

# Woodward, Pires & Lombardo, P.A.

ATTORNEYS-AT-LAW

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\*Board Certified Real Estate Attorney  
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\*\*\* Also admitted in Indiana and Georgia  
\*\*\*\* Also admitted in Pennsylvania

November 10, 1999

VIA FEDERAL EXPRESS

ORIGINAL

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

Re: Consolidated Docket Nos. 980261-WS and 970657-WS

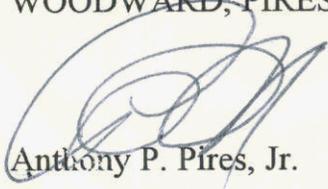
Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen (15) copies of the Notice of Filing of Direct Testimony of Robert Koncar and Direct Testimony of Robert Koncar in the above-referenced matter. Also enclosed is a computer disc with the Direct Testimony of Robert Koncar thereon.

If you have any questions, please do not hesitate to contact me.

Sincerely,

WOODWARD, PIRES & LOMBARDO, P.A.

  
Anthony P. Pires, Jr.

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS \_\_\_\_\_
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- SEC \_\_\_\_\_
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

APP:slw  
Enclosures as noted.  
All parties.

3 + reg;

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Please Respond to: Pelican Bay

Pelican Bay 801 Laurel Oak Dr., Suite 710, Naples, FL 34108 (941) 566-3131 Fax (941) 566-3161  
Marco Island 606 Bald Eagle Dr., Suite 500, P.O. Box 1, Marco Island, FL 34146 (941) 394-5161 Fax (941) 642-6402

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for amendment  
of Certification Nos. 570-W and  
496-S to add territory in  
Charlotte County by Florida  
Water Services Corporation.

DOCKET NO. 980261-WS

ORIGINAL

In re: Application for certificates  
to operate a water and wastewater  
utility in Charlotte and DeSoto  
Counties by Lake Suzy Utilities, Inc.

DOCKET NO. 970657-WS  
ORDER NO. PSC-98-1538-PCO-WS  
FILED: \_\_\_\_\_  
[CONSOLIDATED]

**NOTICE OF FILING DIRECT TESTIMONY OF ROBERT KONCAR**

COMES NOW, DESOTO COUNTY, FLORIDA, by and through its undersigned  
counsel and hereby gives notice of the filing of the Direct Testimony of Robert Koncar in  
the above-styled cause.

Dated this 10<sup>th</sup> day of November, 1999.

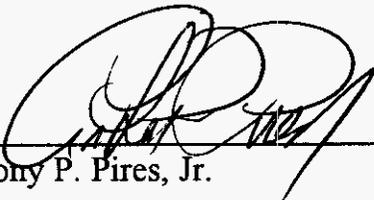
  
\_\_\_\_\_  
Anthony P. Pires, Jr.

Florida Bar Number: 203671  
Woodward, Pires & Lombardo, P.A.  
801 Laurel Oak Drive, Suite 710  
Naples, Florida 34108  
(941) 566-3131

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via  
Regular U.S. Mail to Marty Friedman, Rose, Sundstrom & Bentley, 2548 Blairstone Pines  
Drive, Tallahassee, Florida 32301; John Marks, III, Knowles, Marks & Randolph, 215 South

Monroe Street, Tallahassee, Florida 32301; Tim Vaccaro, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Charlotte L. Sopko, Haus Development, Inc., 603 N. Eastwood Avenue, Mount Prospect, Illinois 60056; Matt Feil, Florida Water Services, Legal Department, Post Office Box 609520, Orlando, Florida 34266; Kenneth Hoffman, Rutledge Law Firm, P. O. Box 551, Tallahassee, Florida 32302; Frederick Bechtold, Vorbeck & Vorbeck, 207 E. Magnolia Street, Arcadia, Florida 34266; and Martha Y. Burton, Charlotte County Administration Center, 18500 Murdock Circle, Port Charlotte, Florida 33948, on this 10<sup>th</sup> day of November, 1999.



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Anthony P. Pires, Jr.

**DIRECT TESTIMONY OF ROBERT KONCAR  
BEFORE THE PUBLIC SERVICE COMMISSION  
ON BEHALF OF DESOTO COUNTY, FLORIDA  
CONSOLIDATED DOCKET NOS. 980261-WS & 970657-WS**

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?  
2 A. Robert Koncar, 201 East Oak Street, Arcadia, Florida 34266.  
3 Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?  
4 A. The DeSoto County Board of County Commissioners as County  
5 Administrator. I began my services to DeSoto County on January 1, 1996.  
6 Q. WOULD YOU PROVIDE A BRIEF HISTORY OF YOUR  
7 BACKGROUND AND EXPERIENCE AS A COUNTY  
8 ADMINISTRATOR AND LOCAL GOVERNMENT ADMINISTRATOR?  
9 A. I have over twenty (20) years of local government management experience,  
10 with thirteen (13) of those years in county government and seven (7) years in  
11 city government. I was an assistant County Administrator in Escambia  
12 County, Florida for six (6) years prior to my being the County Administrator  
13 for Escambia County for a period of 2.5 years. I achieved a Masters Degree  
14 in Public Administration from the University of West Florida in 1979.  
15 Q. ARE YOU A MEMBER OF ANY TRADE AND/OR PROFESSIONAL  
16 ORGANIZATIONS?  
17 A. Yes. I am a member of the International City Management Association; the  
18 Florida City County Management Association; the Florida Economic  
19 Development Council; the Government Finance Officers Association; and the  
20 Phi Alpha Alpha Honor Society for Public Administration.  
21 Q. HAVE YOU EVER PREVIOUSLY TESTIFIED BEFORE A  
22 REGULATORY AGENCY?  
23 A. Yes, before the Division of Administrative Hearings, involving litigation with  
24 the Department of Community Affairs.  
25

1 Q. HAVE YOU EVER PREVIOUSLY TESTIFIED BEFORE A TRIAL  
2 COURT?

3 A. Yes, in U.S. District Court in Escambia County on one (1) occasion.

4 Q. WOULD YOU BRIEFLY PROVIDE YOUR EXPERIENCES AS A  
5 COUNTY ADMINISTRATOR OR LOCAL GOVERNMENT EMPLOYEE  
6 OR MANAGER AS TO WATER AND WASTEWATER ISSUES?

7 A. I was with the City of Valparaiso for seven (7) years. The city operated both  
8 a water and sewer utility system and I developed funding and planned for the  
9 construction of a water tower for the City of Valparaiso. While employed by  
10 City of Valparaiso County I served on the Construction Board for the  
11 construction of a regional sewer system that served Okaloosa County and two  
12 cities and I also served as President and Board Member of the Regional Sewer  
13 Operations Board (this Board was responsible for the daily operations of the  
14 regional sewer system). In those positions, I developed funding and planned  
15 for sewer expansion projects.

16 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS  
17 PROCEEDING?

18 A. To provide factual testimony concerning the issues surrounding Lake Suzy  
19 Utilities, Inc.'s application for expansion of its territory and related issues.

20 Q. WHY DID THE BOARD OF COUNTY COMMISSIONERS OF DESOTO  
21 COUNTY ADOPT ITS RESOLUTION #97-22 ON MARCH 5, 1997  
22 REVOKING PUBLIC SERVICE COMMISSION JURISDICTION OVER  
23 INVESTOR-OWNED WATER AND WASTEWATER SYSTEMS IN  
24 DESOTO COUNTY?  
25

1           A.     The County staff recommended this matter to the Board of County  
2                   Commissioners in order to provide for the Board of County Commissioners  
3                   to have control over the future franchise and provision of water and sewer  
4                   services in DeSoto County. The Board felt strongly that these should be  
5                   locally controlled and they should be making these decisions and not have the  
6                   Public Service Commission making them for the County. In addition, there  
7                   was concern over the lack of economic development in the County and it was  
8                   the Board's position that with control over water and sewer issues in the  
9                   County, economic development could be encouraged. A true and correct copy  
10                  of Resolution 97-22 is attached as Exhibit RK-1.

11          Q.     DOES DESOTO COUNTY HAVE AGREEMENTS WITH POTABLE  
12                   WATER PROVIDERS TO PROVIDE POTABLE WATER TO DESOTO  
13                   COUNTY?

14          A.     Yes, DeSoto County has entered into four (4) agreements for the provision  
15                   of potable water. One contract is the Peace River Water Supply Contract by  
16                   and between the Peace River/Manasota Regional Water Supply Authority,  
17                   Charlotte County, DeSoto County, Manatee County and Sarasota County.  
18                   The second is the Peace River Option Water Supply Contract, commonly  
19                   referred to as the Peace River Option and is a contract by and between the  
20                   Peace River/Manasota Regional Water Supply Authority, Charlotte County,  
21                   DeSoto County and Sarasota County. The third is an agreement between  
22                   DeSoto County and Sarasota County wherein DeSoto County is purchasing  
23                   a portion of Sarasota County's allocation under the Peace River Option. The  
24                   fourth agreement is an interlocal agreement between DeSoto County and  
25                   Charlotte County.

1 Q. ARE YOU FAMILIAR WITH ALL SUCH AGREEMENTS AND COULD  
2 YOU BRIEFLY DESCRIBE THE AGREEMENTS AND THE NATURE  
3 OF THE AGREEMENTS?

4 A. As to the Peace River Water Supply Contract, this Agreement provides for  
5 allocations of water from the water plant in DeSoto County to the four  
6 County members. As to the Peace River Option Contract, this contract  
7 allocates the additional water capacity that will be available when the plant is  
8 expanded. Under the DeSoto County and Sarasota County agreement,  
9 DeSoto County obtains additional capacity from Sarasota County's allocation  
10 when the Peace River Option becomes available. Under the DeSoto County  
11 and Charlotte County agreement, DeSoto County is provided with an  
12 allocation of water from Charlotte County's allocation until the Peace River  
13 Option comes on line.

14 Q. IS IT TRUE THAT DESOTO COUNTY WILL RECEIVE ALL OF ITS  
15 POTABLE WATER FROM THE PEACE RIVER/MANASOTA  
16 REGIONAL WATER SUPPLY AUTHORITY UNDER THE PEACE  
17 RIVER WATER SUPPLY CONTRACT?

18 A. No, as DeSoto County has other agreements, as mentioned earlier including  
19 one where water is purchased from Sarasota County.

20 Q. UNDER THE EXISTING AGREEMENTS BETWEEN DESOTO  
21 COUNTY AND LAKE SUZY UTILITIES, INC., WHAT IS THE ANNUAL  
22 MAXIMUM WATER ALLOCATION OBLIGATION FROM DESOTO  
23 COUNTY TO LAKE SUZY UTILITIES, INC.?

24  
25

1           A.     Under existing agreements, during the contract year 1999 the maximum  
2                   amount of water committed by DeSoto County to Lake Suzy Utilities, Inc. is  
3                   45.625 millions of gallons per year (mgy) or 150,000 gallons per day (gpd).  
4                   This water delivered to Lake Suzy Utilities, Inc. is comprised of water  
5                   delivered to DeSoto County under the Peace River Contract, the Peace River  
6                   Option and the interlocal agreement with Charlotte County. The total amount  
7                   of water available to DeSoto County under all three agreements is 150,000  
8                   gallons per year.

9           Q.     WHAT WATER SOURCE DOES DESOTO COUNTY HAVE  
10                   AVAILABLE TO BE UTILIZED BY FLORIDA WATER SERVICES  
11                   CORPORATION?

12          A.     As mentioned earlier, DeSoto County has the right and opportunity to  
13                   purchase water pursuant to the terms of the Peace River Option as well as its  
14                   agreement with Sarasota County. The balance available to DeSoto County  
15                   after furnishing water to Lake Suzy Utilities, Inc. is 375,000 gpd that will be  
16                   available to be utilized by Florida Water Services Corporation.

17          Q.     WHAT IS THE STATUS OF THE AGREEMENT BETWEEN DESOTO  
18                   COUNTY AND SARASOTA COUNTY FOR DESOTO COUNTY'S  
19                   PURCHASE OF A PORTION OF SARASOTA COUNTY'S  
20                   ALLOCATION UNDER THE PEACE RIVER OPTION?

21          A.     The Agreement has been executed by both parties and a true and correct copy  
22                   is attached as Exhibit RK-2 to this testimony.

23          Q.     WHAT IS THE AMOUNT OF THE WATER ALLOCATION BEING  
24                   PURCHASED FROM SARASOTA COUNTY BY DESOTO COUNTY?

25

1 A. Two hundred fifty thousand (250,000) gpd with an option to increase the  
2 amount to three hundred seventy-five thousand (375,000) gpd.

3 Q. ARE THERE ANY CONSTRAINTS OR RESTRICTIONS IMPOSED ON  
4 DESOTO COUNTY CONCERNING THE WATER ALLOCATION IT IS  
5 PURCHASING FROM SARASOTA COUNTY UNDER DESOTO  
6 COUNTY'S AGREEMENT WITH SARASOTA COUNTY?

7 A. DeSoto County is free to sell it's water allocation from Sarasota County  
8 under the Peace River Option to Florida Water Services Corporation to  
9 provide potable water to users within DeSoto County.

10 Q. AT THE TIME THAT DESOTO COUNTY ADOPTED ITS RESOLUTION  
11 #97-22 HAD LAKE SUZY UTILITIES, INC. RECEIVED ANY  
12 APPROVAL, PERMIT OR AUTHORIZATION FROM DESOTO  
13 COUNTY TO RUN A POTABLE WATER LINE TO THE LINKS  
14 SUBDIVISION IN CHARLOTTE COUNTY?

15 A. No.

16 Q. ARE YOU AWARE OF THE DATE THAT LAKE SUZY UTILITIES, INC.  
17 BEGAN PROVIDING POTABLE WATER SERVICE TO LOT 18 OF THE  
18 LINKS SUBDIVISION IN CHARLOTTE COUNTY?

19 A. To the best of my knowledge, August, 1998.

20 Q. DID DESOTO COUNTY AUTHORIZE THE AUGUST 26, 1998  
21 POTABLE WATER SERVICE CONNECTION BY LAKE SUZY  
22 UTILITIES, INC. TO LOT 18?

23 A. No.

24 Q. ARE YOU AWARE OF ANY WATER TREATMENT FACILITIES  
25 OWNED BY LAKE SUZY UTILITIES, INC.?

1 A. I am not aware of any water treatment facilities owned by Lake Suzy Utilities,  
2 Inc. To the best of my knowledge, Lake Suzy Utilities, Inc. is reliant upon  
3 DeSoto County for all of its potable water.

4 Q. DOES LAKE SUZY UTILITIES, INC. HAVE, OTHER THAN DESOTO  
5 COUNTY, ANY OTHER SOURCE OF WATER SUPPLY?

6 A. No.

7 Q. DOES LAKE SUZY UTILITIES, INC. HAVE THE WATER SUPPLY  
8 ABILITY AND CAPACITY TO SERVICE THE AREAS REQUESTED  
9 UNDER ITS APPLICATIONS TO THE PUBLIC SERVICE  
10 COMMISSION?

11 Q. Is the attached Exhibit RK-3 a true and correct copy of DeSoto County  
12 Resolution 1998-32 ?

13 A. Yes, it is a true and correct copy.

14 A. No.

15 Q. WHY DID THE BOARD OF COUNTY COMMISSIONERS OF DESOTO  
16 COUNTY ADOPT ITS RESOLUTION 1998-32 ON JULY 16, 1998  
17 ESTABLISHING DESOTO COUNTY WATER AND SEWER DISTRICT  
18 NO. #1?

19 A. The Board believed that it needed to spur economic development. The Lake  
20 Suzy area was the most likely candidate for expansion. The Board was  
21 concerned with Lake Suzy Utilities, Inc.'s ability to expand and provide  
22 service in areas that they currently did not serve, thus the Board decided to  
23 "franchise the area" to themselves. At one time they discussed forming a  
24 County owned utility which would provide service to areas not currently  
25 served by Lake Suzy Utilities, Inc.

1 Q. IS IT IN THE BEST INTERESTS OF THE RESIDENTS OF DESOTO  
2 COUNTY FOR LAKE SUZY UTILITIES, INC. TO BE GRANTED ITS  
3 PENDING APPLICATION BEFORE THE PUBLIC SERVICE  
4 COMMISSION?

5 A. Not in my opinion.

6 Q. WHAT EFFECT WILL GRANTING LAKE SUZY UTILITIES, INC.'S  
7 PENDING APPLICATION TO THE PUBLIC SERVICE COMMISSION  
8 HAVE ON THE INTERESTS OF DESOTO COUNTY IN PROMOTING  
9 ORDERLY GROWTH AND DEVELOPMENT?

10 A. Uncertain at this time because of the recent sale of Lake Suzy Utilities, Inc.  
11 to Aqua Source. However, if past experience is an indicator, it will hinder the  
12 growth and development of the area immediately adjacent to the Lake Suzy  
13 Utilities, Inc. area for a number of reasons:

14 Previous attempts to have Lake Suzy Utilities, Inc. provide water and sewer  
15 to an area immediately adjacent to its current service area fell through. Based  
16 upon what County staff was told by the developer requesting expansion and  
17 Mr. Shepard, the then principal shareholder of Lake Suzy Utilities, Inc., it fell  
18 through because Lake Suzy Utilities, Inc. wanted the developer to pay the  
19 cost of the line extension prior to the expansion and the developer did not  
20 want to bear the full cost of the expansion in that other properties could also  
21 be served.

22 In addition, Florida Water Services Corporation has made representations  
23 that it is willing to up front all or a portion of the cost of facilities for  
24 providing water and wastewater services, where economically feasible to do  
25 so. Further, DeSoto County is not familiar with Aqua Source and has not  
26 approved the transfer of the sale of the utility.

1 for all these reasons, the County believes that orderly growth and  
2 development would be or could be hindered if Lake Suzy Utilities, Inc.'s  
3 request in this case was granted.

4 Q. ARE EITHER LAKE SUZY UTILITIES, INC. OR FLORIDA WATER  
5 SERVICES CORPORATION REQUIRED TO OBTAIN ALL OF THEIR  
6 WATER FROM DESOTO COUNTY OR ARE THEY FREE TO UTILIZE  
7 ANY READILY AVAILABLE SOURCE?

8 A. Lake Suzy Utilities, Inc. is required to either take or pay for all water under  
9 its agreements with the County but neither Lake Suzy Utilities, Inc. nor  
10 Florida Water Services Corporation are obligated to exclusively obtain their  
11 water from DeSoto County.

12 Q. WILL THE UTILITY SYSTEM THAT LAKE SUZY UTILITIES, INC.  
13 PROPOSES TO CONSTRUCT TO SERVE THE TERRITORY IN  
14 QUESTION BE IN COMPETITION WITH, OR A DUPLICATION OF  
15 ANY OTHER SYSTEM OR PROPOSED SYSTEM?

16 A. There will be a duplication of territories with that of Florida Water Services  
17 Corporation per the franchise granted to Florida Water Services Corporation  
18 by DeSoto County.

19 Q. HAS LAKE SUZY UTILITIES, INC. ACKNOWLEDGED THE  
20 JURISDICTION OF DESOTO COUNTY OVER LAKE SUZY UTILITIES,  
21 INC.?

22 A. Yes, on numerous occasions, with the most recent being in its application for  
23 transfer of majority control filed with DeSoto County on June 1, 1999.  
24 Previously, it acknowledged the County's jurisdiction in proceedings before  
25 the County Commission on June 8, 1999, and in a March 6, 1998 filing with  
26 the Public Service Commission in this case.

1 Q. DID DESOTO COUNTY PROPERLY GRANT A FRANCHISE TO  
2 FLORIDA WATER SERVICES CORPORATION?

3 A. Yes, the County staff, including the County Engineer, the County Attorney  
4 and myself, reviewed the Florida Water Services application for completeness  
5 and compliance with the terms of the ordinance outlining the requirements for  
6 filing and granting of a franchise. In our review, we determined, as the staff  
7 administrators of the ordinance and as advisors to the County Commission,  
8 that the application complied with the ordinance and recommended approval  
9 of the franchise and franchise area to Florida Water Services. Additionally,  
10 as part o the review we determined that granting the franchise would be  
11 consistent with and would further the goals and objectives of the County's  
12 comprehensive plan. Due and proper notice as outlined in the ordinance for  
13 advertising the consideration of adoption of Ordinance #1999-10 was properly  
14 made.

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DESOTO COUNTY, FLORIDA

RESOLUTION NO. <sup>1997-</sup>~~22~~

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DESOTO COUNTY, FLORIDA TO EXERCISE ITS RIGHT UNDER SECTION 367.171(1), FLORIDA STATUTES, TO RESCIND DESOTO COUNTY RESOLUTION NUMBER 1984-22, A PRIOR RESOLUTION OF DESOTO COUNTY INVOKING PUBLIC SERVICE COMMISSION JURISDICTION OVER ALL INVESTOR-OWNED WATER AND WASTEWATER SYSTEM LOCATED IN DESOTO COUNTY, AND THEREBY EXCLUDE DESOTO COUNTY FROM THE PROVISION OF CHAPTER 367, FLORIDA STATUTES.

WHEREAS, on August 14, 1984, the Board of County Commissioners of DeSoto County, Florida, adopted Resolution Number 1984-22, declaring DeSoto County subject to the provisions of Chapter 367, Florida Statutes, invoking Public Service Commission jurisdiction over all investor-owned water and wastewater systems located in DeSoto County; and

WHEREAS, the Public Service Commission has actively exercised jurisdiction since that time; and

WHEREAS, Section 367.171(1) provides that "A county, after 10 continuous years under the jurisdiction of the commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing commission jurisdiction and thereby exclude itself from the provisions of this chapter"; and

WHEREAS, the Board of County Commissioners of DeSoto County, Florida, has determined that it is in the best interests of the health, welfare and safety of the citizens of DeSoto County, Florida, to rescind Resolution Number 1984-22, and thereby exclude DeSoto County from the provisions of Chapter 367, Florida Statutes.

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

1. DeSoto County hereby rescinds Resolution Number 1984-22, and thereby excludes DeSoto County from the provisions of Chapter 367, Florida Statutes, effective immediately.

2. The DeSoto County Administrator is hereby directed to:

a. Transmit a certified copy of this Resolution to the Public Service Commission for acknowledgement by the Public Service Commission;

b. Notify existing investor-owned water and wastewater systems operating or under construction in DeSoto County, of this Resolution;

c. Accept and process applications for County Certificates of Authorization from investor-owned water and wastewater systems operating or under construction in DeSoto County, in accordance with the provision of Section 367.171(4), Florida Statutes;

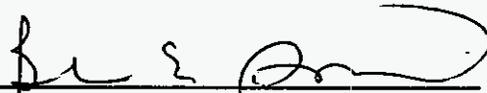
d. Prepare regulations governing investor-owned water and wastewater systems operating or under construction in DeSoto County, for adoption by the Board of County Commissioners of DeSoto County, Florida, within ninety (90) days of the adoption of this Resolution, which regulations shall include, as minimum standards of regulation, the provisions of Section 367.081, Florida Statutes, except for paragraph (4)(a), and Section 367.082, Florida Statutes, except that the word "commission" shall be read as "the governing body of such county" when the context

implies or admits. The authorized rate of return shall be no less than the weighted cost of the capital of the utility, including debt and equity.

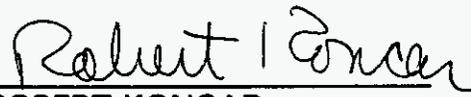
DULY PASSED AND ADOPTED IN REGULAR SESSION OF THE BOARD OF COUNTY COMMISSIONERS OF DESOTO COUNTY, FLORIDA, THIS 5<sup>th</sup> DAY OF MARCH, 1997.

BOARD OF COUNTY COMMISSIONERS  
OF DESOTO COUNTY, FLORIDA

(OFFICIAL SEAL)

  
\_\_\_\_\_  
BARBARA E. SMITH  
Chairman

ATTEST:

  
\_\_\_\_\_  
ROBERT KONCAR  
County Administrator

CONTRACT NO. 99-300  
BCC APPROVED 6-8-99

**WATER SALE AND PURCHASE AGREEMENT**

**(DeSoto County Sale to Sarasota County)**

This Agreement is entered into this 13<sup>th</sup> day of July 1999, by and between DeSoto County, Florida, a political subdivision of the State of Florida, and Sarasota County, Florida, a political subdivision of the State of Florida (the "Agreement").

**WITNESSETH:**

WHEREAS, DeSoto County and Sarasota County are each member counties of the Peace River/Manasota Regional Water Supply Authority, an independent Special District created and existing pursuant to Sections 373.1962 and 163.01, Florida Statutes (the "Authority"); and

WHEREAS, DeSoto County and Sarasota County entered into the Amended Peace River Option Water Supply Contract dated March 8, 1996 between the Authority, Charlotte County, DeSoto County and Sarasota County (the "WSA Contract"); and

WHEREAS, Sarasota County has agreed, for the term of WSA Contract or any renewal term thereof, to immediately transfer 0.250 MGD of its allocation to DeSoto County pursuant to Section 7.10 of the WSA Contract, and further give DeSoto County a five (5) year option to effect the transfer of an additional 0.125 MGD of Sarasota County's allocation; and

WHEREAS, DeSoto County desires to sell surplus potable water to Sarasota County

any renewal term thereof; and

WHEREAS, neither DeSoto County nor Sarasota County intend that this Agreement shall modify or supersede the terms of the WSA Contract except as said Contract may relate to the transfer of up to 0.375 MGD of water allocation from Sarasota County to DeSoto County.

NOW, THEREFORE, in consideration of the foregoing premises, which shall be deemed an integral part of this Agreement, and other good and valuable consideration, the parties intending to be legally bound by the terms hereof agree as follows:

Section 1. TRANSFER OF ALLOCATION. Sarasota County hereby transfers, effective immediately, and DeSoto County hereby accepts, for the term of WSA Contract or any renewal term thereof, 0.250 MGD of Sarasota County's Water Allocation under the WSA Contract. Pursuant to Section 7.10 of the WSA notice of this transfer of allocation shall be delivered to the Authority and revised allocations and schedules shall be recorded with the Clerks of Circuit Court in Charlotte, DeSoto and Sarasota Counties.

Section 2. OPTION FOR TRANSFER OF ADDITIONAL ALLOCATION. Sarasota County hereby gives DeSoto County a five year option, beginning on the effective date of this interlocal agreement, to effect the transfer of an additional 0.125 MGD of Sarasota County's Water Allocation under the WSA Contract for the term of WSA Contract or any renewal term thereof. This option may be exercised by DeSoto County through the adoption of a Resolution of the DeSoto County Board of County Commissioners and delivery of such Resolution to Sarasota County. Pursuant to Section 7.10 of the WSA, a copy of the Resolution exercising the option shall also be delivered to the Authority and revised allocations and schedules shall be recorded with the Clerks of Circuit Court in Charlotte, DeSoto and Sarasota Counties.

applicable to the party; and, (e) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon the assets of the party under any agreement or instrument to which it is a party or by which the party and its assets may be bound or affected.

2.3. There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the parties' knowledge, threatened against the party, wherein any unfavorable decision or ruling or finding would materially adversely affect the performance by the party of its obligations hereunder or which, in any way would adversely affect the validity or enforceability of this Agreement.

Section 3. CONDITIONS PRECEDENT. This Agreement is made subject to the following conditions precedent:

3.1. Complete execution of this Agreement by DeSoto County and Sarasota County.

3.2. Execution and delivery of a separate agreement transferring up to 0.375 MGD of Sarasota County's allocation under the WSA to DeSoto County, a copy of which shall be attached hereto as Exhibit "A".

3.3. Continued validity of the parties' representations as of the date of the complete execution of this Agreement by the parties.

Section 4. WATER PURCHASE RIGHTS AND OBLIGATIONS. DeSoto County shall deliver and Sarasota County shall purchase up to 0.375 MGD of potable water upon completion and permitting of the expansion of the Peace River Regional Water Supply Facility and Peace River Regional Transmission System and each day thereafter throughout the term of this Agreement. DeSoto County shall determine the quantity of water to be sold to Sarasota County and shall notify Sarasota County in writing by June 1 of the quantity to be purchased

By: Sarasota County Board of County Commissioners

By:   
Chairman

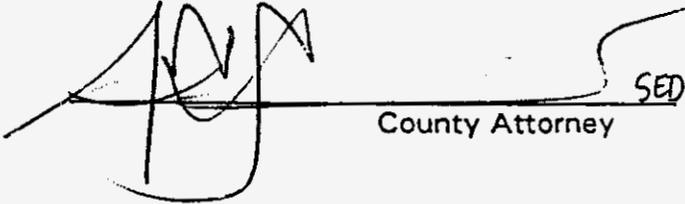
ATTEST:

KAREN E. RUSHING, Clerk of the Circuit and Ex-Officio Clerk of the Board of County Commissioners of Sarasota County, Florida



Deputy Clerk

APPROVED AS TO FORM AND CORRECTNESS:

 SED  
County Attorney

The cost of water per thousand gallons according to the example set forth as Alternate 2 in the attached Exhibit "B" would be calculated as follows:

	Total Unit Cost / 1,000 Gallons	\$ 1.63
Less:	Transmission Expansion / 1,000 Gallons	<u>0.12</u>
	Cost / 1,000	\$ 1.51

5.2. For any given month the amount which Sarasota County shall pay DeSoto County shall be determined according to the following formula:

TOTAL MONTHLY COST OF WATER PURSUANT TO PARAGRAPH 5.1 = THE  
ANNUAL QUANTITY EXPRESSED IN MGD X DAYS OF MONTH X 1000 X COST  
PER THOUSAND GALLONS

Section 6. GENERAL CONDITIONS.

6.1. DeSoto County shall not be required to deliver water to Sarasota County until completion of the System contemplated under the terms of the WSA Contract and receipt of certification from the Florida Department of Environmental Protection to operate the System. The DeSoto County's obligation to deliver water to Sarasota County is limited to the water supplied under and WSA Agreement and transferred by Sarasota County to DeSoto County pursuant to that certain Transfer of Water Allocation Agreement attached hereto as Exhibit "A". DeSoto County is not required to provide water to provide Sarasota County with water from any source other than that set out herein.

6.2. DeSoto County will not be required to deliver water to Sarasota County if prohibited by any applicable federal, state, regional or local statute, rule, ordinance, law, administrative order or judicial decree or in violation of applicable permits. Those provisions of the WSA Contract which pertain to the Source of Water, Delivery Point, Water Quality,

Water Measurement and Water Pressures shall be applicable to this Agreement.

6.3. Sarasota County's obligation to pay money to DeSoto County hereunder does not constitute general indebtedness of Sarasota County. Neither DeSoto County nor the holders of any revenue bonds issued by DeSoto County shall have a right to require or compel Sarasota County to exercise its ad valorem taxing power to pay its obligations under this Agreement or to compel payment from any source. Sarasota County, however, shall and does hereby covenant to set water rates for its customers at a level sufficient to pay all monies due DeSoto County under this Agreement.

6.4. Sarasota County shall pay DeSoto County on a monthly basis in accordance with paragraph 5.2 above. DeSoto County shall send an invoice to Sarasota County for these charges on or before the last day of the calendar month following the month in which the charges were incurred. Sarasota County shall remit payment for the monthly charges within thirty(30)days of receipt of the invoice. Failure to pay monies due hereunder shall create a debt owing by the Sarasota County Utilities Department. Sarasota County may be assessed an amount equal to one percent (1%) of the monthly invoice for each month the invoice, or portion thereof, remains unpaid beyond the limited thirty (30) day grace period.

Section 7. DEFAULT AND REMEDY. Recognizing the region's paramount need for a safe and dependable source of water supply, the parties agree that this Agreement may not be terminated prior to the normal expiration date specified in Section 1 hereof and the remedy for a breach of this Agreement shall be specific performance, injunctive relief and any other equitable relief, as well as monetary damages.

Section 8. APPLICABLE LAW AND VENUE. The laws of the State of Florida shall govern the validity, interpretation, construction and performance of this Agreement and venue for any suit

involving this Agreement shall be in Manatee County, Florida.

Section 9. ASSIGNMENT AND SERVICE. No assignment, delegation, transfer or novation of this Agreement or any part thereof shall be made unless approved in writing by all parties.

Section 10. WAIVER. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver hereof, but such right may be exercise from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive, either expressly or impliedly, any other breach under this Agreement.

Section 11. SECTION CAPTIONS AND REFERENCES. The section headings and captions contained herein are included for convenience only and shall not be considered part of this Agreement or affect in any manner its construction or interpretation. Except as otherwise indicated, all references herein to section are to sections of this Agreement.

Section 12. SEVERABILITY. In the event that any provision of this Agreement shall, for any reason, be determined invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of this Agreement or such other appropriate actions as shall to the maximum extent practicable in the light of such determination implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

Section 13. ATTORNEYS' FEES AND COSTS. In the event there is a breach of this

Agreement and it becomes necessary for any party to employ the services of any attorney either to enforce this Agreement or pursue other remedies with litigation or adversarial administrative proceedings, the losing party shall pay to the successful party reasonable attorneys' fees and such reasonable costs and expenses as are incurred in enforcing this Agreement or pursuing other remedies, to the extent allowed by law.

Section 14. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the respective successors, permitted assigns, administrators and trustees of this Agreement.

Section 15. INTERLOCAL AGREEMENT. This Agreement shall constitute an interlocal agreement pursuant to Section 163.01, Florida Statutes. A true and correct copy of this Agreement and any subsequent amendments shall be recorded with the Clerk of the Circuit Court in DeSoto and Sarasota counties.

Section 16. AMBIGUITY. The parties hereto agree that each one has played an equal part in the negotiation and drafting of this Agreement, and in the event of any ambiguity should be asserted or realized in the interpretation or construction of this Agreement, the result of such ambiguity shall be equally assumed and realized by each party.

IN WITNESS WHEREOF, DeSoto County and Sarasota County have entered into this Agreement on the day, month and year first above written.

DESOTO COUNTY FLORIDA, a political  
subdivision or the State of Florida

By: DeSoto County Board of County  
Commissioners

By:   
William R. Avant, Chairman

ATTEST:

Robert Koncar

Robert Koncar, County Administrator  
and Ex-Officio Clerk of the Board of  
County Commissioners of DeSoto County, Florida

APPROVED AS TO FORM AND CORRECTNESS:

Preston T. Everett

~~Gay XXV 10/20/00~~ County Attorney  
Preston T. Everett

SARASOTA COUNTY FLORIDA, a political  
subdivision or the State of Florida

By: Sarasota County Board of County  
Commissioners

By: Sharon Staub  
Chairman

ATTEST:

KAREN E. RUSHING, Clerk of the  
Circuit and Ex-Officio Clerk of the  
Board of County Commissioners of  
Sarasota County, Florida

Juice Gray

Deputy Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Step 200 SED  
County Attorney

EXHIBIT "A"

TRANSFER OF WATER ALLOCATION AGREEMENT

(Sarasota County to DeSoto County)

This Agreement is entered into this 13<sup>th</sup> day of July 1999, by and between DeSoto County, Florida, a political subdivision of the State of Florida, and Sarasota County, Florida, a political subdivision of the State of Florida (the "Agreement").

WITNESSETH:

WHEREAS, DeSoto County and Sarasota County are each member counties of the Peace River/Manasota Regional Water Supply Authority, an independent Special District created and existing pursuant to Sections 373.1962 and 163.01, Florida Statutes (the "Authority"); and

WHEREAS, DeSoto County and Sarasota County entered into the Amended Peace River Option Water Supply Contract dated March 8, 1996 between the Authority, Charlotte County, DeSoto County and Sarasota County (the "WSA Contract"); and

WHEREAS, Sarasota County has agreed, for the term of WSA Contract or any renewal term thereof, to transfer, effective immediately, 0.250 MGD of its allocation to DeSoto County pursuant to Section 7.10 of the WSA Contract; and

WHEREAS, Sarasota County has further agreed to give DeSoto County a five year option in which to effect the transfer of an additional 0.125 MGD of Sarasota County's allocation, pursuant to Section 7.10 of the WSA Contract, for the term of WSA Contract or

any renewal term thereof; and

WHEREAS, neither DeSoto County nor Sarasota County intend that this Agreement shall modify or supersede the terms of the WSA Contract except as said Contract may relate to the transfer of up to 0.375 MGD of water allocation from Sarasota County to DeSoto County.

NOW, THEREFORE, in consideration of the foregoing premises, which shall be deemed an integral part of this Agreement, and other good and valuable consideration, the parties intending to be legally bound by the terms hereof agree as follows:

Section 1. TRANSFER OF ALLOCATION. Sarasota County hereby transfers, effective immediately, and DeSoto County hereby accepts, for the term of WSA Contract or any renewal term thereof, 0.250 MGD of Sarasota County's Water Allocation under the WSA Contract. Pursuant to Section 7.10 of the WSA notice of this transfer of allocation shall be delivered to the Authority and revised allocations and schedules shall be recorded with the Clerks of Circuit Court in Charlotte, DeSoto and Sarasota Counties.

Section 2. OPTION FOR TRANSFER OF ADDITIONAL ALLOCATION. Sarasota County hereby gives DeSoto County a five year option, beginning on the effective date of this interlocal agreement, to effect the transfer of an additional 0.125 MGD of Sarasota County's Water Allocation under the WSA Contract for the term of WSA Contract or any renewal term thereof. This option may be exercised by DeSoto County through the adoption of a Resolution of the DeSoto County Board of County Commissioners and delivery of such Resolution to Sarasota County. Pursuant to Section 7.10 of the WSA, a copy of the Resolution exercising the option shall also be delivered to the Authority and revised allocations and schedules shall be recorded with the Clerks of Circuit Court in Charlotte, DeSoto and Sarasota Counties.

Section 3. PROHIBITION ON RESALE OF WATER. DeSoto County shall not sell water obtained pursuant to this Agreement to an entity for purposes of servicing customers located outside the territorial boundaries of DeSoto County, provided that, DeSoto County may sell water obtained pursuant to this Agreement without restriction to other members of the Authority.

Section 3-4. INTERLOCAL AGREEMENT. This Agreement shall constitute an interlocal agreement pursuant to Section 163.01, Florida Statutes. A true and correct copy of this Agreement and any subsequent amendments shall be recorded with the Clerk of the Circuit Court in DeSoto and Sarasota counties.

IN WITNESS WHEREOF, DeSoto County and Sarasota County have entered into this Agreement on the day, month and year first above written.

DESOTO COUNTY FLORIDA, a political subdivision or the State of Florida

By: DeSoto County Board of County Commissioners

By: William R Avant  
William R Avant, Chairman

ATTEST:

Robert Koncar

Robert Koncar, County Administrator and Ex-Officio Clerk of the Board of County Commissioners of DeSoto County, Florida  
APPROVED AS TO FORM AND CORRECTNESS:

Preston T. Everett  
~~County Attorney~~  
Preston T. Everett

SARASOTA COUNTY FLORIDA, a political subdivision or the State of Florida

By: Sarasota County Board of County Commissioners

By:   
Chairman

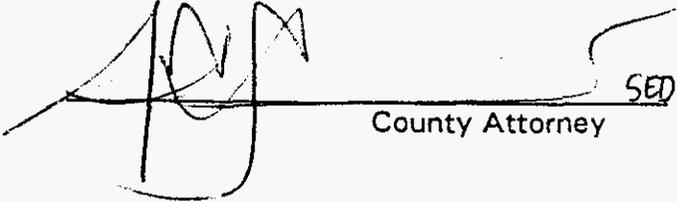
ATTEST:

KAREN E. RUSHING, Clerk of the Circuit and Ex-Officio Clerk of the Board of County Commissioners of Sarasota County, Florida



Deputy Clerk

APPROVED AS TO FORM AND CORRECTNESS:

 SED  
County Attorney

**Resolution Number ~~1998~~-32**

**DeSoto County  
Board of County Commissioners**

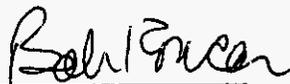
- Whereas,** the Board of County Commissioners of DeSoto County, (hereinafter called the "Board") has determined that the County's economic prosperity depends upon increased economic development; and
- Whereas,** the Board has determined that the greatest opportunity for economic development is in the Southwestern portion of DeSoto County (as determined in the Water and Sewer Study completed by Camp, Dresser and McKee Consultant Engineers, dated February 1997); and
- Whereas,** the Board has discussed, met and reviewed the issues pertaining to the provision of water and sewer services in the area described in "Attachment A" for several years. The Board has created an Economic Development Council to pursue the economic development of the area and has expended substantial County funds to promote economic development in the area; and
- Whereas,** the Board has significant concerns about the financial ability of Lake Suzy Utilities, Inc., to expand in a manner that will keep pace with the economic development of the area; and
- Whereas,** Lake Suzy Utilities, Inc., obtains all of its water from DeSoto County and depends exclusively upon DeSoto County to obtain water for its customers; and
- Whereas,** the Board finds that the most efficient and effective method for promoting and encouraging economic development in the Southwest portion of DeSoto County is for the County to create a Water and Sewer District in the area described in "Attachment A"; and
- Whereas,** The Board is preparing an application for a State grant to construct a water and sewer facility in this portion of the County (described in "Attachment A"), and
- Whereas,** The Board is in the process of securing additional water capacity (through its membership in the Peace River Manasota Water Authority in order to serve this area of the County.

**“Now Therefore Be It Resolved by the Board of County Commissioners of DeSoto County, Florida:”**

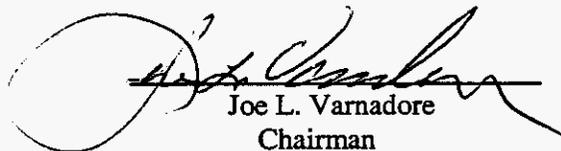
1. Pursuant to Section 153.08 and 153.53 (1) Florida Statutes, the DeSoto County Board of County Commissioners hereby establishes the DeSoto County Water and Sewer District Number One (hereinafter referred to as the “District”). The physical boundaries of the District are set forth in “Attachment A”, attached to this Resolution and by reference made a part hereof.
2. The Board deems it necessary to create the District (for the provision of Water and Sewer Service) in order to provide for the health, safety and welfare of the residents and property located therein, as well as future residences and commercial interests.
3. The Board further finds that in addition to health, safety and welfare concerns, the County deems it in the best interest of the County residents to provide water and sewer service to this area in order to promote economic development of the area and enhance the County’s tax base to the benefit of all County residents.
4. Pursuant to Chapter 153, Florida Statutes, the Board resolves to exercise its powers granted by Chapter 153, Florida Statutes, Part I, by moving forward to establish a water and sewer facility to serve the District. Pursuant to Chapter 153, Florida Statutes, the Board has caused to be made a Study (Camp, Dresser and McKee - Study dated February 1997) of the future need for water and sewer services in DeSoto County and authorizes and directs any additional cost estimates, investigations, maps and plans to be completed as may be necessary in order to obtain all of the necessary information contemplated in Chapter 153.

RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DESOTO COUNTY, FLORIDA  
THIS 16<sup>TH</sup> DAY OF JULY , 1998.

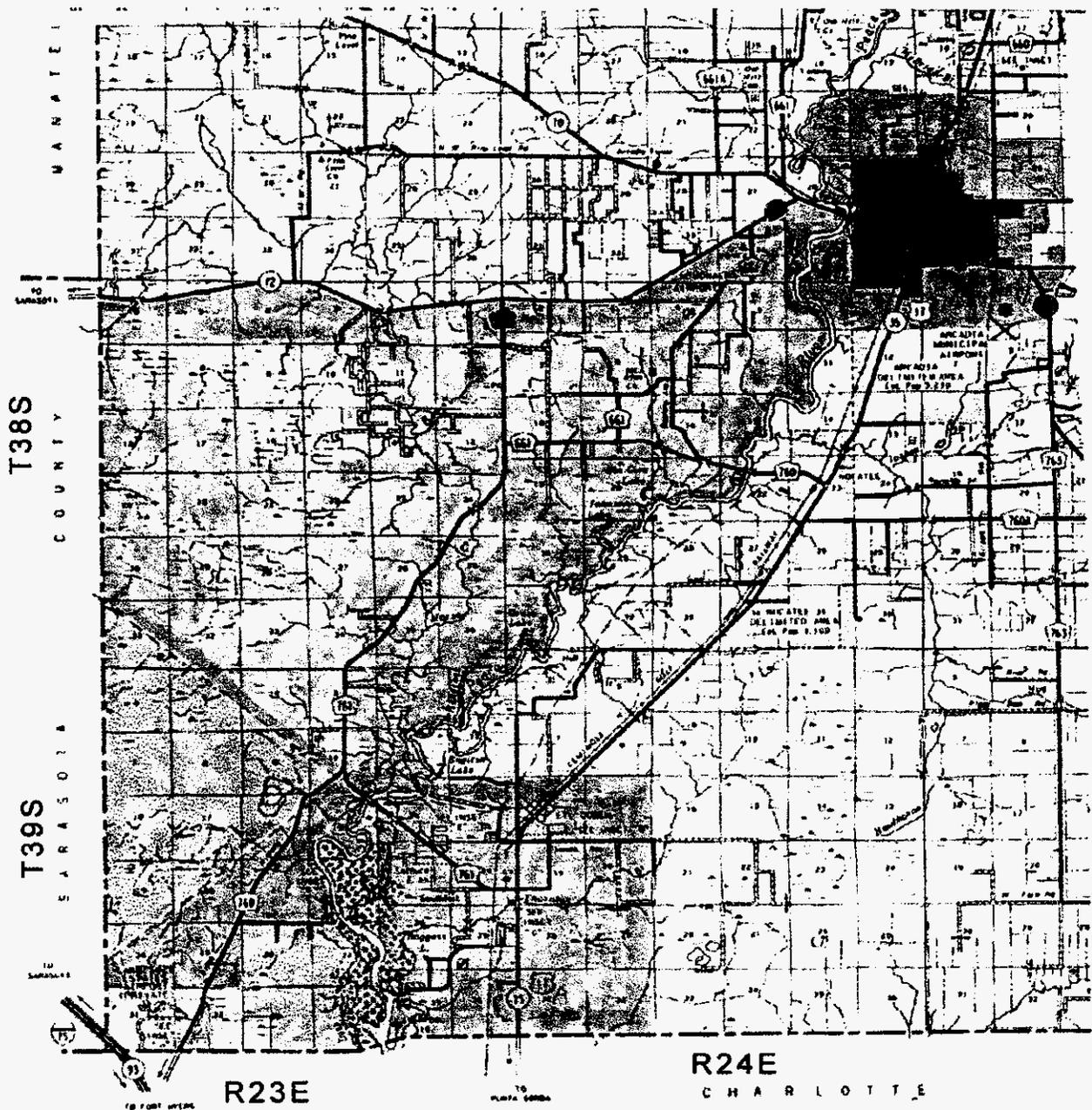
ATTEST



Bob Koncar  
County Administrator



Joe L. Varnadore  
Chairman



**LEGAL DESCRIPTION: Proposed DeSoto County Utilities Service Area**

**Legal Description:**

**For Proposed DeSoto County Utilities Service Area**

All that property lying in Township 37 South, Range 24 East; Township 38 South, Range 23 and 24 East; Township 39 South, Range 23, and 24 East: being more particular described as follows:

All that property lying in DeSoto County South of S.R. 72, East of Sarasota, DeSoto County line, North of Charlotte - DeSoto County line, West of Peace River, South of S.R. 70.

Less property owned by South West Florida Water Management District and property serviced by Lake Suzy Utility, franchised in DeSoto County.

All that portions of the following land sections lying outside of the City limits of Arcadia, Fl.:

Together with Sections 23, 24, 26, 35 Township 37 South, Range 24 East; Section 19, 29, 30, 32 Township 37 South, Range 25 East; Sections 1, 2 Township 38 South, Range 24 East; and Sections 5,6 Township 38 South Range 25 East; less city limits of City of Arcadia.