From Litigation To Arbitration: A Case Study In Water Resources Conflict

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ABSTRACT

The business of water and competing uses for this precious resource in various parts of the United States often leads to conflict. Demand is outpacing supply, especially in the more heavily populated areas. This has led to intra-state and interstate disputes among prospective users of water and, in many cases, litigation. Against such a backdrop, this article examines a case that was litigated for more than five years. It was ultimately settled after a ruling by an administrative law judge. In order to provide sufficient background for the case, the discussion will first cover water law basics and water use permitting. Next, the discussion will touch on the salient parts of the litigation. Finally, the article will illustrate how an embittered five years of "water wars" litigation was resolved through an inter-local agreement providing for binding arbitration, generally a faster and less expensive form of dispute resolution than litigation. The choice of litigation vs. alternative dispute resolution can have significant economic consequences for public supply, industry and agriculture.

Keywords: Arbitration; Dispute Resolution; Litigation; Sustainability; Water

INTRODUCTION

The business of water and competing uses for this precious resource in various parts of the United States often leads to conflict. Water supplies are diminished and threatened with demand outpacing supply, especially in more heavily populated areas. The Apalachicola-Chattahoochee-Flint river dispute among Alabama, Florida, and Georgia is a case in point.[1] In Florida, each of the three largest water management districts[2] have concluded with regard to a region where these districts' boundaries meet,

... that the growth in public water supply over the next 20 years within the area from traditional groundwater sources is not sustainable. Recent water supply plan updates and permitting experience confirms that if traditional groundwater sources continue to be developed to meet growing public water supply demands in the area, harm to the water resources (rivers, streams, lakes, wetlands and aquifer quality) will occur.[3]

Accordingly, in 2006 the three districts developed an Action Plan[4] to facilitate coordination among the districts for water supply planning and water resource regulation in what has become known as the Central Florida Coordination Area.[5] A water supply with questionable sustainability has serious ramifications for all users of water, including public supply, industry, and agriculture.

Moreover, the Southwest Florida Water Management District ("SWFWMD" or "the District") adopted rules for an area of stressed groundwater resources called the Southern Water Use Caution Area ("SWUCA").[6] And

[1] *See*, e.g., http://www.ecr.gov/AnnouncementsEvents/Announcements/CaseBriefingApalachicola.aspx
[2] The Southwest Florida, South Florida and St. Johns River water management districts.
[3] S*ee* http://www.swfwmd.state.fl.us/projects/cfca/
[4] South Florida, Southwest Florida and St. Johns River Water Management Districts, *Recommended Action Plan For the Central Florida Coordination Area* (September 18, 2006), available at http://www.swfwmd.state.fl.us/projects/cfca/cfca_action_plan.pdf
[5] This area includes Polk, Orange, Osceola, and Seminole counties, as well as southern Lake County.
[6] Fla. Admin. Code R. 40D-2.801(3)(b), available at http://www.swfwmd.state.fl.us/waterman/swuca/

on March 19, 2008 the Florida House Environmental Preservation Committee favorably moved a bill that would allow SWFWMD to initiate in the SWUCA one of its "…biggest ever projects to raise water levels, clean rivers and build reservoirs…."[7] The process of adopting rules related to the SWUCA involved a lengthy and intensive entanglement of litigation.[8]

Against such a backdrop, this paper examines a case that has come to be known as "the Tampa Bay Water Wars." Others have referred to it as the "Four Wellfields case."[9] The case encompassed over five years of litigation but was ultimately settled after a ruling by an administrative law judge. In order to provide sufficient background for the case, the discussion will first cover some water law basics. Then, the paper will discuss the rudiments of water use[10] permitting under the Florida Administrative Procedure Act[11] and touch on the salient parts of the conflict. Finally, the paper will illustrate how an embittered five years of litigation was resolved through an Interlocal Agreement and how the arbitration provision in the Agreement has been used to resolve subsequent water resources disputes.

WATER LAW BASICS

The Model Water Code and The Florida Water Resources Act of 1972

As with most eastern states, Florida traditionally operated under a common law riparian system of water rights. [12] Without getting into a lengthy discussion regarding the applicable rules (and their variance) relative to use of surface water vs. groundwater, suffice it to say that about 90% of the potable water supplies in Florida are from groundwater.[13] By the 1950s, local governments had been establishing wellfields for public water supply.[14] But even in the 1950s, these coastal wellfields were already being depleted and experiencing saltwater intrusion.[15] For these and other reasons, the Florida Legislature was becoming more focused on the state's water resources and its system of water law. In 1955 the Legislature created the Florida Water Resources Study Commission.[16] The late Dean Emeritus and Professor of Law, Frank E. Maloney at the University Of Florida College Of Law, was appointed Chairman of the Water Law Committee.[17] Dean Maloney was a recognized authority in water law for almost thirty years. His contributions are too numerous to list here, but one of the most significant is *A Model Water Code*.[18] The opening paragraph of the 1972 Preface to A *Model Water Code* is rather prophetic:

As a nation, the United States is in the early stages of a water crisis. Although the problem is more acute in some areas of the country than others, the population explosion, accompanied by great technological advances in industry and agriculture, has resulted in progressively increasing demands on an essentially limited resource.[19]

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[7] H.B. 1415 (2008); *See* Nicola M. White, "Major Water Restoration Project Moves Forward," *The Tampa Tribune*, Metro 4 (March 20, 2008).
[8] *See Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903 (Fla. 2d DCA 2001).
[9] Kevin E. Regan, Balancing Public Water Supply and Adverse Environmental Impacts Under Florida Water Law: From Water Wars Toward Adaptive Management, 19 *J. of Land Use 123* (Fall 2003).
[10] The terms "water use" and "consumptive use" may generally be used interchangeably with regard to the Florida permitting system.
[11] FLA. STAT. §120.60 (2012).
[12] A thorough discussion of the common law system for allocation of water is beyond the scope of this paper. However, among the most authoritative treatises on this subject are: Frank E. Maloney, Sheldon J. Plager & Fletcher N. Baldwin, Jr., Water Law And Administration: The Florida Experience (1968); and Frank E. Maloney, Sheldon J. Plager, Richard C. Ausness & Bram D. E. Canter, Florida Water Law 1980 (1980).
[13] Joseph J. Delfino & James P. Heaney, Challenges to Water Resources Sustainability in Florida, Conference on Allocating Water: Economics and the Environment, Universities Council on Water Resources, Portland, Oregon (July 20-22, 2004).
[14] Jeff Wade & John Tucker, Current and Emerging Issues in Florida Water Policy, Center For Governmental Responsibility, University of Florida College of Law (1996).
[15] *Id.*
[16] *See* Maloney, et al., Water Law And Administration, *Preface.*
[17] *Id.*
[18] Frank E. Maloney, Richard C. Ausness, & J. Scott Morris, A Model Water Code (1972).
[19] *Id*. at v.

Concerns regarding the adequacy of existing laws to address current and emerging water resource challenges led many states to consider new systems to deal with these issues.[20] In Florida, Dean Maloney and his colleagues studied both the eastern and western systems of water law and developed a model that "incorporated the best of both worlds."[21] But, the idea was also to avoid the deficiencies in each of those systems.[22] In 1972, the Legislature adopted the Florida Water Resources Act[23] based substantially on the framework in A *Model Water Code*. Accordingly, water resources in Florida are administered through a system of five water management districts whose jurisdictions are drawn generally along surface water hydrologic lines.

Water Rights and Water Use Permits

In Florida, as in many eastern states, water is considered a public resource.[24] And, the right to withdraw and use groundwater is generally associated with the ownership or control of the overlying land. However, the right is not absolute, but is subject to common law principles and regulation under the Water Resources Act of 1972.[25] The Water Resources Act is the statutory framework for water use (or consumptive use) permitting by water management districts, and these districts implement water use permitting through their respective rules.[26] Thus, water use is regulated pursuant to a combination of the regulatory provisions of the Water Resources Act and the rules of the relevant water management district.[27] However, it should be noted that "…the ownership of land does not carry with it any ownership of vested rights to the underlying groundwater not actually diverted and applied to beneficial use"[28] and the "…right to use water does not carry with it ownership of the water lying under the land."[29]

The Administrative Procedure

While each water management district has its own procedural rules, the overriding process of obtaining water use (consumptive use) from a water management district is generally governed by the state Administrative Procedure Act.[30] The process begins by filing an application with the appropriate water management district. Upon receipt of an application, the district must review the application and, within 30 days after receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require.[31] Unless the district timely notifies the applicant within this 30-day period, the district cannot deny the permit for failure to correct an error or omission or to supply additional information. An application is considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.

The district must approve or deny the permit within 90 days after receipt of a completed application.[32] However, the 90-day time period is tolled by the initiation of a formal administrative proceeding.[33] These formal administrative proceedings are generally held before an Administrative Law Judge ("ALJ") who issues a Recommended Order. The district Governing Board considers the Recommended Order and issues Final Agency Action[34] or the Final Order in the matter, either issuing or denying the permit. There is a default provision in the

[20] *Id.*
[21] Personal Communication with Dean Frank E. Maloney, *circa* 1977.
[22] *See* Wade, et al., *Current and Emerging Issues in Florida Water Policy* 8.
[23] *See* Fla. Stat. §373.013 (2012).
[24] Fla. Stat. §373.016 (2012).
[25] *Village of Tequesta v. Jupiter Inlet Corp.*, 371 So. 2d 663 (Fla. 1979).
[26] *See* Fla. Admin. Code R. 40A-2, 40B-2, 40C-2, 40D-2, & 40E-2.
[27] *See, e.g., Village of Tequesta v. Jupiter Inlet Corp.*, 371 So. 2d 663 (Fla. 1979).
[28] *Id.* at 667.
[29] *Id.* at 668.
[30] Fla. Stat. §120.60 (2012).
[31] *See* Fla. Stat. §120.60(1) (2012).
[32] *Id.*
[33] *Id.* Formal Administrative Hearings are conducted pursuant to Fla. Stat. §§120.569 & 120.57 (2012).
[34] *See* Fla. Stat. §120.52(2) (2012), for the definition of "Agency Action."

law requiring that any permit application not approved or denied within the 90-day[35] period is considered approved unless the ALJ's Recommended Order recommends that the agency deny the permit.

If the district issues proposed agency action to either approve the permit with conditions objectionable to the applicant, or to deny the permit, the applicant must petition for a formal administrative hearing, or waive all rights to contest the agency action.[36] As will be discussed later in the paper, the 90-day period in which a district must issue or deny a permit and the related "point of entry" for the applicant is significant relative to the "Tampa Bay Water Wars" case.

TAMPA BAY WATER WARS

Located within northwest Hillsborough and south Pasco Counties, Florida, there is a network of wellfields generally known at the Central Wellfield System. As a general statement, the various wellfields were owned by different local governments including the City of St. Petersburg and Pinellas County. Contrary to the portrayal in SWFWMD's media campaign, the parties in the litigation, St. Petersburg and Pinellas County, were distinct local governments with separately owned and operated wellfields. For the most part, West Coast Regional Water Supply Authority ("WCRWSA"), then a regional, wholesale water utility, managed the Central Wellfield System.

In 1993 the City of St. Petersburg ("the City" or "St. Petersburg") began the process of renewing water use permits (WUP) for its three major wellfields. The applications requested existing permitted quantities, and no increases. These wellfields were the primary water supply source for the City. The City is a leading community in reducing per capita water consumption with its conservation efforts and the use of reclaimed water. A fourth wellfield owned and operated by the WCRWSA was also in the water use permit renewal process and was involved in the litigation. St. Petersburg is a coastal city located in Pinellas County, Florida. Decades earlier, because of issues with saltwater intrusion, the City and Pinellas County had each acquired property inland, within northwest Hillsborough and south Pasco Counties, in which to locate their wellfields.[37] These wellfields were part of the Central Wellfield System. Even before the water management districts were in the business of regulating water use, St. Petersburg and Pinellas County had been drawing water from these wellfields and pumping it to residents in their respective jurisdictions. This system worked fairly well until the rural areas near the wellfields began to increase in population.[38] And, as the area around the wellfields became more populated, this transfer of water across political lines sparked conflict. The Tampa Bay area had been experiencing "water wars" since the 1970s. But, a new chapter was brewing with the renewal of the St. Petersburg and WCRWSA wellfield permits. History has shown that inter-basin pumping of water has generally resulted in conflict, especially when the water is taken across county lines.

Residents in the area around the Pinellas wellfields complained that wetlands and lakes in the vicinity of the wellfields were being adversely impacted by the pumping.[39] They also voiced concerns about sinkholes and dried up wells. While it is true that for years, SWFWMD and WCRWSA contended that the cause of these effects was the hydrologic cycle and not groundwater pumping,[40] a significant point to note here is that the issue of environmental impacts was brought to SWFWMD's attention by residents who were in the area around the Pinellas wellfields (that were not scheduled for permit renewal), and not the St. Petersburg wellfields. An unfortunate aspect of the case that did not really come to light is that there were not only significant differences between the purported impact from the City's wellfields and those of Pinellas, but there was a substantial contrast between the approaches that these two parties took during the conflict. Regardless of the facts, during the permit application review process the SWFWMD staff advised the City that its permitted water quantities would be cut back upon renewal of the permits.

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[35] To elaborate, in some cases there may be variable time periods, e.g., "…within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable." *See* Fla. Stat. §120.60 (2012).
[36] The Uniform Rule, Fla. Admin. Code R. 28-106.111(4), provides a 21-day "point of entry," but water management district rules contain 21-day and 14-day windows. *See*, *e.g.*, Fla. Admin. Code R. 40D-1.1010(2).
[37] Cynthia Barnett, "Salty Solution," *Florida Trend* 102 (May 2007).
[38] *Id.*
[39] *Id.*
[40] *Id.*

Retrospectively, it appears that SWFWMD was looking for a test case to cut back wellfield pumpage.[41] While there seemed to be reasonable evidence that other municipal wellfields in the northwest Hillsborough and south Pasco areas were causing moderate to severe impacts to wetlands and lakes, the City's wellfields were the wrong ones on which to focus. Moreover, SWFWMD was not addressing water resource impacts that had been caused by other factors.[42] For example, according to SWFWMD data, 1994 was the worst drought period in 100 years.[43] While apparently the quote is no longer on its website, SWFWMD later said of the water wars, "By the mid-1990s, an increased demand for water, coupled with rainfall deficits and other manmade impacts, forced water levels down, creating environmental damage to lakes and wetlands."[44] But, with the exception of the one WCRWSA wellfield, the other wellfield permits were not pending renewal as were the St. Petersburg permits. And, SWFWMD could not as easily address the "other manmade impacts." From a regulatory perspective, it is much simpler to target allowable quantities on a municipal wellfield permit than to retroactively fix the damage that had been done to the area water resources by developments that had been permitted by SWFWMD under its authority to regulate impacts from surface water runoff modifications. And, procedurally it was easier for SWFWMD to modify a permit in the renewal process. Residential development came to the wellfields and not the other way around. The judicial rulings in the case produced mixed results at best.[45] However, based on the facts and the science, it was a bad test case.

If SWFWMD issued proposed water use permits with reduced quantities, or denied the permits, the City would have to petition for formal administrative hearing in order to avoid a waiver of rights. And, with a formal hearing all parties would be in for a long, expensive litigated ordeal. But, the 90-day clock[46] was running and SWFWMD had to issue proposed (or final) agency action. So, legal counsel for the City met with the Executive Director of SWFWMD to extend the City's offer to waive the 90-day permit clock so that both parties could work toward a reasonable solution. St. Petersburg's intent was to avoid litigation. The Executive Director agreed and counsel for St. Petersburg began coordinating with SWFWMD staff to prepare the appropriate waiver of the permitting clock.

Unfortunately, the voice of reason did not prevail. In spite of the agreement on process that the City's legal counsel had reached with SWFWMD's Executive Director, the City would find out through a local newspaper that the SWFWMD's Governing Board was about to convene a meeting to issue emergency orders cutting back the City's permitted water quantity under the existing permits.[47] SWFWMD was not going to wait for the permit renewals to make cutbacks on permitted water quantities. Moreover, SWFWMD did not give St. Petersburg notice of the emergency meeting. Fortunately, the City did find out about the meeting and the Mayor and legal counsel attended to present St. Petersburg's position. But, the proverbial train had left the station and nothing was stopping it. Accordingly, the Governing Board issued the emergency orders. And, according to a former SWFWMD staff person, SWFWMD had never issued an emergency order of this type before, "No water management district had ever issued one *for a tactical litigation purpose*."[48]

The actions by the SWFWMD Governing Board pushed the City into a defensive, reactive mode. St. Petersburg had two choices. The City either must file petitions for formal hearing or waive all rights to challenge the reduction in permitted water quantities. The City attempted to explain to the SWFWMD Governing Board that if they issued these emergency orders cutting back the City's permitted quantities, it would force the City to file defensive petitions for formal hearing. As counsel for the City were trying to explain this procedural dilemma to the Governing Board, counsel for SWFWMD stepped to the podium and said in response, "Go ahead; make my day."[49] It would be a huge understatement to say that the climate was not optimal for rational negotiations. So, although the

[41] Honey Rand, Water Wars: A Story of People, Politics & Power 159 (2003).
[42] *Id.* at 127; *See also*, Leggette, Brashears & Graham, Inc., & Greeley & Hansen, *Hydrologic Conditions in the Northwest Hillsborough and South Pasco Areas* (March 1995).
[43] Rand, Water Wars at 86.
[44] Previously located at: http://www.swfwmd.state.fl.us/about/isspapers/partnershipagreement.html
[45] *Id.*
[46] *See* Fla. Stat. §120.60 (2012).
[47] Rand, Water Wars at 125.
[48] *Id.* at 103; Emphasis added.
[49] Personal recollection of author.

SWFWMD's media campaign painted the City as the initiator of the litigation, it was actually SWFWMD that fired the first shots and the City was forced into a reactive, defensive mode, notwithstanding the agreement with the SWFWMD Executive Director to bring the matter to the negotiating table. The litigation that St. Petersburg tried to avoid had begun. And, Pinellas County later jumped into the fray as well as other parties.

Although settlement negotiations continued, the litigation continued until 1998. There were five years of legal battles in this phase of the "Tampa Bay Water Wars." At one point it was reported that the litigation costs to the various governments were in excess of $10 million.[50] While the litigation was progressing, settlement talks continued. In retrospect, it seems there were a number of reasons that settlement remained out of reach for those five years. First, there was the apparent desire of Pinellas County to continue with the litigation instead of resolving the case through negotiation.[51] Yet, throughout the litigation the City sincerely tried to find a reasonable solution, including offers of interim measures to ameliorate wetland and lake impacts regardless of the actual causes. Second, the actions of the decision makers at SWFWMD were quite puzzling. On the one hand, SWFWMD representatives attended settlement negotiation meetings. Yet, with closer scrutiny it appears that these gestures were inconsistent with SWFWMD's intentions. The SWFWMD Director of Public Communications (during the Water Wars) later wrote of SWFWMD's strategy:

So, in every public comment, in every document, in every interview, we named them all together as if they were one entity…Reviewing the newspaper clippings at the time, it's easy to see. To pressure St. Petersburg to take a step away from Pinellas, we wanted the city to know that we were going to paint them with the same brush and they didn't like it.[52]

The irony is that, for purposes of negotiating a settlement with SWFWMD, St. Petersburg had taken "a step away" from Pinellas long before the litigation began. But, SWFWMD's strategy, including its public communications campaign, remained a stumbling block to settlement. It is interesting to note a comment attributed to SWFWMD's Executive Director by the then Director of Public Communications, "To this day, Kent Zaiser and Dan Fernandez think I hosed them."[53] In short, it is not surprising that the City of St. Petersburg came to distrust SWFWMD during that era. It was a situation that seriously hindered negotiations.

In the end, it appears that the parties grew weary of the legal battle and the expense. After the administrative law judge issued his Recommended Order, but before SWFWMD's Governing Board was to consider it and issue a Final Order, the case settled. And, in 1998, the various governments entered into an Interlocal Agreement in an effort to end the "Water Wars."

THE INTER-LOCAL AGREEMENT, PARTNERSHIP AND CONFLICT RESOLUTION

The Settlement Agreement

After years of failing to resolve the case through litigation, the parties embarked on a new approach, embodied in what is called The Partnership Agreement.[54] The partnership approach was initially met with skepticism, but was successfully completed after nearly one year of negotiations among the SWFWMD, the then WCRWSA, and its member governments. At the same time the Legislature required WCRWSA to reorganize itself into an organization that could more effectively supply the water needs of the Tampa Bay area. The Partnership Agreement was a major component of the restructuring effort (or governance), which gave WCRWSA its new name. "Tampa Bay Water" became the re-created, regional, wholesale water supply utility to provide water to its member governments. Ostensibly, the purpose of the new name was to give the entity a fresh start after considerable

[50] Cynthia Barnett, "Salty Solution," *Florida Trend* 102 (May 2007).
[51] Personal Communication with counsel for Pinellas County.
[52] Rand, Water Wars at 124.
[53] *Id.*
[54] A copy of the Agreement may be found at: http://ufdc.ufl.edu/WL00003978/00001; See also, http://www.swfwmd.state.fl.us/documents/publications/watermatters/oct-2011/5.html; and http://www.tampabaywater.org/history-of-tampa-bay-water.aspx

negative press during the litigation. Tampa Bay Water would own and operate the various municipal wellfields and supply water to the member governments. SWFWMD would provide grant money for the development of alternate sources. Pumping from the wellfields would be incrementally reduced commensurate with the development of alternate sources. And, challenges to "Primary Environmental Permits," such as water use permits, would be addressed through binding arbitration.[55] Some of the key provisions in the Partnership Agreement included reduced pumping from groundwater sources, development of alternative water supply sources, funding from SWFWMD, increased water conservation efforts, and reduction of water use.[56]

Permit Challenges

Under the 1998 Interlocal Agreement, the member governments agreed to binding arbitration[57] as the sole and exclusive method of resolving all disputes between Tampa Bay Water and a Host Member Government relating to Primary Environmental Permits. Accordingly, if any Host Member Government were to oppose a Tampa Bay Water application for a Primary Environmental Permit, the Host Member Government must notify Tampa Bay Water in writing within thirty days of the date on which the Tampa Bay Water Board approves the application for submittal to the appropriate environmental regulatory agency.[58] If a Host Member Government opposes the quantity of a water withdrawal, the notice must specify the quantity acceptable to the Host Member Government.[59] If the Primary Environmental Permit is a Consolidated Permit, any Host Member Government may raise environmental issues affecting property located within its jurisdiction. [60]

The Tampa Bay Regional Reservoir Arbitration

As a result of this new era of "cooperation," Tampa Bay Water developed two alternate sources of water. One is a desalination plant that was troubled-plagued for years but during various times has been functional.[61] The other is a 1,100 acre, 55 billion gallon capacity, above-ground regional reservoir in Hillsborough County. On October 16, 2000, Hillsborough County notified Tampa Bay Water of its opposition to certain environmental permits for the regional reservoir and demanded arbitration in accordance with the 1998 Interlocal Agreement. This Arbitration Panel was impaneled on November 17, 2000.[62] The 1998 Interlocal Agreement provided for expedited timeframes, including an abbreviated discovery period. The hearing was conducted over a three-week period and the arbitration panel rendered a binding decision in 45 days from receipt of the transcript. Appeal of the arbitration award is not available under the terms of the 1998 Interlocal Agreement. So, in approximately seven months, the parties received a final decision[63] at substantially less expense than the customary formal administrative hearing and appeals to the courts. While the arbitration process in the 1998 Interlocal Agreement is far from perfect, the arbitration process functioned reasonably well. Procedurally, it seemed to be a hybrid mixture of an administrative hearing with arbitration. But, the parties generally felt that the process was successful in reaching finality quickly, and at the same time reducing expense.

In summarizing some of the successful elements of the story, a 2008 column in *The Tampa Tribune* stated: *More than $1 billion has been invested in new, environmentally sound, high-quality water supplies to achieve an unparalleled environmental stewardship commitment. We now have a diverse, interconnected supply of water.*

[55] *Id.*
[56] *Id.*
[57] Amended and Restated Interlocal Agreement Reorganizing the West Coast Regional Water Supply Authority, §3.13(D), June 10, 1998.
[58] *Id.* at §3.13(A).
[59] *Id.*
[60] *Id.*
[61] *See* Cynthia Barnett, "Salty Solution," *Florida Trend* (May 2007).
[62] *In Re: Tampa Bay Regional Reservoir Arbitration, Environmental Protection Commission of Hillsborough County, and Hillsborough County v. Tampa Bay Water*, Order on Motion to Determine Scope of Arbitration and Related Motion to Strike (December 22, 2000) (Alvarez, Thompson & Fernandez, Arbs.).
[63] *In Re: Tampa Bay Regional Reservoir Arbitration, Environmental Protection Commission of Hillsborough County and Hillsborough County v. Tampa Bay Water*, Arbitration Award for Proposed Tampa Bay Regional Reservoir (May 15, 2001) (Alvarez, Thompson & Fernandez, Arbs.)

Groundwater pumping has been reduced more than 29 percent since 2000. Some 60 million gallons per day on average of alternative water supplies can now serve the region.

Tampa Bay is home to the largest seawater desalination plant in the country, the state's first above-ground drinking water reservoir, and the most unique water supply system in the country.[64]

If this water supply partnership is to continue to be effective, SWFWMD, Tampa Bay Water and its member governments will need to remain committed to making the Agreement work. The lesson illustrated in the Tampa Bay Water Wars litigation, is that agreement or negotiated settlement generally cannot be reached without a sincere commitment to the process. In order to further the goals of restoring the environment, providing a sustainable water supply, and avoiding costly litigation, the parties must work cooperatively and in good faith.

CONCLUSION

Litigation is an especially poor way to establish water policy and supply water, while at the same time balancing the impacts to the resource and the environment. As can be seen from the "Tampa Bay Water Wars" example, litigation is an expensive, unpredictable, and often unsatisfactory mechanism for resolving disputes. This is especially so in complex cases, including public or private water supply, industry and agriculture. Cooperative efforts to make use of a limited resource make far more sense. After five years of litigation, the participants in the wellfields case were able to revert to alternative dispute resolution through an Interlocal Agreement that provides for arbitration rather than litigation and, as illustrated in the Tampa Bay Regional Reservoir dispute, the use of arbitration (or mediation) is much more cost and time effective for resolving conflict. While the case study involved public entities, the lessons are equally applicable to private business disputes. Alternative dispute resolution should be considered in most cases prior to initiating litigation. Moreover, the use of alternative dispute resolution may remain an option even after the initiation of litigation. Efforts such as principled negotiation or mediation cannot only reduce costs substantially, but may also give the parties more certainty as to the outcome in less time.

AUTHOR INFORMATION

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[64] Jerry Maxwell, "The Rocky Path from Water Wars to Regional Supply," *The Tampa Tribune*, Nation/World 17 (February 29, 2008).

