

RESOLUTION R-92-205

A RESOLUTION STATING THE POSITION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY REGARDING THE PEACE RIVER MANASOTA REGIONAL WATER SUPPLY'S INTERVENTION INTO THE ADMINISTRATIVE HEARING FOR THE CONSOLIDATED MINERALS, INC. WATER USE PERMIT

WHEREAS, MANATEE COUNTY is a member of the Peace River Manasota Regional Water Supply Authority (the Authority); and

WHEREAS, Consolidated Minerals, Inc. applied to the Southwest Florida Water Management District for a Water Use Permit #200103.02 to withdraw approximately 6.9 million gallons of water per day from the source specified in the draft agreement hereinafter described; and

WHEREAS in January of 1992, Consolidated Minerals, Inc. petitioned for a formal hearing with regard to the Southwest Florida Water Management District's Intent to Issue; and

WHEREAS, on March 3, 1992, the Authority intervened in the Administrative Hearing which had been filed regarding the intent to issue Consolidated Minerals, Inc. a renewal of their Water Use Permit; and

WHEREAS, the hearing regarding this permit renewal is currently scheduled for September 14, 1992; and

WHEREAS, at the direction of the Authority, the Authority's attorney and Executive Director have been negotiating with Consolidated Minerals, Inc. to secure protections for the Authority prior to the final hearing for the Water Use Permit; and

WHEREAS, on August 3, 1992, a draft Settlement Agreement, which is recommended by Authority staff, was proposed for execution by the Authority; and

WHEREAS, certain additional refinements to the August 3, 1992 draft are proposed, all of which clarify the draft without making any changes that would be to the detriment of Manatee County or the Authority and its customers; and

WHEREAS, this being a significant event to the interests of the Board of County Commissioners of Manatee County, the Board takes the following position.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Manatee County, Florida as follows:

1. The Settlement Agreement draft of August 3, 1992 adequately protects the interests of Manatee County.

2. The Settlement Agreement draft of August 3, 1992 adequately protects the interests of the Regional Water Supply Authority and its customers.

3. The proceeding to final hearing would not accomplish more than the proposed settlement.

4. Manatee County's authority representative should vote in favor of the proposed settlement with Consolidated Minerals, Inc. as set forth conceptually in the August 3, 1992 draft and as subsequently refined so long as the refinements, in the judgment of Manatee County's authority representative, do not change the meaning expressed in the August 3, 1992 draft to the detriment of Manatee County.

5. This Resolution shall take effect immediately upon its adoption.

ADOPTED, with a quorum present and voting this 11 day of August, 1992.

BOARD OF COUNTY COMMISSIONERS OF
MANATEE COUNTY, FLORIDA

By: Kathy A. Small

Chairman

ATTEST: R. B. SHORE

Deborah A. Small
Clerk of Circuit Court

DRAFT, August 3, 1992

SETTLEMENT AGREEMENT BETWEEN
THE PEACE RIVER/MANASOTA REGIONAL WATER SUPPLY AUTHORITY
AND CONSOLIDATED MINERALS, INC.

This Agreement entered into the _____ day of _____, 1992 between PEACE RIVER/MANASOTA REGIONAL WATER SUPPLY AUTHORITY, a Political Subdivision of the State of Florida created and existing pursuant to Sections 373.1962 and 163.01, Florida Statutes, hereinafter referred to as the "Authority", and whose address is 1451 Dam Road, Bradenton, FL 34202 and CONSOLIDATED MINERALS, INC., a Florida Corporation, hereinafter referred to as "CMI", and whose address is 1616 South 14th Street, P O BOX 490300, Leesburg, Florida 34749.

WHEREAS, Consolidated Minerals, Inc. has submitted a water use permit "WUP" application no. 190108-12 to Southwest Florida Water Management District "District", and

WHEREAS, petitions challenging the issuance of the WUP to CMI have been filed and set for formal administrative hearing, and

WHEREAS, "Authority" timely intervened in the formal administrative hearing raising its concerns regarding water quality and quantity impacts as a result of the issuance of the WUP, and

WHEREAS, representatives of CMI and representatives of the Authority have met to address the concerns of the Authority, and

WHEREAS, as a result of these discussions, the Authority and

DRAFT, August 3, 1992

CMI have reached agreement on the steps necessary to insure the WUP will not adversely impact the Authority's interests, and

WHEREAS, the Authority has agreed to withdraw its Petition to Intervene dated March 3, 1992 and to abstain from participating in the formal administrative hearing scheduled to commence on September 14, 1992:

NOW, THEREFORE, in consideration of the withdrawal of the Authority's Petition to Intervene and abstention from participating in the formal administrative hearing as referenced above, CMI hereby agrees as follows:

1. CMI agrees to monitor water quantity monthly for the term of the agreement and monitor water quality monthly for the first year and quarterly thereafter ~~the water quality and quantity~~ at the points where Horse Creek and its tributaries (Bussard Roost Branch, Bussard Roost Tributary, Brandy Branch and Pine Level Creek) flow onto and from at the project site. Data generated from the monitoring program will be made available to the Authority upon reasonable notice.

2. CMI agrees to prepare an annual report until all lands are released by Florida Department of Natural Resources (FDNR). The formatting and contents (including monitoring parameters and impact assessment) of the report are to be determined by the District and the Authority. The annual report shall summarize and assess the findings of the water quality and quantity monitoring that was

DRAFT, August 3, 1992

conducted pursuant to paragraph 1 above. ~~and to~~ CMI will submit this annual report to the District, with a copy to the Authority, for public inspection. Prior to submitting the annual report to the District, the Authority will be given thirty days to review the report and submit such comments as it determines appropriate to the District;

3. Subject to all regulatory approvals, CMI agrees that it will use its best efforts to cause no reduction greater than 3% of the historic average annual daily flow ~~greater than three percent (3%)~~ of Horse Creek nor reduce the water quality such that it would exceed below the more stringent of the following established parameters of the following: a) Class 1 surface water (unless present ambient parameter exceeds the standard); b) safe drinking water standards (unless present ambient parameter exceeds the standard); or c) applied regulatory permit conditions. Nevertheless, in the event data gathered through the monitoring program indicate CMI's activities are lowering the historic average annual daily flow or quality of Horse Creek, the Authority will give written notice to CMI that ~~CMI is~~ it is in violation of this Agreement and ~~has~~ CMI will have seven (7) days to provide remedy. Upon receiving such notice, CMI will review its overall project water management plan and implement the following remedies: a) provide supplemental water from the project site of a quantity and quality acceptable to regulatory agencies and the Authority to offset the reduction caused by CMI and return the flow of Horse

DRAFT, August 3, 1992

Creek to its historic average annual daily flow, and b) decrease the release of the water quality parameter concentrations necessary to meet the more stringent standards required under this paragraph. If data gathered through the monitoring program indicate CMI's mining activity is not adversely affecting the historic average annual daily flow or quality of Horse Creek, CMI will review its overall project water management plan and determine the quantity and quality of any available water and, subject to regulatory approval, will make the water from the project site available to the Authority at the property line at no charge for public water supply purposes in a mutually acceptable quantity and quality.

4. Further, CMI, recognizing the long term public benefit associated with conservation and protection of water resources, agrees, subject to regulatory approval, to reclaim 1,500 to 2,000 acres (not including the Mine Water Surge Area, MWSA) in a manner suitable for the diversion, collection, storage and recovery of surface water, and agrees that arrangements providing the Authority with an option to use at no charge (for example, transfer of ownership to the Authority or a lease) will be made no later than one (1) year from the date of release of lands by the Florida Department of Natural Resources (FDNR), in such a manner that the Authority will have sufficient control over the acreage to assure it will have full and complete right of use for diversion, collection, storage and recovery of surface water for public water supply purposes.

DRAFT, August 3, 1992

5. CMI agrees to immediately notify the Authority by telephone, to be followed in writing, as soon as CMI becomes aware of any unauthorized discharge from the project site, and CMI will be responsible for the cost of any damage caused to the Authority's facilities and operations resulting from CMI's project operations.

6. CMI agrees, subject to regulatory approval, to restrict the clay layer deposited in the Mine Water Surge Area (MWSA) to a maximum elevation that is equal to or less than the existing (prior to the mining operation) land elevation at the MWSA site. Should it prove technologically infeasible for CMI to comply with the clay storage level specified for the MWSA, an alternative acceptable to the Authority, such as secondary containment structures, will be implemented by CMI.

7. CMI agrees to operate the production wells in a manner that will not cause ~~any significant~~ adverse impact on the Authority's Aquifer Storage and Recovery Well system and to provide confirmation based upon actual observation and measurement that the ~~adverse~~ impact is not ~~significant~~ adverse.

8. The Authority and CMI respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Authority nor CMI shall assign, sublet or transfer any interest in this Agreement without the written consent of the other, and which consent shall

DRAFT, August 3, 1992

not be unreasonably withheld.

9. This Agreement may only be amended, supplemented, modified, changed or canceled by a duly executed written instrument.

10. This Agreement is governed by the laws of the State of Florida. Should litigation be necessary to enforce any term or provision of this Agreement, it is agreed by the parties hereto that the venue for any litigation shall be in Manatee County. It is also agreed that all costs of the successful party, including reasonable attorney's fees associated with such litigation, shall be borne by the party against whom an adverse judgement is rendered and shall be paid to the successful party immediately upon demand therefor.

11. The Authority in withdrawing its Petition to Intervene and abstaining from participation in the formal administrative hearing scheduled to commence on September 14, 1992, does not waive any of its rights to challenge any future administrative or legal action involving CMI including but not limited to the renewal or modification of permits.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

ATTEST:

PEACE RIVER/MANASOTA REGIONAL
WATER SUPPLY AUTHORITY

By: _____
E. D. Vergara

By: _____
Hon. Jack Lotz

DRAFT, August 3, 1992

Executive Director

Chairman

SEAL

CONSOLIDATED MINERALS, INC.

WITNESSES:

By: _____

Gary Alan Vorbeck
Attorney for Peace River/
Manasota Regional Water
Supply Authority