

RECEIVED-FPSC

090244-WU

10 MAR 23 AM 8:56

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

RECEIVED
PUBLIC SERVICE
10 MAR 18 AM 5:51
ECONOMIC REGULATION

COMMISSION
CLERK
STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION,)
)
vs.)
)
THREE LAKES PARK CO-OP, INC.,)
and)
TLP WATER, INC.)
_____)

IN THE OFFICE OF THE
CENTRAL DISTRICT

DEP Case No.: OGC 08-0812
DOAH Case No.: 08-003822

RECEIVED
FEB 24 2010

DEP Central Dist.

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department"), Three Lakes Park Co-Op, Inc., and TLP Water, Inc. ("Respondent Three Lakes" and "Respondent TLP," respectively) to reach settlement of certain matters at issue between the Department and Respondents.

The Department finds and Respondents neither admit nor deny the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's water resources and to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.
2. Respondents are persons within the meaning of Section 403.852(5), F.S.
3. Respondent Three Lakes is a cooperative, pursuant to Chapter 719, Florida Statutes, that owned and operated a public water system ("PWS") consisting of a water treatment plant ("WTP") and its associated piping ("System"). The System uses ground water as its water source and provides water to a community of approximately 80 persons by means of 53 service connections to a community of mobile homes (made up of the members of the Three Lakes cooperative and situated on land known as "Three Lakes Park") and single family homes (situated along Lakeside Lane and Canal Street). The System consists of water mains and service connections to individual user premises. The System has piped service

DOCUMENT NUMBER-DAT

PW_CO

REV. 06/09

02051 MAR 23 2010

FPSC-COMMISSION CLERK

connections to premises along Canal Street and Lakeside Lane and within Three Lakes Park, north of U.S. Highway 441. The water main runs from the well, through Three Lakes Park and to the west end of Lakeside Lane. The WTP is located at 12315 US Highway 441, Tavares, Lake County, Florida, Latitude 28°48'46" North, Longitude 81°44'59" West.

4. In approximately 1945, the System was installed by drilling a well on the currently existing WTP location and laying a 2" steel pipe line, from the well through what is now known as Three Lakes Park to the west end of Lakeside Lane. In 1948, the land now known as Three Lakes Park, including the WTP, was sold and developed as a fishing camp known as Kerry's Fish Camp. Sometime in the 1950's the land now known as Three Lakes Park was again sold and turned into a rental mobile home park. Some records exist from that time period showing payments for water from the residents of Canal Street. However, it is unknown how or when pipes were installed from the main on Lakeside Lane across a water body to the Canal Street residences. At one time, a total of three pipes extended across the water body, serving Canal Street residences, although only two such pipes remain as of the date of this Consent Order. On December 30, 1992, the land now known as Three Lakes Park was purchased by the mobile home residents living thereon, and they formed a cooperative, pursuant to Chapter 719, Florida Statutes, which is the Respondent Three Lakes. Respondent Three Lakes has continued to provide potable water to its cooperative owners and the residents on Lakeside Lane and Canal Street through the System, which has remained largely the same as it existed in the 1940s and 1950s, except for replacement of some equipment at the WTP and emergency repairs.

5. On or about March 10, 2008, Respondent Three Lakes transferred its interest in the PWS to Respondent TLP, a Florida nonprofit corporation, which continues to operate the PWS. Respondent TLP leases land owned by Respondent Three Lakes for office space and for the location of the WTP. Respondent TLP agrees to comply with the terms of this Order as evidenced by its execution of same, and is a party to this Consent Order for purposes of implementing the corrective actions set forth herein.

6. The Department finds that the following violations occurred:

a. The System components resulting from the emergency repair and modifications were not designed and constructed using sound engineering practice and in accordance with the requirements of Rules 62-555.320(1) and (21)(b), F.A.C., and 62-555.330, F.A.C.

b. The water distribution system piping extensions do not meet Department regulations regarding the installation of potable mains that cross a surface water body. Respondents do not admit the Department's findings contained in this Consent Order, but agree to its terms in the interest of a cooperative resolution of this matter without further delay or litigation. Thus, having reached a resolution of the matter, the Department and Respondents mutually agree and it is

ORDERED:

7. Within 6 months of the effective date of this Consent Order, Respondent TLP shall submit an application to USDA Rural Development ("USDA Application") to apply for a combination of grants and loans to fund a project to connect to the City of Tavares and replace the System components as described in Exhibit 1, a November 20, 2009, letter from Florida Rural Water Association (referred to collectively herein as the "Connection Project").

a. Within 10 days of receiving notification from USDA of approval or denial of the USDA Application, Respondent TLP shall notify the Department of the result.

b. Within 6 months of receiving a notification that USDA Rural Development funds will be awarded for the project, Respondent TLP shall retain the services of a Florida-registered professional engineer to evaluate the Connection Project and submit a Specific Permit application using form 62-555.900(1), F.A.C., along with the required application fees, to the Department ("DEP Application") for a permit to construct the Connection Project.

c. The Department will review the DEP Application submitted pursuant to Paragraph 7.b. above. In the event additional information, modifications, or specifications are necessary to process the DEP Application, the Department will issue a written request for information ("RFI") to Respondent TLP for such information.

Respondent TLP shall accordingly submit the requested information in writing to the Department within 30 days of receipt of the request. Respondent TLP shall provide all information requested in any additional RFIs issued by the Department within 30 days of receipt of each request. Notwithstanding the foregoing, within 90 days of the date the Department receives the application pursuant to Paragraph 7.b. above, Respondent TLP shall provide all information requested by the Department that is necessary to complete the application.

d. Within 8 months of issuance of all required permit(s), Respondent TLP shall complete the modifications approved pursuant to the permit(s) issued, and submit to the Department the engineer's certification of completion of construction, along with all required supporting documentation. Respondent TLP shall receive written Department clearance prior to placing the system modifications into service.

e. Within 30 days of receiving Department clearance, Respondent TLP shall sever the WTP from the System and begin distributing water from the City of Tavares.

f. Within 60 days of receiving Department clearance, the well serving the PWS shall be properly abandoned or put to other beneficial use.

8. If Respondent TLP is unable to obtain funding for the Connection Project, Respondent TLP shall complete the following:

a. Investigate, and report the results of the investigation to the Department, the System extensions to determine compliance with Department regulations regarding pipe protection (depth of cover) in conformance with engineering standards including NSF standards, field testing, and disinfection after installation and before use.

b. Investigate, and report the results of the investigation to the Department, the existing 2-inch main of the water distribution system to determine whether it is an adequate size to maintain service at adequate pressure under all operating conditions.

c. Complete improvements to the System that will allow for a hydraulic pressure test or water balance analysis to determine whether past repairs to the underground or subaqueous piping in the Lakeside Lane portion of the System and the

canal crossing are within acceptable AWWA standards and comply with Chapter 62-555, F.A.C.

d. Perform a hydraulic pressure test or water balance analysis and provide documentation of results to the Department, including whether the Lakeside Lane portion of the System and the canal crossing comply with acceptable AWWA standards and Chapter 62-555, F.A.C.

e. Provided there are customers still being served at addresses 12253 through 12127 Lakeside Lane, excavate the portions of the existing System serving Lakeside Lane where repairs were made during April/May 2007 and August 2007 in order to prepare a set of record drawings, signed and sealed by a Florida-registered professional engineer, showing the extent of all repairs.

f. Provided there are customers still being served along Canal Street, replace the existing two canal crossings to serve customers on Canal Street. The crossing(s) will commence in the vicinity of property located at 12227 Lakeside Lane, Tavares, FL 32778, and will be subject to review and consent by the owner of that property. Respondent TLP shall only be responsible for constructing the canal crossing itself and not for the distribution system to the Canal Street customers that extends onto said customers' respective properties.

g. For any canal crossing construction, submit a Specific Permit application using form 62-555.900(1), F.A.C., along with the required application fees, to the Department ("Crossing Application") for a permit to construct the canal crossing(s).

9. The repairs and additions to the System outlined above shall be made in accordance with Chapter 62-555, F.A.C., and shall be completed no later than three years following TLP's receipt of notice from the USDA that funding for the Connection Project has been denied or is unavailable.

10. Respondent TLP shall provide updates on its progress toward full compliance with this Consent Order by the 28th day of every even-numbered month until the Department notifies Respondent TLP of full compliance.

11. In the event that all of the requirements set forth in Paragraph 7 are met, this system shall be classified as a consecutive water system as defined in Rule 62-550.220(18), F.A.C. As such, Respondent TLP shall operate the system in accordance with the requirements of Rule 62-550, F.A.C., and Rule 62-555, F.A.C. Nothing in this Consent Order is intended to affect the jurisdiction of the Public Service Commission.

12. Within 30 days of the effective date of this Order, Respondent Three Lakes shall pay the Department \$2,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. Additionally, Respondent TLP shall pay the Department \$8,000.00 in settlement of the regulatory matters addressed in this Order. The civil penalties are apportioned as follows: \$3,000.00 for violations of Rule 62-555.405, 62-555.520(1), and 62-555.520(2), F.A.C.; \$3,000.00 for violation of Rule 62-555.345, F.A.C.; \$2,000.00 for violations of Rule 62-555.320, F.A.C. However, in consideration of Respondent TLP's timely performance on this Order, the Department will not assess the above \$8,000.00 in penalties in this matter; if Respondent TLP fails to timely comply with any deadline in this Order, the Department may make a written demand for payment of the penalties and Respondent TLP shall remit the payment to the Department within 60 days of that demand.

13. Respondent TLP agrees to pay the Department stipulated penalties in the amount of \$500.00 per day for each and every day Respondent TLP fails to timely comply with any of the requirements of Paragraphs 7 through 10 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent TLP shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in Paragraph 15, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in Paragraph 12 of this Order.

14. Respondent TLP, or Respondent Three Lakes, as applicable, shall make all payments required by this Order by cashier's check or money order. Payment instruments

shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Ecosystem Management and Restoration Trust Fund."

15. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Kim Dodson, Water Facilities, Department of Environmental Protection, 3319 Maguire Blvd., Ste. 232, Orlando, FL 32803.

16. Respondent Three Lakes and Respondent TLP shall allow all authorized representatives of the Department access to the WTP, and the portions of the System over which Respondent Three Lakes and Respondent TLP have ownership and/or control, at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

17. In the event of a sale or conveyance of the PWS or of the property upon which the PWS is located ("Property"), if all of the requirements of this Order have not been fully satisfied, Respondent Three Lakes or Respondent TLP shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the PWS. The sale or conveyance of the PWS or the Property does not relieve Respondent Three Lakes or Respondent TLP of the obligations imposed in this Order.

18. If any event, including administrative or judicial challenges by third parties unrelated to Respondents, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondents shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondents and could not have been or cannot be overcome by Respondents' due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond

the control of Respondents (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondents shall notify the Department within the next three working days and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondents intend to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondents, the time for performance hereunder shall be extended. The Department may consider economic circumstances in an extension of time for performance hereunder. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondents must take to avoid or minimize the delay, if any. Failure of Respondents to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondents' right to request an extension of time for compliance for those circumstances.

19. The Department, for and in consideration of the complete and timely performance by Respondents of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent Three Lakes' and Respondent TLP's complete compliance with all of the terms of this Order.

20. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent Three Lakes or Respondent TLP of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

21. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

22. Respondents are fully aware that a violation of the terms of this Order may subject Respondents to judicial imposition of damages, civil penalties up to \$5,000.00 per day per violation, and criminal penalties.

23. Respondents acknowledge and waive their right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondents also acknowledge and waive their right to appeal the terms of this Order pursuant to section 120.68, F.S.

24. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondents and the Department, and filed with the clerk of the Department.

25. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

26. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

27. Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

28. The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at 3319 Maguire Blvd., Ste. 232, Orlando, FL 32803. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement.

Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

29. Rules referenced in this Order are available at


<http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm>.

FOR THREE LAKES PARK CO-OP, INC.


David Schell, President

2/23/2010
Date


FOR TLP WATER, INC.


William Carey, President

2/23/2010
Date

DONE AND ORDERED this 23rd day of February 2010, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

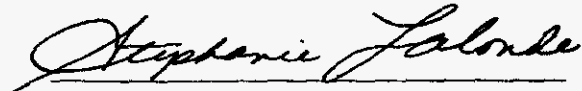

Vivian F. Garfein
District Director
Central District

DEP vs. Three Lakes Park Co-Op, Inc.

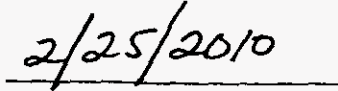
Consent Order, OGC No. 08-0812

Page 12

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.



Clerk



Date

Copies furnished to:

Lea Crandall, Agency Clerk

Mail Station 35