**STATE OF FLORIDA**
**DIVISION OF ADMINISTRATIVE HEARINGS**

FLORIDA SPRINGS COUNCIL, Inc.,

Petitioner,

Case No. 21-1180

vs.

SEVEN SPRINGS WATER COMPANY AND SUWANEE RIVER WATER MANAGEMENT DISTRICT,

Respondents.
_____/

# FLORIDA SPRINGS COUNCIL'S PROPOSED RECOMMENDED ORDER

Florida Springs Council, Inc. ("Florida Springs Council") hereby files its Proposed Recommended Order for this case.

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Pursuant to notice, a final hearing in this case was held on May 10, 2023, in Tallahassee, Florida, before Francine M. Ffolkes, an Administrative Law Judge with the Division of Administrative Hearings.

## APPEARANCES

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For Respondent Suwannee River Water Management District:

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## STATEMENT OF THE ISSUE

The remaining issue in this case is whether the applicant, Seven Springs Water Company ("Seven Springs") has provided reasonable assurance that its proposed use of water for a commercial water bottling facility is "consistent with the public interest" as specifically required by Section 373.223(1)(c), Fla. Stat., and Rule ("District") 40B-2.301 (1)(c), Fla. Admin. Code, commonly referred to as the "third prong" of the water use permitting requirement. Specifically, do the facts and law in this case show that reasonable assurance has been provided that this "third prong" water use permitting requirement has been met even though there are broad-based interests and concerns opposing the proposed water use that are collectively shared by residents of the District and State, and even though the proposed use of water will result in more significant harm to the water resources or ecology of the area than is presently occurring.

## PRELIMINARY STATEMENT

On March 16, 2021, a Petition for Administrative Hearing was filed by the Florida Springs Council, Our Santa Fe River, Inc., and Michael Roth challenging the Suwannee River Water Management District's final order renewing Permit No. 2-041-218202-3 ("Permit") to Seven Springs Water Company. The Petition raised two issues. First, the Petition alleged the Permittee's lack of legal control over the water bottling facility where the proposed water use was to occur did not meet the requirements of the District rules, specifically Sections 2.1.1 and 2.3.1 of the District's Water Use Permit Applicant's Handbook. Second, the Petition alleged reasonable assurances have not been provided that the proposed water use is "consistent with the public interest" as required by Section 373.223(1)(c), Fla. Stat., and District Rule 40B-2.301(1)(c), Fla. Admin. Code, as the term "public interest" is defined in District Rule 40B-2.021(7), Fla. Admin. Code. The Petition was forwarded to the Division of Administrative Hearings ("DOAH") on March 30, 2021.

On April 14, 2021, DOAH issued an order dismissing the Petition for lack of subject matter jurisdiction, including a statement that "[t]he appropriate remedy is to appeal the final agency action" referring to the District final order issuing the Permit (District Final Order No. 21-003). On May 11, 2021, the District issued Final Order No. 21-008, dismissing the Petition with prejudice. Florida Springs Council (Our Santa Fe River, Inc., and Michael Roth had withdrawn from the case) then appealed District Final Order No. 21-008 that dismissed its Petition to the Florida First District Court of Appeal. The Court reversed and remanded the District's Final

Order, holding that Florida Springs Council was entitled to an administrative hearing under the District rules (mandate issued February 6, 2023 in Case No. 1D21-1445).

On February 6, 2023, the District re-referred the case to DOAH. On February 28, 2023, Seven Springs filed a motion to dismiss the Petition, arguing that a second administrative hearing should not be allowed concerning this Permit application. The arguments reflected what was already argued before the First District Court of Appeal. The motion was denied on April 11, 2023.

On April 11, 2023, all parties in this case filed a Stipulation, wherein it was agreed that the water bottling facility (Blue Triton) had agreed to become a co-permittee under the Permit, and therefore the first issue raise in Florida Springs Council's Petition had been resolved.

On March 20, 2023, Seven Springs filed a Motion for Official Recognition for eight categories of documents, including a request for official recognition of "Public Comments in the SRWMD permit file on Seven Springs Permit No. 2-041-218202-3." Seven Springs attached as Exhibit E public comments from the SRWMD permit file on Seven Springs permit No. 2-041-218202-3, the Permit being proposed in this case, for two time periods - from 04/02/2019 to 08/06/2019, and from 05/25/2020 to 09/10/20. A review of the District permit file for those two time periods show that the District received 118 "letters of objection" to the Permit, 7 "letters of concern" about the Permit, and 3 "letters of support" for the Permit. There were 11 instances where the same person submitted two objections, so there were 107 persons who submitted "letters of objection" during these time periods.

On April 11, 2023, an order was issued granting official recognition of six of the eight categories of documents, including granting official recognition of the Public Comments in the District permit file on the Seven Springs Permit.

On April 20, 2023, Florida Springs Council filed an Amended Motion for Official Recognition, requesting official recognition of 15 laws, rules and documents. Included in the category of documents requested for official recognition were the Public Comments in the District Permit file on the Seven Springs Permit, similar to the Seven Springs request. Also included in the request was the "Study of the Spring Bottled Water Industry in Florida" done by the Florida Department of Environmental Protection ("DEP") prepared at the direction of the Florida Legislature in Chapter 2020-150, Section 4, Laws of Florida. Florida Springs Council argued that the Study was a public record of official agency action admissible for the truth of the matters asserted pursuant to Section 90.803(8), Fla. Stat. The final document requested for official recognition was the "Recovery Strategy : Lower Santa Fe River Basin" dated April 8, 2014.

On April 27, 2023, Seven Springs and the District filed responses objecting to Florida Springs Council's Motion for Official Recognition. Concerning the public comments documented on the District web site, both Seven Springs and the District contended that they were unauthenticated, uncorroborated hearsay, but both the Seven Springs and the District acknowledged on page 5 of their identical responses that "it is possible that the ALJ may take judicial notice of the fact that the District's on-line permit file for this Permit appears to contain "X number" of what purport to be (or are labeled as) public comments." An order was issued on May 10, 2023, the day of the final hearing, denying Florida Springs Council's request for

official recognition of the Public Comments from the District permit file on the Seven Springs Permit, and denying the request for official recognition of the DEP Study of the Spring Bottled Water Industry. All other matters requested for official recognition were granted, including the "Recovery Strategy: Lower Santa Fe River Basin" dated April 8, 2014.

On April 26, 2023, Seven Springs filed a Motion in Limine. On April 27, 2023, the District filed a similar Motion in Limine. They requested that any testimony or evidence be excluded (1) that goes beyond the scope of what is included in Section 2.3.4.1 of the Handbook describing what information the Governing Board of the District will consider in determining what is reasonable-beneficial and consistent with the public interest; (2) that addresses the Minimum Flows and Levels in the Lower Santa Fe River and associated springs; and (3) that concerns statutes and rules relating to Minimum Flows and Levels and the reasonable-beneficial test of the water use permitting requirement. The motion was denied without prejudice on May 10, 2023.

On May 2, 2023, a Joint Pre-Hearing Stipulation was filed. In the Stipulation Florida Springs Council agreed that it would not challenge the first and second prong of the water use permitting test (whether the proposed use is "reasonable-beneficial" or will "interfere with any presently existing legal use of water"). Issues of fact which the parties agreed remain to be litigated are whether reasonable assurances have been provided that the project is consistent with the public interest as required by District Rule 40B-2.301(1)(c) and Section 373.223(1)(c), Fla. Stat., (the third prong of the water use permitting test), and whether Florida Springs Council has standing in this proceeding. Agreed remaining issues of law were whether the proposed water use was consistent with the public interest pursuant to Rule 40B-2.301(1)(c)

and Section 373.223(1)(c), Fla. Stat.; whether Minimum Flows and Levels in the Lower Santa Fe River and public comments on the Permit received by the District were relevant and material to this proceeding; and whether Florida Springs Council has standing to initiate this proceeding.

At the hearing, Seven Springs presented the fact testimony of Risa Wray and the expert testimony of David Brown. Seven Springs' Exhibit 1 was admitted into evidence, and Joint Seven Springs/District Exhibits 1-21 were admitted into evidence. The District presented the expert testimony of Warren Zwanka, and District Exhibits 1 and 2 were admitted into evidence. Florida Springs Council presented the fact testimony of Jane Blais, Kristin Rubin, and Ryan Smart and the expert testimony of Warren Zwanka. Florida Springs Council Exhibit 6 was admitted into evidence. Florida Springs Council Exhibits 1, 2, 3, 4 and 8 were proffered as exhibits but were not admitted into evidence.

The transcript of the hearing was filed with DOAH on June 6, 2023.

## FINDINGS OF FACT

Based on the parties' stipulations, the matters officially recognized, and the evidence adduced at the final hearing, the following findings of fact are made:

### RESPONDENTS

1. The Suwannee River Water Management District ("District") is an administrative agency of the State of Florida authorized under Section 373.219(1) of the Florida Statutes to require consumptive use of water permits and to impose such reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of the District or Department of Environmental Protection ("DEP"). The District is also authorized under Section 373.042, Fla. Stat., to establish minimum flows and levels ("MFL") for water bodies at which

further withdrawals would be significantly harmful to the water resources or ecology of the area. Finally, under Section 373.0421(2), Fla. Stat., the District is authorized to concurrently adopt with DEP a recovery or prevention strategy when a water body falls below its established MFL.

2. Seven Springs Water Company ("Seven Springs") is a Florida corporation that was issued a water use permit by the District in 1994. The water use is for commercial bottled water. In this proceeding Seven Springs is seeking a renewal of the Permit (Permit No. 2-041-218202-3) along with BlueTitron Brands, Inc., as co-permttee.

PETITIONER

3. Florida Springs Council, Inc., ("Florida Springs Council") is a 501(c) not-for-profit organization whose mission is to protect and restore Florida's springs and spring-fed rivers. It presently has almost 5,000 members. It provides education for both the public and decision-makers, including working on legislation and regulatory matters affecting springs. It deals with permits and local land use issues affecting springs. Members of Florida Springs Council rely of the Council to protect their interests in protecting Florida's springs.

4. Three members of the Florida Springs Council testified that they use and enjoy the Lower Santa Fe River and its associated Springs, and have concerns with water levels in the river (Blais, Ruben and Smart). One member (Blais) testified she has a business that relies on persons being able to use and enjoy the river. They kayak, canoe, and swim in the river and springs with many other members of the Council, and are relying on the Council to protect their concerns about the river and springs.

5. In order to determine whether a significant number of Florida Springs Council members used the Santa Fe River and its associated springs and were concerned with the issuance of the Permit, the Council surveyed its members in April, 2021 (Petitioner's Exhibit 6). 661 members responded. At that time the total membership was approximately 2500. 59.2 per cent reported they used the river one to ten times per year. 26 per cent reported they use the river one to three times per month. 11.5 per cent said they use the river multiple times per week. Those surveyed reported they used the river for nature and scenic beauty, swimming and snorkeling, kayaking, photography and art, and fishing. About 15 members reported that they own a business that depends on the river. Finally, those surveyed were given choices as to how certain actions would affect their use and enjoyment of the river. 95.5 per cent of the 661 members responded positively that "the pumping of water that should remain in the basin to help recover the Santa Fe River's natural flow" would affect their use and enjoyment of the river, and 90 per cent of the members responded positively that the Water Management District's failure to address whether the Permit is "consistent with the broad-based interest and concerns that are collectively shared by members of the community or residents of the District or State" would affect their use and enjoyment of the river.

PUBLIC INTEREST

Public Comment

6. The remaining issue in this case is whether District Rule 40B-2.301(1)(c), Fla. Admin. Code, has been met. That rule, often referred to as the "third prong" of the three-part water use permitting requirement, requires an applicant for a water use permit to provide reasonable assurance that the proposed water use is "consistent with the public interest." The definition

of “public interest” is defined under District Rule 40B-2.021(7) as “those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State.” This “third prong” test is analyzed separately from the first two “prongs” – the first prong under Rule 40B-2.301(1)(a) requiring the Permit be “reasonable-beneficial”, and the second prong under Rule 40B-301(1)(b) requiring that the Permit not interfere with other existing legal uses. Zwanka depo p. 30, T. 115.

7. The District received approximately 19,000 public comments concerning this Permit renewal. T. 121, 122. An overwhelming majority of the comments were opposed to the Permit. T. 144, 145; See also Exhibit E of Seven Springs’ Motion for Official Recognition, which was granted official recognition, wherein a review of public comments on the District’s web site for the Permit shows that for two specific time periods in 2019 and in 2020, 107 persons submitted “letters of objection” to the Permit, 7 persons submitted “letters of concern”, and 3 persons submitted “letters of support”.

8. District staff did not review most of the 19,000 public comments. T. 125, 126. Therefore, District did not do an evaluation of the 19,000 comments to determine the number of persons who were opposed to the proposed use of water, those who were concerned with the proposed use, nor those who favored the proposed use. Nor did the District do an evaluation to determine how many of those interests and concerns were from members of a community or residents of the District or the State. Yet Florida Springs Council witness Smart described a procedure to address how the basic information from the 19,000 comments could be evaluated to determine how many commentators objected the Permit, how many supported the Permit, how many expressed concerns, how many duplicates existed, and

whether the comment is from the State of Florida. T. 245. 246, 255, 256. Although Florida Springs Council's Exhibit 7 describing the result of this evaluation was not allowed into evidence for hearsay and authentication issues, there is no evidence the District or Seven Springs attempted to analyze the public comments to make such an evaluation. Nor is there any evidence that Seven Springs or the District attempted to determine what were the "interests and concerns that were collectively shared … by residents of the District or State" concerning the issuance of this Permit.

9. The District staff forwarded all of the public comments to the Governing Board. T. 144. However, neither the District nor Seven Springs provided a summary of the comments describing and summarizing the interests or concerns expressed in the comments, or identifying the extent of comments from members of a community or residents of the District or State to the Governing Board. Zwanka depo 100. The District Staff Report recommending approval of the Permit made no analysis of the 19,000 public comments that were overwhelmingly opposed to the project. Dist/SS Joint Ex.17 (Feb. 24, 2021 Staff Report).

10. The opinions expressed in the public comments did not factor into the District's evaluation of the application and the public interest component of the evaluation. T. 126, 146-149.

11. Of the limited number of public comments reviewed by the District staff, the District staff limited its review to determine if something "substantive" was missed in the Staff review of the Permit. The "substantive" issues had to be related to the applicable rules, which the District limited to Section 2.3.4.1 of the Handbook. T. 108, 109, 126, 146-149, 169. The District's position is that it did not need to evaluate how many members of the public opposed

the Permit unless it was of "substance". T. 148. Yet no one on the District staff reviewed the vast majority of the 19,000 comments to determine if the public comments were "substantive" and therefore appropriate for consideration. T. 126.

12. The District and Seven Springs contended that Section 2.3.4.1 of the Handbook provides the only criteria for the first prong water use permitting requirement that the proposed water use must be "consistent with the public interest." However, section (k) of 2.3.4.1 requires consideration of "[o]ther documentation necessary to complete the application." It was acknowledged by District and Seven Springs witnesses that section (k) requires consideration of all of the other criteria in Rule 40B-2. T. 60, 75; Zwanka depo 31, 68, 106, 113; Brown depo 60, 73-75.

13. There are criteria for meeting the third prong "consistent with the public interest" requirement in District Rule 40B-2.301 other than in Handbook Section 2.3.4.1 that the District applies when determining whether a project is consistent with the public interest for water use not involving commercial water bottling. T. 114, 115.

Minimum Flows and Levels ("MFLs")

14. A "minimum flow and level" ("MFL") has been established for the Lower Santa Fe River and its associated springs. Zwanka depo p. 36, 37; "Recovery Strategy: Lower Santa Fe River Basin" pages 1,2 (Pet. Ex. 5, officially recognized by order issued May 10,2023).

15. The MFL is the limit at which further withdrawals from the Lower Santa Fe River and its associated springs will be significantly harmful to the water resources or the ecology of the area. Zanka depo p. 36, 37; "Recovery Strategy: Lower Santa Fe River Basin" pages 1, 2; Section 373.042(1)(a), Fla. Stat.

16. DEP has determined that the MFL for the Lower Santa Fe River and its associated springs is not being met. Zwanka depo p. 36, 37; "Recovery Strategy: Lower Santa Fe River Basin" pages 2, 17.

17. Any further withdrawals from the Lower Santa Fe River or its associated springs will cause significant harm to the water resources or ecology of the area. Zwanka depo p. 36, 37; "Recovery Strategy: Lower Santa Fe River Basin" page 1, 2.

18. Initially, Seven Springs had requested renewal of a water use permit for withdrawal of groundwater close to Ginnie Springs and the Lower Santa Fe River for a duration of 20 years. Dist./SS Jt Ex. 1a

19. In paragraph 7 of its request for additional information concerning the Permit Renewal application (Dist/SS Jt. Ex 2, page 2) the District stated the following:

> 7. Minimum Flows and Levels (MFLs) for the Lower Santa Fe and Ichetucknee Rivers limit groundwater withdrawals in the region to those that have no impact on the MFL water bodies. Provide an analysis of river flow changes at the Santa Fe River near Ft. White and Ichetucknee River at U.S. 27 guages (sic) from the requested allocation and modify the requested allocation or duration as set forth below:
>
> a. Permit renewals with no increase in allocation which demonstrate an impact to the Lower Santa Fe River Minimum Flow and Level shall be considered consistent with the Recovery Strategy and shall be issued a permit for a duration of no more than 5 years.
> b. An applicant shall be issued a permit for the duration of no more than 20 years if the impact to the MFL waterbody will be eliminated or offset. [62-42.300(1)(d). F.A.C.]

20. Seven Springs responded to RAI request number 7 as follows (Dist/SS Jt. Ex, 3, page 3):

> No increase in allocation is requested in conjunction with the current permit renewal. The applicant has reduced the requested permit duration to 5 years.

21. Therefore, Seven Springs opted to seek a 5 year permit renewal with no increase in the permitted allocation but which demonstrated a potential impact to the Lower Santa Fe River MFL instead of the 20 year permit in which the impact to the MFL was to be eliminated or offset.

22. The average withdrawal by Seven Springs under its previous Permit was between 300,000 to 400,000 gallons per day ("gpd"). T. 169, Brown depo p. 93.

23. The allowed allocation for withdrawal under the proposed Permit is 984,000 gpd. T. 169, SS/Dist. Jt. Ex. 18 (Permit)

24. The bottling plant has recently been renovated to increase its ability to use the water in its requested allocation and meet the District's requirement that Seven Springs provide evidence of its physical ability to process the requested allocation of water . See SS/Dist. Jt. Ex. 10, page 3 (District Staff March 2, 2020 email to the Governing Board that originally recommended denial of the Permit, wherein the District Staff stated that "[t]he applicant has asserted that the facility is being renovated to have the physical ability to process the requested allocation" but has failed to provide such evidence.)

25. Such evidence has now been provided. See SS/Dist. Jt. Ex. 13 (July 30, 2020 Thibodeau Report, in which Seven Springs provides evidence that the bottling plant will be expanded, replacing existing packaging lines with higher speed lines and adding additional lines with room for further expansion. See also Recommended Order, pages 14, 15 in Seven Springs Water Company v. Suwannee River Water Management District, DOAH Case No. 20-3581, issued January 20, 2021, citing Seven Springs' responses to requests for information concerning the capacity of the facility to use the requested allocation: that over $40 million has been spent

on updating and renovating the water processing facility; that the old production line was replaced and could produce more bottled water; and that additional lines are being added that "will have the capacity to utilize all of the proposed/permitted annual average daily water allocation of 1,152,000 gallons."

26. Because of the improvements at the bottling facility, the actual withdrawals of groundwater near the Lower Santa Fe would increase from 300,000 to 400,000 gallons a day to close to its permitted allocation of 984,000 gallons per day. T. 169. Such an increase would cause a larger potential impact to the Lower Santa Fe River and associated springs than has historically occurred, and result in further significant harm to the water resources or ecology of the area.

27. The District has established a timetable for implementing the Recovery Strategy to achieve recovery of the MFL for the Lower Santa Fe River and its associated springs, which extends through 2035. Two phases are established for implementation. The focus of the first phase includes "implementation of preliminary regulatory strategies to protect the MFL water bodies from additional harm." (emphasis added) "Recovery Strategy: Lower Santa Fe River Basin" pages 19, 20, 36.

28. DEP is currently re-evaluating the MFL for the Lower Santa Fe River and its associated springs and is in the process of completing the North Florida Southeast Georgia Regional Groundwater Flow Model, but the modifications have not yet been adopted. (See DEP Rule 62-42(1)(e), Fla. Admin. Code) When the MFL is re-evaluated, Seven Springs' 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 Springs." Dist/SS Joint Ex. 17, paragraph 20 (Feb. 24, 2021 Staff Report)

## CONCLUSIONS OF LAW

### STANDING

29. It is well-established that to demonstrate an entity has a substantial interest in the outcome of a proceeding, two things must be shown. First, there must be an injury-in-fact of sufficient immediacy to entitle one to a hearing. Second, it must be shown that the substantial injury is of a type or nature which the proceeding is designed to protect. The first has to do with the degree of injury, and second with the nature of the industry. See Agrico Chem. Co. v. Dep't of Envtl. Reg., 406 So. 478, 482 (Fla. 2d DCA 1981), rev. den.. 415 So.2d 1359 (Fla. 1982).

30. Agrico was not intended as a barrier to the participation in proceedings under chapter 120, Fla. Stat., by persons who are affected by the potential and foreseeable results of agency action. See Peace River/Manasota Reg's Water Supply Auth. v. IMC Phosphates Co., 18 So.3d 1079, 1082-83 (Fla. 2d DCA 2009)("[s]tanding is a legal concept that requires a would be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly.")

31. Rather, the intent of Agrico was to preclude parties from intervening in a proceeding where those parties' substantial interests are remote and speculative. See Vill. Park Mobile Home Ass'n v. Dep't of Bus. Reg., 506, So.2d 426, 433 (Fla. 1st DCA 1987). Standing is a forward-looking concept, not to be confused with prevailing on the merits. In substantial interest cases, the question is whether the party's substantial interests "could be" affected by the proposed agency action, or whether the party's substantial interests "could reasonably be

affected by the proposed activities." Palm Beach Cty. Envtl. Coal. V. Dep't of Envtl. Prot., 14 So.3d 1076, 1078 (Fla. 4th DCA 2009); St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051, 1054 (Fla. 5th DCA 2011).

32. Florida Springs Council must prove its associational standing by satisfying the three-pronged test for environmental associational standing established in Friends of the Everglades, Inc., v. Board of Trustees of the Internal Improvement Trust Fund, 595 So.2d 186 (Fla. 1st DCA 1992). In Friends of the Everglades, the Court held that an environmental organization must meet both the two-pronged test for standing of Agrico, and the test for standing of associations under Florida Homebuilders Association v. Department of Labor and Employment Security, 412 S0.2d 351 (Fla. 1982).

33. Florida Springs Council proved its environmental associational standing by demonstrating: 1) that a substantial number of their members, although not necessarily a majority, were substantially affected by the challenged agency action concerning issuance of the Permit; 2) that the agency action it sought to challenge was within Florida Springs Council's general scope of interest and activity; and 3) that the relief it requested was of the type appropriate for it to receive on behalf of its members. See St. Johns River Water Mgmt. Dist., 54 So. 3d at 1034.

34. Florida appellate courts have ruled there is no bright-line test for determining the "substantial number" requirement. Hillsborough Cnty. V. Fla. Rest. Assoc., 603 So.2d 587 (Fla. 2d DCA 1992)("[w]e do not find that a specific number or percentage is required in order to meet the standing requirement of Florida Home Builders"). Courts have found associational standing where a small fraction of the owners represented by the organization alleged that

they would be affected by the proposed agency action. Federation of Mobile Home Owners of Fla. Inc. v. Dept. Of Bus. Reg., 479 So.2d 252, 254 (Fla. 2d DCA 1985).

35. Even more significantly, Florida Courts are liberal in granting standing to associations representing a common interest that is being affected by an agency action. The Florida Supreme Court, in NAACP, Inc. v. Florida Board of Regents, 863 So.2d 294 (Fla. 2003), continuing the liberal interpretation of associational standing as expressed in Florida Home Builders, held that because the NAACP had members who were young people who would be entering college age, the NAACP had standing to challenge a rule affecting college admission of minority students. Also, in Rosenzweig v. Department of Transportation, 979 So.2d 1050, 1054 (Fla. 1st DCA 2008), when referring to the right of a bicycle club to challenge a DOT rule on bike lanes, the Court stated "if *anyone* has the ability to challenge the Department's interpretation of section 335.065, which specifically relates to bicycle lanes, it would be those seriously involved in bicycling." (Emphasis as stated in quotation)

36. Likewise, in this case Florida Springs Council has standing. The evidence indicates that it is an organization representing persons who are involved in the organization to protect Florida springs for their use and enjoyment, and the agency action being challenged is approving the withdrawal of waters affecting springs and a spring-fed river. Many of the members use the river and springs affected, and 661 members have expressed concern about this agency action.

PUBLIC INTEREST

District Rule 40B-2.301(1)(c)

37. Under Section 373.223(1)(a-c) of the Florida Statutes, applicants seeking a permit to use water must satisfy a "three-pronged" test that provides reasonable assurance that the proposed consumptive use of water, on an individual and cumulative basis: (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. The issue in this case concerns the third prong - whether Seven Springs' use of water for a commercial water bottling facility is "consistent with the public interest."

38. The District has adopted rules to comply with this statutory requirement. Rule 40B-2.301(1)(c) also requires persons seeking a permit to use water to show that the use is "consistent with the public interest." The District then defines "public interest" in Rule 40B-2.021(7) as "those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State." Consequently, the third-prong water use permit test requirement under District rule is that reasonable assurance must be provided that the proposed use is consistent with "those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State."

39. Florida Springs Council is not challenging the validity of this rule, and therefore as the Administrative Law Judge, I must treat the rule as valid and not limit or alter its meaning. See City of Palm Bay v. State Dep't of Transp., 588 So.2d 624, 628(Fla. 1st DCA 1991) ([D]uly promulgated agency rules, … will be treat as presumptively valid until invalidated in a section 120.56 rule challenge."). Without any pending rule challenge, I am required to apply the plain language of the rule. See Smith v. Sylvester. 82 So.3d 1159, 1161 (Fla. 1st DCA 2012)

("Administrative rules must be interpreted according to their plan language whenever possible.").

40. The language in Rule 40B-2.301(1)(c) is clear - if there are broad-based interests and concerns that are collectively shared by members of a community or residents of the District or State, the proposed water use must be shown to be consistent with these interests and concerns. However, I must take into account the intent of Chapter 373 of the Florida Statutes when determining the scope of "interests and concerns" that must be evaluated. The District is a creature of the statutes and its powers are those expressed in statutory language, or necessarily implied from express language. See State, Bd. of Trustees v. Day Cruise Ass'n, Inc., 794 So.2d 696 (Fla. 1st DCA 2001). The "interests and concerns" relevant to the public interest must be water resource related matters, consistent with those matters the District is authorized to consider under Chapter 373 of the Florida Statutes. Specifically, Section 373.016(3) identifies those policies declared by the Legislature to be addressed under this chapter, all of which relate to water resources, including:

> (b) To promote the conservation, replenishment, recapture, enhancement, development, and proper utilization of surface and groundwater;
>
> (d) To promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems; and
>
> (g) To preserve natural resources, fish, and wildlife.

41. Therefore, if the public comments from residents of the District and State expressed collectively shared interests and concerns about water resource matters the District is authorized to consider under Chapter 373, an evaluation is necessary to determine if the proposed water use is consistent with those interests and concerns. (See an excellent analysis

of the scope of the public interest test under Section 373.223(1)(c), Fla, Stat., on pages 25-30 in City of Groveland v. St. Johns River Water Management District and Niagara Bottling Company, LLC, SJRWMD Final Order 2009-59, Sept. 25, 2009, DOAH Case 08-4201,)

42. This case has attracted significant broad-based public interest and concern. There have been approximately 19,000 comments submitted on the District public comment website concerning this Permit. The District website is set up to indicate whether the person commenting objects, supports, or has concerns with the Permit. The overwhelming majority of comments in this case objected to the Permit. This fact is based on the testimony at hearing of Warren Zwanka, the District's Resource Management Division Director in charge of issuance of water use permits. That the overwhelming majority of the public comments objected to the Permit is corroborated by Exhibit E of Seven Springs' Motion for Official Recognition. Exhibit E was granted official recognition, and contained public comments from the District's web site for two specific time periods in 2019 and 2020. A review of this exhibit shows 107 persons submitted "letters of objection" to the Permit, 7 persons submitted "letters of concern", and 3 persons submitted "letters of support".[1]

43. Therefore, the District has information that the Permit is not "consistent with those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State." Yet there was no review or consideration of the 19,000

[1] Seven Springs and the District objected to the public comments on the District website that registered whether the public comment objected, supported, or had concern regarding the Permit as hearsay. Florida Springs argued that the public comments were not being offered for the truth of the matter asserted but only to show the existence of these comments and therefore were not hearsay pursuant to Section 90.801(1)(b), Fla. Stat., and that in any event qualified for the public records hearsay exemption under Section 90.803(8), Fla. Stat. Since hearsay is allowable in administrative hearings to supplement or explain other evidence (See Section 120.57(1)(c), Fla. Stat.), Exhibit E can corroborate the testimony at hearing that the overwhelming majority of the public comment objected to the Permit.

comments submitted to the District to evaluate whether there were "broad-based interests and concerns" that were collectively shared by residents of the District or State, and whether these interests and concerns were related to water resource matters that the District was authorized to consider in this permit application review.

Section 2.3.4.1 of the District's Handbook

44. However, it is the District's position that it has a specific rule for water bottling facilities that addresses the third prong test requiring that the proposed water use be "consistent with the public interest. That rule is Section 2.3.4.1 of the District's Water Use Permit Applicant's Handbook, which was adopted by reference in District Rule 40B-2.301(3). Section 2.3.4.1 reads as follows:

> 2.3.4.1
>
> 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 the withdrawal facility to the 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.

45. Section 2.3.4.1 does not state that it is implementing Rule 40B-2.301(1)(c). Nor does Section 2.3.4.1 state that it replaces or eliminates the third prong requirement in Rule

40B-2.301(1)(c) that reasonable assurance must be shown that the proposed water use is consistent with the broad-based interest and concerns of a community or residents of the District or the State.

46. Section 2.3.4.1 also does not state that it is implementing, replacing or eliminating other District rules applicable to the first prong test of whether the bottling facility is a "reasonable-beneficial" use. The testimony from the District and Seven Springs witnesses is clear that all the other criteria in Rule 40B-2 must be met when considering water use permits for water bottling facilities.

47. There are several other reasons why Section 2.3.4.1 should not be considered a replacement or elimination of the third prong requirement in Rule 40B-2.301(1)(c). First, there is nothing in Section 2.3.4.1 that specifically addresses whether the Permit is consistent with "broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State." The criteria in Section 2.3.4.1 make no evaluation of the broad-based interests and concerns of the public. Also, Section 2.3.4.1 does not have criteria about whether there is public interest is from a community or from persons in the District or State.

48. Second, Section 2.3.4.1 simply requires that the Governing Board "will consider" items (a) through (k) when considering whether a water use is "consistent with the public interest." This Section does not limit the Governing Board to "only consider" items (a) through (k) when determining whether the proposed water use for a water bottling facility is "consistent with the public interest." This Handbook Section does not state that the third-prong test under Rule 40B-2.301(1)(c) can be ignored if (a) through (k) is met. In this case,

there are extensive "broad-based interests and concerns" expressed by residents of the District and the State. Section 2.3.4.1 does not preclude consideration of these interests and concerns.

49. Third, even if Section 2.3.4.1 could be interpreted to limit consideration of whether a proposed water use is "consistent with the public interest" to items (a) through (j), item (k) directs the Governing Board to consider "other documentation necessary to complete the application." "Other documentation" can reasonably be interpreted to mean documentation necessary to satisfy the third prong of the water use test - documentation of the concerns and interests of the approximately 19,000 comments from the public concerning this proposed use of water. Similarly, "other documentation" can reasonably be interpreted to mean documentation necessary to satisfy the first prong water use test documentation that the water use is "reasonable-beneficial."

50. Because Rule 40B-2.301(1)(c) is separate from and in addition to Section 2.3.4.1 of the Handbook, it cannot be ignored. See Gulfstream Park Racing Ass'n, Inc., v. Tampa Bay Downs, Inc., 948 So.2d 599, 606 (Fla. 2006) (citing Hechtman v. Nations Title Ins. of N.Y., 840 So.2d 996 (Fla. 2003) ("It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase and sentence, and part of [a] statute, if possible, and words in a statute should not be construed as mere surplusage."). See also State v. Goode, 830 So.2d 817, 824 (Fla. 2002) ("a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that will render part of a statute meaningless.").

51. In this case, the approximately 19,000 public comments that the District received on its website that overwhelmingly opposed the Permit indicate that the Permit is not

consistent with the public interest, that it is not consistent with "those broad-based interests and concerns that are collectively shared by members of a community or residents of the District or the State." Neither Seven Springs nor the District has done an evaluation of what these "interests and concerns" are in this case, nor whether the "interests and concerns" are relevant to the overall objectives of the District, including the protection of minimum flows and levels (MFLs) of the springs and river adjacent to the proposed project. Such an evaluation was not done despite the separate "third prong" requirement of the water use permitting test. Therefore, Rule 40B-2.301(1)(c), the third prong of the water use permitting test, has not been met.

52. Finally, Section 2.3.4.1 itself indicates that consideration of MFLs is relevant and material in this case when considering whether this proposed project is "consistent with the public interest." Section 2.3.4.1(b) requires that the District consider "[t]he location of the withdrawal." Here, as indicated in the District's permit review, the location of the withdrawal for the proposed water requires that this proposed water use comply with the Santa Fe River Basin MFL Recovery Strategy. Therefore, Section 2.3.4.1 requires Seven Springs and the District to address MFL issues when considering whether the proposed water use is "consistent with the public interest."

Minimum Flows and Levels ("MFLs")

53. The fact that the District has received approximately 19,000 public comments that are overwhelming opposed to the Permit is evidence that the Permit is not consistent with the public interest under the third prong test. The law and facts in this case concerning the status of the minimum flows and levels ("MFLs") in the Lower Santa Fe River and its associated springs

support why the "broad-based interests and concerns" expressed in these 19,000 comments are relevant and material and must be considered in this case.

54. As defined in Rule 40B-2.021(6), Minimum Flows and Levels "means the minimum flow for a watercourse or the minimum water level for ground water in an aquifer or the minimum water level for a surface water body that is at the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area."

55. The source of water used by Seven Springs for its beverage processing operation are wells near Ginnie Springs, which connects to the Lower Santa Fe River. Seven Springs operation results in a withdrawal of water from the spring and river. An MFL has been established for the Lower Santa Fe River and its associated priority springs. See Rule 62-42.300(1), Fla. Admin. Code. If the flow or level in a water body falls below the MFL, Section 373.041(2), Fla. Stat., requires the Department of Environmental Protection (DEP) or Water Management District to adopt a recovery or prevention strategy. The flow in the Lower Santa Fe River and its associated springs is below its MFL, and as a result a recovery strategy has been adopted by the District for these water bodies. See "Recovery Strategy: Lower Santa Fe River Basin," April 8, 2014, Petitioner's Exhibit 5, granted official recognition by Order dated May 10, 2023. Therefore, the Lower Santa Fe River and Ginnie Springs are "at the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area."

56. Pursuant to Rule 62-42.300(1)(d), DEP has adopted by reference Section 6.0 of the Lower Santa Fe River Recovery Strategy, page 41, entitled "Supplementary Regulatory Measures". Section 6.0-5 d)ii establishes the permitting requirements for water use permits under the Recovery Strategy for "Renewals with No Increase in Allocations". It reads as follows:

d) Renewals with No Increase in Allocations:

ii. Renewal applicants that demonstrate a potential impact to the MFL water bodies based on the requested allocation shall be considered consistent with the Recovery Strategy and shall be issued a permit for a duration of no more than five years provided the applicant meets all other existing conditions for issuance. If potential impacts to the MFL water bodies will be eliminated or offset, the five year permit duration limitation under this subparagraph shall not apply. Permits issued for a duration longer than five years must include the necessary actions to provide elimination or offset of impacts to the MFL water bodies, and a schedule for implementation.

(Emphasis supplied)

57. Because Seven Springs application is for a renewal permit and it is not seeking an increased allocation from its existing permit, its five year permit was issued under Section 6.0-5 d)ii of the Recovery Plan. This section authorizes a renewal permit with no increase in permitted allocated withdrawals, even though the proposed permit demonstrates potential impacts (significant harm) to Ginnie Springs and the Lower Santa Fe River.

58. The key issue in this case is that although renewal of this Permit is not a request to increase the permitted allocated amount of water withdrawn for use, the actual amount of water that will be withdrawn as authorized by this Permit will increase. Even though the present amount of water being withdrawn is already causing significant harm to the water resources or ecology of the area, the evidence in this case shows that Seven Springs will increase the amount of water it will withdraw for its use, and therefore cause even more significant harm than is presently occurring. The Permit fails to address this concern, which is not consistent with the public interest in this case.

59. The District and Seven Springs contend that the proposed use of water in this case is in accordance with the MFL recovery strategy for the Lower Santa Fe River and its associated springs based on compliance with Section 6.0-5d)ii of the Santa Fe River Basin Recovery

Strategy, which was adopted by reference in Rule 62-42.300(1)(d). They are correct. Compliance with this MFL strategy is a requirement of the first prong of the water use permitting requirement, that the water use must be "reasonable-beneficial" under District Rule 40ab-2.301(2)(h). But compliance with the prong one "reasonable-beneficial" requirement allows potential impacts to the Lower Santa Fe River and its associated springs as long as the permitted allocated withdrawal is not increased and the duration of the permit is limited to 5 years. In this case, because the actual amount of withdrawal will be increased, additional harm will occur. This additional harm is not addressed by the first prong "reasonable-beneficial" requirement. The District rules do not preclude the District from addressing this additional impact under the third prong "consistent with the public interest" requirement.

Distinction Between the First and Third Prongs

60. As previously stated, water use permitting is governed by a three-pronged test pursuant to Section 373.223(1)(a)-(c), Fla. Stat., and District Rule 40B-2.301(1)(a)-(c), Fla. Admin. Code. Applicants seeking a permit to use water must provide reasonable assurance that the proposed consumptive use of water, on an individual and cumulative basis: (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.

61. The District implements the MFL recovery strategy requirement for water use permits in the Lower Santa Fe River MFL Recovery Strategy area in the reasonable-beneficial (first prong) permitting test. See District Rule 40B-2.301(2)(h), which reads as follows:

> (2) In order to provide reasonable assurance that the consumptive use is reasonable-beneficial, an applicant shall demonstrate that the consumptive use:
> …

(h) Is in accordance with the any minimum flow or level implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S.

(Emphasis supplied).

62. As noted previously, by issuing the Permit pursuant to Section 6.0-5d)ii of the Lower Santa Fe River Basin Recovery Strategy, the District recognizes that issuance of this Permit will result in a potential impact to Ginnie Spring and the Lower Santa Fe River and cause significant harm to the water resources or ecology of the area. However, the District rule states that because the proposed Renewal Permit does not increase its permitted allocation and is limited to a 5-year duration, it is in accordance with the MFL implementation strategy under Section 6.0 of the Lower Santa Fe River MFL Recovery Strategy. Therefore, the proposed water use meets the "reasonable-beneficial" test, the first prong of the water use permitting requirement. Yet the third prong of the water use permitting requirement, that the project must be "consistent with the public interest," is a separate and additional requirement from the "reasonable-beneficial" test, and still must be met.

63. It is basic statutory construction that if a statute or rule contains a three-part test to achieve the statutory goal, each test must be given significance, and must not be construed as mere surplusage. See Gulfstream Park Racing Ass'n, Inc., v. Tampa Bay Downs, Inc., 948 So.2d 599, 606 (Fla. 2006) (citing Hechtman v. Nations Title Ins. of N.Y., 840 So.2d 996 (Fla. 2003) ("It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase and sentence, and part of [a] statute, if possible, and words in a statute should not be construed as mere surplusage."). See also State v. Goode, 830 So.2d 817, 824 (Fla. 2002) ("a basic rule of statutory construction provides that the Legislature does not

intend to enact useless provisions, and courts should avoid readings that will render part of a statute meaningless."). This construction has specifically been applied in the three-pronged water use permitting requirement in Section 373.223(1)(c), Fla. Stat. See City of Groveland v. St. Johns River Water Management District and Niagara Bottling Company, LLC, SJRWMD Final Order 2009-59, Sept. 25, 2009, at 37-39, DOAH Case No. 08-4201. (finding that Section 373.223(1) expressly set forth a distinct three-pronged test, and that even though the first prong definition of "reasonable-beneficial" contained the term "consistent with the public interest," the term must have a different meaning than the third prong "consistent with the public interest" test.). Consequently, the third-prong "consistent with the public interest" requirement must be different, or in addition to, the first-prong reasonable-beneficial test.

64. By meeting Section 6.0 of the Recovery Strategy, Seven Springs meets the first prong of the three-part water use permitting test. However, the evidence in this case does not show that the third prong has been met. The broad-based interests and concerns of the approximately 19,000 public comments have not been evaluated and considered, but there is evidence that an overwhelming majority oppose the proposed water use. There will be an additional impact on the Lower Santa Fe River and its associated springs because of the actual increase in withdrawals. The MFL for the Lower Santa Fe River and its associated springs will soon be re-evaluated. Until that re-evaluation occurs, not allowing this additional impact to occur is consistent with the "broad-based interests and concerns that are collectively shared by members of a community or residents of the District or State."

Remedies

65. As cited above, the Permit was approved under Section 6.0-5d)ii, even though there is a potential impact to the MFL. Under Section 6.0-5d)ii of the Recovery Strategy the Permit renewal was allowed for a limited term of five years because there was no increase in the permitted withdrawal allocation. However, due to the increase in production capabilities at the bottling plant, there will to be an increase in the actual withdrawal rate under the Permit. This will cause even more significant harm to the Lower Santa Fe River and its associated springs than is presently occurring.

66. Also, consideration in this case must be given to DEP Rule 62-42.300(1)(e). This rule states that the present MFL for the Lower Santa Fe River and its associated springs are being re-evaluated. Although the rule states that the re-evaluated MFL shall be noticed for rule adoption no later than December 31, 2019, the present MFL is still in effect and the re-evaluation is still occurring. See Dist/SS Jt. Ex. 17, Staff Report paragraph 20.

67. To address the broad-based public interests and concerns and to prevent further harm than is already occurring in the Lower Santa Fe River and its associated springs, pursuant to Rule 40B-2.301(1)(c), either of the following permit conditions should be required:

- Limit withdrawals under the Permit to the historical withdrawal rate (300-400 mgd); or
- Require Seven Springs to offset any withdrawals above the historical withdrawal rate (300-400 mgd) up to the permitted allocation of 984 mgd.

68. If the re-evaluated MFL is adopted before the Permit's renewal date, Seven Springs has the option to seek modification of its Permit. Otherwise, the above conditions should remain in effect for the 5-year duration of the Permit.

69. Such permit conditions address the added impacts from the increase in historical withdrawals that are likely upon issuance of this Permit. The 5-year permit limitation should remain until it is determined that the MFL is met and further withdrawals are not causing significant harm.

STIPULATION

70. The Pre-Hearing Stipulation limits the issue in this proceeding to the determination as to whether reasonable assurance has been provided that the proposed Permit is "consistent with the public interest" as required by Rule 40B-2.301(1)(c), the third prong of the three-part water use permitting test. The Pre-Hearing Stipulation does not preclude Florida Springs Council from raising issues of law and fact related to whether the third prong requirement has been met, including laws and facts relevant or material to public concerns or MFL issues.

71. The Pre-Hearing Stipulation includes the following relevant stipulations as to what is at issue in this case:

> VII. Concise Statement of Issues of Fact Which Remain to be Litigated
>
> 1. Whether Seven Springs has provided reasonable assurance that the beverage processing use of water authorized under the Permit is "consistent with the public interest" pursuant to Section 373.223(1)(c), Fla. Stat., and Rule 40B-2.301(1)(c), F.A.C.
>
> 2. Whether Florida Springs Council has standing to initiate this 120.57, F.S., proceeding.
>
> VIII. Concise Statement of Issues of Law Which Remain for Determination

1. Whether Florida Springs has standing to initiate this 120.57, F.S., proceeding.

2. Whether the use of water authorized under the Permit is "consistent with the public interest" as set forth in Section 373.223(1)(c), Fla. Stat., and Rule 40B-2.301(1)(c), F.A.C., thereby entitling Seven Springs to issuance of the Permit.

3. Whether the consideration of Minimum Flows and Levels ("MFL") for the Lower Santa Fe River and the public comments received by the District are relevant and material to this proceeding.

72. "This proceeding" concerns whether the proposed use of water by Seven Springs is "consistent with the public interest" as required by statute and District rule. It follows that Florida Springs Council is stipulating in Section VII 1. of the Stipulation that "Issues of Fact to Be Litigated" are the relevant or material facts relating to whether reasonable assurances have been provided that the proposed water use is "consistent with the public interest." Florida Springs Council is contending that the public comments received by the District are by the definition of "public interest" relevant and material to "this proceeding." Florida Springs Council is also contending that the MFL Recovery Strategy under Section 6.0-5d)ii, which is part of the prong 1 reasonable-beneficial test, does not address the additional harm that will occur because of the added actual withdrawals that will occur under this Renewal Permit. Therefore, the MFL is also relevant and material in this proceeding.

73. Also, paragraph V. 12 of the Pre-Hearing Stipulation under a Section entitled "A Concise Statement of Those Facts Which Are Admitted and Will Require No Proof at Hearing" has a statement related to the first prong of three-part water use permitting

test. It states that "No party challenges that Seven Springs has provided reasonable assurances that its consumptive use of water is a reasonable-beneficial use, in accordance with Rule 40B-2.301(1)(a) and (2), F.A.C." Paragraph 13 also has similar language concerning no party challenging the second prong of the water use permitting test, that use of the water will not interfere with any presently existing legal use. These stipulations indicate that Florida Springs Council's challenge is limited to the third prong issue. But these stipulations do not preclude Florida Springs Council from pursuing its third prong challenge in the hearing, or any facts related to the third prong issue.

74 As has been stated above, It is basic statutory construction that if a statute or rule contains a three-part test to achieve the statutory goal, each test must be given significance, and must not be construed as mere surplusage. See Gulfstream Park Racing Ass'n, Inc., v. Tampa Bay Downs, Inc., 948 So.2d 599, 606 (Fla. 2006) (citing Hechtman v. Nations Title Ins. of N.Y., 840 So.2d 996 (Fla. 2003). See also State v. Goode, 830 So.2d 817, 824 (Fla. 2002) ("a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that will render part of a statute meaningless."). This construction has specifically been applied in the three-pronged water use permitting requirement in Section 373.223(1)(c), Fla. Stat. See City of Groveland v. St. Johns River Water Management District and Niagara Bottling Company, LLC, DOAH Case No. 08-4201, SJRWMD Final Order 2009-59 Sept. 25, 2009 at 37-39. Consequently, the third-prong "consistent with the public interest" requirement must be different, or in addition to, the first-prong reasonable-beneficial test.

75. At the hearing, it was argued by Seven Springs and the District that because Florida Springs Council stipulated it would not challenge the first prong of the water use permitting test, it was precluded from raising requirements that may relate to both the first and third prongs. Specifically, it was noted that District Rule 40B-2.301(2), which lists the requirements to show the Permit meets the first prong "reasonable-beneficial" test, includes paragraph (h), which requires that the consumptive use of water to be "in accordance with any minimum flow or level and implementation strategy established pursuant to Sections 373.042 and 373.0421, F.S." Seven Springs may be "in accordance with" the MFL strategy as required in Section 6.0-5d)ii and therefore meet the first prong "reasonable-beneficial" test. But that does not preclude consideration of MFL facts and issues not addressed by the "reasonable-beneficial" requirement under Rule 40B-2.301(2)(h), such as the impacts and harm caused by the additional actual withdrawals that will occur if the Renewal Permit is issued.

76. Likewise concerning the "reasonable-beneficial" requirement under paragraph (g) of the reasonable-beneficial test in Rule 40B-2.301(2), which states that the consumptive use of water "will not cause harm to the water resources of the area." While Florida Springs Council did not challenge the reasonable-beneficial test, Florida Springs Council did not stipulate that harm to water resources could not be considered under the separate third prong "consistent with the public interest" test. Indeed, despite Rule 40B-2.301(2)(g), the District in this case is not requiring Seven Springs to show that its proposed use of water "will not cause harm to the water resources of the area." By issuing the Renewal Permit pursuant to Section 6.0-5d)ii of the Recovery

Strategy, the District is authorizing a potential impact or harm to the MFL water bodies for a 5 year duration when there is no increase in the permitted allocation. Florida Springs Council is not challenging this inconsistent interpretation of the first prong reasonable-beneficial requirement But as has been stated above, the evidence shows that Seven Springs will be increasing its actual withdrawal of water, resulting in even more impact to the water resources or ecology of the area than is already occurring. Such an increase in actual withdrawal, causing even more significant harm than is presently occurring, is allowable under the first prong "reasonable-beneficial" test in the District rules. But such an increase in significant harm can be considered relevant and material as to whether the proposed Permit Renewal is "consistent with the public interest" under the separate third prong of the water use test.

77. Florida Springs Council's acknowledgment under the Pre-Hearing Stipulation that it was not challenging the criteria under first prong "reasonable-beneficial" test does not preclude consideration of the MFL issues that are relevant and material to the third prong "consistent with the public interest" test.

## RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is,

RECOMMENDED that the Suwannee River Water Management District issue Permit No. 2-041-218202-3 to Co-Permittees Seven Springs Water Company and Blue-Titron Brands, Inc., with the following condition:

1. Limit withdrawals to the historical withdrawal rate (300-400 mgd) until adoption of the re-evaluated MFL under Rule 62-42(1)(e), Fla. Admin. Code,

at which time the Permittee may seek to modify its Permit to be consistent with the new MFL, or

2. Limit withdrawals to the historical withdrawal rate (300-400 mgd) until the difference between the historical withdrawal rate and the permitted allocation is offset as approved by the District.

DONE AND ENTERED this _____ day of _____ in Tallahassee, Florida.

Respectfully submitted this 31st day of July, 2023

*/s/ Douglas H. MacLaughlin*
Douglas H. MacLaughlin, FBN: 0251054
dmaclaughlin@aol.com
319 Greenwood Drive
West Palm Beach, FL 33405

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via email to Douglas Manson at dmanson@mansonbolves.com, and Paria Shirzadi Heeter at pheeter@mansonbolves.com, counsel for Seven Springs Water Company; and Fredrich T. Reeves at freeves@tbaylaw.com, attorney for the Suwannee River Water Management District, on this 31st day of July, 2023.

*/s/ Douglas H. MacLaughlin*
Douglas H. MacLaughlin