

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

RECEIVED FPSC  
JUN 27 AM 10:14  
COMMISSION CLERK

**DATE:** 06/27/2002

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK  
ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF ECONOMIC REGULATION (REDEMANN) *Ref ID*  
OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN, GERVASI) *see NASSAU Ref 199*

**RE:** DOCKET NO. 990817-WS - APPLICATION BY FLORIDA WATER SERVICES CORPORATION FOR AMENDMENT OF CERTIFICATES NOS. 171-W AND 122-S TO ADD TERRITORY IN NASSAU COUNTY.  
COUNTY: NASSAU

**AGENDA:** 07/09/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\990817C.RCM

### CASE BACKGROUND

Florida Water Services Corporation (Florida Water or utility) is a Class A utility that provides water and wastewater service to approximately 84,645 water customers and 42,159 wastewater customers in Florida. The utility's 2001 annual report shows a total annual operating revenue of \$94,628,152 and a net operating income of \$11,950,624.

On June 24, 1999 the utility applied for an amendment to Water Certificate No. 171-W and Wastewater Certificate No. 122-S in Nassau County, Florida pursuant to Rule 25-30.036(3), Florida Administrative Code. The purpose of the amendment was to provide water and wastewater service to a proposed development on Crane Island which will be developed into 260 single family homes, a 360-room inn, a 2,000 square foot civic center, a 4,500 square foot yacht club with 90 slips, and a 100-seat restaurant.

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FPSC-COMMISSION CLERK

On July 21, 1999, Florida Public Utility Corporation (FPUC) timely filed an objection to the application. Pursuant to Order No. PSC-99-1708-PCO-WS, issued September 1, 1999, this matter was scheduled for an administrative hearing to be held on May 23 and May 24, 2000.

On November 9, 1999, Florida Water filed a Stipulated Motion for Stay of Case Schedule requesting that all hearing and filing dates be suspended. By Order No. PSC-99-2235-PCO-WS, issued November 12, 1999, the motion was granted in part and denied in part. Pursuant to Order No. PSC-99-2235-PCO-WS, the filing dates were suspended for a period of 45 days from the issuance date of the Order, but the prehearing and hearing dates remained scheduled. By close of business on the 45th day, the parties were required to file either a written settlement agreement or report that outlined dates certain for any other actions which would resolve the protest. On January 6, 2000, the parties filed a written settlement agreement. The Prehearing and Hearing dates scheduled in this matter were canceled.

As further discussed in Issue 1, upon reviewing the settlement agreement, Commission staff (staff) requested that the parties clarify and/or modify certain aspects of the agreement. On April 19, 2000, FPUC filed an Amendment of Settlement Agreement entered into by the parties. Further, in FPUC's letter accompanying the Amendment of Settlement Agreement, FPUC states that upon acceptance of the parties settlement, FPUC's protest may be considered withdrawn.

Also, on July 12, 1999, a copy of the application was sent to the Department of Community Affairs (DCA) for comment, pursuant to the Memorandum of Understanding entered into between the Commission and DCA on June 5, 1998. A response was received on August 12, 1999. In its initial response, the DCA stated that there is no need for service in the proposed area and that development as proposed in the certificate application appeared to be inconsistent with the Nassau County Comprehensive Plan, allowing a maximum of one dwelling unit per 5 acres. DCA also stated that the site is located in the Coastal High Hazard Area.

Following the filing of the negotiated settlement between the parties in April 2000, the staff contacted Florida Water to request its analysis and response to the DCA comments. The utility responded to the DCA's comments by letter dated August 3, 2000.

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Since so much time had elapsed from the initial filing of the amendment, the staff also recontacted the DCA and requested it review the utility's comments. The DCA provided a follow-up response on September 12, 2000, in which the DCA concluded that its earlier comments were still valid. DCA asserts that according to the Future Land Use Map (FLUM), Crane Island is designated a Conservation wetlands; however, the developer contends that the island is uplands.

Due to this disagreement, an inspection of Crane Island was conducted. On November 15, 2000, a joint on-site inspection was made with the developer's attorney (Jacobs and Associates, Inc.), the developer (CIVITAS), the DCA, the Florida Department of Environmental Protection (DEP), the Nassau County Planning Department, the Northeast Florida Regional Planning Counsel, and the PSC.

On November 29, 2000, the DCA wrote a letter to the developer's attorney still indicating a concern for the development, but indicating that there was a proposal to change the land use. Nassau County had submitted a change to its comprehensive plan regarding Crane Island.

On November 28, 2001, Florida Water sent a letter indicating that an agreement had been reached with DCA regarding its objections, but that the City's right of way issue was outstanding. Florida Water stated that a mediation had been set for December 2001 and a trial was scheduled on the right of way issue for January of 2002.

On May 15, 2002, Florida Water sent another letter regarding the status of the development. In its letter, Florida Water indicated that development approval for the territory requested by the application submitted in this docket had been delayed. Further, Florida Water stated that DCA indicated that it would be November 2002 at the earliest before the development obtained the necessary approvals.

It is staff's understanding that the developer and Nassau County are still in negotiations with DCA regarding the land use of Crane Island. However, the DCA, Nassau County, and the developer have not agreed to the number of units to be developed at this time.

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It has become clear that the development issues will take until at least November of 2002 to be resolved. However, staff believes that it is appropriate at this time to address the outstanding Settlement Agreement as amended. The Settlement Agreement and the Amendment of Settlement Agreement constitute Attachment A which is appended to this recommendation. Issue 1 addresses Florida Water's and FPUC's proposed settlement agreement.

The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission approve the Settlement Agreement, filed January 6, 2000, as amended by the Amendment to the Settlement Agreement, filed April 19, 2000, by Florida Water Services Corporation and Florida Public Utilities Company?

**RECOMMENDATION:** Yes. The Commission should approve the Settlement Agreement, filed January 6, 2000, as amended by the Amendment to the Settlement Agreement, filed April 19, 2000, by Florida Water Services Corporation and Florida Public Utilities Company, and Florida Public Utilities Company's protest should be considered withdrawn. **(CHRISTENSEN, GERVASI)**

**STAFF ANALYSIS:** As stated in the case background, pursuant to Order No. PSC-99-2235-PCO-WS, Florida Water's Stipulated Motion for Stay of Case Schedule was granted, in part, suspending the filing dates for a period of 45 days from the issuance date of the Order. The parties were required to file either a written settlement agreement or report that outlined dates certain for any other actions which would resolve the protest by the close of business on the 45th day. Pursuant to this Order, an order reestablishing the key activities dates would be issued if no written settlement agreement or report was received. The 45 day period concluded on December 27, 1999. No written settlement or report had been received by the 45th day. Therefore, staff was in the process of establishing the key activities dates.

However, shortly thereafter, FPUC informed staff that an agreement had been written and was in the process of being signed. FPUC stated that due to the holidays, the parties were having difficulties obtaining the necessary signatures in a timely fashion. On January 6, 2000, the parties filed a Settlement Agreement. Subsequently, the Prehearing and Hearing dates were canceled by the Chairman's Office.

The settlement agreement, filed January 6, 2000, provides, in pertinent part, the following:

1) The Parties agree that the boundary between Florida Public Utilities Company and Florida Water Services Corporation is the southerly city limits of the City of Fernandina Beach as said boundary exists as of the date of this agreement.

2) FPUC does not object to the extension requested by Florida Water to add Crane Island to its certificated territory as that area is described in attachment A hereto.

3) With the exception of Crane Island, Florida Water will not add service territory nor provide service to customers north of the southerly boundary of the City of Fernandina Beach and FPUC will not add areas or serve customers south of that boundary or in the area described as Crane Island.

4) Neither Party believes that it has customers in the other party's service area as agreed to herein but in the event there are, then those customers would continue to receive service from the current provider of service.

Staff had concerns with certain aspects of the settlement agreement as written. FPUC had no metes and bounds description of its territory. Pursuant to Order No. 3798, issued April 28, 1965, in Docket No. 7848-W, FPUC was granted a certificate which included "[a]ll of the territory encompassed by the corporate limits of the City of Fernandina Beach . . . and any additions thereto as may be legally annexed from time to time."<sup>1</sup> Due to the above described circumstance, staff requested that the parties include a metes and bounds description of the current southerly city limits of the City of Fernandina Beach as said boundary exists as of the date of this agreement.

Staff's second concern regarded paragraph 4 of the Settlement Agreement which would allow customers to remain with their current providers once they were discovered to be residing outside that utility's certificated territory. Section 367.045(2)(a), Florida Statutes, states that "[a] utility may not delete or extend its service outside the area described in its certificate of

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<sup>1</sup>Staff notes that by Order No. PSC-02-0555-PAA-WS, issued April 23, 2002, in Docket No. 011344-WS, the Commission acknowledged that Nassau County is no longer within the Commission's jurisdiction. That Order was consummated by Order No. PSC-02-0691-CO-WS, issued May 21, 2002. Since FPUC is no longer under the Commission's jurisdiction, there is no need to correct FPUC's territory description. Further, if the Commission approves the Settlement agreement as amended, FPUC will no longer have any pending matters before the Commission.

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authorization until it has obtained an amended certificate of authorization from the [C]ommission." Staff requested that the parties clarify or modify this provision of the settlement agreement since it appeared to be in conflict with Section 367.045(2)(a), Florida Statutes.

On April 19, 2000, the parties filed an Amendment to the Settlement Agreement which states, in pertinent part, the following:

1) The Parties agree that the legal description of the southerly city limits of the City of Fernandina Beach which the parties agree is the boundary between the companies is as set forth in Attachment A hereto, which is a metes and bounds description.

2) The parties agree to delete paragraph 4 of the Settlement agreement, with which staff was concerned because it appeared to be in conflict with Section 367.045(2), Florida Statutes.

3) All other provisions of the Settlement Agreement included in Attachment B are herewith reaffirmed.

The Amendment of Settlement Agreement, filed April 19, 2000, resolves staff's concerns with the original Settlement Agreement. Even though staff is unable complete the processing of this application due to the outstanding development issues, staff believes it is beneficial to approve the settlement agreement at this time to resolve the outstanding protest by FPUC. Upon approval of the settlement agreement, FPUC will no longer have any pending matters before the Commission. Further, staff believes that the settlement agreement as amended is a reasonable resolution of FPUC's protest which benefits all participants in this proceeding by alleviating the time and expense of a hearing in this matter.

For the foregoing reasons, staff recommends that the Commission approve the Settlement Agreement, filed January 6, 2000, and the Amendment of Settlement Agreement, filed April 6, 2000, by Florida Water and FPUC. Staff further recommends that the Commission acknowledge the withdrawal of FPUC's protest upon approval of the settlement agreement as amended.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No, this docket should remain open pending the processing of the amendment application. (CHRISTENSEN, GERVASI)

**STAFF ANALYSIS:** The docket should remain open pending the processing of the amendment application.



**ATTACHMENT A**

**AMENDMENT OF SETTLEMENT AGREEMENT**

WHEREAS, on January 6, 2000, Florida Public Utilities Company ("FPUC") and Florida Water Services Corporation ("Florida Water") filed a Settlement Agreement in Docket No. 990817-WS; and

WHEREAS, the parties desire to modify and clarify that Agreement;

NOW, THEREFORE, the Parties have agreed to the following amendments to the Settlement Agreement.

1. The Parties agree that the legal description of the southerly city limits of the City of Fernandina Beach which the parties agree is the boundary between the companies is as set forth in Attachment A hereto.

2. The parties agree to delete paragraph 4 of the Settlement Agreement.

3. All other provisions of the Settlement Agreement included as Attachment B are herewith reaffirmed.

CC Stern

On behalf of Florida Public Utilities Company

Justin Street vice president

On behalf of Florida Water Services Corp.

3/20/00  
Date

4-14-00  
Date

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Sections 10 and 11

Begin at center channel line of the Intracoastal Waterway and intersection of the center channel line of drainage canal, which services the Fernandina Beach Municipal Airport; thence run in a Northeasterly direction along said center channel line to the intersection of the South line of Section 11, Township 2 North, Range 28 East; thence run N 80° 24' E, along the South line of Section 11, Township 2 North, Range 28 East, to the center line of S.R. 105-A (Amelia Rd.); thence run S 10° 01' W, a distance of 300 feet more or less to the South line of said Section 11; thence run N 80° 24' E along said South line of Section 11 to the Easterly right-of-way line of the Amelia Island Parkway; thence run N 14° 48'30" E, 600.92 feet; thence run N 12°01'39" E 2,336.52 feet; thence run N 89°37'29" E 237.70 feet; thence run N 87° 33'04" E, 699.08 feet; thence run S 10° 00'07" W, 652.89 feet; thence run S 78°25'09" E, 154.37 feet; thence run S 11°20'10" W, 910.35 feet; thence run N 86° 07'18" E. 719.19 feet, more or less to low water line of the Atlantic Ocean, said point of ending is also the Southeast corner of Section 10, Township 2 North, Range 28 East.

SETTLEMENT AGREEMENT

WHEREAS, Florida Public Utilities Company ("FPUC") and Florida Water Services Corporation ("Florida Water") are public utilities providing water and wastewater services respectively on portions of Amelia Island; and

WHEREAS, on June 23, 1999, Florida Water filed an application with the Florida Public Service Commission to extend its territory on Amelia Island; and

WHEREAS, on July 21, 1999, FPUC filed an objection to the application for extension; and

WHEREAS, the Parties have now resolved their dispute and have reached an agreement as to the boundary between the utilities and the service areas of the respective companies.

NOW, THEREFORE, the Parties have entered into the following agreement:

1. The Parties agree that the boundary between Florida Public Utilities Company and Florida Water Services Corporation is the southerly city limits of the City of Fernandina Beach as said boundary exists as of the date of this agreement.
2. FPUC does not object to the extension requested by Florida Water to add Craney Island to its certificated territory as that area is described in attachment A hereto.
3. With the exception of Craney Island, Florida Water will not add service territory nor provide service to customers north of the southerly boundary of the City of Fernandina Beach and FPUC will not add areas or serve customers south of that boundary or in the area described as Craney Island.
4. Neither Party believes that it has any customers in the other party's service area as agreed to herein but in the event there are, then those customers would continue to receive service from the current provider of service.

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5. The parties endorse approval of this Agreement by the FPSC and neither will recommend that the Commission modify or amend the Agreement. Neither party will protest or appeal an Order of the FPSC approving this Agreement.

CC Stern Sr U.P.

On behalf of Florida Public Utilities Company

Charles Stewart Vice President

On behalf of Florida Water Services Corp.

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## ATTACHMENT A

A portion of Section 19, "Craney Island", and a portion of Section 6 and 49, all in Township 2 North, Range 28 East, Nassau County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Section 6; thence  $S89^{\circ}48'01''E$ , along the Northerly line of said Section 6, a distance of 1,143.72 feet; thence  $S23^{\circ}19'40''W$ , 1,135.18 feet, to the Point of Beginning; Continue  $S23^{\circ}19'40''W$ , 111.15 feet; thence  $S00^{\circ}10'48''W$ , 327.86 feet; thence  $S09^{\circ}53'05''E$ , 496.61 feet; thence  $S74^{\circ}39'00''W$ , 281.30 feet; thence  $N78^{\circ}01'26''W$ , 168.67 feet; thence  $S21^{\circ}48'05''W$ , 80.78 feet; thence  $N68^{\circ}11'55''W$ , 26.93 feet; thence  $N04^{\circ}05'08''E$ , 70.18 feet; thence  $N78^{\circ}41'24''W$ , 50.99 feet; thence  $S26^{\circ}33'54''W$ , 44.72 feet; thence  $N83^{\circ}53'04''W$ , 140.80 feet; thence  $N39^{\circ}28'21''W$ , 110.11 feet; thence  $S49^{\circ}23'55''W$ , 92.20 feet; thence  $S86^{\circ}11'09''W$ , 150.33 feet; thence  $S12^{\circ}31'44''E$ , 184.39 feet; thence  $S52^{\circ}56'29''E$ , 265.50 feet; thence  $S40^{\circ}42'33''E$ , 395.76 feet; thence  $S28^{\circ}15'22''E$ , 30.83 feet; thence  $S01^{\circ}20'01''W$ , 284.50 feet; thence  $S50^{\circ}37'47''W$ , 46.38 feet; thence  $S14^{\circ}48'00''E$ , 63.24 feet; thence  $S68^{\circ}30'21''W$ , 49.57 feet; thence  $S44^{\circ}11'53''W$ , 109.78 feet; thence  $S39^{\circ}52'47''E$ , 49.14 feet; thence  $S38^{\circ}05'15''W$ , 53.44 feet; thence  $S64^{\circ}51'40''W$ , 59.41 feet; thence  $S29^{\circ}31'42''W$ , 73.29 feet; thence  $S64^{\circ}12'35''E$ , 57.34 feet; thence  $S04^{\circ}07'01''E$ , 225.67 feet; thence  $S19^{\circ}15'12''W$ , 75.00 feet; thence  $S13^{\circ}01'15''E$ , 53.04 feet; thence  $S19^{\circ}15'12''W$ , 85.26 feet; thence  $N02^{\circ}57'43''W$ , 87.20 feet; thence  $N78^{\circ}34'19''W$ , 62.01 feet; thence  $S25^{\circ}20'49''W$ , 88.59 feet; thence  $S10^{\circ}00'00''E$ , 67.54 feet; thence  $S51^{\circ}06'36''W$ , 44.72 feet; thence  $S65^{\circ}28'19''W$ , 261.52 feet; thence  $N69^{\circ}31'03''W$ , 94.43 feet; thence  $S49^{\circ}20'09''W$ , 94.17 feet; thence  $S74^{\circ}34'09''E$ , 141.93

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feet; thence S44°16'05"E 52.74 feet; thence  
S04°49'42"W, 113.69 feet; thence S52°23'53"E, 69.62  
feet; thence N75°32'52"E, 56.74 feet; thence  
S28°04'35"E, 64.20 feet; thence S12°21'19"W, 248.98  
feet; thence S36°22'50"W, 134.63 feet; thence  
S08°46'24"W, 57.66 feet; thence S48°13'44"W, 114.05  
feet; thence S36°54'27"W, 59.38 feet; thence  
S51°09'37"W, 73.70 feet; thence S01°32'06"W, 63.56  
feet; thence S13°16'09"W, 54.31 feet; thence  
S05°24'52"W, 54.62 feet; thence S38°34'53"W, 99.52  
feet; thence S57°45'16"W, 43.99 feet; thence  
N20°53'50"W, 165.67 feet; thence N24°47'58"W, 100.27  
feet; thence N41°09'56"W, 102.29 feet; thence  
N33°19'15"W, 100.28 feet; thence N27°46'17"W, 100.02  
feet; thence N39°13'10"E, 20.24 feet; thence  
N39°26'44"W, 94.05 feet; thence N15°56'27"W, 100.65  
feet; thence N25°31'47"W, 100.00 feet; thence  
N22°22'49"W, 100.10 feet; thence N32°15'03"W, 100.82  
feet; thence N22°03'09"W, 95.72 feet; thence  
N07°35'42"W, 100.32 feet; thence N12°20'27"W, 100.00  
feet; thence N14°27'34"W, 100.08 feet; thence  
N01°34'37"W, 101.73 feet; thence N16°00'07"W, 100.22  
feet; thence N16°23'39"W, 94.90 feet; thence  
N05°55'55"W, 100.32 feet; thence N07°10'22"E, 101.12  
feet; thence N08°05'08"W, 110.67 feet; thence  
N02°37'48"E, 37.66 feet; thence N04°06'05"W, 199.79  
feet; thence N04°53'01"W, 131.15 feet; thence  
N12°09'13"W, 160.18 feet; thence N05°01'54"E, 160.02  
feet; thence N13°25'31"W, 141.70 feet; thence  
N14°18'10"W, 154.82 feet; thence N05°30'37"W, 143.95  
feet; thence N05°35'10"W, 144.68 feet; thence  
N41°54'22"E, 128.72 feet; thence N39°39'37"W, 184.51  
feet; thence N08°26'08"W, 155.35 feet; thence  
N00°22'39"W, 103.87 feet; thence N02°17'02"E, 114.51  
feet; thence N59°55'35"E, 30.64 feet; thence  
N83°34'36"E, 2,119.07 feet to the Point of Beginning.

Containing 113.69 acres, more or less