


United States Nuclear Regulatory Commission Official Hearing Exhibit	
In the Matter of:	Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2)
	ASLBP #: 09-879-04-COL-BD01 Docket #: 05200029 05200030 Exhibit #: PEF311-00-BD01 Admitted: 10/31/2012 Rejected: Other:
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Effective: July 1, 2010

West's Florida Statutes Annotated [Currentness](#)

Title XXVIII. Natural Resources; Conservation, Reclamation, and Use (Chapters 369-380)

 [Chapter 373](#). Water Resources ([Refs & Annos](#))

 [Part II](#). Permitting of Consumptive Uses of Water ([Refs & Annos](#))

→→ 373.223. Conditions for a permit

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

- (a) Is a reasonable-beneficial use as defined in [s. 373.019](#);
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

(2) The governing board or the department 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 department determines that such transport and use is consistent with the public interest, and no local government shall adopt or enforce any law, ordinance, rule, regulation, or order to the contrary.

(3) Except for the transport and use of water supplied by the Central and Southern Florida Flood Control Project, and anywhere in the state when the transport and use of water is supplied exclusively for bottled water as defined in [s. 500.03\(1\)\(d\)](#), any water use permit applications pending as of April 1, 1998, with the Northwest Florida Water Management District and self-suppliers of water for which the proposed water source and area of use or application are located on contiguous private properties, when evaluating whether a potential transport and use of ground or surface water across county boundaries is consistent with the public interest, pursuant to paragraph (1)(c), the governing board or department shall consider:

- (a) The proximity of the proposed water source to the area of use or application.
- (b) All impoundments, streams, groundwater sources, or watercourses that are geographically closer to the area of use or application than the proposed source, and that are technically and economically feasible for the proposed transport and use.
- (c) All economically and technically feasible alternatives to the proposed source, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery.
- (d) The potential environmental impacts that may result from the transport and use of water from the proposed source, and the potential environmental impacts that may result from use of the other water sources identified in paragraphs (b) and (c).

(e) Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for existing legal uses and reasonably anticipated future needs of the water supply planning region in which the proposed water source is located.

(f) Consultations with local governments affected by the proposed transport and use.

(g) The value of the existing capital investment in water-related infrastructure made by the applicant.

Where districtwide water supply assessments and regional water supply plans have been prepared pursuant to [ss. 373.036](#) and [373.709](#), the governing board or the department shall use the applicable plans and assessments as the basis for its consideration of the applicable factors in this subsection.

(4) The governing board or the department, by regulation, may reserve from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review and revision in the light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

(5) In evaluating an application for consumptive use of water which proposes the use of an alternative water supply project as described in the regional water supply plan and provides reasonable assurances of the applicant's capability to design, construct, operate, and maintain the project, the governing board or department shall presume that the alternative water supply use is consistent with the public interest under paragraph (1)(c). However, where the governing board identifies the need for a multijurisdictional water supply entity or regional water supply authority to develop the alternative water supply project pursuant to [s. 373.709\(2\)\(a\)2.](#), the presumption shall be accorded only to that use proposed by such entity or authority. This subsection does not effect evaluation of the use pursuant to the provisions of paragraphs (1)(a) and (b), subsections (2) and (3), and [ss. 373.2295](#) and [373.233](#).

CREDIT(S)

Laws 1972, c. 72-299, Part II, § 3; Laws 1973, c. 73-190, § 10; Laws 1976, c. 76-243, § 10; Laws 1985, c. 85-81, § 35. Amended by [Laws 1998, c. 98-88, § 4, eff. Oct. 1, 1998](#); [Laws 2005, c. 2005-291, § 6, eff. June 24, 2005](#); [Laws 2010, c. 2010-205, § 15, eff. July 1, 2010](#).

CROSS REFERENCES

Local governments, sector plans, see [F.S.A. § 163.3245](#).

LAW REVIEW AND JOURNAL COMMENTARIES

[Modernizing water law: The example of Florida. Christine A. Klein, Mary Jane Angelo, and Richard Hamann, 61 Fla.L.Rev. 403 \(July 2009\).](#)

Slicing the water supply pie: Competing applications under Florida's Water Resources Act. William L. Earl and Thomas T. Ankersen, 61 Fla.B.J. 87 (June 1987).

Wastewater re-use in Florida. Stanley J. Niego, 56 Fla.B.J. 626 (1982).

Water transfer: An invitation to a confrontation. Vance W. Kidder, 62 Fla.B.J. 41 (Nov. 1988).

LIBRARY REFERENCES

Waters and Water Courses  183.5, 202.

Westlaw Topic No. [405](#).

[C.J.S. Waters §§ 483, 543](#) to [581](#), [616](#), [640](#), [643](#), [646](#), [651](#), [656](#), [659](#) to [665](#).

RESEARCH REFERENCES

ALR Library

[109 ALR 395](#), Subterranean and Percolating Waters; Springs; Wells.

Encyclopedias

[FL Jur. 2d Water § 50](#), Existing Uses.

[FL Jur. 2d Water § 51](#), Permissible Uses; Transportation.

[FL Jur. 2d Water § 53](#), Temporary Permits.

[FL Jur. 2d Water § 54](#), Application for Permit.

[FL Jur. 2d Water § 56](#), Hearing; Issuance of Permit.

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[1](#). Granting of permits



Granting consumptive use permit (CUP) to withdraw groundwater for bottling and distribution as drinking water through existing well would not violate any duty of river water management district to manage water resources to ensure sustainable use, including future increases in demand; even though planning study document showed limit on groundwater withdrawals if all anticipated groundwater demands come to fruition within 20-30 year time period, competent evidence indicated little or no impact on other water users because of minimal drawdown, even taking into account increased water demand during twenty year duration of the permit. [Marion County v. Greene, App. 5 Dist., 5 So.3d 775 \(2009\)](#). [Water Law](#)  [1107](#)

Existing water use permit was entitled to superiority in considering application for consumptive use permit for water allowances, and granting of later permit would not require consideration of fact that existing permit holder could deepen its wells and expend funds to upgrade wells from their current condition. [Harloff v. City of Sarasota, App. 2 Dist., 575 So.2d 1324 \(1991\)](#), review denied [583 So.2d 1035](#). [Water Law](#)  [1906](#)


2. Public interest



River water management district, in determining whether to grant consumptive use permit (CUP) to withdraw groundwater for bottling and distribution as drinking water through an existing well, was not required to consider factors set forth in statute that expressly exempted bottled water from consideration; rather, district was required by statute to consider whether issuance of CUP was consistent with the public interest. [Marion County v. Greene, App. 5 Dist., 5 So.3d 775 \(2009\).](#) [Water Law](#) 1104; [Water Law](#) 1122

In examining whether an application for a conditional use permit (CUP) is consistent with the public interest, the river water management district considers whether the use of water is efficient, there is a need for the water requested, and the use is for a legitimate purpose; the inquiry focuses on the impact of the use on water resources and existing legal users. [Marion County v. Greene, App. 5 Dist., 5 So.3d 775 \(2009\).](#) [Water Law](#) 1122; [Water Law](#) 1530



Issuance of consumptive use permit (CUP) to applicants, who sought authorization to withdraw groundwater for bottling and distribution as drinking water through an existing well, was consistent with the public interest, in that applicants presented evidence indicating that there was a need for amount of water requested. [Marion County v. Greene, App. 5 Dist., 5 So.3d 775 \(2009\).](#) [Water Law](#) 1107; [Water Law](#) 1122

3. Interdistrict diversion

The Department of Environmental Regulation properly exercised its authority in implementing administrative guidelines for water districts to follow in effecting interdistrict transfers of water, and thus, first water district could consider application for consumptive use permit which would authorize use in first water district of water drawn from second water district; under the administrative guidelines, second water district, as well as first water district, would have to study the problem and determine that the permit was consistent with the public interest before water could be taken from the second water district. [Osceola County v. St. Johns River Water Management Dist., 504 So.2d 385 \(1987\).](#) [Water Law](#) 1035

Legislature has impliedly granted to Department of Environmental Regulation authority to allow interdistrict diversions of water, and such authority is properly delegated to water management districts. [Osceola County v. St. Johns River Water Management Dist., App. 5 Dist., 486 So.2d 616 \(1986\), approved 504 So.2d 385.](#) [Water Law](#) 1027; [Water Law](#) 2082

4. Consumptive use permits

Applicants who sought consumptive use permit (CUP) from river water management district in order to withdraw groundwater for bottling and distribution as drinking water through an existing well were not required to show that a special use permit (SUP) had been issued by county before CUP could be issued, as district had exclusive authority to approve CUP applications, and neither the statutes nor the rules regarding CUPs imposed any requirements on district related to compliance with a local government's comprehensive plan or land development regulations. [Marion County v. Greene, App. 5 Dist., 5 So.3d 775 \(2009\).](#) [Water Law](#) 1105; [Water Law](#) 1122

5. Rulemaking

Proposed administrative rule allowing Department of Environmental Protection (DEP) or governing board to reserve, and prospectively reserve, water from use by permit applicants was not an invalid exercise of delegated legislative authority; rule limited such reservation to cases where reservation was required for the protection of fish and

wildlife or public health and safety, which was consistent with statute authorizing DEP or governing board to reserve such water “as in its judgment may be required for the protection of fish and wildlife or the public health and safety.” [Association of Florida Community Developers v. Department of Environmental Protection, App. 1 Dist., 943 So.2d 989 \(2006\)](#). [Environmental Law](#) 🔑536; [Water Law](#) 🔑1560

Water management district rule setting forth the criteria that had to be met by applicant for water use permit (WUP) was a proper implementation of three-prong statutory test. [Southwest Florida Water Management Dist. v. Charlotte County, App. 2 Dist., 774 So.2d 903 \(2001\)](#), review denied [800 So.2d 615](#). [Water Law](#) 🔑1530

6. Review

Water management district's basis of review for water use permit applications, which required reuse of water where feasible, was authorized under three-prong statutory test requiring a use to be reasonable-beneficial and in the public interest. [Southwest Florida Water Management Dist. v. Charlotte County, App. 2 Dist., 774 So.2d 903 \(2001\)](#), review denied [800 So.2d 615](#). [Water Law](#) 🔑1530

Water management district's proposed and existing bases of review for water use permit applications, which required certain water use permit (WUP) applicants to investigate feasibility of desalination and implement it if feasible, were valid exercises of delegated legislative authority. [Southwest Florida Water Management Dist. v. Charlotte County, App. 2 Dist., 774 So.2d 903 \(2001\)](#), review denied [800 So.2d 615](#). [Water Law](#) 🔑1525

Water management district's proposed and existing bases of review for water use permit applications, which required water supply utilities to adopt a “water-conserving rate structure,” were within district's authority. [Southwest Florida Water Management Dist. v. Charlotte County, App. 2 Dist., 774 So.2d 903 \(2001\)](#), review denied [800 So.2d 615](#). [Water Law](#) 🔑1525

Although Southwest Florida Water Management District was not free to reject hearing officer's findings of fact related to mixed issues of law and fact regarding extent to which applicant should be permitted to withdraw water in light of possible interference with previously issued water permit, District was free to substitute its judgment concerning legal question of whether facts established that requested use would not interfere with water use under existing permit and would be reasonable-beneficial use. [Harloff v. City of Sarasota, App. 2 Dist., 575 So.2d 1324 \(1991\)](#), review denied [583 So.2d 1035](#). [Administrative Law And Procedure](#) 🔑513; [Water Law](#) 🔑1898

Southwest Florida Water Management District has broad powers to reject conclusions of law proposed by hearing officer in granting consumptive use permit for water allowances. [Harloff v. City of Sarasota, App. 2 Dist., 575 So.2d 1324 \(1991\)](#), review denied [583 So.2d 1035](#). [Water Law](#) 🔑1898

West's F. S. A. § 373.223, FL ST § 373.223

Current with chapters in effect from the 2012 Second Regular Session and the Extraordinary Apportionment Session of the Twenty-Second Legislature through June 1, 2012

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