Memorandum

August 6, 2004

To: Water Management Districts Staff Members

From: Central Florida Planning Department – Water Resource Section
Erin Dorn, Planner II & Leslie Johnson, Planner II

Re: Resolution Procedure Design for Phase II of East-Central Florida Supply Planning Initiative

Two months ago, you hired this team of consultants to create a protocol for handling disputes over water resources. After assessing your situation we have identified the following dispute resolution procedure design to address such issues. The resolution design will outline the proposal purpose, the procedural process, the management style, and implementation process. It is our expectation that this process should be applicable in any situation that involves multiple parties seeking access to rare water sources. Should you have any question or concerns please feel free to contact our office at 561-789-2205.
Proposal Purpose

As the population continues to grow and water resources remain fixed, disputes continue to arise over how to equitably distribute these resources. Therefore, a procedure has been identified to adequately assess each party’s needs and capabilities to ensure the most equitable and efficient distribution of water resources. A current example in which this procedure can be implemented is in the negotiations over the use of water from the Taylor Creek Reservoir Expansion. Approximately a dozen local governments are interested in using this resource, and there are only 50 million gallons of water a day, not nearly enough to satisfy the needs of hundreds of thousands of potential users.

A process with defined steps is needed to ensure that the water is divided efficiently and equitably, so that solution does not become bogged down in unnecessary processes. By having a definite process, it is expected that conflict will be managed, tensions and motivations balanced; groups will be able to invent alternatives for joint gains and make decisions, and a commitment to implement a decision will be obtained.

Proposal Process

This process is designed to provide a guideline for interaction between the Water Management District (WMD) and local governments and water providers (users). The process is initiated by the WMD, but continued participation is left up to the users. If the users elect not to participate in the process, they automatically forgo any opportunity to take advantage of the identified resources. The meetings will be hosted by and paid for by the WMD who will serve as facilitator.

The first step in the process (which is laid out in graphic form and is attached to this proposal) is the identification of water resource options by the WMD. These options are usually attractive to users because they are feasible and have funding sources attached to them. After looking over the proposed projects, each user will file a statement of interest with the WMD. These statements will include information that is included in the user’s Water Resources Work Plan – need, capacity, infrastructure, and other options available. The WMD will then have three months to review these statements. By filing the statement of interest, the user is agreeing to facilitation and mediation. As mentioned before – any withdrawal from the process results in a forfeiture of use of the resource. This is important in keeping the users motivated to reach an agreement.

After organizing the statements by projects, the WMD may take two paths. If for an individual project, supply is greater than demand, the WMD and users will sit down and discuss details and develop a plan for cost sharing, infrastructure, etc. The plan will then go to the individual user’s government or board for approval, and then implementation. If supply is less than demand, the WMD and users will go to Mandatory Mediation presided over by a special master, where a plan for water sharing will be developed. If an agreement can be reached, then a plan will be developed and the plan will go to individual user’s governments or boards for approval and implementation. If an agreement cannot be reached, then the participants will vote – decision by special master or litigation. The plans resulting from these two paths will go straight to implementation. This will also provide the participants with an incentive to cooperate. If the local governments fail to adopt or approve the water sharing plan, then the process will go to mandatory mediation, to see if a plan acceptable to the local government or board can be developed there. It is not perceived that this option will be used very often, due to the fact
that the local governments will be involved in the process every step of the way through representation by the users.

**Process Management**

As stated earlier, once the applicants file a formal letter of interest, the WMD officials will be given three months to respond to the request. During this response period the WMD officials will be responsible for processing the request. It will be their responsibility to determine who should get access to the particular water resource. This process will entail analyzing and organizing the projects based on the following criteria’s: cost, need, availability of options, location or proximity to resources, and infrastructure feasibility.

At this time any other relevant information needed for the assessment will be requested by the WMD officials, this can include letters of public support etc. If it is determined that the supply of water is greater then the demand then a neutral facilitator will be selected (based on recommendations offered by the Florida Conflict Resolution Consortium [FCRC]) and paid for by the WMD. In this case the facilitator will be responsible for laying out the guidelines and assisting in creating an agreement that focuses on funding and logistics that both parties can agree to.

On the other hand if it is determined that the supply is smaller than the demand then a mandatory mediation session is ordered and conducted by a special master, who is selected and hired through the same process. The criteria for the hiring of this special master is that in addition to having mediation training, he or she must have knowledge of water usage rules and regulations as well as be familiar with Florida geography and water body resources. The special master is to facilitate the meeting discussion, in search of an agreeable solution. The special master may also be used to make the final decisions at the request of the involved parties if the two sides fail to come to an agreement.

**Process Institutionalization**

After an initial agreement is developed it will be the responsibility of the applicant (or user) to present the proposed agreement to there constituents for approval and support. The assumption will be that discussion will be generated and the proposed agreement will come to vote based on majority consensus (for example if the applicant spokesperson represents a private water company then he or she will need to gain support and approval from the company’s executive board). Once approval has been granted the agreement is then validated with a signed contract. At this point a brief letter will be sent out to all of the applicant’s constituents summarizing the terms of the contract and identifying a contact person in case of any questions. It is important to note that technical assistance is also available courtesy of the WMD (through the use of professional staff) if additional help is requested during the implementation period.

In choosing to use this procedure to establish agreements, the incentives are that you will have a perceived show of good faith in the public’s eye, you will development a stronger networking relationship with fellow partners, you avoid confrontation with public officials and other high level officials, you will save money by avoiding litigation, you will have access to technical support, and this process will help you ensure shorter turnaround time in providing quality services.
Water Management presents option(s)

Users have two months to file petitions of interest

WMD has three months to organize petitions by project

Demand>need

Facilitated meeting to decide funding and logistics

Adoption of plan/contract by parties

Failure of parties to adopt contracts

Parties reach Agreement on Division of Water Source

Parties fail to reach agreement (vote)

Decision by Special Master

Litigation

Mandatory Mediation conducted by a special master

Demand<need
Water Resource Process Plan Diagram