

Decision Impacts Water Rules

By **TOM PALMER**

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BROOKSVILLE — A state hearing officer Thursday weakened an attempt by regional water managers to adopt a water-use rule to prevent damage to drinking water supplies and lakes in Polk and surrounding counties.

While Administrative Law Judge J. Stephen Menton agreed with the Southwest Florida Water Management District's analysis of the region's water problems and the need to reduce pumping, he disagreed with parts of the agency's solution.

Affected by the ruling is a 5,000-square-mile area known as the Southern Water-Use Caution Area. It covers eight counties from Charlotte on the south to Polk and Hillsborough on the north.

Although a Swiftmud spokeswoman said the ruling strengthens the district's position in regulating water use, lawyers who opposed parts of the proposed rule said Thursday's ruling means district officials will have to rethink their approach.

"The judge upheld minimum levels, the authority to set per-capita water use and the ability to revoke or modify permits," said Swiftmud spokeswoman Honey Rand. "The judge sent a message: regulate, regulate, regulate."

Polk County Attorney Mark

Carpanini saw it differently.

"I think this order sort of plunges permitting with Swiftmud into chaos," he said.

Added Tampa lawyer Doug Manson, who represented farmers opposed to parts of the rule, said, "If logic prevails, they'll go back to the drawing board."

The conclusions in the 652-page order included:

- Swiftmud is correct in setting minimum flows and levels for rivers and the aquifer, but those standards don't go far enough to reverse saltwater intrusion or to protect wetlands.

- Existing water users do not deserve any special consideration for getting water permits.

- There's no basis in Florida law to allow existing water users to market their water allocations to others needing water permits when no new permits are being issued.

- Utilities can make their own determination of when water reuse is feasible.

- Utilities cannot be forced to investigate the feasibility of desalination as a condition to get a permit.

- Portions of the current rules for evaluating permit application are too vague and arbitrary.

Everyone commenting on the rule Thursday said their comments were preliminary until they had time to study the order more carefully.

However, both Rand and Man-

son agreed the part of the ruling that cancels preferences for existing users could lead to an appeal by farmers concerned about the economic impact.

Rand said the district's economic analysis had a lot to do with its decision to treat existing users as they did in the rule — including the section that allows them to market their water permits.

The next phase will occur April 21 when Swiftmud's governing board meets in special session in Brooksville to hear from the agency's staff and from the public about the ruling and what the next step should be. The meeting will begin at 9 a.m.

Thursday's ruling ends more than a year of anticipation since the public hearing for the rule ended on November 1995.

The hearing was the result of a challenge by Polk County and seven other parties to the rule that Swiftmud's governing board approved in November 1994 following two years of hearings and workshops.

Water managers pushed for the rule because saltwater was continuing to move inland from the Gulf of Mexico under large sections of Manatee, Sarasota and Hillsborough counties and lake and aquifer levels were dropping further inland.

Overpumping from the Floridan aquifer was blamed for both phenomena.