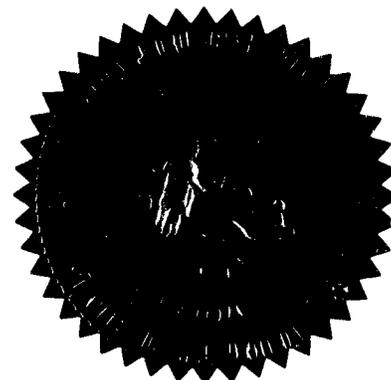


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991666-WU

In the Matter of

APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 106-W TO ADD
TERRITORY IN LAKE COUNTY BY
FLORIDA WATER SERVICES
CORPORATION.



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VOLUME 1

Pages 1 through 125

PROCEEDINGS:

HEARING

BEFORE:

COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

DATE:

Wednesday, July 11, 2001

TIME:

Commenced at 10:06 a.m.

PLACE:

E. L. Puryear Building
243 South Lake Avenue
Groveland, Florida 34736

REPORTED BY:

TRICIA DeMARTE
Official FPSC Reporter
(850) 413-6736

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7 City of Groveland.

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11 behalf of the Commission Staff.

12

13 ALSO PRESENT:

14 BOBBIE REYES, Florida Water Services Corporation

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P R O C E E D I N G S

1
2 COMMISSIONER JABER: All right. Counsel, are there
3 preliminary matters that we need to discuss before we go
4 forward with testimony?

5 MS. CHRISTENSEN: Yes, Commissioner.
6 Patty Christensen, appearing on behalf of Staff. The
7 first preliminary matter that Staff would like to address is
8 that we have requested and the parties have requested that
9 direct and rebuttal testimonies be addressed at the same time.

10 COMMISSIONER JABER: That's fine. Ms. Christensen, I
11 think the first thing we need to do is take appearances from
12 the parties of record. And Mr. Menton.

13 MR. MENTON: Good morning, Commissioners. Steve
14 Menton with the law firm of Rutledge, Ecenia, Purnell and
15 Hoffman; and Bobbie Reyes is from Florida Water Services
16 Corporation on behalf of Florida Water, the applicant in this
17 case.

18 COMMISSIONER JABER: Ms. Brownless.

19 MS. BROWNLESS: Suzanne Brownless of
20 Suzanne Brownless, P.A., 1311-B Paul Russell Road, Suite 201,
21 Tallahassee, Florida, appearing on behalf of the City of
22 Groveland.

23 MS. CHRISTENSEN: Patty Christensen, appearing on
24 behalf of Staff.

25 COMMISSIONER JABER: Okay. Ms. Christensen, you were

1 indicating that the parties have agreed to take direct and
2 rebuttal at the same time. Commissioners, I'm assuming that
3 that's acceptable to you all.

4 COMMISSIONER PALECKI: Yes.

5 COMMISSIONER JABER: All right. What is next?

6 MS. CHRISTENSEN: The next matter that Staff would
7 like to address is, there were several stipulations that were
8 agreed to by the parties at the prehearing, and we would like
9 to address those now. The first stipulation is, the parties
10 have agreed that there is a need for service in the territory
11 proposed by Florida Water Service's application. We would
12 note, however, that the parties made it clear at the prehearing
13 that the timing of that service was still an issue in this
14 hearing.

15 COMMISSIONER JABER: Let me just say that I am having
16 trouble hearing. Anytime there is any sort of movement in the
17 back of the room, Counsel, I can't hear you, and remember that.
18 So speak directly into the mic so that the Commissioners can
19 hear what you are saying.

20 And the stipulations are on Page 17 of the prehearing
21 order; right, Patty?

22 MS. CHRISTENSEN: That is correct, I believe.

23 COMMISSIONER JABER: And there are three of them.

24 Ms. Christensen, are there more?

25 MS. CHRISTENSEN: That is correct. The other

1 stipulations are that Florida Water Service has the financial
2 ability to serve, and that Florida Water Service has the
3 technical ability to serve.

4 COMMISSIONER JABER: Were there any objections at all
5 to these proposed stipulations?

6 MS. CHRISTENSEN: No.

7 COMMISSIONER JABER: All right. Are there any
8 changes to the wording?

9 MS. CHRISTENSEN: None.

10 COMMISSIONER JABER: And you wish to have us approve
11 them today for you; right?

12 MS. CHRISTENSEN: Yes, Commissioner.

13 COMMISSIONER JABER: Commissioners, I need a motion
14 to approve the proposed stipulations on Page 17 of the
15 prehearing order.

16 COMMISSIONER BAEZ: So moved.

17 COMMISSIONER PALECKI: Seconded.

18 COMMISSIONER JABER: Show the proposed stipulations
19 approved.

20 Okay. What's next?

21 MS. CHRISTENSEN: Commissioners, we have several
22 witnesses that have been requested to take out of order.
23 First, Ms. Winningham, who is the Staff's witness from the
24 Department of Community Affairs, has requested that she be
25 allowed to testify at a time certain so that she would only

1 have to appear for one day and return to her offices.

2 COMMISSIONER JABER: Is Ms. Winningham in the room
3 this morning?

4 MS. CHRISTENSEN: Yes, she is present.

5 COMMISSIONER JABER: Is there any objection to taking
6 Ms. Winningham up as the first witness?

7 MS. BROWNLESS: No, ma'am.

8 MR. MENTON: No, Commissioner.

9 COMMISSIONER JABER: That's what we will do.

10 MS. CHRISTENSEN: Next, Commissioners, the City of
11 Groveland also has indicated that several of their witnesses
12 have some time constraints which require that they testify on
13 certain days. Mr. Mittauer is available to testify on today's
14 date, which is June 11th, but would not be available to testify
15 tomorrow, July 12th -- I'm sorry, did I say "June"? July --
16 due to a previous commitment. And Staff has no objection
17 taking Mr. Mittauer's testimony out of order.

18 And then Mr. Beliveau --

19 MS. BROWNLESS: Beliveau.

20 MS. CHRISTENSEN: -- is available to testify on
21 July 12th from early in the morning until noon or possibly
22 after 3:00 p.m., but he needs to be in another proceeding at
23 1:00 p.m., and there is a time that he would be unavailable
24 tomorrow as well, but he would need to testify tomorrow.

25 COMMISSIONER JABER: Ms. Brownless, let me get some

1 clarification from you. I'm very optimistic that we can finish
2 this hearing today. So tell me what the order of witnesses you
3 prefer is, and confirm for me whether Mr. Beliveau can be
4 available late this afternoon or early evening, if necessary.

5 MS. BROWNLESS: Mr. Beliveau is in South Carolina
6 right now, and he is coming in tonight. He will be available
7 from as early as you want to start tomorrow morning until noon.
8 I mean, if you want to start at six o'clock, we'll come.

9 COMMISSIONER JABER: I think it's safe to note that
10 we will not be starting at 6:00 a.m. tomorrow morning.

11 All right, Ms. Brownless, but your preferred order of
12 witnesses would be Mr. Mittauer -- say his name for me.

13 MS. BROWNLESS: Mittauer, Mittauer.

14 COMMISSIONER JABER: -- Mittauer, okay, first, and
15 then Mr. Yarborough?

16 MS. BROWNLESS: Yes, ma'am.

17 COMMISSIONER JABER: Okay. Show that as being
18 approved.

19 MS. BROWNLESS: And the only thing I would request,
20 Commissioner, is, if it looks like we will not be able to
21 finish Mr. Tillman, for example, because he is going to be a
22 very long witness, that we stop and take Mr. Mittauer out of
23 turn, I guess, so that he can get done because Mr. Mittauer can
24 stay as late tonight as you all want to stay.

25 COMMISSIONER JABER: Mr. Menton, do you have any

1 objection to interrupting the testimony of Mr. Tillman if we
2 need to?

3 MR. MENTON: That would be fine, Commissioner. I
4 think Mr. Perry will be our first witness because he's going to
5 be very brief. And so we'll take him right after
6 Ms. Winningham, and I think we'll finish him up. And I'm
7 optimistic that we will finish Mr. Tillman in time to get to
8 Mr. Mittauer, but if we don't, I think Mr. Tillman has agreed
9 that he would come back tomorrow.

10 COMMISSIONER JABER: Okay. My list of order of
11 witnesses is the following, you all can correct it if it's
12 wrong, but we will take Brenda Winningham first, Mr. Perry
13 second, Mr. Tillman third, Mr. Mittauer fourth, Mr. Yarborough
14 fifth, and our final witness will be Mr. Beliveau; is that
15 correct?

16 MS. BROWNLESS: Yes, ma'am.

17 MR. MENTON: Yes, ma'am.

18 COMMISSIONER JABER: All right. Patty, what's next?

19 MS. CHRISTENSEN: The next issue that Staff would
20 like to bring to the Commissioners' attention is, on July 9th,
21 2001, Ms. Brownless filed a request for official recognition
22 which has not been addressed yet by the Commission.

23 COMMISSIONER JABER: Which has what?

24 MS. CHRISTENSEN: Has not yet been addressed by the
25 Commission.

1 COMMISSIONER JABER: All right. Ms. Brownless.

2 MS. BROWNLESS: Yes, ma'am. We have requested that
3 the following documents be judicially noticed pursuant to Rule
4 of Evidence 90.202 and 90.203. The first one is Lake County
5 Ordinance 1996-42 enacted May 7th of 1996. We have certified
6 copies of that ordinance available.

7 The second is Lake County Ordinance 1999-177, which
8 is the planned unit development order for the Summit
9 development.

10 The third is the Department of Environmental
11 Protection application for a public drinking water facility
12 construction permit for the Summit dated 3/20/2000.

13 The second (sic) is the Florida Department of
14 Environmental Protection permit number WD35-0080593-010, the
15 water distribution system extension permit.

16 The fifth is the St. Johns River Water Management
17 District permit number 4-069-62892-2, the Summit.

18 The sixth is the Department of Environmental
19 Protection delineation map for potable water well permitting,
20 Chapter 62-524, F.A.C.

21 And the seventh is Chapter 62-524, F.A.C., simply a
22 copy of the codified version of the Administrative Code.

23 COMMISSIONER JABER: Ms. Brownless, you've given
24 copies to counsel?

25 MS. BROWNLESS: Yes, sir. He has a copy of all of

1 these materials and was provided them on Monday.

2 COMMISSIONER JABER: Mr. Menton, do you have any
3 objections to the request?

4 MR. MENTON: Commissioner, I don't think I will, but
5 I received these on late Monday afternoon as I was trying to
6 get things organized. I have not been able to, for example,
7 confirm that the DEP application that she gave me a copy is the
8 one that we also have. I assume that we will be able to do
9 that. In terms of the ordinances, she has certified copies;
10 obviously, I don't have a problem with that. What I would like
11 to do, though, is to reserve the right to either respond or
12 provide some supplemental provisions if necessary, and I don't
13 think it will be necessary. I would just like to request an
14 opportunity to review them.

15 COMMISSIONER JABER: And that's as to which item on
16 this list?

17 MR. MENTON: The ordinances which are the fire -- I
18 mean, the '96 ordinance and the '99 ordinance, the first two
19 that she mentioned.

20 COMMISSIONER JABER: Now, Mr. Menton, I would note
21 that Chapter 90 allows that ordinances passed by county
22 government may be judicially recognized. It's not that you
23 have a problem with that. You want an opportunity to provide a
24 separate list.

25 MR. MENTON: A response.

1 COMMISSIONER JABER: You always have that
2 opportunity. So I don't hear you objecting to the request.

3 MR. MENTON: Right, that's correct. Now, I would
4 caveat that with one. The DEP delineation map, it is an issue
5 that she provided me on Monday, and I believe we were talking
6 about this prior to the hearing. And I think I can get to the
7 point where I can be comfortable that it's authentic. It is
8 not the type of matter that is generally judicially noticed or
9 officially recognized, and I would point that out. I think
10 that we may be able to reach a stipulation on authenticity.
11 Obviously, I reserve objections on relevancy and a lot of other
12 matters, timeliness, et cetera, but in terms of just the
13 authenticity, I think she can get me to a comfort level where I
14 would be willing to stipulate to authenticity on that.

15 COMMISSIONER JABER: Okay. Let's do this.

16 MS. BROWNLESS: May I just add this?

17 COMMISSIONER JABER: Go ahead, Ms. Brownless.

18 MS. BROWNLESS: I would point out that in Chapter
19 62-524 -- 62-524.430, maps containing a delineated area, it
20 states as follows: The following maps which are incorporated
21 herein by reference show surface areas delineated pursuant to
22 Rule 62-524.420, F.A.C.

23 And if you turn to the list of maps, it notices that
24 there's Lake County, a Clermont west map. That is the map that
25 has been identified here. We have Mr. Kris Barrios, who

1 prepared this map, available by phone today to verify the
2 authenticity of the map. And that's all we want him to do, is
3 just simply verify that this is the Clermont west map as
4 referenced in the rule. And he is also prepared to give an
5 affidavit to that effect that we can attach to the map.

6 COMMISSIONER JABER: Right. But if we pursue that
7 option, we'd also have to think about a method of getting that
8 into the record, and that could be done by stipulation. What
9 I'd like do is to go ahead and officially recognize Items
10 1 through 5 on the list that was offered up by Ms. Brownless
11 and the Item 7. For Item 6, I'd like to give you all an
12 opportunity to talk about it further, and then bring it back to
13 my attention.

14 Okay. What I heard Mr. Menton say is, he may not
15 have an objection at all. He just wants an opportunity for you
16 and he to reach an agreement on the authenticity of it.

17 MS. BROWNLESS: Okay. And my understanding from
18 Mr. Menton, and I want to make sure I have this clear, is that
19 if we do receive an affidavit from Mr. Barrios of DEP, that
20 that will satisfy him as to the authenticity. I mean,
21 obviously, he reserves the right to object to relevance.

22 MR. MENTON: Correct. I mean, I obviously need to
23 see the affidavit before I'll commit that it will satisfy me,
24 but I think we can reach, you know, an agreement that it's the
25 authentic DEP map. I think we may have a dispute as to

1 relevancy, timeliness, et cetera, and what it means, but those
2 are other issues. We can argue those.

3 COMMISSIONER JABER: Okay. We will revisit this when
4 you all have had another opportunity to talk, but for the
5 record, we will officially recognize Items 1 through 5 and Item
6 7 on the City of Groveland's list of official recognition.

7 What's next, Ms. Christensen?

8 MS. BROWNLESS: Excuse me. May I ask if Mr. Menton
9 has any items that he would like to take judicial notice of?

10 MR. MENTON: Not at this time.

11 MS. CHRISTENSEN: I believe that concludes all of the
12 preliminary matters. Staff would ask, although we're taking
13 notice of these items, I know Ms. Brownless has copies of them,
14 Staff would appreciate it if we could actually get copies of
15 her copies so that we have physical copies as well.

16 COMMISSIONER JABER: Yeah, Ms. Brownless, please
17 provide copies to Staff.

18 MS. BROWNLESS: Yes, ma'am.

19 COMMISSIONER JABER: All right.

20 MS. CHRISTENSEN: And I believe we have no other
21 preliminary matters that Staff is aware of.

22 COMMISSIONER JABER: Are all the witnesses in the
23 room? Are there witnesses in the room? All right. Can I ask
24 the witnesses to please stand and raise their right hand.

25 (Witnesses collectively sworn.)

1 COMMISSIONER JABER: Thank you. Ms. Christensen, do
2 you want to call your witness?

3 MS. CHRISTENSEN: Yes. I would like to call
4 Ms. Brenda Winningham to the stand.

5 MS. BROWNLESS: Don't we have the ability to give
6 opening statements of ten minutes?

7 MS. CHRISTENSEN: Oh, I'm sorry. Yes, you do. I'm
8 sorry.

9 COMMISSIONER JABER: You want to give opening
10 statements of ten minutes. Go ahead, Mr. Menton.

11 MR. MENTON: Thank you, Commissioner. Very briefly.
12 Commissioners, despite all of the documents and the boxes and
13 things that you see around you, I'm going to suggest to you
14 that this is a very simple case. The issue before you is
15 whether or not Florida Water's request to add additional
16 territory to its certificated area in Lake County complies with
17 the requirements of Chapter 367 and should be granted.

18 I believe we have reached a stipulation that Florida
19 Water has the financial and technical capability to provide the
20 service. And I thought from the prehearing statements and the
21 prefiled testimony that there was also no dispute over the need
22 for service. However, based upon the discussions and events
23 over the last couple of weeks, I'm not so sure where we stand
24 on that issue, and we may have some legal debate as we proceed
25 over the course of the next few hours and into tomorrow.

1 I have reviewed and re-reviewed the prefiled
2 testimony and the prehearing statements, and I'm not sure where
3 that dispute is coming from. I think as long as we stay
4 focused on the issues that are framed in the prehearing orders
5 and the prefiled testimony, this hearing should go very
6 smoothly and quickly.

7 There are two adjoining developments that you will
8 hear a lot about over the course of the next day or so. And,
9 Commissioner, if I may, I'll point out on the map to you the
10 ones that we're talking about here. Florida Water is currently
11 providing service to a development known as the Palisades.
12 And, essentially, the crosshatched area going this way
13 represents the existing certificated area for Florida Water.
14 There is an additional portion of territory that has been
15 certificated over here that is not part of the Palisades
16 development, per se, but it is part of the existing
17 certificated area. The area that has been requested goes with
18 the crosshatch this way, and that is a development this is
19 proposed by the same developers who did the Palisades, and it's
20 known as the Summit. And there's, essentially, in the
21 application that we filed and the plans that we've received,
22 proposed to be 135 lots, a golf course within the Summit
23 development. So there's the Palisades where there is existing
24 service now, and then there's the Summit which is the requested
25 area right here.

1 The owner of the property that's known as the Summit
2 approached Florida Water and requested water service, and
3 that's what's prompted this whole proceeding and this
4 application that was submitted. As I indicated, we have
5 already worked with that developer on the Palisades system.
6 The Palisades water plant that is currently serving, and I'll
7 leave the mic here, but I'll show you where it is, right
8 here --

9 MS. BROWNLESS: Can you indicate for the record, is
10 it just off 478, just to the south of 478, Cherry Hill Road?

11 MR. MENTON: This map does not have the roads located
12 on it. There is a road, I believe, 478 that runs right along
13 this boundary line here. And the plant is located --

14 MS. BROWNLESS: Immediately to the south of Cherry
15 Lake Road.

16 MR. MENTON: -- right in this corner, right here.
17 The existing Florida Water plant there -- and I need to point
18 out that the application that we have in this case is for water
19 only. There is no wastewater service requested, and that's
20 because the development is proposed to be done with septic
21 tanks, and it has been vested into the use of septic tanks with
22 the densities that have been requested. So there was no
23 wastewater application that was submitted with this, and there
24 is no wastewater service currently being provided to the
25 Palisades.

1 The existing water plant that Florida Water has, has
2 a capacity of 1.12 million gallons per day. The latest figures
3 that we have indicate that the current flows from that plant
4 are approximately 319,000 gallons per day. I believe the
5 prefiled testimony indicates 395, but the recent 12-month
6 average has actually declined somewhat and is down to
7 319,000 gallons per day. So Florida Water has capacity within
8 its existing water plant at the Palisades to meet the needs of
9 the Summit.

10 The application that was submitted by Florida Water
11 was pursuant to the request of the developer, and we have
12 entered into an agreement with the developer, which is attached
13 as an exhibit to the application. That exhibit was -- or the
14 developer agreement was executed, I believe, in February of
15 2000. The City of Groveland, with a population of
16 approximately 3,100 people, filed an objection to Florida
17 Water's application. As you will note from that objection that
18 was filed and the prefiled testimony that was submitted by the
19 city, the principal basis for the objection was that the
20 requested territory was within the scope of a service area
21 designated by the city pursuant to Section 180.02(3), Florida
22 Statutes.

23 While there is not much dispute from a factual
24 perspective in this case, it would appear that there is
25 considerable dispute between the parties as to the scope and

1 effect of a city ordinance. We would suggest that Section
2 180.02(3) is clear on its face and allows a municipality to
3 designate an exclusive service area for wastewater or for
4 alternate water sources. Thus, the service area designated by
5 the city is irrelevant in the context of this application which
6 is solely for potable water.

7 In adopting the Staff recommendation and denying
8 Florida Water's motion for summary final order, I believe the
9 Commission has already ruled that it does not have the
10 jurisdiction or authority to enforce the city's claim under
11 Chapter 180. Thus, although it is addressed at length in the
12 prefiled testimony of the city, we believe that the city's
13 interpretation is erroneous, but that issue can probably only
14 be resolved by a court outside of this proceeding. The
15 Commission is obligated to follow the criteria set forth in
16 Section 367. Applying those criteria, I would suggest that you
17 will conclude that you have no option but to approve Florida
18 Water's application. To the extent the city wishes to pursue
19 its interpretation of Chapter 180, it must do so in an
20 appropriate forum.

21 Since the filing of its objection in this docket, the
22 city has been racing to extend its lines as close as possible
23 to the Summit. At the time Florida Water submitted its
24 application, the closest water lines that the city had to the
25 Summit were approximately five miles away. The city was in the

1 process of pursuing a grant from DEP to extent its lines out
2 State Road 19 and down Cherry Lake Road approximately two and a
3 half miles to a subdivision known as the Garden City
4 subdivision. That subdivision had contaminated wells and
5 apparently qualified for a grant for an extension of city water
6 lines.

7 The Garden City subdivision, according to the
8 testimony of the city itself, is approximately 13,000 feet from
9 the entrance to the Summit. During the pendency of these
10 proceedings, the city has apparently continued extensions
11 beyond the subdivision to get closer to the Summit. However,
12 as we sit here today, the city has no water customers within
13 two and a half miles of the Summit. It's attempting to extend
14 its lines closer, but it will still not be adjacent to the
15 Summit. The city's proposed service to the Summit is
16 inconsistent with the county comprehensive plan. The Staff
17 witness will confirm that the Department of Community Affairs
18 also opposes the city's proposed service.

19 In applying the duplication and competition criteria,
20 which is required under Section 367, the city's noncompliance
21 is a factor, I believe, that you should take into account
22 because it indicates that the city cannot provide service
23 consistent with its own comprehensive plan or the county's
24 comprehensive plan. I would also suggest to you that under
25 Section 180.06, Florida Statutes, the city was obligated to

1 obtain the consent of Florida Water or is obligated to obtain
2 the consent of Florida Water before it provides service to an
3 area adjacent to territory that we are currently serving.

4 According to the city's own engineer, in order for
5 the city to design, permit, and construct additional extensions
6 necessary to reach the Summit, it would take approximately six
7 months from the time it gets approval to go forward. Thus,
8 Florida Water's application is not duplicating and is not in
9 competition with anything other than the city's desire to
10 serve. Duplication of a desire to serve is not a basis for
11 denying an application under Chapter 367.

12 In sum, I would suggest to you that there is no
13 dispute as to Florida Water's financial or technical ability to
14 serve the requested territory. The developer has requested
15 service and has entered into a water service agreement that
16 confirms the need for service. Florida Water's application
17 meets the criteria for approval of its application to add the
18 requested territory to its certificate, and we would request
19 that the Commission approve that application. Thank you.

20 COMMISSIONER JABER: Ms. Brownless.

21 MS. BROWNLESS: Good morning, Commissioners. First,
22 I would say that with regard to the interpretation of what the
23 City of Groveland is doing here. The City of Groveland is not
24 seeking for this Commission to interpret Chapter 180, our
25 rights under Chapter 180, the legal or jurisdictional effects

1 of a Chapter 180 utility district. As Mr. Menton noted, that
2 issue has already been raised in his motion for summary
3 judgment, and the Commission has already found that you do have
4 the jurisdiction to interpret Chapter 180.

5 The city is here to do two things. The city is here
6 and will establish that its lines are currently 3,000 feet from
7 the entrance of the Summit. It is currently in the process of
8 clearing out its lines at that 3,000 foot point for service to
9 Garden City. The City Council has authorized extension of the
10 city's line, that additional 3,000 feet, in response to a
11 request from developers on Wilson Island. Wilson Island is
12 immediately adjacent to the entrance of the Summit subdivision,
13 the extension area in question here. So the city will, in
14 fact, be able to provide service. The city has adequate water
15 capacity to do so. The city has existing water treatment
16 capacity to do so.

17 It is the city's position that while Florida Water,
18 as a large established utility, certainly has the financial
19 ability to make whatever improvements are necessary to serve
20 the Summit, and they have the technical ability in the sense of
21 the appropriate managerial staff, water plant operators, that
22 kind of stuff, we have always maintained that the Palisades
23 water treatment plant was insufficient to provide the needs of
24 the Summit, and we still believe that and will develop that in
25 the record today.

1 With regard to the city's duplication of services, it
2 is our position that under 367.045(5)(a) that the Commission
3 cannot grant a certificate for an extension into an area which
4 duplicates or competes with the city's system. It is clear
5 that this extension will duplicate or compete with the city's
6 system, and we'll demonstrate that based upon the maps of the
7 city's system.

8 We want to finally say that the city has the
9 financial ability to provide service, the technical ability to
10 provide service, the plant capacity to provide service, and the
11 expertise to provide service. That with regard at least as far
12 as the staff is concerned, there is no question as to the
13 city's financial ability or technical ability to provide.

14 With regard to the need for service, we have
15 stipulated that there is a planned unit development, and that
16 it has platted their 523 units. We have never stipulated as to
17 the date for the need. The date that service was available or
18 that state a service would be available in the application was
19 July 1st of the year 2000. Obviously, that date has long since
20 passed. We will demonstrate that the construction permits
21 associated with this unit, this planned unit development, have
22 not been approved by the county. And obviously, if you don't
23 have approved construction permits, you can't go forward. So
24 we think that the application for extension of service by
25 Florida Water that's been applied for here both duplicates and

1 competes with the city's system, is contrary to the city's
2 established utility service area, and that the Commission does
3 not have the authority to do so. Thank you.

4 COMMISSIONER JABER: Thank you, Ms. Brownless.
5 Ms. Christensen, do you want to call your first witness? Let
6 me ask a question with respect to Mr. Perry's testimony. I
7 heard both of you -- and certainly based on the stipulation
8 that we just approved, there is no disagreement with respect to
9 Florida Water's financial ability.

10 MS. BROWNLESS: We have requested that Mr. Perry come
11 for a very short series of questions which have to do with the
12 water services agreement.

13 COMMISSIONER JABER: Thank you for that
14 clarification.

15 MS. CHRISTENSEN: Staff would like to call
16 Ms. Brenda Winningham to the stand.

17 BREANDA WINNINGHAM
18 was called as a witness on behalf of the Staff of the Florida
19 Public Service Commission and, having been duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CHRISTENSEN:

23 Q Can you please state your name and your work address
24 for the record, please.

25 A Brenda Winningham, 2555 Shumard Oak Boulevard,

1 Tallahassee, Florida.

2 Q Ms. Winningham, have you had the opportunity to
3 review Mr. Charles Gauthier's testimony that was filed on
4 behalf of Commission Staff October 6th?

5 A Yes, I did.

6 Q And, Ms. Winningham, are you adopting the prefiled
7 direct testimony filed by Mr. Charles Gauthier consisting of
8 three pages?

9 A I'm sorry, could you repeat the last part?

10 Q Are you adopting the testimony that was prefiled by
11 Mr. Gauthier in this matter that consists of approximately
12 three pages?

13 A Yes.

14 Q And do you have any changes or modifications to make
15 to that direct prefiled testimony?

16 A Yes, I do.

17 Q Can you please state the changes, and if you can,
18 indicate the page number and the line number.

19 A Okay. One moment. Let me get out the testimony.

20 MS. CHRISTENSEN: If I can approach the witness, I
21 have a copy.

22 A On Page 2, Lines 2 and 3, it refers to, I guess, an
23 analysis. I was thinking that it had referred to a letter, so
24 I don't think that would be a change. It's just a memorandum
25 of the analysis for the January 13th, 2000 memo. And then on

1 Page 2, Lines 16 and 17, it refers to the amount of vested
2 development on 500 acres, 300 to 400 dwelling units. I had
3 talked with Lake County to confirm that number, and I have just
4 heard a couple of different numbers. They have all been in the
5 300 to 500 change, but I don't have an exact number.

6 Q Do you have any other modifications that you would
7 like to make?

8 A No.

9 Q And let me just clarify. On Line 15 of Page 2, you
10 would extend that to a 300 to 500 dwelling unit range?

11 A Yes.

12 Q Ms. Winningham, with those modifications, would your
13 responses to the questions that were asked in the prefiled
14 direct testimony of Mr. Gauthier be the same today?

15 A Yes.

16 Q And, Ms. Winningham, have you had an opportunity to
17 review the exhibits that were attached to that prefiled
18 testimony as well as the exhibit that was filed on your behalf,
19 your resume?

20 A I've reviewed the two -- the memorandum and the
21 letter that were attached.

22 Q Uh-huh.

23 A And I provided you with a copy of my resume. I have
24 not seen Mr. Gauthier's resume.

25 COMMISSIONER JABER: Let's insert the testimony in,

1 and then we will identify the exhibits.

2 MS. BROWNLESS: We would like an opportunity to voir
3 dire before the testimony is inserted, please.

4 COMMISSIONER JABER: Let's do that first then,
5 Ms. Christensen, before we get to the exhibits.

6 MS. CHRISTENSEN: That's fine.

7 COMMISSIONER JABER: Go ahead, Ms. Brownless.

8 MS. BROWNLESS: Thank you.

9 VOIR DIRE EXAMINATION

10 BY MS. BROWNLESS:

11 Q Ms. Winningham, how are you?

12 A I'm fine.

13 Q I'm Suzanne Brownless on behalf of the City of
14 Groveland. Could I summarize your background by saying that
15 you have a Bachelor of Science degree in history and religion
16 you received in 1989 from Florida State?

17 A No. Those were my minors. My major was political
18 science.

19 Q Oh, I'm sorry. I read it wrong. Okay. But a BS
20 from Florida State in 1989. You have a Master of Science
21 degree in urban and regional planning granted in 1991?

22 A Yes.

23 Q You have approximately ten years of experience in the
24 urban and regional planning field in both Georgia and the state
25 of Florida?

1 A Yes.

2 Q And at the Department of Environmental Protection,
3 you have basically worked your way up in the planning
4 department to a supervisory level?

5 MR. MENTON: Excuse me, Department of Community
6 Affairs, I believe.

7 MS. BROWNLESS: Correct. I'm sorry.

8 A Yes, I have.

9 Q And at this time, you are a supervisor at the DCA?

10 A Yes, I am.

11 Q Your job duties include reviewing comprehensive plans
12 for compliance with Chapter 163 and Rule 9J; is that correct?

13 A 9J-5, yes.

14 Q 9J-5, yes, ma'am. And you also supervise other
15 individuals who do that as well?

16 A That -- in their reviews of those items, yes.

17 MS. BROWNLESS: Thank you. We would accept
18 Ms. Winningham as an expert in the area of utility planning
19 and, specifically, as an expert in the area of Chapter 163 and
20 Florida comprehensive plans.

21 COMMISSIONER JABER: Ms. Christensen, we are going to
22 move the prefiled testimony of Charles Gauthier as adopted by
23 Brenda Winningham into the record as though read. Exhibits.

24 MS. CHRISTENSEN: Exhibits, yes, Commissioner.

25 MS. BROWNLESS: Can we get a ruling on the tender of

1 the witness as an expert in urban planning?

2 COMMISSIONER JABER: I acknowledged it. I
3 acknowledged it.

4 MS. BROWNLESS: Thank you.

5 COMMISSIONER JABER: I don't think it requires a
6 ruling.

7 MS. BROWNLESS: Well, we want to qualify her --

8 COMMISSIONER JABER: I acknowledged it.

9 MS. BROWNLESS: Thank you.

10 COMMISSIONER JABER: Go ahead, Ms. Christensen.

11 CONTINUED DIRECT EXAMINATION

12 BY MS. CHRISTENSEN:

13 Q Ms. Winningham, have you had an opportunity to review
14 the exhibits that were attached to the prefiled testimony of
15 Mr. Gauthier, that was his resume and the letter and the
16 memorandum that were attached?

17 A Yes, I did.

18 Q And you've also had an opportunity to review your
19 resume?

20 A I'm sorry, I didn't review Charles Gauthier's resume.
21 I reviewed my resume. The copy that was given to me did not
22 contain his resume.

23 Q Okay. Ms. Winningham, are you adopting the exhibits
24 that were attached, specifically the memorandum and the letter
25 that were attached to the prefiled testimony, as well as your

1 resume?

2 A Yes, I am.

3 Q I would ask -- would you make any changes to those
4 today?

5 A No.

6 Q Ms. Winningham, do you have a summary of the direct
7 prefiled testimony?

8 COMMISSIONER JABER: Let's identify --

9 MS. CHRISTENSEN: I'm sorry.

10 COMMISSIONER JABER: -- Ms. Winningham's -- actually,
11 let's do it as a composite exhibit, Ms. Christensen, CRG-1.

12 MS. BROWNLESS: We object to CRG-1.

13 COMMISSIONER JABER: Right. CRG-2 and BW-1 shall be
14 identified as a Composite Exhibit 1.

15 (Exhibit 1 marked for identification.)

16 COMMISSIONER JABER: Go ahead, Ms. Christensen.

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1 DIRECT TESTIMONY OF CHARLES R. GAUTHIER

2 Q. What is your name and business address?

3 A. My name is Charles R. Gauthier, and my business address is 2555 Shumard
4 Oak Boulevard, Tallahassee, Florida 32399-2100.

5 Q. By whom are you employed and what is your position?

6 A. I am employed by the Florida Department of Community Affairs (DCA) as
7 Chief of the Bureau of Local Planning.

8 Q. Please explain the responsibilities of your current position.

9 A. My responsibilities include the review of comprehensive plans and
10 developments of regional impact throughout the state including Lake County.
11 I supervise 47 professional planners. Approximately 500 comprehensive plan
12 amendment packages are reviewed each year.

13 Q. How long have you been employed with DCA?

14 A. Approximately seven years. I was appointed Bureau Chief in March of
15 1999. From October 1994 to March 1999, I served as Growth Management
16 Administrator. During the 1980s, I was employed by DCA for approximately two
17 and one half years.

18 Q. How long have you been employed as a professional planner?

19 A. I have been employed in the planning field since 1977 in the areas of
20 environmental regulation, comprehensive planning, development review and
21 growth management. A copy of my resume is attached as CRG-1.

22 Q. What is the purpose of your testimony?

23 A. Pursuant to the Memorandum of Understanding between the Public Service
24 Commission (PSC) and DCA, my staff conducted an analysis of the application
25 by Florida Water Services Corporation (FWSC) for an expansion of territory,

1 | with respect to issues of concern for DCA. I received the analysis on January
2 | 13, 2000, and it was forwarded to the PSC with a cover letter dated February
3 | 2, 2000, from John E. Baker, Community Program Administrator. These documents
4 | are attached as Exhibit CRG-2.

5 | Q. Were the January 13, 2000 and the February 2, 2000 letters prepared at
6 | your direction or under your control?

7 | A. Yes, they were prepared under my direction and control.

8 | Q. Could you please summarize your comments regarding FWSC's application?

9 | A. FWSC has applied to the PSC to amend its current potable water service
10 | territory in Lake County, Florida. FWSC currently provides potable water to
11 | an area in the southwestern part of Lake County and wishes to add an area that
12 | is adjacent to its existing service territory. The proposed territory
13 | expansion is located northeast of the City of Groveland. Although the area
14 | is designated by the Lake County comprehensive plan as Rural, approximately
15 | 500 acres is vested for development (300-~~400~~⁵⁰⁰ dwelling units). However, this
16 | area does contain a significant amount of wetlands.

17 | Q. Are you aware that the City of Groveland (City) has filed a protest to
18 | FWSC's application asserting that the City has the right to serve the disputed
19 | territory?

20 | A. Yes. DCA is aware of the City's protest and assertions. The City has
21 | objected to this application, stating that it would expand FWSC into the
22 | City's utility district. The utility district was designated through a local
23 | ordinance adopted by the City in May of 1999. The Public Facilities Element
24 | of the Groveland Comprehensive Plan makes references to areas outside of the
25 | city limits where potable water service is currently provided. However, there

1 | are no clear guidelines or criteria set forth in the comprehensive plan that
2 | could be used to select or identify potential areas outside of the City that
3 | could be afforded these services. This area is not specifically identified
4 | in the City's comprehensive plan as a potential service area. Although DCA
5 | staff understands and has evaluated the concerns raised by the City, DCA staff
6 | does not recommend any objections to the application of FWSC. The City
7 | utility district includes approximately 94 square miles (50 square miles south
8 | of the city limits and 44 square miles north of the city limits) of
9 | unincorporated Lake County designated as rural, suburban and even areas in the
10 | Green Swamp. Without any proper controls, DCA may not be supportive of the
11 | City's desires to serve such a vast area with urban services.

12 | Q. Does the DCA have any concerns with regard to FWSC serving the disputed
13 | territory?

14 | A. No.

15 | Q. Does that conclude your testimony?

16 | A. Yes, it does.

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1 BY MS. CHRISTENSEN:

2 Q Ms. Winningham, have you prepared a summary of the
3 direct prefiled testimony?

4 A Have I prepared a summary?

5 Q Yes, of the testimony.

6 A Yes.

7 Q Can you please provide that summary today.

8 A Yes. I am here to discuss the Department's review of
9 the Public Service Commission application by the Florida Water
10 Services Corporation for an expansion of its service area. The
11 application would add an adjacent area to their existing
12 service territory. The proposed expansion area is designated
13 by the Lake County comprehensive plan as a rural land use;
14 however, approximately 500 acres is vested for development in
15 the area at higher densities, and Lake County approved a large
16 cluster development in the area.

17 As part of the review, the Department became aware
18 that the City of Groveland had concerns with the proposed
19 Florida Water Services area expansion and was interested in
20 being the service provider and that the application would
21 expand Florida Water Services' territory into the city's
22 utility district. The Department reviewed the City of
23 Groveland's comprehensive plan. The public facilities element
24 makes reference to areas outside the city elements where
25 potable water service is provided. However, there are no clear

1 guidelines or criteria in the plan that could be used to select
2 or identify potential water service areas outside the city, and
3 the city's plan does not identify the proposed Florida Water
4 Services expansion area as a potential service area for water.
5 Although the DCA understands and has evaluated the concerns
6 raised by the city, staff did not recommend any objections to
7 the application by the Florida Water (sic) Service Commission.

8 MS. CHRISTENSEN: Staff has no further questions, and
9 we tender the witness for cross examination.

10 COMMISSIONER JABER: Okay. Mr. Menton.

11 MR. MENTON: Thank you, Commissioner.

12 CROSS EXAMINATION

13 BY MR. MENTON:

14 Q Good morning, Ms. Winningham.

15 A Good morning.

16 Q I believe Ms. Brownless has already established that
17 you have a Master's degree in urban and regional planning;
18 correct?

19 A Yes.

20 Q And in your present position, you review comp plans
21 for both cities and counties; correct?

22 A Yes.

23 Q And as I understand it, the Department of Community
24 Affairs divides up areas of the State for purposes of comp plan
25 review; is that correct?

1 A Correct.

2 Q And what areas are included within your region?

3 A Lake County and the central Florida region, which
4 includes Polk County, Hardee County, Highlands, DeSoto, and
5 Okeechobee.

6 Q So the territory that is requested in the application
7 by Florida Water is within the geographic range or area that
8 you're responsible for at DCA?

9 A Yes.

10 Q And in your job at DCA, you review comp plan
11 amendments and DRIs, et cetera, and determine their compliance
12 with Chapter 163, and you also determine the consistency of the
13 local plans; is that correct?

14 A Yes.

15 Q And you would look to see whether or not a city plan
16 is consistent with a county plan? Is that part of what you
17 would look at in reviewing a city plan?

18 A I have never reviewed a new city plan because when I
19 came on board they were already there. But normally, it's
20 looked to be consistent with the State plan. If there are
21 specific inconsistencies between the plans, it may be raised
22 between the county and the city, but it's not the primary thing
23 we're looking at. We're primarily looking to be sure it's
24 consistent with the statute and the State plan.

25 Q Okay. Now, the DCA letter, which is part of

1 Exhibit 1, is signed by John Baker. Who is Mr. Baker?

2 A John Baker was my predecessor in my current position.

3 Q So he held the job that you currently hold --

4 A Correct.

5 Q -- at the time? Okay.

6 In connection with the testimony that you have given
7 here today, what have you reviewed?

8 A I reviewed the memo that was prepared by staff
9 concerning the proposal, the letter that went to the Public
10 Service Commission with the memo, the prehearing statement by
11 Charles Gauthier. I have reviewed the documents I received as
12 far as prehearing statements from the City of Groveland, and I
13 think there was some rebuttal testimony, I'm not sure who by,
14 and the PSC application that was received. I went to look at
15 the map that's in the PSC office of the proposed service
16 territory. I looked at the Lake County future land use map,
17 the City of Groveland plan and its comprehensive plan
18 amendments.

19 Q Okay. You say the "City of Groveland's plan," you
20 mean the comp plan?

21 A The comprehensive plan, yes.

22 Q And did you review the county's comp plan?

23 A I didn't review the county's comprehensive plan
24 because we were relying primarily on the vesting that was in
25 the area and the approved densities that had already been done

1 in that area as well.

2 Q But you did review the future land use maps that are
3 part of the plan?

4 A Yes, they are part of the plan.

5 Q So even though you weren't in Mr. Baker's position at
6 the time this letter was written, you have gone back and
7 reviewed basically the same documents that he would have
8 reviewed --

9 A I have gone back to try and be sure that all the
10 statements were correct, yes.

11 Q And are you comfortable then with the conclusions
12 that are set forth in the January 13th memorandum --

13 A Yes.

14 Q -- which is attached as Exhibit 1?

15 A Yes.

16 Q Now, as part of your investigation for this docket,
17 you have spoken with the Lake County planner, Jeff Richardson;
18 correct?

19 A Yes.

20 Q And you spoke with him on a couple of occasions?

21 A Yes.

22 Q And what did he indicate to you about development in
23 the area of the Summit?

24 A I spoke with him about -- to confirm that there was
25 vested development in the area as well as the -- that there was

1 an area that had already been approved for a clustered
2 development.

3 Q And would the proposed development plans that are
4 reflected in Florida Water's application be consistent with
5 what you learned about the vesting in terms of the county from
6 the county perspective?

7 A Yes.

8 Q The area between the City of Groveland and the
9 Summit, how would you describe that from looking at the
10 county's future land use maps?

11 A The area is designated for suburban land use and
12 rural land use, which suburban land use has several categories
13 of density and intensity that could be developed based on
14 timing and facility availability, et cetera. But the rural
15 category would be at one dwelling unit per five acres, which is
16 primarily to retain that rural in that area because they aren't
17 anticipating its need to develop within the planning time frame
18 at this time.

19 Q What is the significance from the standpoint of --
20 from a utility service planning perspective of the land use
21 designations that you've just mentioned?

22 A I'm sorry, could you repeat the question?

23 Q What is the significance from the standpoint of
24 utility service planning of the designations that you've just
25 identified for this area?

1 A We wouldn't normally expect utilities to be provided
2 to a rural area. It would -- I'm trying to explain it. It
3 would be not very cost-effective to run utility lines to an
4 area that's going to develop at one unit per five acres, and it
5 would encourage potentially urban sprawl because having the
6 lines available would increase the chance that people would
7 want or request more intense development than was anticipated
8 on the future land use map.

9 Q And as I understand it, you have concluded that the
10 service proposed by Florida Water in this area would be
11 consistent with the land use designations that are in there and
12 the planning criteria that you would be looking at from a DCA
13 perspective; correct?

14 A When we considered the addition of the vested
15 development in the area and in the already approved cluster
16 development.

17 Q Okay. And by contrast, from your review, would the
18 provision of service from the city be consistent with the comp
19 plans?

20 A I didn't have enough data and analysis to make a
21 determination on that because the county's plan, I'm sorry, the
22 city's plan does not currently address that area, but we would
23 have some concerns on the fact that there's the suburban and
24 the rural designations in that area because it would increase
25 the likelihood of urban sprawl.

1 Q Okay. So --

2 COMMISSIONER PALECKI: Let me jump in here and ask a
3 question on that.

4 THE WITNESS: I'm sorry?

5 COMMISSIONER PALECKI: I'd like to jump in and ask a
6 question on that. It appears to me that the development is
7 already planned and that the service, whether it's provided by
8 Florida Water or the city, will be virtually identical. And
9 the question I have to you is: If the city conformed its plan
10 to comply with the development, would the DCA have any
11 preference one way or another over Florida Water or the city?

12 THE WITNESS: Our concern isn't that the site is
13 being provided with the water. We don't have a concern with
14 whoever would provide the water. The concern would be
15 addressing the potential impacts on running the water lines
16 through the additional territory between the City of Groveland
17 and the site.

18 When we reviewed the proposal, we did not have any
19 information indicating where the city was currently providing
20 water outside the city. There's a reference to 22 homes that
21 are outside the city that were being served. So we were
22 looking at it as, well, here's the city boundaries, and they
23 would have to be running lines through this rural and suburban
24 area to reach this development.

25 COMMISSIONER PALECKI: So you're concerned about the

1 possibility that having the water lines in these outlying areas
2 could cause additional development that you might not want to
3 see in --

4 THE WITNESS: And a more intense development than was
5 anticipated and may not be appropriate. We don't currently
6 have data and analysis. You know, if possible, they could
7 address that and if there's a need for it, but we don't know
8 that at this time.

9 COMMISSIONER PALECKI: So the concern is really the
10 run of the water line from currently served city territory to
11 the new development?

12 THE WITNESS: Correct.

13 COMMISSIONER PALECKI: Thank you.

14 BY MR. MENTON:

15 Q Ms. Winningham, I believe that you mentioned in your
16 answer just a minute ago that you did review the city's
17 proposed service to the Summit and the context of whether or
18 not it was addressed or consistent with the city's comp plan;
19 is that correct?

20 A Yes.

21 Q And what was your conclusion in that regard?

22 A The city's plan does not currently address, as I
23 said, other than the 22 homes that it indicates outside the
24 city, anything about where water would be provided outside of
25 the city as far as service goes. There's no policies that give

1 any specific guidance to where that would be located, at what
2 time, or indicating, you know, in their five-year schedule of
3 capital improvements what improvements they would be doing and
4 at what time to provide the service into those areas.

5 Q Is there a demonstration in the city comp plan that
6 providing service to this area would be compatible with the
7 land uses that are going on out there?

8 A There's nothing in the city's plan currently
9 addressing that.

10 Q And would that be something that you would expect to
11 see in terms of justifying extension of city service out to
12 that area?

13 A Right, normally when a comprehensive plan amendment
14 would come in that would show us what the proposed expansion of
15 the city service area would be, there would be data and
16 analysis provided looking at the need, the environmental
17 factors, you know, the distance, the timeliness of, you know,
18 when it would be appropriate based on need, various other
19 factors.

20 Q And you mentioned data and analysis. Is that a term
21 of art in planning?

22 A Possibly. We use it a lot, so I suppose it is.

23 Q What do you mean by "data and analysis"?

24 A Data and analysis would just be the information that
25 would support this proposed change to the plan. It would show

1 that, yes, there is a need for this. We have enough population
2 growth in this area that, you know, this area needs to develop
3 more intensively. Just because something was put on a future
4 land use map at one density doesn't mean it's going to stay at
5 that density forever. As a city grows and expands, there will
6 be a greater -- and the population grows, there's a greater
7 need, and there would be a change to the comprehensive plan to
8 maybe increase those densities, but then you would show that.
9 You would show how the population was increasing and that, you
10 know, the site or the area was appropriate for a more intense
11 development, that sort of thing.

12 Q From a planning perspective, why is it important to
13 coordinate to provision of utility services with land use?

14 A In trying to control urban sprawl, to provide
15 adequate services to populations as well as not to -- I'm
16 trying to think -- cost prohibitive. You know, you don't want
17 to run lines where it's going to cost you a great deal of money
18 to serve an area if you aren't going to have the population
19 there to support that development or the use of the water
20 service to -- you know, they would pay the fees. If there's no
21 one there to pay that, it's going to be a very high cost to
22 provide that service to, you know, one small area.

23 Q From your review, does the city's efforts to provide
24 service to the requested territory reflect such coordination?

25 A We haven't received anything in their plan at this

1 point to support that, no.

2 Q Okay. Would you expect that provision of utility
3 services to areas outside of a municipality's boundaries be
4 reflected in the capital improvements schedule for the
5 municipality?

6 A Right. Normally in the five-year schedule of capital
7 improvements, you would indicate what improvements you are
8 going to be making, during what year, how much the anticipated
9 cost was, where the funding would be coming from, and that's
10 usually indicated in the five-year schedule.

11 Q Was there anything in the City of Groveland's capital
12 improvements schedule that reflected service to the area that's
13 in dispute here?

14 A No.

15 Q The Chapter 180 service area that's been designated
16 by the city ordinance, do you know how large that is?

17 A We had looked at it as part of the review, and I
18 think it was something like 50 square miles.

19 Q Actually, I believe it's 94 square miles.

20 A Ninety-four. I have -- it's in the memorandum, I
21 believe.

22 Q Yes, I believe it is in your memo.

23 A It's in the prehearing testimony. Just one moment.
24 Okay. Ninety-four square miles, yes.

25 Q Is the size of the area that's included within the

1 180 designated area by the city a concern to DCA?

2 A The size itself is only of a concern in relation to
3 when we look at what land uses are designated within that area.
4 The size goes through a great deal of rural and suburban land
5 use designation, as well as portions of the Green Swamp, and so
6 we would look to have data and analysis supporting why that
7 would be appropriate.

8 Q Okay. And in the context of this particular
9 development, the city's proposed service to the Summit would
10 run through some rural and suburban areas that you talked
11 about. So it would run through some areas that would cause
12 concern from DCA's --

13 A Right, that we would be looking to indicate why, you
14 know, an area that was designated rural should be getting water
15 provided at this time.

16 MR. MENTON: Commissioner, just give me a second.
17 I'm just about finished.

18 Q In your discussions with Lake County, have they ever
19 indicated to you that they saw any inconsistency between
20 Florida Water's plan to serve the requested territory and the
21 county's comp plan or its divested rights that exist under the
22 county's plan?

23 A They indicated that they had concern about the amount
24 of suburban and rural land that were between the city and the
25 site.

1 Q Okay. My question, though, related to service by
2 Florida Water. Did they ever express any concerns to you?

3 A Oh, I'm sorry. No.

4 Q And for Florida Water to provide service to the
5 Summit, they would -- the current plan calls for a water line
6 to run along the top of an area that's already being developed;
7 correct?

8 A Correct.

9 Q So Florida Water would not have to run through any
10 rural or suburban areas in order to provide service to the
11 Summit?

12 A Correct.

13 Q Now, you have reviewed the rebuttal testimony that
14 was submitted on behalf of the city by Mr. Greg Beliveau; is
15 that correct?

16 A Yes.

17 Q And you have reviewed the provisions of the city's
18 plan cited by Mr. Beliveau in his prefiled rebuttal testimony;
19 correct?

20 A Yes.

21 Q Did you see anything in Mr. Beliveau's prefiled
22 rebuttal testimony that resolved the questions that you had
23 regarding potential service by the city to the requested
24 territory?

25 A No.

1 Q Did he address the issues that you feel are important
2 in terms of consistency?

3 A No.

4 Q Is there anything in Mr. Beliveau's rebuttal
5 testimony that would cause you to modify or amend in any way
6 your testimony or the opinions that are set forth in the
7 January 13th --

8 A I don't believe so. I'm sorry.

9 Q -- the January 13th memorandum, which is Exhibit 1 --
10 part of Exhibit 1?

11 A No.

12 MR. MENTON: No further questions. Thank you.

13 COMMISSIONER JABER: Ms. Brownless.

14 MS. BROWNLESS: Thank you.

15 CROSS EXAMINATION

16 BY MS. BROWNLESS:

17 Q Good afternoon, morning I guess it still is. How are
18 you?

19 A Pretty good.

20 Q I just want to start out by making sure I'm
21 clarifying the testimony you have just given to Mr. Menton.
22 With regard to whether or not provision of service by the City
23 of Groveland to the Summit subdivision is consistent with the
24 county's comprehensive plan, is it your position that you have
25 insufficient data to form a decision as to the consistency with

1 the county's plan?

2 A Of providing Florida Water service --

3 Q No. Let me go again.

4 A I'm getting confused.

5 Q Okay. I believe I heard you testify that you did not
6 have enough data to determine if the city's plan to provide
7 service to the Summit --

8 A The city's plan?

9 Q The city's plan -- was consistent with the county's
10 comprehensive plan; is that correct?

11 A No -- well, yes, in the respect of the future land
12 use map. I didn't review the entire county plan to see if --
13 you know, consistency. We looked at the future land use map.

14 Q So as we sit here today, is it a fair statement to
15 say you have no professional opinion as to whether the service
16 by the city to the Summit is consistent or inconsistent with
17 the county's comprehensive plan?

18 A We would have concerns that are potentially showing
19 inconsistency as far as the suburban and the rural land uses.
20 We just don't have specific data and analysis telling us --

21 Q But you have no opinion, as you sit here today,
22 whether service by the city is consistent or inconsistent; is
23 that correct? You have concerns --

24 A I have concerns.

25 Q -- but no opinion?

1 A We did not review it to make a finding of
2 consistency, so I can't say that it is or is not.

3 COMMISSIONER JABER: What was that? What was that,
4 Ms. Winningham?

5 THE WITNESS: I didn't review the proposal for the
6 city to expand water and sewer to the area as far as
7 consistency with the county's plan. I mean, there is nothing
8 in the county's plan, to my knowledge, that indicates the city
9 will provide service to this area. But also, there is on
10 future land use map rural area and suburban area which lends me
11 to believe that it may be inconsistent, but I don't have any
12 data and analysis really telling me things may have changed
13 over time. But, you know, based on what it is right now, it
14 would appear that it's probably inconsistent, but things may
15 have changed since that future land use map was established
16 that would make it appropriate. I just don't have the
17 information to tell that.

18 BY MS. BROWNLESS:

19 Q So you have no opinion on the consistency or
20 inconsistency, as we sit here today?

21 A Well, based on the information --

22 Q Based on the data that you --

23 A -- that I have, it would appear --

24 COMMISSIONER JABER: Ms. Brownless, for the sake
25 of -- I'm sorry, Ms. Winningham. For the sake of the court

1 reporter, and remember, we're having trouble hearing, let me
2 ask you all to just one at a time speak.

3 I think what Ms. Brownless is trying to establish, if
4 I could just -- she's trying to establish that you are not here
5 today to expressly give your opinion with respect to the city's
6 proposal being inconsistent with the county plan. Let's
7 establish that, and then you can elaborate. But her question
8 is: Do you have an opinion with respect to whether the city's
9 desire to serve Summit is inconsistent with the county plan.

10 THE WITNESS: I do in that it is inconsistent because
11 of the rural designation, but providing the service to the
12 Summit because it requires going through those rural and
13 suburban areas appears, you know, based on the data I have
14 inconsistent with the county's plan in that respect, yes.

15 COMMISSIONER PALECKI: Ms. Winningham, in your
16 testimony on Page 3, Line 10, you use the term, "Without any
17 proper controls, DCA may not be supportive of the city's
18 desires to serve." It's my understanding from reading that
19 that if the city put proper controls in place and submitted
20 them to DCA, that DCA might be supportive of the city's plan.
21 Would that be correct?

22 THE WITNESS: It's possible. And that's what we
23 would be looking for in the data and analysis. And proper
24 controls would also mean that there would potentially be maybe
25 some policies that would indicate when and where the service

1 would be provided, and that might address the timing issue as
2 far as need went.

3 COMMISSIONER PALECKI: So those proper controls might
4 prevent a rural area, for example, from being developed
5 densely -- to prevent that from changing into an urban area.

6 THE WITNESS: Correct. Their service area, I'm not
7 sure, you know, what time span they are looking at to provide
8 the service into that area, and so they could have policies
9 that would indicate that they wouldn't be going into the rural
10 area until certain timing issues were addressed as far as need
11 and population growth and that sort of thing.

12 COMMISSIONER PALECKI: Thank you.

13 BY MS. BROWNLESS:

14 Q And I'm sorry to keep going over this, but this
15 testimony has changed, so I want to make sure I'm absolutely
16 clear here. Issue 8 in this case, and I'm going to read that
17 to you, Ms. Winningham, says the following: Is the City of
18 Groveland's proposal to serve the area consistent with the
19 local comprehensive plan?

20 A With the what --

21 Q It says, "local comprehensive plan." Can you refer
22 to Issue 8? Do you have a copy?

23 A Issue 8.

24 Q Of the prehearing order. Do you have a copy of that,
25 Ms. Winningham?

1 MS. CHRISTENSEN: I don't think she has a copy of it.
2 May I approach?

3 COMMISSIONER JABER: Yes.

4 A Okay. As far as consistency with the City of
5 Groveland's plan?

6 Q Okay. Now, wait a minute. Let me ask.

7 A I'm sorry.

8 Q Now, this says, "local comprehensive plan." Now, in
9 this instance, there would be two applicable local
10 comprehensive plans, would there not?

11 A Yes.

12 Q One would be the City of Groveland's comprehensive
13 plan?

14 A Yes.

15 Q And one would be Lake County's comprehensive plan --

16 A Yes.

17 Q -- is that correct?

18 And I want to focus on whether you have an opinion
19 regarding whether provision of city service is consistent to
20 the Summit is consistent with Lake County's comprehensive plan.
21 Okay. And with regard to that particular issue, do you have or
22 have you reviewed sufficient data to form an opinion?

23 A The data that I would have looked at was the future
24 land use map designations. And because of the rural area and
25 the suburban, I don't know currently what the suburban areas

1 are designated as. I told you there's three different tiers of
2 density that can be provided there. So on the future land use
3 map, I'm just given suburban. But the rural added to that,
4 yes, I had concerns that I believed it was inconsistent with
5 those land uses.

6 Q So your, quote, concerns, are based upon the map that
7 you reviewed; is that correct?

8 A Correct.

9 Q Did you provide as Exhibit Number 1 to your testimony
10 the urban uses land use map you reviewed?

11 MR. MENTON: I believe it's deposition, not the
12 prefiled testimony.

13 MS. CHRISTENSEN: Correct.

14 MS. BROWNLESS: I'm sorry.

15 BY MS. BROWNLESS:

16 Q This is Deposition Exhibit Number 1, and we discussed
17 this at your deposition; correct?

18 A Correct.

19 Q Now, is this the most current land use map for Lake
20 County?

21 A No. I have a newer one that I reviewed. The area
22 that I was looking at, though, was consistent with that map as
23 well.

24 Q Okay. The date on this map that you provided at your
25 deposition is 1995 data it says; is that correct?

1 A Right.

2 Q The map that you reviewed subsequent to this, what
3 was the data?

4 A I have it with me. Just one moment.

5 Q I guess my better question is, what is the -- this
6 one said, "based on 1995 data," meaning the map that was
7 provided pursuant to your deposition. What is the database for
8 the map you have?

9 A This one does not specify the data. It was adopted
10 March 20th, 2001.

11 Q There's no indication on there at all what the
12 database would be?

13 A No, not that I have found here. No.

14 Q Do these future land use maps -- well, let me ask you
15 this question. Is the land use map that you just referred to
16 the most recent of which you are aware?

17 A Yes.

18 Q And this is the one that's currently on file with the
19 DCA?

20 A Yes.

21 Q Okay. Does that future land use map show vested
22 interests?

23 A No.

24 Q Okay. And for our edification here, those of us who
25 are not land use denizens, what is a vested interest?

1 A Vested development would have been something that
2 received approval or had gone through a certain amount of
3 preparation and reliance upon some sort of approval process or
4 submitting plans prior to the comprehensive plan for the amount
5 of development they were looking to do.

6 Q And when you say, "prior to the comprehensive plan,"
7 you would mean prior to the enactment of Chapter 163, the
8 statewide Comprehensive Land Planning Act?

9 A Well, prior to the actual adoption of the
10 comprehensive plan under that Act and if it's a founding of in
11 compliance.

12 Q And that would be the adoption by the state of
13 Florida --

14 A It would be adopted by the local government.

15 Q -- the adoption by the local government?

16 A Right.

17 Q Okay. Just for purposes of edification here, when
18 was Chapter 163 originally enacted? Do you know?

19 A I cannot give you the specific date.

20 Q Is it on or about 1975?

21 A There were two different planning Acts under which
22 plans were prepared. The plans that I would be referring to
23 were prepared and approved generally around 1990, '91.

24 Q 1990 or '91. Okay. So these would be developments
25 that were vested prior to that time?

1 A Right.

2 Q Okay. Did you discuss vested developments with Lake
3 County planning staff?

4 A Yes.

5 Q And when you had those discussions with the Lake
6 County planning staff about vested developments, did you know
7 the exact location of the city's water line?

8 A No.

9 Q So you didn't ask Lake County staffers whether there
10 were vested developments that were along State Road 478?

11 A No.

12 Q Do you have any information at the Department of
13 Community Affairs that you reviewed that would provide that
14 type of information?

15 A There -- possibly, if it's a development of regional
16 impact.

17 Q I'm sorry, I didn't hear that.

18 A A development of regional impact that was vested,
19 there might be binding letters to that effect. Other
20 developments, no.

21 Q So there could be a significant number of
22 developments along 478 that were vested developments of which
23 you would be unaware?

24 A That could be possible, yes.

25 Q When you talked to I believe it was -- and I'm going

1 to get this man's name wrong -- Mr. Baker at the county -- or
2 who is the person at the Lake County Planning Department with
3 whom you spoke?

4 A Jeff Richardson I believe was the name,
5 Jeff Richardson.

6 Q I'm having a hard time hearing you.

7 A Jeff Richardson.

8 Q Thank you. When you talked with Mr. Richardson, did
9 he indicate to you what data he was relying on with regard to
10 these?

11 A No.

12 Q So you have no idea whether Lake County has a vested
13 development map or anything like that?

14 A No.

15 Q To the extent that there were vested developments
16 along 478/Cherry Lake Road, the course of the city's water
17 line, could that change your opinion as to whether extension by
18 the city to serve the Summit is inconsistent with Lake County's
19 comprehensive plan?

20 A That would be part of the data and analysis we would
21 look at so that it would maybe support providing that service
22 through that area.

23 Q And I just want to make sure I understand the
24 criteria. If there were vested developments out there in which
25 the current comprehensive -- or in which water services would

1 be required to be provided, is that the type of data you would
2 look at?

3 A That would be among the data we would look for.

4 Q I want to focus right now on the testimony of
5 Mr. Gauthier. I say his name incorrect.

6 A Gauthier.

7 Q Gauthier. That testimony is three pages in length,
8 is it not?

9 A Yes.

10 Q So it's very short testimony.

11 A Yes.

12 Q And it references the memorandum -- a letter dated
13 February 2nd, 2000, which has been identified as Composite
14 Exhibit Number 1.

15 A Yes.

16 Q And it also references a memorandum dated
17 January 13th of 2000; is that right?

18 A Yes.

19 Q Does the memorandum dated January 13th of 2000
20 indicate that the City of Groveland's service -- that service
21 by the City of Groveland to the Summit is inconsistent with the
22 city's comprehensive plan? Does it state that specifically?

23 A It doesn't state that specifically.

24 Q Okay. Does the memo of January 13th, 2000, indicate
25 that service by the city to the Summit would be inconsistent

1 with Lake County's comprehensive plan?

2 A No.

3 Q Does Mr. Gauthier's three-page testimony indicate
4 that service by the city to the Summit is inconsistent with the
5 city's comprehensive plan?

6 A He doesn't state that specifically. He just raises
7 concerns.

8 Q Does the testimony of Mr. Gauthier indicate that the
9 service by the city is inconsistent with the county's
10 comprehensive plan?

11 A No.

12 Q Okay. My understanding is that in May of this year,
13 May of this year is the first time that you were assigned to
14 this docket; is that correct?

15 A It may have been earlier, but it was sometime between
16 March and May.

17 Q Okay. And prior to that, Mr. Gauthier was going to
18 testify in this proceeding?

19 A Correct.

20 Q And so your analysis would have been done in, when?
21 When you became assigned, obviously.

22 A Right, sometime between March and May.

23 Q Okay. When did you form your opinion as to the
24 inconsistency of the plan for service to the Summit with the
25 city's comprehensive plan?

1 A As part of my review, I went back and looked at the
2 city's comprehensive plan and the amendments, and I could not
3 find anything in the plan that addressed providing water
4 service to this area. So I wasn't looking at it to say, you
5 know, it's completely inconsistent because I don't have any
6 data and analysis to say it would and wouldn't be consistent --

7 Q I want to be very clear here. This is your analysis
8 of the consistency or inconsistency of the service by the city
9 to the Summit with the city's comprehensive plan.

10 A Right. So I reviewed the city's comprehensive plan
11 and the amendments. There was no indication in the plan as to
12 providing service to that area other than that there's 22 homes
13 outside the city which were receiving city water. There are
14 references in the plan to expanding, you know, that they
15 potentially expand, but there's nothing specifically stating,
16 when, where, what criteria, anything along those lines.

17 Q I understand that. And again, I want to make sure I
18 have this very clear for the record. Is it your opinion today
19 that service by the city to the Summit subdivision is
20 inconsistent with the city's comprehensive plan?

21 A There's nothing in the city's plan --

22 Q Is that yes or --

23 A -- to look at, so I would have to say that it was
24 inconsistent because there's simply nothing in the plan saying
25 they would provide the service there.

1 COMMISSIONER JABER: Ms. Winningham, I had questions
2 in that regard too. On Page 3 of your testimony at the top,
3 you do make some references to not being able to determine if
4 what the city was proposing was inconsistent with the plan
5 because there wasn't enough information in the city's comp
6 plan. Is that a concern that can be remedied by the city just
7 modifying its comprehensive plan?

8 THE WITNESS: They could come in and amend their
9 comprehensive plan to indicate they were going to provide
10 service to this area, and then we would look to have supporting
11 data and analysis showing that that was appropriate, which
12 would include looking at what the land uses are right now in
13 the county, whether or not there's vested development there
14 that could come in at higher densities than are shown on the
15 future land use map, whether there is a population growth
16 that's higher than was anticipated. So really, they need more
17 increased densities above what's shown on the future land use
18 map, that the area is suitable for higher intensity development
19 based on environmental features, that sort of thing.

20 COMMISSIONER JABER: I have always had trouble
21 understanding the difference between DCA's review of looking at
22 where developments are in relation to urban and rural areas and
23 the concern that DCA may have from the State perspective. With
24 the review that happens at a county level, it seems to me some
25 of that will be decided in the county's review of whether the

1 development is appropriate. And help me understand the
2 difference between your review and the county's review. That's
3 my first question, and I have a follow-up.

4 THE WITNESS: Well, our review is based on the
5 county's review. The information that they provide us is the
6 data analysis that we're looking at. And they are looking to
7 provide supporting information showing that these are the
8 future land uses that are appropriate here, the densities and
9 intensities are appropriate here, and this is why.

10 COMMISSIONER JABER: But reconcile that with, aren't
11 cities and counties supposed to give you a -- is it a 15 year
12 projected plan for growth?

13 THE WITNESS: It's a ten year.

14 COMMISSIONER JABER: Ten year. Well, if the city
15 submits a comprehensive plan to you that has ten years' worth
16 of projections, their wish list for where they want to be, how
17 do they know what developments the county might be reviewing
18 five years from now?

19 THE WITNESS: That's why plans sometimes do have to
20 be amended. They anticipate the growth is going to go here,
21 this is where they'd really like to see the growth, but there
22 may be factors that they aren't considering at that time, and
23 that's why we have the amendment process in there.

24 COMMISSIONER JABER: Well, then if that's the case,
25 then how much weight should I give to your statement that there

1 wasn't enough data in the city's comprehensive plan to allow
2 you to make a decision on whether their proposal today is
3 consistent with what they gave you?

4 THE WITNESS: Well, the city's plan really doesn't
5 address it as far as data or even in the policy saying they
6 would provide. There's no map showing they are going to
7 provide service to this area. So there isn't anything to show
8 us that the city actually was doing a planning process to say,
9 oh, you know, we should expand our lines here, and this is why.
10 There is nothing along those lines. The county has obviously
11 looked at the land uses in that area and established them at
12 suburban and rural, so that would mean, particularly in the
13 rural area, they weren't anticipating water service probably be
14 provided.

15 COMMISSIONER JABER: So if they amended their
16 comprehensive plan tomorrow and included in their amendment a
17 proposal to serve -- a projection to serve the Summit without
18 going through rural areas, you would have no problem with their
19 proposal?

20 THE WITNESS: Well, the suburban would be of concern
21 in that there's three tiers. I would have to look at all the
22 timing issues that the county has laid forth. They may meet
23 all those, and those would be what they'd look at. They'd look
24 at the timing that the county has laid forth in their plan as
25 to when it's appropriate to provide these higher densities, and

1 show us that, you know, hopefully, yes, it was. That's the
2 type of data -- when we say "data" -- that we're looking for,
3 is just the reasons that support more intense development of
4 the provision of services to an area.

5 COMMISSIONER JABER: And how does that differ from
6 your review of what Florida Water is proposing?

7 THE WITNESS: When we looked at Florida Water, we
8 were looking at one specific site. They are adjacent. They
9 are just going to serve this site. So it's limited in the
10 amount as far as contributing to urban sprawl. There's already
11 development in that area. They wouldn't be running lines
12 further through a rural area, that sort of thing. When we look
13 at the city providing it, we see that there is area they have
14 to cross, and is it appropriate to run water lines, because
15 once the lines are there, one would anticipate that you are
16 going to be serving people off of that line. Particularly, if
17 you run a long line, you are not just going to have that end
18 service provided.

19 COMMISSIONER JABER: Okay.

20 MS. BROWNLESS: Thank you.

21 BY MS. BROWNLESS:

22 Q I think you indicated that you reviewed Lake County's
23 comprehensive plan in your analysis; is that correct?

24 A I reviewed the future land use map, which is part of
25 their comprehensive plan.

1 Q Did you review any of the other provisions of the
2 comprehensive plan?

3 A No, I didn't go back because we were relying
4 primarily on the vesting in the area and the already approved
5 developments to support that.

6 Q Can you briefly review this, and see if you think
7 that these are provisions from the Lake County's comprehensive
8 plan?

9 A I can't state that they are provisions from the
10 county's plan.

11 Q You didn't review the plan at all? You didn't review
12 the written definitions from the plan or the policies
13 associated with the plan?

14 A No, I did not.

15 Q Okay. So you don't know the definition of "suburban
16 area" pursuant to the plan?

17 A I talked with my planner who handles Lake County,
18 which was Bob Dennis (phonetic), as well as looked at the
19 definition that is on the future land use map that provides
20 densities for the various land use categories.

21 Q Can I refer you to I-18 on this sheet?

22 MR. MENTON: Commissioner Jaber, at this point, I
23 have to object because she's asking the witness to refer to a
24 document that she hasn't been able to identify at this point,
25 and I don't think that that's appropriate.

1 MS. BROWNLESS: Well, if you would give me a minute,
2 I think the witness might be able --

3 COMMISSIONER JABER: Go ahead, Ms. Brownless,
4 respond.

5 BY MS. BROWNLESS:

6 Q Okay. Can you look on Page I-18, please --

7 COMMISSIONER JABER: No, respond to his objection,
8 which is, you haven't laid a foundation.

9 MS. BROWNLESS: Well, I think if she looks at Policy
10 1-1A.2, she'll be able to identify the document, Commissioner.

11 COMMISSIONER JABER: I'm going to allow it. We're
12 going to give this a try.

13 MS. BROWNLESS: Thank you.

14 COMMISSIONER JABER: Go ahead, Ms. Winningham.

15 BY MS. BROWNLESS:

16 Q Do you see where it says, "Planned mixed use
17 developments in the suburban land use designation" on Page
18 I-18?

19 A Yes.

20 Q And I believe you previously testified that based
21 upon conversations with the county, you understand there are
22 three criteria of suburban land use in Lake County?

23 A Yes.

24 Q And could you look at the definitions on 1, 2, and
25 3, and see if those are consistent with the definitions on the

1 map you reviewed?

2 A One, 2, and 3 under 1-1A.2?

3 Q Yes, ma'am, Pages I-18 and I-19.

4 A This happens to be only one of the categories. It's
5 for the planned unit developments or mixed --

6 Q I can't hear you.

7 A I'm sorry. It appears to be only one of the
8 categories they had listed on the future land use map under
9 suburban for the planned unit developments, under suburban. If
10 you look at the future land use map, they had three categories
11 of suburban. One included planned unit developments, and this
12 appears to refer to that.

13 Q Okay. So this is consistent with the data that --
14 with your understanding of the definitions on the map you
15 reviewed?

16 A Yes.

17 COMMISSIONER JABER: Ms. Brownless, let me interrupt
18 you here. We're going to take a ten-minute break. That will
19 give Ms. Winningham time to read this document; that will also
20 give us an opportunity to talk to the sound guy about the sound
21 in the room or lack thereof. So let's take a ten-minute break.

22 (Brief recess.)

23 COMMISSIONER JABER: Let's go ahead and get back on
24 the record. Ms. Brownless, if you could reidentify what this
25 document is and get us started this way, that would be

1 appreciated.

2 MS. BROWNLESS: Why don't we identify it for the
3 record -- how is that -- and just give it an exhibit number?
4 Would that be helpful?

5 COMMISSIONER JABER: Give me a short title.

6 MS. BROWNLESS: Yes, ma'am. This is the definitions
7 of the Lake County comprehensive plan for suburban area and
8 policies as stated in Pages I-3, I-4, I-18, and I-19 of the
9 Lake County's comprehensive plan.

10 COMMISSIONER JABER: The short title.

11 MS. BROWNLESS: Excerpts from Lake County's
12 comprehensive plan.

13 MR. MENTON: And, Commissioner, if we could, my short
14 title would be Exhibit 2 because I don't know what this is.
15 I've never seen it before.

16 COMMISSIONER JABER: All right. For purposes of the
17 record, Exhibit 2 shall be marked for identification purposes,
18 and it will be definitions from Lake County's plan.

19 MS. BROWNLESS: Comprehensive plan, yes.

20 (Exhibit 2 marked for identification.)

21 COMMISSIONER JABER: Go ahead, Ms. Brownless.

22 MS. BROWNLESS: Thank you.

23 BY MS. BROWNLESS:

24 Q Okay. Are the definitions that are found on Policy
25 A-1A.2 (sic) on Page I-18 consistent with your understanding of

1 the planned mixed unit developments in suburban land use
2 designations for the Lake County comprehensive plan?

3 A Yes.

4 MR. MENTON: Commissioner Jaber, I would have to
5 object at this point because this witness has indicated that
6 she hasn't reviewed those sections before. I think what she's
7 testified to is that she has had communications with the Lake
8 County planner and her understanding as to what is included in
9 the Lake County plan was based upon those. I don't think it's
10 fair to pop some definitions on her and try to ask her to
11 comment because she doesn't have the entire comp plan to review
12 and in context to determine if there might be other relevant
13 sections, et cetera. I've never seen this document before, and
14 I have full faith in Ms. Brownless that this is an accurate and
15 true copy, but I haven't looked at the comp plan. This witness
16 hasn't looked at the comp plan, and I don't think it's fair to
17 begin to ask her on a few excerpts out of context on something
18 she hasn't seen before.

19 COMMISSIONER JABER: Okay. So Mr. Menton, what
20 exactly is your objection? Is it as to foundation? Is it as
21 to relevance?

22 MR. MENTON: Foundation, I'm sorry.

23 COMMISSIONER JABER: Okay. Ms. Brownless, what is
24 your response?

25 MS. BROWNLESS: I would respond to that by saying the

1 witness has testified that there were definitions in the land
2 use future map that she reviewed. She's testified that these
3 definitions are consistent with the definitions on the land use
4 map she's reviewed, and she has been able to identify them. I
5 don't think I have to provide every exhibit to Mr. Menton ahead
6 of time.

7 COMMISSIONER JABER: Mr. Menton, I'm going to allow
8 the questions because this is cross examination, and she's
9 using it to impeach the witness. If Staff has a problem with
10 any of this, and they are not objecting, I'm sure they are
11 welcome to redirect, but I will allow the questions. Go ahead,
12 Ms. Brownless.

13 MS. BROWNLESS: Thank you, ma'am.

14 BY MS. BROWNLESS:

15 Q Now, with regard to suburban planned development
16 succeeding 25 or more access on Paragraph Number 2 on Page
17 I-19, it indicates under "A" that those will be connected to
18 public, private, or franchised water systems; is that correct?

19 A Yes.

20 Q And with regard to Paragraph Number 3, suburban
21 planned development succeeding 100 or more lots; is that
22 correct?

23 A Yes.

24 Q It also indicates that they shall be connected to
25 public, private, or franchised water and sewer systems; is that

1 correct?

2 A Yes.

3 Q So to the extent that these suburban areas identified
4 on the land use map would fall within these two categories,
5 then the existence of a centralized water system would be
6 consistent with those characterizations, would they not?

7 A Where a PUD is applicable.

8 Q Okay. I'd like you to look now at Policy 1-1B.2.

9 A Okay.

10 Q And I believe I asked you this at your deposition.
11 With regard to when centralized water systems would be
12 allowable in rural areas, do you remember that line of
13 questioning?

14 A Yes.

15 Q And Policy 1-1B.2 would indicate, am I correct, that
16 centralized water systems would be acceptable in rural areas if
17 the absence of such facilities would result in a threat to
18 public health or safety; is that correct?

19 A Yes.

20 Q Is that also the testimony that you gave at your
21 deposition?

22 A I'm sorry, could you repeat the question?

23 Q A public health, safety, and welfare exception, is
24 that also the testimony that you gave at your deposition, that
25 that would be an exception?

1 A That would be an exception we would look at that
2 would be a reason why you might do that, yes.

3 Q Okay. And if that were established then that would
4 be a reason that might make provision of such service
5 consistent with what would otherwise be a rural area; is that
6 correct?

7 A Yes.

8 Q I want to go back to the timing of when you entered
9 this case. The decisions that you formed and the opinions that
10 you formed were formed in March or April of this year; is that
11 correct?

12 A Somewhere in the March to May period.

13 Q Okay. Did you file any additional testimony in this
14 docket addressing the issue of consistency of either Florida
15 Water's plan -- well, let me ask you this. Did you file any
16 additional testimony in this docket addressing the issue of
17 consistency?

18 A No.

19 Q Were you requested to file any additional testimony?

20 A No.

21 Q Did you provide the -- the Staff filed their
22 prehearing statement on February 9th of this year. Did the
23 Staff ask your opinion with regard to Issue Number 8 at that
24 time?

25 A I don't believe so.

1 Q You would not even have been assigned to this case in
2 February, would you?

3 A I don't believe so.

4 Q Okay. Is the first time that you expressed an
5 opinion as to the specific consistency of the city's
6 comprehensive plan to the city provision of service at your
7 deposition on June 28th?

8 A I believe so.

9 Q Okay. Is that also the first time that you expressed
10 an opinion as to the consistency of the city's comprehensive
11 plan with the county's comprehensive plan?

12 A I don't think I made any statement as far as
13 consistency of the city's plan with the county's plan.

14 Q I'm sorry, that's incorrect. The provision of city
15 service to the Summit, the issue of consistency with the
16 county's comprehensive plan. Would that be the first date you
17 would express an opinion about that?

18 A As a specific statement of opinion, I believe that,
19 you know, I reviewed the document, and I didn't have any
20 concerns as far as our initial analysis, which we didn't have
21 any objections to the provision of service.

22 Q Wait. I think we have crossed purposes here. Let me
23 rephrase my question. I think you indicated that your
24 deposition on June 28th was the first time that you rendered an
25 opinion as to whether the provision of service by the city to

1 the Summit was consistent with the city's comprehensive plan;
2 is that correct?

3 A Yes.

4 Q Okay. Now, is your deposition on June 28th also the
5 first time that you rendered an opinion as to -- or concerns, I
6 guess, opinion as to the consistency of the city's
7 comprehensive plan with the Lake County comprehensive plan?

8 A As a specific statement to that --

9 Q Yes, ma'am, as a specific statement. Okay. Because
10 those opinions do not appear anywhere in the prefiled testimony
11 of Mr. Gauthier, do they?

12 A He did not state specifically yes or no.

13 Q Were you requested by Staff to file any additional
14 testimony on these points?

15 A No.

16 Q To your knowledge, is the testimony that's been
17 identified today all of the testimony that's been prepared?

18 A To my knowledge.

19 Q And you certainly don't plan to offer any additional
20 written testimony today, do you?

21 A No.

22 Q I want to discuss a little bit about your opinion
23 that the city's service of the Summit is inconsistent with the
24 city's comprehensive plan. Okay. And can I boil that down to
25 the fact that the Summit was not identified as a potential

1 utility service district in the city's current comprehensive
2 plan?

3 A Yes.

4 Q Would you agree that comprehensive plans are dynamic
5 documents?

6 A Yes.

7 Q Would you agree that those plans can be changed based
8 upon a demand for service?

9 A Yes.

10 Q Would you agree that those plans can be changed based
11 upon environmental concerns?

12 A Yes.

13 Q And would you agree that an environmental concern
14 would be the need to provide noncontaminated water to an area?

15 A Yes.

16 Q Would you consider the ability to provide
17 noncontaminated water to be an issue of public health and
18 safety?

19 A Yes.

20 Q Can these issues trigger comprehensive plan
21 amendments after the fact? In other words, you find out that
22 there's an area that's contaminated, or you get a demand for
23 service prior to the amendment of your comprehensive plan.

24 A Are you saying that the need for the service or --
25 when you are saying "after the fact," or that they have already

1 provided the service?

2 Q No, ma'am. What I mean is, you have an existing
3 comprehensive plan. It does not identify a potential service
4 area in that plan.

5 A Yes.

6 Q Okay. A site is identified that has a contamination
7 problem after the plan is filed with DCA and whatever. That
8 event could be a triggering event to amend the plan; is that
9 correct?

10 A Yes.

11 Q And that would be an appropriate amendment in that
12 case?

13 A Yes.

14 Q At your deposition, I discussed a wastewater
15 feasibility study that was done by the City of Groveland. Do
16 you remember that --

17 A Yes.

18 Q -- in August of 1999?

19 A Uh-huh.

20 Q Okay. And that wastewater feasibility study covered
21 an area south of the City of Groveland, did it not?

22 A Yes, it did.

23 Q And that was in the area in the Green Swamp area
24 south of the city; correct?

25 A I think it went into a portion of the Green Swamp,

1 yes.

2 Q Was that study funded by the Department of Community
3 Affairs?

4 A I don't know.

5 Q Okay.

6 A I believe you indicated that it was, but I do not
7 have an independent knowledge of that.

8 Q When you looked at the cover page, did it indicate it
9 was funded by the Department --

10 A Right. You showed me the cover page that indicated
11 it was.

12 Q Okay. Doesn't that study indicate potential
13 wastewater service areas for the city?

14 A Yes.

15 Q And based upon those types of studies, one could
16 satisfy an amendment to one's comprehensive plan, could you
17 not?

18 A Right. The study would be part of that supporting
19 data and analysis.

20 Q Do you know whether the City of Groveland has amended
21 its plan or attempted to amend its plan to include those areas?

22 MS. CHRISTENSEN: Objection. I'm not sure --
23 objection, Commissioners, as to relevance. I'm not sure
24 which -- what portion of the city's plan she is talking about,
25 amending wastewater service, water service --

1 BY MS. BROWNLESS:

2 Q The utility's comprehensive plan with regard to
3 utility service. There's a utility infrastructure item in the
4 comprehensive plan, is there not, Ms. Winningham?

5 A Public facilities --

6 Q Yes, ma'am. And I think you said that you reviewed
7 the City of Groveland's comprehensive plan?

8 A Yes.

9 Q Have you reviewed amendments to the comprehensive
10 plan?

11 A Yes.

12 Q Are you aware of whether the city has filed an
13 amendment to its plan to include these areas?

14 A There was a remedial amendment, I believe, that
15 addressed an amendment site that they were going to provide the
16 service to. I didn't review it in detail because it wasn't the
17 area I was concerned on, and it dealt with wastewater.

18 MR. MENTON: And, Commissioner, if I could, I just
19 wanted to clarify that when you say, "these areas," I think the
20 question was a little bit vague.

21 MS. BROWNLESS: Well, I'm talking about the areas
22 that were identified in the wastewater study in August of 1999.

23 MR. MENTON: That were south of the city?

24 MS. BROWNLESS: Yes, sir.

25 COMMISSIONER JABER: Ms. Brownless, restate the

1 entire question. And in the future, I'll ask all of you all to
2 wait for the ruling.

3 And, Ms. Winningham, if you don't understand a
4 question, feel free to say exactly that, and Ms. Brownless, I'm
5 sure, will be more than happy to restate it.

6 COMMISSIONER PALECKI: Ms. Winningham, I'd like to
7 ask you a question. If the city a year ago had made
8 modifications to their comprehensive plan, had the -- the DCA
9 was able to initiate the proper controls that you referred to
10 in your testimony and the DCA had approved that comprehensive
11 plan with the additional water line going out to this
12 development, would the DCA have any preference whatsoever
13 between the city and Florida Water?

14 THE WITNESS: No.

15 COMMISSIONER PALECKI: It's the fact it's a matter of
16 timing that the city hasn't yet come before the DCA and asked
17 for these modifications to their plan, and that the DCA hasn't
18 had a chance yet to react to those modifications or to approve
19 them or disapprove them; is that correct?

20 THE WITNESS: Correct. We just haven't seen -- had
21 any change come before us or seen any data showing us that,
22 yeah, this is appropriate right now.

23 COMMISSIONER PALECKI: If this Commission were to
24 determine, and we're not making any predeterminations until we
25 hear all of the testimony, but if we were to determine that the

1 city was better able to serve and we made a finding that we
2 would approve the city's plan but contingent upon the city
3 obtaining approval first of a modified comprehensive plan from
4 the DCA, would the DCA have any problem in that regard?

5 THE WITNESS: We wouldn't have a problem your making
6 that finding. I can't make a decision on whether or not it
7 would be appropriate since I haven't seen the data.

8 COMMISSIONER PALECKI: Right, you haven't seen the
9 data yet. You haven't had a chance to judge whether a modified
10 comprehensive plan would be appropriate for not.

11 THE WITNESS: Correct.

12 COMMISSIONER PALECKI: Thank you.

13 BY MS. BROWNLESS:

14 Q I want to turn now to your concerns about the
15 consistency of the City of Groveland service to the Summit with
16 regard to the Lake County comprehensive plan, and I just want
17 to make sure I understand your position. Does that basically
18 boil down to the fact there would be a city water line through
19 areas which are identified on the future land use map as rural
20 or suburban?

21 A Rural and suburban, I believe. The area we were
22 looking at when we reviewed this contains rural and suburban.
23 Right now, as I said, we don't know as far as meeting the
24 timing criteria and stuff for higher densities within the
25 suburban. So that was the issue that was concerning us, that a

1 water line would be running through it. It wasn't that it
2 would be city but any water line.

3 Q Okay. Other than that concern, other than that
4 point, and I think the rationale for that is because you
5 believe that putting the line there will encourage urban
6 sprawl; is that correct?

7 A It has the potential to based on just the land uses
8 that I had looked at.

9 Q Okay. And to the extent there was vested development
10 in the area of 478 not shown on the future land use map, that
11 might change your opinion as to whether service by the city was
12 consistent or inconsistent?

13 A Depending on the amount of vested development, its
14 location, yes.

15 MS. BROWNLESS: Excuse me while I plunder through my
16 stuff.

17 Q So is it fair to say that at this time you have
18 insufficient data to make a determination with regard to the
19 consistency of the city's plan with the Lake County
20 comprehensive plan?

21 A Right now, it's -- I would say it was inconsistent
22 only because there's nothing in the city's plan dealing with
23 it.

24 Q No, ma'am. We're not talking about the city's
25 comprehensive plan.

1 A I'm sorry.

2 Q We're talking about, is it a fair statement to say
3 that with regard to the consistency of the city's service of
4 the Summit with the Lake County comprehensive plan, you have
5 inconsistent data to make a decision or insufficient data to
6 make a decision?

7 A The only data I have is what is on the future land
8 use map at this time and the existing land use map that would
9 show how much is already developed. It wouldn't show vested
10 development, that sort of thing. So there isn't sufficient
11 data to say as a whole this would be inconsistent. It's just
12 what I have as far as land use shows that there is that
13 potential there.

14 Q So it is a potential for inconsistency?

15 A Yes.

16 Q Now, I'm going to put a map on the board, I hope I
17 will be able to put it up there.

18 COMMISSIONER JABER: Ms. Winningham, how often are
19 city comprehensive plans reviewed by DCA?

20 THE WITNESS: The amendments that come in?

21 COMMISSIONER JABER: Just the plans on file. How
22 often does DCA review them?

23 THE WITNESS: Anytime there's an amendment, you would
24 go back and look at the comprehensive plan to see that the
25 amendment was consistent with the other elements of the plan.

1 Normally, you would look at that. It wouldn't necessarily mean
2 that you would reread the entire plan because you would be
3 looking for specific issues, and you would go to those areas of
4 the plan.

5 COMMISSIONER JABER: Does the Department of Community
6 Affairs have authority to require amendments to a plan?

7 THE WITNESS: We can't require it. Sometimes the
8 Legislature will require it through statute that amendments be
9 submitted to us.

10 COMMISSIONER JABER: Okay.

11 BY MS. BROWNLESS:

12 Q I think you indicated in your testimony previously
13 that you reviewed the maps that had been filed with the
14 application of Florida Water; is that correct?

15 A Yes.

16 Q Can you examine this map of this Sheet 1 of 3,
17 Florida Water Services, Palisades Country Club Water
18 Distribution, and look at it to see if that's what you looked
19 at, at the PSC?

20 A It looks similar to the map I think that I saw there.
21 It was a number of months ago, so I can't say 100 percent.

22 Q But it does look consistent with what you examined?

23 A Yes.

24 Q Okay. On this map, this is Cherry Lake Road; is that
25 correct?

1 A It's labeled as such.

2 Q Yes, ma'am. And this is Spring Lake?

3 A Yes.

4 Q Okay. Lay (phonetic) Road Lake?

5 A I can't read that either.

6 Q I can't read that either. And Lake Jamison; is that
7 correct?

8 A It looks like Johnson, but I might be wrong too.

9 Q Johnson.

10 MS. BROWNLESS: Do you need to --

11 MR. MENTON: I need to put on my glasses.

12 BY MS. BROWNLESS:

13 Q On this map, is this little green square the water
14 treatment plant?

15 A Yes.

16 Q And that sits just south of Cherry Lake Road; is that
17 correct?

18 A Correct.

19 Q And this is the existing Palisades system; is that
20 correct?

21 A I believe so.

22 Q Okay. And this blocked area up here in the dark
23 purple lines is the Summit subdivision that's the subject of
24 this --

25 A The proposed expansion area?

1 Q Yes, ma'am.

2 COMMISSIONER JABER: Are you going to sit down?

3 MS. BROWNLESS: Yes, ma'am.

4 COMMISSIONER JABER: Let me just tell you, as a
5 matter of courtesy, when we go out of town for a hearing, if
6 you all have exhibits that require illustration like this, if
7 you would just give the court reporter's office a heads-up, we
8 would bring handheld mics with us.

9 MS. BROWNLESS: Yes, ma'am.

10 COMMISSIONER JABER: Okay.

11 BY MS. BROWNLESS:

12 Q Now, I have handed out a small map; is that correct,
13 Ms. Winningham?

14 A Yes.

15 Q And can you -- let me think here. How could I do
16 this so everybody can track along?

17 MS. BROWNLESS: I'm just going to stand over by the
18 witness, if that's all right with you, Commissioner.

19 Q The map that's just been distributed shows the Summit
20 PUD grafted on this map; is that correct?

21 A Yes.

22 Q And it also shows County Road 478, does it not?

23 A Yes.

24 Q And the scale of this map is 1 inch to 2,000 feet; is
25 that correct?

1 MS. CHRISTENSEN: I'm going to object to improper
2 foundation for this map. This is not a map that we have seen
3 before. I don't believe this is a witness that can lay the
4 foundation for this map. I'm trying to give some leeway for
5 maps that we've viewed before, but this is a newly created map.
6 She hasn't even asked her if she recognizes this, is trying to
7 move in through this witness things on this map, and I don't
8 know that she's laid the proper foundation that the witness has
9 enough familiarity with it.

10 COMMISSIONER JABER: Ms. Brownless, the objection is
11 that you haven't laid a proper foundation. What's your
12 response?

13 MS. BROWNLESS: We have indicated and the witness has
14 indicated that she reviewed the maps at the Florida Public
15 Service Commission. She's identified the map at the PSC that
16 she reviewed as Sheet 1 of 3. What we're simply trying to do
17 is get her to establish the landmarks on this map that match
18 the map that she's reviewed. It is relevant to this inquiry.

19 COMMISSIONER JABER: Is this map anywhere in the
20 prefiled testimony, Ms. Brownless?

21 MS. BROWNLESS: No, ma'am.

22 COMMISSIONER JABER: Okay. Ask the questions -- you
23 just made some statements. Rephrase those into questions and
24 lay the proper foundation.

25 BY MS. BROWNLESS:

1 Q With regard to the map that you just reviewed on --
2 sits on the easel there, which is the Florida Water Map Sheet 1
3 of 3, were you able to identify landmarks on that map?

4 A Yes.

5 Q One of which was the State Road 478, is that correct,
6 Cherry Lake Road?

7 A Cherry Lake Road, yes.

8 Q Were you able to identify the Summit PUD area at
9 question in this hearing?

10 A Yes.

11 Q Were you able to identify the location of the water
12 treatment plant?

13 A Yes.

14 Q Can you -- is the location of those landmarks on the
15 Florida Water Services' map consistent with the location of
16 those landmarks on the exhibit before you?

17 A Can I take it up there to look?

18 Q Yes, ma'am.

19 A Yes.

20 Q I want to show you an overlay. I'll have you compare
21 the overlay to what you just --

22 COMMISSIONER JABER: Ms. Brownless, give a copy of
23 that to her counsel.

24 Q Is that an accurate reflection of the map we just
25 discussed?

1 A Yes.

2 MR. MENTON: Commissioner Jaber, if I might, I know
3 we're going down an area that I'm going to have some objections
4 on, so I might as well start out right away. This is the map
5 that we talked about in the motion for official recognition
6 that I'm sure that we can reach some stipulation to
7 authenticity at some point in time. I'm sure we will be able
8 to do that, but I do have a concern about using this map in
9 connection with this witness who has no prefiled testimony
10 related to this issue in any way, shape, or form, and about
11 which we have no prefiled testimony as to the significance of
12 it, how these sites are determined, how long they are
13 determined for, what the significance of any of that means.

14 COMMISSIONER JABER: Doesn't Ms. Brownless have to
15 show that the questions she's about to ask are related to
16 Ms. Winningham's testimony?

17 MR. MENTON: That's --

18 COMMISSIONER JABER: Okay. Well, I haven't heard the
19 questions yet, so let me reserve ruling on your objection, but
20 I appreciate you stating it and certainly you giving me a
21 heads-up.

22 MR. MENTON: Preemptive.

23 COMMISSIONER JABER: Go ahead, Ms. Brownless. And I
24 would caution, I know that I reserved ruling on the official
25 recognition list to allow you all to work that out, but I will

1 be looking for questions that are directly related to
2 Ms. Winningham's testimony.

3 MS. BROWNLESS: Yes, ma'am, and they certainly shall
4 be.

5 BY MS. BROWNLESS:

6 Q Ms. Winningham, I'm going to identify the map that
7 you've been -- did I give you a copy of it?

8 A No.

9 Q How about you come up to the color map,
10 Ms. Winningham?

11 MS. CHRISTENSEN: And bring your microphone.

12 Q Ms. Winningham, this map is the state of Florida,
13 Department of Environmental Protection delineation map for
14 potable water well permitting, Chapter 62-524, F.A.C. And the
15 date on this map is July 2001, and I'll just read the one box
16 down here. It says, "USGS quadrangle name: Clermont west,
17 FDEP quadrangle index number: 3715" --

18 MR. MENTON: Suzanne, I'm sorry, I'm having a hard
19 time hearing you back here.

20 MS. BROWNLESS: I'm sorry. Steve, I'm just reading
21 from this little box right here from the map.

22 MR. MENTON: I don't object to that part, but I know
23 you are getting close.

24 Q -- "Delineation round number: 3." Okay. Now,
25 Ms. Winningham, I'd like to try to identify the project area

1 that's on the FPSC map in relation to this DEP quadrangle map.
2 And I believe that with regard to the overlay, okay, you
3 identified that that was the same as the solid printed version
4 of the map; is that correct?

5 MR. MENTON: Commissioner, at this point I would
6 object. I think we are getting into an area that this witness
7 hasn't demonstrated that she has any foundation to be able to
8 apply that map or determine its significance.

9 COMMISSIONER JABER: So your objection is one of
10 foundation?

11 MR. MENTON: Foundation.

12 MS. BROWNLESS: Okay. We have provided the proper
13 foundation. This map is a delineation map for well permitting,
14 and it indicates it is incorporated by reference into this rule
15 as we discussed before.

16 COMMISSIONER JABER: What part of her testimony does
17 this relate to, Ms. Brownless?

18 MS. BROWNLESS: This relates to whether or not the
19 extension of the line by the city to Cherry Lake would be
20 inconsistent with the county's comprehensive plan. She has
21 testified that there is -- that to the extent water would be
22 provided to a contaminated area or an area where the water
23 quality is in question, that would raise a public health,
24 safety concern. This map right here on it says that it
25 indicates areas where ethylene dibromide is present.

1 COMMISSIONER JABER: I'll allow the question.

2 MS. BROWNLESS: Thank you.

3 BY MS. BROWNLESS:

4 Q And I want to take the overlay, and I'm going to line
5 it up, to the best of my ability here, with the map. Does that
6 look correct, Ms. Winningham?

7 A Generally. It's hard to see through the overlay.

8 Q Can you get closer and see?

9 A Yes.

10 Q This would locate the Summit PUD, the area at
11 question, in this little box right here. And it would put it
12 on 478; correct?

13 A Yes.

14 Q And that would be consistent with the Florida Water
15 map; correct?

16 A Yes.

17 Q Now, this map -- also, Cherry Lake Road goes right
18 down here and right here; correct?

19 A Yes.

20 Q Okay. This Palisades water treatment plant as
21 indicated on the overlay and on the map is just south of Cherry
22 Lake Road; is that correct?

23 A Yes.

24 Q And that's also consistent with the Florida Water
25 map; correct?

1 A Yes.

2 Q Okay. Now, the location of this water treatment
3 plant is in an area that's been identified on this map as
4 3526369 (sic); is that correct?

5 A Yes.

6 MR. MENTON: Commissioner, I'm sorry, I have to
7 interrupt again.

8 COMMISSIONER JABER: That's all right. What's your
9 objection?

10 MR. MENTON: The objection again is twofold. Number
11 one, foundation in the sense that she's asking this Department
12 of Community Affairs witness about a DEP map that I still don't
13 think she's established that this witness has ever seen before
14 or knows the significance of or knows how it is used or knows
15 how it is applied.

16 I would also object on the grounds that it does go
17 beyond the scope of her prefiled testimony. Her testimony
18 raised concerns with the city's provision of service. Those
19 concerns were explicated in her cross examination that they
20 included potential inconsistency in the lack of the city's comp
21 plan to address what DCA would expect to be addressed if they
22 were to provide service. Now, there may be ways that the city
23 can correct that at some point, and there may be
24 justifications, but how and why they would go about doing that
25 is beyond the scope of this proceeding and beyond the scope of

1 this witness's testimony.

2 COMMISSIONER JABER: Ms. Brownless, your response.

3 MS. BROWNLESS: We have, by the questions we've asked
4 today, laid the proper predicate for Ms. Winningham to provide
5 this testimony. First of all, we established on the record
6 that with regard to the issue of consistency or inconsistency,
7 those statements were not made and those opinions were not
8 expressed until June 28th at Ms. Winningham's deposition. That
9 would have been after the time that we were allowed to file
10 rebuttal testimony. I think we are entitled to present
11 evidence and to cross examine and to use exhibits to cross
12 examine on Ms. Winningham's opinion. She's testified today
13 that her belief is that extension of the county water line
14 around Cherry Lake to the Summit subdivision is inconsistent
15 with the county's comp -- or may be inconsistent with the
16 county's comprehensive plan because it puts a water line
17 through suburban and rural areas. She's also indicated that
18 there would be an exception to that --

19 THE WITNESS: Could be a potential exception.

20 COMMISSIONER JABER: Ms. Winningham, wait for the
21 ruling, please.

22 MS. BROWNLESS: -- to that inconsistency if it were
23 shown that a health, safety, or welfare issue was involved.

24 COMMISSIONER JABER: Ms. Winningham, let me ask you
25 to sit down. And let me say something to both parties. First

1 of all, I'm going to overrule your objection, but I'm going to
2 allow you the same sort of flexibility and latitude when your
3 witnesses are on. Part of the reason I'm overruling the
4 objection is, I think the Commissioners opened some of these
5 doors.

6 Commissioner Palecki and I asked questions about what
7 the city could do to modify the plan, so there was testimony
8 with respect to what the city could do. That came up on cross
9 examination. I think that Ms. Brownless has laid the
10 foundation. I think Ms. Brownless established that this is a
11 person who is familiar with local planning issues. I don't
12 think she's asking her to testify to the authenticity of the
13 DEP map. She was asking her to establish the area.

14 So the other thing I would caution the parties with
15 is, this is Staff's witness. And to the degree Staff wants to
16 redirect this witness, I'm going to allow it, but we have been
17 extremely flexible. Please do not abuse that.

18 And, Ms. Brownless, I am going to allow Mr. Menton
19 that same sort of flexibility.

20 MS. BROWNLESS: Thank you.

21 COMMISSIONER PALECKI: Could I make a point,
22 Commissioner?

23 COMMISSIONER JABER: Yes.

24 COMMISSIONER PALECKI: I would also point out that
25 this witness has filed three pages of testimony; that the point

1 made by this witness I don't consider one of the most important
2 points in this case. And we've already taken two and a half
3 hours of this hearing time -- well, approximately two with this
4 witness, and I hope that we're getting pretty close to the end
5 of this cross examination.

6 MR. MENTON: And, Commissioner Jaber, I certainly
7 respect your ruling. If I could just make one point, though,
8 because I think this is an issue that may be a recurring
9 problem over the course of this proceeding, and one of the big
10 concerns that I have is that I never saw this map until Monday
11 afternoon, and it is nowhere referenced in any of the prefiled
12 testimony either. This witness or any of the other witnesses.
13 So all of a sudden, we are getting hit with this idea of
14 contamination. And just that word out there creates an aura
15 that there is some great concern that we have to deal with.
16 And I think that it's unfair to suddenly interject that into
17 the proceeding Monday before we start, and then try to get the
18 DCA witness to explain what these cones mean and what that
19 means.

20 I think the rule is going to speak for itself. I
21 think it is a pretty straightforward rule, and we can address
22 that in posthearing briefs, but I am very concerned about
23 opening the door to having witnesses begin to extrapolate upon
24 what these cones, you know, that the DEP has put on these maps
25 mean because it's just not in the prefiled, and we have not had

1 an opportunity to address it with any of our witnesses nor are
2 we prepared to respond to any of that in this proceeding.

3 COMMISSIONER JABER: I recognize that, Mr. Menton,
4 but the problem with that is, the parties are always on notice
5 that exhibits may be used for cross examination, and there is
6 no requirement that those exhibits be shared. I also
7 understand in this case that this witness was deposed and some
8 discussion of the exception, as I understand it, was brought
9 up. Do you disagree with that, Mr. Menton?

10 MR. MENTON: Well, I'm not sure -- I don't think --
11 this map did not come up in her deposition. None of this came
12 up in her deposition at all.

13 COMMISSIONER JABER: Ms. Brownless, what's your
14 response to that?

15 MS. BROWNLESS: We did not have a copy of the map at
16 Ms. Winningham's deposition. We specifically asked her if the
17 extension of lines by the city would be appropriate if there
18 were a public health, safety issue, and she indicated that it
19 would be.

20 MR. MENTON: And she's already testified to that
21 today. That's the extent of --

22 MS. BROWNLESS: This is a follow up as to that issue.

23 COMMISSIONER JABER: Mr. Menton, if I gave you an
24 opportunity to ask this witness questions with respect to this
25 map and the contamination issue, would you be able to do that

1 this afternoon after our lunch break?

2 MR. MENTON: Perhaps, Commissioner. I'm not sure
3 that I have any questions yet because I don't think this
4 witness can say anything other than that in determining whether
5 it would be appropriate for a city to extend its lines out in
6 through rural areas, one of the factors that they would
7 consider would be contamination. She's already said that.
8 That's basically the gist of it. I think everything else here
9 in terms of the areas, et cetera, I don't think I have any
10 questions on.

11 COMMISSIONER JABER: All right. Then we're going to
12 move on. Finish your cross examination, Ms. Brownless.

13 MS. BROWNLESS: If you give me just a few minutes,
14 I'll make sure I'm finished. I have no further questions.
15 Thank you.

16 MR. MENTON: If I knew that, I would have saved my
17 objection.

18 COMMISSIONER JABER: Ms. Christensen, redirect.

19 MS. CHRISTENSEN: Yes.

20 COMMISSIONER JABER: Well, wait a second.

21 Commissioners, do you have any additional questions before
22 Staff does redirect?

23 COMMISSIONER PALECKI: No.

24 COMMISSIONER JABER: Go ahead.

25 REDIRECT EXAMINATION

1 BY MS. CHRISTENSEN:

2 Q Let me ask you -- I know Ms. Brownless asked you a
3 lot about questions and rendering an opinion as of I think it
4 was June 28th when your deposition was taken. When you were
5 giving those specific responses to the comprehensive plan and
6 the questions of consistency or inconsistency, were you
7 responding to the questions that were presented to you by the
8 deposition -- by Ms. Brownless in the deposition?

9 A I am not sure I understand the question.

10 Q What I'm asking is -- because it appears that
11 Ms. Brownless feels that there is some weight to the fact that
12 you had not expressed an opinion prior to the deposition, isn't
13 it the case that you were just responding to questions that
14 Ms. Brownless was posing regarding the consistency of those
15 plans when you were doing your deposition?

16 MS. BROWNLESS: I would object to the form of the
17 question.

18 COMMISSIONER JABER: It's a direct question,
19 Ms. Brownless. And the question is this, Ms. Winningham --

20 MS. BROWNLESS: It's also a leading question,
21 Commissioner.

22 COMMISSIONER JABER: Hang on, Ms. Brownless. The
23 question is this: Did you have any reason prior to the
24 deposition to consider whether the city's plan was inconsistent
25 with Lake County's comprehensive plan? Is that the question?

1 MS. CHRISTENSEN: That would be an additional
2 question, but that was a good question.

3 COMMISSIONER JABER: Ms. Winningham, answer that
4 question.

5 THE WITNESS: No, I did not look at whether the
6 city's plan was inconsistent with the county's plan.

7 COMMISSIONER JABER: Okay. Go ahead, Patty.

8 BY MS. CHRISTENSEN:

9 Q In preparation for the deposition, did you look at
10 those issues?

11 A I did not look at whether the city's plan was
12 inconsistent with the county's plan. I looked at the city and
13 county information in relation to the proposed expansion area.

14 Q And when you were asked questions regarding
15 consistency, those were asked of you in deposition; correct?

16 A Yes.

17 Q And you expressed your opinion as a direct result of
18 those questions?

19 A Yes, I did.

20 Q Let me ask you, you've mentioned several times that
21 there can be amendments to the comprehensive plans, whether
22 it's a county or city comprehensive plan; correct?

23 A Yes.

24 Q Is there any restrictions on the number of amendments
25 or times that a city or a county can amend its plan based on

1 changed circumstances?

2 A They can amend a plan through large scale amendments
3 twice a year. There are exceptions for emergency amendments
4 and developments of regional impact. There may be others.
5 Those are the two big exception areas.

6 Q So twice a year at a minimum, more often as needed.
7 Would that be correct?

8 A More often --

9 Q Well, under those --

10 A There are exceptions from the twice-a-year limitation
11 for the emergency amendments and development of regional impact
12 amendments.

13 Q Okay. So if an issue of groundwater contamination
14 comes up in a map of 2000, you would have two times in that
15 period to amend your comprehensive plan to address that?

16 A Correct.

17 Q Can you tell us, how long does it take for a
18 comprehensive plan to be approved with an amendment or to be
19 amended? Do you know how long that process usually takes?

20 A The Department's review period is normally 60 days
21 for the proposed amendment and 60 days for the adopted
22 amendment, but that doesn't include the local government's time
23 to prepare the amendment and take it through hearing; then the
24 adoption hearing process as well. And then at the end of the
25 compliance determination by the Department, there's 21 days for

1 a challenge by a citizen. So it could take potentially, you
2 know, four to six months for an amendment to go through.

3 Q Is that without a protest, without a protest to
4 the --

5 A That's if there was no citizen challenge at the end
6 or finding of noncompliance by the Department. There are some
7 shorter processes which are, like, called a preliminary review
8 determination where an amendment can be sent up to us. If it's
9 something that clearly everyone agrees is probably not going to
10 be a large issue, it could go through in 30 days, and then we
11 would send it back, you know, assuming we had no issues. They
12 could then be adopted, and that would shorten the process.

13 Q So would you consider it a prohibitive process to
14 make amendments to the comprehensive plan as needed based on
15 changing of population growth, change of circumstances such as
16 contamination? Would you, in your opinion, as a DCA planner
17 consider that a prohibitive process?

18 A No.

19 Q Let me take you back to the review that you did of
20 the city's plan. You did not find any amendments to the plan
21 that would talk about providing water up in that -- up through
22 the Cherry Lake area to the Summit; is that correct?

23 A Correct.

24 Q And can you indicate what -- what are the benefits to
25 amending, let's say, the city's plan or the comprehensive plan

1 to reflect a need for a change of service?

2 A It would benefit the city by being able to anticipate
3 where its growth is going to occur, better allocate its
4 resources into the areas where they are anticipating to need
5 that growth to go.

6 Q Can you tell us if you know how long it might take
7 for a comprehensive plan with the amendment to be approved if
8 there were an objection?

9 A If we have objections, the original process time I
10 spelled out would still be in place, because during the
11 adoption phase, we would have sent out our objections at the
12 end of the 60 days. And during that time, the local government
13 staff would prepare a response, maybe modify the amendment, and
14 then it would go to their counsel or commission for adoption
15 and be rendered back up to us.

16 Q Okay. Assuming -- let's assume that somewhere if
17 there was a citizen protest to the amendment of the
18 comprehensive plan, do you have any idea how long that may
19 delay the --

20 A It would depend because that would get into -- you
21 know, that would normally be a legal challenge to the
22 amendment. And so then you would get into, you know, having to
23 work out a settlement agreement potentially with the party. It
24 may go to hearing. I couldn't anticipate exactly what that
25 time frame would be, but you can petition for an expedited

1 hearing, I believe.

2 Q And I just want to make sure that we're clear. When
3 you were discussing earlier with Ms. Brownless regarding an
4 amendment that was supposedly up at the DCA at this point, is
5 that solely regarding wastewater service in south of the city,
6 to your knowledge?

7 A Yes.

8 Q So that amendment would not address providing water
9 service to north of the city and over to the Summit?

10 A Correct.

11 Q And to your knowledge, the city's comprehensive plan
12 does not have that?

13 A Correct.

14 Q To your knowledge, does the Lake County comprehensive
15 plan address that either?

16 A No.

17 Q And let me clarify that as far as providing service
18 to the Summit, DCA has no objection to water service to the
19 Summit; is that correct?

20 A Correct.

21 Q And is it your opinion that at least based on the
22 information that you've reviewed that Florida Water Services
23 providing water service to the Summit would not create any
24 inconsistencies with the future land use map of Lake County?

25 A Correct.

1 MS. CHRISTENSEN: I have no further questions at this
2 time.

3 COMMISSIONER JABER: Thank you, Ms. Christensen.
4 Let's deal with exhibits. Staff, you have Exhibit 1.

5 MS. CHRISTENSEN: Yes. Staff at this time would ask
6 that Composite Exhibit 1 be moved into the record.

7 COMMISSIONER JABER: Thank you. Exhibit Number
8 1 will be admitted into the record.

9 (Exhibit 1 admitted into the record.)

10 MS. BROWNLESS: Commissioner, can I just clarify that
11 Exhibit Number 1 only includes the resume of Ms. Winningham and
12 CRG-2, which is the letter of January 13th -- I mean, a letter
13 in February and the memo of January 13th?

14 COMMISSIONER JABER: Exhibit Number 1 is CRG-2 and
15 BW-1, yes.

16 MS. BROWNLESS: Thank you.

17 COMMISSIONER JABER: Now, Ms. Brownless, are you --

18 MS. BROWNLESS: We have no objection to that. That's
19 fine.

20 COMMISSIONER JABER: Okay. Exhibit 1 is moved into
21 the record. Now, you had identified Exhibit Number 2, which
22 were the definitions. You did not intend to move that into the
23 record; right?

24 MS. BROWNLESS: No, ma'am.

25 COMMISSIONER JABER: Thank you. Ms. Winningham, let

1 me thank you very much for coming this way and testifying on
2 Staff's behalf. And we tried not to keep you too long, but we
3 appreciate your patience.

4 THE WITNESS: Thank you.

5 COMMISSIONER JABER: We're going to take a lunch
6 break. Here's what I want to the parties to accomplish during
7 this lunch break.

8 MR. MENTON: Commissioner, if I could, we have one
9 witness, Mr. Perry, who has a three o'clock appointment. He's
10 very brief. I mean, I hate to say that. His prefiled was only
11 four pages, and hers was only three, but I actually thought
12 that we could stipulate his testimony in, but Suzanne said she
13 had a couple of questions. I think they are very brief. So I
14 was hoping we could take him before the lunch break, if we
15 could.

16 COMMISSIONER JABER: How much time do you expect --
17 you've got to take a guess. I mean, the thing is, it boggles
18 my mind. We do these prehearing orders. The witnesses are
19 established at the prehearing conference. We go out of town.
20 We inconvenience our own people, and Commissioners rearrange
21 all of their schedules to do their job. We get to hearings,
22 and then we are redeciding the order of witnesses.

23 Your witnesses have known well in advance what the
24 order is, so commitments need to be changed in accordance to
25 our hearings. You know, you need to accommodate this schedule.

1 But saying all of that, how much time do you need for
2 Mr. Perry?

3 MS. BROWNLESS: I think it should be less than 15
4 minutes.

5 COMMISSIONER JABER: Fine. We will take Mr. Perry;
6 we will take a lunch break. Here's what I expect you all to
7 accomplish during lunch. Sit down and talk about the official
8 recognition list with respect to the DEP map. If you reach an
9 agreement with respect to that map and the affidavit, also
10 consider a stipulation with respect to the affidavit coming
11 into the record. We will take that up as the first item after
12 lunch. Mr. Perry.

13 MS. CHRISTENSEN: Commissioners, can I ask that
14 Ms. Winningham be excused from the hearing?

15 COMMISSIONER JABER: Yes.

16 (Witness excused.)

17 COMMISSIONER JABER: Go ahead, Mr. Menton.

18 MR. MENTON: Thank you.

19 JAMES A. PERRY

20 was called as a witness on behalf of Florida Water Services
21 Corporation and, having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MENTON:

24 Q Could you please state your name and business
25 address.

1 A My name and James Aaron Perry. My business address
2 1000 Color Place, Apopka, Florida.

3 Q Mr. Perry, by whom are you employed and in what
4 capacity?

5 A Florida Water Services, I'm their chief financial
6 officer.

7 Q Did you cause to be filed in this docket direct
8 testimony dated August 10th, 2000, consisting of four (sic)
9 pages?

10 A Yes, I had -- did.

11 Q Do you have any changes or corrections to that
12 testimony?

13 A There are three minor changes. On Page 2, Line 7,
14 "treasurer" should be stricken from that. On Page 2, Line 17
15 the date is wrong. It should be September 1998, not 1999. And
16 on Page 4, Line 1, the word "at" should be inserted before
17 "my."

18 Q Mr. Perry, if I asked you the same questions today
19 that are set forth in your prefiled testimony, would your
20 answers be the same as contained in that testimony?

21 A Yes, they would.

22 MR. MENTON: Commissioner, I would ask that the
23 prefiled direct testimony of James Perry be entered into the
24 record as though read.

25 COMMISSIONER JABER: Yes, the prefiled testimony of

1 James A. Perry will be inserted into the record as though read.

2 BY MR. MENTON:

3 Q Mr. Perry, your prefiled direct testimony included
4 one exhibit, JAP-1, which is a copy of Florida Water's
5 1999 audited financial statements. Do you have any changes to
6 that exhibit?

7 A No, I do not.

8 MR. MENTON: Commissioner Jaber, at his deposition,
9 Mr. Perry did provide the parties with the 2000 financial
10 statements which became available after his prefiled, and we
11 have copies of that today. So we would include that as part of
12 his exhibit, or JAP-1, with your permission.

13 COMMISSIONER JABER: Yes. There's no objection,
14 Ms. Brownless, to including it in JAP-1?

15 MS. BROWNLESS: No, ma'am.

16 COMMISSIONER JABER: Staff.

17 MS. CHRISTENSEN: No.

18 COMMISSIONER JABER: Let's show Exhibit Number
19 3 identified as JAP-1, which will include the balance sheets
20 for the year 2000.

21 (Exhibit 3 marked for identification.)
22
23
24
25

1 Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

2 A. My name is James A. Perry and my business address
3 is 1000 Color Place, Apopka, Florida 32703.

4 Q. WHAT IS YOUR POSITION WITH FLORIDA WATER SERVICES
5 CORPORATION?

6 A. My position is Vice President - Chief Financial
7 Officer/~~Treasurer~~ for Florida Water Services
8 Corporation ("Florida Water").

9 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND WORK
10 EXPERIENCE?

11 A. I am a graduate of the University of Central
12 Florida, I hold a certificate from Wharton's
13 Executive Development Program. I hold professional
14 certifications of CPA, CIA, CISA. My work history
15 includes: Vice President Finance for Palm Coast
16 Utility Corporation from September 1991 through
17 September ¹⁹⁹⁸~~1999~~; Internal Audit Manager for ITT
18 Community Development Corporation from June 1985-
19 August 1991; Supervisor for Brent Milikan & Co.,
20 CPA's from September 1982-June 1985; Auditor for
21 U.S. Home Corporation from April 1981-September

1 1982; and Staff Auditor for Cherry, Beckart &
2 Holland from January 1979 through March 1981.

3 Q. WHAT ARE YOUR PRESENT DUTIES AS VICE PRESIDENT -
4 CHIEF FINANCIAL OFFICER/TREASURER FOR FLORIDA
5 WATER?

6 A. I am responsible for accounting, financial
7 reporting, budgeting, strategic planning, treasury
8 and information systems.

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS
10 PROCEEDING?

11 A. To support Florida Water's amendment application
12 and specifically, to testify that Florida Water has
13 the financial ability to provide service in the
14 territory requested. I have attached to my
15 testimony as Exhibit (___) JAP-1, a copy of Florida
16 Water's audited balance sheet and income statement
17 for year-end 1999. These audited financials verify
18 Florida Water's financial strength and soundness.

19 Q. WAS EXHIBIT (___) JAP-1 PREPARED BY YOU OR AT YOUR
20 DIRECTION AND CONTROL?

1 A. Yes. The financial statements were prepared ^{at} my
2 direction and under my control.

3 Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

4 A. Yes, it does.

1 BY MR. MENTON:

2 Q Mr. Perry, could you please provide a summary of your
3 testimony.

4 A Sure. Commissioners, good afternoon. My name is
5 James Perry. I'm the chief financial officer for Florida
6 Water. The purpose and summary of my testimony is to
7 demonstrate that Florida Water has the financial ability to
8 provide service to the requested area that's discussed today in
9 the hearing. The audited financial statements as provided,
10 inclusive all the footnotes, verify Florida Water's strengths
11 and soundness and financial ability.

12 MR. MENTON: We tender Mr. Perry for cross.

13 MS. BROWNLESS: Thank you.

14 COMMISSIONER JABER: Thank you. Ms. Brownless.

15 CROSS EXAMINATION

16 BY MS. BROWNLESS:

17 Q Mr. Perry, I'd like to ask you a little bit about
18 your qualifications.

19 A Sure.

20 Q At this time you are the supervisor of the rate
21 department, the accounting department, and the financial
22 functions of Florida Water; is that correct?

23 A That's correct.

24 Q Okay. And your training is in accounting; is that
25 correct?

1 A That's correct.

2 Q You have a CPA, CIA, and CISA; is that correct?

3 A That's correct.

4 Q I asked at your deposition that you explain the
5 certification CIA. Could you also do that here?

6 A The CIA certification is a certified internal auditor
7 designation. You can obtain that through the Institute of
8 Internal Auditors. They are an international institute that
9 have chapters throughout the world. There is approximately
10 14,000 members who are certified internal auditors throughout
11 the world. It's an examination that's sort of like the CPA
12 exam. It's a comprehensive examination of internal audit
13 controls and financial controls and some information system
14 controls. It's a one-day examination of approximately six
15 hours long. And in order to obtain the certification, you also
16 have to have the requisite experience.

17 Q Yes, sir. Now, the CISA certification, what is that?

18 A That's a certified information systems auditor
19 designation. It's similar to the CIA. It's a comprehensive
20 exam. It takes approximately five hours, I believe it is now.
21 It's sponsored by the EDP Auditors Association. It's
22 internationally recognized also. And just like the CIA or CPA,
23 you have to have the requisite experience in order to get the
24 designation.

25 Q Thank you. Is it fair to say that since at least

1 1991, you have been involved in public and private water
2 utility accounting issues?

3 A Well, really, it's prior to that. It started in
4 approximately 1980 when I was in public accounting. I did a
5 lot of work for municipal clients, and so I was involved in the
6 accounting and auditing of water, wastewater, and electric
7 utilities at that time.

8 Q So that would be roughly a period of 21 years, give
9 or take?

10 A Approximately.

11 Q And during that period of time, you have moved from
12 what I will call line positions to supervisory positions, is
13 that correct, with regard to accounting, public utility
14 accounting issues?

15 A I would say I moved from a line position early on in
16 my career, in the late '70s. I have always had people under me
17 that I've supervised, so --

18 Q Well, I guess what I'm trying to establish here is,
19 you've kind of worked up the ranks. You've both done the work
20 and supervised people who do the work?

21 A Sure.

22 MS. BROWNLESS: Okay. At this time, we would like to
23 tender Mr. Perry as an expert in the area of utility
24 accounting.

25 COMMISSIONER JABER: So acknowledged, Ms. Brownless.

1 MS. BROWNLESS: Thank you.

2 BY MS. BROWNLESS:

3 Q In your deposition, I asked you to look at the
4 service availability contract that was attached to Mr. Sweat's
5 testimony. Do you remember that?

6 MR. MENTON: Commissioner Jaber, at this point I
7 would interject an objection because this is an issue that is
8 beyond the scope of his prefiled direct testimony. He offered
9 no testimony regarding the developer agreement.

10 COMMISSIONER JABER: Response, Ms. Brownless.

11 MS. BROWNLESS: My response is that my line of
12 questions will go to the charges that are on Exhibit E which
13 have to do with how refunds are made. If you look on
14 Exhibit E, Page 37.

15 COMMISSIONER JABER: Exhibit E?

16 MS. BROWNLESS: It is Exhibit E to the water service
17 agreement.

18 COMMISSIONER JABER: Oh, to the agreement. But
19 that's part of someone else's testimony; correct?

20 MS. BROWNLESS: Yes. I apologize for this.
21 Obviously, Exhibit E has not been identified for the record
22 because it's part of the application. My understanding is
23 Mr. Tillman will identify it. I had understood that
24 Mr. Tillman would go first, and Mr. Perry would go second.

25 COMMISSIONER JABER: See, this is exactly my problem

1 with changing the order of witnesses at the time of the
2 hearing. No, you agreed to that. Mr. Perry's testimony is
3 limited to the financial liability of the utility's
4 application. I'm sustaining his objection. You need to move
5 on. Ask other questions.

6 BY MS. BROWNLESS:

7 Q Let me ask you this question. You are an expert in
8 the area of utility tax concerns, are you not?

9 A I'm knowledgeable. I wouldn't call myself an expert
10 in tax.

11 Q Okay. At your deposition, I asked you if the
12 developer in this instance would be installing a line -- and
13 let me tie this up, please -- is that correct?

14 A I believe you asked me about a refundable advance.

15 Q Exactly. And was he going to receive a refundable
16 advance?

17 MR. MENTON: Commissioner Jaber, again, I would
18 interject an objection because it goes beyond the scope of his
19 prefiled. His prefiled was simply to demonstrate that Florida
20 Water has the financial ability to provide service. He was not
21 involved in the developer agreement, and there was no testimony
22 in his prefiled about the developer agreement.

23 COMMISSIONER JABER: Ms. Brownless.

24 MS. BROWNLESS: Ms. Jaber, we would like to inquire
25 along the following line. Exhibit E, which will be introduced

1 into evidence and identified by Mr. Tillman, identifies -- is
2 the service availability agreement between the developer and
3 Florida Water. That agreement indicates that there will be a
4 main extension charge associated with the line that the
5 developer will install from the water treatment plant to the
6 Summit.

7 COMMISSIONER JABER: Ask Mr. Tillman those questions.
8 Do you have questions with respect to Florida Water's financial
9 ability?

10 MS. BROWNLESS: I have a question of Mr. Perry with
11 regard to the tax implications of the contribution of that line
12 to Florida Water. He's their accounting witness. He's their
13 finance guy. He's their rate guy.

14 COMMISSIONER JABER: Okay. Show me how that's
15 related of Pages 1 through 4 of Mr. Perry's testimony or where
16 it can be found on JAP-1.

17 BY MS. BROWNLESS:

18 Q On JAP-1, there is an entry for income tax, is there
19 not?

20 A Are you referring to the financial statements?

21 Q I'm referring to your Exhibit JAP-1.

22 A What page?

23 Q I'm looking at Page 1 of 3.

24 A Yes, there is an entry. There is balances on income
25 taxes receivable. Is that the one you're referring to?

1 Q Right. Wouldn't the complete financial statements
2 that were included in the record, the books, these are excerpts
3 from larger books, are they not, your audited financials?

4 A These are the audited financials. This is the
5 summary of transactions and/or the balances at the end of the
6 year.

7 Q Your audited financials include entries for income
8 taxes paid by Florida Water, do they not?

9 A The books and records throughout the year reflect
10 liabilities and payments.

11 Q And that would be reflected on these sheets, would it
12 not?

13 A Well, these sheets are the balances that exist at the
14 end of the year and/or the expenses attributable.

15 Q But they would be directly related to the income tax
16 expense incurred by Florida Water, would they not?

17 A That's correct.

18 Q And my question is simply this. When a developer
19 contributes a line to Florida Water, is there a tax consequence
20 to that contribution that would be reflected on your books and
21 records?

22 MR. MENTON: Commissioner, I would object as being
23 beyond the scope of his direct and being irrelevant to the
24 financial ability of Florida Water to provide the service,
25 which is the only issue that he was presented to testify about.

1 COMMISSIONER JABER: Mr. Menton, I think it's
2 directly related to the balance sheet because of how she
3 rephrased the question. I'll allow it.

4 A I believe on a contribution of a line, I'm not
5 exactly certain because --

6 Q I'm sorry, I can't hear you.

7 A I said I believe on a contribution of a line, there
8 would be no tax impact at the time the contribution of line is
9 made on the books of Florida Water. There's been considerable
10 change in the contributions in aid of construction taxability
11 issue in regard to cash payments, but I believe on the
12 taxability of a line, it would not be -- it would be recognized
13 as income. It gets a little complicated when it becomes a
14 contribution in aid of construction and it's amortized. So
15 immediately there would not be.

16 Q Does Florida Water request that a developer pay any
17 type of tax gross-up associated with the cost of a line
18 contributed to your system?

19 A Florida Water has never asked for a tax gross-up
20 payment, to the best of my recollection.

21 Q Okay. Would the -- to the extent that funds were --
22 so, therefore, no amount of money associated with a tax
23 gross-up would be refunded to the developer in your refundable
24 advance program?

25 A That's correct.

1 Q Based on your knowledge of the utility industry, do
2 municipal corporations pay income tax?

3 A Do they pay income taxes?

4 Q Are they required to pay income taxes?

5 A No, they are not.

6 Q So would a municipal corporation under any
7 circumstances incur a taxable -- incur taxes as the result of
8 the contribution of a line?

9 MR. MENTON: I hesitate to object because I think I'm
10 probably prolonging this, but I would object as being beyond
11 the scope of his testimony.

12 COMMISSIONER JABER: Ms. Brownless.

13 MS. BROWNLESS: I believe it's relevant to the issue
14 at hand.

15 COMMISSIONER JABER: It's not an objection of
16 relevance. It is outside the scope of his testimony. You need
17 to move on.

18 MS. BROWNLESS: That's all we have. Thank you.

19 MR. MENTON: Thank you.

20 COMMISSIONER JABER: Okay. Staff.

21 MS. CHRISTENSEN: No questions.

22 COMMISSIONER JABER: Mr. Menton.

23 MR. MENTON: No redirect. Thank you, Commissioner,
24 for letting us take him out of turn.

25 COMMISSIONER JABER: Mr. Menton, you want to admit

1 Exhibit 3 into the record? Okay. Exhibit 3 --

2 MR. MENTON: I have a copy of the 2000 financials --

3 MS. BROWNLESS: Steve, are these the complete
4 financials that were attached to Mr. Perry's deposition
5 exhibit?

6 MR. MENTON: It's the same.

7 MS. BROWNLESS: Because I think there were two books
8 that I got.

9 MR. MENTON: I think because you asked for the
10 '99 with the notes, and the prefiled didn't have the notes, so
11 we gave you a copy of the '99 at that time too, I believe.

12 MS. BROWNLESS: Well, I guess if we could request
13 that what was provided at the deposition also be --

14 MR. MENTON: We'll work it out.

15 MS. BROWNLESS: Then that's fine. I mean, whatever
16 you gave us at the deposition.

17 COMMISSIONER JABER: Exhibit 3 shall be admitted into
18 the record, which is JAP-1, which will include the 2000 balance
19 sheets, and the parties will work out exactly what that means.
20 And make sure the court reporter has a copy of that and Staff.

21 (Exhibit 3 admitted into the record.)

22 MS. CHRISTENSEN: Just for clarification, are we
23 considering this JAP-1 as a composite exhibit of the '98,
24 '99 balance sheets and the 2000 balance sheets with all
25 accompanying things?

1 COMMISSIONER JABER: Yes.

2 MS. CHRISTENSEN: Okay. Thank you.

3 COMMISSIONER JABER: Mr. Perry, thank you for your
4 testimony. And he may be excused.

5 MR. MENTON: Thank you.

6 (Witness excused.)

7 COMMISSIONER JABER: We'll take a lunch recess. It's
8 5 after 1:00. Let's come back 10 till 2:00 at which time the
9 parties will let me know what the outcome of the official
10 recognize list is. We'll make a ruling one way or the other on
11 that, and then we will take the testimony of -- whose next?

12 MS. CHRISTENSEN: Mr. Tillman.

13 COMMISSIONER JABER: Mr. Tillman. Thank you.

14 MR. MENTON: Mr. Tillman. I'm back on schedule. No
15 more out of schedule for me.

16 (Lunch recess.)

17 (Transcript continues in sequence with Volume 2.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4
5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
6 certify that the foregoing proceeding was heard at the time and
7 place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript constitutes a true transcription of my notes of said
12 proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,
14 attorney or counsel of any of the parties, nor am I a relative
15 or employee of any of the parties' attorneys or counsel
16 connected with the action, nor am I financially interested in
17 the action.

18 DATED THIS 26TH DAY OF JULY, 2001.

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TRICIA DeMARTE
FPSC Official Commission Reporter
(850) 413-6736