Case Specific Resolution Process Plan  
URP 5122 Spring 2001

Dispute: City of Freeport v. WRP and NWFWMD
Francis B. Flores

Setting:

The time frame of this resolution is the later half of 1998. The dispute involves water rights in Walton County of panhandle Florida. It begins in June 1998 with the issuance of a consumptive water use permit by the Northwest Florida Water Management District (NWFWMD), an agency of the State of Florida, to Water Resource Partnership (WRP), a utility serving part of coastal Walton. Soon after, the City of Freeport under Chapter 120.56 Challenges to rules of Florida State Statute challenged the permit. As a result, an administrative law hearing was set for December 1998 as procedure under Chapter 120.65 Administrative Law Judges.

Chapter 120, which is called the Administrative Procedure Act, has a provision for a mediated dispute resolution process under 120.573 Mediation of disputes. If mediation settles the administrative dispute, the agency will enter a final order incorporating the agreement of the parties. If the mediation process ends with no settlement of the dispute, the administrative law procedure will resume. In this Resolution Process Plan, a series of communications and mediated meetings takes place in an attempt to reach agreement on the consumptive use rights of water between the parties in dispute and to avoid litigation.
**Background:**

In the 1980s, the work of NWFWMD and other entities motivated planning considerations that addressed water resource concerns in panhandle Florida. In 1982, a Regional Water Supply Development Plan (RWSDP) from NWFWMD addressed the growing concern of water resource availability in the region and provided estimates of available potable water within the area of discussion. In 1988, an Addendum to RWSDP increased the estimates of available water and updated recommendations to the area.

This trend of increasing estimates of resource availability took an opposite turn in the 1980s, following further evaluation of hydrogeologic data. The coastal area relative to the dispute was designated a Water Resource Caution Area (WRCA) in 1989, subject to special administrative rule. The WRCA designation is warranted by the special concern for the resource in that area and is subject to careful resource management practices to minimize further threat to the resource.

In the early 1990s, awareness of the situation began to motivate the utilities to address it. Regional Utilities, DWU, and SWU of Moreno Point, coastal Walton, formed a utility partnership as a result, named the WRP. Eventually, this partnership disintegrated when Regional Utilities, who already had infrastructure connection north to Freeport, withdrew from WRP to protect its own interests. Following this, Regional Utilities began working in partnership with Freeport. City of DeFuniak Springs, which is a Walton city north of Freeport, and Walton County, supported the Freeport stance.

To address the resource concerns at hand, in the mid 1990s NWFWMD required DWU and SWU to develop alternate supply sources as a condition of future permit renewals. The alternatives included inland surface groundwater sources, Okaloosa and
Walton surface water sources, and desalination of brackish water; and the cost of examining these alternatives was over 1 million dollars between SWU and DWU, doing business as WRP. The only viable alternative established by these investigations was the inland well field.

In the early to mid 1990s, NFWMD had held informal meetings between involved parties to address future concerns. Throughout the mid-1990s, WRP proposed to withdraw water from a well field in vicinity of Freeport. In 1996, WRP initiated the application process for a consumptive use permit of the inland well field.

In August 1997, an open discussion meeting sponsored and facilitated by NFWMD attempted to forge the “Walton County Partnership Resolution”. In September 1997 an agreement of principle was drafted by NFWMD to address the open discussion.

In December 1997, WRP purchased property five miles north of Freeport and elected to pursue the development of inland wells to meet 20-year demands of its service area. WRP submitted a consumptive use permit application to NFWMD to serve the inland well field. Freeport and its secondary parties- DeFuniak, Walton, Regional Utilities expressed concerns over this move.

In June 1998, NFWMD through a notice of proposed agency action advertised intent to grant a consumptive use permit to WRP for development of this inland well field for 20 years. Immediately, Freeport petitioned the permit.
**Objective:**

The main objective of the resolution plan is to reach agreement between Freeport and WRP as to the conditions and authorized withdrawal amounts of consumptive use permits NWFWMD will issue to WRP. Secondarily, an agreement of Freeport’s future consumptive use permitting will be attempted. The secondary objective is relative to the primary in that it is a negotiation issue, and offers an opportunity for comprehensive planning. As a regulatory agency of the State, NWFWMD has power to authorize consumptive use permits. By statute under Chapter 320, NWFWMD must approve reasonable, beneficial, uses of water that have little impact to the water resource. In the view of staff of the NWFWMD, the June 1998 permit issuance to WRP met that criteria and was in the best interest of the region.

**Initiation:**

**First Week of July 1998**

As NWFWMD is the State regulatory agency seeking agreement amongst permittees, the Director of the Resource Regulation Division initiated contact by e-mail with Freeport’s Mayor and the presidents of WRP’s two subsidiary utilities (DWU and SWU) in July 1998. Through initial contact, the NWFWMD stated its desire to handle the dispute by mediated discussions was motivated by the ability to avoid a litigation process, which could limit the scope of desired outcomes at a high cost.

**Second and Third Week of July 1998**

Freeport and WRP gradually warmed and responded positively to this and individually expressed their desire for a settled dispute through agreement. After confirmation was received by e-mail from both permittees, a letter summarizing actions
involved in the dispute was sent to Freeport and WRP. Also, with this was a contact information list of involved NWFWMD employees: Executive Director, Director of Resource Regulation, Director of Planning, Director of Resource Management, and other technical staff. Freeport and WRP followed suit on providing a contact list of representatives from each entity. This list included the heads of each entity, technical staff, and consultant technical experts.

**Fourth Week of July 1998**

Through informal communication between representatives, including phone conferencing: the objective of the dispute resolution was defined; a outside party mediator from a California firm was selected and was to be paid collectively by the three entities; the place and time of the meeting was set; and the need for a further meeting, if necessary, were agreed on. A formal letter stating these agreed attributes was circulated and signed by the three entities.

**First Week of August 1998**

In preparation for the formal mediated discussion, NWFWMD compiled a briefing package, which was sent to Freeport, WRP, and the mediator. Individually, Freeport and WRP did the same, which was sent to the other, NWFWMD, and the mediator. The packages included all relevant information related to the dispute. Included was summarization of events, summarization of correspondence, and all paperwork that had been exchanged.

**Overview of Environment**

WRP supported the actions of NWFWMD thus far. Although, Freeport initially challenged the issuance of the permit, there was a general understanding that the
challenge had little chance of being affirmed by the administrative law hearing. The communications came to the point of addressing the need for both Freeport and WRP to be issued permits that supported commencialism as a common goal. Cooperation was necessary, since Freeport lies directly between WRP and its proposed inland well field and expensive infrastructure costs were inevitably to be shared for future utility service in the area. Although prior meetings pitted the two permittees in opposition, there was new attitude, mainly from Freeport, that future relations and communications involving cooperative agreement were in everyone’s best interest.
Meeting Addressing Freeport and WRP Consumptive Use Permits
August 1, 1998 - 9am to 3pm
Two Egg Hotel, Conference Room A

Parties:

- City of Freeport
- WRP
- NWFWMD

Objectives:

- To reach consensual agreement on the conditions and authorized amounts of NWFWMD-issued consumptive use water permits to WRP
- To reach consensual agreement on the conditions and authorized amounts of NWFWMD-issued consumptive use water permits to the City of Freeport
- To foster open communication and promote future cooperation between the two permittees

Agenda:

8:45 Breakfast: coffee, water, donuts, and fruit

9:00 Introductions
- Name tents distributed- name, affiliation, title
- Mediator self-introduction
- Representatives self-introduction
- Statement and agreement of rules of meeting

9:30 Presentations of individual positions of parties- 15 minutes each
- Mediator statement on meeting
- NWFWMD
- WRP
- Freeport

10:30 Break
10:45  **Vision for permits**
- Everyone involved provide bulleted list of desired conditions and amounts of future permits to be issued to Freeport and WRP
- Gather list and create categories

11:15  **Agreement on data ranges**
- Review of agree data ranges reached in initiation summarized by mediator
- Overview of limitation imposed by agreed data ranges on consumptive use permits

11:45  **Lunch: catered, served at picnic area**

12:30  **Shaping Strategies**
- Review proposed strategies submitted in briefing packages
- Generate new strategies for desired outcomes and address opportunities and outcomes
- Assess the importance of the items and discuss results
- Build shared context

1:35  **Break**

1:45  **Agreement on permit conditions and authorized amounts**
- Develop framework outlining resolution
- Negotiate and reach closure on each issue
- Blend comprehensive proposals into final agreement
- Reach consensual agreement on WRP permit, and if possible, Freeport permit by unanimous decision with each party having 1 vote
- Draft **Agreement in Principle**

14:45  **Contingency**
- If necessary, call for organization of a second meeting if agreed upon by parties, slated for approximately two weeks ahead