

RESOLUTION NO. 2014- 153

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE NORTH FLORIDA UTILITY COORDINATING GROUP RESOLUTION APPROVING INTERVENTION IN ADMINISTRATIVE CHALLENGES TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S ADOPTION OF PROPOSED RULES RELATING TO THE ADOPTION OF MINIMUM FLOWS FOR THE LOWER SANTA FE AND ICHETUCKNEE RIVERS AND ASSOCIATED PRIORITY SPRINGS AND ANY OTHER DOCUMENTS ASSOCIATED WITH THIS PROJECT.

WHEREAS, the St. Johns River Water Management District (SJRWMD) and the Suwannee River Water Management District (SRWMD) are undertaking and continuing water supply planning processes using growth projections, groundwater and resource impact models, and other technical tools that will affect local governments and utilities throughout the region and specifically developing MFL Prevention and Recovery Plans that local governments and utilities may be a participant; and

WHEREAS, the City of Atlantic Beach, Clay County Utility Authority, City of Gainesville, City of Jacksonville Beach, JEA, City of Neptune Beach, Town of Orange Park, and St. Johns County (hereinafter each individually referred to as a "Party" and collectively as the "Parties."), have executed a Memorandum of Agreement to jointly and collaboratively pursue their shared objectives of assuring that water resources in the region are protected, and that sufficient water supplies exist to meet existing and future water demands in the region; and

WHEREAS, the Parties are public water suppliers providing water utility service to customers in Northeast Florida; and

WHEREAS, the Parties have operated collaboratively under the Memorandum of Agreement as the North Florida Utility Coordinating Group ("NFUCG"); and

WHEREAS, the Florida Department of Environmental Protection ("DEP") has proposed to adopt minimum flows and levels ("MFLs") and an associated recovery strategy for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs, as identified in the Florida Administrative Register, Vol. 40, No. 46, pages 1069-1071 and as modified by a Notice of Change, published on April 8, 2014, in the Florida Administrative Register, Vol. 40, No. 68, page 1536 (the "Proposed Rules").

WHEREAS, the Proposed Rules substantially affect the interests of the NFUCG and its members.

WHEREAS, several parties have filed petitions with the Florida Division of Administrative Hearings challenging the Proposed Rules.

WHEREAS, the members of NFUCG wish to protect their interests implicated by the Proposed Rules as affected in the legal challenges initiated against the Proposed Rules.

WHEREAS, by filing a petition as a member of NFUCG to intervene in legal actions, it will allow the County to better protect the County's future water supply resources and plan capital expenditures appropriately and serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact;

Section 2. The County Administrator, or designee, is hereby authorized to execute the North Florida Utility Coordinating Group Resolution approving intervention in administrative challenges to Florida Department of Environmental Protection's adoption of proposed rules relating to the adoption of minimum flows for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs and any other documents associated with this project.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 3rd day of June, 2014.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest:

Ram Salterman
Deputy Clerk
Chair

By:

[Signature]
Chair



NORTH FLORIDA UTILITY COORDINATING GROUP

RESOLUTION APPROVING INTERVENTION IN ADMINISTRATIVE CHALLENGES TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S ADOPTION OF MINIMUM FLOWS FOR THE LOWER SANTA FE AND ICHETUCKNEE RIVERS AND ASSOCIATED PRIORITY SPRINGS

WHEREAS, the Florida Department of Environmental Protection ("DEP") has proposed to adopt minimum flows and levels ("MFLs") and an associated recovery strategy for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs, as identified in the Florida Administrative Register, Vol. 40, No. 46, pages 1069-1071 and as modified by a Notice of Change, published on April 8, 2014, in the Florida Administrative Register, Vol. 40, No. 68, page 1536 (the "Proposed Rules").

WHEREAS, the Proposed Rules substantially affect the interests of the North Florida Utility Coordinating Group ("NFUCG") and its members.

WHEREAS, several parties have filed petitions with the Florida Division of Administrative Hearings challenging the Proposed Rules.

WHEREAS, the members of NFUCG wish to protect their interests implicated by the Proposed Rules as affected in the legal challenges initiated against the Proposed Rules.

NOW THEREFORE, BE IT RESOLVED BY NFUCG, THAT:

1. NFUCG is authorized to file a petition to intervene in legal actions challenging the validity of the Proposed Rules, including Division of Administrative Hearings Case Nos. 14-1420RU, 14-1421RP, 14-1443RP, and 14-1644RP;
2. NFUCG authorizes its attorneys, in consultation with NFUCG's members, to represent those interests which are in common to all of NFUCG's members in the proceedings described in paragraph 1 above.

AS APPROVED via voice vote by City of Atlantic Beach, Clay County Utility Authority, City of Jacksonville Beach, City of Neptune Beach, Town of Orange Park, and JEA on April 4, 2014, and by the remaining members on the dates reflected below:

CITY OF ATLANTIC BEACH

By: _____
As: _____

Dated: _____

JEA

By: _____
As: _____

Dated: _____

CITY OF NEPTUNE BEACH

By: _____
As: _____

Dated: _____

ST. JOHNS COUNTY

By: _____
As: _____

Approval Date: _____
Dated: _____

CLAY COUNTY UTILITY AUTHORITY

By: _____
As: _____

Dated: _____

CITY OF JACKSONVILLE BEACH

By: _____
As: _____

Dated: _____

TOWN OF ORANGE PARK

By: _____
As: _____

Dated: _____

CITY OF GAINESVILLE

By: _____
As: _____

Approval Date: _____
Dated: _____



ST. JOHNS COUNTY
UTILITY DEPARTMENT
1205 State Road 16
St. Augustine, Florida 32084

I N T E R O F F I C E M E M O R A N D U M

TO: Bill Young, Director of Utilities
FROM: Gordon Smith, Utility Engineering Manager
SUBJECT: FDEP's Minimum Flows and Levels (MFLs) for the Lower Santa Fe and Ichetucknee Rivers
DATE: May 2, 2014

At a County Commission meeting on December 17, 2013, staff provided an update on Florida Department of Environmental Protection (FDEP) development of Minimum Flows and Levels (MFL) for the Lower Santa Fe and Ichetucknee Rivers. The St. Johns River Water Management District (SJRWMD) and the Suwannee River Water Management District (SRWMD) are jointly undergoing long term water supply planning efforts which involve development of a MFL Prevention, and Recovery Plan. The results of these studies could have a significant impact on the region and on individual utility providers.

The County is part of the North Florida Utility Coordinating Group (NFUCG) who has major concerns with the scientific basis for the MFL proposed by SRWMD. Based on the information provided to the St. Johns County Utility Department, adoption of the MFL could require a major reduction in groundwater pumping for all of North Florida, resulting in a major impact on the County's water supply, requiring us to find alternatives to groundwater. In addition, the resulting increase in the cost of water treatment and supply most likely will raise water rates considerably.

During our meeting in December, a Joint Defense/Common Interest Agreement was presented to our Board outlining the terms, provisions, conditions, and requirements between the NFUCG parties (City of Atlantic Beach, Clay County Utility Authority, City of Gainesville, City of Jacksonville Beach, JEA, City of Neptune Beach, Town of Orange Park, and St. Johns County). This agreement is needed if the County is part of any legal action taken by the NFUCG. The Board was appreciative of the Utility Department looking out for the best interest of our rate payers but encouraged us to work with the agencies involved. The Board was supportive but took no action on the agreement.

NFUCG met with FDEP and SRWMD expressing our concerns encouraging them to take the time to get the science right rather than to adopt a MFL on an accelerated time frame at the expense of reliability and sound policy considerations. NFUCG's technical experts raised numerous fatal technical concerns regarding the data, models, and methodology used to establish the proposed MFL. After our discussions with these agencies, FDEP revised the proposed rule in a way that would still provide protection to the springs, but would address many of our concerns. Specifically, the proposed rule would not require existing users to take actions to meet the MFL recovery criteria

until a new groundwater model is developed. This new model is expected to provide much more accurate and reliable results in order to set regulatory criteria and determine what actions will be required to meet these criteria.

On March 7, 2014, a Notice of Proposed Rule for Chapter 62-42, F.A.C., was published in the Florida Administrative Register. A public hearing was held on April 3, 2014 and FDEP filed a notice of rule change on April 8, 2014 to address comments from the public hearings. NFUCG felt the revised rule as presented was a good compromise and the group decided not to pursue a rule challenge. As in most rule adoption proceedings, other points of view are expressed and the rule adoption process can change quickly.

Prior to the first public hearing, Mr. Paul Still challenged the rule and filed a petition on March 27, 2014. On April 25, 2014, Ichetucknee Alliance joined the Florida Wildlife Federation's petition for an administrative hearing on the Lower Santa Fe River/Ichetucknee River MFL. Once other parties entered in the petition to the rule, NFUCG filed to intervene in the process.

The Administrative Law Judge reviewed the records in these cases and consolidated the challenges on April 22, 2014. The Division of Administrative Hearings Case numbers are 14-1420RU, 14-1421RP, 14-1443RP, and 14-1644RP. Links to a few of the petitions are listed below:

Mr. Paul Still vs Suwannee River Water Management District (Case No. 14-1420RU)
https://www.doah.state.fl.us/DocDoc/2014/001420/14001420_408_03252014_09321358_e.pdf

Florida Wildlife Federation, Inc. and Ichetucknee Alliance, Inc. (CASE NO. 14-1644)
https://www.doah.state.fl.us/DocDoc/2014/001420/14001420_0_04252014_03255576_e.pdf

NFUCG, Clay County Utility Authority, and JEA
https://www.doah.state.fl.us/DocDoc/2014/001420/14001420_0_04242014_04182079_e.pdf

As this case moves forward, other parties may intervene.

The proposed rule substantially affects the interests of the NFUCG and the rate payers of St. Johns County. NFUCG filed a petition to intervene, allowing us a seat at the table during the rule making discussions. Our concerns are particularly acute since this is the first MFLs adopted by FDEP for statewide application and will serve as a model for future statewide MFL rulemaking.

Recommendation

Depending on the outcome of this challenge, a change to the rule could result in significant costs and ultimately rate increases to our customers to meet criterion that we believe is inaccurate and unreliable. St. Johns County's options are either to do nothing, or as part of the NFUCG, to legally intervene in legal action challenging the validity of the proposed rule. This action would ensure that the interests of the County and our customers are represented during the rule making process.

Action Needed

Utility Department Staff recommends approval of the attached resolution approving intervention in the administrative challenge to FDEP's adoption of the MFLs for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs and authorizing the County Administrator, or his Designee to execute on behalf of St. Johns County, any documents associated with this project.