    - Lead & Copper – Biannual

26. Prior to placing this project into service, Permittee shall submit, at a minimum, all of the following to the Department for evaluation and approval for operation, as provided in Rules 62-555.340 and 62-555.345, F.A.C.:
    a. the engineer's *Certification of Construction Completion and Request for Clearance to Place Permitted PWS Components Into Operation* {DEP Form 62-555.900(9)};
    b. certified record drawings, if there are any changes noted for the permitted project.

c. two consecutive days of satisfactory bacteriological analytical results collected in accordance with Rule 62-555.340(2), F.A.C. at each of the locations indicated in the applicable AWWA standard referenced in Rule 62-555.340(1), F.A.C.
d. 10 satisfactory bacteriological analysis results performed on the raw water to be taken 10 consecutive weekdays, or taken twice a day, 6 hours apart for 5 consecutive weekdays;
e. satisfactory chemical clearance for new well, to include Primary Inorganic Contaminants, Secondary Contaminants, Volatile Organic Contaminants (VOCs), Synthetic Organic Contaminants (SOCs, aka Pesticides and PCBs), Radionuclides (Gross Alpha, Radium-226, Radium-228, Uranium), Alkalinity, Dissolved Iron, Dissolved Oxygen, pH, Total Sulfide, and Turbidity results from a certified laboratory.

In order to facilitate the issuance of a letter of clearance, the Department requests that all of the above information be submitted as one package.

27. The new facilities shall be cleaned, disinfected, and bacteriologically cleared in accordance with Chapter 62-555, F.A.C. [Section 62-555.340 and 62-555.315(6)(b), F.A.C.]

Executed in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jeffrey S. Martin, P.E.
Chief Engineer
Water and Wastewater Permitting

Date: November 25, 2020

NEW WATER SYSTEM CAPACITY DEVELOPMENT FINANCIAL AND MANAGERIAL OPERATIONS PLAN

INSTRUCTIONS: This operations plan shall be completed and submitted for the following public water systems, which are defined as "new systems" for the purposes of capacity development and which are hereinafter referred to as "new systems": entirely new community or non-transient non-community water systems constructed, or commencing operations, on or after October 1, 1999; and water systems that previously did not meet the definition of a community water system (CWS) or the definition of a non-transient non-community water system (NTNCWS) but that grow to become a CWS or NTNCWS through an infrastructure expansion constructed, or placed into operation, on or after October 1, 1999. (Water systems that previously did not meet the definition of a CWS or the definition of an NTNCWS but that grow to become a CWS or NTNCWS by adding users without expanding their infrastructure are not considered "new systems" for the purposes of capacity development.) Complete and submit one copy of this operations plan, including all required attachments, to the appropriate Department of Environmental Protection District Office or Approved County Health Department at the following times:

- with the construction permit application for the "new system" or for the infrastructure expansion creating the "new system;" or, if the construction permit for the "new system" or infrastructure expansion creating the "new system" was issued by the Department prior to the effective date of Rule 62-555.525, F.A.C., (9-22-99), with the certification of construction completion for the "new system" or for the infrastructure expansion creating the "new system"; or, if a construction permit is not required for the "new system," within 90 days after commencing operations as a CWS or NTNCWS;
- within 90 days after the third anniversary of the "new system" commencing operations as a CWS or NTNCWS; and
- within 90 days after a change in ownership of the "new system" if the change in ownership occurs after the effective date of this form.

Complete all parts of this operations plan for "new systems" that will not be regulated by the Florida Public Service Commission (FPSC), and complete only Parts I, IV, V, VI, and VII of this operations plan for "new systems" that will be regulated by the FPSC. All information provided in this operations plan, including all attachments to this plan, shall be typed or printed in ink. Refer to the *New Water System Capacity Development Planning Manual* as adopted in Rule 62-555.335, F.A.C., for recommended formats to use when preparing attachments to this operations plan. The *New Water System Capacity Development Planning Manual* includes criteria the Department uses to evaluate information in operations plans and includes a description of how the Department uses information in operations plans.

I. General Information

Public Water System (PWS) Name: NWNA - High Springs PWS System		
PWS Identification Number:* N/A		
PWS Type: ☐ Community Water System (CWS) ☒ Non-Transient Non-Community Water System (NTNCWS)		
Number of Service Connections:† 1	Total Population Served: † 110	
PWS Owner: Nestle Waters North America, Inc.		
Contact Person: Kent Koptiuch	Contact Person's Title: Natural Resource Manager	
Contact Person's Mailing Address: 690 NE Hawthorne Ave.		
City: Lee	State: FL	Zip Code: 32059
Contact Person's Telephone Number: 229-740-1845	Contact Person's Fax Number: N/A	
Contact Person's E-Mail Address: kent.koptiuch@waters.nestle.com		

* *This information is required only if the PWS has already commenced operations as a PWS (i.e., only if the PWS is an existing PWS).*

† *At the time the PWS commences operations as a CWS or NTNCWS or, for a PWS that has already commenced operations as a CWS or NTNCWS, at the time of submittal of this operations plan.*

II. Projected or Actual Expenses

Attach an expenses plan showing all projected or actual water system expenses for a five-year planning period. If this operations plan is being submitted with a construction permit application or with a certification of construction completion or within 90 days after the "new system" commences operations as a CWS or NTNCWS, the five-year expenses plan shall start at the date the "new system" is expected to, or did, commence operations as a CWS or NTNCWS. If this operations plan is being submitted as an updated plan after the third anniversary of the "new system" commencing operations as a CWS or NTNCWS, the five-year expenses plan shall start at the date of said third anniversary. If this operations plan is being submitted as an updated plan after a change in ownership of the "new system," the five-year expenses plan shall start at the date ownership of the "new system" changes. Include only the following two types of information: (1) the nature of the expense (e.g., salary of an operator); and (2) the dollar amount of the expense. Show only expenses pertaining to the water system. Include expenses for operators, persons maintaining the water system between operator visits, purchased utilities, water treatment chemicals, supplies for routine upkeep, and analytical testing. Other expenses under 10% of the total projected or actual amount must be listed but need not be described.

PWS Identification Number: N/A

III. Projected or Actual Income

Attach an income plan showing projected or actual income and funds used to pay for all water system expenses for a five-year planning period. If this operations plan is being submitted with a construction permit application or with a certification of construction completion or within 90 days after the "new system" commences operations as a CWS or NTNCWS, the five-year expenses plan shall start at the date the "new system" is expected to, or did, commence operations as a CWS or NTNCWS. If this operations plan is being submitted as an updated plan after the third anniversary of the "new system" commencing operations as a CWS or NTNCWS, the five-year income plan shall start at the date of said third anniversary. If this operations plan is being submitted as an updated plan after a change in ownership of the "new system," the five-year income plan shall start at the date ownership of the "new system" changes. Show only income and funds used to pay for water system expenses. Include only the following two types of information: (1) the nature of each source of income or funds (e.g., revenue from the sale of water to customers, interest income, funding from a city, receipt of a loan or grant, or a personal bank account); and (2) the dollar amount to be provided by each source of income or funds. Report all projected or actual amounts; however, a description of each amount under 10% of the total projected or actual amount is not necessary.

IV. Management Capacity

Attach a list of positions and employees, including position titles and responsibilities, licensure requirements for the positions, and employee names and qualifications. If a position is vacant, indicate the projected hiring date. Include the license class and number for operators. Indicate the positions/employees who are responsible for acting on behalf of the water system in case of emergency, to spend money, or to make other decisions. Provide telephone numbers and addresses for these responsible positions/employees. Show only position/employee information pertaining to the water system.

V. Plans, Manuals, and Programs

Depending upon type and size, water systems may be required to have written plans, manuals, and programs as described in Department rules or in the *New Water System Capacity Development Planning Manual*. Contact the State Emergency Response Commission (SERC) regarding Risk Management Plans, and contact the appropriate Department of Environmental Protection (DEP) District Office or Approved County Health Department (ACHD) regarding all other plans, manuals, and programs listed below. Indicate below which plans, manuals, and programs the SERC or the appropriate DEP District Office or ACHD says will be required for your water system and the due dates for the required plans, manuals, and programs.

Plan, Manual, or Program	Required? (Y/N)	Initial Due Date (MM/YY)
Bacteriological Monitoring Plan	✔	Commencement of PWS
Cross-Connection Control Program		
Disinfectants/Disinfection Byproducts Monitoring Plan		
Emergency Preparedness/Response Plan		
Operation & Maintenance Manual	✔	Commencement of PWS
Risk Management Plan		
Sampling Plan for Lead and Copper Tap Samples and Water Quality Parameters	✔	Commencement of PWS

VI. Alternate Means of Providing Water Service

Attach an explanation of why you are proposing to provide water service instead of connecting to another public water system. Include a list of the alternatives considered and the financial, managerial, and technical reasons for deciding to provide water service.

VII. Certification

I am duly authorized to sign this operations plan on behalf of the PWS identified in Part I of this operations plan. I certify that the information provided in this operations plan and on the attachments to this operations plan is true and accurate to the best of my knowledge and belief. I also certify that, for the five-year planning period covered by this operations plan, the PWS expects to collect, or already has, sufficient funds to equal or exceed its forecasted expenses, enabling the PWS to deliver drinking water meeting regulatory standards.

Kent S Koptiuch 11-17-20	Kent Koptiuch	Natural Resource Manager
Signature and Date	Printed or Typed Name	Title

Attn: Arturo Aranda
Florida Department of Environmental Protection
Northeast District
8800 Baymeadows Way West, Suite 100 Jacksonville, FL 32256

Date: 11/17/2020

RE: New Water Capacity Development Financial and Managerial Operations Plan

The information included within this document are being provided to the Florida Department of Environmental Protection as required for the New Water System Capacity Development Financial and Managerial Operations Plan (Form 62-555.900(20)). The new system is being proposed in Gilchrest County which is not currently regulated by the Florida Public Service Commission (FPSC) and is anticipated to be permitted as a Non-Transient Non-Community Water System (NTNCWS).

Part II. Projected or Actual Expenses

The project expenses are currently only an estimate of the actual expenses to operate this PWS. The projected expenses are not anticipated to increase over the period of the next 5 years. On anticipation of PWS permit this expense is expected to commence January of 2021.

Expense	Year 1 (2021)	Year 2 (2022)	Year 3 (2023)	Year 4 (2024)	Year 5 (2025)
Operator	-	-	-	-	-
Chlorine	~$600	~$600	~$600	~$600	~$600
Supplies	-	-	-	-	-
Contractual Services	~$2,500	~$2,500	~$2,500	~$2,500	~$2,500

Part III. Project or Actual Income

This PWS will be fully funded by the sole user/owner, Nestle Waters of North America Inc (NWNA). This project of income is based on the projected expenses for a period 5 years.

Income	Year 1 (2021)	Year 2 (2022)	Year 3 (2023)	Year 4 (2024)	Year 5 (2025)
PWS Owner	~$3,100	~$3,100	~$3,100	~$3,100	~$3,100

Part IV. Management Capacity

This PWS will managed by the NWNA. NWNA currently has water scientists, geologists, and engineers on staff for the purpose of maintaining this water system. In addition, NWNA will hire a contract water operator to oversee operations and provide recommendations to NWNA in the event issues are encountered.

Name	Position	General Information
Kent Koptiuch	Natural Resource Manager (Owner Representative)	Phone # 229-740-1845 Email: kent.koptiuch@waters.nestle.com
Vacant	Operator (Class C)	Contract Services or Employee to be hired at commencement of PWS operations.

Part VI. Alternate Means of Providing Water Service

The NWNA High Springs Facility is currently outside of the service area of any existing PWS. The well site is existing and was once permitted as a NTNCWS. NWNA is proposing to replace the existing components of the existing PWS and utilize. From a financial perspective, the use of an existing well site adjacent to sole user is more fiscally responsible. From a managerial standpoint, the existing staff is currently capable overseeing daily operations with the addition of an operator. On the basis of technical aspects, the location and proximately of the well site allows for the owner to maintain the quality of water that the owner expects with more control then purchasing from a third-party.

NWNA HIGH SPRINGS PROCESSING FACILITY

PWS SYSTEM

PROJECT NARRATIVE

FOR

NESTLE WATERS
NORTH AMERICA, INC.
NORTHEAST 70 AVE.
HIGH SPRINGS, FLORIDA 32643

NOVEMBER 13, 2020

Jim Stidham And Associates, Inc.
547 N. Monroe St., Ste. 201,
Tallahassee, Fl 32301

REPORT CONTENTS

APPENDIX A – Figures

APPENDIX B – Design Data

APPENDIX C – Equipment Specifications

APPENDIX D – Well Records

1.0 INTRODUCTION

The Nestle Waters North America (NWNA) High Springs facility is located at the street address of Northeast 70 Ave., High Springs, Florida 32643, and is situated within Section 2 of Township 8 South, Range 16 East. The subject property is located within Gilchrist County with an assigned parcel identification number of 02-08-16-0000-0003-0000 (40.0 acres +/-) and recorded on official record book 2005 and page 7821 per property appraisers' map.

This facility historically served as a Public Water System (PWS) for the property to the south. There is one (1) active well and an existing concrete framed well house from the historical PWS.

The well house is situated approximately halfway across the southern property line, just off the access road and approximately 60 feet from the fence line.

Please see Locations Map in '***Appendix A***.'

1.1 Need and Purpose

The purpose of this project is to allow for the supply of potable water to the Nestle High Springs facility. This PWS is to be utilized by the employees of this facility. Based on information obtained from Nestle, the facility currently has a total of approximately 110 employees present at this facility on any given day. In addition to the employee usage potable water will be required within the facility for the cooling tower and blowdown/makeup water. Based on a per capita water usage of 120 gallons per capita per day (gpcd) and industrial water usage of an estimated 17,000 gallons per day, the total estimated water usage is 30,200 gallons per day. After applying a peaking factor of 2.5, the maximum estimated daily flow is 75,500 gallons per day or approximately 80,000 gallons per a day. Additionally, a separate line is being proposed to be installed prior to chlorination after hydropneumatic tank for process water at the Nestle facility. It is estimated that approximately 20,000 gallons per day (gpd) will be utilized for this facility. The non-chlorinated line will be installed with a double backflow preventor to prevent non-chlorinated water from backflowing into the PWS system. The estimated maximum daily usage from the well and hydro-pneumatic tank are approximated at 100,000 gallons per day. The proposed usage of this system appears to fall under the requirements of a non-community transient water system (NCTS). Sodium hypochlorite injection will be utilized to the meet the requirements for disinfection residual. See '***Appendix B'*** for calculations.

Fire protection for the sole user of this PWS system is addressed internally with an independent fire suppression system utilizing multiple fire flow wells with generator backup.

1.2 General Operations

The High Springs operation consists of one (1) active well, and well house building that would serve the adjacent processing facility. Spring water is to be pumped from the well into a 2,000-gallon hydro-pneumatic tank. The hydro-pneumatic tank will help maintain system pressure and provide storage volume in periods of higher demand. When a water demand is present in the PWS line water will be treated through a chlorination system prior to transmission to the

end user. When water demand is present in the non-chlorinated line the system will maintain pressure, but chlorine will not be utilized (see process flow diagram).

2.0 EXISTING SYSTEM DETAILS

2.1 Well Details

The existing well was constructed as a PWS well through the Suwannee River Water Management District (SRWMD) under permit number 32169. The well has a 6” casing approximately 80 feet deep, with a total well depth of 150 feet. The historical well was utilized as part of the historical PWS system (PWS ID #2214183) and was permitted for 72,000 gpd. The existing well was equipped with a 5 HP submersible pump. A copy of the well construction application to the SRWMD has been included in **Appendix ‘D’**.

2.2 Well House

The Well House contained a hydropneumatics tank with a permitted storage capacity of 900 gallons. A Stenner Hypo-Chlorination pump was used for disinfection. Both have been removed from the facility and will be replaced to support the current system. The well house is constructed with concrete block walls and wood truss roof.

3.0 PROPOSED PWS SYSTEM

3.1 Potable Water Treatment

The water treatment for this facility will consist of a sodium hypochlorite chlorine injection system. This water treatment system shall be utilized to serve the PWS water supply line to the on-site processing facility. The well pump will supply water to the new 2,000-gallon hydropneumatic tank. Water demand from the PWS user will be chlorinate on discharge through a 2” water line. Prior to chlorination and after discharge from the hydropneumatic tank, a separate 2” line with double backflow preventor will be installed for use at the facility for non-potable use. Note, all sampling taps will be smooth bore hose bibs with no threads and NSF-61/372 certified.

3.2 Well House

A replacement hydropneumatic tank compliant with AWWA standards is to be located just south of the existing well house. Tank to be sized at 2,000 gallons and installed per tank manufacturer’s specifications.

The hydropneumatic tank will be equipped with a pressure transducer and level probe. These sensors will be utilized to maintain pressure within the tank and provide logic to call the well pump to turn on.

3.3 Chlorination Equipment

The chlorination system will utilize a positive displacement chemical feed pump and 12% sodium hypochlorite to maintain the chlorine residual between 0.2 mg/L and 4.0 mg/L.

Equipment specifications are provided in **Appendix 'C'**. Chlorine feed rate will be manually adjusted, and operation of the chemical feed pump will be controlled by an inline flow meter on the PWS line.

3.4 Well Details

The well pump drop pipe is to be replaced with stainless steel and equipped with a new submersible pump as part of this PWS permit application (Pump Specifications **Appendix 'C'**). A flow meter will be installed prior to the hydropneumatic tank to monitor total water volume from the well. The existing well seal is vented with an inverted stainless steel screen. The existing well casing is currently 8" above slab, although during the pump replacement the casing will be extended to 12" above slab.

When the existing well drop pipe was pulled for inspection and replacement, a primary and secondary well sample was pulled and sent to the lab for analysis. The results of this analysis will be supplied to FDEP upon receipt from the lab.

3.5 Statement of Compliance

All above-grade piping shall be ductile iron, galvanized or stainless steel and PVC or HDPE shall be used below grade. All components, equipment, and piping shall be certified under NSF 61/372 and/or FDA 21, in addition all components will be acceptable for use within PWS systems.

If you have any questions or require additional information please feel free to contact me directly at tholley@jsna.com or 850-222-3975 ext 101.

Sincerely,

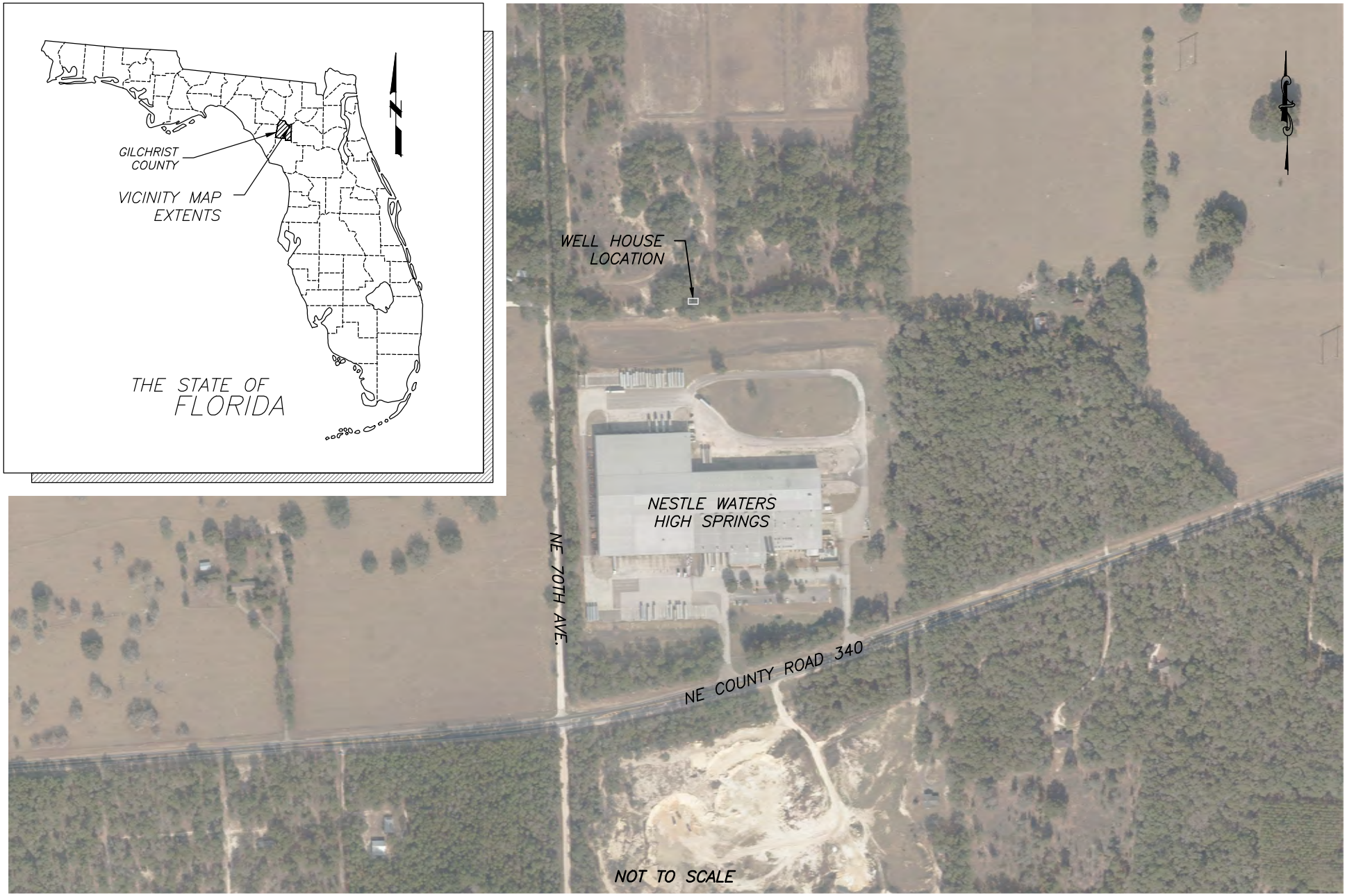
Anthony M. Holley, P.E.
Principal Engineer
Jim Stidham & Associates, Inc.
547 North Monroe St., Suite 201
Tallahassee, FL 32301

This item has been electronically signed and sealed by Anthony M. Holley, PE #74002 on 11/13/2020 using a SHA authentication code.

Printed copies of this document are not considered signed and sealed and the SHA authentication code must be verified on any electronic copies.

APPENDIX A

Figures

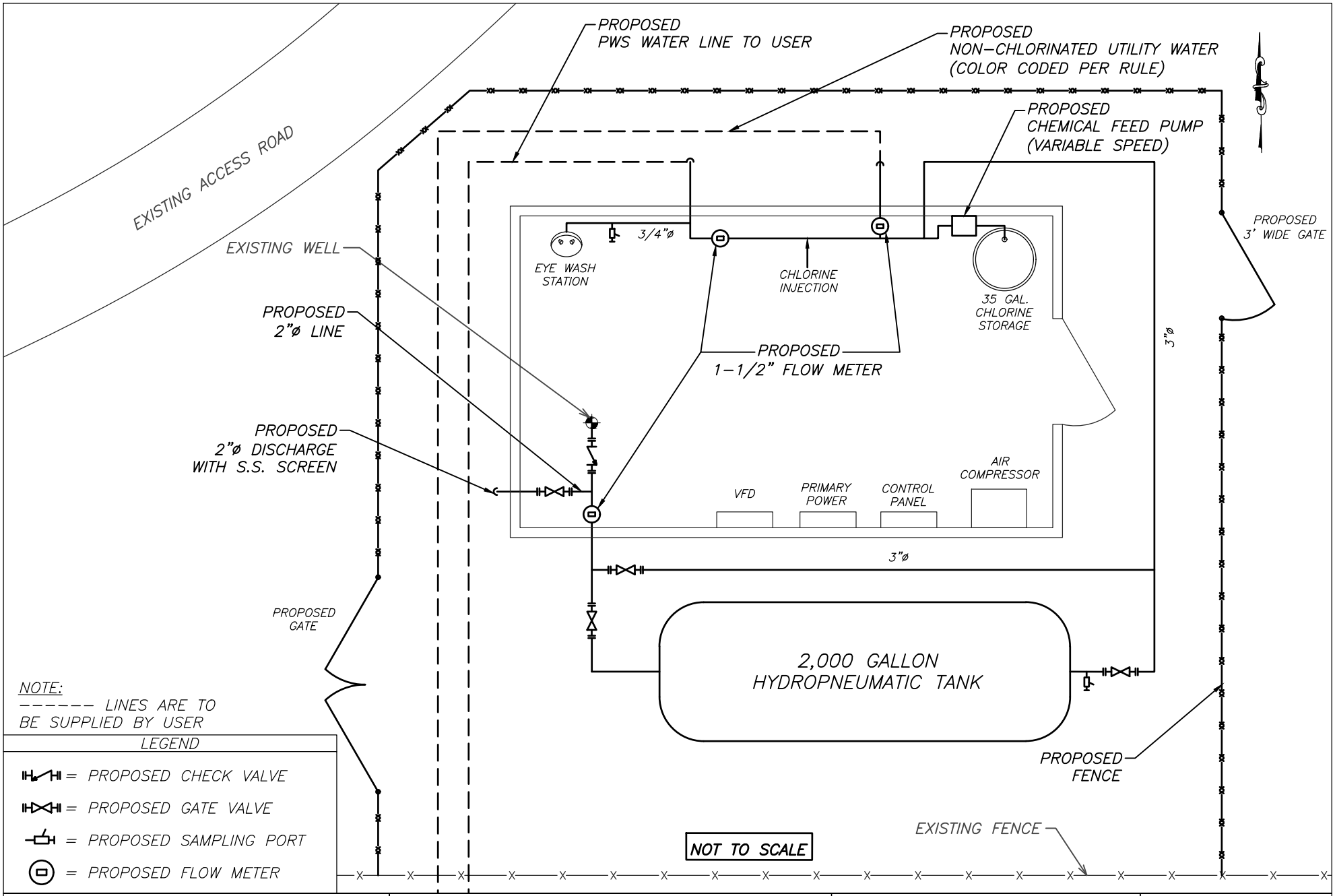


JIM STIDHAM & ASSOCIATES, INC.
HYDROLOGY, GEOLOGY, CIVIL & ENVIRONMENTAL ENGINEERING
547 N. MONROE ST., SUITE 201, TALLAHASSEE, FLORIDA 32301
FACSIMILE: 850/681-0560 TELEPHONE: 850/222-3975

NESTLE WATERS HIGH SPRINGS
7100 NE CO RD 340
GILCHRIST CO., HIGH SPRINGS, FL 32643

LOCATION MAP

FIGURE 1
PROJECT 3267



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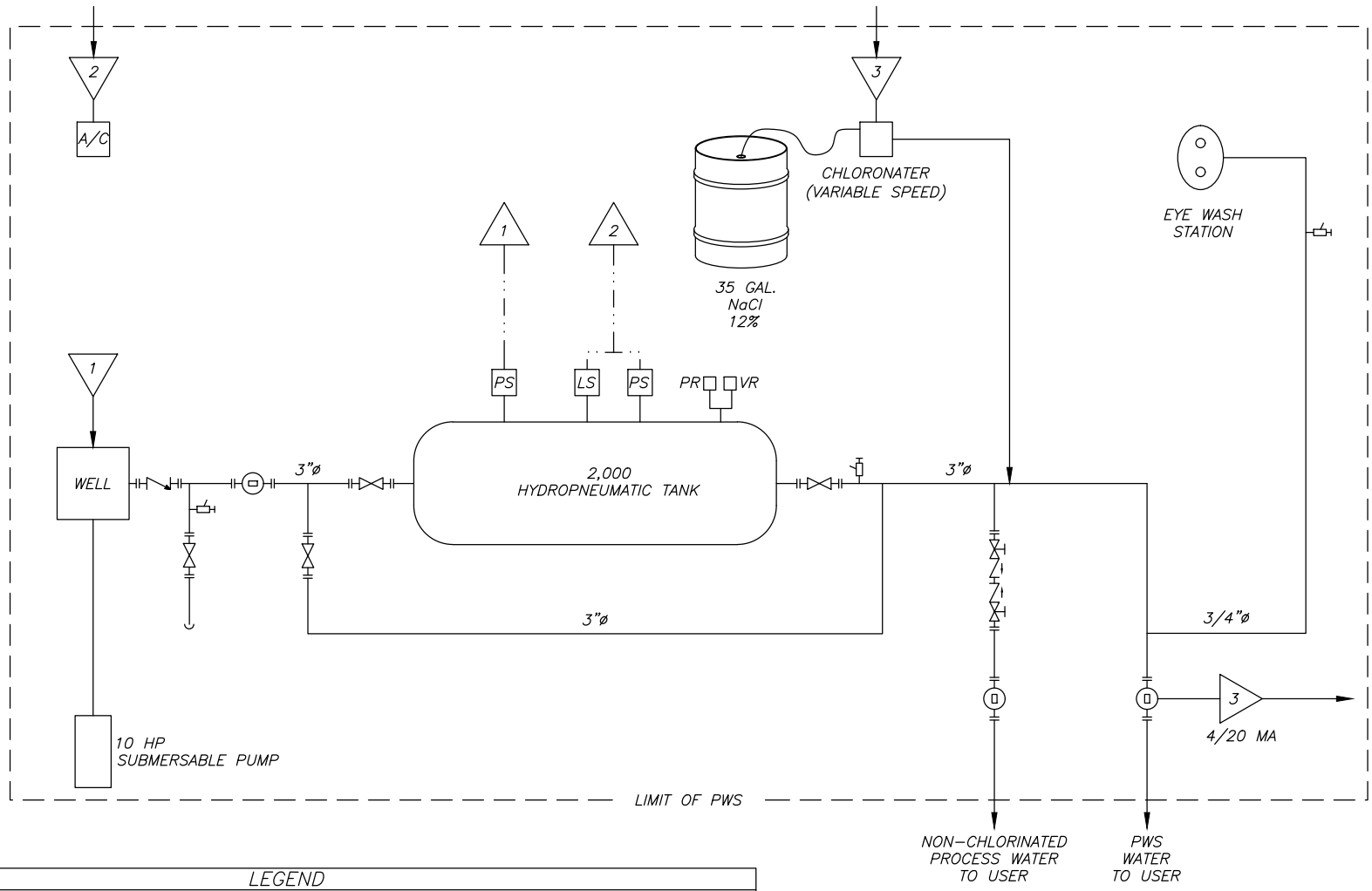
NESTLE WATERS HIGH SPRINGS
7100 NE CO RD 340
GILCHRIST CO., HIGH SPRINGS, FL 32643

SITE MAP & PIPING LAYOUT

FIGURE
2
PROJECT
5013-006



LEGEND

= PROPOSED CHECK VALVE

= PROPOSED GATE VALVE

= PROPOSED SAMPLING PORT

= PROPOSED FLOW METER

= PROPOSED BACK FLOW PREVENTER

PS – PRESSURE TRANSMITTER

LS – LEVEL TRANSMITTER

PR – PRESSURE RELIEF

VR – VACUUM RELIEF

A/C – AIR COMPRESSOR

NOT TO SCALE

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NESTLE WATERS HIGH SPRINGS
7100 NE CO RD 340
GILCHRIST CO., HIGH SPRINGS, FL 32643

PROCESS FLOW DIAGRAM

FIGURE
3
PROJECT
5013-006

APPENDIX B

Design Data

PWS and Well Water Demand Calculations:

Employee Service Size: 110 combined workers and truckers

Estimated per capita flow: 120 gpcd

$$110\ service\ population * 120\ estimated\ gpd\ per\ capita = 13{,}200\ gpd$$

Estimated Employee usage per day: 13,200 gpd

Estimated Industrial usage per day: 17,000 gpd

$$13{,}200\ gpd + 17{,}000\ gpd = 30{,}200\ gpd$$

Estimated Average Daily Flow of PWS (ADF_{PWS}): 30,200 gpd

Peaking Factor = 2.5

$$30{,}200\ gpd * 2.5\ peaking\ factor = 75{,}500\ gpd \sim 80{,}000\ gpd$$

Maximum Hourly Demand Peaking Factor: $\frac{30{,}200\ gpd}{24\frac{hr}{day}} * 4 = 5{,}033\ gph$

Estimated Maximum Hour Water Demand (MHD) = 5,033 gph

Estimated Maximum Daily Flow of PWS (MDF_{PWS}) = 80,000 gpd

Estimated Non-Chlorinate Industrial Water Demand = 20,000 gpd

Estimated Maximum Daily Flow from Well (MDF_T)= 100,000 gpd

10-year population projection: Facility expansion is not expected within 10 years; required flow to remain consistent over this period of time.

Chlorination Equipment:

Estimate Maximum Chlorine Dosage: 4.0 ppm

Chlorination Capacity Required:

$$\frac{\frac{MDF_{PWS}}{1440\frac{min}{day}} * 0.3785 * Dosage}{CL_{Strength}(\%)} = \frac{\frac{80{,}000\ mgd}{1440\frac{min}{day}} * 0.3785 * 4.0ppm}{12} = 7\ mL/\min \sim 2.66\frac{gal}{day}$$

Hydropneumatic Tank:

- Size 72” dia. X 11’-0” OAL (8’ Shell)
- Volume 2,000 gallons
- Max working pressure 125 psi
- Nominal working pressure 70-90 psi
- Hydrostatic test pressure 162.5 psi
- Code ASME code & stamped
- Saddles welded to tank shell Two (2) 6’ high

Pump Cycle Times & Volumes:

Low Water Level set at 20% of tank volume:	~403 gallons of water
High Water Level set at 35% of tank volume:	~727 gallons of water
Usable volume of water:	~324 gallons of water

Estimated Cycle Time:

- Draw down time (Average) @ 70 gpm flow rate = 4 minutes - 38 seconds
- Pump up time (Average) @ 30 gpm flow rate = 10 minutes – 48 seconds
- Total Average pump cycle time is = 15 minutes – 26 seconds or 4 pump cycles per hour

APPENDIX C

Equipment Specifications

Proposed Equipment:

1. Well Pump: Goulds model 85GS100
2. Flow Meters: Proline Promag W 400 Electromagnetic Flow Meter
3. Chlorinator: Chem Tech XP008LVHX
4. Chlorine: 12% UltraChlor

TECHNICAL BROCHURE
B35-85GS

FEATURES

Powered for Continuous Operation: All ratings are within the working limits of the motor as recommended by the motor manufacturer. Pump can be operated continuously without damage to the motor.

Field Serviceable: Units have left hand threads and are field serviceable with common tools and readily available repair parts.

Sand Handling Design: Our face clearance, floating impeller stack has proven itself for over 50 years as a superior sand handling, durable pump design.

FDA Compliant Non-Metallic Parts: Impellers, diffusers and bearing spiders are constructed of glass filled engineered composites. They are corrosion resistant and non-toxic.

Discharge Head/Check Valve: Cast 303 stainless steel for strength and durability. Two cast-in safety line loops for installer convenience. The built-in check valve is constructed of stainless steel and FDA compliant BUNA rubber for abrasion resistance and quiet operation.

Motor Adapter: Cast 303 stainless steel for rigid, accurate alignment of pump and motor. Easy access to motor mounting nuts using standard open end wrench.

Stainless Steel Casing: Polished stainless steel is strong and corrosion resistant.

Hex Shaft Design: Six sided shafts for positive impeller drive.

Engineered Polymer Bearings: The proprietary, engineered polymer bearing material is strong and resistant to abrasion and wear. The enclosed upper bearing is mounted in a durable Noryl® bearing spider for excellent abrasion resistance.

e-GS

35GS, 45GS, 65GS & 85GS

35-85 GPM 1-10HP, 60 HZ, SUBMERSIBLE PUMPS

GOULDS WATER TECHNOLOGY
a xylem brand

WATER END DATA

Series	Model	Required HP	Stages	Water End	
				Length (in)	Weight (lbs)
35GS	35GS10	1	6	14.2	8
	35GS15	1.5	8	16.6	9
	35GS20	2	10	19.1	10
	35GS30	3	14	24.0	13
	35GS50	5	23	36.4	20
	35GS75	7.5	36	53.0	28
	35GS100	10	46	65.2	34
45GS	45GS15	1.5	5	12.9	8
	45GS20	2	7	15.4	9
	45GS30	3	10	19.0	10
	45GS50	5	17	27.7	15
	45GS75	7.5	25	38.9	21
	45GS100	10	34	50.6	27
65GS	65GS15	1.5	6	19.1	10
	65GS20	2	7	21.2	11
	65GS30	3	10	27.4	12
	65GS50	5	16	41.2	18
	65GS75	7.5	26	62.3	35
	65GS100	10	33	76.8	42
85GS	85GS30	3	8	29.4	13
	85GS50	5	14	42.8	18
	85GS75	7.5	21	63.8	35
	85GS100	10	27	79.9	41

NOMENCLATURE – SOLD AS WATER ENDS ONLY

35 GS 20

GPM at — 35, 45, 65, 85
Best Efficiency

GS Pump Series

Horsepower Code

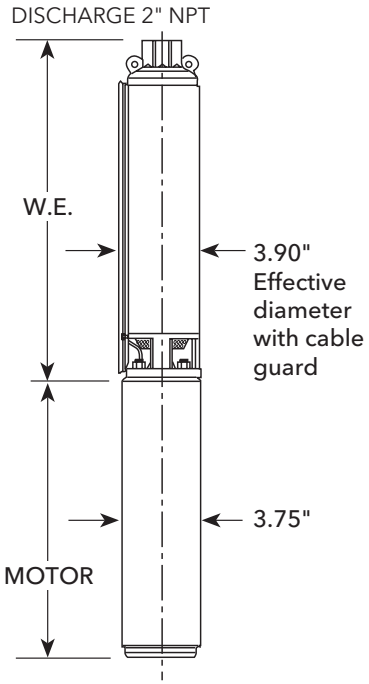
10 = 1
15 = 1 1/2
20 = 2
30 = 3
50 = 5
75 = 7 1/2
100 = 10

SPECIFICATIONS

Model	Flow Range GPM	Horse-Power Range	Best Efficiency GPM	Discharge Connection	Minimum Well Size	Rotation
35GS	10-50	1.0 - 10	35	2"	4"	CCW
45GS	20 - 65	1.5 - 10	45	2"	4"	CCW
65GS	30 - 80	1.5 - 10	65	2"	4"	CCW
85GS	40 - 120	3.0 - 10	85	2"	4"	CCW

"GS" SERIES MATERIALS OF CONSTRUCTION

Part Name	Material
Discharge Head	AISI 303 SS
Check Valve Poppet	AISI 303 SS
Check Valve Seal	BUNA, FDA Compliant
Check Valve Seat	AISI 304 SS
Check Valve Retaining Ring	AISI 302 SS
Bearing Spider - Upper	Noryl
Bearing	Proprietary Engineered Polymer
Klipring	AISI 301 SS
Diffuser	Noryl
Impeller	Noryl
Bowl	AISI 304 SS
Intermediate Sleeve*	AISI 304 SS, Powder Metal
Intermediate Shaft Coupling*	AISI 304 SS, Powder Metal
Intermediate Bearing Spider*	Noryl
Intermediate Bearing Spider*	AISI 303 SS
Shim	AISI 304 SS
Screws - Cable Guard	AISI 304 SS
Motor Adapter	AISI 303 SS
Casing	AISI 304 SS
Shaft	17-4 PH Stainless Steel
Coupling	AISI 304 SS, Powder Metal
Cable Guard	AISI 304 SS
Suction Screen	AISI 304 SS



CENTRIPRO 4" SINGLE-PHASE MOTORS

Order No.	Type	HP	Volts	Length in. (mm)	Weight lb. (kg.)
M10422	2-wire PSC	1	230	13.3 (337)	24.5 (11.1)
M15422		1.5		14.9 (378)	28.9 (13.1)
M10412	3-wire	1	230	11.7 (297)	23.1 (10.5)
M15412		1.5		13.6 (345)	27.4 (12.4)
M20412		2		15.1 (383)	31.0 (14.1)
M30412		3		18.3 (466)	40.0 (18.1)
M50412		5		27.7 (703)	70.0 (31.8)

CENTRIPRO 4" THREE-PHASE MOTORS

Order No.	HP	Volts	Length in. (mm)	Weight lb. (kg.)
M10430	1	200	11.7 (297)	22 (10.4)
M15430	1.5		11.7 (297)	22 (10.4)
M20430	2		13.8 (351)	28 (12.7)
M30430	3		15.3 (389)	32 (14.5)
M50430	5		21.7 (550)	55 (24.9)
M75430	7.5		27.7 (703)	70 (31.8)
M10432	1	230	11.7 (297)	23 (10.4)
M15432	1.5		11.7 (297)	23 (10.4)
M20432	2		13.8 (351)	28 (12.7)
M30432	3		15.3 (389)	32 (14.5)
M50432	5		21.7 (550)	55 (24.9)
M75432	7.5		27.7 (703)	70 (31.8)
M10434	1	460	11.7 (297)	23 (10.4)
M15434	1.5		11.7 (297)	23 (10.4)
M20434	2		13.8 (351)	28 (12.7)
M30434	3		15.3 (389)	32 (14.5)
M50434	5		21.7 (550)	55 (24.9)
M75434	7.5		27.7 (703)	70 (31.8)
M100434	10		–	–
M15437	1.5	575	11.7 (297)	23 (10.4)
M20437	2		15.3 (389)	32 (14.5)
M30437	3		15.3 (389)	32 (14.5)
M50437	5		27.7 (703)	70 (31.8)
M75437	7.5		27.7 (703)	70 (31.8)

NEMA MOTOR

- Corrosion resistant stainless steel construction.
- Built-in surge arrestor is provided on single phase motors through 5 HP.
- Stainless steel splined shaft.
- Hermetically sealed windings.
- Replaceable motor lead assembly.
- NEMA mounting dimensions.
- Control box is required with 3 wire single phase units.
- Three phase units require a magnetic starter with three leg Class 10 overload protection.

AGENCY LISTINGS

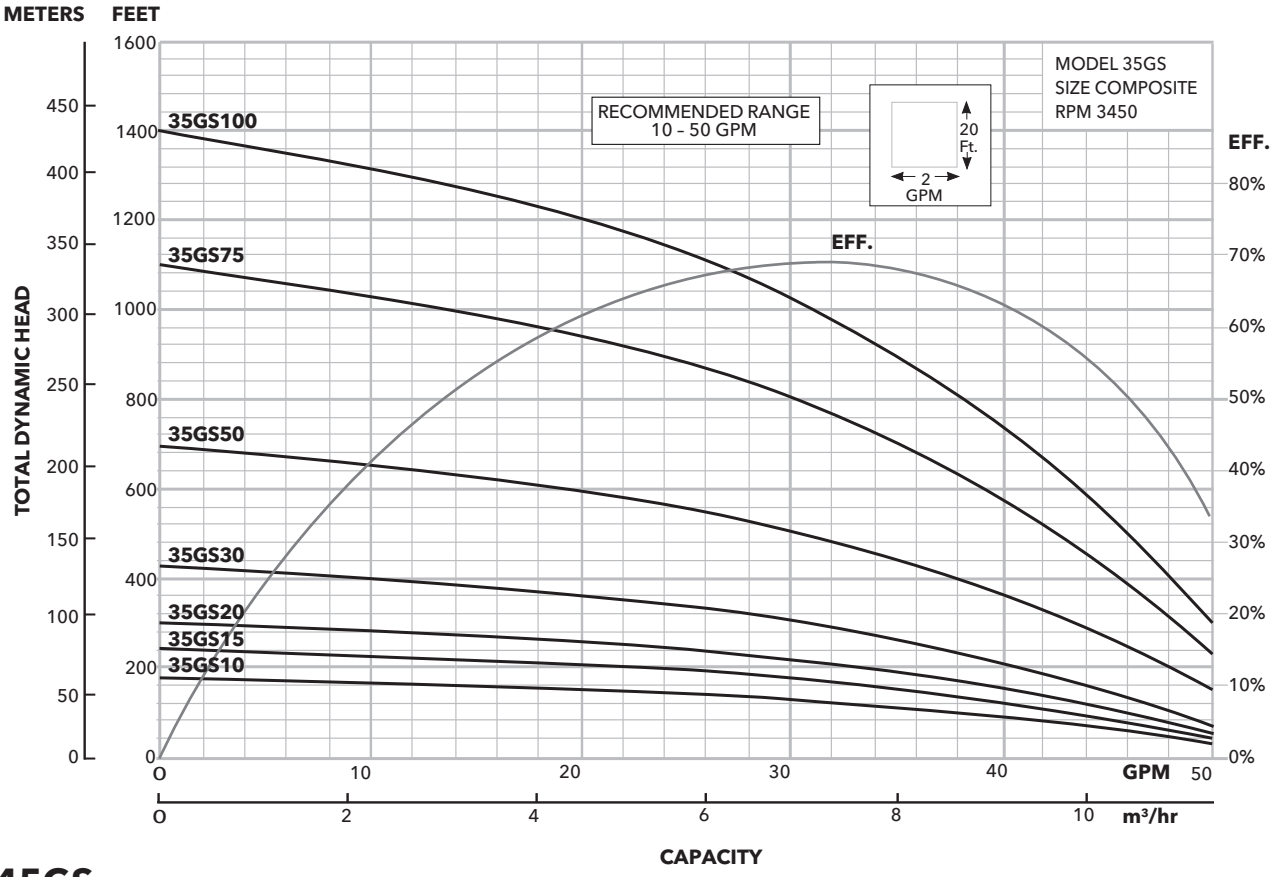
CentriPro Motor - tested to UL778 and CAN 22.2 by CSA International (Canadian Standards Association)

CentriPro Motor - Certified to NSF/ANSI 61, Annex G, Drinking Water System Components 4P49

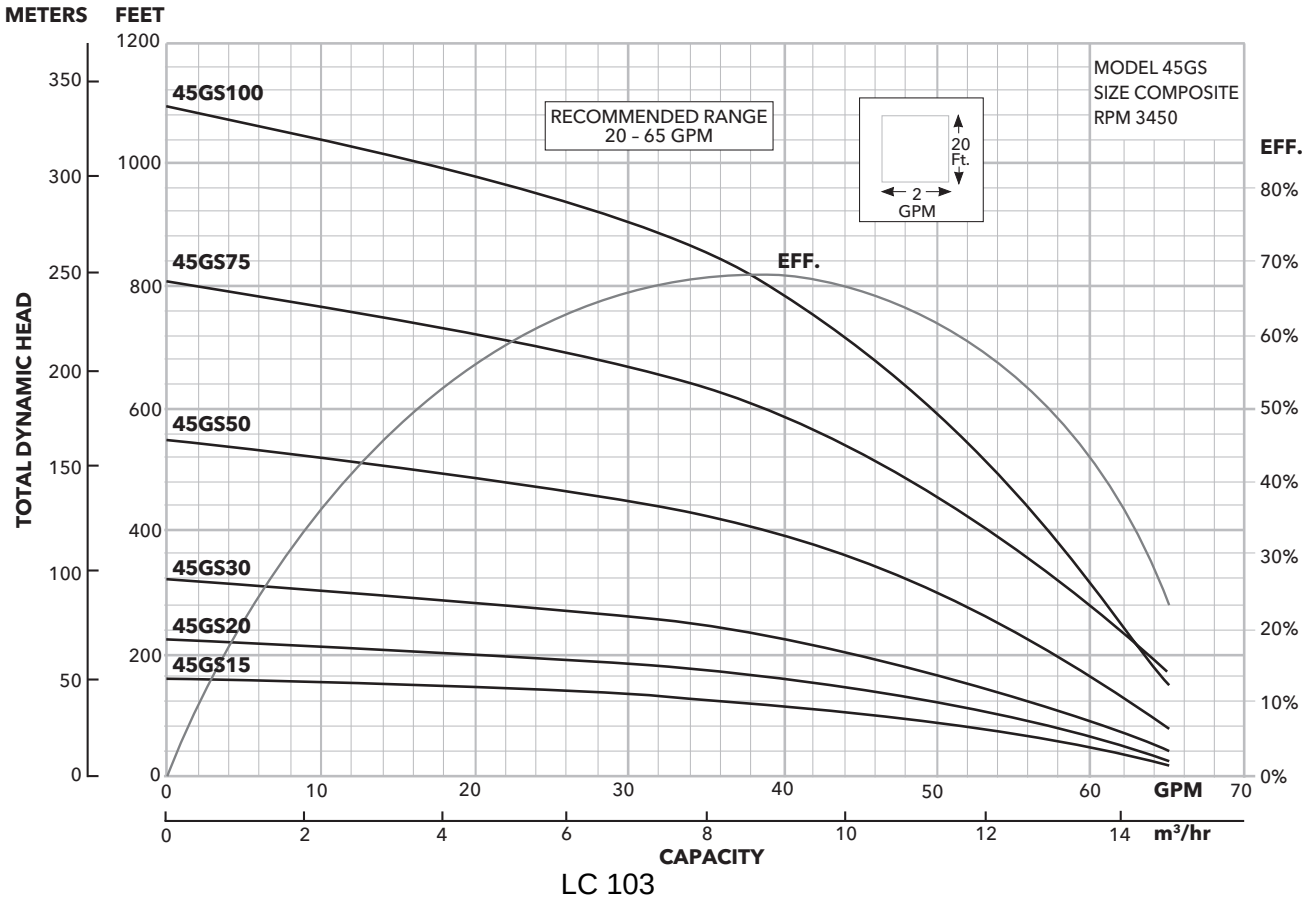
NSF/ANSI 372 – Drinking Water System Components – Lead Content

CLASS 6853 01 - Low Lead Content Certification Program - - Plumbing Products

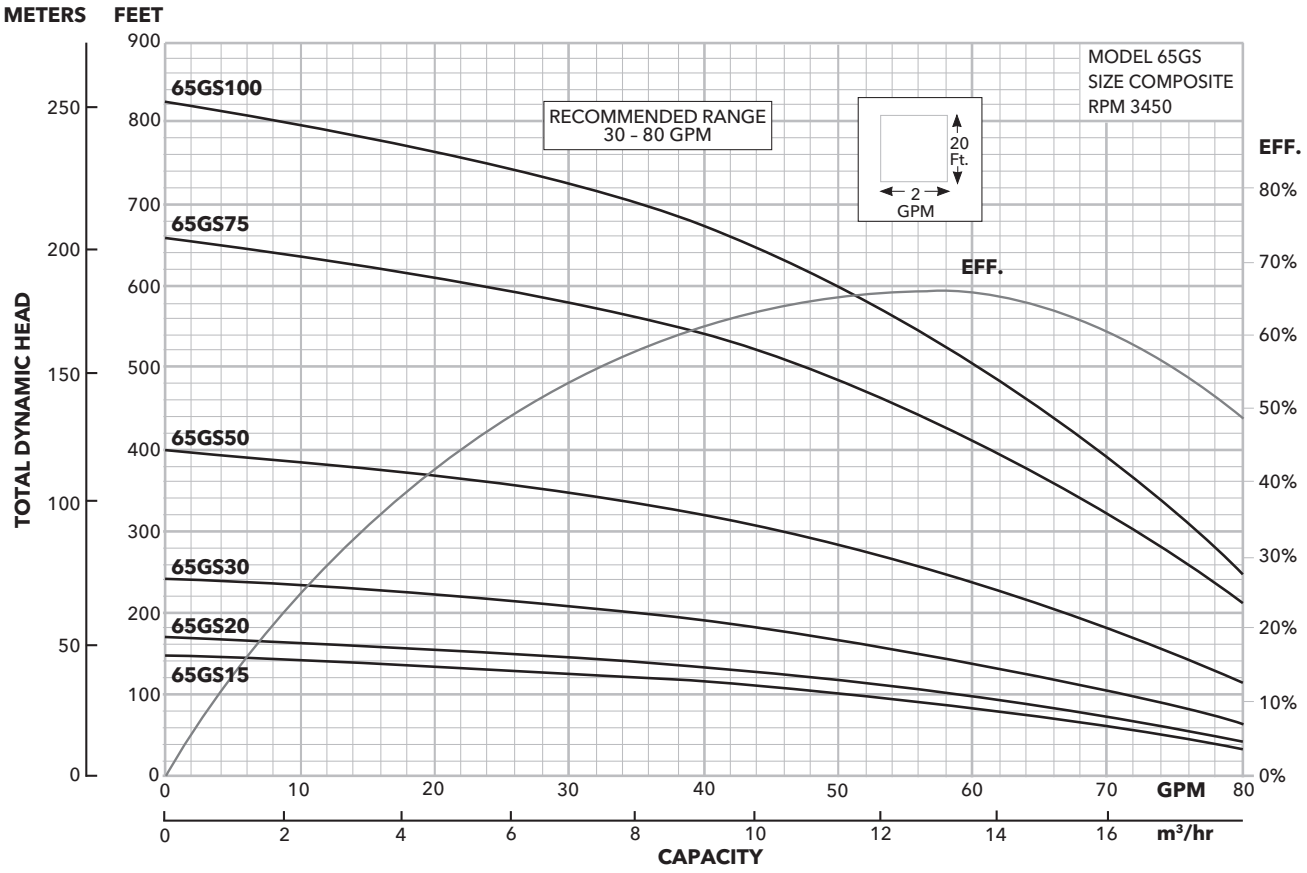
Model 35GS



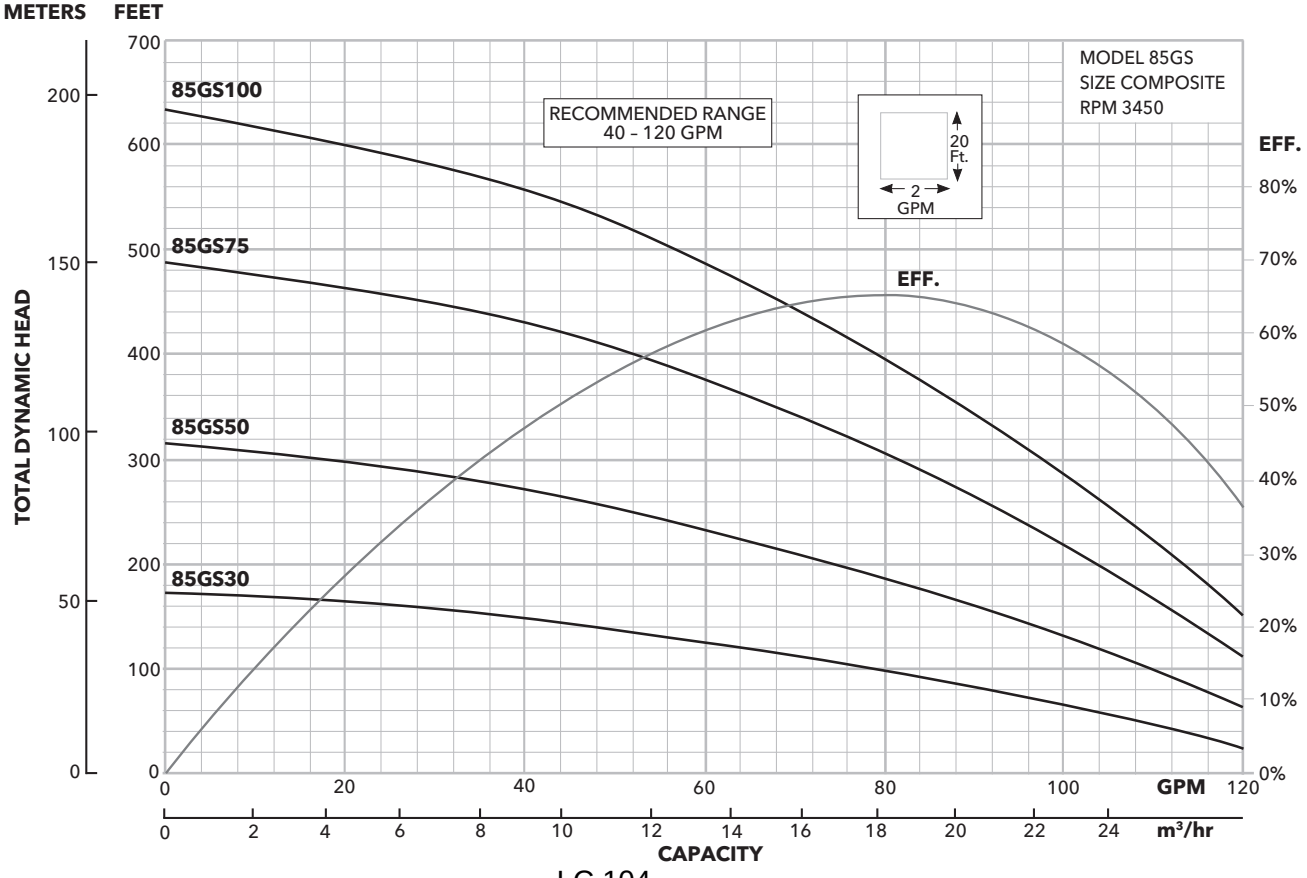
Model 45GS



Model 65GS



Model 85GS



MODEL 35GS

SELECTION CHART

Horsepower Range 1 – 3, Recommended Range 10 – 50 GPM, 60 Hz, 3450 RPM

Pump Model	HP	PSI	Depth to Water in Feet/Ratings in GPM (Gallons per Minute)																										
			20	40	60	80	100	120	140	160	180	200	220	240	260	280	300	320	340	360	380	400	420	440	460	480	520	560	600
35GS10	1	0		49	46	42	38	33	26	15																			
		20	44	40	36	31	23	11																					
		30	40	36	30	22																							
		40	35	29	20																								
		50	28	18																									
		60	16																										
Shut-off PSI			69	60	52	43	34	26	17	8																			
35GS15	1½	0			48	46	43	40	37	33	29	23	14																
		20	47	45	43	39	36	32	28	21	10																		
		30	45	42	39	35	32	27	19																				
		40	42	38	35	31	26	18																					
		50	38	34	30	25	16																						
		60	34	29	24	15																							
Shut-off PSI			97	88	79	71	62	53	45	36	27	19	10																
35GS20	2	0			50	48	46	44	42	39	37	34	30	26	20	12													
		20	49	47	45	43	41	38	36	33	29	24	17																
		30	47	45	43	40	38	35	32	28	23	16																	
		40	44	42	40	38	35	32	27	22	15																		
		50	42	40	37	34	31	27	21	14																			
		60	39	37	34	30	26	20	12																				
Shut-off PSI			123	114	105	97	88	79	71	62	53	45	36	27	19	10													
35GS30	3	0				50	48	47	45	44	42	41	39	38	36	34	31	28	25	21	16	10							
		20		49	48	46	45	43	42	40	39	37	35	33	30	27	24	19	14										
		30	49	47	46	45	43	42	40	39	37	35	33	30	27	23	18	13											
		40	47	46	44	43	41	40	38	37	35	32	30	26	22	18	12												
		50	46	44	43	41	40	38	36	34	32	29	26	22	17	11													
		60	44	42	41	39	38	36	34	31	29	25	21	16	10														
Shut-off PSI			176	168	159	150	142	133	124	116	107	98	90	81	72	64	55	46	38	29	20	12							

Horsepower Range 5-10, Recommended Range 10 – 50 GPM, 60 Hz, 3450 RPM

Pump Model	HP	PSI	Depth to Water in Feet/Ratings in GPM (Gallons per Minute)																										
			50	100	150	200	250	300	350	400	450	500	550	600	650	700	750	800	850	900	950	1000	1050	1100	1150	1200	1250	1300	1350
35GS50	5	0			50	48	46	43	41	38	35	31	26	19	11														
		20		50	48	46	44	41	38	35	31	26	20	12															
		30		49	47	45	42	40	37	33	29	24	16																
		40	50	48	46	44	41	38	35	31	27	20	12																
		50	49	47	45	43	40	37	34	29	24	17																	
			48	46	44	41	39	35	32	27	21	13																	
Shut-off PSI			280	259	237	215	194	172	150	129	107	85	64	42															
35GS75	7½	0					50	48	47	46	44	43	41	39	37	35	33	30	27	24	19	14							
		20				50	49	47	46	44	43	41	39	37	35	33	31	28	24	20	14								
		30			50	49	48	47	45	44	42	40	38	37	34	32	29	26	22	17	12								
		40			50	49	47	46	44	43	41	39	38	36	33	31	28	24	20	15									
		50		50	49	48	47	45	44	42	40	39	37	35	32	30	26	22	18	12									
				50	49	47	46	45	43	41	40	38	36	34	31	28	25	20	15										
Shut-off PSI			453	431	410	388	366	345	323	301	280	258	236	215	193	171	150	128	106	85	63	42							
35GS100	10	0							49	48	47	46	45	44	42	41	40	38	37	35	33	31	29	26	24	20	16	11	
		20						49	48	47	46	45	44	42	41	40	38	37	35	33	31	29	27	24	20	16	12		
		30						49	48	47	45	44	43	42	40	39	38	36	34	32	30	28	25	22	19	14			
		40					49	48	47	46	45	44	43	41	40	38	37	35	34	32	29	27	24	21	17	12			
		50					49	48	47	46	44	43	42	41	39	38	36	34	33	31	28	26	23	19	15	10			
						49	48	47	46	45	44	43	41	40	39	37	35	34	32	30	27	24	21	17	13				
Shut-off PSI			583	561	540	518	496	475	453	431	410	388	366	345	323	302	280	258	237	215	193	172	150	128	107	85	63	42	

MODEL 45GS

SELECTION CHART

Horsepower Range 1½ – 5, Recommended Range 20 – 65 GPM, 60 Hz, 3450 RPM

Pump Model	HP	PSI	Depth to Water in Feet/Ratings in GPM (Gallons per Minute)																										
			20	40	60	80	100	120	140	160	180	200	220	240	260	280	300	320	340	360	380	400	440	480	520	560	600	640	
45GS15	1½	0	64	61	57	52	46	37	23																				
		20	55	50	44	34																							
		30	49	43	32																								
		40	41	30																									
		50	27																										
		60																											
Shut-off PSI			61	52	44	35	26	18	9																				
45GS20	2	0		62	60	57	53	49	45	40	32																		
		20	59	56	52	48	43	38	28																				
		30	55	51	47	43	36	26																					
		40	51	47	42	35	25																						
		50	46	41	34	22																							
		60	40	46	37	38	28	29																					
Shut-off PSI			88	80	71	63	54	45	37	28	19																		
45GS30	3	0		65	62	60	59	56	53	50	47	45	41	37	30	21													
		20	62	60	58	55	52	49	47	44	40	35	28																
		30	60	58	55	52	49	46	43	39	34	26																	
		40	57	54	51	49	46	42	38	33	25																		
		50	54	51	48	45	42	38	32	23																			
		60	51	48	45	41	37	31	22																				
Shut-off PSI			130	121	113	104	95	87	78	69	61	52	43	35	26	17													
45GS50	5	0				65	63	62	61	60	59	58	56	55	53	51	50	48	46	44	42	39	32	22					
		20		64	63	61	60	59	58	57	56	54	53	51	49	47	46	43	41	38	35	31	20						
		30	64	62	61	60	59	58	57	55	54	52	51	49	47	45	43	41	38	34	30	25							
		40	62	61	60	59	58	57	55	54	52	50	49	47	45	43	40	37	33	29	24								
		50	61	60	59	58	56	55	53	52	50	48	47	45	42	40	37	33	28	23									
		60	60	59	58	56	55	53	52	50	48	46	44	42	39	36	32	28	22										
Shut-off PSI			228	220	211	202	194	185	176	168	159	150	142	133	124	116	107	98	90	81	72	64	46	29					

Horsepower Range 7½ – 10, Recommended Range 20-65 GPM, 3450 RPM

Pump Model	HP	PSI	Depth to Water in Feet/Ratings in GPM (Gallons per Minute)																										
			40	80	120	160	200	240	280	320	360	400	440	480	520	560	600	640	680	720	760	800	840	880	920	960	1000	1040	
45GS75	7½	0					63	62	60	58	56	53	51	48	46	43	39	34	28	21									
		20				63	61	60	57	55	53	50	48	45	42	38	33	27	19										
		30			64	62	60	58	56	54	51	49	46	43	40	35	30	23											
		40		65	63	61	59	57	55	52	50	47	45	41	37	32	26												
		50		64	62	60	58	56	54	51	49	46	43	39	35	29	21												
		60	65	63	61	59	57	55	52	50	47	44	41	37	31	25													
Shut-off PSI			332	315	298	280	263	246	228	211	194	177	159	142	125	107	90	73	55	38									
45GS100	10	0				65	64	63	61	60	58	57	55	54	53	51	50	48	46	44	42	39	36	32	28	23			
		20			65	64	63	61	60	58	57	55	54	52	51	49	48	46	44	42	39	36	32	27	22				
		30		65	64	63	62	60	59	57	56	54	53	52	50	49	47	45	43	40	37	33	29	24					
		40		65	64	62	61	60	58	56	55	54	52	51	49	48	46	44	41	38	35	31	26	21					
		50	65	64	63	62	60	59	57	56	54	53	51	50	48	47	45	42	40	36	33	28	23						
		60	65	64	62	61	59	58	56	55	53	52	50	49	47	45	43	41	38	34	30	26	20						
Shut-off PSI			456	439	422	404	387	370	353	335	318	301	283	266	249	231	214	197	179	162	145	127	110	93	75	58			

MODEL 65GS

SELECTION CHART

Horsepower Range 1½ – 5, Recommended Range 30 – 80 GPM, 60 Hz, 3450 RPM

Pump Model	HP	PSI	Depth to Water in Feet/Ratings in GPM (Gallons per Minute)																					
			20	40	60	80	100	120	140	160	180	200	220	240	260	280	300	320	340	360	380	400	440	480
65GS15	1½	0		78	70	61	51	36																
		20	68	58	47	30																		
		30	57	45																				
		40	42																					
		50																						
		60																						
Shut-off PSI			55	46	38	29	20	12																
65GS20	2	0		81	74	67	59	48	35															
		20	72	64	56	45	30																	
		30	63	54	43																			
		40	53	41																				
		50	39																					
		60																						
Shut-off PSI			65	56	48	39	30	22	13															
65GS30	3	0			81	76	71	66	59	53	45	35												
		20	80	75	69	64	57	51	42	32														
		30	74	69	63	56	49	41	30															
		40	68	62	55	48	39																	
		50	61	54	47	38																		
		60	53	46	36																			
Shut-off PSI			96	87	79	70	61	53	44	35	27	18												
65GS50	5	0						80	77	73	70	67	63	59	55	50	45	39	32					
		20				79	76	72	69	66	62	58	54	49	44	37	30							
		30			78	75	72	69	65	61	57	53	48	43	36									
		40		78	75	71	68	64	61	57	52	47	42	35										
		50	77	74	71	67	64	60	56	52	47	41	34											
		60	74	70	67	63	59	55	51	46	40	33												
Shut-off PSI			164	155	147	138	129	121	112	103	95	86	77	69	60	51	43	34	26					

Horsepower Range 7½ – 10, Recommended Range 30 – 80 GPM, 60 Hz, 3450 RPM

Pump Model	HP	PSI	Depth to Water in Feet/Ratings in GPM (Gallons per Minute)																					
			40	80	120	160	200	240	280	320	360	400	440	480	520	560	600	640	680	720	760	800	840	880
65GS75	7½	0						78	74	70	66	61	56	50	44	35								
		20				80	77	73	69	65	60	55	50	42	33									
		30				79	75	71	67	62	57	52	46	38										
		40			80	77	73	69	64	60	54	49	41	32										
		50			78	75	70	66	62	57	51	45	36											
		60		79	76	72	68	64	59	54	48	40	30											
Shut-off PSI			268	251	233	216	199	181	164	147	129	112	95	77	60	43								
65GS100	10	0						80	78	75	72	69	66	62	58	54	50	45	39	31				
		20					80	78	75	72	69	65	62	58	54	49	44	37	30					
		30					79	76	73	70	67	63	59	55	51	46	40	33						
		40				80	77	74	71	68	65	61	57	53	48	43	36							
		50				78	76	73	69	66	63	59	55	50	45	39	32							
		60			79	77	74	71	68	64	60	57	52	48	42	35								
Shut-off PSI			339	322	305	288	270	253	236	218	201	184	166	149	132	114	97	80	62	45				

MODEL 85GS

SELECTION CHART

Horsepower Range 3 – 10, Recommended Range 40 – 120 GPM, 60 Hz, 3450 RPM

Pump Model	HP	PSI	Depth to Water in Feet/Ratings in GPM (Gallons per Minute)																						
			20	40	60	80	100	120	140	160	180	200	220	240	260	280	300	320	340	360	380	400	440	480	520
85GS30	3	0		112	103	92	79	64	48																
		20	100	88	74	59	42																		
		30	86	72	57	39																			
		40	70	54																					
		50	52																						
		60																							
Shut-off PSI			66	58	49	40	32																		
85GS50	5	0				114	109	103	97	90	83	74	66	57	47										
		20	119	113	107	101	95	88	80	72	63	54	43												
		30	112	106	101	94	87	79	70	62	52	41													
		40	105	100	93	85	77	69	60	51	40														
		50	99	92	84	76	68	59	49																
		60	91	83	75	66	58	48																	
Shut-off PSI			128	119	111	102	93	85	76	67	59	50	41	33	24										
85GS75	7½	0						119	115	111	108	104	100	95	91	86	81	76	71	65	59	52			
		20				118	114	110	106	102	98	94	89	84	80	74	69	63	57	50	41				
		30			117	113	110	106	102	98	93	88	84	79	74	68	62	56	48	40					
		40	120	116	113	109	105	101	97	92	88	83	78	73	67	61	55	47							
		50	116	112	109	105	101	96	92	87	82	77	72	66	60	54	46								
		60	112	108	104	100	95	91	86	81	76	71	66	59	53	45									
Shut-off PSI			203	194	185	177	168	159	151	142	133	125	116	107	99	90	81	73	64	55	47	38			
85GS100	10	0								119	116	114	111	108	104	101	97	94	90	87	83	79	71	62	52
		20						118	116	113	110	107	103	100	96	93	89	85	82	78	74	70	61	50	
		30				120	118	115	112	109	106	103	99	96	92	89	85	81	77	73	69	65	55	42	
		40			120	117	115	112	109	106	102	99	95	92	88	84	81	77	73	68	64	59	48		
		50		120	117	114	111	108	105	102	98	95	91	87	84	80	76	72	68	63	58	53	40		
		60	119	117	114	111	108	105	101	98	94	91	87	83	79	75	71	67	63	58	52	46			
Shut-off PSI			265	257	248	239	231	222	213	205	196	188	179	170	162	153	144	136	127	118	110	101	84	66	49

PART NUMBER CROSS REFERENCE

Old GS Hi Cap Part Number	NEW eGS Hi Cap Part Number
33GS10	35GS10
33GS15	35GS15
33GS20	35GS20
33GS30	35GS30
33GS50	35GS50
33GS75	35GS75
33GS100	35GS100
40GS15	45GS15
40GS20	45GS20
40GS30	45GS30
40GS50	45GS50
40GS75	45GS75
-	45GS100
55GS15	65GS15
55GS20	65GS20
55GS30	65GS30
55GS50	65GS50
55GS75	65GS75
55GS100	65GS100
60GS15	65GS15
60GS20	65GS20
60GS30	65GS30
60GS50	65GS50
60GS75	65GS75
75GS30	85GS30
75GS50	85GS50
75GS75	85GS75
75GS100	85GS100
80GS30	85GS30
80GS50	85GS50
80GS75	85GS75

* Determined using best efficinecy point, see curves for more detail

NOTES

Xylem |'zīləm|

1) The tissue in plants that brings water upward from the roots;
2) a leading global water technology company.

We're a global team unified in a common purpose: creating innovative solutions to meet our world's water needs. Developing new technologies that will improve the way water is used, conserved, and re-used in the future is central to our work. We move, treat, analyze, and return water to the environment, and we help people use water efficiently, in their homes, buildings, factories and farms. In more than 150 countries, we have strong, long-standing relationships with customers who know us for our powerful combination of leading product brands and applications expertise, backed by a legacy of innovation.

For more information on how Xylem can help you, go to www.xyleminc.com

xylem
Let's Solve Water

Xylem Inc.
2881 East Bayard Street Ext., Suite A
Seneca Falls, NY 13148
Phone: (866) 325-4210
Fax: (888) 322-5877
www.gouldswatertechnology.com

CHEM-TECH XP Peristaltic Pumps

- **Self-priming with natural degassing action**
- **Ideal for pumping sodium hypochlorite and other gaseous chemicals**
- **2-year warranty**

Dependable CHEM-TECH XP series peristaltic pumps deliver worry-free dosing of a variety of chemicals. Many operators prefer peristaltic pumps because their unique tubing-driven pump heads offer natural degassing and are completely self-priming. This makes them ideal for feeding gaseous chemicals such as sodium hypochlorite.

Pumps feature a three-position rocker switch that sets to on, off or prime. The pump control knob allows output adjustment from 10 to 100%. 2-year warranty (pump tube excluded).

Pumps include: a suction strainer, an injection check valve assembly and 15' of 1/4" OD tubing. **Replacement tube kits include:** one internal tube with ends. **Kopkits™ include:** peristaltic tubing and a head assembly.

THIS PRODUCT HAS BEEN TESTED AND CERTIFIED BY THE WATER QUALITY ASSOCIATION ACCORDING TO NSF/ANSI 61 FOR MATERIALS SAFETY ONLY.

3-Position Rocker Switch

Use with:	sodium hypochlorite, sodium hydroxide, potassium permanganate, sodium bisulfate, ferric chloride (call for compatibility with other chemicals)
Wetted materials:	PVC head and fittings and Norprene® peristaltic tubing
Maximum viscosity:	300 cP
Suction lift:	20 ft dry
Duty cycle:	continuous
Turndown ratio:	10:1
Metering accuracy:	2%
Tubing size:	1/4" OD
Power:	115 VAC (230 VAC and other alternate voltages available as special order)
Shipping weight:	8 lbs

			PUMP		REPL TUBE KIT		KOPKIT	
MFR #	GPD	PSI	STOCK #	EACH	STOCK #	EACH	STOCK #	EACH
XP004LAHX	4	125	69260	$ 429.95	49204	$ 14.73	49208	$ 112.68
XP009LAHX	9	110	69261	429.95	49205	14.73	49209	112.68
XP015LAHX	15	110	69262	429.95	49205	14.73	49209	112.68
XP023LAHX	23	100	69263	429.95	49206	14.73	49210	112.68
XP030LAHX	30	80	69264	429.95	49207	14.49	49211	112.68
XP050LALX	50	40	69265	429.95	49207	14.49	49211	112.68
XP080LALX	80	25	69266	429.95	69267	14.73	69179	112.68

Large LCD Screen

CHEM-TECH XPV Peristaltic Pumps with External Controls

- **Variable speed with LCD display**
- **4-20 mA, Hall effect and dry contact inputs**
- **Flow totalization with just one button press**

CHEM-TECH XPV series pumps combine unparalleled performance, simplicity and value with state-of-the-art electronic controls and variable-speed peristaltic pump technology. They allow a variety of input signal types and onboard timer programs—customize your pump to any application you want.

The pumps' electronic management system matches the variable-speed motor to the real-time dosing requirements. Adjust your dosing using a 4-20 mA signal, Hall-effect or dry-contact pulse input, external stop, or manual operation in fixed speed mode. You can also use a cycle timer to run automatically at set intervals, or a daily timer to add chemicals based on days of the week.

The large LCD screen allows easy programming, and clearly displays operating parameters. The flow totalization menu reports the volume of chemicals pumped with just one button press. You can set the flow verification feature to disable the pump and activate an alarm if flow is interrupted for any reason.

Pumps include: suction strainer, injection check valve, spare pump tube and 15' 1/4" OD tubing. **Replacement tube kits include:** one internal tube with ends. **KOPkit™ includes:** peristaltic pump tubing and a head assembly.

THIS PRODUCT HAS BEEN TESTED AND CERTIFIED BY THE WATER QUALITY ASSOCIATION ACCORDING TO NSF/ANSI 61 FOR MATERIALS SAFETY ONLY.

Use with:	sodium hypochlorite, sodium hydroxide, hydrogen peroxide, ferric chloride, potassium permanganate, sodium bisulfate, hydrochloric acid (call for compatibility with other chemicals)
Wetted materials:	PVC head and fittings and Norprene® peristaltic tubing
Maximum viscosity:	300 cP
Suction lift:	10 ft dry
Duty cycle:	continuous
Turndown ratio:	100:1
Metering accuracy:	±3%
Tubing size:	1/4" OD
Power:	120 VAC, 60 watts (other voltages available)
Shipping weight:	8 lbs

			PUMP		REPL TUBE KIT		KOPKIT	
MFR #	GPD	PSI	STOCK #	EACH	STOCK #	EACH	STOCK #	EACH
XP008LVHX	8	125	49361	$ 779.95	49204	$ 14.73	49208	$ 112.68
XP017LVHX	17	110	49362	779.95	49205	14.73	49209	112.68
XP033LVHX	33	100	49363	779.95	49206	14.73	49210	112.68
XP055LVHX	55	80	49364	779.95	49207	14.49	49211	112.68
XP100LVLX	100	25	49365	779.95	69267	14.73	69179	112.68

Accessories

DESCRIPTION	STOCK #	EACH
Strainer Assembly (No Valve)	49366	$ 19.47
Injection Valve Assembly	66554	25.24
Roller Assembly	49367	55.21
Grease Kit	49368	42.75
Wall Mount Kit w/ Shield	49369	65.61

Certificates and approvals

Currently available certificates and approvals can be called up via the product configurator.

CE mark

The device meets the legal requirements of the applicable EU Directives. These are listed in the corresponding EU Declaration of Conformity along with the standards applied.

Endress+Hauser confirms successful testing of the device by affixing to it the CE mark.

RCM-tick symbol

The measuring system meets the EMC requirements of the "Australian Communications and Media Authority (ACMA)".

Ex approval

The devices are certified for use in hazardous areas and the relevant safety instructions are provided in the separate "Control Drawing" document. Reference is made to this document on the nameplate.

Drinking water approval

- ACS
- KTW/W270
- NSF 61
- WRAS BS 6920

HART certification

HART interface

The measuring device is certified and registered by the FieldComm Group. The measuring system meets all the requirements of the following specifications:
- Certified according to HART 7
- The device can also be operated with certified devices of other manufacturers (interoperability)

Certification PROFIBUS

PROFIBUS interface

The measuring device is certified and registered by the PNO (PROFIBUS User Organization Organization). The measuring system meets all the requirements of the following specifications:
- Certified in accordance with PROFIBUS PA Profile 3.02
- The device can also be operated with certified devices of other manufacturers (interoperability)

Modbus RS485 certification

The measuring device meets all the requirements of the MODBUS/TCP conformity test and has the "MODBUS/TCP Conformance Test Policy, Version 2.0". The measuring device has successfully passed all the test procedures carried out.

EtherNet/IP certification

The measuring device is certified and registered by the ODVA (Open Device Vendor Association). The measuring system meets all the requirements of the following specifications:
- Certified in accordance with the ODVA Conformance Test
- EtherNet/IP Performance Test
- EtherNet/IP PlugFest compliance
- The device can also be operated with certified devices of other manufacturers (interoperability)

Radio approval

The measuring device has radio approval.

For detailed information regarding radio approval, see Special Documentation → 98

Measuring instrument approval

The measuring device is (optionally) approved as a cold water meter (MI-001) for volume measurement in service subject to legal metrological control in accordance with the European Measuring Instruments Directive 2014/32/EU (MID).

The measuring device is qualified to OIML R49: 2013.

Other standards and guidelines

- EN 60529
  Degrees of protection provided by enclosures (IP code)
- EN 61010-1
  Safety requirements for electrical equipment for measurement, control and laboratory use - general requirements
- IEC/EN 61326
  Emission in accordance with Class A requirements. Electromagnetic compatibility (EMC requirements).

The Public Health and Safety Organization

NSF Product and Service Listings

These NSF Official Listings are current as of **Thursday, September 19, 2019** at 12:15 a.m. Eastern Time. Please contact NSF to confirm the status of any Listing, report errors, or make suggestions.

Alert: NSF is concerned about fraudulent downloading and manipulation of website text. Always confirm this information by clicking on the below link for the most accurate information:
http://info.nsf.org/Certified/PwsChemicals/Listings.asp?CompanyName=odyssey&

NSF/ANSI/CAN 60
Drinking Water Treatment Chemicals - Health Effects

Odyssey Manufacturing Company
1484 Massaro Boulevard
Tampa, FL 33619
United States
813-635-0339
Visit this company's website
(http://www.odysseymanufacturing.com)

Facility : Lantana, FL

Sodium Hydroxide

Trade Designation	*Product Function*	*Max Use*
25% Sodium Hydroxide	Corrosion & Scale Control pH Adjustment	200mg/L
50% Sodium Hydroxide	Corrosion & Scale Control pH Adjustment	100mg/L

Sodium Hypochlorite[CL]

Trade Designation	*Product Function*	*Max Use*
Ultrachlor 12.5 Trade Percent Sodium Hypochlorite	Disinfection & Oxidation	70mg/L

[CL] The residual levels of chlorine (hypochlorite ion and hypochlorous acid), chlorine dioxide, chlorate ion, chloramine and disinfection by-products shall be monitored in the finished drinking water to ensure compliance to all applicable regulations.

Facility : Tampa, FL (T1)

Sodium Hypochlorite[CL]

Trade Designation	*Product Function*	*Max Use*
Sodium Hypochlorite 12.5 Trade Percent	Disinfection & Oxidation	94mg/L
Sodium Hypochlorite 12.5 Weight Percent	Disinfection & Oxidation	84 mg/L
Ultrachlor	Disinfection & Oxidation	94mg/L

[CL] The residual levels of chlorine (hypochlorite ion and hypochlorous acid), chlorine dioxide, chlorate ion, chloramine and disinfection by-products shall be monitored in the finished drinking water to ensure compliance to all applicable regulations.

Facility : Tampa, FL (T2)

Sodium Hydroxide

Trade Designation	*Product Function*	*Max Use*
25% Sodium Hydroxide	Corrosion & Scale Control pH Adjustment	200mg/L
50% Sodium Hydroxide	Corrosion & Scale Control pH Adjustment	100mg/L

Sodium Hypochlorite[CL]

Trade Designation	*Product Function*	*Max Use*
Ultrachlor 12.5 Trade Percent Sodium Hypochlorite	Disinfection & Oxidation	70mg/L

[CL] The residual levels of chlorine (hypochlorite ion and hypochlorous acid), chlorine dioxide, chlorate ion, chloramine and disinfection by-products shall be monitored in the finished drinking water to ensure compliance to all applicable regulations.

Number of matching Manufacturers is 1

Number of matching Products is 9

Processing time was 1 seconds

APPENDIX D

Well Information

SUWANNEE RIVER
WATER MANAGEMENT DISTRICT
WELL COMPLETION REPORT

PERMIT # 32169

Owner | Address | City | State | Zip

Contractor Signature | License # | Completion Date | Casing Depth | Total Depth

Type of work: Construct X Repair ___ Abandon ___
Well Use: Private ___ Public X Monitor ___ Irrigation ___
Industrial ___ Other ___
Method: Rotary ___ Cable Tool X Jet ___ Combination ___
Other ___
Casing: Black Steel ___ Galvanized X PVC ___ Other ___
Sags of Grout ___ Interval Grouted ___ Ft. to ___ Ft.
Static Water Level 39 Ft. below Top of Casing
Pumping Water Level ___ Ft. after ___ Hrs. at ___ GPM
Pump Size 2 H.P. Capacity 50 GPM

LOCATION
Located Near ___
County Gilchrist
1/4 1/4 Section Township Range
Subdivision Lot #
Latitude - Longitude

N

Locate in Section

RECEIVED JUN 01 1989

Grout Thickness & Depth	Casing Diam.	Casing Depth	Depth (ft.) From	Depth (ft.) To	Examine cuttings at 20 ft. or smaller intervals and at changes. Give color, grain size and type of material. Note any caving. Indicate producing zones. Attach additional sheets if necessary.
Surf	6"		0	20	Sand
			20	38	Sand - light clay
			38	46	Lime Rock

Driller's Signature | Registration #

SUWANNEE RIVER WATER MANAGEMENT DISTRICT (SRWMD)

APPLICATION FOR WELL PERMITTING

Permit Number 32169

To: Permitting
Route 3, Box 64
Live Oak, Florida 32060
Phone: (904) 362-6909

THIS FORM MUST BE FILLED OUT COMPLETELY

WUP Number

Date November 9, 1988

In compliance with the Rules and Regulations of the SRWMD, authorization is requested to construct (X) repair ( ) abandon ( ) a well for: (PLEASE PRINT OR TYPE)

Ginnie Springs Water Company	610 NE Santa Fe Blvd.	High Springs 32643
OWNER	STREET OR RFD	TOWN OR CITY, COUNTY & ZIP
Myers Well Drilling	2065	Gainesville 32601
CONTRACTOR	LICENSE NUMBER	TOWN OR CITY & ZIP

Date Construction is to begin: As soon as possible

WELL WILL BE: 6 in. diameter, proposed yield 100 GPM, approximately 150 deep, with 80 feet of black (X) galvanized ( ) PVC ( ) other ( ) specify

CASING WILL BE JOINED BY: coupling (X) weld (X) bolt (X) PVC ( ), annular space will be filled

WELL WILL BE USED FOR: private supply ( ) public supply (X) irrigation ( ) industrial ( ) test ( ) monitor ( ) other ( ) specify:

CONSTRUCTION EQUIPMENT: cable tool (X) rotary ( ) jetted ( ) auger ( ) other ( ) specify ( )

Request for repair ( ) modification ( ) alteration ( ) of well constructed under Permit No. _____. Describe work to be done.

CONTRACTOR agrees to furnish a well completion report within 30 days after drilling operations cease and to comply with all provisions of the Rules of the SRWMD and with local health regulations relative to well construction. Test holes, if desired, will be constructed as provided in the Rules of the SRWMD and upon abandonment, the hole will be thoroughly plugged from bottom to top as to prevent any leakage in or out of well. Wells temporarily not in use will be plugged or capped. The District will be allowed geophysical logging. Contractor will furnish well cuttings to the District at each change in formation and each 10 feet, if requested. Additional conditions or requirements shown below will be complied with. OWNER consents to personnel of SRWMD having access to the well at any reasonable time and agrees to conformative use and allocations of the use of water according to Rules of the SRWMD.

Well located: CR 236 (Street or RFD) Approx. 5.5 Miles W (NSEW) of or in High Springs (City or Town)

County Gilchrist

Subdivision N/A

Blk. No. N/A Lot No. N/A

NE	NW	SW	SW	2	6S	16E
¼	¼	¼	¼	SEC	TWP	RANGE

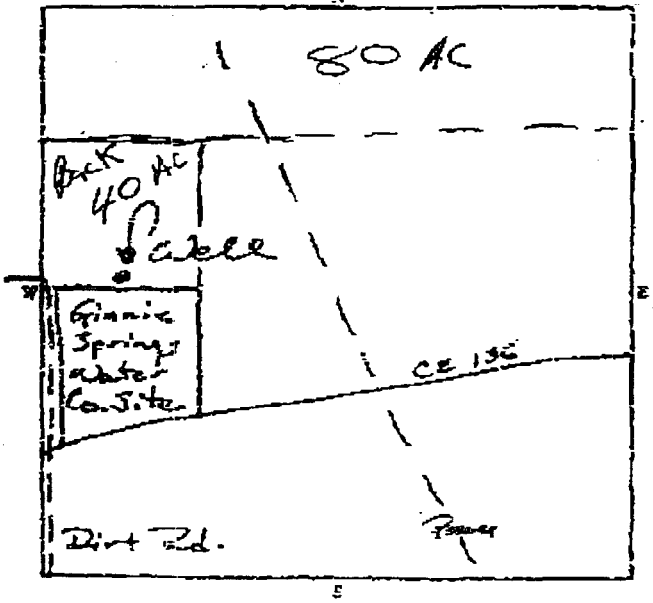
Fee Included $ 275.00 ck. 1129 pd. 9/8 (Amount)

Signature WATER WELL CONTRACTOR - Required

Signature OWNER OR AGENT

PERMIT REJECTED ( ): REASON

INDICATE N WELL SITE



PERMIT GRANTED (X): Annette L. Bunker

CONDITIONS: DER - noncommunity 300' distance - bottom 5' with top 20' must be grouted. SRWMD rep must be on site during grouting. SRWMD must be given at least a 24-hour notice prior to grouting.

Fee Schedule: Payable with application. Non-refundable if permit granted.

Non-public Supply	$ 20.00
Public Supply	$275.00
Abandonment (All Wells)	NO FEE

"WUP"

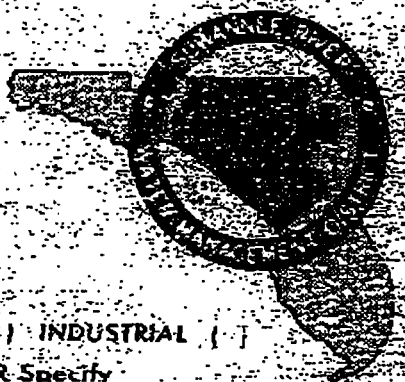
SRWMD 7/1/85

RECEIVED NOV 14 1988

RECEIVED NOV 14 1988

WELL

PERMIT



To

CONSTRUCT (X) MODIFY ( ) REPAIR ( )

PUBLIC (X) PRIVATE ( ) IRRIGATION ( ) TEST ( ) INDUSTRIAL ( )

( ) OTHER Specify _____

Nassau Springs Water Co — OWNER — 3 SEC — 8S TWP — 26E RANGE

Jim Hayes — CONTRACTOR — 11-15-88 DATE

SPECIAL CONDITIONS: DEP - Abn Con Must be at least 200' from septic tank and drainfield. Must be grouted bottom 5' and top 20'. SRWMD rep must be onsite during grouting. SRWMD must be given 24hr notice prior to grouting

FEE $ 275.00 PAID (X) — VOID UNLESS SIGNED: Annette Robertson — AUTHORIZED SIGNATURE

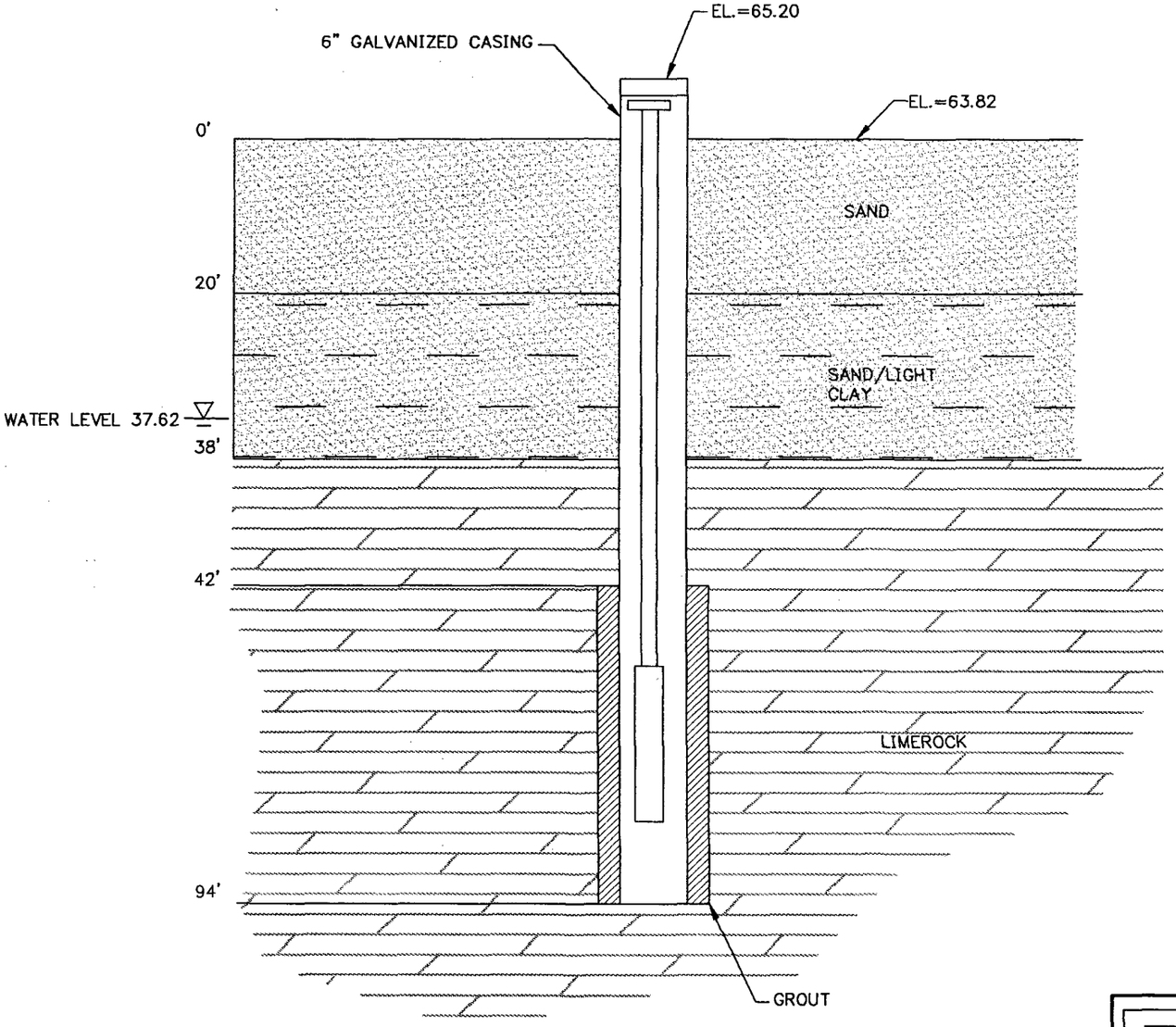
This is Not a Consumptive Use Permit and Does Not Guarantee the Water Quality

MUST BE DISPLAYED AT WELL SITE DURING CONSTRUCTION

SRWMD DF 2-13-76

NON-TRANSFERABLE

32169



LC 120

3/30/98

ENG, DENMAN & ASSOC. INC.
• ENGINEERS
• SURVEYORS
• PLANNERS
2404 N.W. 43rd ST.
GAINESVILLE, FLORIDA 32606-6602
TEL. (352) 373-3541
FAX. (352) 373-7249
E-MAIL: EDA@ATLANTIC.NET

AQUAPENN
SPRING WATER CO.

WELL PROFILE

Scale:	N.T.S.	Drawn:	WSM	Project No:	97-303-ED1
Designed:	CSV	Date:	03/27/98	Sheet No.	5 of 5

ELECTRONIC SIGNATURE REPORT

Florida Professional Engineer Licensee: Anthony M. Holley, P.E.

Florida Professional Engineer License Number: 74002

JSA Project Number: 5013

Project Name: High Springs PWS

Client Name: NWNA

List of the Electronically Signed and Sealed Engineering Documents:

DESCRIPTION	SHA AUTHENTICATION CODE
PWS Application 62-555.900_Signed.pdf	c20e607a2a063b04bc1cc70b851f4be07f61c5a2
Permit Narrative (High Springs)_Signed.pdf	b4cef1495c0ed83bde93397a408cfa1a6abe7c06

Florida Professional Engineer Signature, Seal and Date:

11/13/2020

Anthony M. Holley, P.E. Date
Senior Professional Engineer
Florida License #74002
Jim Stidham & Associates, Inc.
547 North Monroe Street, Suite 201
Tallahassee, Florida 32301
Certificate of Authorization #5629

STATE OF FLORIDA
SUWANNEE RIVER WATER MANAGEMENT DISTRICT

SEVEN SPRINGS WATER COMPANY,

Petitioner,

vs.

WUP App. No. 2-041-218202-3
DOAH Case No. 20-3581

SUWANNEE RIVER WATER MANAGEMENT DISTRICT,

Respondent.
_____/

SEVEN SPRINGS WATER COMPANY'S RESPONSE TO DISTRICT'S EXCEPTIONS

Petitioner, Seven Springs Water Company, by and through the undersigned counsel and pursuant to section 120.57, Florida Statutes ("F.S."), and rule 28-106.217, Florida Administrative Code ("F.A.C."), hereby submits the following responses to the exceptions filed by Respondent, Suwannee River Water Management District ("District"), to the Recommended Order issued in this proceeding, and states as follows:

SUMMARY OF ARGUMENT

As discussed in detail below, the District's "exceptions" fail to, and cannot, allege that the Administrative Law Judge's ("ALJ") findings are not based upon competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law, which are the only legal basis for rejecting a finding of fact under section 120.57(1)(l), F.S. Likewise, the District's erroneous arguments regarding the application of section 120.60, F.S., have been rejected multiple times by the ALJ. And, more importantly, the District's

exceptions fail to advise the District's Governing Board (the "Board")[1] that pursuant to section 120.57(1)(l), F.S., the Board does not have the authority to reconsider the ALJ's ruling on these procedural evidentiary issues. For these reasons, and as stated in detail below, the District's exceptions must be rejected.

STANDARD OF REVIEW

With respect to the review of an ALJ's findings of fact, section 120.57(1)(l), F.S., provides in pertinent part:

> The agency **may not** reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings were not based upon competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

Section 120.57(1)(1), F.S. (emphasis added). An agency may not reweigh evidence and may only reject findings of fact if there is no competent, substantial evidence in the record to support them. *See* section 120.57(1)(l), F.S.; *see also Charlotte Cty. v. IMC Phosphates Co.*, 18 So. 3d 1089, 1092 (Fla. 2d DCA 2009); *Brogan v. Carter*, 671 So. 2d 822, 823 (Fla. 1st DCA 1996); *Wills v. Fla. Elections Comm'n*, 955 So. 2d 61 (Fla. 1st DCA 2007); *Walker v. Bd. of Prof'l Eng'rs*, 946 So. 2d 604 (Fla. 1st DCA 2006) (an agency cannot modify or substitute new findings of fact if competent substantial evidence exists to support the ALJ's findings of fact). If the findings are supported by competent, substantial evidence in the record, the agency is bound by those findings. *Id.*; *see also Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987).

The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial

[1] This Response distinguishes the Board, as the agency reviewing the ALJ's Recommended Order and issuing the Final Order, from the District, a party, like Seven Springs, in the underlying proceeding.

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., Savage v. State*, 120 So. 3d 619, 621 (Fla. 2d DCA 2013); *see also Dept. of Highway Safety and Motor Vehicles v. Wiggins*, 151 So. 3d 457 (Fla. 1st DCA 2014). Therefore, section 120.57(1), F.S., expressly precludes the Board from rejecting findings of fact that are based upon competent substantial evidence. *Stokes v. Bd. of Prof'l Eng'rs*, 952 So. 2d 1224 (Fla. 2007).

Further, a reviewing agency may not reweigh the evidence presented to the ALJ at the final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *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 Cty. Sch. Bd.*, 652 So. 2d 894 (Fla. 2d DCA 1995). As explained in *Walker v. of Prof'l Eng'rs,* 946 So. 2d 604 (Fla. 1st DCA 2006) (quoting *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277 (Fla. 1st DCA 1985)):

> Factual issues susceptible of ordinary methods of proof that are not infused with policy considerations are the prerogative of the hearing officer as the finder of fact. **It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence.** If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

Walker, at 605 (emphasis added). In other words, 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). Therefore, if the record discloses any competent substantial evidence to support 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. Eng'rs*, 946 So. 2d 604 (Fla. 1st DCA 2006); *Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987).

Chapter 120, F.S., also mandates agencies to review a recommended order based solely on the record presented to the ALJ. *Lawnwood Med. Ctr., Inc. v. Agency for Health Care Admin.*, 678 So. 2d 421, 425 (Fla. 1st DCA1996) (holding the agency violated section 120.57(1)(b)(10) [now 120.57(1)(l)] by making its own findings in order to change or supplement the ALJ's findings). An agency is not authorized by section 120.57(1)(b), F.S., to reopen the record, **receive additional evidence**, or make additional findings. *Id.*; *see also Kanter Real Estate, LLC v. Dep't of Env't Prot.,* 267 So. 2d 483 (Fla. 1st DCA 2019); *Henderson Signs v. Dep't of Transp.*, 397 So. 2d 769, 772 (Fla. 1st DCA 1981). An agency has no authority to make independent or supplemental findings of fact. *See City of N. Port v. Consol. Minerals, Inc.*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994) ("The agency's scope of review of the facts is limited to ascertaining whether the hearing officer's factual findings are supported by competent substantial evidence."); *see also Manasota 88, Inc. v. Tremor*, 545 So. 2d 439,441 (Fla. 2d DCA 1989) (citing *Friends of Children v. Dep't of Health & Rehab. Servs.*, 504 So. 2d 1345 (Fla. 1st DCA 1987)) (agency reviewing an ALJ's proposed order has no authority to make independent and supplementary findings of fact). Further, the District's proffer on this issue is not competent substantial evidence that can support additional findings. *See Russ v. State*, 73 So. 3d 178 (Fla. 2011) (citing *LaMarca v. State*, 785 So. 2d 1209, 1215 (Fla. 2001) ("[p]roffered evidence is merely a representation of what evidence the [party] proposes to present and is not actual evidence.").

Finally, with respect to conclusions of law, section 120.57(1), F.S., states that "[t]he 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.…" However, on issues where the agency does not have substantive jurisdiction, such as the application of Chapter 120, F.S., the agency has no authority to overturn the ALJ's conclusions. *G.E.L. Corp. v. Dep't of Env't Prot.*, 875 So. 2d 1257 (Fla. 1st DCA 2004) (application of section 120.595, F.S., not within the substantive jurisdiction of Department). As noted by the First District in *G.E.L.*, the Department of Environmental Protection (like the Board) has "substantive jurisdiction over matters relating to environmental issues and **not technical matters of law concerning jurisdictional issues that arise under statutory provisions**…." *Id.* at 1263; *see also Doyle v. Dep't of Bus. Regulation*, 794 So. 2d 686 (Fla. 1st DCA 2001) (holding that an award of attorney's fees under a particular statute does not fall within the field of expertise of an agency); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140 (Fla. 2d DCA 2001) (holding doctrine of collateral estoppel is not with the agency's substantive jurisdiction). Likewise, evidentiary rulings are matters within the ALJ's prerogative as the finder of fact and may not be reversed on agency review. *Barfield v. Dep't of Health*, 805 So. 2d 1008 (Fla. 1st DCA 2001) (holding agency had **no substantive jurisdiction to displace the ALJ's conclusion of law regarding the admissibility of evidence**); *Martuccio v. Dep't of Prof'l Regulation*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993). In other words, because the ALJ's multiple rulings precluding the Board from denying Seven Springs' permit based upon the "ownership and control" issue and precluding evidence on that issue are based upon Chapter 120, F.S., the Board does not have substantive jurisdiction over those rulings.

In preparing its exceptions, the District counsel has chosen to ignore this long line of case law.

RESPONSE TO DISTRICT'S OBJECTIONS TO ORDER ON MOTION IN LIMINE AND ORDER DENYING MOTION TO AMEND

In Paragraphs 8, 10-13, 17-24, and 26,[2] the District takes exception to three prior rulings by the ALJ: the Order on the Motion in Limine; the Order Denying Motion to Amend; and, the Order Denying Respondent's Motion for Reconsideration of Order Denying Motion to Amend. These exceptions are nothing more than restatements of prior motions and responses in an attempt to suggest new factual findings on the issue of ownership and control of the High Springs Plant. The District's exceptions fail to advise the Board that it is without jurisdiction to take any of the requested actions with respect to the Conclusions of Law and Findings of Fact cited in these exceptions or to include supplemental Findings of Facts. As such, the exceptions must be denied.

The Board, as the reviewing entity, has no jurisdiction to overturn the ALJ's ruling that 120.60(1), F.S., precludes the District's arguments regarding sections 2.1.1 and 2.3.1, A.H.[3] The ALJ's orders granting Seven Springs' Motion in Limine, and rejecting both the District's Motion to Amend and the District's Motion for Rehearing, as referenced in the Recommended Order, have fully addressed these issues and their preclusion pursuant to section 120.60, F.S. Therefore,

[2] Any references to "these exceptions" or "these cited exceptions" in this section refer to Paragraphs 8, 10-13, 17-24, and 26 of the District's exceptions.

[3] The ALJ ruled that the Board is foreclosed from denying Seven Springs' application for failing to demonstrate compliance with sections 2.1.1. and 2.3.1, A.H. (i.e., the issue of ownership and control of the High Springs Plant). Recommended Order, ¶¶ 42 & 72. The ALJ's ruling was based on the part of section 120.60(1), F.S., mandating that "[a]n agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period." Recommended Order, ¶ 40. Therefore, the District was precluded from amending its Notice of Denial to add this issue and the issues in the proceeding were limited to the three basis for denial set forth in the "Water Use Technical Staff Report," dated February 27, 2020. Recommended Order, ¶¶ 40, 65 & 72; *see also Order Granting, in Part, Petitioner's Motion in Limine*, DOAH Case No. 20-1329 (June 29, 2020); *Order Denying Motions to Amend*, DOAH Case No. 20-3581 (Sept. 16, 2020); *Order Denying Respondent's Motion for Reconsideration of Order Denying Motion to Amend*, DOAH Case No. 20-3581 (Sept. 25, 2020).

evidence and testimony on the High Springs Plant ownership and control issues, as well as any other issues not raised in the Notice of Denial, are precluded from being a basis for denial.[4] *See Order Denying Respondent's Motion for Reconsideration of Order Denying Motion to Amend*, DOAH Case No. 20-3581 (Sept. 25, 2020); *Order Denying Motions to Amend*, DOAH Case No. 20-3581 (Sept. 16, 2020); *Order Granting, in Part, Petitioner's Motion in Limine*, DOAH Case No. 20-1329[5] (June 29, 2020).[6] These rulings can only be overturned by an appellate court and are not within the jurisdiction of the agency. *See G.E.L. Corp. v. Dep't of Env't Prot.*, 875 So. 2d 1257 (Fla. 1st DCA 2004); *Barfield v. Dep't of Health*, 805 So. 2d 1008 (Fla. 1st DCA 2001). As Seven Springs has not been provided the opportunity to present evidence and argument on the ownership and control issues as required by section 120.57, F.S., should the ALJ's ruling be overturned by the appellate court, Seven Springs will provide such evidence.

It is the role of the ALJ, not the agency, to consider all evidence, resolve any conflicts therein, judge the credibility of witnesses, and reach ultimate findings of fact and conclusions of law based on competent substantial evidence. *Addison v. Agency for Persons with Disabilities*, 113

[4] The ALJ permitted the District to proffer, but did not admit, testimony on the precluded ownership and control issues. [T. 161-62, 164-65, 187, 285-89]. A proffer "is merely a representation of what evidence the defendant proposes to present and is not actual evidence." *Estate of Despain v. Avante Grp., Inc.,* 900 So. 2d 637, 642 (Fla. Dist. Ct. App. 2005); *Grim v. State,* 841 So. 2d 455, 462 (Fla. 2003), cert. denied, 540 U.S. 892 (2003); *LaMarca v. State*, 785 So. 2d 1209, 1216 (Fla. 2001), cert. denied, 534 U.S. 925 (2001). The primary purpose of a proffer is to include the proposed answer and expected proof in the record so the appellate court may understand the scope and effect of the question and proposed answer in considering whether the trial court's ruling was correct. *Brown v. State*, 431 So. 2d 247, 248 (Fla. 1st DCA 1983), aff'd 455 So. 2d 382 (Fla. 1984). Therefore, any proffered testimony cannot be considered by the Board nor can any findings in the Final Order be based on proffered testimony.

[5] Incorporated in Case No. 20-3581 by *Order Granting Joint Motion to Consolidate*, DOAH Case No. 20-3581 (January 15, 2021).

[6] These rulings were confirmed by the ALJ, as well as by District's counsel, throughout the hearing and again in the Recommended Order. [T. 34: 20-25, 50: 21-24, 157: 20-25, 159: 13, 161: 11-21, 198: 11-16, 279: 12-22, 283: 21-25, 284: 1-12, 601: 5-7]; Recommended Order, ¶¶ 29, 40, & 42.

So. 3d 1053, 1056 (Fla. 1st DCA 2013) (citing *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)). Evidentiary-related matters are within the sole province of the ALJ as the factfinder. *See, e.g., Tedder v. Fla. Parole Comm'n*, 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003) (citing *Heifetz*, 475 So. 2d at 1281). As the ALJ's ruling, i.e, that due to 120.60(1), F.S., ownership and control of the High Springs Plant cannot be a basis for denial of the permit, is an evidentiary and procedural matter solely within the province of the ALJ, it is not subject to the Board's review. *See, e.g., G.E.L. Corp. v. Dep't of Env't Prot.*, 875 So. 2d 1257 (Fla. 1st DCA 2004); *Bridlewood Group Home v. Agency for Persons with Disabilities*, 136 So. 3d 652, 657 (Fla. 2d DCA 2013); *see also Martuccio v. Dep't of Prof'l Regulation*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Tedder v. Fla. Parole Comm'n*, 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003).

It should be noted that the District's sole reliance on the *MedPure* case, as support for its argument that the ALJ's ruling was in error, is misplaced.[7] The same argument on this case was made to the ALJ in the District's proposed recommended order and was rejected. *MedPure* is distinguishable from this case as it involved the denial of a "default license" under a provision of section 120.60(1), F.S. *MedPure, LLC v. Dep't of Health,* 295 So. 3d 318 (Fla. 1st DCA 2020). Seven Springs has not requested a "default license." More importantly, the District's suggestion that "the court held that a denial permit under Section 120.60(1), F.S., may not be issued where the application fails to meet the 'minimum licensure requirements of the agency" misrepresents the Court's actual ruling. In fact, the Court stated:

> The appellants first argue that the Department should have allowed hearings on their claims that they were entitled to default licenses pursuant to section 120.60(1),

[7] The District's remaining exceptions on this issue merely presume the ALJ's ruling was in error and go on to explain and apply sections 2.1.1. and 2.3.1, A.H., to the High Springs Plant. In so doing, the District is attempting to make new findings, in direct contravention of the ALJ's rulings, on an issue upon which Seven Springs has not been provided the opportunity to present evidence and argument on as required by section 120.57, F.S.

> Florida Statutes (2019). We determine that they were not entitled to default licensure ***because their bare bones filings were insufficient to constitute an application.***

MedPure, LLC v. Dep't of Health, 295 So.3d 318, 322 (Fla. 1st DCA 2020) (emphasis added). In contrast to the application submitted by Seven Springs, which was hundreds of pages of information and supporting documents, MedPure and another entity submitted individual, one-page letters to the Department of Health "purporting to be registration applications to operate" medical marijuana treatment centers. *Medpure*, at 321. The Court concluded that:

> The relevant conditions precedent under which default licensure would apply are "receipt of a completed application" and application approval or denial within 90 days.
>
> The **bare bones letter** filed by appellants **did not act as a completed application that triggered the Department's responsibilities under section 120.60, Florida Statutes, under the circumstances of this case.** These circumstances include: 1) the Department's rule that put parties on notice that applications were not being accepted at that time; 2) the letters were not filed on an application form prepared by the Department; 3) the bare bones filing did not demonstrate compliance with the minimum licensure requirements; and 4) allowing the appellants to file for licenses during an undesignated period for filing would contravene the competitive structure for licensing contemplated in section 381.968, Florida Statutes (2019).

Id. at 322 (emphasis added). Any attempt by the District to suggest that Seven Springs' detailed application can be compared to a one-page letter is a clear example of the District's continued choice to ignore the facts and pursue denial at all costs.

> Section 120.60(1), F.S., provides in pertinent part that:
>
> [u]pon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period… An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.

As the ALJ concluded, this section "forecloses certain grounds for denial from being raised at this stage of Seven Springs' permit application proceeding." Recommended Order, ¶ 40.[8] To date, the District has not filed an appeal to the District Court of Appeal of the ALJ's decision that (due to the above-quoted section 120.60(1), F.S.) denial of Seven Springs' application cannot be based upon sections 2.1.1 or 2.3.1, A.H. As the applicability of section 120.60, F.S., is outside the jurisdiction of the Board, the ALJ's conclusion stands.

In Paragraphs 8, 10-13, 17-24, and 26, the District also attempts to have the Board make new findings of fact regarding the "ownership and control" of the High Springs Plant as support for the denial of the permit.[9] And while the ALJ's ruling regarding sections 2.1.1 or 2.3.1, A.H., already precludes the consideration of the District's proposed exceptions, the exceptions must also be rejected because, as discussed in detail above, the Board does not have any authority to reopen the record, receive additional evidence or make additional findings of fact.[10] *See, e.g., City of N. Port*, 645 So. 2d at 487; *Lawnwood Med. Ctr., Inc. v. Agency for Health Care Admin.*, 678 So. 2d 421, 425 (Fla. 1st DCA 1996); *Henderson Signs v. Florida Dep't of Transp.*, 397 So.2d 769, 772

[8] *MedPure* can be further distinguished in that it involved a license that was subject to a competitive review process. Unlike a consumptive use permit, a license subject to competitive review may not be issued to one party without considering the applications of others for the same license. As acknowledged by the Court, this is an important distinction because to grant a license "pursuant to the deemer provision would automatically exclude other applicants from consideration." *MedPure* at 323. Here there is no competitive review process and the "deemer provision" of 120.60, F.S., is not at issue. Further, the *MedPure* Court determined that because of the submission of the "bare bones" and unauthorized application, the agency's duties under section 120.60, F.S., were not triggered. *MedPure* at 319 & 322.

[9] The District acknowledges that the ALJ failed to make findings on the issue of ownership and control of the High Springs Plant arguing that the issue "***should have been addressed*** by the Administrative Law Judge in the Recommended Order…." (emphasis added) *See Respondent Suwannee River Water Management District's Exceptions to Recommended Order*, ¶ 18, line 1.

[10] All of the exceptions attempt to have the Board reopen the record to receive additional evidence and make additional findings of fact on ownership and control issues, which were excluded by the ALJ.

(Fla. 1st DCA 1981); *Belleau v. Dep't of Envtl. Prot*., 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County Sch. Bd*., 652 So. 2d 894 (Fla. 2d DCA 1995).

Furthermore, none of the District's exceptions cited in this section contain any allegation that the ALJ's findings are not supported by competent substantial evidence. The law requires that "[i]f there is competent substantial evidence in the record to support the ALJ's findings of fact, the agency may not reject them, modify them, substitute its findings, or make new findings." *Bridlewood Grp. Home v. Agency for Persons with Disabilities*, 136 So. 3d 652, 657 (Fla. Dist. Ct. App. 2013) (citing *Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985)); *Rogers v. Dep't of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *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). It is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *Id.*

Further, there could be no finding of fact on the High Springs Plant ownership and control, even by the ALJ, because the ALJ's rulings precluded any evidence or testimony on the issue. A finding of fact must be supported by competent substantial evidence in the record, and there is no such evidence on this issue in the record. Contrary to the District's allegations, the ALJ in his Recommended Order did not make any findings of fact on ownership and control of the High Springs Plant. Instead, any mentions of the issue by the ALJ were simply restatements of the District's arguments in the context of rejecting those arguments.[11]

In summary, these exceptions must be rejected because: 1) the Board has no authority to overturn the evidentiary rulings of the ALJ; 2) the Board's review is limited to the record that was

[11] For these reasons, the District's allegation in Paragraphs 17, 18, 22, 23, 24, and 26 that "[i]n the RO, the Administrative Law Judge also finds that Seven Springs does not own or control the High Springs plant," is inaccurate.

before the ALJ and it has no authority to reopen the record and admit additional evidence; and 3) the Board has no authority to make independent findings of fact.

RESPONSES TO EXCEPTIONS

Response to Paragraph 1

In Paragraph 1, the District takes exception to Finding of Fact 8 because the District's rules do not define "bulk water" or "bulk water provider." However, the District fails to assert that the finding is not based upon competent, substantial evidence or that the proceeding on which the finding was based did not comply with the essential requirements of law. Therefore, the exception is improper. More importantly, as the exception admits that the finding is "correct" and the finding is supported by competent substantial evidence in the record [Jt. Ex. 1d; T. 227-228, 295-296], the exception must be denied.

Response to Paragraph 2 - 7, 9

In Paragraphs 2 – 7 and 9, the District takes exception with Findings of Fact 10, 11, 15, 18, 25, 26 and 33 because "only part" of the documents were quoted in the finding. Again, this is an improper exception as there is no assertion that the findings are not based upon competent, substantial evidence or that the proceeding on which the findings were based did not comply with the essential requirements of law. Therefore, the exceptions are improper. Further, as the findings are supported by competent substantial evidence in the record, the exceptions must be denied. [Jt. Ex. 2, p. 1; Jt. Ex. 4, p. 1; Jt. Ex. 8, p. 1-3; Jt. Ex. 10, p. 1 & 3; P. Ex. 15, pp. 1, 4-5, 8, 9-10, & 11; T. 88:19-23, 89: 23-25, 90: 1-5, 91: 17-25, 92: 1-3].

Response to Paragraphs 8, 10, 11, 12 and 13

In Paragraphs 8, 10, 11, 12 and 13, the District takes exception with Findings of Fact 29, 38, 40, 42, and 44 because the District disagrees with the ALJ's order on the Motion in Limine. As with the prior exceptions, this is not a proper exception as the District fails to assert that the

findings are not based upon competent, substantial evidence or that the proceeding on which the findings were based did not comply with the essential requirements of law. Therefore, the exceptions are improper. Further, as the findings, which are nothing more than actual quotes from various orders and pleadings in the Record, are clearly supported by competent substantial evidence, they must be denied. *See Order Granting, in Part, Petitioner's Motion in Limine*, DOAH Case No. 20-1329, p. 1 (June 29, 2020); *Petitioner's Response in Opposition to Motion to Amend Grounds for Denial*, DOAH Case No. 20-3581, pp. 1-2 (August 26, 2020); *Order Denying Motions to Amend*, DOAH Case No. 20-3581, pp. 5-6 (September 16, 2020); *Order Denying Respondent's Motion for Reconsideration of Order Denying Motion to Amend,* DOAH Case No. 20-3581, pp. 1-2 (September 26, 2020); *Petitioner Seven Springs' Response in Opposition to District's Second Motion in Limine,* DOAH Case No. 20-3581, pp. 4-6 (October 5, 2020). To the extent the District or Board disagree with the ALJ's Order as to the application of Chapter 120, F.S., they may appeal to the District Court of Appeal for that determination. However, as discussed above, the Board is without jurisdiction to overturn the ALJ on an issue over which it does not have substantive jurisdiction, e.g., Chapter 120.

Response to Paragraph 14

In Paragraph 14, the District takes exception with Findings of Fact 47, 48 and 49 because the District believes the findings were not based upon competent substantial evidence and that a permit issued by the Department of Environmental Protection, which is not in the Record and does not authorize water use withdrawals, should offset the permitted allocation. While procedurally the exceptions to the Findings of Fact are properly phrased exceptions, they still must be denied because the findings are supported by competent substantial evidence in the Record. Findings of Fact 47, 48 and 49 are quoted, in full, below and citations to the record which support the findings are included after each sentence:

> 47. With regard to the second ground for denial, the 21st condition negotiated between Seven Springs and the District's staff reduced the requested allocation from 1.152 mgd to 0.984 mgd. [P. Ex. 27, p. 7; P. Ex. 28; T. 353: 20-25, 354: 1-13, 292:19-23]. The testimony and evidence presented at the final hearing demonstrated that there are currently two bottling lines in operation in the High Springs plant. [T. 201: 18-21; P. Ex. 37, p. 2]. Line 1 has been replaced since NWNA acquired the facility with a new "high–speed" line (at a cost of approximately $15 million) that fills 81,000 half-liter bottles per hour ("bph"), and Line 2 is an older 54,000 bph line that is undergoing renovations to a high–speed line. [T. 201: 18-21, 320: 10-15, 324: 24-25, 332: 1-14, 333: 1-10; P. Ex. 37, pp. 2-3].
>
> 48. Although there are currently only two lines, NWNA has plans to buildout the High Springs plant so that it will have four high-speed lines. [T. 190: 3-6, 332: 1-17, 333: 1-10; P. Ex. 28, p. 1; Jt. Ex. 9b, pp. 3 & 6; P. Ex. 37, pp. 2-3]. Seven Springs presented evidence and credible expert testimony of Adam Thibodeau, P.E., demonstrating that the High Springs plant will have four high-speed lines in operation within the proposed permit term of five years. [P. Ex. 37, p. 3; P. Ex. 28, p. 1; T. 351: 8-13]. The third high-speed line will be installed within the existing building. [P. Ex. 37; T. 332: 9-14, 333: 6-10]. A building expansion will allow the addition of a fourth high-speed line. [P. Ex. 37; T. 332: 9-14, 333: 6-10].
>
> 49. It is expected that the third and fourth lines added to the High Springs plant will be capable of producing at least 90,000 bottles per hour. [P. Ex. 37, p. 3; T. 320: 2-9 & 14-15]. The greater weight of the evidence supports a finding that the plans for expansion of the bottling plant production lines are sufficiently established. [P. Ex. 37, p. 3; P. Ex. 28, p. 1; T. 190: 3-6, 332: 1-17, 333: 1-10; Jt. Ex. 9b, pp. 3 & 6].

Because "there is competent substantial evidence in the record to support the ALJ's findings of fact, the agency may not reject them…." *Bridlewood Grp. Home v. Agency for Persons with Disabilities*, 136 So. 3d 652, 657 (Fla. 2d DCA 2013) (citing *Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985)). It is irrelevant that there may also be competent substantial evidence supporting a contrary finding, such as the one suggested by the District in this exception. *Id.*; *Rogers v. Dep't of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *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).

The District's argument in Paragraph 14 appears to be that a subsequent permit issued by the Department of Environmental Protection, which is not in the Record, somehow alters these

facts. As explained above, Chapter 120, F.S., limits an agency to review a recommended order based solely on the record that was before the hearing officer. *Lawnwood Med. Ctr., Inc. v. Agency for Health Care Admin.*, 678 So. 2d 421, 425 (Fla. 1st DAC 1996). The District is attempting to have the Board receive new evidence not in the record and make independent or additional findings of fact. As explained above, the Board is not authorized by section 120.57(1)(b), F.S., to reopen the record, receive this additional evidence,[12] or make any additional findings. *Id.*; *Henderson Signs v. Dep't of Transp.*, 397 So. 2d 769, 772 (Fla. 1st DCA 1981). And while this Public Water System or PWS permit is not part of the record in this matter, it is important to point out the errors in the District's understanding of what the Department permit does and does not authorize. Simply put, the PWS permit does not authorize the withdrawal of water. In addition to having a permit from the Department pursuant to section 62-555, F.A.C., a PWS for beverage processing must also have a consumptive use permit in the District. See District Rule 40B-2.041(8)(g), F.A.C. Therefore, even if the District's new evidence could be considered, absent some evidence that the District has issued a consumptive use permit to the applicant for the PWS use, no water may be withdrawn and, thus, no "offset" would be appropriate.

Response to Paragraphs 15 and 16

In Paragraphs 15 and 16, the District takes exception with Findings of Fact 51[13] and 52 by reiterating its arguments in Paragraph No. 14 and citing evidence it considers to be contrary to the

[12] This new evidence (the PWS Permit), which was not a part of the Record, is also cited to and relied upon in Paragraphs 14-18, 20-21, and 24-26 of the District's exceptions. For reasons stated in this Paragraph and above, no exceptions may be granted that attempt to reopen the record, admit new evidence, or make new findings.

[13] It is unclear as to what Paragraph 15 of the District's exceptions is actually referring when it references Paragraph 51 of the Recommended Order. Contrary to the District's suggestion, Paragraph 51 does not mention the District's expert or his testimony. Regardless, the findings of fact in Paragraph 51 are supported by competent substantial evidence in the record and the District

finding. Therefore, Seven Springs adopts by reference its Response to Paragraph 14, herein. The District also argues that its expert provided testimony that "an acceptable water allocation is 0.892 mgd or 0.862 mgd on an annual average basis" and that the historic usage was lower.[14] While the District's expert actually testified that had he generated the number it would have "been around" that range, he also testified that the .984 mgd figure was a reasonable upper limit. [T. 642; P. Ex. 29, pp. 13-14 & 20]. However, even if the District's expert had not agreed that .984 was reasonable, suggestion of contrary evidence is not a sufficient basis for an exception, especially when, as in this case, there is competent substantial evidence supporting the ALJ's finding of fact. *Bridlewood Grp. Home v. Agency for Persons with Disabilities*, 136 So. 3d 652, 657 (Fla. 2d DCA 2013) (citing *Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)); *Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *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).

It is the ALJ that is to resolve conflicting evidence, not the Board. Further, the District did not allege that the findings are not supported by competent substantial evidence or that the proceeding on which the finding was based did not comply with the essential requirements of law. In fact, the District's exceptions ignore its own expert's testimony that he agreed the .984 mgd was reasonable. [T. 642; P. Ex. 29, pp. 13-14 & 20]. As the finding is supported by competent

does not allege otherwise. [P. Ex. 27, p. 2; P. Ex. 28, p. 1; P. Ex. 37; T. 334-335, 351, 359]. Therefore, this exception must be rejected.

[14] While it was not disputed that the historic pumping is lower than the .984 mgd request, this argument ignores the District's testimony by Mr. Zwanka, that "actual water usage" is based upon the plant running on only two lines, one of which will be replaced, and then extrapolating, interpolating the use of four future lines. [T. 447]. This is exactly the process used by both the District's and Seven Springs' expert in their agreement that the .984 mgd request was reasonable. [T. 334-335, 351, 359, 642; P. Ex. 27, p. 2; P. Ex. 28, p. 1; P. Ex. 29, pp. 13-14 & 20; P. Ex. 37].

substantial evidence, the exception must be denied. [P. Ex. 27, p. 2; P. Ex. 28, p. 1; P. Ex. 29, pp. 13-14; P. Ex. 37; T. 334-335, 351, 359, 642].

Additionally, in Paragraphs 15 and 16, the District is attempting to have the Board receive new evidence not in the Record and make independent or additional findings of fact. As explained above, the Board is not authorized by section 120.57(1)(b), F.S., to reopen the record, receive this additional evidence, or make any additional findings of fact.

Response to Paragraph 17

In Paragraph 17, the District takes exception with Finding of Fact 53, arguing that the ALJ's finding that "the greater weight of the evidence demonstrated that the High Springs plant will have sufficient physical capacity to use the full requested allocation of water within the proposed five-year permit term" is irrelevant. This allegation is contrary to the arguments made by the District in Paragraphs 14–16 where it argues the relevance of its expert's testimony on the issue. Further, to the extent the District felt the evidence was irrelevant, it should have raised its objection before the ALJ. Finally, as the second basis for denial of the permit, the District stated that Seven Springs "failed to provide sufficient evidence showing that such renovations will create the necessary physical ability." As noted above, the Board does not have the authority to modify the ALJ's decision on the admissibility of the information. As the finding is supported by competent substantial evidence, which the District admits in this exception, the exception must be denied. *Bridlewood Grp. Home v. Agency for Persons with Disabilities*, 136 So. 3d 652, 657 (Fla. 2d DCA 2013) (citing *Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)); *Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *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).

The District also incorrectly states that the ALJ found that Seven Springs does not own or control the High Springs plant. More importantly, such a statement would be incorrect. The ALJ's statements, upon which the District relies, actually state that Seven Springs does not "own or operate" the High Springs Plant. As discussed in detail below, the issue of "control" has not been addressed as the ALJ ruled that the Board could not deny the permit based upon section 2.1.1 and 2.3.1, A.H., the "ownership or control" sections. As determined by the ALJ, because the District failed to comply with the requirements of section 120.60, F.S., those sections cannot form the basis for denial. Therefore, as explained above, no evidence or testimony was admitted on ownership and control of the High Springs Plant and no findings of fact were made on the issue.

Furthermore, the District's allegation that it is "undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plant or the real property on which the High Springs plant is located,"[15] is false. As explained above, no evidence was admitted on the issue based on the ALJ's evidentiary ruling, Seven Springs never stipulated on the issue of ownership and control of the High Springs plant, and what is actually required to demonstrate "control" is significantly different from the District position taken in this proceeding. [T. 158: 7-15, 158-159, 177: 2-4, 179: 16-20, 279: 12-22, 461 (demonstration of "ownership or "control" limited to submission of service area map), 601: 10-19, 681, 685-86].

Finally, in Paragraph 17, the District is attempting to have the Board receive new evidence not in the Record and make independent or additional findings of fact. As explained above, the Board is not authorized by section 120.57(1)(b), F.S., to reopen the record, receive this additional evidence, or make any additional findings of fact.

[15] This false allegation is repeated in Paragraphs 17-18, 22-24 and 26 of the District's exceptions.

Response to Paragraphs 18, 19, 20, 21, 22, 23 and 24

In Paragraphs 18, 19, 20, 21, 22, 23 and 24, the District takes exception with Conclusions of Law 65, 68, 71, 72, 74, 75 and 76, arguing that the issues of "ownership and control" were properly raised below. However, the ALJ determined that based upon the District's failure to comply with section 120.60, F.S., it was precluded from raising these issues as a basis for denial. The District also attempts to add a new finding of fact by suggesting that it "is undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plat or the real property on which the High Springs plant is located." First, the District's assertion is a disputed issue of fact which, should the appellate court determine the High Springs plant "ownership and control" issues may be raised, must be resolved by an administrative law judge. Second, while the ALJ made no findings regarding "control," what the District actually requires to demonstrate "control" is significantly different from the position taken in this proceeding. [T. 461 (demonstration of "ownership or control" limited to submission of service area map); 684, 685-86].

Further, as explained above, the District's reliance on the *Medpure* case is misplaced as it does not stand for the proposition that the Board has the authority to overrule the ALJ on the issue. Nor does the *Medpure* case provide a basis for a court to overturn the ALJ's ruling on the issue. As noted by the District, in *Medpure*, "the court held that a default permit under Section 120.60(1), F..S. (sic) may not be issued where the application fails to meet the "minimum licensure requirements of the agency." Seven Springs has not asserted it is entitled to a default permit. Further, as noted by the ALJ, if the District had believed that Seven Springs had failed to satisfy these alleged issues, it was required to provide Seven Springs with notice of the error or omission. Recommended Order, ¶¶ 40 & 42; [T. 161: 15-25, 162: 1-3]; *Order Denying Motions to Amend*,

DOAH Case No. 20-3581 (September 16, 2020); *Order Denying Respondent's Motion for Reconsideration of Order Denying Motion to Amend*, DOAH Case No. 20-3581 (September 26, 2020)].[16]

Additionally, Paragraph 74 of the Recommended Order, although labeled as a conclusion of law, is actually a finding of fact. This paragraph identifies memorandum provided in response to a District request for additional information and quotes what was in the memorandum. "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.'" *Goin v. Comm'n on Ethics*, 658 So. 2d 1131, 1138 (Fla. 1st DCA 1995); *Kinney v. Dep't of State, Div. of Licensing*, 501 So. 2d 129, 132 (Fla. 5th DCA 1987). This factual finding is supported by competent substantial evidence in the record. [Jt. Ex. 9b, pp. 1-2, 24-26]. Because there is competent substantial evidence in the record to support the ALJ's factual finding, the agency may not reject it. *Bridlewood Grp. Home v. Agency for Persons with Disabilities*, 136 So. 3d 652, 657 (Fla. 2d DCA 2013) (citing *Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)).

Finally, the District is attempting to have the Board receive new evidence not in the Record and make independent or additional findings of fact. As explained above, the Board is not authorized by section 120.57(1)(b), F.S., to reopen the record, receive this additional evidence, or make any additional findings of fact.

[16] In the event a court of competent jurisdiction determines that the ALJ's exclusion of the issues was in error, then Seven Springs will have the opportunity to put into evidence those facts which would support a conclusion that Seven Springs "controls" the use consistent with past agency practice.

Response to Paragraph 25

In Paragraph 25, the District takes exception with Conclusion of Law 77. However, Paragraph 77 of the Recommended Order, although labeled as a conclusion of law, is actually a finding of fact. Paragraph 77 simply restates a portion of the District's technical staff report. [Jt. Ex. 10, p.3]. "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.'" *Goin v. Comm'n on Ethics*, 658 So. 2d 1131, 1138 (Fla. 1st DCA 1995); *Kinney v. Dep't of State, Div. of Licensing*, 501 So. 2d 129, 132 (Fla. 5th DCA 1987). Because there is competent substantial evidence in the record to support the ALJ's factual finding, the agency may not reject it. [Jt. Ex. 10, p.3]; *Bridlewood Grp. Home v. Agency for Persons with Disabilities*, 136 So. 3d 652, 657 (Fla. 2d DCA 2013) (citing *Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)).

Furthermore, while the District states that it takes exception to this paragraph, it then goes into another discussion regarding the PWS permit. And, while the District's arguments demonstrate a clear lack of understanding of what a PWS permit actually authorizes, the exception is, at best, an attempt to have the Board make additional findings of fact based on new evidence not in the record. As explained above, the Board is not authorized by section 120.57(1)(b), F.S., to reopen the record, receive this additional evidence, or make any additional findings of fact.

Response to Paragraph 26

In Paragraph 26, the District takes exception with Conclusion of Law 78 by reiterating its arguments in Paragraphs 14, 15, 16 and 17 and citing evidence it considers to be contrary to the finding. Therefore, Seven Springs adopts by reference its Responses to Paragraph 14, 15, 16, and 17, herein. As discussed in detail above, it is the ALJ that is to resolve conflicting evidence, not

the Board. Further, the District did not allege that the finding is not supported by competent substantial evidence or that the proceeding on which the finding was based did not comply with the essential requirements of law. Finally, because the Board is not authorized by section 120.57(1)(b), F.S., to reopen the record, receive this additional evidence, or make any additional findings of fact, and by section 120.60(1), F.S., from denying the permit based upon these arguments, the District's exceptions are improper and must be rejected.

WHEREFORE, the Board should issue a Final Order rejecting the District's exceptions, accepting and adopting the ALJ's Recommended Order in total, and issuing the permit to Seven Springs as recommended in the Recommended Order.

Respectfully submitted this 8th day of February, 2021.

SEVEN SPRINGS WATER COMPANY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Clerk of the Suwannee River Water Management District via electronic mail and served by electronic mail to counsel of record on the service list below this 8th day of February, 2021.

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STATE OF FLORIDA
SUWANNEE RIVER WATER MANAGEMENT DISTRICT

SEVEN SPRINGS WATER COMPANY,

Petitioner,

v.

SUWANNEE RIVER WATER MANAGEMENT DISTRICT,

Respondent.
_____/

Final Order No.	21-003
Renewal WUP App. No.	2-041-218202-3
DOAH Case Nos.	20-1329
	20-3581
	(consolidated)

FINAL ORDER

This case comes to the Suwannee River Water Management District (the "District") upon a Recommended Order ("RO") from Administrative Law Judge, G. W. CHISENHALL (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 January 20, 2021, following a formal administrative hearing held on October 19-21, 2020.

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 Recommended Order. The District timely filed exceptions to the RO. The Petitioner, Seven Springs Water Company ("Seven Springs") did not file exceptions to the RO. Seven Springs filed Responses to District'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 render a Final Order granting permit No. 2-041-218202-3 to Seven Springs. The RO did not recommend conditions for the permit.

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 on competent substantial evidence." *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).

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.")

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 Envtl. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

RULINGS 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." *Envtl. 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 DISTRICT'S EXCEPTIONS

1. The District's Exception to RO paragraph 8.

The District asserts that while RO paragraph 8 is correct that Seven Springs identified itself as a "bulk water provider to the adjacent bottled water facility" in its application, Chapter 373, Fla. Stat., District Rule Chapter 40B-2, F.A.C., and the District's Applicant's Handbook do not recognize (or even mention) such a use, and, pursuant to Chapter 373, Fla. Stat., Chapter 40B-2, F.A.C., and the Applicant's Handbook, such a use does not exist (***Joint Ex. 1., Tr. 393:20-24, 394:3-10, 500:17-25, 501:1-6, 561:4-25, 562:1-3***). Since there is no definition of "bulk water" or "bulk water provider" in Chapter 373, Fla. Stat., Chapter 40B-2, F.A.C., or the Applicant's Handbook – the Application was processed under the statutes and rules applicable to a Beverage Processing Use (***Tr. 561:4-25, 562:1-3***), pursuant to which Seven Springs' application was recommended for denial.

Ruling

This exception does not assert that a finding of fact is not based upon competent substantial evidence or that a proceedings upon which a finding of fact is based did not comply with essential requirements of law. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's finding of fact. Further, this exception does not assert that the ALJ erred concerning a conclusion of law over which the District has substantive jurisdiction or an interpretation of an administrative rule over which the District has substantive jurisdiction. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's conclusions of law or interpretation of of administrative rule.

Accordingly, the exception is denied.

2. The District's Exception to RO paragraph 10.

The District asserts that only part of the first request for additional information ("RAI") is quoted in RO paragraph 10. The entire first request for additional information ("RAI") was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 2).***

Ruling

This exception does not assert that a finding of fact is not based upon competent substantial evidence or that a proceedings upon which a finding of fact is based did not comply with essential requirements of law. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's finding of fact. Further, this exception does not assert that the ALJ erred concerning a conclusion of law over which the District has substantive jurisdiction or an interpretation of an administrative rule over which the District has substantive jurisdiction. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's conclusions of law or interpretation of of administrative rule.

Accordingly, the exception is denied.

3. The District's Exception to RO paragraph 11.

The District asserts that only part of the first request for additional information ("RAI") is quoted in RO paragraph 11. The entire first request for additional information ("RAI") was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 2).***

Ruling

This exception does not assert that a finding of fact is not based upon competent substantial evidence or that a proceedings upon which a finding of fact is based did not comply with essential requirements of law. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's finding of fact. Further, this exception does not assert that the ALJ erred concerning a conclusion of law over which the District has substantive jurisdiction or an interpretation of an administrative rule over which the District has substantive jurisdiction. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's conclusions of law or interpretation of of administrative rule.

Accordingly, the exception is denied.

4. The District's Exception to RO paragraph 15.

The District asserts that only part of the second RAI is quoted in RO paragraph 15. The entire second RAI was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 4).***

Ruling

This exception does not assert that a finding of fact is not based upon competent substantial evidence or that a proceedings upon which a finding of fact is based did not comply with essential requirements of law. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's finding of fact. Further, this exception does not assert that the ALJ erred concerning a conclusion of law over which the District has substantive jurisdiction or an interpretation of an administrative rule over which the District has substantive jurisdiction. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's conclusions of law or interpretation of of administrative rule.

Accordingly, the exception is denied.

5. The District's Exception to RO paragraph 18.

The District asserts that only part of the third RAI is quoted in RO paragraph 18. The entire third RAI was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 8).***

Ruling

This exception does not assert that a finding of fact is not based upon competent substantial evidence or that a proceedings upon which a finding of fact is based did not comply with essential requirements of law. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's finding of fact. Further, this exception does not assert that the ALJ erred concerning a conclusion of law over which the District has substantive jurisdiction or an interpretation of an administrative rule over which the District has substantive jurisdiction. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's conclusions of law or interpretation of of administrative rule.

Accordingly, the exception is denied.

6. The District's Exception to RO paragraph 25.

The District asserts that only part of the Zwanka memorandum is quoted in RO paragraph 25. The entire Zwanka memorandum was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2021 ***(Joint Ex. 10).***

Ruling

This exception does not assert that a finding of fact is not based upon competent substantial evidence or that a proceedings upon which a finding of fact is based did not comply with essential requirements of law. Therefore the exception cannot be the basis

for a rejection or modification of one of the RO's finding of fact. Further, this exception does not assert that the ALJ erred concerning a conclusion of law over which the District has substantive jurisdiction or an interpretation of an administrative rule over which the District has substantive jurisdiction. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's conclusions of law or interpretation of of administrative rule.

Accordingly, the exception is denied.

7. The District's Exception to RO paragraph 26.

The District asserts that only part of the staff report is quoted in RO paragraph 26. The entire staff report was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(Joint Ex. 10).***

Ruling

This exception does not assert that a finding of fact is not based upon competent substantial evidence or that a proceedings upon which a finding of fact is based did not comply with essential requirements of law. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's finding of fact. Further, this exception does not assert that the ALJ erred concerning a conclusion of law over which the District has substantive jurisdiction or an interpretation of an administrative rule over which the District has substantive jurisdiction. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's conclusions of law or interpretation of of administrative rule.

Accordingly, the exception is denied.

8. The District's Exception to RO paragraph 29.

The District asserts that while part of the Order partially granting Seven Springs' Motion in Limine is accurately quoted, the Order is legally incorrect for the reasons set forth in (1) Respondent's Response to Petitioner's Motion in Limine filed on June 25, 2020, in DOAH Case No. 20-1329 and (2) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, this exception is, under protest, denied.

9. The District's Exception to RO paragraph 33.

The District asserts that only part of the comments of the DISTRICT Governing Board are quoted in RO paragraph 33. The entire transcript of the August 11, 2020, public hearing was introduced into evidence during the formal administrative hearing held on October 19 through 21, 2020 ***(SS Ex. 15).***

Ruling

This exception does not assert that a finding of fact is not based upon competent substantial evidence or that a proceedings upon which a finding of fact is based did not comply with essential requirements of law. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's finding of fact. Further, this exception does not assert that the ALJ erred concerning a conclusion of law over which the District has substantive jurisdiction or an interpretation of an administrative rule over which the District has substantive jurisdiction. Therefore the exception cannot be the basis for a rejection or modification of one of the RO's conclusions of law or interpretation of of administrative rule.

Accordingly, the exception is denied.

10. The District's Exception to RO paragraph 38.

The District asserts that while that part of Seven Springs' response to the DISTRICT's Motion to Amend is accurately quoted, the response is legally incorrect for the reasons set forth in (1) the DISTRICT's Motion to Amend Grounds for Denial filed on August 14, 2020, in DOAH Case No. 20-3581; (2) the DISTRICT's Reply to Petitioner's Response to the District's Motion to Amend Grounds for Denial filed on September 4, 2020 in DOAH Case No. 3581; and (3) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, this exception is, under protest, denied.

11. The District's Exception to RO paragraph 40.

The District asserts that while that part of the Administrative Law Judge's Order issued on September 16, 2020 is accurately quoted, the Order is legally incorrect for the reasons set forth in (1) the DISTRICT's Motion to Amend Grounds for Denial filed on August 14, 2020, in DOAH Case No. 20-3581; (2) the DISTRICT's Reply to Petitioner's Response to the District's Motion to Amend Grounds for Denial filed on September 4, 2020 in DOAH Case No. 3581; and (3) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, this exception is, under protest, denied.

12. The District's Exception to RO paragraph 42.

The District asserts that while that part of the Administrative Law Judge's Order issued on September 25, 2020 denying the DISTRICT's Motion for Reconsideration is accurately quoted, the Order is legally incorrect for the reasons set forth in (1) the DISTRICT's Motion to Amend Grounds for Denial filed on August 14, 2020, in DOAH Case No. 20-3581; (2) the DISTRICT's Reply to Petitioner's Response to the District's Motion to Amend Grounds for Denial filed on September 4, 2020 in DOAH Case No. 3581; (3) the DISTRICT's Motion for Reconsideration of Order Denying Motion to Amend filed on September 21, 2020, in DOAH Case No. 20-3581; and (4) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, this exception is, under protest, denied.

13. The District's Exception to RO paragraph 44.

The District asserts that while that part of the Seven Springs response is accurately quoted, the response is legally incorrect for the reasons set forth in (1) the DISTRICT's Second Motion in Limine filed on September 28, 2020, in DOAH Case No. 20-3581 and (2) paragraphs 88 through 98 of the DISTRICT's Proposed Recommended Order filed on December 18, 2020, in DOAH Case No. 20-3581.

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, this exception is, under protest, denied.

14. The District's Exception to RO paragraphs 47, 48 and 49.

The District asserts that these findings of fact were not based upon competent substantial evidence. As of the date of the formal administrative hearing, only one beverage processing product line was fully operational at the High Springs facility and the second line was being renovated and, as testified to by Seven Springs' expert witness Adam Thibodeau, P.E., is not always operational ***(Tr. 666:16-20).*** Additionally, after the conclusion of the final hearing in this matter, Nestle Waters North America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and

19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

Ruling

Concerning the exceptions raised with regard to the PWS Permit, the PWS permit was not part of the record in this case and therefore may not be considered by the District. *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.") Therefore, the exceptions related to the PWS Permit are denied.

The remainder of the exceptions concern findings of fact. There is not a complete lack of competent substantial evidence in the record supporting these findings of fact. Therefore the remaining exceptions are denied.

15. The District's Exception to RO paragraph 51.

The District asserts that based on a "raw data work up," the DISTRICT's expert, Tom Rutledge, testified that an acceptable water allocation is 0.892 mgd or 0.862 mgd on an annual average basis, not the 0.984 mgd requested by Seven Springs and approved in the Recommended Order ***(Tr. 648:13-25, 649:1-2).*** Additionally, the actual use of water at the High Springs facility has always been significantly less that the allocation presently requested, 0.984 mgd ***(Tr. 201:15-21; Joint Ex. 10, p. 3).*** Seven Springs has reported the actual use of water at the High Springs facility for the years 1995 through 2019, and the highest reported actual use of water was for 2006, which showed an average annual water use of 0.3874 mgd, significantly less than the 0.984 mgd requested allocation ***(Joint Ex. 10, p. 3, Tr. 428:24-25, 429:1-3).*** Hence, the 0.984 mgd request should not be approved. Additionally, after the conclusion of the final hearing in this matter, Nestle Waters North

America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

Ruling

Concerning the exceptions raised with regard to the PWS Permit, the PWS permit was not part of the record in this case and therefore may not be considered by the District. *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.") Therefore, the exceptions related to the PWS Permit are denied.

The remainder of the exceptions concern findings of fact. There is not a complete lack of competent substantial evidence in the record supporting these findings of fact. Therefore the remaining exceptions are denied.

16. The District's Exception to RO paragraph 52.

The District asserts that based on a "raw data work up," the DISTRICT's expert, Tom Rutledge, testified that an acceptable water allocation is 0.892 mgd or 0.862 mgd on an annual average basis, not the 0.984 mgd requested by Seven Springs and approved in the Recommended Order ***(Tr. 648:13-25, 649:1-2).*** Additionally, after the conclusion of the final hearing in this matter, Nestle Waters North America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The

PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

Ruling

Concerning the exceptions raised with regard to the PWS Permit, the PWS permit was not part of the record in this case and therefore may not be considered by the District. *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.") Therefore, the exceptions related to the PWS Permit are denied.

The remainder of the exceptions concern findings of fact. There is not a complete lack of competent substantial evidence in the record supporting these findings of fact. Therefore the remaining exceptions are denied.

17. The District's Exception to RO paragraph 53.

The District asserts that this finding of fact as to the physical capacity of the High Springs plant is legally irrelevant because Seven Springs does not have the legal right to conduct the water use at the High Springs plant. Such right must be demonstrated through property ownership or other property interest, such as a lease, at the project site (SRWMD Water Use Permitting Applicant's Handbook §§2.1.1. and 2.3.1). It is undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plant or the real property on which the High Springs plant is located ***(Tr. 270:7-10, 271:12-23, 425:8-12, Joint Ex. 10, p. 2, SS Ex. 36 [Amended Memo. of Agmt.], Joint Ex. 7a, p. 1, Tr. 156:6-10, 552:7-10, 552:16-25, 553:1-3, Joint Ex. 7a, p. 1, Joint Ex. 10, p. 2, Joint Ex. 7a, p. 1, SS Ex. 36 [Amended Memo. of Agmt., which states "…the Contract provides for the sale and purchase of water between the parties for bottling at the High Springs Plant, a water bottling plant recently purchased and operated by (Nestle Waters North America)…"], Tr. 425:8-12).*** In the RO, the Administrative Law Judge also finds that

Seven Springs does not own or control the High Springs plant ***(RO paragraph 5 ["After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Water of North America"]; paragraph 14; paragraph 19 [recounting that Seven Springs responded to the third RAI by stating "this MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility … which NWNA owns and operates"]; paragraph 68 ["Because Seven Springs does not own or control the High Springs facility…"];and paragraph 72 ["Seven Springs does not own or control either of Nestle's bottling facilities"].*** Additionally, after the conclusion of the final hearing in this matter, Nestle Waters North America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

Ruling

Concerning the exceptions raised with regard to the PWS Permit, the PWS permit was not part of the record in this case and therefore may not be considered by the District. *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.") Therefore, the exceptions related to the PWS Permit are denied.

The remainder of the exceptions concern Seven Springs' failure to meet the requirements of §§ 2.1.1 and 2.3.1 of the District's Applicant's Handbook requiring ownership and control of the High Springs plant. For the reasons set out in the ruling to the District's Exception to RO paragraph 68, these exceptions are, under protest, denied.

18. The District's Exception to RO paragraph 65.

The District asserts that the issues of ownership and control of the project site and related matters pursuant to SRWMD Water Use Permitting Applicant's Handbook §§2.1.1. and 2.3.1 was properly raised below and should have been addressed by the Administrative Law Judge in the Recommended Order (See paragraph 19 of these exceptions). It is undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plant or the real property on which the High Springs plant is located ***(Tr. 270:7-10, 271:12-23, 425:8-12, Joint Ex. 10, p. 2, SS Ex. 36 [Amended Memo. of Agmt.], Joint Ex. 7a, p. 1, Tr. 156:6-10, 552:7-10, 552:16-25, 553:1-3, Joint Ex. 7a, p. 1, Joint Ex. 10, p. 2, Joint Ex. 7a, p. 1, SS Ex. 36 [Amended Memo. of Agmt., which states "…the Contract provides for the sale and purchase of water between the parties for bottling at the High Springs Plant, a water bottling plant recently purchased and operated by (Nestle Waters North America)…"], Tr. 425:8-12).*** In the RO, the Administrative Law Judge also finds that Seven Springs does not own or control the High Springs plant ***(RO paragraph 5 ["After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Water of North America"]; paragraph 14; paragraph 19 [recounting that Seven Springs responded to the third RAI by stating "this MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility … which NWNA owns and operates"]; paragraph 68 ["Because Seven Springs does not own or control the High Springs facility…"]; and paragraph 72 ["Seven Springs does not own or control either of Nestle's bottling facilities"].***

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, these exceptions are, under protest, denied.

19. The District's Exception to RO paragraph 68.

The District asserts that the ALJ erred as a matter of law in determining that the District was not allowed to raise the issue of whether Seven Springs has the legal right to conduct the water use at the High Springs plant as required by the District's Water Use Permitting Applicant's Handbook §§2.1.1. and 2.3.1. The ALJ found that the District was prohibited from raising such issues because these issues had not been raised in a request for additional information pursuant to Section 120.60, F.S.

Ruling

The District is correct that the ALJ erred in his construction of Section 120.60, F.S. This is because the failure to comply with Section 120.60, F.S., does not mandate the issuance of a permit where the application fails to meet the minimum licensure requirements of

the agency. *MedPure, LLC v. Dep't of Health,* 295 So. 3d 318, 323 (Fla. 1st DCA 2020)

Failing to meet the ownership and control requirements in §§2.1.1. and 2.3.1 of the District's Water Use Permitting Applicant's Handbook constitutes a failure to meet the District's minimum requirements for a water use permit.

The ALJ found that Seven Springs does not own or control the High Springs plant ***(RO paragraph 5 ["After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Water of North America"]; paragraph 14; paragraph 19 [recounting that Seven Springs responded to the third RAI by stating "this MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility … which NWNA owns and operates"]; paragraph 68 ["Because Seven Springs does not own or control the High Springs facility…"]; and paragraph 72 ["Seven Springs does not own or control either of Nestle's bottling facilities"].*** Therefore, Seven Springs does not meet the ownership and control requirements in §§2.1.1. and 2.3.1 of the District's Water Use Permitting Applicant's Handbook.

Were the District empowered to reject or modify the ALJ's conclusion of law concerning Section 120.60, F.S., the District would reject this conclusion of law and enter a final order denying Seven Springs' application for a permit.

However, Section 120.60, F.S., is not a statute over which the District has substantive jurisdiction. Therefore, the District is not authorized to reject or modify a conclusion of law dealing with Section 120.60, F.S. *See,* Section 120.57(1)(l), F.S.

Accordingly, this exception is, under protest, denied.

20. The District's Exception to RO paragraph 71.

The District takes exception to this RO paragraph for the same reasons it took exception to RO paragraph 68.

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, these exceptions are, under protest, denied.

21. The District's Exception to RO paragraph 72.

The District takes exception to this RO paragraph for the same reasons it took exception to RO paragraph 68.

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, these exceptions are, under protest, denied.

22. The District's Exception to RO paragraph 74.

The Memorandum of Agreement is a contract for the sale of water. The Memorandum of Agreement does not convey to Seven Springs any legal rights of ownership or control of the High Springs facility as required by the DISTRICT's Water Use Permit Applicant's Handbook §§ 2.1.1 and 2.3.1. **(Applicant's Handbook §§ 2.1.1. and 2.3.1., *SS Ex. 36, Tr. 515:2-9, 600:4-13, 602:9-23***). It is undisputed that Seven Springs has no legal right to process or bottle the water at the High Springs plant, since it does not own or have other legal control of the plant or the real property on which the High Springs plant is located **(*Tr. 270:7-10, 271:12-23, 425:8-12, Joint Ex. 10, p. 2, SS Ex. 36 [Amended Memo. of Agmt.], Joint Ex. 7a, p. 1, Tr. 156:6-10, 552:7-10, 552:16-25, 553:1-3, Joint Ex. 7a, p. 1, Joint Ex. 10, p. 2, Joint Ex. 7a, p. 1, SS Ex. 36 [Amended Memo. of Agmt., which states "…the Contract provides for the sale and purchase of water between the parties for bottling at the High Springs Plant, a water bottling plant recently purchased and operated by (Nestle Waters North America)…"], Tr. 425:8-12).*** In the RO, the Administrative Law Judge also finds that Seven Springs does not own or control the High Springs plant ***(RO paragraph 5 ["After AquaPenn, the High Springs plant was owned and operated by Dannon, Coca-Cola, Ice River, and now Nestle Water of North America"]; paragraph 14; paragraph 19 [recounting that Seven Springs responded to the third RAI by stating "this MOA provides that NWNA and the applicant have entered into a contract in which NWNA is obligated to exclusively purchase spring water from the applicant to serve the NWNA High Springs Plant facility … which NWNA owns and operates"]; paragraph 68 ["Because Seven Springs does not own or control the High Springs facility…"]; and paragraph 72 ["Seven Springs does not own or control either of Nestle's bottling facilities"].***

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, these exceptions are, under protest, denied.

23. The District's Exceptions to RO paragraph 75.

The District takes exception to this RO paragraph for the same reasons it took exception to RO paragraph 72.

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, these exceptions are, under protest, denied.

24. The District's Exception to RO paragraph 76.

The District takes exception to this RO paragraph for the same reasons it took exception to RO paragraph 68.

Ruling

For the reasons set out in the ruling to the District's Exception to RO paragraph 68, these exceptions are, under protest, denied.

25. The District's Exception to RO paragraph 77.

After the conclusion of the final hearing in this matter, Nestle Waters North America, Inc. ("NWNA"), which owns and operates the High Springs plant (RO paragraphs 5, 14 and 19), applied for and was issued Public Water System permit no. 0395114-001-WC (the "PWS Permit") by the Florida Department of Environmental Protection ("FDEP"). Neither NWNA nor Seven Springs provided any notice of the application or the PWS Permit to the DISTRICT. The PWS Permit allows NWNA to refurbish an existing 6 inch well located adjacent to the High Springs plant for a water system to provide water to the High Springs plant. The PWS Permit provides that the permitted maximum daily capacity for this water system will be 100,000 gallons per day (gpd) or 0.100 million gallons per day (mgd). The application for the PWS Permit provides that the water system is to provide water to the High Springs plant for non-bottling uses. However, all of these non-bottling uses of water were considered by the Administrative Law Judge (ALJ) in these proceedings and make up 0.110 mgd of the allocation of 0.954 mgd approved by the ALJ in the RO (*see* RO paragraph 51). Accordingly, the 0.954 mgd allocation approved by the ALJ for the instant water use permit should be reduced by the permitted maximum daily capacity for the water system approved in the PWS Permit to 0.854 mgd (0.954 mgd – 0.100 mgd = 0.854 mgd). A true and correct copy of the PWS Permit is attached hereto as Exhibit 1, and a true and correct copy of NWNA's application for the PWS Permit is attached hereto as Exhibits 2A, 2B, and 2C.

Ruling

These exceptions are based on the PWS Permit. The PWS Permit was not part of the record in this case and therefore may not be considered by the District. *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.")

Accordingly, these exceptions are denied.

26. The District's Exception to RO paragraph 78.

The District takes exception to this RO paragraph for the same reasons it took exception to RO paragraphs 51 and 52.

The District also takes exception to this RO paragraph due to Seven Springs' failure to meet the requirements of §§ 2.1.1 and 2.3.1 of the District's Applicant's Handbook requiring ownership and control of the High Springs plant.

The remainder of the exceptions are based on the PWS Permit.

Ruling

Concerning the exceptions to this RO paragraph based on the same reasons the District took exception to RO paragraph 51, these exceptions are denied for the same reasons the District denied the exceptions to RO paragraph 51.

Concerning the exceptions to this RO paragraph based on the same reasons the District took exception to RO paragraph 52, these exceptions are denied for the same reasons the District denied the exceptions to RO paragraph 52.

Concerning the exceptions related to Seven Springs' failure to meet the requirements of §§ 2.1.1 and 2.3.1 of the District's Applicant's Handbook requiring ownership and control of the High Springs plant, for the reasons set out in the ruling to the District's Exception to RO paragraph 68, these exceptions are, under protest, denied.

Concerning the exceptions based on the PWS Permit, the PWS Permit was not part of the record in this case and therefore may not be considered by the District. *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.") Therefore these exceptions are denied.

RULINGS ON SEVEN SPRINGS' EXCEPTIONS

Seven Springs filed no exceptions to the RO.

ORDER

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

A. Under protest, the RO is adopted and incorporated herein by reference. The RO is adopted "under protest" as to those reasons set out in the ruling on the District's exceptions to RO paragraph 68 above. The RO is being adopted "under protest" to preserve the District's right to appeal this Final Order as provided in *Barfield v. Dep't of Health,* 805 So. 2d 1008, 1012-1013

(Fla. 1st DCA 2001).

B. The District shall issue renewal permit no. No. 2-041-218202-3 to Seven Springs substantially in the form attached hereto as Exhibit "B".

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 _____, 2021.

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 _____, 2021.

_____
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
109 N. Brush Street, Suite 300
Tampa, Florida 33602
Email: dmanson@mansonbolves.com
cvarn@mansonbolves.com
pheeter@mansonbolves.com
drodriguez@mansonbolves.com

by email on _____, 2021.

_____
Warren Zwanka
Deputy Agency Clerk
Suwannee River Water Management District

EXHIBIT “A”

(COPY OF RO TO BE ADDED)

EXHIBIT “B”

(COPY OF FORM OF PERMIT FOLLOWS)

SUWANNEE RIVER WATER MANAGEMENT DISTRICT
9225 CR 49
Live Oak, Florida 32060

PERMIT NO: 2-041-218202-3 **DATE ISSUED:** February ____, 2021
PROJECT NAME: Seven Springs Water Company

A PERMIT AUTHORIZING:

Allocation Summary		
Average Daily Rate (Million Gallons Per Day)	**Freeze Protection (Million Gallons Per Year)**	**Allocation Change (Million Gallons Per Day)**
0.9840	0.0000	-0.1680

LOCATION:
SITE: Seven Springs Water Company
TRS: S2 T8S R16E, S3 T8S R16E, S34 T7S R16E
County: Gilchrist

ISSUED TO:

Seven Springs Water Company
c/o Risa Klemans
101 NE Ginnie Springs Road
High Springs, FL 32643

Permittee agrees to hold and save the Suwannee River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all plans and specifications attached thereto, is by reference made a part hereof.

This permit does not convey to permittee any property rights nor any rights or privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation or requirement affecting the rights of other bodies or agencies. This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes and 40B-2, Florida Administrative Code.

PERMIT IS CONDITIONED UPON:
See conditions on attached “Exhibit A”, dated February ____, 2021

AUTHORIZED BY: Suwannee River Water Management District

By: _____
Executive Director

"EXHIBIT A"
CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 2-041-218202-3
Seven Springs Water Company
DATED February ___, 2021

1. All water uses authorized by this permit shall be implemented as conditioned by this permit, including any documents incorporated by reference in a permit condition. The District may revoke this permit, in whole or in part, or take enforcement action, pursuant to sections 373.136 or 373.243, F.S., unless a permit modification has been obtained. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

2. This permit does not convey to the permittee any property rights or privileges other than those specified herein, nor relieve the permittee from complying with any applicable local government, state, or federal law, rule, or ordinance.

3. The permittee shall notify the District in writing within 30 days of any sale, transfer, or conveyance of ownership or any other loss of permitted legal control of the Project and / or related facilities from which the permitted water use is made. Where the permittee's control of the land subject to the permit was demonstrated through a lease, the permittee must either submit documentation showing that it continues to have legal control or transfer control of the permitted system / project to the new landowner or new lessee. All transfers of ownership are subject to the requirements of rule 40B-2.351, F.A.C. Alternatively, the permittee may surrender the water use permit to the District, thereby relinquishing the right to conduct any activities under the permit.

4. Nothing in this permit should be construed to limit the authority of the District to declare a water shortage and issue orders pursuant to chapter 373, F.S. In the event of a declared water shortage, the permittee must adhere to the water shortage restrictions, as specified by the District. The permittee is advised that during a water shortage, reports shall be submitted as required by District rule or order.

5. A permittee may seek modification of any term of an unexpired permit. The permittee is advised that section 373.239, F.S. and rule 40B-2.331, F.A.C., are applicable to permit modifications.

6. This permit shall expire on **2/____/2026 (five years after the date of issuance)**. The permittee must submit the appropriate application form incorporated and the required fee to the District pursuant to rule 40B- 2.361, F.A.C., up to one year prior to this expiration date in order to continue the use of water.

7. Use classification is **Beverage Processing**.

8. Source classification is **Groundwater**.

9. The permitted water withdrawal facilities consist of the stations in the Withdrawal Point Information table(s).

10. The permittee must mitigate interference with existing legal uses caused in whole or in part by the permittee's withdrawals, consistent with a District-approved mitigation plan. As necessary to offset such interference, mitigation may include, but is not limited to, reducing pumpage, replacing

the existing legal user's withdrawal equipment, relocating wells, changing withdrawal source, supplying water to existing legal user, or other means needed to mitigate the impacts.

11. The permittee must mitigate harm to existing off-site land uses caused by the permittee's withdrawals. When harm occurs, or is imminent, the permittee must modify withdrawal rates or mitigate the harm.

12. The permittee must mitigate harm to the natural resources caused by the permittee's withdrawals. When harm occurs or is imminent, the permittee must modify withdrawal rates or mitigate the harm.

13. If any condition of the permit is violated, the permittee shall be subject to enforcement action pursuant to chapter 373, F.S.

14. The permittee must notify the District in writing prior to implementing any changes in the water use that may alter the permit allocations. Such changes include, but are not limited to, change in water treatment method, or entry into one or more large water use agreements. In the event a proposed change will alter the allocation, permittee must first obtain a permit modification.

15. All correspondence sent to the District regarding this permit must include the permit number (**2-041-218202-3**).

16. The District reserves the right to open this permit, following notice to the permittee, to include a permit condition prohibiting withdrawals for resource protection.

17. The permittee shall implement automated monitoring of groundwater withdrawals, at permittee's expense, upon commencement of withdrawals. Monthly reports shall include daily volume pumped by each well of inside diameter eight inches or greater at land surface and shall be delivered within the following month in an approved District format.

18. The permittee shall implement and/or maintain the conservation practices selected in the Water Conservation Plan submitted to the District on June 27, 2019. Any new practices selected shall be implemented within one year from the date of permit issuance. Practices that involve scheduling methods or maintenance shall be documented. Documentation for implementation and/or maintenance shall be maintained on all practices and available upon request.

19. The permittee's water use shall be consistent with the Minimum Flows and Minimum Water Levels (MFL) prevention or recovery strategy developed for any water body from which this permitted water use directly or indirectly withdraws or diverts water, pursuant to subsection 40B-2.301(2)(h), F.A.C.

20. Following the effective date of the re-evaluated adopted MFL pursuant to subsection 62-42.300(1)(e), F.A.C., this permit is subject to modification during the term of the permit, upon reasonable notice by the District to the permittee, to achieve compliance with any approved MFL recovery or prevention strategy for the Lower Santa Fe River, Ichetucknee River, and Associated Priority Springs. Nothing herein shall be construed to alter the District's authority to modify a permit under circumstances not addressed in this condition.

21. The permittee is authorized to withdraw a maximum of 0.9840 mgd of groundwater for beverage processing use. Daily allocations are calculated on an average annual basis.

22. The permittee shall cap Well P-1 (Station ID 135840) in a water tight manner upon placing Well P-3 (Station ID 138124) into use.

23. The permittee shall maintain the Ginnie Springs gauging station (Station ID 02322400) through the duration of this permit; and ensure hourly stage, water temperature, conductivity, pH, nitrate, and dissolved oxygen measurements are reported to the District in an electronic format in the event this station is no longer maintained and reported by the USGS.

24. With advance notice to the permittee, District staff with proper identification shall have permission to enter the project site to, inspect, observe, collect samples, and take flow measurements of springs under the permitttee's ownership or control. The permittee shall either accompany District staff onto the property or make provision for access onto the property.

25. Unless authorized by modification of this permit, the entire groundwater allocation authorized by this permit shall be bottled at the Gilchrist County facility or otherwise used at the Gilchrist County facility for potable uses, equipment cooling, line flushing, or other industrial uses; and bulk tankering of water from the Gilchrist County facility is prohibited. As used in this permit condition, the term "bottled" means sealed in bottles, jugs, and/or similar containers that are intended to be later offered for retail sale for human consumption. As used in the permit conditions, the term "Gilchrist County facility" means the manufacturing facility located at 7100 NE CR 340, High Springs, Florida 32643 in Gilchrist County, Florida.

26. With advance notice to the permittee, the permittee shall arrange and ensure that District staff with proper identification shall have permission to enter, inspect, observe, collect samples, and take measurements of the Gilchrist County facility to determine compliance with the permit conditions and permitted plans and specifications. The permittee shall either accompany District staff onto the property or make provision for access onto the property.

27. Unless expressly exempted in rule 40B-2.051, F.A.C., no groundwater may be used at the Gilchrist County facility, except the allocation permitted herein, without authorization of the use through modification of this permit or a separate water use permit.

WITHDRAWAL POINT INFORMATION:

Site Name: Seven Springs Water Company

Well Details						
District ID	**Station Name**	**Casing Diameter (inches)**	**Capacity (GPM)**	**Source Name**	**Status**	**Use Type**
135840	P-1	10	600	FAS - Upper Floridan Aquifer	Active	Beverage Processing
135841	P-2	10	600	FAS - Upper Floridan Aquifer	Active	Beverage Processing
138124	P-3	10		FAS - Upper Floridan Aquifer	Proposed	Beverage Processing
108733	98566 Landscape	4		FAS - Upper Floridan Aquifer	Inactive	n/a
33073	32169 for PWS ID 2214206	6		FAS - Upper Floridan Aquifer	Inactive	n/a

1. A person whose substantial interests are or may be determined has the right to request an administrative hearing by filing a written petition with the Suwannee River Water Management District (District), or may choose to pursue mediation as an alternative remedy under Section 120.569 and 120.573, Florida Statutes, (F.S.), before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth in Sections 120.569 and 120.57 F.S. Pursuant to Rule 28-106.111, Florida Administrative Code, (F.A.C.), the petition must be filed at the office of the District Clerk at District Headquarters, 9225 C.R. 49, Live Oak, Florida 32060 within twenty-one (21) days of receipt of written notice of the decision or within twenty-one (21) days of newspaper publication of the notice of District decision (for those persons to whom the District does not mail actual notice). A petition must comply with Chapter 28-106, F.A.C.

2. If the Governing Board takes action which substantially differs from the notice of District decision to grant or deny the permit application, a person whose substantial interests are or may be determined has the right to request an administrative hearing or may choose to pursue mediation as an alternative remedy as described above. Pursuant to Rule 28-106.111, F.A.C. the petition must be filed at the office of the District Clerk at District Headquarters, 9225 C.R. 49, Live Oak, Florida 32060 within twenty-one (21) days of receipt of written notice of the decision or within twenty-one (21) days of newspaper publication of the notice of District decision (for those persons to whom the District does not mail actual notice). Such a petition must comply with Chapter 28-106, F.A.C.

3. A substantially interested person has the right to a formal administrative hearing pursuant to Section 120.569 and 120.57(1), F.S., where there is a dispute between the District and the party regarding an issue of material fact. A petition for formal hearing must comply with the requirements set forth in Rule 28-106.201, F.A.C.

4. A substantially interested person has the right to an informal hearing pursuant to Section 120.569 and 120.57(2), F.S., where no material facts are in dispute. A petition for an informal hearing must comply with the requirements set forth in Rule 28-106.301, F.A.C.

5. A petition for an administrative hearing is deemed filed upon receipt of the petition by the Office of the District Clerk at the District Headquarters in Live Oak, Florida.

6. Failure to file a petition for an administrative hearing within the requisite time frame shall constitute a waiver of the right to an administrative hearing pursuant to Rule 28-106.111, F.A.C.

7. The right to an administrative hearing and the relevant procedures to be followed is governed by Chapter 120, F.S., and Chapter 28-106, F.A.C.

8. Pursuant to Section 120.68, F.S., a person who is adversely affected by final District action may seek review of the action in the District Court of Appeal by filing a notice of appeal pursuant to the Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.

9. A party to the proceeding before the District who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, F. S., may seek review of the order pursuant to Section 373.114, F.S., by the Florida Land and Water Adjudicatory Commission, by filing a request for review with the Commission and serving a copy of the Department of Environmental Protection and any person named in the order within 20 days of adoption of a rule or the rendering of the District order.

10. For appeals to the District Courts of Appeal, a District action is considered rendered after it is signed on behalf of the District and is filed by the District Clerk.

11. Failure to observe the relevant time frames for filing a petition for judicial review, or for Commission review, will result in waiver of the right to review.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Rights has been sent by U.S. Mail to:

Seven Springs Water Company
c/o Risa Klemans
101 NE Ginnie Springs Road
High Springs, FL 32643

This February _____, 2021

_____
Deputy Clerk
Suwannee River Water Management District
9225 C.R. 49
Live Oak, Florida 32060
386.362.1001 or 800.226.1066 (Florida only)

cc: Permit Number: 2-041-218202-3