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December 9, 1996

Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

HAND DELIVERY

Re: Docket No. **961299-WS**
Application for Grandfather Certificates to Provide Water and
Wastewater Service in Polk County by Garden Grove Water
Company, Inc.

Dear Ms. Bayo:

Enclosed on behalf of Garden Grove Water Company, Inc. for
filing in the above docket are an original and fifteen copies of
Garden Grove Water Company Inc.'s Motion to Dismiss Emmer
Development Corp.'s Petition For Leave to Intervene and Response to
Emmer Development Corp.'s "Request For Proposed Agency Action
Procedures and Response to ... Application For A Grandfather
Certificate."

Please acknowledge receipt of the foregoing by stamping the
enclosed extra copy of this letter and returning same to my
attention. Thank you for your assistance.

Sincerely,
Wayne L. Schiefelbein
Wayne L. Schiefelbein

- CK
- NFA
- APP
- CAF
- CMU
- CTR
- EAG
- LEG
- LIN
- OPC
- RCH
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- OTH *enclosures*

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[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
13117 DEC-96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Grandfather)
Certificates to Provide Water and)
Wastewater Service in Polk County)
by Garden Grove Water Company, Inc.)

Docket No. 961299-WS

Filed: December 9, 1996

GARDEN GROVE WATER COMPANY INC.'S
MOTION TO DISMISS
EMMER DEVELOPMENT CORP.'S
PETITION FOR LEAVE TO INTERVENE
AND
RESPONSE TO EMMER DEVELOPMENT CORP.'S
"REQUEST FOR PROPOSED AGENCY ACTION PROCEDURES"
AND
"RESPONSE TO ... APPLICATION FOR A
GRANDFATHER CERTIFICATE"

Garden Grove Water Company, Inc. (the Applicant) pursuant to Florida Administrative Code Rule 25-22.037(2)(a), by and through its undersigned counsel, moves to dismiss the Petition for Leave to Intervene filed by Emmer Development Corp. (Emmer), and further responds to Emmer's "Request for Proposed Agency Action Procedures and Response to ... Application for a Grandfather Certificate", and in support of its motion and response states the following.

BACKGROUND

1. On October 20, 1987, the Applicant and the Board of County Commissioners of Polk County entered into a fifteen (15)-year franchise agreement, whereby the Applicant was granted exclusive authority to provide water and wastewater service within a specified geographical area within Polk County. (Exhibit A)

2. On September 20, 1994, the City of Lake Wales entered into a Water and Wastewater Intergovernmental Service Area Agreement with Polk County. This agreement allowed Lake Wales the right to

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13117 DEC-96

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provide water and wastewater service within a geographic area designated therein. (Exhibit B)

3. By mistake, Polk County included in said Intergovernmental Service Area Agreement all of Sections 18 and 19 of Township 30 South, Range 28 East, a portion of which sections Polk County had previously granted to the Applicant under the aforesaid franchise agreement.

4. Upon learning of the mistake, Polk County, through its Utilities Division Director, by letter dated February 8, 1996, notified the City Manager of Lake Wales of the error and requested that the City of Lake Wales revise its service area under said Intergovernmental Service Area Agreement. (Exhibit C)

5. Prior to said Intergovernmental Service Area Agreement, the Applicant had been in negotiations with Emmer regarding the Applicant's provision of water and wastewater service to approximately 313 acres planned for development by Emmer, which area is within the geographical boundaries of the aforesaid franchise agreement. In fact, such negotiations between the Applicant and Emmer date back prior to the franchise being granted in 1987.

6. Subsequent to the execution of said Intergovernmental Service Area Agreement, Emmer and the City of Lake Wales engaged in negotiations and entered into an agreement by which Lake Wales would provide water and wastewater services to Emmer's property. This was done with the knowledge of those parties that the extension of the City of Lake Wales' utility lines to Emmer's

property would infringe upon the Applicant's service area under the franchise agreement.

7. After a February 9, 1996 public announcement was made that the City of Lake Wales and Emmer had entered into such agreement, the Applicant, on February 9, 1996 and February 16, 1996, notified the City of Lake Wales that any negotiation and agreements with Emmer were in violation of Florida Statutes Section 180.06 (1995) and the franchise agreement.

8. On March 19, 1996, the Lake Wales City Commission refused to make the modification requested by Polk County and the Applicant and, instead, deferred the matter to Polk County upon the representation that Emmer was seeking to modify the franchise agreement.

9. On March 19, 1996, Emmer formally requested the Polk County Utilities Commission, pursuant to County Ordinance 82-11, to amend the franchise agreement so as to exclude from the Applicant's franchise area the land owned and planned for development by Emmer. On March 29, 1996, the City of Lake Wales requested Polk County to "favorably consider" Emmer's request. (Composite Exhibit D)

10. On May 14, 1996, the Polk County Board adopted a resolution transferring jurisdiction to the PSC. It did so with the intention of retaining jurisdiction over cases pending before it at that time, and with the assurance of PSC Staff that such pending cases would be completed by the Polk County Board. (Composite Exhibit E)

11. On June 4, 1996, the Polk County Board, sitting as the Polk County Utilities Commission, held a hearing on Emmer's March 19, 1996 request to determine if Emmer's property would be excluded from the Applicant's franchise area.

12. On June 11, 1996, the Polk County Utilities Commission adopted an Order denying Emmer's request. (Composite Exhibit F)

13. At its June 25, 1996 agenda conference, the PSC voted to acknowledge the Polk County Board's resolution transferring jurisdiction to the PSC, effective May 14, 1996.

14. On July 10, 1996, Emmer filed a Petition for Writ of Certiorari in the Circuit Court for the Tenth Judicial Circuit in and for Polk County, Florida, seeking review of the June 11, 1996 Order by Polk County.

15. On July 11, 1996, by Order No. PSC-96-0896-FOF-WS, the PSC acknowledged the Polk County Board's resolution transferring jurisdiction, effective May 14, 1996. (Exhibit G) The PSC Order, pursuant to Florida Statutes Section 367.171(2), required utilities seeking grandfather certificates within Polk County to have registered with the PSC by June 13, 1996, and to apply for grandfather certificates by August 12, 1996.

16. By form letter dated July 30, 1996, Charles H. Hill, Director of the PSC's Division of Water and Wastewater, advised the Applicant (and other providers of water and/or wastewater services in Polk County) to "immediately" register with the PSC. (Exhibit H) The letter further advised the Applicant (and other providers) that "in order to facilitate the application process," PSC Staff would

conduct informal meetings with affected utility providers on August 20-22, 1996, in Bartow, Polk County, where PSC Staff would distribute relevant materials, and explain regulatory practices and procedures. The letter further stated that after an initial informal meeting on August 20

we will be making individual appointments to help utility owners file an application for a grandfather certificate (Section 367.171(2)(b), Florida Statutes) and/or determine whether your system qualifies as exempt from Public Service Commission regulation. Since by law you are required to file an application for grandfather certificate with the PSC within ninety days, it is important that you attend this meeting on August 20, so that you will be able to receive your PSC Certificate.

17a. On August 6, 1996, the Applicant, through the undersigned counsel, contacted supervisory technical staff with the PSC Division of Water and Wastewater and a senior attorney with the PSC Division of Legal Services, Bureau of Water and Wastewater. They confirmed that the Applicant should immediately register with the PSC, but that, the PSC Order and statute notwithstanding, submittal of a grandfather certificate application could be deferred until after the August 20-22 meetings with PSC Staff.

b. In reliance thereon, the Applicant, 1) on August 6, 1996, dispatched its registration to the PSC by express mail (Composite Exhibit I); and 2) met with PSC Staff in Bartow on August 20 and 21, 1996. PSC Staff provided the Applicant with the application form, written instructions and other guidance at said meetings.

18a. Applicant thereafter prepared its application for water and wastewater grandfather certificates. The application was duly filed with the PSC on October 29, 1996, using the forms provided by PSC Staff to the Applicant.

b. It bears mentioning that rather than a slapdash venture, every good faith effort was made by Applicant to comply with the PSC's unfamiliar requirements. This is substantiated by the relatively benign "deficiency letter" issued by PSC Staff on December 3, 1996 for the October 29, 1996 application.

19. On November 27, 1996, Emmer filed with the PSC its "Petition for Leave to Intervene, Request for Proposed Agency Action Procedures, and Response to Garden Grove Water Company's Application for a Grandfather Certificate" (sic).

20. On December 3, 1996, Emmer filed a Notice of Voluntary Dismissal of Petition for Writ of Certiorari theretofore pending in circuit court. (Exhibit J) Emmer therein announced that it "believes that the Public Service Commission has exclusive jurisdiction over the issues before this Court" It should be noted that prior to the December 3 voluntary dismissal, briefs had been filed by Emmer, Polk County, and the Applicant, and the parties were awaiting notice from the court for scheduling oral argument.

MOTION TO DISMISS EMMER'S PETITION
FOR LEAVE TO INTERVENE

21. Florida Administrative Code Rule 25-22.039 addresses intervention in a pending proceeding before the PSC. The rule limits intervenor status to persons "who have a substantial

interest in the proceeding" and requires any petition for leave to intervene to

include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that substantial interests of the intervenor are subject to determination or will be affected through the proceeding.

22. This rule is properly considered in conjunction with the long-standing test employed by the Florida courts for third party intervention in agency proceedings. The courts require that the person seeking intervenor status demonstrate (1) that it will suffer injury in fact which is of sufficient immediacy to entitle it to a section 120.57 hearing, and (2) injury of the type or nature that the proceeding is designed to protect. Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982) (intervention denied where intervenor's "substantial interest was purely economic in that the intervenor simply wanted to preclude competition.")

23. Emmer has failed to include allegations sufficient to demonstrate that it is entitled to participate in this proceeding or that its substantial interests are subject to determination or will be affected.

24. Emmer asserts that if certification of the Applicant is granted, Emmer "will suffer immediate injury because service to the Emmer Property will be less efficient and at a higher cost than if service is provided by Lake Wales." (Petition at p. 4) See also,

in its "Response" to the instant application, Emmer's allegation that the cost of the Applicant serving the Emmer property is "approximately \$2 million greater", and "more that 200% higher" than the cost for the City of Lake Wales to serve the same property. (Petition at p. 11)

25. Emmer is apparently unaware that an individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself. Storey v. Mayo, 217 So. 2d 304 (Fla. 1968) upholding PSC Order No. 4285 [December 1, 1967]).

26. Emmer nonetheless argues in its Petition (at p. 4) that Florida Statutes Section 367.045(4) recognizes the "right of a consumer who would be substantially affected by the requested certification to participate and request a formal hearing in the certification proceedings." That argument is ill-founded, as said subsection relates specifically to original (or "initial") certification, territorial extensions and deletions for which notice is specifically required. Said subsection has nothing to do with certification under grandfather rights, which the instant application seeks. More on this later.

27a. In any event, the issues of the respective rights of the Applicant and the City of Lake Wales to serve the Emmer property, and the comparative cost of extending service to such property, have already been determined by the Board of County Commissioners of Polk County, sitting as the Polk County Utilities Commission.

b. Acting pursuant to Emmer's March 19, 1996 request for hearing, Polk County has specifically determined, that

The extension of service to land owned by Emmer by Garden Grove can be accomplished at a reasonable cost, therefore, Emmer's request is denied.¹

28. Emmer sought certiorari review by the circuit court of the Order denying Emmer's request to amend the Applicant's franchise area. With Emmer's December 3, 1996 filing of a Notice of Voluntary Dismissal of Petition for Writ of Certiorari, the June 11, 1996 Order by Polk County is final. Accordingly the issues of comparative cost to serve and respective authority to serve are res judicata.

29. Emmer will of course argue that the Polk County resolution transferring jurisdiction to the PSC impedes the County's exercise of jurisdiction over Emmer's March 19, 1996 request to the Board. Such an argument should be summarily rejected.

30. There is indeed case law that a county resolution relinquishing regulatory powers over water and sewer utilities had the effect of superseding preexisting franchise agreements between a county and a utility. Florida Public Service Commission v. Florida Cities Water Company, 446 So.2d 1111 (2nd DCA 1984). That case, however, specifically sustained the utility's post-resolution declaratory action against the County for relief from the

¹ Polk County also made other findings regarding the differences between connection and associated AFPI charges, which it determined to not be conclusive as to the reasonableness of the cost of extension, and the federal income tax gross-up, which has since been repealed and to which Emmer is no longer subject.

obligation to make further franchise fee payments to the County. The case did not at all address the authority of the county to resolve cases properly pending before it at the time of adoption of the jurisdictional resolution.

31. It is well settled by case law that the PSC has only the authority expressly or implicitly conferred to it by statute. City of Cape Coral v GAC Utilities Inc. of Florida, 281 So. 2d 493, 496 (Fla. 1973). In that case, the Court stated

... the Commission's powers, duties and authority are those and only those that are conferred expressly or implicitly by statute of the State. Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof ...
(citations omitted) (emphasis added)

32. Florida Statutes Section 367.171 outlines the effectiveness of Chapter 367 when regulatory jurisdiction passes between a county and the PSC. Nowhere in Chapter 367 does the Legislature provide for the PSC to hear matters pending before a county at the time a county passes general regulatory jurisdiction to the PSC. The fact that the Legislature failed to expressly mention whether the PSC could hear matters pending before a county when general regulatory jurisdiction passes to the PSC shows that there is a reasonable doubt as to the PSC's power to hear such pending matters. Therefore, Cape Coral, supra, requires that the doubt be resolved against finding such PSC jurisdiction. The PSC has no jurisdiction over the disputed issues of the respective authority of the Applicant and the City of Lake Wales, and their

comparative costs, of serving the Emmer property.²

33. Emmer's allegations as to the second requirement under the Agrico case are also ill-founded. The "injury" alleged by Emmer is not of the type or nature that a certification proceeding under grandfather rights is designed to protect.

34. Throughout its Petition and request for other relief, Emmer makes a number of overwrought assertions about an application for certification under grandfather rights. This is at its most extreme, at p. 9 of its Petition, where Emmer states:

Section 367.171(2) clearly provides that the benefits of grandfather certification are only available during the 90 day window following attachment of the Commission's jurisdiction. Outside of this 90 day window, a utility must apply for an original certificate in accordance with Section 367.045.

35. This assertion is spurious. What Section 367.171(2) actually says is as follows:

(a) Within 30 days after this chapter becomes applicable to a county, each utility shall register by filing with the commission a written statement setting forth the full legal name of the utility, its mailing address, and a brief description of its service area.

(b) On the day this chapter becomes applicable to any county, any utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it. Within

² This precise line of argument is taken virtually verbatim, as made by the PSC, and accepted by the court, in West Charlotte Utilities, Inc. v. the Board of County Commissioners, Charlotte County, in Case No. 94-1839-CA, before the Circuit Court of the Twentieth Judicial Circuit. See Composite Exhibit K, PSC's "Response to Defendant's Second Amended Answer and Affirmative Defense and Counterclaim" dated April 12, 1995, and Circuit Court Judge Casanueva's Order dated June 5, 1995.

90 days after the day this chapter becomes applicable to it, the utility shall make application for a certificate by filing with the commission:

1. A map of its existing system or system under construction;
2. A description of the area served by the system; and
3. A tariff listing all rates and charges and such other financial information as may be required by the commission.

Such application shall be accompanied by a fee as provided by s. 367.145. If a utility fails to register with the commission within the prescribed time, the commission may require that the utility apply for an original certificate of authorization in accordance with s. 367.045.

36. It is undisputed that the Applicant did not register with the PSC within thirty (30) days after Chapter 367 became applicable to Polk County. It is undisputed that the Applicant did not file an application for grandfather certificates within ninety (90) days after Chapter 367 became applicable to Polk County. The extenuating circumstances described in the Background section of this submittal aside, none of these omissions negate the PSC's authority to grant certification under grandfather rights to what it deems to be a qualifying applicant.

37. The purpose of a certificate under grandfather rights under Florida Statutes Section 367.171(2) is in keeping with traditional notions of grandfather clauses. This type of certification is favored under Florida law because it tends to protect rights either existing or in the process of being obtained as applicable law or regulatory jurisdiction changes. As such, the legislative intent expressed in Section 367.171(2), of entitlement

to a certificate, should be liberally construed. This has in fact been consistent PSC practice for many, many years.³ That the Applicant did not perfect its rights in strict conformance with the statute, in reasonable and good faith reliance on Commission Staff's direction, should not impair the Applicant's rights under the statute.

38a. In this regard, the PSC should not overlook, as Emmer does, that the franchise granted in 1987 to the Applicant by Polk County is a property right as a matter of law. See, for example, City of Mount Dora v. JJ's Mobile Homes, 579 So.2d 219 (5th DCA 1991), at pp 223-224. As a matter of law, the Applicant, upon filing its application for grandfather certificates, became automatically entitled to certificates authorizing it to operate in the same franchise territory. See Florida Public Service Commission v. Florida Cities Water Company, 446 So. 2d 1111 (2nd DCA 1984), at 1113.

b. These principles may be conditioned upon a determination by the PSC and the Courts to determine among other things whether there is a need for service, and whether the Applicant is ready, willing and able to render service. However, in the instant controversy, Emmer clearly needs service, and it is undisputed that the Applicant is ready, willing and able to provide such service.

39. This docket was established to consider nothing more or

³ See, for example, Order No. PSC-95-0966-FOF-WU (August 8, 1995); Order No. PSC-94-0234-FOF-WU (March 3, 1994); Order No. PSC-93-1380-FOF-WU (September 20, 1993); Order No. PSC-92-0866-FOF-WU (August 25, 1992). Older PSC cases include Order No. 12989 (February 13, 1984) and Order No. 11604 (February 11, 1983).

less than Applicant's request under grandfather rights to preserve its entitlement to continue its authority to serve certain territory which Polk County had authorized it to serve, at rates and charges which were lawfully in effect at the time of the jurisdictional transfer. So long as the Applicant does not seek to enlarge that previously-granted authority, Emmer's attempt to convert this proceeding into an original certification under Florida Statutes Section 367.045 should be rejected. Emmer does not have standing to seek such relief as a party to this proceeding. This proceeding is not designed or intended to redress the purported "injury" for which Emmer seeks redress.

RESPONSE TO EMMER'S REQUEST FOR USE OF
PAA PROCEDURES

40. If the PSC grants the Applicant's Motion to Dismiss Emmer's Petition for Leave to Intervene, then it follows that Emmer's "Request for Use of Proposed Agency Action Procedures" is moot. The Applicant would nonetheless like to take this opportunity to respond to Emmer's request for "PAA procedures."

41. The Applicant strongly believes in the validity of and is therefore committed to preserve its rights to serve its territory at its existing rates and charges. Emmer seems equally determined, before the County and the PSC, and, until recently, the Circuit Court, to exclude itself from the Applicant's territory, in part because the Applicant's connection charges are higher than those of the City of Lake Wales (and despite the not unrelated fact that Applicant's service rates are lower than those of the City of Lake Wales). The Applicant is therefore puzzled by Emmer's request for

the PAA process, for, if Emmer is granted party status, a protest to the PAA by whichever party is dissatisfied appears to be assured. The Applicant is as determined as Emmer to avoid unnecessary delay in this proceeding. It would therefore appear more expedient for all concerned to set this case directly for formal hearing if Emmer is in fact granted intervenor status.

42. Emmer's reliance on PSC Order No. 19848 for urging the use of PAA procedures in the instant proceeding is more than tenuous. That Order involved a utility which sought grandfather certification eight days shy of one year after adoption of a County resolution transferring water and sewer utility jurisdiction to the PSC. Further, the applicant was not the owner of the utility at the time the PSC obtained such jurisdiction. Accordingly, the PSC, in granting grandfather certificates, issued its order as a Notice of Proposed Agency Action, and found that

since it could be argued that the application should have been filed as an application for an original certificate, we find it appropriate for the Utility to provide notice of the issuance of these certificates. 88 FPSC
8:234

The PSC required the utility to provide such notice in conformance with then-existing original certificate application requirements. This type of approach is not appropriate where as here the Applicant has duly filed an application for grandfather certification of the systems that it owned at the time jurisdiction was transferred to the PSC in conformance with Commission Staff direction for such an application.

RESPONSE TO EMMER'S "RESPONSE TO
GARDEN GROVE'S APPLICATION"

43. If the PSC grants the Applicant's Motion to Dismiss Emmer's Petition for Leave to Intervene, then it follows that Emmer's "Response to Garden Grove's Application" is moot. The Applicant would nonetheless like to take this opportunity to respond to Emmer's allegations. However, the Applicant will not rehash its previous statements set forth in the foregoing Motion to Dismiss regarding Emmer's allegations regarding "statutory guidelines".

44a. The PSC should reject Emmer's assertion that the Applicant is only entitled to a certificate for the area served on the day that Chapter 367 became applicable to Polk County.

b. It is indeed undisputed that the Applicant was not actually serving the Emmer's property on May 14, 1996, nor does it actually serve such property at this time.

c. It is also undisputed that the Emmer property is located within the exclusive franchise area granted by Polk County to the Applicant, and that the Applicant had the prior legal right to serve Emmer under that franchise.

d. It is also undisputed that the property is adjacent to the Applicant's service area now existing and as it existed on May 14, 1996, and that the Applicant is and, at all times relevant to this controversy, has been ready, willing and able to provide service to Emmer.

e. As mentioned in paragraph 5 hereinabove, negotiations between the Applicant and Emmer for water and wastewater service to

the Emmer property date back prior to the 1987 grant of a franchise to the Applicant. Based on the projected growth of the franchise, the Applicant has made substantial investments in its water plant, regional wastewater plant, and effluent disposal system. The Applicant has the current capacity to serve the Emmer property and is prepared to extend service upon written agreement with Emmer.

f. The loss of the Emmer property would have a significant financial impact on the Applicant. The Emmer property is in the projected growth area and if the City of Lake Wales is allowed to encroach on the Applicant's service area as such area is authorized by the franchise agreement with Polk County, the Applicant would face the loss of significant customer load (from the Emmer property and other potential customers on immediately adjacent properties) that is needed to financially support existing plant capacity.

g. The Applicant's existing water and sewer lines are 2.17 and 2.86 miles respectively, from the Emmer property. The City of Lake Wales' existing water and sewer lines are estimated by Applicant to be 1.8 and 2.4 miles from the Emmer property. It should come as no surprise, then, to understand the Polk County Utilities Board's finding that the difference in the cost of extending service from the two providers was not conclusive and that the extension of service to Emmer could be accomplished at a reasonable cost.

h. It is undisputed that the inclusion of the Emmer property in the Intergovernmental Service Area Agreement was the result of a scrivener's error. It is further undisputed that the agreement

between the City of Lake Wales and Emmer was entered into with the full knowledge of both parties that this action purported to capitalize on said scrivener's error and infringe upon the Applicant's rights under its franchise agreement.

45a. Emmer asserts that the scope of grandfather certification is specifically limited to "the area served" when the PSC acquired jurisdiction.

b. Florida Statutes Section 367.171(2) indeed states that a certificate applicant is entitled to grandfather rights for "the area served" as of the date of the jurisdictional transfer. Compare Florida Administrative Code Rule 25-30.035, which, among the application filing requirements for a grandfather certificate, requires submittal of

(9) a description ... of the territory the utility was serving, or was authorized to serve by the county which had jurisdiction over the utility on the day Chapter 367, Florida Statutes, became applicable to the utility.

(10) one copy of a detailed system map showing the lines, treatment facilities and the territory to be served. Any territory not served at the time of the application shall be specifically identified. ... (emphasis added)

c. The PSC has in fact traditionally granted territory under grandfather rights using a literal reading of the statute, that is to say, for "the area served" as of the date of the jurisdictional transfer. Further, the PSC has denied requests to include territory under grandfather rights beyond "the area served" as of

the jurisdictional transfer.⁴

d. The regulatory philosophy in cases where the PSC has declined requests to include territory under grandfather rights beyond the area actually served at the time of the jurisdictional transfer is very clear and consistent. The common denominators are concern over the utilities' financial ability to serve the additional area, and the lack of need for service to such additional areas, given the absence of plans for development.

e. In the instant case, it is undisputed that the Applicant has the readiness, willingness and ability to serve the area in controversy, and that there is a need for service accompanied by specific plans for development.

f. Further, in none of said cases did the PSC confront a situation where, as here, the Applicant was clearly and specifically authorized to serve the area requested under a county franchise agreement.

g. As a matter of law, and under the undisputed facts of the instant case, the Applicant is entitled to grandfather certificates from the PSC authorizing the Applicant to operate in the same franchise territory as was granted by Polk County.⁵

46. Emmer's reliance on PSC Order No. 20409 as precedent to defeat the grandfather rights of the Applicant to serve the Emmer

⁴ See for example, Order No. PSC-94-0260-FOF-WS (March 8, 1994), Order No. PSC-94-0259-FOF-WS (March 8, 1994); Order No. PSC-93-1794-FOF-SU (December 15, 1993); Order No. PSC-93-1793-FOF-SU (December 15, 1993); Order No. PSC-93-0229-FOF-WS (February 10, 1993).

⁵ See cases cited in paragraph 39 hereinabove.

property is misplaced. That case involved show cause proceedings against a utility which clearly had unilaterally extended its service beyond the territory granted to it by the PSC through grandfather certification subsequent to such certification. Nowhere in that case was there any suggestion that the utility had in fact been authorized by prior regulatory authority to serve beyond the actual area it did serve at the time of such certification.

47. The Applicant will not reargue here at any length its position regarding Emmer's allegations that the Applicant's extension of service would be significantly more expensive than service by the City of Lake Wales. While the Applicant disputes such contentions, the issue has been litigated before the Polk County Utilities Commission and, given Emmer's December 3, 1996 Notice of Voluntary Dismissal of its Petition for Certiorari, should be considered res judicata for purposes of the instant proceeding.

48a. Emmer also requests the PSC to fully evaluate "in an original certification proceeding" the Applicant's capacity ("ERC") charges and Allowance for Funds Prudently Invested (AFPI) to determine whether these charges are reasonable and prudent.

b. The Applicant has in fact requested PSC approval under grandfather rights of such charges as they were in effect at the time jurisdiction was transferred to the PSC.

c. While the Applicant believes those charges should be grandfathered in, it also acknowledges that the PSC under grandfather certification proceedings has the discretion, on a

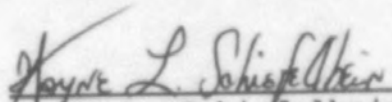
prospective basis, to establish rate base and set and approve rates, as set forth under Florida Statutes Section 367.171(2)(c).

49a. Finally, Emmer urges close scrutiny by the PSC of certain affiliated transactions involving the sale of plant sites to the utility to determine whether they were "lawful, reasonable and prudent from the perspective of the ratepayer." (Petition at pp. 12-13)

b. Despite Emmer's insinuations, there is nothing to suggest anything unseemly or unlawful about said affiliated transactions. Further, any "scrutiny" of such transactions should be tempered by the Florida Supreme Court's admonition that absent a showing that affiliated transactions exceed the going market rate or are otherwise inherently unfair, they should not be disturbed. GTE Florida Incorporated v Deason, 642 So. 2d 545 (Fla. 1994)

Wherefore, the Applicant, Garden Grove Water Company, Inc., requests that Emmer Development Corp.'s Petition for Leave to Intervene, and for other relief, be denied.

Respectfully submitted,


Wayne L. Schiefelbein
Gatlin, Woods & Carlson
1709-D Mahan Drive
Tallahassee, FL 32308
(904) 877-7191

Attorneys for
Garden Grove Water Company, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to D. Bruce May, Esquire, Holland & Knight, 315 South Calhoun Street, Suite 600, Tallahassee, Florida, 32301 and Kathleen M. Johnson, Esquire, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850 on this 9th day of December, 1996.

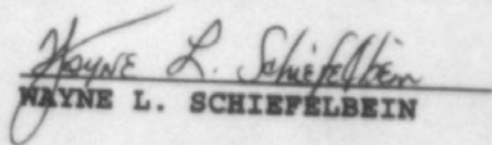

WAYNE L. SCHIEFELBEIN

EXHIBIT A

October 20, 1987
Franchise Agreement
(8 pages)

FRANCHISE AGREEMENT

SECTION 1: There is hereby granted to GARDEN GROVE WATER COMPANY, INC. (hereinafter referred to as the "Utility" or the "Grantee"), for a period of fifteen (15) years from the date of the acceptance of this franchise as hereinafter provided, the right, authority and obligation to construct, establish, own, control, operate and maintain a public water plant and distribution system and sewage treatment plant and collection system (collectively referred to as a "utility system") within the boundaries of the property described in Exhibit "A", attached hereto and by reference made a part hereof, lying and being in Polk County, Florida, which lands are not within the municipal limits of any incorporated city or town in Polk County, Florida, and are not now being served by a municipally owned or operated water system or sewer system, and are not now being served by individuals, firms or corporations under a franchise granted by the Board of County Commissioners or Utilities Commission in said County of Polk and State of Florida except as where noted and excepted; and to construct, maintain and repair sewer lines or water lines together with the necessary manholes, hydrants and service pipes for the purpose of collecting and transporting sewage and distributing potable water in such areas and to make all necessary house and building connections upon, along, and in and under the roads, streets, alleys and public places in said area, and also to repair, replace, enlarge and extend the same, and to carry on the business of furnishing water and sewage service in said areas for a consideration, subject to the ordinance, rules and regulations of the Board of County Commissioners of Polk County, Florida, or the Polk County Utilities Commission and subject to the conditions and provisions of this agreement and all applicable Federal, State, and local laws, ordinances, rules and regulations. This agreement shall not be construed to prevent any person from owning or operating any utility system the ownership or operation of which does not

EXHIBIT A

require a franchise from the Board of County Commissioners in the Polk County Utilities Commission nor shall it be construed to grant authority to own or operate a utility system within any area within which another entity has previously been granted the right or authority to operate a utility system.

SECTION 2: The Utility shall make all improvements, additions and extensions to the plant and distribution and collection systems as needed to provide service within its service area provided that the cost of extending sewage collection and water distribution lines is economically feasible in relation to anticipated usage. Excess costs are to be borne by the developer or new customer. When disputed, excess costs and other terms and conditions of service extension shall be arbitrated by the Polk County Utilities Commission.

SECTION 3: The Utility shall at all times be subject to and comply with all ordinances, rules and regulations of the Board of County Commissioners and the Polk County Utilities Commission now in effect or hereafter enacted or adopted.

SECTION 4: For the purpose of carrying into effect the privilege granted herein, the Grantee is hereby authorized to make all necessary excavations in such public roads, streets, alleyways and other public grounds situated in the areas above described, but they shall be done within a reasonable period of time and with the least practical interference with the rights of the public and individuals.

Plans for the installation, extension, modification or expansion of the water distribution system or plant or sewage collection system or plant and appurtenances thereto shall be filed with the Director of the Polk County Utilities Division for review prior to construction. Where distribution or collection lines or other facilities are to be located in the public right-of-way or other public grounds, or where the disturbance of such lands is necessary for purposes of maintenance or repair, the Grantee shall also secure any required permits from the

County Engineer prior to the initiation of any construction activity, except where an emergency exists.

SECTION 5: The Grantee shall restore all roads, streets, alleys, sidewalks and public grounds when excavated by it, to a condition as good as it was at the time of such excavation or damage. In the case of a public right-of-way or other public lands, the affected area shall be restored to the standards set by the County Engineer. In case any obstruction or other damage caused by said Grantee shall remain for an unreasonable length of time after notice to cure such condition, or in case of neglect by said Grantee to protect any dangerous place by proper guards, the Polk County Board of County Commissioners may complete the necessary restoration at the expense of the Grantee.

SECTION 6: If required by the widening, repair, or reconstruction of any road or other public way, the Utility shall move all its utility lines or facilities in such public road or way at no cost to the County.

SECTION 7: The Utility shall be allowed to charge rates and fees according to resolution from time to time adopted by the Polk County Utilities Commission which rates and fees shall be fair and reasonable and not unduly discriminatory and shall be set in accordance with all applicable ordinances, rules and regulations of the Board of County Commissioners and the Polk County Utilities Commission.

SECTION 8: The Utility shall not sell, assign, or transfer its franchise agreement, facilities, assets or any portion thereof without the approval of the Polk County Utilities Commission.

SECTION 9: The Utility shall at all time protect and save harmless the County of Polk from all damage and loss from or arising out of or by reason of, the construction or operation of its utility system.

SECTION 10: The Utility shall at all times comply with all lawful regulations and requirements of the Polk County Health

Department, the Division of Health of the Department of Health and Rehabilitative Services of Florida, the Florida Department of Environmental Regulation and any other regulatory agency having jurisdiction over the operations of the Grantee.

SECTION 11: The right is reserved to the Board of County Commissioners or the Polk County Utilities Commission to levy and collect franchise, utility, or use taxes and inspection or other fines, fees, and costs when such taxes, fines, fees, or costs are authorized by general law or ordinance.

SECTION 12: The Utility shall, as a part of its water system, install and maintain fire hydrants or stand pipes for fire protection in the areas served by the Utility's water system. Plans for the installation of fire hydrants or stand pipes are subject to the approval of the Director of the Polk County Utilities Division. Installation and maintenance costs are part of the normal capital improvements costs and operating expenses of the Utility. The Utility shall be given reasonable time to conform to this requirement.

SECTION 13: The Utility shall file its written acceptance of the provisions of this franchise with the Clerk of the Circuit Court of Polk County, Florida, as ex-officio Clerk of the Board, on or before the expiration of sixty (60) days from the approval of this agreement, and certify in such acceptance that it will comply with all ordinances, rules and regulations of the Polk County Board of County Commissioners and in the operation of the water or sewage system, and will protect and save harmless the Polk County Utilities Commission and the Polk County Board of County Commissioners from all damage and loss from or arising out of or by reason of the construction or operation of said water or sewage system. By acceptance of this franchise the Utility does agree that it will construct, operate and maintain a water system and a sewage treatment system in the geographical area of this franchise, furnishing said area with reasonable water and sewage service, all in accordance with the rules and regulations of the

Board of County Commissioners or the Polk County Utilities Commission. Failure on the part of the Utility to file its acceptance hereof with the Clerk of the Board, as herein provided, or to comply with any of the provisions of this franchise, shall render this franchise null and void.

SECTION 14: This agreement shall take effect and be in force from and after its passage by this Commission and its written acceptance by the Utility and upon such acceptance being filed with the Clerk of the Board of County Commissioners.

DATED this 20th day of October, 1987.

POLK COUNTY UTILITIES COMMISSION

By: Royce Ready
Royce Ready, Chairman

ATTEST:

E.D. "BUD" DIXON, Clerk

By: E.D. Dixon
Deputy Clerk

Legal Description

Begin at an intersection of the northerly right of way line of Seaboard Coastline Railroad and the north south center of section line of Section 9, Township 29 South, Range 26 East, Polk County, Florida; thence north along said center of section line to the northerly right of way line of Eloise Loop Road; thence southeasterly along said northerly right of way line to the west boundary of U.S. Government Lot 4, Section 9, Township 29 South, Range 26 East; thence north along said west boundary to the north boundary of said U.S. Government Lot 4; thence east along said north boundary to the waters of Lake Eloise thence south, southeasterly, south, east, north, east, northeasterly, northerly, and westerly along said waters edge to its intersection with the west boundary of the east half of U.S. Government Lot 3 in Section 3, Township 29 South, Range 26 East; thence run north along the said west boundary to the northwest corner of said east half of U.S. Government Lot 3; thence continuing north along the west boundary of U.S. Government Lot 3 (E1/2 of SW1/4), Section 34, Township 28 South, Range 26 East, to the northwest corner of said U.S. Government Lot 3; thence continuing north to the northwest corner of northeast quarter of the northwest quarter of said Section 34, Township 28 South, Range 26 East; thence west along the north boundary of said northwest quarter of Section 34 to the waters of Lake Otis; thence northerly along said waters to an intersection with the north boundary of the southwest quarter of Section 27, Township 28 South, Range 26 East; thence east along said north boundary of the southwest quarter of Section 27 to the waters of Lake Link; thence southerly, easterly and northerly along said waters to the aforesaid north boundary of the southwest quarter of Section 27; thence east along said north boundary of the southwest quarter of Section 27 to the northwest corner of the southeast quarter of said Section 27; thence east along the north boundary of the southeast quarter of said Section 27 to the northwest corner of the southwest quarter of Section 26, Township 28 South, Range 26 East; thence east along the north boundary of said southwest quarter of Section 26 to the southwest corner of the northeast quarter of said Section 26; thence north along the west boundary of said northeast quarter of Section 26 to the centerline of Dundee Road (SR 542); thence east along said centerline of Dundee Road to the east right of way line of Carl Floyd Road; thence south along said east right of way line of Carl Floyd Road to the north right of way line of Executive Road; thence east along said north right of way line and easterly extension thereof to an intersection with the southerly extension of the centerline of Country Club Road; thence north along said southerly centerline extension to an intersection with the centerline of Dundee Road; thence easterly along said centerline of Dundee Road to the east boundary of Section 25, Township 28 South, Range 26 East; thence north along said east boundary of Section 25 to the southeast corner of Section 24, Township 28 South, Range 26 East; thence north along the east boundary of said Section 24 to the north boundary of Section 19, Township 28 South, Range 27 East; thence east along said north boundary of Section 19 to the east boundary of said Section 19; thence south along said east boundary of Section 19 to the northwest corner of the southwest quarter of Section 20, Township 28 South, Range 27 East; thence east along the north boundary of said southwest quarter of Section 20 to the east boundary of said southwest quarter; thence south along said east boundary of the southwest quarter to the south boundary of said southwest quarter; thence run south along the center of said Section 29 to the south quarter corner and continue south to the southwest corner of the southwest quarter of the northeast quarter of Section 32, Township 28 South, Range 27 East; thence run east along the south boundary of the said northwest quarter of the northeast quarter to the westerly right of way of U.S. Highway 27; thence run southerly along the said westerly right of way of U.S. Highway 27 to its intersection with the south boundary of Section 5, Township 29 South, Range 27 East; thence west along said south boundary to the southwest corner of said Section 5; thence south along the east boundary of Section 7 and 10, Township 29 South, Range 27 East to the northeast corner of Section 19, Township 29 South, Range 27 East; thence continue south to the southeast corner of the north half of said Section 19; thence west along the south boundary of said north half to the southeast corner of the north half of Section 24 and 23, Township 29 South, Range 26 East; thence continue west along the south boundary of said north half of the southwest

corner of the northwest quarter of said Section 23; thence continue east along the south boundary of the northeast quarter of Section 22, Township 29 South, Range 26 East to an intersection with the north right of way line of Seaboard Coastline Railroad; thence north along said northerly right of way to the POINT OF BEGINNING. Less and except the Orchid Springs Franchise, described as follows, to-wit: **TRACT A:** Starting at the NE corner of Section 35, Township 28 South, Range 26 East, run thence S. $0^{\circ} 22'$ East along the East boundary of Section 35 a distance of 580.8 feet to a concrete marker for the point of beginning; run thence S. $0^{\circ} 22'$ East along the East boundary of Section 35 a distance of 1414.2 feet; thence N. $89^{\circ} 44'$ East a distance of 560 feet; thence N. $33^{\circ} 58'$ East a distance of 1000 feet; thence N. $40^{\circ} 11'$ West a distance of 1826.13 feet; thence N. $60^{\circ} 57'$ West a distance of 467 feet to the Easterly right-of-way boundary of State Road 542; thence S. $29^{\circ} 03'$ West along the Easterly right-of-way of State Road 542 a distance of 1195 feet; thence N. $89^{\circ} 44'$ East a distance of 1038.76 feet to the Point of Beginning, and **TRACT B:** North 420 feet of the South 749.20 feet of the NE-1/4 of Section 35, Township 28 South, Range 26 East, lying East of the right-of-way of State Road S-542, containing approximately 11.16 acres, and also described as: That part of the North 420 feet of the South 749.20 feet of Lots 1 and 2 of Florida Highland Company's Subdivision of Section 35, Township 28 South, Range 26 East, as recorded in Plat Book 3A, at page 27, of the public records of Polk County, Florida, lying East of the right-of-way of State Road S-542. Also the 12-1/2 feet immediately East of the above-described property which was closed as a road by Polk County Commissioners. Resolution recorded in Official Records Book 1067, page 823. **Tract #1:** That part of Lot 2 lying Northwesterly of the right-of-way of State Road #542 in Highland Company Subdivision, as recorded in Plat Book 3A, page 27, of the public records of Polk County, Florida, lying and being in the NE-1/4 of the NE-1/4 of Section 35, Township 28 South, Range 26 East, Polk County, Florida. **TRACT #2:** All that part of Lots 3, 9 and 17 of said Highland Company Subdivision, as recorded in Plat Book 3A, page 27, of the public records of Polk County, Florida, lying Northerly of a line described as follows: Starting at the corner common to Sections 25, 26, 35 and 36, Township 28 South, Range 26 East, Polk County, Florida, run thence N. $89^{\circ} 46'$ E. along the South boundary of said Section 25 a distance of 148.78 feet for the point of beginning; thence run N. $40^{\circ} 11'$ W. a distance of 303.13 feet, thence N. $60^{\circ} 57'$ W. a distance of 467 feet to a concrete marker located on the Easterly right-of-way boundary of State Road #542 at a point 459.05 feet North and 454.77 feet West of the common corner above described for the end of said line. SUBJECT to rights-of-way as of record and/or in use. **TRACT #3:** Lot 6, of Highland Company Subdivision, as recorded in Plat Book 3A, page 27, of the public records of Polk County, Florida, lying and being in the Southeast Quarter of the Northeast Quarter of Section 35, Township 28 South, Range 26 East; AND That part of the Northwest Quarter of Section 36, Township 28 South, Range 26 East, Polk County, Florida, described as: Starting at the Northwest corner of Section 36, Township 28 South, Range 26 East, run thence North $89^{\circ} 46'$ East along the North boundary of Section 36 a distance of 148.78 feet for the point of beginning; thence run South $49^{\circ} 11'$ E. a distance of 1523.0 feet, thence South $33^{\circ} 58'$ W. a distance of 1000.0 feet, thence South $89^{\circ} 44'$ W. a distance of 560 feet to the West boundary of Section 36, thence South $0^{\circ} 22'$ East along the Section line a distance of 464.95 feet to a point 200.04 feet Northerly of the Southwest corner of the Northwest Quarter of Section 36, thence run North $69^{\circ} 50' 30''$ E. along the centerline of a canal a distance of 683.83 feet, thence North $33^{\circ} 58'$ E. a distance of 1296.18 feet, thence North $40^{\circ} 11'$ W. a distance of 1506.60 feet to a point on the North boundary of Section 36, thence run South $89^{\circ} 46'$ W. Along the said North boundary of Section 36 a distance of 260.89 feet to the point of beginning. SUBJECT to rights-of-way as of record and/or in use. (37.1). **TRACT #4:** All that part of the Northwest Quarter of Section 36, Township 28 South, Range 26 East, Polk County, Florida, lying Easterly and Northerly of a line described as: Starting at the Northwest corner of Section 36, run thence North $89^{\circ} 46'$ East along the North boundary of Section 36, a distance of 409.67 feet for the point of beginning of said line; run thence South $40^{\circ} 11'$ East a distance of 1506.60 feet, thence South $33^{\circ} 58'$ West a distance of 1296.18 feet to the centerline of a canal, thence run North $69^{\circ} 50' 30''$ East along the centerline of said canal a distance of 2139.4 feet, more or less, to its intersection with the East boundary of said Northwest Quarter of Section 36, for the end of said line. SUBJECT to rights-of-way as of record and/or in use. **TRACT #5:** The South one-half of the Southeast Quarter of Section 25, Township 28 South, Range 26 East, Polk County, Florida, LESS AND EXCEPT: Begin at the Northeast corner of said South one-half of the Southeast Quarter and run S. $0^{\circ} 19' 17''$ E. along the East line of said South one-half of the Southeast Quarter a distance of 457.10 feet, thence N. $88^{\circ} 44'$ one-half of the Southeast Quarter a distance of 457.10 feet, thence N. $88^{\circ} 44'$ 17" W. 108.15 feet, thence S. $52^{\circ} 15' 43''$ W. 476.63 feet, thence S. $0^{\circ} 5' 17''$ E.

252.20 feet, thence S. $89^{\circ}54'43''$ W. 138.00 feet, thence N. $0^{\circ}5'17''$ W. 182.00 feet, thence N. $80^{\circ}58'17''$ W. 419.00 feet, thence N. $50^{\circ}57'17''$ W. 725.00 feet, thence N. $69^{\circ}41'17''$ W. 625.70 feet, thence N. $0^{\circ}5'17''$ W. 72.69 feet to a point on the North line of said South one-half of the Southeast Quarter, thence N. $89^{\circ}54'43''$ E. along North line 2184.81 feet to the point of beginning, LESS AND EXCEPT right-of-way of State Road S-542, and LESS AND EXCEPT the East 30 feet of the South 866.9 feet of the Southeast Quarter of the Southeast Quarter of said Section 25 for road. TRACT #6: That part of the Northeast Quarter of Section 36, Township 28 South, Range 26 East, Polk County, Florida, described as: Beginning at the Northeast corner of Section 36, run thence South along the East boundary of Section 36 a distance of 533.80 feet to its intersection with the centerline of a canal, thence run S. $69^{\circ}50'30''$ W. along said centerline of canal a distance of 2823.3 feet, more or less, to its intersection with the West boundary of said Northeast Quarter, thence run North along the West boundary of said Northeast Quarter to the Northwest corner of the Northeast Quarter, thence run Easterly along the North boundary of said Northeast Quarter of Section 36 a distance of 2642.28 feet to the point of beginning, SUBJECT to right-of-way over the East 30 feet thereof.

EXHIBIT B

Intergovernmental Service Area Agreement

(7 pages)

WATER AND WASTEWATER
INTERGOVERNMENTAL SERVICE AREA AGREEMENT

THIS AGREEMENT, made and entered this 20th day of September, 1994, by and between POLK COUNTY, a political subdivision of the State of Florida (hereinafter the County), and the CITY OF LAKE WALES, FLORIDA (hereinafter the City);

WITNESSETH:

WHEREAS, the parties hereto recognize that planned, orderly growth is essential to the economic and social well-being of the people of Polk County; and

WHEREAS, the orderly and economic growth of the County and the Lake Wales urban area depend in large part upon the ability of local government to provide an environment for development which would include the availability of water and wastewater services; and

WHEREAS, public resources managed by local government should be utilized in an efficient manner to foster growth and development and to maximize the benefits of same to the citizens of Polk County; and

WHEREAS, the City and County operate water and wastewater utilities in the unincorporated areas surrounding the City of Lake Wales and recognize that interlocal cooperation in the provision of such services will prevent duplicate systems, eliminate confusion, foster planned and orderly expansion of public utilities, encourage growth and development and maximize the beneficial use of public resources for the citizens of Polk

County and the City of Lake Wales.

NOW THEREFORE, in order to accomplish the purposes set forth above and in consideration of the mutual promises and covenants contained herein, the City and County agree as follows:

1. INTERLOCAL AGREEMENT. This is an interlocal agreement made and entered into by and between the City and County pursuant to the provisions of Chapter 163, Florida Statutes.

2. WATER AND WASTEWATER SERVICE AREA. The area described on Exhibit "A" and depicted on Exhibit "B", both of which are attached hereto and made a part hereof, shall hereinafter be known as the City of Lake Wales Water and Wastewater Utility Service Area (hereinafter the Area). An official map of the area shall be maintained by the City. The City shall have the first right to provide water and/or wastewater services within the Area to any customer residing or doing business within the Area and to deliver said service in accordance with the City's general practice, policy and procedures. The County shall not provide water and/or wastewater service to any customer within the Area unless that customer has first requested service from the City and said request has been denied. In the event that the majority of a property lies partially within the Area, the property shall be deemed included within the Area, and upon receipt of service, the boundary of the Area shall be automatically amended to include all of such property. In the event that the majority of a property lies without the Area, the City may serve such

property with the written consent of the County, and in that event, the boundary shall be amended pursuant to paragraph 3 hereof. It is mutually understood and agreed that the City may, in its discretion, impose conditions upon connection to the City's water and/or wastewater systems within the Area, and no customer shall be deemed to have been denied service by the City if said service is made available in accordance with the City's general practice, policy and procedures.

3. COORDINATION OF PLANNING ACTIVITIES. The parties recognize that to achieve the mutual goal of planning for and providing future development of their respective systems in an efficient, economic and orderly manner, it will be necessary for each to maintain written communication with the other, as necessary, concerning plans and actual development of water and/or wastewater utility facilities which may or should affect the Adopted County and/or City Comprehensive plans for future development of the systems of the other party.

4. SERVICE NOT REQUIRED. Nothing herein shall be construed to require the City or the County (in accordance with its limited right to serve as provided herein) to serve any customer or customers deemed by the City or County respectively to be not feasible, economically or physically, to serve.

5. CITY SERVICE OUTSIDE AREA. Except with the written consent of the County, the City shall not serve any customer whose property to be served lies completely outside the Area. In the event the County gives its written consent to service by the

City outside the Area, the Area shall be deemed expanded and the description thereof contained on Exhibit "A" and Exhibit "B" shall be automatically, and without the necessity of any act by either party, amended.

6. COUNTY SERVICE INSIDE AREA. Except with the written consent of the City, the County shall not serve any customer whose property to be served lies completely inside the Area. In the event the City gives its written consent to service by the County inside the Area, the Area shall be deemed altered and the description thereof contained on Exhibit "A" and Exhibit "B" shall be automatically, and without the necessity of any act by either party, amended.

7. In the event of an automatic alteration of the Area pursuant to the provisions of paragraph(s) 5 or 6 hereof, the parties may by mutual consent amend the Area to restore the prior description. Any such consent shall be in writing and executed by the parties.

8. TERM AND EFFECTIVE DATE. This Agreement shall become effective when executed by both parties and shall be effective for a period of twenty (20) years unless terminated earlier by mutual consent. It is the intention of the parties, as part of their respective comprehensive plan review procedures pursuant to Section 163____, Florida Statutes, to review the boundaries of the Area and the terms of this Agreement and to mutually discuss renewal for such additional time and upon such terms and conditions as may be mutually agreeable.

9. Breach by either party not cured upon sixty (60) days notice, shall give the other party the right to terminate this Agreement at will.

10. The terms of this Agreement are not severable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 20th day of September, 1994.

BOARD OF COUNTY COMMISSIONERS
POLK COUNTY, FLORIDA

BY *Don*
Chairman

ATTEST:

E. D. "BUD" DIXON, Clerk

BY *Marie E. Kessler*
Deputy Clerk BoCC 9-20-94

CITY OF LAKE WALES

BY *Albert Kirkland, Sr.*
Mayor

ATTEST: *Indira*
City Clerk

APPROVED AS TO FORM AND CORRECTNESS: *[Signature]*
City Attorney

CITY OF LAKE WALES
UTILITY PLANNING AREA

TOWNSHIP 29S, RANGE 27E

All of Sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, that portion of Sections 16 and 17 lying south of CR 17A.

TOWNSHIP 29S, RANGE 28E

All of Sections 27, 28, 29, 30, 31, 32, 33, 34 and the Southwest quarter of Section 19.

TOWNSHIP 30S, RANGE 27E

All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30 and all of Section 26 except for the Southeasternmost 40 acres.

TOWNSHIP 30S, RANGE 28E

All of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18 and 19.

T29S-R27E T 29 S - R.28 E

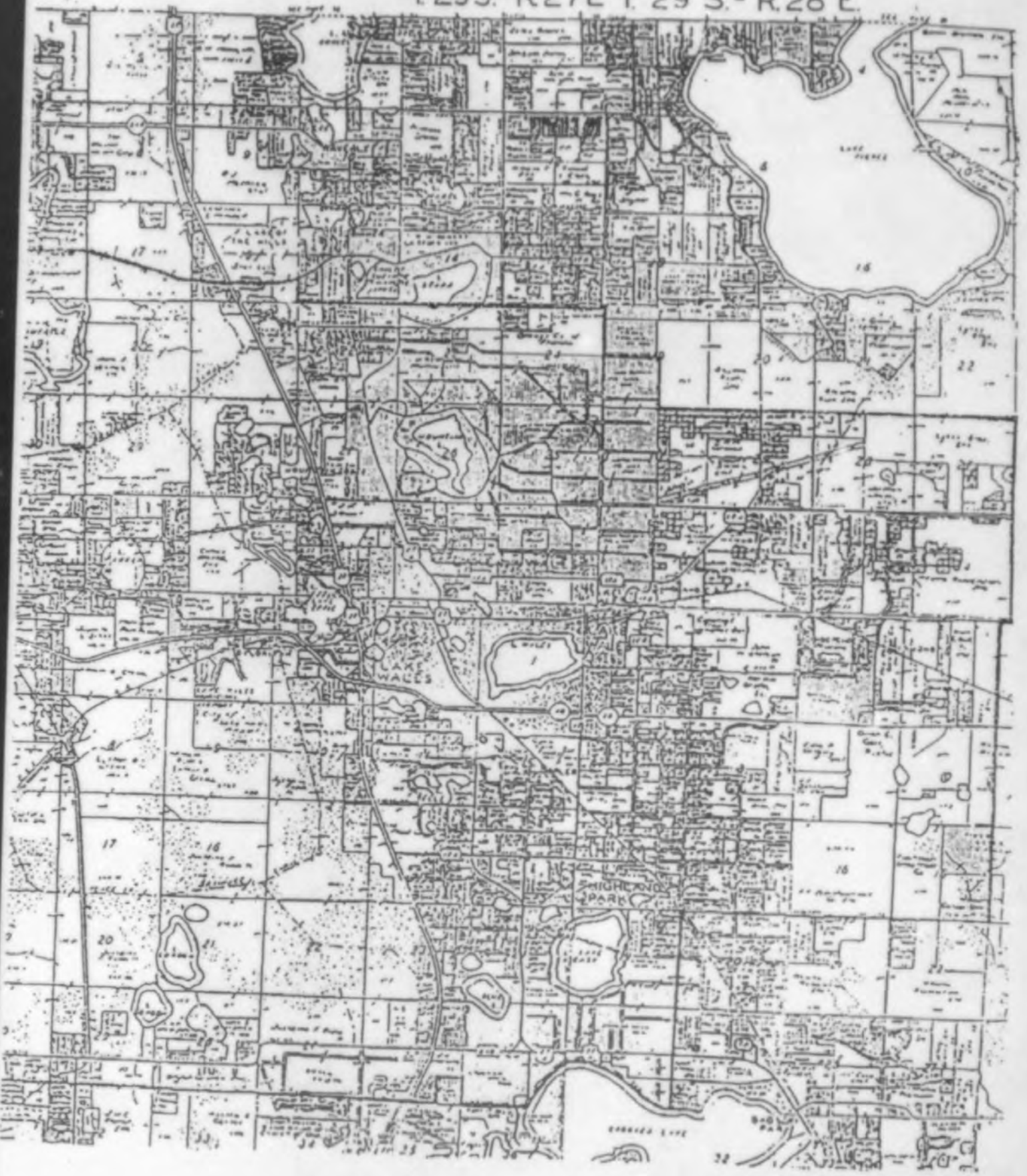


EXHIBIT C

February 8, 1996 letter
(one page)



Board of County Commissioners

330 W. Church St.
P.O. Box 2019
Bartow, FL 33831

Administration (941) 534-6741
Customer Service (941) 534-6039, 534-6040
Operations/Maintenance (941) 534-7351

Utilities Division

February 8, 1996

Mr. David Green, City Manager
City of Lake Wales
Post Office Box 1320
Lake Wales, Florida 33859-1320

RE: Service Area Boundary

Dear David:

I am writing to request a service area map amendment related to the "Water and Wastewater Intergovernmental Service Area Agreement" between the City of Lake Wales and the County.

The specific modification is noted on the attached revised Exhibit "B" of the agreement which has been redrawn to exclude portions of Sections 18 and 19, in Township 29S, Range 27E.

This amendment is necessitated by an oversight at the time we executed the agreement in September 1994. The area in question is included in the utility service area of the Garden Grove Franchise which, under County Ordinance, was given exclusive right in 1987 to provide water and wastewater service in the area.

I am requesting that Exhibits "A" and "B" of our intergovernmental agreement be revised accordingly and executed as amendments to the agreement.

Your usual cooperation in actioning this request is very much appreciated. If you have any questions or wish further discussion, please let me know.

Sincerely,

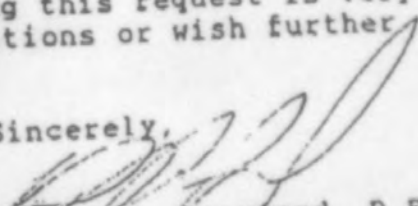

Donald A. Crawford, P.E.
Utilities Division Director

EXHIBIT D

DAC/mjm
attachments:

xc: John G. Wood, Jr., Vice President, Garden Grove Water Co.
Andrew R. Reilly, Esquire, P.A.
Merle Bishop, Community Services Department Director
Darrell Gunn, Public Works Department Director
Steve Shealey, Utilities Staff Engineer
Paula Zwack, Fiscal & Franchise Manager
File: City of Lake Wales
Garden Grove Water Company

COMPOSITE EXHIBIT D

a) March 19, 1996
Request by Emmer to Delete Emmer from Garden Grove Franchise
(7 pages)

b) March 29, 1996
Letter of Support by City of Lake Wales
(1 page)

c) More legible fifth page from Exhibit D-a
(1 page)

Polk County B.O.C.C.

JUN 04 1996 VOLUME 1 26

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Attorneys at Law

Andrew R. Reilly & Associates

P.O. Box 2039 • Haines City, Florida 33845 U.S.A.
 Telephone (941) 422-5978 • FAX (941) 421-2771
 FEDX/UPS: 95 South 10th Street, Haines City, Florida 33844 U.S.A.

Andrew R. Reilly
 Fred Reilly

RECEIVED

MAR 19 1996

POLK COUNTY
 UTILITIES DEPARTMENT

March 19, 1996

Mr. Don Crawford, Director
 Polk County Utility Division
 Post Office Box 2019
 Bartow, FL 33831

Re: Utility Service to Lake Myrtle
 Development - PUD 84-38

Dear Mr. Crawford,

Under the provisions of paragraph 2 Polk County/Lake Wales Water and Wastewater Intergovernmental Service Area Agreement dated September 20, 1994, Emmer Development Corp. the Developer of PUD 84-38 applied to Lake Wales for Utility Service. A preliminary Utility Agreement had been negotiated. Since the PUD is now contiguous to the City of Lake Wales, the Utility Agreement provided for annexation.

Your letter of February 8, 1996 to Mr. Dave Green, City Manager suggested amending the Polk County/Lake Wales Intergovernmental Agreement to exclude PUD 84-38 from the Lake Wales Service Area. This is not without complications for my client, Emmer Development Corp. As set out in Appendix A getting the utilities for PUD 84-38 has been a continuing problem since prior to the Initial Tentative Approval in 1984. Until the Service Area Agreement actually deletes the Emmer property, Emmer has no choice but to continue to follow its requirements.

The key issue for Emmer is not whose service area the property is in but the cost to Emmer for Utility Services. The 1993 Garden Grove Water Company costs estimates referred to in Item 6 of Appendix A, were high particularly compared to what Polk County would have charged for the same service. Now compared to what Lake Wales would charge, the new Garden Grove costs are excessive. See Schedule B.

CRAWFQ.LTR (884300) 007 3/12/96

*"The courts shall be open to every person for redress of any injury,
 and justice shall be administered without sale, denial or delay."*
 Article I, § 21 - Florida Constitution

Polk County B.O.C.C.

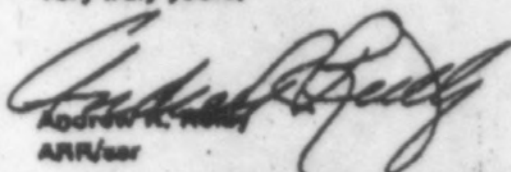
JUN 04 1996 WPM/ME 1 26

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March 6, 1995
Page 2

Emmer Development Corp. requests it be given the opportunity to show the Polk County Utilities Commission that under Section 14 of Ordinance No. 82-11 the extension of service to PUD 84-38 by Garden Grove Water Company, Inc. could be accomplished only at an unreasonable cost and that the same service by the City of Lake Wales is more economical for the development of PUD 84-38.

Very truly yours,


Andrew K. Weller
ARR/sar

xc: Mr. Phil Emmer, Emmer Development Corporation
Mr. Gary Brown, Lake Wales City Manager

Polk County B.O.C.C.
JUN 04 1998 1 28

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APPENDIX A

1. In 1984 Polk County had no capacity for providing water or wastewater service to PUD 84-38 and the project was not in Garden Grove Franchise Area. Polk County, however, was considering the Waverly area as a potential site for a wastewater treatment facility.
2. As a condition to the initial PUD 84-38 tentative approval, the Developer could permit, install and operate a temporary package plant for Phase I only until Polk County had wastewater services available. When that occurred PUD 84-38 would be required to use Polk County Utilities for the entire project.
3. Sometime after 1984 Polk County acquired capacity at the newly constructed wastewater facility at Waverly. For the Developer of PUD 84-38 the question then became whether there was sufficient capacity for PUD 84-38 and if so what would be the cost of extending the lines roughly 3 3/4 miles from the plant to PUD 84-38.
4. On August 25, 1987, without any specific notice to the Developer, the Polk County Utilities Commission granted Garden Grove Water Company, Inc., request to extend its franchise area beyond the original franchise boundaries. PUD 84-38 was for the first time, included in the franchise area.
5. In late 1989 the Developer first became aware that PUD 84-38 was in the Garden Grove franchise area. In March 1990 Developer sought and received a major modification of PUD 84-38 from mobile homes to conventionally constructed homes. Garden Grove was subsequently contacted to provide utilities services and the costs for doing such. Because of the recession the project went dormant.
6. In 1993 further inquiries were made to Garden Grove for cost estimates. In December 1993 these costs were furnished and compared to what Polk County would charge. The difference in cost for some services was startling primarily due to the Contribution in Aid Of Construction Tax (CIAC) which was then, as it is now, at 60.33%.
7. Garden Grove would require the Developer to extend at it's cost, the water and sewer lines from the nearest utility service to the project. It also would require the Developer to convey the offsite lines and the onsite water distribution system and wastewater collection system at Garden Grove. These "donations" of personal property become a taxable asset of the Utility. Garden Grove requires the Developer to pay the tax which is currently 60.33% of the personal property donated cost.
8. On September 20, 1994 Polk County entered into a Water and Wastewater Intergovernmental service area Agreement which included PUD 84-38 in the Lake Wales Utility Service Area. Thereafter in accord with the agreement the Developer applied for Lake Wales Utility services.
9. Until such time as the said Intergovernmental Agreement is modified the Developer is obligated to follow paragraph 2 thereof which it has done. Garden Grove has challenged Lake Wales attempt to service PUD 84-38. In this particular case the issue as to whether Lake Wales

Polk County B.O.C.C.

JUN 04 1996 VOLUME 1 20

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or Garden Grove should provide utility service to PUD 84-38 is really governed by the language of Section 14. ~~Section~~ of Polk County Ordinance No. 82-11 where under subsection (1) it states:

(1) Each utility shall provide service to the territory described in this franchise agreement within a reasonable time. If the Commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost ~~and~~ that addition of the deleted territory to that of another utility company is economical and feasible, it may amend the franchise agreement to delete the territory not served or not properly served by the Utility, or it may rescind the franchise agreement. (Emphasis added)

**COMPARISON OF ESTIMATED CAPITAL COSTS TO PROVIDE WATER AND SEWER SERVICE
GARDEN GROVE WATER CO., INC. - VS. - CITY OF LAKE WALES
For
LAKE MYRTLE PUD - PHILIP EMMER, DEVELOPER**

REF. NO.	DESCRIPTION OF CHARGE	GARDEN GROVE WATER CO., INC. CHARGES (A)					CITY OF LAKE WALES CHARGES (B)				
		BASE CHARGE		APPL CHARGE (C)		TOTAL CHARGE (D)	BASE CHARGE		APPL CHARGE		TOTAL CHARGE (E)
		\$/Unit	\$ Total	\$/Unit	\$ Total		\$/Unit	\$ Total	\$/Unit	\$ Total	
1.0	CONNECTION CHARGES/IMPACT FEES										
1.1	WATER CHARGES										
1.1.1	570 Single Family Detached Units: 1 Unit = 1 ERC	\$10	280,700	0	0	280,700	\$45	287,000	0	0	287,000
1.1.2	300 Apartment Units: (0)	281	84,300	0	0	84,300	365	109,500	0	0	109,500
1.1.3	Combined Other Uses Based on 6 Single Family Detached Units	\$10	4,000	0	0	4,000	\$45	5,100	0	0	5,100
1.1.4	Total Water Charge	N/A	379,000	N/A	0	379,000	N/A	401,600			401,600
1.2	SEWER CHARGES										
1.2.1	570 Single Family Detached Units: 1 Unit = 1 ERC	2,050	1,165,500	1,730	845,100	2,154,600	1,804	897,000	0	0	897,000
1.2.2	300 Apartment Units: (0)	1,374	412,200	1,150	347,700	759,900	890	277,800	0	0	277,800
1.2.3	Combined Other Uses Based on 6 Single Family Detached Units	2,850	16,400	1,730	13,840	30,240	1,898	6,520	0	0	6,520
1.2.4	Total Sewer Charge	N/A	1,594,100	N/A	1,347,640	2,941,740	N/A	781,320	N/A	0	781,320
2.0	CHARGE TO EMMER TO DESIGN, PERMIT, AND CONSTRUCT THE OFFSITE WATER LINE AND FORCE MAIN TO SERVE THIS PUD SITE	N/A	744,361	N/A	N/A	744,361	N/A	N/A	N/A	N/A	0
3.0	GAC CHARGE TO EMMER: (0)										
3.1	Onsite Construction	N/A	448,812	N/A	N/A	448,812	N/A	N/A	N/A	N/A	0
3.2	Onsite Construction	N/A	201,850	N/A	N/A	201,850	N/A	N/A	N/A	N/A	0
3.3	Onsite Construction	N/A	750,662	N/A	N/A	750,662	N/A	N/A	N/A	N/A	0
3.4	Total GAC Charge	N/A	1,401,324	N/A	N/A	1,401,324	N/A	711,590	N/A	N/A	711,590
4.0	OTHER CHARGES (Based on 670 ERC's) (1)	N/A	131,820	N/A	N/A	131,820	N/A	1,484,800	0	0	1,484,800
5.0	TOTAL ESTIMATED CHARGE	N/A	1,605,923	N/A	1,347,640	2,953,563	N/A	2,464,810	0	0	2,464,810

1) Based on information provided by Garden Grove Water Co. Inc. dated 5-1-96
 2) As of March 95, the Wastewater Allowance (Charge) for Future (readily available) 1270, 570, 1,170. This calculation is based on: (1) The APPL charge in December 1995 at about \$1,730 and (2) The vast majority of Emmer's connections will be made after December 1995.
 3) For GAC 1 unit = 0.25 ERC
 4) For GAC 1 unit = 0.87 ERC
 5) City Charge @ \$14.15/ERC
 6) Based on information provided by City on 3/1/96
 7) Developer (PUD Sponsor) must pay GAC a specified percentage of the construction cost of all On and Offsite construction which GAC will own, operate, and distribute. This percentage rate is 40.25%.

Polk County B.O.C.C.
 JUN 04 1996 VOLUME 1 2 6

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Polk County B.O.C.C.
JUN 04 1996 VOLUME 1 2 6

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MAR 15 '96 15:12 JOHN G WOOD

P.2

GARDEN GROVE WATER COMPANY
ALLOWANCE FOR FUNDS FRUDENTLY INVESTED
CALCULATION OF CURRENT COST PER ERG PER MONTH:

1998

<u>MONTH:</u>	<u>WASTEWATER TREATMENT FACILITY:</u>	<u>EFFLUENT DISPOSAL FACILITY:</u>	<u>TOTAL A.F.P.I. CHARGE:</u>	<u>APR</u>
JANUARY	587.44	616.24	1,203.68	866.17
FEBRUARY	597.81	627.69	1,225.50	824.67
MARCH	608.18	639.15	1,247.33	839.67
APRIL	618.56	650.60	1,269.16	850.67
MAY	628.93	662.05	1,290.98	864.67
JUNE	639.30	673.50	1,312.80	879.67
JULY	649.68	684.96	1,334.64	894.67
AUGUST	660.05	696.41	1,356.46	908.67
SEPTEMBER	670.43	707.86	1,378.29	923.67
OCTOBER	680.80	719.32	1,400.12	938.67
NOVEMBER	691.17	730.77	1,421.94	952.67
DECEMBER	701.55	742.22	1,443.77	967.67

Polk County B.O.C.C.

JUN 04 1996 VOLUME 1 26

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MAR 15 '96 15:12 JOHN G WOOD

P. 3

GARDEN GROVE WATER COMPANY
ALLOWANCE FOR FUNDS PRUDENTLY INVESTED
CALCULATION OF CARRYING COST PER ENG PER MONTH:

1999

<u>MONTH:</u>	<u>WASTEWATER TREATMENT FACILITY:</u>	<u>EFFLUENT DISPOSAL FACILITY:</u>	<u>TOTAL A.P.P.-I. CHARGE:</u>	<u>A.P.P.</u>
JANUARY	712.79	754.80	1,467.59	.67 983100
FEBRUARY	724.04	767.39	1,491.43	.67 999100
MARCH	735.28	779.97	1,515.25	.67 1015100
APRIL	746.53	792.55	1,539.08	.67 1031100
MAY	757.77	805.13	1,562.90	.67 1047100
JUNE	769.02	817.71	1,586.73	.67 1063100
JULY	780.27	830.29	1,610.56	.67 1079100
AUGUST	791.51	842.88	1,634.39	.67 1095100
SEPTEMBER	802.76	855.46	1,658.22	.67 1111100
OCTOBER	814.00	868.04	1,682.04	.67 1127100
NOVEMBER	825.25	880.62	1,705.87	.67 1143100
DECEMBER	836.49	893.20	1,729.69	.67 1159100

Polk County B.O.C.C.

JUN 04 1996 126

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RECEIVED

APR 03 1996

POLK COUNTY UTILITIES DEPARTMENT



City of Lake Wales

P.O. Box 1320
182 E. Central Ave.
Lake Wales, Florida
33859-1320
Phone 813/678-4182
FAX 813/678-4180

March 29, 1996

Neil Combee
Chairman
Polk County Board of County Commissioners
P.O. Box 2019
Bartow, FL 33831

RE: UTILITY SERVICE TO LAKE MYRTLE

Dear Chairman Combee:

This is to advise that the Lake Wales City Commission at its March 19, 1996 meeting discussed the matter of the provision of utility services to Lake Myrtle. The Lake Myrtle area was included within the Lake Wales Service area as described in an intergovernmental service area agreement dated September 20, 1994 between the City and Polk County. The City subsequent to the agreement has entered into negotiations/discussions with Emmer Development Corporation with respect to the provision of water and sewer services to the subject property.

Garden Grove Water District has recently challenged the City's right to provide utility services to Lake Myrtle. It is the City's understanding that the cost to Emmer Development Corporation to obtain service from Garden Grove Water District is approximately \$4,950,000, whereas the cost for services to be provided by the City of Lake Wales is estimated to be \$1,484,000. Representatives of Emmer Development Corporation are seeking the County Utility Commission's approval to allow Lake Wales to provide utility services to the Lake Myrtle Property.

The Lake Wales City Commission instructed me to ask that the County favorably consider the request submitted on behalf of Emmer Development Corporation that the franchise area be modified to allow Lake Wales to be the service provider. We appreciate the Commission's favorable consideration of this request.

Thank you.

Sincerely,

David L. Greene
City Manager

cc: Rick Hedrick, County Manager
All Members of the County Commission
Andy Reilly, Attorney

Donald Crawford, Utilities Director
Katherine Kinloch, City of Lake Wales Utilities Director
Phil Emmer, Emmer Development Corporation

**COMPARISON OF ESTIMATED CAPITAL COSTS TO PROVIDE WATER AND SEWER SERVICE
GARDEN GROVE WATER CO., INC. - VS. - CITY OF LAKE WALES
For
LAKE MYRTLE PUD - PHILIP EMMER, DEVELOPER**

REF. NO.	DESCRIPTION OF CHARGE	GARDEN GROVE WATER CO., INC. CHARGES (a)					CITY OF LAKE WALES CHARGES (f)				
		BASE CHARGE		AFPI CHARGE (b)		TOTAL CHARGE (\$)	BASE CHARGE		AFPI CHARGE		TOTAL CHARGE (\$)
		\$/Unit	\$ Total	\$/Unit	\$ Total		\$/Unit	\$ Total	\$/Unit	\$ Total	
1.0)	CONNECTION CHARGES/IMPACT FEES										
1.1)	WATER CHARGES										
1.1.1)	570 Single Family Detached Units: 1 Unit = 1 ERC	510	290,700	0	0	290,700	645	367,650	0	0	367,650
1.1.2)	300 Apartment Units: (c)	281	84,300	0	0	84,300	355	106,500	0	0	106,500
1.1.3)	Combined Other Uses Based on 8 Single Family Detached Units:	510	4,080	0	0	4,080	645	5,160	0	0	5,160
1.1.4)	Total Water Charge	N/A	379,080	N/A	0	379,080	N/A	479,310			479,310
1.2)	SEWER CHARGES										
1.2.1)	570 Single Family Detached Units: 1 Unit = 1 ERC	2,050	1,168,500	1,730	986,100	2,154,600	1,066	607,620	0	0	607,620
1.2.2)	300 Apartment Units: (d)	1,374	412,200	1,159	347,700	759,900	590	177,000	0	0	177,000
1.2.3)	Combined Other Uses Based on 8 Single Family Detached Units:	2,050	16,400	1,730	13,840	30,240	1,066	8,528	0	0	8,528
1.2.4)	Total Sewer Charge	N/A	1,587,100	N/A	1,347,640	2,944,740	N/A	793,148	N/A	0	793,148
2.0)	CHARGE TO EMMER TO DESIGN, PERMIT, AND CONSTRUCT THE OFFSITE WATER LINE AND FORCE MAIN TO SERVE THIS PUD SITE	N/A	744,251	N/A	N/A	744,251	N/A	N/A	N/A	N/A	0
3.0)	CIAC CHARGE TO EMMER: (g)										
3.1)	Offsite Construction	N/A	448,812	N/A	N/A	448,812	N/A	N/A	N/A	N/A	0
3.2)	Onsite Construction	N/A	301,850	N/A	N/A	301,850	N/A	N/A	N/A	N/A	0
3.3)	Total CIAC Charge	N/A	750,662	N/A	N/A	750,662	N/A	N/A	N/A	N/A	0
4.0)	OTHER CHARGES (Based on 878 ERC's) (e)	N/A	131,920	N/A	N/A	131,920	N/A	211,588	N/A	N/A	211,588
5.0)	TOTAL ESTIMATED CHARGE	N/A	3,683,023	N/A	1,347,640	4,958,583	N/A	1,484,056	0	0	1,484,056

(a) Based on information provided by Garden Grove Water Co., Inc. dated 3/13/98

(b) As of March 98, the Wastewater Allowance (Charge) for Funds Prudently Invested (AFPI) is \$775.20/ERC. This calculation is based on: (1) The AFPI charge in December 1999 at about \$1,730; and (2) The vast majority of Emmer's connections will be made after December 1999.

(c) For GGWC 1 unit = 0.55 ERC

(d) For GGWC 1 unit = 0.67 ERC

(e) City Charge @ \$241/ERC

(f) Based on information provided by City on 3/15/98

(g) Developer (Phil Emmer) must pay GGWC a specified percentage of the construction cost of all On and Offsite construction which GGWC will own, operate, and maintain. This percentage value is 60.33%.

Prepared: 03/15/98
Revised: 03/18/98
F:\REPORTS\04-03-0025.TB2

Schedule B

COMPOSITE EXHIBIT E

Documentation showing County reliance
on PSC Staff assurances that County
would retain jurisdiction over matters
pending before it at the time of
adoption of its resolution (9 pages)

12-05-1996 1:10PM

FROM BOCC COUNTY ATTORNEY 941 534 7654

P 7
FILE
5/8/96
CWD

Mark F. Carpanini
County Attorney

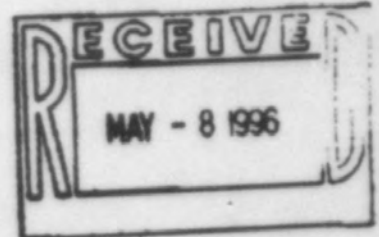
Palmer C. Davis
Mary Elizabeth Harlan
Karla Foreman Wright



Board of County Commissioners
Office of the County Attorney

Wastewater
330 W. Church St.
P.O. Box 9005, Drawer AT01
Bartow, FL 33831-9005
Tel: (941) 534-6482
Fax: (941) 534-6055

MEMORANDUM



TO: Randy Oliver, Assistant for Special Projects
FROM: Mark F. Carpanini, County Attorney *MC*
DATE: May 8, 1996
RE: **Resolution Conferring Jurisdiction on Public Services
Commission Over Private Water and Wastewater Utilities**

Attached is a resolution conferring jurisdiction on the Florida Public Service Commission in connection with private water and sewer utilities.

It is my understanding from speaking with Ralph Jaeger of the General Counsel's Office of the Public Service Commission that the County will retain jurisdiction over pending matters as of the time of transfer. I think it would be prudent for Don Crawford to develop a list of such cases prior to the adoption of the resolution so everyone is clear on which matters are involved.

Call me if you have any further questions.

MFC:lp

Attachment

xc: Don Crawford, Utilities Director

**POLK COUNTY
BOARD OF COUNTY COMMISSIONERS**

**CONSENT AGENDA
COUNTY MANAGER
ITEM XII.A**

Ken Richardson, Dist. 1 Nancy Rouse Caldwell, Dist. 2 Marlene Young, Dist. 3
Jerry Cacter, Dist. 4 Neil Coobee, Dist. 5
Richard L. Hedrick, County Manager

AGENDA REQUEST

May 14, 1996

APPROVED
Polk County Board of
County Commissioners
Date: 5/14/96
Initial: [Signature]

TO: Board of County Commissioners
Richard L. Hedrick, County Manager

THROUGH: Darrell W. Gunn, Public Works Director

FROM: Donald A. Crawford, Utilities Director

SUBJECT: CONSENT AGENDA -- MAY 14, 1996
ADOPTION OF RESOLUTION TO CONFER JURISDICTION ON
THE PUBLIC SERVICE COMMISSION OVER MATTERS
RELATING TO PRIVATE WATER AND WASTEWATER
UTILITIES AND SET PUBLIC HEARING DATE OF
SEPTEMBER 3, 1996 AT 1:30 P.M. TO REPEAL POLK
COUNTY ORDINANCE 82-11, THE POLK COUNTY WATER AND
SEWER SYSTEM REGULATORY ORDINANCE.

STATEMENT OF ISSUE

Board of County Commissioners' adoption of a Resolution to confer jurisdiction on the Public Service Commission over matters relating to private water and wastewater utilities and set Public Hearing date of September 3, 1996 at 1:30 P.M. to repeal Polk County Ordinance 82-11, the Polk County Water and Sewer System Regulatory Ordinance.

ANALYSIS

On May 7, 1996, the Board voted to transfer jurisdiction of private water and wastewater utilities to the Florida Public Service Commission (PSC). The attached resolution provides for this transfer of jurisdiction. The County Attorney's office has been advised by PSC legal staff that the transfer of jurisdiction does not effect any pending regulatory franchise actions.

This Resolution transfers regulatory actions relating to private water and wastewater utilities in Polk County to the PSC effective immediately upon its passage, however the County will maintain jurisdiction of six (6) pending franchise actions until their resolution. These specific actions along with target completion dates, are identified below:

BoCC Consent Agenda -- May 14, 1996

RE: ADOPTION OF RESOLUTION TO CONFER JURISDICTION ON THE PUBLIC SERVICE COMMISSION OVER MATTERS RELATING TO PRIVATE WATER AND WASTEWATER UTILITIES AND SET PUBLIC HEARING DATE OF SEPTEMBER 3, 1996 AT 1:30 P.M. TO REPEAL POLK COUNTY ORDINANCE 82-11, THE POLK COUNTY WATER AND SEWER SYSTEM REGULATORY ORDINANCE.

Page 2

Handwritten note: 2/14/96

<u>FRANCHISE</u>	<u>ACTION</u>	<u>TARGET COMPLETION DATE</u>
Skyview Receivership	Emergency & Permanent Rate Application & other matters involving receivership	June 4, 1996
Garden Grove	Request by Emmer Development to be removed from franchise area	June 4, 1996
Grenelefe	Rate Application	July 2, 1996
Village Water	Rate Application	July 16, 1996
Cypress Lakes	Franchise Agreement & Rate Application	August 6, 1996
Crooked Lake Park	Rate Application	August 20, 1996

Finally, as a housekeeping measure, the Board needs to set a Public Hearing date to repeal Polk County Ordinance No. 82-11, the Polk County Water and Sewer System Regulatory Ordinance (suggested hearing date is September 3, 1996 at 1:30 P.M.). This date has been scheduled for after the last target completion date of the above listed pending franchise actions.

RECOMMENDATION

It is the recommendation of Administration, the County Attorney's office and the Deputy Clerk and Auditor to the Board that the Board adopt the Resolution to confer jurisdiction on the Public Service Commission over matters relating to private water and wastewater utilities and set Public Hearing date of September 3, 1996 at 1:30 P.M. to repeal Polk County Ordinance 82-11, the Polk County Water and Sewer System Regulatory Ordinance.

BoCC Consent Agenda -- May 14, 1996
 RE: ADOPTION OF RESOLUTION TO CONFER JURISDICTION ON
 THE PUBLIC SERVICE COMMISSION OVER MATTERS
 RELATING TO PRIVATE WATER AND WASTEWATER UTILITIES
 AND SET PUBLIC HEARING DATE OF SEPTEMBER 3, 1996 AT
 1:30 P.M. TO REPEAL POLK COUNTY ORDINANCE 82-11,
 THE POLK COUNTY WATER AND SEWER SYSTEM REGULATORY
 ORDINANCE.

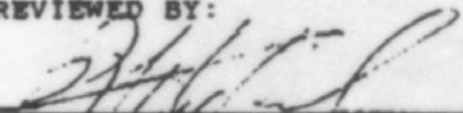
Page 3

FISCAL IMPACT

N/A

DAC/mjm (5/8/96)

REVIEWED BY:



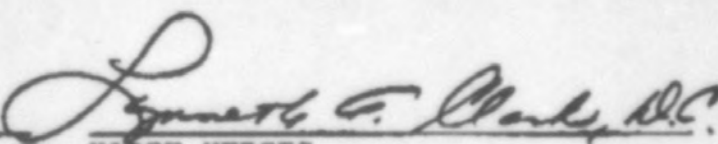
 RICHARD L. HEDRICK
 COUNTY MANAGER



 DARRELL W. GUNN
 PUBLIC WORKS DIRECTOR



 MARK CARPANINI
 COUNTY ATTORNEY



 HARRY HEDGES
 for: AUDITOR TO THE BOARD

12-05-1996 1:08PM

FROM BOCC COUNTY ATTORNEY 941 534 7654

P 2

li.

Jim Roden, Jr.
Acting County Manager

Tony Smith
Assistant County Manager

Charles R. Oliver
Assistant for Special Projects



Board of County Commissioners

July 16, 1996

Post Office Box 9005
330 W. Church Street
Bartow, Florida 33831
(941) 534-6444
(941) 534-6055 FAX

Ms. Billie Messer
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: PENDING CASES

Dear Ms. Messer:

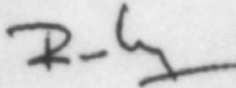
As you are aware, Polk County has transferred jurisdiction for water and wastewater utilities in Polk County, to the Florida Public Service Commission in accordance with Chapter 367 of Florida Statutes. A list of pending franchise actions, which the County will retain jurisdiction until their resolution and target completion dates, are as follows:

<u>FRANCHISE</u>	<u>ACTION</u>	<u>TARGET COMPLETION DATES</u>
Grenelefe	Rate Application	Completed
Village Water	Rate Application	Completed
Skyview Receivership	Emergency & Permanent Rate Application & other matters involving receivership	Approved - Emergency July 16, 1996
Garden Grove	Request by Emmer Development to be removed from franchise area	Currently being Litigated
Cypress Lakes	Franchise Agreement & Rate Application	August 6, 1996
Crooked Lake Park	Rate Application	August 20, 1996

Ms. Billie Messer
Public Service Commission
July 16, 1996
Page two

The receiver for Skyview has indicated, he will petition the court for the County to retain jurisdiction on that system. Thank you for your cooperation. If you have any questions or we can be of any assistance, please feel free to contact Don Crawford, Utilities Director, or myself.

Sincerely,



Charles R. Oliver
Assistant for Special Projects

CRO/dp

xc: Mark Carpanini, County Attorney
Don Crawford, Utilities Director
PS960716



Board of County Commissioners

Utilities Division

305 N. Jackson
P.O. Box 2019
Bartow, FL 33831
Administration: (941) 534-6039
Administration Fax: (941) 534-6059
Operations / Maintenance: (941) 534-7351

November 5, 1996

Florida Public Service Commission
Water and Wastewater Division
2540 Shunard Oak Boulevard
Tallahassee, FL 32399-0873
ATTN: Ms. Billie Messer, Regulatory Analyst Supervisor

Re: Cases Pending In Polk County At the Time of Jurisdictional Transfer

Dear Ms. Messer:

As you are aware, there were six franchises issues pending before the Utilities Commission at the time Polk County relinquished jurisdiction of the water and wastewater franchises to the FPSC on May 14, 1996. All of those issues, with the possible exception of Skyview Utilities, Ltd.'s "permanent" rate increase, have now been resolved. Andy Reilly, the court appointed receiver for Skyview Utilities, Ltd., is currently evaluating the jurisdictional options available for the permanent rate increase.

Enclosed please find the chart titled "Status of Specific Water & Wastewater Franchises Issues Pending at the Time of Jurisdictional Transfer" which lists the outcome of each of those issues. Also, enclosed is a copy of the official minutes documenting the actions of the Board of County Commissioners sitting as the Polk County Utilities Commission.

If you have any questions, please give me a call. Thank you.

Sincerely,

Paula M. Zwack
Utilities Fiscal and Franchise Manager

.cc Donald Crawford, Utilities Director
Derrell Gunn, Public Works Director

Status of Franchise Issues
page 2

.cc (continued)

Mark Carpanini, County Attorney
Sports Shinko Utility, Inc.
Village Water, Ltd.
Skyview Utilities, Ltd.
Cypress Lakes Assoc., Ltd.
Crooked Lake Water Co., Inc.

PSC transitional files
Each franchise file

Polk County Utilities Commission

Status of Specific Water & Wastewater Franchise Issues Pending at the Time of Jurisdictional Transfer

Prepared by: Paula M. Zwach, Utilities Fiscal Manager
per minutes vbt

04-Nov-96

Franchise Name	Issue/Action	Public Hearing Date	Outcome
Sports Shinko Utility, Inc. d/b/a Greendale Utilities	Rate Application for Restructuring of Rates Only	July 2, 1996	Recommended rates were approved to generate revenue neutral (no more than 1995 revenue). If excess earnings occur, money to be refunded to customers. PCUC motion included directive to have FPSC do audit in one year to determine if overearnings have occurred.
Village Water, Ltd.	Rate Increase Application	July 10, 1996	Recommended rates were approved. The County Consultant report included in the minutes contains the Board approved rates.
Skylview Utilities, Ltd.	Emergency Rate Increase Applic	July 10, 1996	Recommended rates were approved (per sewer connection surcharge approved for the life of the proposed loan for emergency repairs). As of 10/20/96, loan process not yet completed. Water & sewer deposits increased too. Court Appointed Receiver reviewing options regarding jurisdiction for this rate increase application.
	"Permanent" Rate Increase Applic	PENDING	
Garden Grove Water Company, Inc.	Emermer Developments request to be removed from franchise area	June 4, 1996 June 11, 1996	Board denied request from Emermer. Order issued by Board. Currently being litigated.
Cypress Lakes Assoc., Ltd. formerly Cypress Lakes Regional Utility, L.C.	Establish Initial Rates	August 6, 1996	Recommended rates were approved along with several miscellaneous fees.
Crooked Lake Park Water Co., Inc.	Rate Increase Application	August 20, 1996	Board continued hearing to 9/3/96. The rates contained in this day's minutes are not those approved.
		September 3, 1996	Board continued hearing to 9/24/96. The rates contained in this day's minutes are not those approved.
		September 24, 1996	Recommended rates were approved.

COMPOSITE EXHIBIT F

June 11, 1996 Order denying Emmer's Request;
County Staff recommendation;
Minutes
(7 pages)

Polk County B.O.C.C.

JUN 11 1996 VOLUME 1 26

002045

COUNTY ATTORNEY
REGULAR AGENDA
ITEM X A

In Re: Request of Emmer Development

ORDER

This matter came to be heard by the Polk County Board of County Commissioners sitting as the Polk County Utilities Commission.

Emmer Development Corporation (Emmer) requested pursuant to Section 14 of Polk County Ordinance No. 82-11, as amended, that the franchise agreement between Polk County and Garden Grove Water Company be amended to exclude land owned by it and planned for development.

Such amendment would ultimately permit Emmer Development to receive water and sewer utility services from the City of Lake Wales.

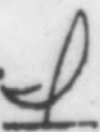
In support of its request, Emmer made a showing that connection charges and the "gross up" charge imposed in connection with the conveyance of water and sewer lines to Garden Grove would be greater than that charged by the City of Lake Wales. (See Exhibit 1)

Section 14 of Polk County Ordinance No. 82-11 provides in part:

If the Commission finds that any utility has failed to provide service to any person reasonably entitled thereto or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted territory to that of another utility company is economical and feasible, it may amend the franchise agreement to delete the territory not served or not properly served by the utility, or it may rescind the franchise agreement.

Based upon the all of the testimony presented and other evidence received in this matter, the Polk County Utilities Commission determines as follows:

1. The extension of service to land owned by Emmer by Garden Grove can be accomplished at a reasonable cost, therefore, Emmer's request is denied.
2. The difference in connection and associated AFPI charges between the City of Lake Wales and Garden Grove was considered but not determined to be conclusive as to the reasonableness of the cost of extension.
3. The amount of income tax that must be paid by Emmer to Garden Grove of \$888,661 which would not be required by the City of Lake Wales is not of itself an unreasonable cost of extension given the size of the proposed development by Emmer. (570 detached single family units, 300 apartment units, and 1 acre of neighborhood shopping)

EXHIBIT 

Polk County B.O.C.C.

JUN 11 1996 VOLUME 1 26

002040

4. The Commission concludes and finds that the continued vitality of the Garden Grove utility and its ability to provide quality utility service to its other customers is dependent upon maintaining its customer base and the continued provision of utility service to its other customers might well be adversely prejudiced by exclusion of the Emmer development as a prospective customer.

Dated this _____ day of _____, 1996.

Polk County B.O.C.C.

JUN 04 1996 VOLUME 126

001730

REGULAR AGENDA
PUBLIC WORKS
ITEM V.A.I.Y

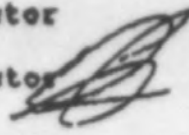
POLK COUNTY
BOARD OF COUNTY COMMISSIONERS

SITTING AS
POLK COUNTY UTILITIES COMMISSION

June 4, 1996

TO: Polk County Utilities Commission
James R. Roden, Jr., Acting County Manager

THROUGH: Darrell W. Gunn, Public Works Director

FROM: Donald A. Crawford, Utilities Director 

SUBJECT: REGULAR AGENDA -- JUNE 4, 1996
DEVELOPER'S REQUEST TO BE EXCLUDED FROM
GARDEN GROVE UTILITY SERVICE AREA SO THEY
CAN BE SERVED BY THE CITY OF LAKE WALES

STATEMENT OF ISSUE

Emmer Development Corporation is requesting that the Polk County Utilities Commission allow a proposed development to be served with water and wastewater services from the City of Lake Wales. The development is located within the utility service area boundary of the Garden Grove franchised area, however Emmer contends that the extension of service by Garden Grove could be accomplished only at an unreasonable cost and that the same service by the City of Lake Wales is more economical for the development.

ANALYSIS

The County issued a franchise agreement to Garden Grove Water Company, Inc. in 1987 granting exclusive right to provide water and wastewater service in a specified area.

The proposed Emmer Development Corporation project is located in the southwest corner of the Garden Grove franchised service area. Emmer contends that the cost of service from Garden Grove is unreasonable and that it is more economical to be served by the City of Lake Wales. They have cited Section 14 of Ordinance No. 82.11, Polk County Water and Sewer Systems Regulatory Ordinance which provides that "If the Commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted territory to that of another utility company is economical and feasible, it may amend the franchise agreement to delete the territory not served". A copy of Emmer's request is attached in the form of a letter from their legal counsel, Mr. Andrew Reilly, requesting the opportunity to show the Commission that it is at an unreasonable cost to be served by Garden Grove and it is economical and feasible to be served by Lake Wales.

EXHIBIT *A*

Polk County B.O.C.C.

JUN 04 1996 VOLUME 1 26

001751

Polk County Utilities Commission/Regular Agenda -- June 4, 1996
 RE: Developer's Request to be Excluded from Garden Grove Utility
 Service Area So They Can Be served by the City of Lake Wales
 June 4, 1996

Garden Grove has stated that they are ready, willing and able to serve the development, and that the cost of service is the same as for all other customers within the service area. Further, Garden Grove has filed legal action for declaratory judgement against the City of Lake Wales to determine if the City is prohibited from providing service within the franchised area.

The City of Lake Wales has written to the Board of County Commissioners requesting that the County favorably consider Emmer's request to be served by Lake Wales. The Emmer Development is contiguous to the City of Lake Wales' recently annexed area, and is within the City of Lake Wales service area boundary as defined by a September 1994 Water and Wastewater Intergovernmental Service Area Agreement. It should be noted that although the City has been requested to revise the intergovernmental service area boundary to exclude the area overlapping with Garden Grove's franchised area, the intergovernmental service area agreement is specifically between the City and the County. This agreement does not preempt the rights of existing water and wastewater providers in the area.

RECOMMENDATION

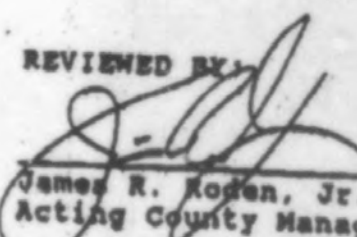
The Board of County Commissioners is being requested to determine if the Emmer Development should be deleted from the Garden Grove franchised service area.

FISCAL IMPACT

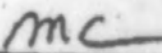
Not applicable.


DAC/mjm (5/22/96)
 attachments: as stated

REVIEWED BY:


 James R. Roden, Jr.
 Acting County Manager


 Darrell W. Gunn
 Public Works Department


 County Attorney


 Clerk to the Board

POLK COUNTY, FLORIDA - VOLUME 126 - JUNE 4, 1996

001612

For detailed list, see Check Register which is hereby adopted and incorporated herein by reference.

The Chairman then adjourned the meeting of the Board at 10:35 a.m.

RECONVENE AS PUBLIC UTILITIES COMMISSION

The Public Utilities Commission convened at 10:35 a.m., with the following members present: Neil Combee, Chairman, Ken Richardson, Nancy Rouse Caldwell, Marlene Duffy Young, and Jerry Carter.

RE: EMMER DEVELOPMENT CORPORATION/LAKE MYRTLE PUD 84-38
GARDEN GROVE WATER COMPANY
CITY OF LAKE WALES

Derrell Gunn, Director of Public Works, highlighted the memorandum, Exhibit F, and reported the Board is being requested to determine if the Emmer Development Corporation's proposed development, Lake Myrtle PUD 84-38, should be deleted from the Garden Grove franchise service area.

Andy Reilly, attorney for Emmer Development Corporation, gave the background information and explained the reason for the request. He showed slides, and discussed the Ordinance and the utility franchise.

Phil Emmer, Chairman of Emmer Development Corporation, explained his activities as a developer and the status of the current project under discussion. He discussed the difference in cost between Garden Grove Water Company and the City of Lake Wales in providing this service, and requested that the Board allow this project to be connected to the City of Lake Wales.

Doug Dardin, Envisors, Inc., described the conceptual site development plan and what the complex would contain as well as the proposed development schedule.

Rob Ori, CPA, discussed utility rate structures, defined the different terms used, and showed cost comparisons between the two providers and the impact to the development and individual home owner.

David Green, City Manager of the City of Lake Wales, spoke in support of the project and requested the franchise agreement with Garden Grove be amended and that this property be included in the City of Lake Wales.

Jack Brandon, attorney representing Garden Grove Water Company, reported that Garden Grove does have an exclusive franchise which it obtained in 1987. He gave some historical background in terms of Garden Grove's rate structure and reported the fees were set based upon a rate study completed by a consultant on the basis of capital improvements. He further reported that the only way the Board could remove this property from the franchise was if it found that Garden Grove failed to provide service and there is no evidence to support this. He requested that the Board not take this project out of the Garden Grove franchise area.

Discussion followed.

Commissioner Richardson moved to delete Emmer Development from the Garden Grove franchise service area.

POLK COUNTY, FLORIDA - VOLUME 126 - JUNE 4, 1996

001613

Mark Carpanini, County Attorney, reported that what is before the Board right now is a request by Emmer to make a finding that the extension of service to this development could be accomplished only at an unreasonable cost.

Commissioner Richardson then reported that that is his finding, that it is an unreasonable cost.

Commissioner Caldwell seconded the motion for discussion purposes.

After further discussion, Commissioner Caldwell withdrew her second and the motion died.

Commissioner Young moved that the Board find that the extension of service can be accomplished under the Ordinance by the private supplier consistent with the intent of the Ordinance.

Discussion followed and Commissioner Young changed her motion to deny the request of Emmer Development Corporation pursuant to Section 14 of the Ordinance to be excluded from the Garden Grove franchise area.

After further discussion, Commissioner Young changed her motion to direct legal staff to prepare Findings of Fact that the Board would need to deny this request that the area should not be deleted from the franchise area.

After further discussion, Commissioner Young changed her motion to direct legal staff to come back with supporting documentation to support a position to deny Emmer Development Corporation its request to be deleted from the Garden Grove franchise service area.

Mr. Carpanini reported he would bring back to the Board Findings of Fact and Conclusion as evidence of the action for Board adoption.

Commissioner Carter seconded the motion which, upon a vote, carried 4-1 with Commissioner Richardson voting against the motion.

The Chairman adjourned the Public Utilities Commission at 12:25 p.m.

RECONVENE

The Board of County Commissioners of Polk County, Florida, reconvened at 12:35 p.m., in regular session, with the following members present: Neil Combee, Chairman, Ken Richardson, Nancy Rouse Caldwell, Marlene Duffy Young, and Jerry Carter.

STATUS REPORT/MONG v. CROW

Mark Carpanini, County Attorney, discussed the case of Mong v. Crow as highlighted in Exhibit G and reported the mediated settlement called for \$67,000 to be paid to the plaintiff and Bob Trohn, attorney representing the County in this case, thought this would be taken care of through the County's insurance with Florida Association of Counties Trust (FACT) but FACT said the County agreed to pay the plaintiff's attorney's fees.

**APPROVAL TO CONSTRUCT NEW AMBULANCE STATION
IN WINTER HAVEN**

Jim Roden, Jr., Acting County Manager, highlighted Exhibit G, detailing a request for Board approval to construct a new ambulance station in Winter Haven, with a total cost not to exceed \$245,640.00.

On motion of Commissioner Young, seconded by Commissioner Richardson and upon vote carried 4/0 with Commissioner Caldwell absent, the Board approved the request as set forth in Exhibit G.

**AUTHORIZE CHAIRMAN TO EXECUTE STATE OF FLORIDA,
DEPARTMENT OF STATE, DIVISION OF LIBRARY AND INFORMATION
SERVICES GRANT AGREEMENT**

Charles Saddler, Director of Human Services, highlighted Exhibit H, detailing a request for Board approval and authorization for the Chairman to execute the State of Florida, Department of State, Division of Library and Information Services Grant Agreement in the amount of \$25,000.00 for Fiscal Year 1996-97.

Ms. Chancey, City of Bartow Librarian, thanked Mr. Saddler for his work on the grant and urged the Board to approve the request.

Whereupon, on motion of Commissioner Young, seconded by Commissioner Richardson and upon vote carried 4/0 with Commissioner Caldwell absent, the Board authorized the Chairman to execute the grant agreement as set forth in Exhibit H.

**ADOPT FINDINGS AND CONCLUSIONS
RE: EMMER DEVELOPMENT**

Mark Carpanini, County Attorney, presented Exhibit I, Findings and Conclusions, Re: Request of Emmer Development pursuant to Section 14 of Polk County Ordinance No. 82-11, as amended.

Whereupon, on motion of Commissioner Young, seconded by Commissioner Carter and upon vote carried 3/1 with Commissioner Richardson voting against the motion and Commissioner Caldwell absent, the Board adopted the Order, Exhibit I, Findings and Conclusions regarding a request of Emmer Development pursuant to Section 14 of Polk County Ordinance No. 82-11, as amended.

**APPROVE SETTLEMENT AGREEMENT BETWEEN POLK COUNTY,
DEPARTMENT OF COMMUNITY AFFAIRS AND
U.S.A. INTERNATIONAL SPEEDWAY, INC.**

Mark Carpanini, County Attorney, highlighted Exhibit J detailing a request for Board approval of a Settlement Agreement between Polk County, the Department of Community Affairs, and U.S.A. International Speedway, Inc.

Whereupon, on motion of Commissioner Young, seconded by Commissioner Carter and upon vote carried 4/0 with Commissioner Caldwell absent, the Board approved the Settlement Agreement, Exhibit K.

EXHIBIT G

Order No. PSC-96-0896-FOF-WS
(3 pages)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of Board of Commissioners of Polk County declaring Polk County subject to provisions of Chapter 367, F.S.) DOCKET NO. 960674-WS) ORDER NO. PSC-96-0826-FOF-WS) ISSUED: July 11, 1996)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ACKNOWLEDGING RESOLUTION
OF THE BOARD OF COUNTY COMMISSIONERS
DECLARING POLK COUNTY SUBJECT TO THE
PROVISIONS OF CHAPTER 367, FLORIDA STATUTES

BY THE COMMISSION:

On May 14, 1996, the Board of County Commissioners of Polk County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring that water and wastewater utilities in Polk County are subject to the provisions of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes. The Florida Public Service Commission received Polk County's resolution on May 24, 1996. The effect of the resolution is to invoke the Commission's jurisdiction over water and wastewater utilities in Polk County as of May 14, 1996.

We, therefore, find that the provisions of Chapter 367, Florida Statutes, became applicable in Polk County, effective May 14, 1996. All utilities as defined by Chapter 367, Florida Statutes, shall comply with the provisions of this Order.

Pursuant to Section 367.171(2)(a), Florida Statutes, each utility was required to register with this Commission within thirty (30) days of the date this Commission received jurisdiction, or by June 13, 1996. All utilities must obtain either a certificate of authorization or be exempt from regulation pursuant to Section 367.031, Florida Statutes.

Each utility desiring to obtain a grandfather certificate for the area served by such utility as of May 14, 1996, shall make application to this Commission pursuant to Section 367.171(2)(b),

ORDER NO. PSC-96-0896-FOF-WS
DOCKET NO. 960674-WS
PAGE 2

Florida Statutes, within ninety (90) days of the date this Commission received jurisdiction, or by August 12, 1996.

Each utility shall continue to collect the rates and charges for water and wastewater service which were being collected on May 14, 1996. Such rates and charges shall remain in effect until changed by this Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the resolution of the Board of County Commissioners of Polk County, declaring that Polk County be subject to the provisions of Chapter 367, Florida Statutes, effective May 14, 1996, is hereby acknowledged. It is further

ORDERED that all water and wastewater utilities in Polk County are hereby directed to comply with Commission procedures as set forth in the body of this Order and Chapter 367, Florida Statutes. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 11th day of July, 1996.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

(S E A L)

RA

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

EXHIBIT H

July 30, 1996 letter from Charles H. Hill

(7 pages)

State of Florida

Commissioners:
SUSAN P. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA

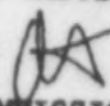


DIVISION OF WATER &
WASTEWATER
CHARLES HILL
DIRECTOR
(904) 413-6900

Public Service Commission

MEMORANDUM

July 30, 1996

TO: PROVIDERS OF WATER AND/OR WASTEWATER SERVICES
FROM: CHARLES H. HILL, DIRECTOR 
RE: FLORIDA PUBLIC SERVICE COMMISSION JURISDICTION

By resolution dated May 14, 1996, the Polk County Board of County Commissioners voted to transfer jurisdiction over privately owned water and wastewater utilities in Polk County to the Florida Public Service Commission, effective immediately. As you may be aware, the Florida Public Service Commission, (PSC) is a state agency which regulates the rates and charges of privately owned water and wastewater utilities in addition to electric, natural gas and telecommunications companies unless these utilities are found exempt from Commission regulation. A copy of the order which acknowledges Polk County's resolution is enclosed with this letter.

According to Section 367.171(2)(a), Florida Statutes, within thirty days after the PSC receives jurisdiction of water and wastewater utilities in a county, each utility shall register with the Commission. In addition, the utility must file an application for a grandfather certificate within ninety days. Due to the number of utility systems in Polk County, the Commission staff required additional time to contact all the operating entities. Utilities now receiving this letter should register with the Commission immediately.

Registration consists of sending a letter stating the name and address of the utility. A sample letter of registration is attached. This letter should be sent to the following address:

Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

- 2 -

In order to facilitate the application process, members of the Commission staff will be in Bartow August 20th through August 22nd. We plan to conduct an informal meeting at 10:00 a.m. on August 20 in the W.H. Stewart Conference Center. At this meeting, we will be distributing relevant materials and explaining the Commission's regulatory practices and procedures. After this meeting and continuing the next two days, we will be making individual appointments to help utility owners file an application for a grandfather certificate (Section 367.171(2)(b), Florida Statutes) and/or determine whether your system qualifies as exempt from Public Service Commission regulation. Since by law you are required to file an application for grandfather certificate with the PSC within ninety days, it is important that you attend this meeting on August 20, so that you will be able to receive your PSC Certificate. The W.H. Stewart Conference Center is located at 1710 Highway 17, South in Bartow; telephone number (941) 533-0765.

If you have any questions, please contact Mr. J. Travis Coker in the Bureau of Policy Development and Industry Structure at (904) 413-6997.

CHH/TC/jn
Enclosure

cc: Paula Zwack, Polk County Fiscal & Financial Manager

BATSEL, MCKINLEY, ITTERSAGEN, GUNDERSON & BERTSSON, P.A.
ATTORNEYS AT LAW

P.13
WAW

1801 PLACIDA ROAD SUITE 104
ENGLEWOOD, FLORIDA 34223
(813) 474-7713
TELEFAX (813) 474-8276

18401 MURDOCK CIRCLE
PORT CHARLOTTE, FLORIDA 33948
(813) 627-1000
TELEFAX (813) 255-0684

C. GUY BATSEL
MICHAEL R. MCKINLEY
SCOTT D. ITTERSAGEN
MIKO P. GUNDERSON
ROBERT H. BERTSSON
ROBERT F. KOCH

Reply To: Port Charlotte

October 18, 1994

Ms. Blanca S. Bayou, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Fletcher Building
Tallahassee, Florida 32399-0850

RECEIVED
OCT 21 1994
FPSC-RECORDS/REPORTING

RE: Bocilla Utilities, Inc./PSC Registration

To Whom It May Concern:

We represent Bocilla Utilities, Inc., a privately owned potable water utility located entirely within Charlotte County, Florida. On September 27, 1994, the Board of County Commissioners of Charlotte County adopted Resolution 94-195 (photocopy attached), which transfers regulatory jurisdiction to the Florida Public Service Commission (PSC). Pursuant to Section 367.171, Florida Statutes, we are hereby submitting the registration on behalf of our client with the PSC.

The information required for registration is as follows:

1. The full legal name of the utility is Bocilla Utilities, Inc. a Florida corporation.
2. Its mailing address is: 7050 Placida Road, Englewood, Florida 34229 with copy to Michael R. McKinley, Esquire, 18401 Murdock Circle, Port Charlotte, Florida 33948.
3. A brief description of the service area is as follows:

All those lands in Section 28, 29, 32, and 33, Township 41 South, Range 20 East, and a portion of Lands in Section 4, Township 42 South, Range 20 East, Charlotte County, Florida, lying between the Centerline of the Intracoastal Waterway (W.C.I.N.D.) and the Gulf of Mexico, bounded on the South by the south line of Don Pedro Beach, as recorded in Plat Book 7, Pages 17A through 17B, of the Public Records of Charlotte County, Florida and an Easterly projection thereof, and bounded on the North by a line described as follows:

Florida Public Service Commission
October 18, 1994
Page Two

Beginning at the intersection of the Gulf of Mexico and the Northerly line of Palm Island Estates Unit No. 1, as recorded in Plat Book 3, Pages 59A through 59C, of the Public Records of Charlotte County, Florida, thence Northeasterly along said Northerly line to an intersection with the North line of the South half of said Section 29; thence Easterly, along the North line of the South half of said Section 28 and 29, to the Centerline of said Intracoastal Waterway.

The above description contains plats of various units of Palm Island Estates, Don Pedro Beach, various condominiums and other lands. (See enclosed map.)

4. A tariff listing all rates and charges approved by the Board of County Commissioners will be provided to the PSC under separate cover. We will also submit the appropriate fee at that time.

Don't hesitate to contact us if you have any questions or further information is required.

Sincerely,



Michael R. McKinley

MRM/kt
Enclosure
22884104
cc: Bocilla Utilities, Inc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of Board of) DOCKET NO. 960674-WS
 Commissioners of Polk County) ORDER NO.
 declaring Polk County subject to) ISSUED:
 provisions of Chapter 367, P.S.)

The following Commissioners participated in the disposition of this matter:

- SUSAN F. CLARK, Chairman
- J. TERRY DEASON
- JOE GARCIA
- JULIA L. JOHNSON
- DIANE K. KIESLING

ORDER ACKNOWLEDGING RESOLUTION
OF THE BOARD OF COUNTY COMMISSIONERS
DECLARING POLK COUNTY SUBJECT TO THE
PROVISIONS OF CHAPTER 367, FLORIDA STATUTES

BY THE COMMISSION:

On May 14, 1996, the Board of County Commissioners of Polk County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring that water and wastewater utilities in Polk County are subject to the provisions of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes. The Florida Public Service Commission received Polk County's resolution on May 24, 1996. The effect of the resolution is to invoke the Commission's jurisdiction over water and wastewater utilities in Polk County as of May 14, 1996.

We, therefore, find that the provisions of Chapter 367, Florida Statutes, became applicable in Polk County, effective May 14, 1996. All utilities as defined by Chapter 367, Florida Statutes, shall comply with the provisions of this Order.

Pursuant to Section 367.171(2)(a), Florida Statutes, each utility was required to register with this Commission within thirty (30) days of the date this Commission received jurisdiction, or by June 13, 1996. All utilities must obtain either a certificate of authorization or be exempt from regulation pursuant to Section 367.031, Florida Statutes.

Each utility desiring to obtain a grandfather certificate for the area served by such utility as of May 14, 1996, shall make application to this Commission pursuant to Section 367.171(2)(b).

ORDER NO.
DOCKET NO. 960674-WS
PAGE 2

Florida Statutes, within ninety (90) days of the date this Commission received jurisdiction, or by August 12, 1996.

Each utility shall continue to collect the rates and charges for water and wastewater service which were being collected on May 14, 1996. Such rates and charges shall remain in effect until changed by this Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the resolution of the Board of County Commissioners of Polk County, declaring that Polk County be subject to the provisions of Chapter 367, Florida Statutes, effective May 14, 1996, is hereby acknowledged. It is further

ORDERED that all water and wastewater utilities in Polk County are hereby directed to comply with Commission procedures as set forth in the body of this Order and Chapter 367, Florida Statutes. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 11th day of July, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RA

ORDER NO.
DOCKET NO. 960674-WS
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

COMPOSITE EXHIBIT I

Registration by Garden Grove Water Company, Inc.
(4 pages)

Receipt (1 page)



GARDEN GROVE WATER CO., INC.

3601 CYPRESS GARDENS ROAD - WINTER HAVEN, FLORIDA 33884 - PHONE 324 4318

August 6, 1996

Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Garden Grove Water Company, Inc./PSC Registration

To Whom It May Concern:

Pursuant to Section 367.171(2) (a), Florida Statutes, we are hereby submitting the registration on behalf of Garden Grove Water Company, Inc. with the PSC.

The information required for registration is as follows:

1. The full legal name of the utility is Garden Grove Water Company, Inc., a Florida Corporation.
2. Its mailing address is 3601 Cypress Gardens Road, Winter Haven, Florida 33884.
3. A legal description of the service area is attached hereto.
4. We will be submitting an application for a Grandfather Certificate in the near future.

Please don't hesitate to contact us if you have any questions or further information is required.

Sincerely,

A handwritten signature in black ink, appearing to read "John G. Wood, Jr.", written over a printed name and title.

John G. Wood, Jr.
Vice-President

JGW/km

Description: Franchise Area
Garden Grove Water Company

Date: October 9, 1987

Legal Description

Begin at an intersection of the northerly right of way line of Seaboard Coastline Railroad and the north south center of section line of Section 9, Township 29 South, Range 26 East, Polk County, Florida; thence north along said center of section line to the northerly right of way line of Eloise Loop Road; thence southeasterly along said northerly right of way line to the west boundary of U.S. Government Lot 4, Section 9, Township 29 South, Range 26 East; thence north along said west boundary to the north boundary of said U.S. Government Lot 4; thence east along said north boundary to the waters of Lake Eloise thence south, southeasterly, south, east, north, east, northeasterly, northerly, and westerly along said waters edge to its intersection with the west boundary of the east half of U.S. Government Lot 3 in Section 3, Township 29 South, Range 26 East; thence run north along the said west boundary to the northwest corner of said east half of U.S. Government Lot 3; thence continuing north along the west boundary of U.S. Government Lot 3 (E1/2 of SW1/4), Section 34, Township 28 South, Range 26 East, to the northwest corner of said U.S. Government Lot 3; thence continuing north to the northwest corner of northeast quarter of the northwest quarter of said Section 34, Township 28 South, Range 26 East; thence west along the north boundary of said northwest quarter of Section 34 to the waters of Lake Otis; thence northerly along said waters to an intersection with the north boundary of the southwest quarter of Section 27, Township 28 South, Range 26 East; thence east along said north boundary of the southwest quarter of Section 27 to the waters of Lake Link; thence southerly, easterly and northerly along said waters to the aforesaid north boundary of the southwest quarter of Section 27; thence east along said north boundary of the southwest quarter of Section 27 to the northwest corner of the southeast quarter of said Section 27; thence east along the north boundary of the southeast quarter of Section 26, Township 28 South, Range 26 East; thence east along the north boundary of said southwest quarter of Section 26 to the southwest corner of the northeast quarter of said Section 26; thence north along the west boundary of said northeast quarter of Section 26 to the centerline of Dundee Road (SR 542); thence east along said centerline of Dundee Road to the east right of way line of Carl Floyd Road; thence south along said east right of way line of Carl Floyd Road to the north right of way line of Executive Road; thence east along said north right of way line and easterly extension thereof to an intersection with the southerly extension of the centerline of Country Club Road; thence north along said southerly centerline extension to an intersection with the centerline of Dundee Road; thence easterly along said centerline of Dundee Road to the east boundary of Section 25, Township 28 South, Range 26 East; thence north along said east boundary of Section 25 to the southeast corner of Section 24, Township 28 South, Range 26 East; thence north along the east boundary of said Section 24 to the north boundary of Section 19, Township 28 South, Range 27 East; thence east along said north boundary of Section 19 to the east boundary of said Section 19; thence south along said east boundary of Section 19 to the northwest corner of the southwest quarter of Section 20, Township 28 South, Range 27 East; thence east along the north boundary of said southwest quarter of Section 20 to the east boundary of said southwest quarter; thence south along said east boundary of the southwest quarter to the south boundary of said southwest quarter; thence run south along the center of said Section 29 to the south quarter corner and continue south to the southwest corner of the southwest quarter of the northeast quarter of Section 32, Township 28 South, Range 27 East; thence run east along the south boundary of the said northwest quarter of the northeast quarter to the westerly right of way of U.S. Highway 27; thence run southerly along the said westerly right of way of U.S. Highway 27 to its intersection with the south boundary of Section 5, Township 29 South, Range 27 East; thence west along said south boundary to the southwest corner of said Section 5; thence south along the east boundary of Section 7 and 18, Township 29 South, Range 27 East; thence continue south to the southeast corner of the north half of said Section 19; thence west along the south boundary of said north half to the southeast corner of the north half of Section 24 and 23, Township 29 South, Range 26 East; thence continue west along the south boundary of said north half of the southwest

corner of the northwest quarter of said Section 23; thence continue east along the south boundary of the northeast quarter of Section 22, Township 29 South, Range 26 East to an intersection with the north right of way line of Seaboard Coastline Railroad; thence north along said northerly right of way to the POINT OF BEGINNING. Less and except the Orchid Springs Franchise, described as follows, to-wit: **TRACT A:** Starting at the NE corner of Section 35, Township 28 South, Range 26 East, run thence S. $0^{\circ} 22'$ East along the East boundary of Section 35 a distance of 580.8 feet to a concrete marker for the point of beginning; run thence S. $0^{\circ} 22'$ East along the East boundary of Section 35 a distance of 1414.2 feet; thence N. $89^{\circ} 44'$ East a distance of 560 feet; thence N. $33^{\circ} 58'$ East a distance of 1000 feet; thence N. $40^{\circ} 11'$ West a distance of 1826.13 feet; thence N. $60^{\circ} 57'$ West a distance of 467 feet to the Easterly right-of-way boundary of State Road 542; thence S. $29^{\circ} 03'$ West along the Easterly right-of-way of State Road 542 a distance of 1195 feet; thence N. $89^{\circ} 44'$ East a distance of 1038.76 feet to the Point of Beginning, and **TRACT B:** North 420 feet of the South 749.20 feet of the NE-1/4 of the NE-1/4 of Section 35, Township 28 South, Range 26 East, lying East of the right-of-way of State Road S-542, containing approximately 11.16 acres, and also described as: That part of the North 420 feet of the South 749.20 feet of Lots 1 and 2 of Florida Highland Company's Subdivision of Section 35, Township 28 South, Range 26 East, as recorded in Plat Book 3A, at page 27, of the public records of Polk County, Florida, lying East of the right-of-way of State Road S-542. Also the 12-1/2 feet immediately-East of the above-described property which was closed as a road by Polk County Commissioners. Resolution recorded in Official Records Book 1067, page 823. **Tract #1:** That part of Lot 2 lying Northwesterly of the right-of-way of State Road #542 in Highland Company Subdivision, as recorded in Plat Book 3A, page 27, of the public records of Polk County, Florida, lying and being in the NE-1/4 of the NE-1/4 of Section 35, Township 28 South, Range 26 East, Polk County, Florida. **TRACT #2:** All that part of Lots 3, 9 and 17 of said Highland Company Subdivision, as recorded in Plat Book 3A, page 27, of the public records of Polk County, Florida, lying Northerly of a line described as follows: Starting at the corner common to Sections 25, 26, 35 and 36, Township 28 South, Range 26 East, Polk County, Florida, run thence N. $89^{\circ} 46'$ E. along the South boundary of said Section 25 a distance of 148.78 feet for the point of beginning; thence run N. $40^{\circ} 11'$ W. a distance of 303.13 feet, thence N. $60^{\circ} 57'$ W. a distance of 467 feet to a concrete marker located on the Easterly right-of-way boundary of State Road #542 at a point 459.05 feet North and 454.77 feet West of the common corner above described for the end of said line. SUBJECT to rights-of-way as of record and/or in use. **TRACT #3:** Lot 6, of Highland Company Subdivision, as recorded in Plat Book 3A, page 27, of the public records of Polk County, Florida, lying and being in the Southeast Quarter of the Northeast Quarter of Section 35, Township 28 South, Range 26 East; AND That part of the Northwest Quarter of Section 36, Township 28 South, Range 26 East, Polk County, Florida, described as: Starting at the Northwest corner of Section 36, Township 28 South, Range 26 East, run thence North $89^{\circ} 46'$ East along the North boundary of Section 36 a distance of 148.78 feet for the point of beginning; thence run South $49^{\circ} 11'$ E. a distance of 1523.0 feet, thence South $33^{\circ} 58'$ W. a distance of 1000.0 feet, thence South $89^{\circ} 44'$ W. a distance of 560 feet to the West boundary of Section 36, thence South $0^{\circ} 22'$ East along the Section line a distance of 464.95 feet to a point 200.04 feet Northerly of the Southwest corner of the Northwest Quarter of Section 36, thence run North $69^{\circ} 50' 30''$ E. along the centerline of a canal a distance of 683.83 feet, thence North $33^{\circ} 58'$ E. a distance of 1296.18 feet, thence North $40^{\circ} 11'$ W. a distance of 1506.60 feet to a point on the North boundary of Section 36, thence run South $89^{\circ} 46'$ W. Along the said North boundary of Section 36 a distance of 260.89 feet to the point of beginning. SUBJECT to rights-of-way as of record and/or in use. (37.1). **TRACT #4:** All that part of the Northwest Quarter of Section 36, Township 28 South, Range 26 East, Polk County, Florida, lying Easterly and Northerly of a line described as: Starting at the Northwest corner of Section 36, run thence North $89^{\circ} 46'$ East along the North boundary of Section 36, a distance of 409.67 feet for the point of beginning of said line; run thence South $40^{\circ} 11'$ East a distance of 1506.60 feet, thence South $33^{\circ} 58'$ West a distance of 1296.18 feet to the centerline of a canal, thence run North $69^{\circ} 50' 30''$ East along the centerline of said canal a distance of 2139.4 feet, more or less, to its intersection with the East boundary of said Northwest Quarter of Section 36, for the end of said line. SUBJECT to rights-of-way as of record and/or in use. **TRACT #5:** The South one-half of the Southeast Quarter of Section 25, Township 28 South, Range 26 East, Polk County, Florida, LESS AND EXCEPT: Begin at the Northeast corner of said South one-half of the Southeast Quarter and run S. $0^{\circ} 19' 17''$ E. along the East line of said South one-half of the Southeast Quarter a distance of 457.10 feet, thence N. $88^{\circ} 44' 17''$ W. 108.15 feet, thence S. $52^{\circ} 15' 43''$ W. 476.63 feet, thence S. $0^{\circ} 5' 17''$ E.

252.20 feet, thence S. $89^{\circ}54'43''$ W. 138.00 feet, thence N. $0^{\circ}5'17''$ W. 182.00 feet, thence N. $80^{\circ}58'17''$ W. 419.00 feet, thence N. $50^{\circ}57'17''$ W. 725.00 feet, thence N. $69^{\circ}41'17''$ W. 625.70 feet, thence N. $0^{\circ}5'17''$ W. 72.69 feet to a point on the North line of said South one-half of the Southeast Quarter, thence N. $89^{\circ}54'43''$ E. along North line 2184.81 feet to the point of beginning, LESS AND EXCEPT right-of-way of State Road S-542, and LESS AND EXCEPT the East 30 feet of the South 866.9 feet of the Southeast Quarter of the Southeast Quarter of said Section 25 for road. TRACT #6: That part of the Northeast Quarter of Section 36, Township 28 South, Range 26 East, Polk County, Florida, described as: Beginning at the Northeast corner of Section 36, run thence South along the East boundary of Section 36 a distance of 533.80 feet to its intersection with the centerline of a canal, thence run S. $69^{\circ}50'30''$ W. along said centerline of canal a distance of 2823.3 feet, more or less, to its intersection with the West boundary of said Northeast Quarter, thence run North along the West boundary of said Northeast Quarter to the Northwest corner of the Northeast Quarter, thence run Easterly along the North boundary of said Northeast Quarter of Section 36 a distance of 2642.28 feet to the point of beginning, SUBJECT to right-of-way over the East 30 feet thereof.

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REFERENCE NUMBER: 4000255552 349885

NAME: Garden Grove, Water

TELEPHONE: John G. Wood Jr 813-324-2663

COMPANY: JOHN WOOD REALTY INC

STREET ADDRESS: 3501 CYPRESS GARDENS

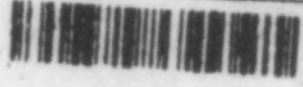
CITY AND STATE: WINTER HAVEN FL ZIP CODE: 33854

NAME: Division of Record & Reporting

COMPANY: Florida Public Service Comm.

STREET ADDRESS: 2540 Shumard Oak Blvd

CITY AND STATE (INCLUDE COUNTRY IF INTERNATIONAL): Tallahassee FL ZIP CODE: 32399-0850



WEIGHT: LTR DIMENSIONAL WEIGHT: ZONE: SHIPPER'S COPY

NEXT DAY AIR WORLDWIDE EXPRESS (INTERNATIONAL)

FOR ADDITIONAL EXPRESS SERVICES: SATURDAY PICKUP SATURDAY DELIVERY

DECLARED VALUE: AMOUNT \$

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An Additional Handling Charge applies for certain items. See instructions.

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<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

RECEIVER'S / THIRD PARTY'S UPS AGENCY NO. OR MAJOR CREDIT CARD NO. SIGNATURE DATE

THIRD PARTY'S COMPANY NAME: _____

STREET ADDRESS: _____

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SHIPPER'S SIGNATURE: X.M. Hardy DATE OF SHIPMENT: 8/16/83

EXHIBIT J

Emmer's December 3, 1996
Notice of Voluntary Dismissal of
Petition for Writ of Certiorari
(1 page)

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

EMMER DEVELOPMENT CORP.,
a Florida corporation,

Petitioner,

vs.

CASE NO. GC-G-96-1775

POLK COUNTY, a Political Subdivision
of the State of Florida, acting through
THE BOARD OF COUNTY COMMISSIONERS OF
POLK COUNTY, sitting as THE POLK COUNTY
UTILITIES COMMISSION,

Respondent.

NOTICE OF VOLUNTARY DISMISSAL OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 1.420(a) of the *Florida Rules of Civil Procedure* and Rule 9.350(b) of the *Florida Rules of Appellate Procedure*, Petitioner, EMMER DEVELOPMENT CORP., by and through the undersigned attorneys, after further research, believes that the Public Service Commission has exclusive jurisdiction over the issues before this Court and therefore voluntarily dismisses its Petition for Writ of Certiorari.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Jack P. Brandon, Esquire, Post Office Box 1079, Lake Wales, Florida 33859-1079, and Mark F. Carpanini, Esquire, County Attorney's Office, Post Office Box 80, Bartow, FL 33831-0080, this 3rd day of December, 1996.

FROST, O'TOOLE & SAUNDERS, P.A.

By: 

John W. Frost, II
Florida Bar No. 114877
Post Office Box 2188
Bartow, FL 33831-2188
(941) 533-0314
(941) 533-8985 (FAX)
ATTORNEYS FOR PETITIONER

cc: Honorable Charles A. Davis, Jr.

COMPOSITE EXHIBIT K

West Charlotte Utilities, Inc.
v. The Board of County Commissioners,
Charlotte County

Case No. 94-1839-CA

PSC's Response to Defendant's Second
Amended Answer and Affirmative Defenses
and Counterclaims dated April 12, 1995
(4 pages)

Circuit Court Judge Casanueva's Order
dated June 5, 1995 (1 page)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL
CIRCUIT, IN AND FOR CHARLOTTE COUNTY, FLORIDA

WEST CHARLOTTE UTILITIES,
INC., a Florida Corporation,

Plaintiff,

v.

CASE NO. 94-1839-CA

THE BOARD OF COUNTY
COMMISSIONERS, Charlotte
County, Florida

Defendant.

FLORIDA PUBLIC SERVICE COMMISSION'S RESPONSE
TO DEFENDANT'S SECOND AMENDED ANSWER AND
AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Comes forth the Florida Public Service Commission ("Commission"), who was named in Defendant's Counterclaim, and hereby provides its Response to Defendant's Second Amended Answer and Affirmative Defenses and Counterclaim.

Jurisdiction Does Not Reside With Commission

In response to Defendant's Counterclaim, the Commission states that:

1. The disputed issues in this action were pending before the County at the time it passed general regulatory jurisdiction to the Commission.

2. On September 27, 1994, the Defendant passed general regulatory jurisdiction over water and wastewater utilities in Charlotte County to the Commission. On September 29, 1994, the Plaintiff transferred its assets to Englewood Water District ("Englewood"), a governmental authority, pursuant to Section 367.071, Florida Statutes. The transfer to the governmental

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FLORIDA PUBLIC SERVICE COMMISSION'S RESPONSE TO
DEFENDANT'S SECOND AMENDED ANSWER AND AFFIRMATIVE
DEFENSES AND COUNTERCLAIM

authority occurred as a matter of right. Pursuant to Section 367.022(2), Florida Statutes, Englewood is exempt from Commission regulation. The only time that the Commission had general regulatory jurisdiction over the Plaintiff was between September 27, 1994 and September 29, 1994. The Commission never did, and does not, have jurisdiction over the disputed issues in this action.

3. Pursuant to Court Order dated January 18, 1995, the Commission filed an amicus brief in the parallel case to this action, Case No. 95-22-CA, on or about February 6, 1995, in which it stated its position regarding jurisdiction.

4. It is well settled by case law that the Commission has only the authority expressly or impliedly conferred to it by statute. City of Cape Coral v. GAC Utilities, Inc., of Florida, 281 So.2d 493, 496 (Fla. 1973). In that case, the Court stated:

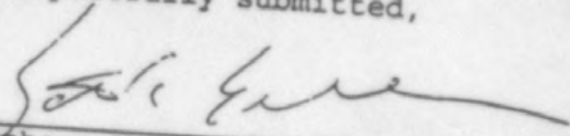
... the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State. Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof ... (citations omitted).

5. Section 367.171, Florida Statutes, outlines the effectiveness of Chapter 367 when regulatory jurisdiction passes between a county and the Commission. Nowhere in Chapter 367, Florida Statutes, does the Legislature provide for the Commission

FLORIDA PUBLIC SERVICE COMMISSION'S RESPONSE TO
DEFENDANT'S SECOND AMENDED ANSWER AND AFFIRMATIVE
DEFENSES AND COUNTERCLAIM

to hear matters pending before a county at the time a county passes general regulatory jurisdiction to the Commission. The fact that the Legislature failed to expressly mention whether the Commission could hear matters pending before a county when general regulatory jurisdiction passes to the Commission shows that there is a reasonable doubt as to the lawful existence of the Commission's power to hear such pending matters. Therefore, Cape Coral, supra, requires that the doubt be resolved against finding such Commission jurisdiction. The Commission has no jurisdiction over the disputed issues in this action.

Respectfully submitted,



Robert Vandiver, General Counsel
Scott K. Edmonds, Staff Counsel
Florida Bar No. 001211
FLORIDA PUBLIC SERVICE COMMISSION
101 East Gaines Street
Tallahassee, Florida 32399-0863
(904) 487-2740

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT, IN
AND FOR CHARLOTTE COUNTY,
FLORIDA.

GENERAL JURISDICTION DIVISION

WEST CHARLOTTE UTILITIES,
INC., a Florida Corporation,

Plaintiff,

v.

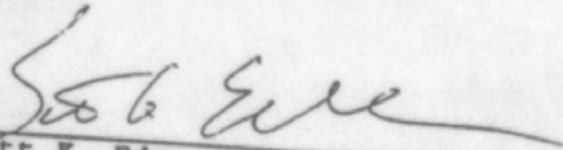
CASE NO. 94-1839-CA

THE BOARD OF COUNTY
COMMISSIONERS, Charlotte
County, Florida

Defendant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
was served by U.S. mail on this 12th day of April, 1995, to:
Andrew Shaw, Esquire, Ferguson, Skipper, Shaw, Keyser, Baron &
Tirabassi, P.A., 1515 Ringling Blvd., Suite 1000, Post Office Box
3018, Sarasota, Florida 34230; and John R. Marks, III, Esquire,
Katz, Kutter, Haigler, Alderman, Marks & Bryant, P.A., 106 E.
College Avenue, Suite 1200, Tallahassee, Florida 32301


Scott K. Edmonds, Staff Counsel
Florida Bar No. 001211
FLORIDA PUBLIC SERVICE COMMISSION
101 East Gaines Street
Tallahassee, Florida 32399-0863
(904) 487-2740

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA
CIVIL DIVISION

WEST CHARLOTTE UTILITIES,
INC., a Florida corporation,

Plaintiff,

vs.

CASE NO. 95-22-CA

THE BOARD OF COUNTY COMMISSIONERS
Charlotte County, Florida

Defendant.

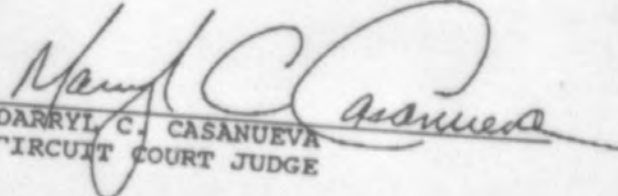
ORDER

THIS CAUSE coming on before the Court for consideration upon the Writ of Prohibition sought by the Plaintiff, and each party having filed the appropriate documentation and argument in support thereof and in opposition of the request, and the Court having received authority from the parties to resolve the matter based on the contents of the court file, it is hereby

ORDERED and ADJUDGED that the Petition is denied. The Court finds that the Respondent transferred to the Public Service Commission prospective jurisdiction of any new matter that arose after the date of transfer, and retained unto itself jurisdiction to conclude those matters pending before it. It is further

ORDERED and ADJUDGED that in that a Writ of Prohibition is to prevent an inferior tribunal from undertaking actions that exceed its jurisdiction, that the granting of said writ in the instant case would be inappropriate. In that any action undertaken by the Defendant/Respondent that the Petitioner/Plaintiff deems to be in derogation of its rights or contrary to law are subject to appellate review, it would be inappropriate to use the Writ of Prohibition to prevent the Defendant/Respondent from making an erroneous decision. On this additional ground, the Petition is also denied.

DONE and ORDERED on this 5 day of June 1995 at the Charlotte County Courthouse, Punta Gorda, FL.


DARRYL C. CASANUEVA
CIRCUIT COURT JUDGE

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To	BOB G	From	(a)
Co.		Co.	
Dept.	please call!	Phone #	
Fax #		Fax #	

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