11-14 O/A 1-7-87

IN THE SUPREME COURT OF FLORIDA

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

Petitioner,

v.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT,

Respondent.

CASE NO. 68,791

RESPONDENT'S ANSWER BRIEF

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PRELIMINARY STATEMENT

Respondent, St. Johns River Water Management District, will cite to the record as set forth in its Appendix to this Brief. Parties and other matters frequently referred to are as follows:

1. App. ___. Citations to the partial record provided in Respondent's Appendix accompanying this Brief.

2. Osceola County. Petitioner herein and the Petitioner in the original prohibition proceedings below.

3. St. Johns. The St. Johns River Water Management District is the Respondent in this Court as it was below.

4. DER. The Florida Department of Environmental Regulation. DER was an amicus below.

5. Brevard County. Brevard County was the permit applicant below. A dependent special district of Brevard County, the South Brevard Water Supply Authority, appeared as amicus below.

6. SFWMD. The South Florida Water Management District.

STATEMENT OF THE CASE AND OF THE FACTS

Unfortunately, Petitioner, Osceola County, has presented a statement of the case and of the facts which improperly characterizes the lower court's decision and which is infused with editorial comments, unsubstantiated statements, and particularly, legal argument as to legislative history and statutory interpretation. Therefore St. Johns cannot accept Osceola County's statement of the case or of the facts.

A. THE CASE

This case is before the Court pursuant to Article V, Section 3(b)(3), Florida Constitution. Osceola County seeks reversal of a decision by the District Court of Appeal, Fifth District.[1] The District Court held that the Department of Environmental Regulation has specific legislative authority to permit the transport and use of water beyond overlying land, across county boundaries or outside the watershed from which it is taken and the statutory authority to regulate the management of water resources statewide. The authority to allow inter-district diversions of water is included in these general

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[1] Osceola County v. St. Johns River Water Management District, 486 So.2d 616 (Fla. 5th DCA 1986).

specific authorizations. Moreover, such authority is properly delegated to the water management districts. Osceola County has focused on the words "implied" and "impliedly" and distorts the context in which those words were used. The Court did not hold, as stated by Osceola County, that St. Johns unilaterally "has the power to issue permits to withdraw, transport and use water not located within the limits of the District's boundaries." The water is proposed to be consumed within St. Johns and St. Johns' approval to transport the water would be a nullity without SFWMD also approving the transport.

B. THE FACTS

St. Johns disagrees with Osceola County's discussion of the legislative history of Chapter 373, its statutory interpretation, and editorialization contained within its statement of the facts. These matters are for legal argument.

The facts are uncomplicated. Brevard County, not the South Brevard Water Authority as Osceola County states, applied to SFWMD and St. Johns for a consumptive use permit which would authorize the use, in Brevard County, of water to be drawn from the Holopaw region of Osceola County which lies within the SFWMD[2]. The application was to be considered by the St. Johns'

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[2] App. 1

Governing Board on May 7, 1985, upon a district staff recommendation of denial. Osceola County sought a writ of prohibition from the District Court of Appeal, Fifth District, to prevent the Governing Board of St. Johns from considering the permit application asserting that St. Johns lacked jurisdiction under Chapter 373 to consider a consumptive use permit application relating to water which will be diverted from outside its boundaries. The District Court granted an order to show cause precluding the St. Johns Governing Board from acting on the permit application pending final disposition of the matter.

After briefing and oral argument by the parties, the District Court on March 6, 1986, rendered its decision subject to rehearing.[3] Rehearing was requested by Petitioners but rehearing was denied. On May 14, 1986, Petitioner filed its Notice to Invoke Discretionary Jurisdiction of the Supreme Court of Florida asserting that the lower court's decision expressly affects a class of constitutional officers, namely county commissioners, and it expressly and directly conflicts with Askew v. Cross Keys Waterways, 372 So.2d 913 (Fla. 1978) and Department of Professional Regulation v. Pariser, 483 So.2d 28 (Fla. 1st DCA 1985). On August 29, 1986, this Court filed its Order accepting jurisdiction and setting oral arguments.

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[3] App. 7

SUMMARY OF THE ARGUMENT

The actual issue in this case, as cogently expressed by the lower court is "whether transfer of water from one management district to another is authorized by law or [p]ut another way, does the [DER] have the statutory authority to adopt an administrative rule prescribing the procedure to be followed and the guidelines to be observed by the respective water management districts in considering inter-district water transfers." The issue is not whether an individual water management district may independently authorize the withdrawal, transfer and use of water outside its jurisdictional boundaries, as improperly framed by Osceola County. Indeed the lower court specifically found that St. Johns even if it approved an application, could not do what Osceola County assails.

Various statutory provisions authorize Brevard County to secure water for use by citizens within the county. The various statutory provisions are a general authorization that is without limitation concerning where Brevard County may seek to withdraw water from provided the transport and use is determined by the DER or water management district or districts to be consistent with the public interest and otherwise qualified for a permit per Section 373.223(1), Florida Statutes.

Section 373.223(2), Florida Statutes, was enacted to abrogate particular common law water use restrictions and preempt county claims to regulate the allocation of water and

thereby prevent the transport and use of water across county boundaries. The transport across water management district boundaries was not included within Section 373.223(2), Florida Statutes, for the obvious reason that there was no common law restriction against such transport and use since the five districts did not exist under the common law and only came into existence upon the enactment of Chapter 373. Transport across county boundaries was later inserted in the provision to complement the implementation of Section 373.217, Florida Statutes, which precludes county interference with the Department's and the District's exclusive authority over the permitting of consumptive water uses and the transportation thereof. Consequently the clear intent of Section 373.223(2) is not to limit the use and transport of water as asserted by Osceola County, but rather to broaden the opportunity for water use by eliminating common law restrictions and artificial parochial impediments so that the full beneficial use of Florida's waters may be achieved.

Section 373.223, Florida Statutes, provides specific legislative authority to authorize the transport of water whenever the statutory criteria for issuance of a permit and transport and use are met, including across district boundaries. The fact that consumptive use permitting has been delegated to the water management districts does not eliminate specific authority conferred by the statute. Moreover, specific statutory authority given the Department authorizes it to specify a procedure whereby districts can consider requests

to transport water across district boundaries and factual considerations for district rules relating to public interest determinations as are set forth in Florida Administrative Code Rule 17-40.05. Chapter 373 is replete with statutory guidelines and standards clothed with common law meanings to guide both the DER and the water management districts in implementing the purposes and in intent of Part II of Chapter 373.

ARGUMENT

The resolution of the issues before this Court lies in the proper perspective regarding the comprehensive legislative scheme set forth in Chapter 373, Florida Statutes, for the regulation of Florida's water resources. The District's position represents an interpretation of Chapter 373, Florida Statutes, founded in specific authority conferred in the statute, which enables management and use of the water resources in the State to the maximum degree in the most efficient and cost effective manner. Osceola County's parochial interpretation of the statute is entirely contrary to the intent and purposes of the statute because it has the opposite result of the District's. Osceola County's entire argument is completely contingent upon this Court finding the need for the words "water management district boundary" in a statutory provision. The lower court properly rejected how Osceola County narrowly framed the issue in terms of the absolute necessity for the words "transport and use ... across ... water management district boundaries" to appear in Section 373.223(2), Florida Statutes, and instead adopted the logical interpretation of Chapter 373, Florida Statutes, that inter-district transport of water is authorized under the specific authority granted to the DER to regulate the management of Florida's water resources on a state-wide basis and to authorize the transport and use of water beyond overlying land, across county boundaries or outside the watershed from which it

is taken. The secondary issue in this case is whether the legislative scheme established under Chapter 373, Florida Statutes, authorizes the DER to establish and delegate an administrative policy mechanism whereby the conservation and maximum beneficial use of Florida's waters may be realized on a state-wide and regional basis when an applicant, such as Brevard County, wishes to withdraw water from within the boundaries of one water management district and transport it for consumptive use within another water management district. Review of Chapter 373 reveals that not only is the DER specifically authorized to establish such a mechanism, but it has a duty to do so.

I.

BREVARD COUNTY IS SPECIFICALLY AUTHORIZED BY STATUTE TO APPLY FOR APPROVAL OF A CONSUMPTIVE USE OF WATER THAT WOULD TRANSPORT WATER DRAWN IN SOUTH FLORIDA WATER MANAGEMENT DISTRICT TO THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT AND THERE USE IT.

A seminal adjunct of Osceola County's position is that not only does St. Johns not have the authority to consider an application that proposes to transport water across water management district boundaries but that Brevard County does not have the authority to apply for approval to transport water across water management district boundaries. However, Sections 125.01, 127.01, 153.03 and 373.223, Florida Statutes, specifically authorize Brevard County to seek approval to transport

water across the boundary of SFWMD and St. Johns and use it within St. Johns.

This Court should do as the lower court did and decline to rule for Osceola County. The reasons for doing so lie in the clear literal meaning of Section 373.223(2), Florida Statutes, as written, the legislative history of the provision which supports the clear literal meaning the District gives the provision, other statutory provisions in pari materia with it and because Osceola County's position when applied defeats sound, comprehensive planning by local governments. It also is defeative of the purposes of Chapter 373, Florida Statutes, and this will be discussed under Point II.

Sections 125.01, 127.01 and 153.03, Florida Statutes, specifically authorize Brevard County to go outside of Brevard County into any adjoining county to acquire land and construct or purchase water systems and supply water within both counties. These specific authorizations are general authorizations that are not in any fashion limited except as is specified in Section 153.03(1) and (5), Florida Statutes: a county may not attempt to take over a water supply system of a municipality or industrial or manufacturing plant without the permission of the owner. There is no constraint in these statutory provisions against transporting water across water management district boundaries.

The District suggests that the absence of a prohibition against transporting water across water management district boundaries versus the presence of the constraints on county

authority that are stated in Section 153.03, Florida Statutes, provide a great deal of insight into legislative intent concerning Section 373.223(2), Florida Statutes. Section 373.223(2), Florida Statutes, authorizes consumptive use permittees to apply for permission to transport and use ground water, which is the type of water Brevard County seeks, beyond the land overlying the water and across county boundaries, which Brevard seeks to do as well. The statutory provision also authorizes transport and use of water outside the watershed from which it is taken but herein Brevard County's proposed transport and use would not constitute a transport and use outside the ground watershed from which Brevard County would draw the water but would be a transport and use within the same ground water watershed. Thus, giving Section 373.223(2), Florida Statutes, its literal reading, Brevard County is authorized to seek approval to transport water from Osceola County and use it in Brevard County. Statutes are to be given their plain, unambiguous meaning. Holly v. Auld, 450 So.2d 217 (Fla. 1984).

Section 373.223(2), Florida Statutes, as noted by Osceola County, was initially enacted as part of Chapter 72-299, Laws of Florida and as originally enacted provided:

> 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 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. (emphasis added).

When Chapter 373 was enacted, the Legislature intended to provide a statewide system both on the state and regional level to fully control the Florida's waters so as to realize their full beneficial use for a growing state. Consequently, to have an efficient and comprehensive system of water law under the administrative permit system of water management contemplated under Chapter 373, Florida Statutes, the Legislature enacted Section 373.223(2), Florida Statutes, as derived from the Model Water Code, to eliminate the eastern riparian common law overlying land and watershed place-of-use restrictions so that the comprehensive administrative system established under the statute could be effectively and efficiently administered to meet Florida's water needs. See, Maloney, Ausness and Morris, A Model Water Code, (1972), section 2.02(2) commentary and in general, the Chapter 2 commentary. The intent to depart from the common law was noted by Osceola County.

It is at this point that St. Johns and Osceola County part ways in interpreting the legislative history of Section 373.223(2), Florida Statutes. Indeed in 1976 the Legislature amended Chapter 373 and Section 373.223(2), Florida Statutes. Up to that time, Section 373.223(2), Florida Statutes, was a specific authorization to counties without any stated limit on where they could seek to transport water from, except that the county be qualified pursuant to Section 373.223(1), Florida Statutes, and the transport and use be in the public interest per Section 373.223(2), Florida Statutes. Chapter 76-243, Sections 9 and 10, Laws of Florida, was not intended to place a

limitation on the authority and ability of counties to seek water outside their boundaries but was intended to curtail the efforts of counties, such as Osceola County's, to frustrate consumptive use permitting.

Codified as Section 373.217, Florida Statutes, Chapter 76-243, Section 9, Laws of Florida, preempted to the DER and the water management districts the exclusive authority for regulating the consumptive use of water and the transportation of water and specifically prevents local governments from enacting and enforcing any law, ordinance, rule or regulation that would forbid a consumptive use permittee from transporting water. See, Cammack v. Seminole County, Case No. 84-3270 CA (Fla. 18th Cir. Ct. 1985). To fully implement Section 373.217, Florida Statutes, and to maintain consistency, the Legislature concomitantly amended Section 373.223(2) in Chapter 76-243, Section 10, Laws of Florida, by authorizing the districts or the DER to permit the transport of water "across county boundaries" and prohibiting any local government from adopting or enforcing "any law, ordinance, rule regulation or order to the contrary". These amendments, read in pari materia, make it clear that the verbage that was added to Section 373.223(2), Florida Statutes, was not intended to restrict the authority of counties to seek water in adjoining counties but instead was intended to curtail the efforts of adjoining counties to thwart consumptive use permitting that involved transport and use of water across county boundaries. It was the clear legislative intent, by the very terms of Section 373.223, Florida Statutes,

that the opposition of adjoining counties be limited to: (1) whether the applicant should be issued a consumptive use permit and (2) whether the proposed transport and use was in the public interest.

This case is nothing more than a spurious attempt through a specious contention to thwart the purpose for Section 373.223(2), Florida Statutes, as it was initially enacted and subsequently amended. It is superfluous for the Legislature to insert language in Section 373.223(2), regarding water management district boundaries since obviously there was never a common law restriction regarding a use being confined to within district boundaries since the districts never existed until the enactment of Chapter 373. Likewise, it is superfluous for the legislature to insert language in section 373.223(2) regarding water management district boundaries in addition to county boundaries because the authorization to counties to go beyond their boundaries encompasses authorization to propose to cross water management districts and because of the legislative intent behind Chapter 76-243, Sections 9 and 10, Laws of Florida. Moreover, the latest legislative expression relating to the transport of water across water management district boundaries, Section 187.201(8)(b)3, Florida Statutes, (1985), states that it is the policy in Florida to "encourage the development of local and regional supplies within water management districts instead of transporting surface water across district boundaries". This statutory provision does not establish regulatory authority but it does indicate that transport of

surface water is not prohibited and that there is no policy encouraging or discouraging the transport of ground water. Thus every legislative expression on the transport of water is a general authorization with specific limitations that do not include a prohibition against transporting water across water management district boundaries.

Osceola County ignores the clear meaning and the legislative intent of Section 373.223(2), Florida Statutes, and asserts that failure of the provision to refer to district boundaries precludes transfers across such boundaries. The point of law in Pariser is that if the Legislature says an agency act in a particular way the agency cannot act in another. That case is clearly distinguishable from the instant case. Herein the agencies would act in conformance with the authority the Legislature provided them to the extent the Legislature provided authority and the authority provided the agencies is valid in every respect. The doctrine of expressio unius est exclusio alterius, applied in Pariser and which is what Osceola County's whole argument is based on, is not a mechanical rule of law universally applied to a statutory provision without regard to legislative intent and particularly when its application leads to an absurd or inconsistent result. Smalley Transportation Company v. Moed's Transfer Company, 373 So.2d 55 (Fla. 1st DCA 1979). For illustration, the illogical extrapolation of Osceola County's interpretation of the provision and the application of the doctrine would also mean that transfers across municipal boundaries are also precluded since

there is no reference to municipal boundaries in the statutory provision; there could be no transfers across special district boundaries since there is no reference to special district boundaries in Section 373.223(2), Florida Statutes; there could be no transport across regional planning council boundaries since there is no reference to such boundaries; and that certain regional water supply authorities currently established under Section 373.1962, Florida Statutes, cannot fulfill their functions simply because the boundaries of the authorities are divided by water management district boundaries.[4] Moreover, to accept Osceola County's position would also mean that transfers within the same county, city or property would be prohibited if the county, city or property was divided by a district boundary line. Such divisions are prevalent since district boundaries were determined to conform closely to hydrological lines rather than political or ownership boundaries. See, Maloney, Plager, Ausness and Canter, Florida Water Law 1980, (Univ. of Fla. 1980) at 210; A Model Water Code, supra at Section 1.15 commentary. For example, parts of Orange, including the City

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[4] Currently, the Withlacoochee Regional Water Supply Authority and the Peace River-Manasota Regional Supply Authority are comprised of counties lying within separate water management districts. See, Water Resources Atlas of Florida, (Fernald and Patten, ed. 1984), p. 249.

of Orlando, and Osceola counties lie within St. Johns and the remainder within the South Florida district, and Polk County is subdivided by the boundary lines of three water management districts. St. Johns includes part of Haines City and metropolitan Lake Alfred and Winter Haven. The lower court rejected Osceola County's position and found nothing in Chapter 373 to sustain it. Osceola County, 486 So.2d at 619, n. 4; App. 17.

A basis for jurisdiction that Osceola County raised was that the lower court's decision affected the duties of county commissioners who are constitutional officers. The lower court's decision does so only indirectly because Section 373.217, Florida Statutes, preempted consumptive use permitting from counties. Counties have the duty, pursuant to Section 163.3177, Florida Statutes, to develop and adopt an economically feasible comprehensive plan for the orderly and balanced development of the area and have as an objective the coordination of plans among neighboring counties and with regional and state comprehensive plans. Furthermore, the Legislature encourages cooperative planning among the counties, municipalities and water management districts since consumptive use permitting is the legislative domain of regional water management districts. See Sections 373.196, 373.1961, Fla. Stat. (1985). If any thing, Osceola County's position would make local planning for counties and cities that are divided by or near water management district boundaries more difficult and development more expensive. This would hold true as well for

regional planning councils and state agencies doing regional and state comprehensive plans pursuant to Chapter 186, Florida Statutes.

II.

STATUTORY PROVISIONS ESTABLISH SPECIFIC AUTHORITY FOR THE DEPARTMENT OF ENVIRONMENTAL REGULATION TO ACT UPON BREVARD COUNTY'S APPLICATION AND, BUT FOR THE DELEGATION OF AUTHORITY TO THE WATER MANAGEMENT DISTRICTS, THE DUTY TO ACT UPON THE APPLICATION

Section 373.223, Florida Statutes, provides the DER with the specific authority to act upon the application of Brevard County to transport water drawn in Osceola County, in the SFWMD, to Brevard County, in St. Johns, and there use it. The lower court so held and this court should also because to do so, as the lower court states, gives effect to the statutory provision's plain, unambiguous meaning and is consistent with legislative intent, and to not do so is defeative of the purposes of Chapter 373.

The previous portion of this argument approached Section 373.223(2), Florida Statutes, from an applicant's standpoint. This portion approaches the section from the administering agency standpoint. St. Johns does so because Section 373.223(2), Florida Statutes, empowers regulators as well as applicants.

DER is empowered to implement a consumptive use permitting program but delegation of its authority to the water

management districts, which was once merely encouraged, is now mandatory. Sections 373.016(3), 373.103(1), 373.216, 373.219, Florida Statutes. If it were not for the water management district having consumptive use permitting programs, the DER, a state agency whose geographical jurisdiction is co-terminus with the boundaries of the State of Florida, could have a consumptive use permitting program. If DER did, it would grant and deny permits and receive requests to transport and use water. Clearly to it, a state agency, water management district boundaries are irrelevant in terms of its geographical jurisdiction. Thus by the clear and unambiguous terms of Section 373.223, Florida Statutes, if an applicant qualified for a consumptive use permit, DER could authorize the transport and use of water beyond overlying land, outside the watershed or across county boundaries, if to do so is in the public interest. Brevard County has requested approval of what the statute specifically authorizes DER to consider. It is nonsensical to say that regulatory authority is lost if DER delegates authority to water management districts. This is what Osceola County maintains. It is nonsensical to say regulatory authority is lost even if it be argued that Section 373.216, Florida Statutes, removes the option of DER delegating authority. To do so disregards the clear, unambiguous meaning of the statute and defeats the purpose of the statute.

Giving Section 373.223(2), Florida Statutes, its clear, unambiguous meaning is entirely consistent with the legislative

intent for Chapter 373, Florida Statutes. The fundamental purpose of the enactment of the Florida Water Resources Act, Chapter 373, Florida Statutes, was to provide comprehensive regulation of waters in the state through the establishment of a flexible policy for the conservation, protection, management and control of the available water resources so as to realize their full beneficial use. Section 373.016, Florida Statutes; City of St. Petersburg v. Southwest Florida Water Management District, 355 So.2d 796, 798 (Fla. 2nd DCA 1977). The state's "waters" are essentially "all water ... within the jurisdiction of the state." Section 373.019(8), Florida Statutes. These provisions do not talk about managing waters of the district. Likewise managing waters on the basis of an area less than the entire state cannot provide optimum beneficial use because it interjects impenetrable boundaries that bear no relation to population centers, growth, property ownership, and the quantity and quality of water resources. This could not be the intent of the Legislature.

There are other non-regulatory provisions in Chapter 373 that establish legislative intent that transport and use of water is solely confined to state boundaries and is not confined by water management district boundaries. Section 373.036, Florida Statutes, authorizes a State Water Use Plan. Sections 373.196 and 373.1961, Florida Statutes, authorize cooperative planning for and providing of water among municipalities, counties and water management districts.

ection 373.1962, Florida Statutes, authorizes local governments to form regional water supply authorities. No where within any of these statutory provisions is it indicated that water resources are to be managed and used in a manner that cannot include transport and use across water management district boundaries. Indeed Section 373.1962(1)(a)-(f), Florida Statutes, which establishes criteria whereby the Governor and Cabinet would decide whether formation of a regional water management authority will be authorized contains no indication in it that authority boundaries may not cross water management district boundaries. These provisions as well as those mentioned in the preceeding paragraph were found by the lower court to establish that water was to be managed not on the parochial basis Osceola County wants but on the statewide basis the Legislature has authorized DER and the water management districts to manage the State's water resources on.

III.

THE DEPARTMENT OF ENVIRONMENTAL REGULATION'S DELEGATION OF ITS AUTHORITY TO AND SUPERVISION OF THE WATER MANAGEMENT DISTRICTS IS ABUNDANTLY BASED IN SPECIFIC AUTHORITY

Chapter 373, Florida Statutes, establishes a two-tiered administrative structure with the DER vested with the central power and responsibility on the state level, while the five water management districts maintain both delegated and independent powers to deal with the particular water problems

in their respective region.[5] Pursuant to Sections 373.016(3) and 373.026(7), Florida Statutes, the DER retains general supervisory authority over the water management districts regardless of delegation of permitting powers to the districts. Florida Administrative Code Rule 17-101.040(10)(b). Moreover, and particularly significant to this case, the DER may adopt and enforce any regulations necessary to administer Chapter 373, Florida Statutes, on the state level and, as state coordinator of Florida's water resources and district interaction, to establish policy guidelines, directives or objectives for the districts in administering the statute. Sections 373.043, 373.036(10), 403.805, Florida Statutes. Furthermore, as previously mentioned, the Legislature directed the DER to formulate, with district input, a state water use plan as an "integrated, coordinated plan for the use and development of the waters of the state ..." (emphasis added).

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[5]For the historical background and administrative framework of Chapter 373, Florida Water Law 1980, supra, pp. 205-212; Fleming, "Water Allocation: The Reasonable and Beneficial Use Standards", 52 Fla. B. J. 25 (1979); DeGrove, Land Growth in Politics (APA Planners Press 1984), pp. 106-116; Maloney and Hamann, "Integrating Land and Water Management", U. of Fla. Water Resources Research Center, Publication No. 54, (1981) pp. 45-63.

Section 373.036, Florida Statutes.[6] The purpose of the state water use plan is to provide a detailed and comprehensive blueprint for statewide water resources management. See, A Model Water Code, Section 1.07(1972) commentary pp. 103-104. As the nascent step in the development of the current state water use plan and as an increment in the coordinated statewide management of Florida's water resources, in 1981 the DER, pursuant to specific legislative authority previously mentioned, adopted the initial part of the State Water Policy, Florida Administrative Code Chapter 17-40.[7] In developing Florida Administrative Code Chapter 17-40, the DER had the foresight to recognize the eventuality that a water use may be requested which proposed to traverse district boundaries. The DER realized that individual districts do not possess statewide authority, as possessed by it. Consequently, the water transport section of the State Water Policy, Florida Administrative Code Rule 17-40.05, was adopted to guide the individual districts in such instances. The rule prescribes a

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[6] See, State Water Use Plan, Dept. of Environmental Regulation (March 1986). The plan recognizes that as Florida grows so do water demands, and recognizes that transport of water across district boundaries may be a last resort. Consequently, an objective of the plan is to optimize the use of local supplies prior to diversion of waters. Goal 8, Policy 37 (A)(d), (B),(f). This objective is consistent with the legislative policy to "encourage the development of local and regional water supplies within water management districts instead of transporting surface water across district boundaries." Section 187.201(8)(b)3, Florida Statutes.

[7] See, Kemp, "Interbasin Transfers of Water in Florida", 56 Fla. B. J. 9, 15 (1982).

multiple permitting mechanism requiring that the transport or use of water across district boundaries be approved by each of the involved districts. Florida Administrative Code Rule 17-40.05(1). This cumulative permitting requirement prescribes that each involved district assess the proposed use based upon each district's inventory of the current water resource within its bounds gleaned from research and present permitted uses so as to determine if the new use meets the statutory criteria in Section 373.223(1), Florida Statutes, as implemented through their rules. Additionally, the DER set forth the minimum criteria to guide the respective districts in adopting rules whereby whether the transport and use of water across district boundaries is consistent with the public interest under Section 373.223(2), Florida Statutes, can be assessed. See, Florida Administrative Code Rule 17-40.05(2)[8]. To assure consistent state water management policy throughout the state, the Legislature granted the DER exclusive statutory authority to review district rules to ensure consistency with state water policy and the DER can order the amendment or repeal of a district rule deemed inconsistent. Section 373.114(2), Florida

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[8]The St. Johns district has adopted a consistent rule in Florida Administrative Code Rule 40C-2.312.

Statutes[9]. It is evident that DER possesses specific legislative authority pursuant to its planning and supervisory functions under Chapter 373 and Section 373.223, Florida Statutes, to require a coordinated permit review system for inter-district transport of water.

Osceola County erroneously characterizes the lower court's decision as solely founded upon implied authority. However, as previously discussed, and as held in the lower court decision, DER has specific statutory authority under the general grant of power to regulate Florida's waters on the state level and under Section 373.223, Florida Statutes, to permit the inter-district transport of water. Osceola County v. St. Johns River Water Management District, 486 So.2d at 619 (Fla. 5th DCA 1986). Attendant to this express grant is the power to fulfill the legislative purpose of statewide water management by prescribing a permitting process involving each involved water management district, here the St. Johns and the South Florida district, so that the state has a coordinated permitting process for instances wherein a water use applicant wishes to transport water across district boundaries. See, Coca-Cola Co., Ford Division v. State, Dept. of Citrus, 406 So.2d 1079 (Fla. 1981); See also Section 373.103(1)(6), Florida

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[9]Chapter 83-310, Section 72, Laws of Florida, substantially revised Section 373.114, Florida Statutes, thus strengthening DER's authoritative relationship with the districts to ensure a coordinated and consistent water policy regarding competing district interactions. Cf. Kemp, supra p. 17.

Statutes. Since DER is a state agency having jurisdiction coterminous with Florida's boundaries, neither Chapter 373, particularly in Section 373.223(2), Florida Statutes, nor artificial political boundaries, preclude DER from establishing the most practical means of implementing the statute to govern inter-district water uses. The fact that St. Johns and South Florida water management districts exercise consumptive use permitting authority does not alter, obviate or preempt DER's statutory responsibility and duty of establishing necessary policies and plans to govern the proper use of Florida's waters as contemplated by the legislature. See, Sections 373.016(3), 373.026(7), Florida Statutes, Florida Administrative Code Rule 17-101.040(10)(b). The legislative boundaries of the water management districts were roughly drawn on hydrologic bases. These boundaries do not impede DER from establishing statewide water management policies. In fact the lower court observed that it would be incongruous for the legislature to vest DER with central authority over the management of Florida's water resources while intending for DER to be restricted in its planning by the regional boundaries of the district. Osceola County, 486 So.2d at 620. If Osceola County's view that inter-district transfers are prohibited were accepted, then the very purpose of comprehensive water management conceived by the Legislature would be defeated in those counties sub-divided by water management district boundaries as has previously been illustrated. The lower court rejected this parochial interpretation of legislative intent and found additional authority

to the contrary in the legislative policy set forth in Section 187.201(8)(b)3, Florida Statutes, regarding the encouragement of the development of local and regional supplies within the districts "instead of transporting surface water across district boundaries". Osceola County, 486 So.2d at 619, n. 4. Consequently, the Legislature has not only provided DER with specific legislative authority to permit the inter-district transport of water which transcends the geographic jurisdictional limits of the water management district but also provided DER with specific legislative authority to delegate authority and prescribe the manner in which water management districts implement express and implied authority conferred by Chapter 373, Florida Statutes.

IV.

THE AUTHORITY OF THE WATER MANAGEMENT DISTRICTS AND ITS EXERCISE DO NOT CONTRAVENE ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION

The express authority conferred on the districts, either directly or by delegation, and the exercise of that express authority and the necessary implied authority incident thereto, in the instant situation would not modify legislatively established boundaries. Moreover the Legislature established adequate statutory criteria whereby the administrative branch can act and the legislative branch can review the action of the administrative branch.

The lower court specifically held that an exercise of authority by St. Johns would not authorize Brevard County to withdraw water from beneath land located in SFWMD. Conversely were SFWMD to approve the transport and use that Brevard County proposes, Brevard County would not be able to use water in Brevard County absent approval of St. Johns. The lower court was not asked to evaluate the sufficiency of the statutory criteria contained in Section 373.223, Florida Statutes, and therefore did not rule on it. The action brought by Osceola County, Petition for Writ of Prohibition alleged the absence of statutory authority, not constitutional inadequacy. The lower court found that there was not an absence of statutory authority. Instead it found specific authority existed.

Osceola County's position has been that the absence of verbage in Section 373.223(2), Florida Statutes, mentioning "across water management district boundaries" means that water cannot be transported across water management district boundaries. Assuming for argument purposes only that verbage to that effect is requisite, then DER and the water management districts would lack authority to approve the transport and use Brevard County proposes. Likewise, Brevard County could not apply to transport and use water as it proposes. However, if DER and the districts do not lack authority to grant or deny and Brevard County to apply, then "consistent with the public interest" exists as the legislatively established statutory criteria. Osceola County, throughout its brief, does not acknowledge or mention the existence of that statutory criteria.

If the DER and the districts lack authority to consider and Brevard County to request authorization to transport and use water across water management district boundaries, the statutory criteria "consistent with the public interest" yet exists. The lack of an evaluative standard is a spurious contention. Likewise the adequacy of the legislatively created standard, which Osceola County could not challenge below in the form of a Petition for Writ of Prohibition, which the lower court did not rule on, and which Osceola County's brief did not address, is spurious. Indeed the adequacy of the standard, which is the point of law Askew deals with, is improperly before this Court on a conflict or effect on constitutional officer basis.

Osceola County's reliance on Askew is totally misplaced. Factually, the only similarity between the instant case and the decision in Askew, is that both involve a statute delegating certain powers to a state agency. In Askew a delegation to the Administrative Commission of the power to designate Areas of Critical State Concern on recommendation of the Division of State Planning was held to violate Article II, Section 3, Florida Constitution because the legislature failed to provide sufficient standards and guidance to the agency to carry out such policy because in the absence of sufficient standards and guidance, the agency was the policy-making body itself. The statute was found defective because it did not establish or provide for establishing priorities or other means for the Administration Commission to identify and choose among the vast

categories of resources the statute was intended to preserve. The statute treated alike the various broad categories of "environmental, historical, natural or archeological" resources of regional or statewide importance without identifying which "environmental" resources were of critical state concern, which "historical" resources were of critical state concern, which "natural" resources were of critical state concern, or which "archeological" resources were of critical state concern. Conversely, the lower court in the instant case did not hold that DER, in the absence of sufficient legislative policy standards, had been delegated legislative authority to permit inter-district transfers of water. The fundamental legislative policy in the instant case is narrowly circumscribed to the regulation of the consumptive use of water according to specified criteria to prevent harm to the water resources and protect public interest and cannot be equated with the vastly general categories of "environmental" or "natural" resources without specific criteria found deficient in Askew. Furthermore, in Askew, the Adminstration Commission could designate, at its caprice, an area of critical state concern which, in effect, superceded local governmental land use regulation in such areas. Whereas in the case at bar, the legislature, rather than a state agency, has predetermined to supercede local governmental regulation of consumptive uses of water regardless of the location of the local government within the state and has not reposited in any state agency or water management district the power to designate what areas of the

state such local regulation shall be preempted. See, Section 373.217, Florida Statutes (1985). Consequently, Askew is clearly distinguishable from the lower court's decision in the instant case.

The DER, as was the case with the administering agency in Askew, is not designating areas within which water use permitting will occur, the legislature did that, but is fulfilling its legislative authorization of statewide water management by prescribing a practical procedural mechanism under Florida Administrative Code Rule 17-40.05 for proposed diversions of water across water management district boundaries while also respecting the regional autonomy of each district by requiring approval of each district. It is the proposed water use that transcends the common boundary line between the St. Johns district and the South Florida district, not the respective consumptive use permitting process of the respective districts.

The illustration of Osceola County regarding the imaginary transport of water from Lake Jackson in Leon County for consumption in Orlando, Miami, or Key West misses the point and, in fact, reinforces rather than erodes the lower court's decision. As postured by Osceola County, the example fails to recognize that in such an instance the South Florida district would not be the sole permitting authority since no district can independently authorize an inter-district diversion of water. Osceola County, 486 So.2d at 619. An inter-district diversion, by definition, must involve more than one district's jurisdiction. In the illustration, South Florida Water

Management District's basis for jurisdiction would not be because the water would be withdrawn and diverted from Leon County, outside South Florida's jurisdiction, but because the water would be consumed and disposed within the jurisdictional boundaries of the South Florida district. Consequently, the South Florida district is prescribed by statute, as delegated from DER, to act on such a permit. Since the approval of the district where the water is to be withdrawn is also necessary under the statute, the utility and necessity for a state policy governing such instances is clearly authorized to DER under Chapter 373, Florida Statutes. As in the instant case, the basis for St. Johns jurisdiction is not because the withdrawal is to occur outside its boundaries, but because the water transported will be consumed and eventually disposed of within the jurisdictional boundaries of the St. Johns district. DER's policy established under Florida Administrative Code Rule 17-40.05 does not negate legislatively established boundaries of the districts, which are irrelevant to its jurisdiction, but instead, via legislative authority, provides a workable check and balance procedure for evaluating whether a proposed transport and use of water beyond overlying land, across county boundaries, and outside the watershed it is taken (which may also happen to be across water management district, municipal, special taxing district, regional planning council, or other artificial boundaries) "is consistent with the public interest". Therefore the lower court's decision is factually

distinct from and entirely consistent with the holding in Askew.

Osceola County submits inter-district transfers in a water shortage scenario as a great problem. Rainfall deficits do not follow water management district boundaries, nor therefore do water shortages. The cooperation that occurs now between water management districts in times of water shortage would not cease if an inter-district transfer were to occur. See, Florida Administrative Code Rule 40C-21.231(2)(1985).

Osceola County alleges that St. Johns intended to bifurcate the exercise of its authority. This contention, which is speculative since the District has not taken action on Brevard County's application, is not one of lack of authority conferred. If in the future St. Johns improperly acts upon the Brevard County's application, Osceola County has ample recourse to have any improper actions of St. Johns corrected. The alleged bifurcation has no relation to whether St. Johns has authority and Osceola County's contrived attempt to establish uncertainty about exercising criteria does not establish a lack of authority. The issue below was one of legislative authority to act, not one of proper or improper application of statutory permitting criteria.

Osceola County also relies on Askew to assert that Chapter 373, Florida Statutes, provides no legislative standards to guide DER, and in turn St. Johns, in permitting the transport of water across district boundaries. For Brevard County to obtain the consumptive use permits under the facts of

this case, it must establish for each permit that the proposed use: (a) is a reasonable-beneficial use, (b) will not interfere with any presently existing legal uses of water, and (c) is consistent with the public interest. Section 373.223(1), Florida Statutes (1985); See, City of St. Petersburg v. Southwest Florida Water Management District, 355 So.2d 796 (Fla. 2d DCA 1977), app. dismissed, 358 So.2d 129 (Fla. 1978). Since Brevard County's proposed use involves the transport of waters beyond overlying land, across county boundaries, or outside the watershed from which it is taken, the legislature also requires that such transport and use be consistent with the public interest. Section 373.223(2), Florida Statutes (1985). Unlawful delegation of legislative power may occur when neither the agency, nor the courts can determine whether the agency is carrying out the intent of the legislature. Askew, supra at 919. Additionally, the required specificity of legislative standards and guidelines may depend upon the subject matter dealt with and the degree of difficulty involved in articulating finite standards. Id at 918. In this case, the legislature has provided DER and the St. Johns district with considerable standards for the issuance of consumptive use permits and authorizing the transport of water in light of the objectives set forth in Section 373.016, Florida Statutes, and the entire legislative scheme established under Chapter 373, Florida Statutes.

Chapter 373, Florida Statutes, defines "reasonable beneficial use" as "the use of water in such quantity as is

necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest". Section 373.019(4), Florida Statutes (1985). The reasonable beneficial use standard and the permitting system established under Part II of Chapter 373 were derived from the Model Water Code and represents a coalescence of the best elements of the common law riparian doctrine of reasonable use and the prior appropriation beneficial use doctrine of the western states. A Model Water Code, supra at 171 and Section 2.02 of commentary.[10] Consequently the terms "reasonable use" and "beneficial use" are legal phrases having significant common law heritage developed and articulated by the courts readily available to be utilized by the districts as limiting guidelines in exercising their discretion. When the Legislature adopted the technical words "reasonable beneficial use", words with well-developed common law meanings, it intended to rely on the technical common law meanings of the terms to guide and constitutionally limit DER and the districts in deciding whether a use is reasonable beneficial. Ocasio v. Bureau of Crimes Compensation Division of Worker's Compensation, 408 So.2d 751 (Fla. 3rd DCA 1982) (Technical legal words are deemed to have been statutorily used as they are legally defined). The Legislature also recognized that the

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[10] See also, Florida Water Law 1980, supra, pp. 224-233; F. Maloney, L. Capehart, R. Hoofman, "Florida's Reasonable Beneficial Water Use Standard: Have East and West Met?" 31 Fla. L. Rev. 253 (1979) [hereinafter "Reasonable Beneficial Use"].

determination of whether a particular proposed use is reasonable beneficial would be optimized if it involved the application of the distinct regional water resource expertise of each district weighed against the combination of factors involved in the common law foundation of the standard as well as with varying public interests affected by a proposed use. See, Section 373.016(3), 373.219, Florida Statutes (1985). Such "subordinate functions may be transferred by the legislature to permit administration of legislative policy by an agency with the expertise and flexibility needed to deal with complex and fluid conditions". Microtel, Inc. v. Florida Public Service Commission, 464 So.2d 1189, 1191 (Fla. 1985).

The statute provides both DER and St. Johns with adequate standards enabling them to flesh out the articulated legislative policy and the State Water Policy and the St. Johns rules have roots in the common law factors used by the courts in determining whether a use is reasonable and beneficial. See, Florida Administrative Code Rule 17-40.04; 40C-2.301(4)[11]. Consequently, it cannot be intelligently argued that Chapter 373, Florida Statutes, fails to provide DER and St. Johns with

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[11] See also, Restatement (Second) of Torts, Section 850A (1977); Florida Water Law 1980, supra, pp. 230-232; A Model Water Code, supra, Chapter 2 commentary; "Reasonable Beneficial Use", supra pp. 267-274; Fleming, supra; Hamman, "Common Law Water Rights and the Florida Water Resources Act of 1972", Chapter 9, Environmental Regulation and Litigation in Florida (Florida Bar 1981).

sufficient and meaningful standards enabling them to implement the legislative policy contemplated under the statutes.

The criteria "consistent with the public interest," is meaningful and sufficient. It is well recognized that in some areas of regulation, particularly those regarding the exercise of police powers and protection of the public health, safety and welfare that it is impractical of the legislature to provide definite, comprehensive standards and that the legislature may enact a law complete in itself which leaves come discretion in the operation and enforcement of the law with the agency. Florida Waterworks Assoc. v. Florida Public Service Comm., 473 So.2d 237 (Fla. 1st DCA 1985), rev. denied, 486 So2.d 596 (1986); Brewer v. Insurance Commissioner and Treasurer, 392 So.2d 593 (Fla. 1st DCA 1981). "Public interest" has been held to be a sufficient and meaningful criteria for other statutes.

In Albrecht v. Dept. of Environmental Regulation, 353 So.2d 883 (Fla. 1st DCA 1977), cert. denied, 359 So.2d 1210 (1978) the petitioners contended that the legislative standard requiring that before a fill permit may be issued the project not be "contrary to the public interest" was not a sufficient standard to guide DER's discretion in reaching a permit determination. The court held that the statutory criteria directing DER to prepare a biological survey and ecological survey regarding fish, marine and wildlife, oyster beds, clam beds, and marine productivity were sufficient to satisfy the constitutional restriction on delegation of legislative power,

particularly since such a permit evaluation involved complex decisions making the necessity for specific or quantitative standards impractical and undesirable.

Likewise in Brewster Phosphates v. State, Dept. of Environmental Regulation, 444 So.2d 483 (Fla. 1st DCA), rev. denied, 450 So.2d 485 (1984) the court found adequate legislative standards to guide DER in the designation of "Outstanding Florida Waters". The appellants asserted that a proposed DER rule designating a portion of the Little Manatee River as an Outstanding Florida Water was invalid because the legislature provided no guidance as to the OFW designation since the term was only expressed in one statutory provision. The court found that although Section 403.061(27) (1982 Supp.) only mentioned the express words "Outstanding Florida Waters", it was only part of an extensive legislative scheme requiring DER to study, classify, develop long range plans for and supervise all of Florida's waters and that the provision should be read in pari materia with the overall legislative scheme set out in Chapter 403. Id at 485. The court examined the specific duties charged to DER, such as controlling pollution, establishing water quality standards, assessing pollution levels and classifying waters by their most beneficial uses, and found considerable standards for classifying state waters under the designation.

Florida Administrative Code Rule 17-40.05(2)[12] identifies six areas appropriate for district rules regarding deciding whether a transport and use of water across district boundaries is in the public interest. Chapter 373, Florida Statutes, provides substantial legislative standards to guide DER's state water policy rule.

The first consideration under Florida Administrative Code Rule 17-40.05(2)(a) is whether comprehensive water conservation and reuse programs are implemented and enforced in the area of need. The statute is replete with legislative concern over water conservation and necessary programs to realize the full beneficial use of Florida's waters. See, Sections 373.016(1), (2)(b) and (3); 373.026(3); 373.036(1); 373.139(1); 373.191; 373.59; 373.495; 373.0395(6); 373.196, Fla. Stat. (1985) and Section 187.201(8)(b)1, 11, 13, Fla. Stat. (1985). In fact, as to water supply, the legislature encourages water conservation and reducing adverse environmental effects from water uses. Section 373.1961(1), (2), Fla. Stat. (1985).

The second consideration under Florida Administrative Code Rule 17-40.05(2)(b) is whether the major costs, benefits and environmental impacts have been adequately determined including the impact on both the supplying and receiving areas. As to costs, it is clear under the reasonable beneficial use

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[12]See St. Johns rule, Florida Administrative Code Rule 40C-2.312 and App. 22 Section 9.3. The St. Johns rules were developed from State Water Policy guidelines, App. 19.

definition and its common law foundation that a proposed use must be an economically efficient operation[13] and the legislature has directed DER to consider the maximum economic development of the water resources consistent with the other uses and to prevent uneconomical and impractical uses. Sections 373.036(2)(b), (e), Fla. Stat. (1985). Further, the consideration of environmental impacts is self-evident in the statute and needs no illumination. See Sections 373.016(d),(e), (f); 373.026(5); 373.033; 373.042; 373.196(3); 373.1961(1); 373.223(3); 373.226, Fla. Stat. (1985).

The third consideration under Florida Administrative Code Rule 17-40.05(2)(c), whether the transport is an environmentally and economically acceptable method to supply water for a given purpose, is closely related to the second consideration since economic and environmental impacts are inherently related to the method of transport. The legislature is concerned not only with an environmentally acceptable method of transport, but a dependable one as well. See Sections 373.016(2), 373.196(3), 373.1961(1), (2), Fla. Stat. (1985).

The fourth consideration under Florida Administrative Code Rule 17-40.05(2)(d) is whether the water needs of the supplying area are reasonably determined and can be satisfied even if the transport takes place. The DER is directed to give priority to regions dependent on a single source aquifer,

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[13] See, Section 373.019(4), Florida Statutes (1985); A Model Water Code, supra, p. 171.

Section 373.026(2)(b)3, Florida Statutes, and the districts are likewise directed to identify and protect specific areas prone to overdraft from water uses, Sections 373.0395(2), 373.0397, Florida Statutes (1985). DER and the districts must protect the needs of domestic users and permitted legal existing users, Section 373.036(2)(f) and 373.219(1), Florida Statutes (1985). DER may also designate certain uses connected with a particular source as undesirable because of the nature of the activity or the amount of water required. Section 373.036(8), Fla. Stat. (1985). Furthermore, the districts shall not deprive any county wherein water is withdrawn of the prior right to the reasonable beneficial use of the water needed to adequately supply the needs of its constituents. Section 373.1961(5), Fla. Stat. (1985).

The fifth consideration under Florida Administrative Code Rule 17-40.05(2)(e) is that the transport plan include a regional approach to water supply and distribution, including, where appropriate, plans for interconnecting water supply sources. This consideration is derived from the entire comprehensive water management scheme in Chapter 373 and particularly regarding the coordinated efforts between municipalities, counties, water management districts and the DER to meet the needs of water users without sacrificing environmental concerns and impacting the source area. Sections 373.196, 373.1961, 373.1962, Fla. Stat. (1985).

The sixth consideration is merely a recognition of the flexibility needed in regulating both the use and transport of water based upon the factual circumstances of each case.

It is abundantly clear the DER did not promulgate its own administrative standards as asserted by Osceola County. To the contrary, these considerations are firmly based upon meaningful legislative guidelines gleaned from the extensive legislative scheme under Chapter 373, Florida Statutes. Brewster Phosphates, supra. The particular legislative provision held invalid in Askew is not even remotely similar to the extensive legislative concerns and standards contained in Chapter 373, Florida Statutes, governing water use and supply. Here, there are adequate standards and guidelines provided in Chapter 373, Florida Statutes, in light of the legislative objective to manage and conserve the state's total water resources and in realizing the impracticality of drafting detailed specific legislation governing issuance of consumptive use permits. See, State Dept. of Citrus v. Griffin, 239 So.2d 577 (Fla. 1970). As observed by the court in Dickinson v. State, 227 So.2d 36, 37 (Fla. 1969) regarding the delegation standard, "the exact meaning of the requirement of a standard has never been fixed. The exigencies of modern government have increasingly dictated the use of general rather than minutely detailed standards in regulating enactments under the police power." Furthermore, the lower court held that the procedural safeguards established under Section 373.114, Florida Statutes (1985), giving the governor and cabinet authority to review any order or rule of the district to ensure consistency with

Chapter 373, limits the exercise of agency discretion regarding standard policy decisions. Osceola County at 620. The courts have determined that such safeguards and availability of judicial review should be weighed in determining the constitutionality of delegated authority. Coca-Cola Co. Food Division v. State, Dept. of Citrus, 406 So.2d 1079, 1084 (Fla. 1981); Albrecht v. Dept. of Environmental Regulation, 353 So.2d 883 (Fla. 1st DCA 1977), cert. denied, 359 So.2d 1210 (1978); Burgess v. Florida Dept. of Commerce, 436 So.2d 356 (Fla. 1st DCA 1983), rev. denied, 447 So.2d 885 (1984).

CONCLUSION

Specific, valid legal authority supports the rules of DER and St. Johns, as well as the intended action of St. Johns. Osceola County's brief is replete with specious contentions which this Court should ignore. St. Johns urges this Court to affirm the decision of the lower court *per curiam*. Or in the alternative, clarify the lower court's decision to the extent necessary to modify the language concerning "implied authority" so that litigants in cases yet to occur cannot cite the lower court's opinion as case law approving an agency having implied authority in the absence of specific authority. St. Johns maintains the lower court decision does not enunciate such a rule of law and does not contend that such a rule of law is valid. St. Johns is specifically empowered by valid statutory enactments.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of RESPONDENT'S ANSWER BRIEF has been furnished by United States Mail to the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301; and one true copy to the following counsel of record this 20th day of October, 1986:

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