de la PARTE, GILBERT AND GRAMOVOT, P. A.
ATTORNEYS AT LAW

8/A-7-87

IN THE SUPREME COURT OF FLORIDA

OSCEOLA COUNTY, a political subdivision of the State of Florida,

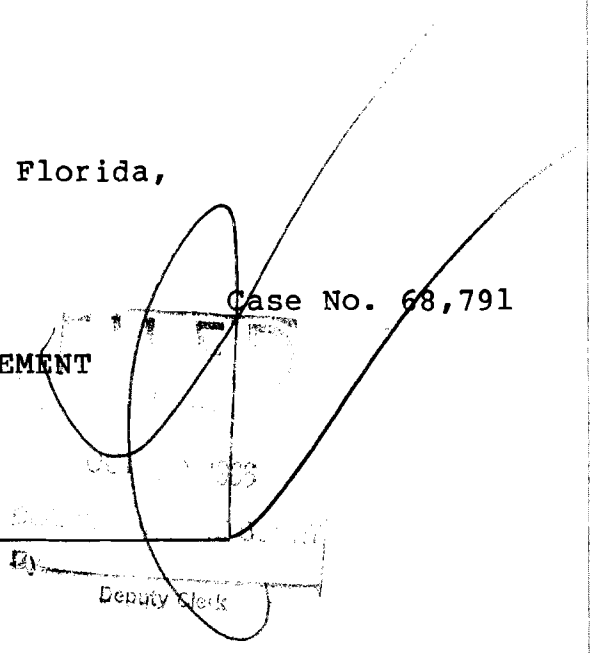
Petitioner,

v.

Case No. 68,791

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT,

Respondent.



AMICUS CURIAE BRIEF OF WEST COAST REGIONAL WATER SUPPLY AUTHORITY

EDWARD M. CHEW and
EDWARD P. de la PARTE, JR.
de la PARTE, GILBERT AND
GRAMOVOT, P.A.
705 E. Kennedy Boulevard
Tampa, Florida 33602
(813) 229-2775

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

FLORIDA ADMINISTRATIVE CODE

PRELIMINARY STATEMENT

The West Coast Regional Water Supply Authority is an inter-local governmental agency created pursuant to Sections 373.1962 and 163.01, Florida Statutes. Its members are Hillsborough County, Pinellas County, Pasco County, the City of Tampa and the City of St. Petersburg. By motion dated October 1, 1986, the West Coast Regional Water Supply Authority sought permission of this Court for leave to file a brief as amicus curiae in support of Respondent, St. Johns River Water Management District. The Court granted this motion on October 14, 1986.

In this brief, the St. Johns River Water Management District may be referred to as "St. Johns", the South Florida Water Management District may be referred to as "South Florida" and the Florida Department of Environmental Regulation may be referred to as "DER".

STATEMENT OF THE CASE AND FACTS

A. The Case.

Petitioner, Osceola County, sought to invoke this Court's discretionary jurisdiction pursuant to Article V, Section 3(b)(3), Florida Constitution, on the grounds that the decision below of the district court of appeal conflicts with a decision of another district court of appeal on the same question of law, the decision below of the district court of appeal conflicts with a decision of this Court on the same question of law and the decision below of the district court of appeal expressly affects a class of constitutional or state officers. This Court accepted jurisdiction of this case, presumably on all three grounds.

Osceola County seeks reversal of the decision in Osceola County v. St. Johns River Water Management District, 486 So.2d 616 (Fla. 5th DCA 1986). However, contrary to Osceola County's assertion, the decision of the district court of appeal did not find "implied legislative authority for an administrative agency, the Florida Department of Environmental Regulation, to delegate to yet another agency, the St. Johns River Water Management District, the power to issue permits to withdraw, transport, and use water not located within the

limits of St. John's statutorily delineated geographically boundaries." The district court of appeal expressly rejected this as the issue to be decided or the holding of the court. The court stated as follows:

> Petitioner asserts that the issue before the court is whether St. Johns may exercise jurisdiction on resources outside its territorial boundaries, but to state the question thusly virtually requires the conclusion that it may not. The real issue here is whether the Florida Water Resources Act gives DER the power to authorize such transfers.

Id. at 617. The specific holding of the court was that the legislature had impliedly granted to DER the authority to allow inter-district diversions of water, and such authority is properly delegated to the water management districts. Id. at 620. Therefore, the real issue before this Court is whether DER has the authority to allow water to be withdrawn in one water management district, transferred across water management district boundaries and consumptively used in another water management district.

B. The Facts.

Since the West Coast Regional Water Supply Authority did not participate in any of the proceedings below, it relies on the facts reflected in the decision of the district court of appeal.

SUMMARY OF ARGUMENT

The sole issue before this Court is whether DER has the power to authorize the water management districts to jointly control the inter-district transfers of water. This is the specific issue addressed in the decision below of the district court of appeal. To the extent that Osceola County attempts to raise the issue of whether a single water management district may independently control resources beyond its territorial boundaries, this issue must be rejected by this Court just as it was specifically rejected by the district court of appeal.

The Florida Water Resources Act of 1972 declared that all water within the state is a state resource and granted DER statewide jurisdiction to conserve, protect, manage and control all of the waters within the state. DER has express legislative authority to issue permits for the consumptive use of water. DER adopted rule 17-40.05, Florida Administrative Code, which allows the transport and use of water across water management district boundaries provided that each of the water management districts involved approves of the transport

and use. Therefore, DER has valid legislative authority to issue consumptive use permits on a statewide basis and DER has properly exercised valid legislative authority in authorizing the joint control by water management districts of the inter-district transfers of water.

ARGUMENT

I.

CHAPTER 373, Florida Statutes, GRANTS DER THE AUTHORITY TO ALLOW INTER-DISTRICT DIVERSIONS OF WATER.

The primary issue before this Court is whether Chapter 373, Florida Statutes, authorizes DER to allow the withdrawal of water from one water management district and the transfer of that water across water management district boundaries to be consumptively used in another water management district. Osceola County poses an entirely different issue for the Court which is not based on the facts of this case. This Court does not need to determine whether a water management district, acting alone and without authority from DER, can issue a permit authorizing the withdrawal of water from another water management district and the transfer to and use of that water within the water management district issuing the permit.

In the instant case, Broward County applied to both St. Johns and South Florida for consumptive use permits. If, and only if, both permits are issued, Broward County would be authorized to withdraw water from South Florida and transfer the water to St. Johns for a public supply of water within Broward County. Broward

County must obtain a consumptive use permit from each water management district before any water is withdrawn, transferred or used. Therefore, another way of stating the issue before this Court is whether St. Johns and South Florida may jointly control the transfer of water between the two water management districts as a result of the delegation of this authority from DER. The issue then is whether DER has the authority to authorize the inter-district diversions of water.

A. Chapter 373, Florida Statutes, Grants DER Statewide Control of Waters in the State.

When the courts are faced with a question of statutory interpretation or construction, the courts must be guided by the fundamental rule of statutory construction that the legislative intent is the polestar of the inquiry. State v. Webb, 398 So.2d 820 (Fla. 1981); City of Tampa v. Thatcher Glass Corporation, 445 So.2d 578 (Fla. 1984). The statutory scheme should be construed in light of the evil to be remedied and the remedy conceived by the legislature to cure that evil. Orlando Sports Stadium, Inc. v. Powell, 262 So.2d 881 (Fla. 1972). When there is any ambiguity in the meaning or context of a statute, the statute must be construed to give effect to the legislative purpose. Smith v. City of St. Petersburg, 301 So.2d 756 (Fla. 1974).

In the instant proceeding, this Court's initial inquiry should begin with the object and purpose of the Florida Water Resources Act of 1972 as set forth in Chapter 373, Florida Statutes, ("Act"). No judicial interpretation or statutory construction is necessary to determine the purpose or objective of the Act. The legislature clearly and succinctly established the purpose of the Act in Section 373.016, Florida Statutes, which provides as follows:

> (1) The waters of the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.
>
> (2) It is further declared to be the policy of the legislature:
>
> (a) To provide for the management of water and related land resources;
> (b) To promote the conservation, development and proper utilization of surface and groundwater;
> (c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water for storage for beneficial purposes;
> (d) To prevent damage from floods, soil erosion, and excessive drainage;
> (e) To preserve natural resources, fish, and wildlife;
> (f) To promote the public policy set forth in s. 403.021;
> (g) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and
> (h) Otherwise to promote the health, safety and general welfare of the people of this State.
>
> (3) The legislature recognizes that the water resource problems of the State vary from region

> to region, both magnitude and complexity. It is therefore, the intention of the legislature to vest the Department of Environmental Regulation or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts. The Department may exercise any power herein authorized to be exercised by a water management district; however, to the greatest extent practicable, such powers should be delegated to the Governing Board of a water management district.

(Emphasis supplied). Clearly then, the object and purpose of the entire Act is to conserve, protect, manage and control the waters of the state. The term "waters of the state" has also been clearly defined by the legislature. Section 373.019(8), Florida Statutes, provides as follows:

> "water" or "waters in the state" mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artifical water courses, lakes, ponds, or difused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the State.

(Emphasis supplied).

It is critical to the proper resolution of the case before the Court to clearly recognize that the object and purpose of the Act is to control waters of the state. The purpose of the Act is not to control waters of a water management district, waters of a county, waters of

a municipality, or waters of an overlying land owner. The legislature has expressly declared, and this Court has recognized, that waters in the State of Florida are a state resource. §373.016(1), Fla. Stat.; Village of Tequesta v. Jupiter Inlet Corporation, 371 So.2d 663, 671 (Fla. 1979).

In addition to a clear legislative declaration that all waters in the State are a state resource, the legislature has clearly declared that the power to conserve, protect, manage and control the waters of the state is vested in DER. §373.016(3), Fla. Stat. Section 373.026, Florida Statutes, expressly makes DER responsible for the administration of the Act at the state level. Further, DER is authorized to exercise any power authorized to be exercised by any of the water management districts. §§373.016(3), 373.026(7), Fla. Stat.

One of the powers and responsibilities established by the Act is the permitting of consumptive uses of water. This appears in Part II of the Act. §§373.203-373.249, Fla. Stat. Section 373.219, Florida Statutes, provides that DER (or water management districts) may require such permits for consumptive uses of water and may impose conditions necessary to assure that the consumptive use of water is consistent with the objectives of DER (or district) and is not harmful to the

water resources. This statutory provision does not establish any express limitation of geographical boundaries for a consumptive use of water. Since there is no express geographical limitation for the consumptive use of water and since DER has statewide jurisdiction of a statewide resource, DER has the power to issue consumptive use permits without regard to geographical boundaries as long as the consumptive uses of water is consistent with the DER's objectives and is not harmful to the water resources.

The conclusion that DER has statewide authority to issue consumptive use permits without regard to geographical boundaries is confirmed by express statutory authority for DER to exercise any power which any water management district may exercise. If DER was limited in its consumptive use permitting to the geographical boundaries of each of the five water management districts, this grant of power would be redundant and an inefficient use of executive agency resources. This statutory provision would be effectively useless. It must be presumed that the legislature intended for this provision to have some useful purpose. Smith v. Piezo Technology and Professional Administrators, 427 So.2d 182 (Fla. 1983). The only useful purpose for this provision is to authorize and confirm DER's statewide jurisdiction

to issue consumptive use permits without regard to the geographical boundaries of water management districts. This allows DER to conserve, protect, manage and control the waters of the state on a statewide basis and to resolve inter-regional problems in a manner most appropriate for the statewide or inter-regional resource.

Finally, the statewide jurisdiction of DER in the consumptive use permitting system must be recognized in light of the characteristics of the resource. Water is migratory in nature and exists in different physical states all of which are interrelated parts of a complex hydrologic cycle. Village of Tequesta, supra. The resource does not recognize political boundaries and is not captive within the boundaries of any water management district. This is especially true in the instant case, since Brevard County is apparently seeking to withdraw water from the artesian aquifer known as the Floridan Aquifer. This aquifer underlies most of the state and furnishes most of the well-water supplies of the state. Id. at 666. Consequently, the legislature could not have intended to establish a regulatory scheme for the consumptive use of a statewide resource which knows no political boundaries and then limit the consumptive use of that resource to the political boundaries of the water management districts.

This was clearly the conclusion of the district court of appeal in the decision below. That court concluded that the Act created a regulatory framework for managing the waters in the state at both a state and regional level. The court concluded that the grant of statewide authority to DER was perceived by the legislature as the most effective way to conserve and manage the state's total water resources. In reaching this conclusion, the district court of appeal relied on this Court's conclusion in St. Johns River Water Management District v. Deseret Ranches of Florida, Inc., 421 So.2d 1067 (Fla. 1982), that the Florida Water Resources Act provided a comprehensive plan for the conservation, protection, management and control of state waters.

The inescapable conclusion of the express statutory grant of power to DER, and the powers reasonably implied therefrom, is that DER is vested with the power to conserve, protect, manage and control water, without regard to the political boundaries of water management districts. This includes the power to grant consumptive use permits for the withdrawal or diversion of water in any part of the state and the transport of that water to and the use of that water in any other part of the state. Consequently, the district court of appeal in the decision below correctly concluded that the legislature

granted DER the authority to allow inter-district diversions and transfers of water.

B. Section 373.223(2), Florida Statutes, Allows DER to Issue Consumptive Use Permits for the Transfer of Water Across Water Management District Boundaries.

Section 373.223(2), Florida Statutes, provides:

> The governing board or the Department may authorize the holder of a use permit to transport and use ground or surface water beyond overlying land, across county boundaries, or outside the watershed from which it is taken if the governing board or Department determines that such transport and use is consistent with the public interest, and no local government shall adopt or enforce any law, ordinance, rule, regulation, or order to the contrary.

Osceola County contends that the authorization to permit the transport and use of water (1) beyond overlying land, (2) across county boundaries and (3) outside the watershed impliedly prohibits DER from authorizing the transport and use of water across water management district boundaries. Osceola County urges this Court to employ one or more rules of statutory construction in support of its position. Although each of these rules of statutory construction will be addressed below, this issue need not be addressed by this Court in order to dispose of the specific issue before this Court.

The specific issue before this Court is whether DER is authorized to issue consumptive use permits for the transport and use of water across water management

district boundaries. By granting DER the power to authorize the transport and use of water beyond overlying lands, across county boundaries and outside the water shed, the legislature has established an all-inclusive power to authorize the transport and use of water anywhere within the state. The three specific classes of transport and use identified by the legislature include each and every kind or class of transport that can occur within the state. There is no kind or class of transport of water which does not fall within the three classes identified by the legislature.

The transport and use of water as requested by Brevard County includes the transport and use of water beyond overlying lands and across county boundaries. Therefore, DER would have the express legislative authority to issue the consumptive use permit requested by Brevard County. The transport and use of water requested by Brevard County may also be outside the watershed from which the water is withdrawn. If this is the case, DER would have express legislative authority to issue a consumptive use permit under this third statutory class.

Interestingly, the decision of the district court of appeal suggests that the Holopaw region of Osceola County where Brevard County proposes to locate the wellfield is

within the watershed of the St. Johns River. If Brevard County also falls within the watershed of the St. Johns River, then Section 373.223(2), Florida Statutes, would be entirely inapplicable and could impose no limitation on DER's authority to issue a consumptive use permit since the withdrawal, transport and use of water as requested by Brevard County would occur within a single watershed.

Finally, the legislature's decision not to exhaustively enumerate every political and geophysical boundary across which the transport of water can occur, does not mean that the transport of water across these boundaries is prohibited. For example, the statute does not specifically authorize the transport of water across water supply authority boundaries, flood control district boundaries, soil and water conservation district boundaries, municipal boundaries or basin boundaries. By declining to enumerate each and every boundary, the legislature has not prohibited transport of water across that boundary since each of these boundaries fall within one or more of the three classifications specifically identified by the legislature. Consequently, Section 373.223(2), Florida Statutes, provides express statutory authorization for DER to authorize the transport and use of water across any political or geophysical boundary

within the State, including across water management district boundaries.

C. The Rules of Statutory Construction Confirm the Legislature's Intent to Grant DER the Power to Authorize Consumptive Use Permits for the Transport and Use of Water Across Water Management District Boundaries.

Osceola County relies on a variety of rules of statutory construction in support of its argument that DER does not have the power to authorize one water management district to issue permits for the withdrawal, use and transport of water from another water management district. As discussed above, the issue is not whether DER can authorize a single water management district to permit inter-district transfers of water. The issue is whether DER has the power to authorize the inter-district transfers of water. Therefore, the Court should employ rules of statutory construction only if it cannot determine that DER has the express statutory power to issue consumptive use permits for the inter-district transfers of water.

Rules of statutory construction are simply tools used by the judiciary to determine legislative intent. Legislative intent is the polestar of all endeavors by the judiciary to interpret statutes. State v. Egan, 287 So.2d 1 (Fla. 1973). Therefore, if a rule of statutory construction is contrary to clear legislative intent, a court should find that that rule is inapplicable.

A very important example of this is Osceola County's assertion that Section 373.223(2), Florida Statutes, should be strictly construed since it is in derogation of the common law. This rule of construction runs directly contrary to the legislature's express direction that this Act be liberally construed in order to effectively carry out the purposes of the Act. §§373.616, 373.6161, Fla. Stat. Consequently, the rule of statutory construction is inapplicable and Section 373.223(2), Florida Statutes, should be interpreted liberally to effectuate the purposes of the Act. One of these purposes is the statewide control of waters in the state and this necessarily includes DER's power to authorize the inter-district transfers of water.

Osceola County also urges this Court to hold that the decision of the district court of appeal was in error because it failed to follow the rule of statutory construction that the legislature, by expressly enumerating some circumstances and locations where water may be transported, intended to prohibit the inter-district diversion of water. Osceola County urges this Court to hold that the decision of the district court of appeal is in conflict with Department of Professional Regulation v. Pariser, 383 So.2d 28 (Fla. 1st DCA 1985) which followed the rule of expressio unius est exclusio

alterius. However, as with all rules of statutory construction, this exclusio maxim is strictly an aid to statutory construction and is not a rule of law. Smalley Transportation Company v. Moed's Transfer Company, 373 So.2d 55 (Fla. 1st DCA 1979). The First District Court of Appeal has cited with approval the following words of caution from the Supreme Court of the United States in Ford v. United States, 373 U.S. 593, 47 S.Ct. 531:

> This maxim properly applies only when in the natural association of ideas in the mind of the reader, that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment.
>
> * * *
>
> It will, however, be proper to observe, before proceeding to give instances an illustration of the maxim, Expressio unis est exclusio alterius, that great caution is requisite in dealing with it for, as Lord Campbell observed in Saunders v. Evans, it is not of universal application, but depends upon the intention of the party as discoverable on the face of the instrument or of the transaction; thus where general words are used in a written instrument, it is necessary, in the first instance, to determine whether those general words are intended to include other matters, besides such as are specifically mentioned, or to be referable exclusively to them, in which latter case only the above maxim can be properly applied.
>
> * * *
>
> It is often a valuable servant, but a dangerous master to follow in the construction of

> statutes or documents. The exclusio is often the result of inadvertance or accident, and the maxim ought not to be applied, when it's application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.

(Emphasis supplied); Smalley Transportation Company v. Moed's Transfer Company, supra, at 56.

In the instant case, this maxim cannot apply. First, the three classes of water transport identified in the statute include all categories of transport and therefore include the transport of water across district boundaries. Second, in light of the comprehensive nature of the Florida Water Resources Act, it would be inconsistent and unjust to hold that DER cannot authorize the inter-district transfers of water in light of the broad delegation of statewide powers to conserve, protect, manage and control the waters of the state.

Also, a close reading of Pariser, supra, reveals that it is distinguishable from the instant case. In Pariser, supra, the legislature had authorized the Construction Industry Licensing Board ("Board") to impose a fine for violations of certain statutory provisions. The legislature had also authorized the Department of Legal Affairs to bring a civil action to recover any civil penalties. However, the Board sought to expand its disciplinary powers by adopting a rule which authorized the Board to take additional disciplinary action against

a licensee who did not pay a fine imposed by the Board. The express holding of the court was when the legislature expressly provided one method for enforcement of civil penalties, it would be erroneous to additionally imply such authority on behalf of the Board.

The instant case does not involve legislative authority for one executive agency to authorize the inter-district transfer of water and the usurpation of concurrent jurisdiction by another executive agency. Pariser, supra, involved the legislative authority to impose a fine and the legislative authority to collect the fine. The exclusio maxim applied to preclude implied authority to collect the fine in another manner. In the instant case, if Osceola County's position was accepted, DER would have been vested with the statewide authority to regulate a statewide resource but by implication been precluded from employing an important tool to manage and control the resource. The prohibition of inter-district transfers of water by implication should be rejected and Pariser, supra, should be found to be inapplicable to the facts of this case.

Next, Osceola County contends that the decision below of the district court of appeal interprets Section 373.223(2), Florida Statutes, in a manner which cannot be harmonized or reconciled with other provisions of the

Act. However, the disharmony suggested by Osceola County results from Osceola County's misstatement of the holding of the district court of appeal and the issue before this Court. If the district court of appeal had held that St. Johns may exercise jurisdiction on resources outside its boundaries, disharmony could certainly result if this jurisdiction was independent and not based on a delegation by DER of its statewide jurisdiction. However, the real issue, as specifically recognized by the district court of appeal below, is whether the Florida Water Resources Act gives the DER the power to authorize inter-district transfers. When viewed in this light, it is clear that statewide jurisdiction by DER assures a harmonious and efficient regulatory scheme.

Contrary to Osceola County's assertion, DER's statewide jurisdiction to permit the consumptive use of water and the delegation of the permitting of inter-district transfers of water jointly to the water management districts assures consistent, reasonable and harmonious application of permitting standards. Section 373.223(1), Florida Statutes, demands that an applicant for a consumptive use permit prove that the use is a reasonable-beneficial use, will not interfere with any presently existing legal use of water, and is consistent

with the public interest. If the affected water management districts have joint authority to control inter-district transfers of water, the applicant must prove his entitlement to a consumptive use permit to both water management districts. If the applicant cannot prove his entitlement to a permit to either the supplying district or the receiving district, then no inter-district transfer of water will occur. Both districts must not only consent to but must approve the inter-district transfers of water. This permitting system satisfies not only the legislative policy to control waters in the state on a statewide basis but also allows the conservation, protection, management and control of waters on a regional basis. Under this system, parochialism cannot occur since either water management district can veto the inter-district transfer of water subject to DER's statewide control. This was clearly the intention of the legislature and the rule of statutory construction that statutory provisions should be harmonized and reconciled is satisfied.

Similarly, there is no disharmony in this regulatory scheme when the need arises for the declaration of a water shortage under Section 373.246, Florida Statutes, or when the need arises for the resolution of a conflict

among competing consumptive use permit applicants pursuant to Section 373.233, Florida Statutes. Since DER has ultimate statewide consumptive use permitting jurisdiction, if any disharmony or inconsistencies arise among the water management districts, DER and the Land and Water Adjudicatory Commission have express statutory authority to assure consistency and harmony. §373.114, Fla. Stat.

Finally, Osceola County asserts that the decision below of the district court of appeal is contrary to the rule of statutory construction that all doubts concerning the exercise of an administrative power should be resolved against its exercise. Again, if the decision of the district court of appeal is correctly stated, it is not inconsistent with this rule of statutory construction. Osceola County incorrectly states that the decision of the district court of appeal will allow one agency to derivately expand the scope of another agency's legislatively established geographical jurisdiction. First, DER has statewide consumptive use permitting jurisdiction and further has express statutory authority to delegate this power to the water management districts. §373.103, Fla. Stat. Second, DER has not authorized any water management district exercise any

power outside of its geographical boundaries. The inter-district transfer of water requires consumptive use permits from both the supplying district and the receiving district. The consumptive use permit from the supplying district would authorize the withdrawal of water and the transport of that water to the district boundary. The consumptive use permit from the receiving district would authorize the transport of the water from the district boundary and the consumptive use of the water. Consequently, there is no doubt that each water management district has authority only to control the water resources within its jurisdictional boundaries by the consumptive use permitting process and has no power outside of its boundaries. Since there is no doubt that each district is exercising only the power expressly authorized or conferred by statute, the rule of statutory construction raised by Osceola County is inapplicable.

II.

DER'S ADOPTION OF RULE 17-40.05, FLORIDA ADMINISTRATIVE CODE, WAS A VALID EXERCISE OF PROPERLY DELEGATED LEGISLATIVE AUTHORITY

Osceola County contends that the decision below of the district court of appeal found implied statutory authority for DER to authorize a water management district to issue permits for water located outside the district's statutorily described geographic jurisdiction in conflict with this Court's holding in Askew v. Cross Key Waterways, 372 So.2d 913 (Fla. 1978). If the district court of appeal had found the statutory authority as was suggested by Osceola County, the decision of the district court of appeal conceivably could be in conflict with this Court's decision. However, the decision of the district court of appeal was not as broad as suggested by Osceola County. In fact, the decision of the district court of appeal was much more narrow since the district court of appeal specifically stated:

> We hold that the legislature has impliedly granted to D.E.R. the authority to allow inter-district diversions of water and such authority is properly delegated to the water management districts.

Osceola County v. St. Johns Water Management District, supra, at 620.

Since Rule 17-40.05(1), Florida Administrative Code, requires the approval of each district involved in the

transport or use of water across district boundaries, DER has clearly not attempted to allow any district to exercise jurisdiction beyond its geographic boundaries. Since each district must affirmatively approve the inter-district transport or use of water, each district involved has veto power over the proposed transfer or use. Consequently, no district can take any action which is effective beyond its geographical boundaries and this Court's decision in Askew v. Cross Key Waterways, supra, is inapplicable.

Assuming arguendo, that DER had adopted a rule which delegated to any single water management district the authority to issue a consumptive use permit for the inter-district transfer of water, the legislative authority for that rule would not be invalid under this Court's holding in Askew v. Cross Key Waterways, supra. That decision held that the legislature could not delegate to an executive agency the administration of legislative programs without minimal standards and guidelines ascertainable by reference to the enactment establishing the program. This Court found these guidelines crucial for both the proper administration of the program and for judicial review. Id. at 925. Specifically, this Court held that the statute authorizing the Division of State Planning to designate an area of critical state concern lacked sufficient legislative guidelines and criteria.

In the instant case, the legislature has delegated to DER the jurisdiction to issue consumptive use permits on a statewide basis. The consumptive use permitting system is based on three clearly defined statutory criteria which have not been challenged as being inadequate for either administration by an executive agency or review by the judiciary. §373.223(1), Fla. Stat. Further, the legislature first authorized and then required that a consumptive use permitting system be implemented in each of the five water management districts.

The legislature has established sufficient standards and guidelines for a regulatory program and has legislatively specified that all geographic areas in the State be subject to this regulatory scheme. Under the existing regulatory scheme, DER and all water management districts clearly are bound by clear legislative criteria for the issuance of consumptive use permits and since these criteria apply throughout the state DER cannot alter the geographic boundaries within which these statutory criteria apply. At most, DER could only specify which of the water management districts would have jurisdiction to apply the statutory criteria for a consumptive use permit for the inter-district transfers of water. Clearly, this is not proscribed by Askew v. Cross Key Waterways, supra,

and no conflict exists between that decision and the decision below of the district court of appeal.

CONCLUSION

The district court of appeal in its decision below correctly concluded that the legislature granted to DER the power to authorize the inter-district transfers of water and this power was properly delegated to the water management districts. The decision below does not conflict with the decision of any other district court of appeal or with any decision of this Court. Consequently, the decision below should be affirmed.

Respectfully submitted

EDWARD M. CHEW, Esq. and
EDWARD P. de la PARTE, JR.
de la PARTE, GILBERT AND
GRAMOVOT, P.A.
705 E. Kennedy Boulevard
Tampa, Florida
(813) 229-2775

Attorneys for West Coast
Regional Water Supply
Authority

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Peeples, Earl & Blank, P.A. One Biscayne Tower, Suite 3636, Two S.

Biscayne Boulevard, Miami, Florida 33131; Neal D. Bowen, 17 S. Vernon Avenue, Kissamee, Florida 32741; Vance W. Kidder, St. Johns' River Water Management District, P.O. Box 1429, Palatka, Florida 32078-1429; Robert Bruce Snow, County Attorney, Hernando County, 112 N. Orange Avenue, P.O. Box 2060, Brooksville, Florida 33512; Clifton A. McClelland, Jr., Potter, McClelland, Griffith, Jones & Marks, 700 S. Babcock Street, #400, P.O. Box 2523, Melbourne, Florida 32902-2523, for South Brevard Water Authority; Mary E. Harlan, P.O. Box 60, Bartow, Florida 33830, for Polk County, Edward B. Helvenston, Assistant County Attorney, Pasco County Government Center, 7530 Little Road, New Port Richey, Florida 33553; Carol A. Forthman, Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32301; Valerie A. Roberts, 322 E. Pine Street, Orlando, Florida 32801; Stephen P. Lee, County Attorney, Marion County, 111 S.E. 25th Avenue, Ocala, Florida 32671, this 18th day of October, 1986.

Edward Chew
EDWARD M. CHEW