

5-15-1987

Water Rights Compact Among Seminole Tribe of Florida, Florida and South Florida Water Management District

Seminole Tribe of Florida et al

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Water Rights Compact Among Seminole Tribe of Florida, Florida and South Florida Water Management District (May 15, 1987)

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Seminole Water Rights Compact

WATER RIGHTS COMPACT
AMONG THE
SEMINOLE TRIBE OF FLORIDA,
THE STATE OF FLORIDA
AND
THE SOUTH FLORIDA
WATER MANAGEMENT DISTRICT

Seminole Water Rights Compact

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WATER RIGHTS COMPACT

AMONG THE SEMINOLE TRIBE OF FLORIDA,

THE STATE OF FLORIDA AND THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

WHEREAS, the parties to the Compact recognize the importance of tribal self-determination and economic development to the Tribe and the people of the State of Florida; and

WHEREAS, the parties to the Compact recognize the importance of protection of the environment and natural resources to the well being of all; and

WHEREAS, the parties to the Compact recognize that the general public interest is served by supporting the self-determination goals of the Tribe, by protecting and enhancing the environment, and by exercising prudence in the use of natural resources; and

WHEREAS, the parties to the Compact desire to protect the interests of all in available waters through cooperation and planning for present and future needs of the Tribe and others; and

WHEREAS, the Seminole Tribe of Florida claims paramount rights to the use of water under Federal law and freedom from State regulation; and

WHEREAS, the parties to the Compact disagree as to the scope and/or existence of the rights; and

WHEREAS, the regulation of consumptive water use and surface water management under Florida law within that portion of the State of Florida encompassing the Seminole Tribe's Federal Reservations and Tribal Trust lands has been delegated by the State to the South Florida Water Management District; and

WHEREAS, the Seminole Tribe does not presently recognize the authority of the State or the District to regulate consumptive water use and surface water management on the Seminole Federal Reservations and Tribal Trust lands; and

WHEREAS, the parties to the Compact desire to avoid the expense and uncertainty of large scale water rights litigation; and

WHEREAS, the State and the District have recognized an obligation to assist the Tribe in the development of its Reservations by appropriate utilization of the waters of the Reservations so that the Tribe may become economically self-sufficient; and

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WHEREAS, the Tribe has agreed to cooperate with the State and the District in the regulation of water use and water management; and

WHEREAS, the Compact is intended to create a comprehensive and effective system of regulation applicable to the Seminole federal Reservations and Tribal trust lands that protect the Tribe's water rights and development potential and is in harmony with the essential terms and principles of the State system; and

WHEREAS, this system would provide for the protection of surface and ground water within and outside of the Tribe's federal Reservations and Tribal Trust lands and prevent adverse environmental impacts; and

WHEREAS, the comprehensive system provides a procedural mechanism for resolving conflicts and establishes respective burdens of the Tribe, the State, the District, and other parties in fairly resolving water use and water management issues; and

WHEREAS, the Seminole Tribe has withdrawn its objections to the Modified Hendry County Plan pending approval before the United States Army Corps of Engineers in return for assurance that Tribal water rights will be protected under the Compact; and

WHEREAS, the Compact is not intended to disturb vested rights; and

WHEREAS, the State, the District, and the Tribe have agreed to cooperate and use their best efforts to identify the extent and quality of water resources available to the Tribe.

NOW, THEREFORE, the parties to the Compact agree as follows:

I. DEFINITIONS

The following terms as used in the Compact shall have the meaning assigned in this section, and shall not be understood as having the same meaning as terms defined by state law or by judicial interpretation of state law, unless otherwise expressly stated in the Compact.

- A. Action in Federal District Court -- Actions commenced in the United States District Court for the Southern District of Florida to enforce rights and obligations under the Compact.
- B. Board -- The Governing Board of the District with the general powers and duties set forth under Chapter 373, (1986 supp.) of the Florida Statutes, and its successors.
- C. District -- The South Florida Water Management District, an agency of the State of Florida created by Chapter 25270, Laws of Florida (1949) and operating pursuant to Chapter 373 Florida Statutes, and its successors.
- D. District Rules, Orders, and Regulations -- All lawfully promulgated rules, orders, and regulations adopted by the District or affecting the operations of the District.
- E. Essential Terms and Principles of the State System -- Non-procedural provisions of the Florida Water Resources Act of 1972 as presently codified in Chapter 373 of the Florida Statutes (supp. 1986) and which are necessary to provide for the beneficial use and management of water and related land resources; to promote the conservation, development, and proper utilization of surface and groundwater; to prevent damage from floods, soil erosion, and excessive drainage; and to protect natural resources, fish, and wildlife.
- F. Florida Water Code -- The Florida Water Resources Act of 1972 as codified in Chapter 373 of the

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Florida Statutes (1986 supp.).

- G. Manual -- The Evaluation Criteria Manual approved by Tribe, State and the Board containing specific technical and procedural criteria.
- H. Reservations -- Lands designated by the United States Department of the Interior as of the effective date of the Compact, as federal Seminole Indian Reservations physically located within the geographic area under the authority of the District.
- I. State -- The State of Florida, its agencies (other than the District), political subdivisions, constitutional officers, officials of its agencies and subdivisions (other than officials of the District).
- J. Substantially Affected Third Persons -- Persons, groups, or entities who demonstrate a non-frivolous interest substantially affected by the exercise of rights under the Compact. The Florida Department of Environmental Regulation, the Florida Department of Natural Resources, the Florida Department of Community Affairs, and the Florida Game and Freshwater Fish Commission, successor agencies, and owners of lands within the basin affected by exercise of rights under the Compact are presumed to be substantially affected third parties. This presumption can be rebutted by an affirmative showing that the state agency or landowner does not have an interest that would be substantially affected by the exercise of rights under the Compact.
- K. Tribal Trust Lands -- Lands held in trust by the United States for the benefit of the Seminole Tribe, including the Immokolee lands held by the Tribe in fee status in Section 10, Township 47S, Range 29E, Collier County, Florida, as of the effective date of the Compact, and which are physically located within the geographic area under the authority of the District.
- L. Tribal Water Code -- A Code adopted by the Tribe which is consistent with the provisions of the Compact and which ensures compliance with the Compact by persons conducting activities on Reservation and Tribal Trust lands.
- M. Tribe -- The Seminole Tribe of Indians of Florida or the Seminole Tribe of Florida, a tribe of American Indians recognized by the United States and organized under section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. section 476, and recognized by the State of Florida pursuant to Chapter 285, Florida Statutes.
- N. Wetlands -- Areas that are inundated by surface or groundwater with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetative or aquatic life that require saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, wet prairies, river overflows, mud flats and natural ponds.
- O. Work Plan -- One or more work plans as described under Part VII., Section A. of the Compact.

II. GENERAL PROVISIONS

- A. Obligations of the Tribe in Exercising Rights Under the Compact
 - 1. The obligations of the Tribe in developing its reservations and Tribal Trust lands in exercising its rights under the Compact are limited to those expressly stated in the Compact, the Manual, or applicable federal laws. Nothing in the Compact is intended to divest the State of Florida of any jurisdiction it has as of the effective date of the Compact

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within the borders of the Seminole Reservations and Tribal Trust lands.

2. Those State laws and District rules, orders, and regulations which are applicable to the Tribe under the terms of the Compact as specified hereafter are expressly incorporated into federal law, and apply to the Tribe as federal law.
3. The Tribe may use any form of testing and monitoring to fulfill obligations under the Compact, if such testing and monitoring is reasonably equivalent to the accuracy and reliability of testing and monitoring customarily used or required by the District.
4. The Tribe shall give permission for the District to make on-the-ground inspections of Tribal facilities affected by the Compact, upon twenty-four (24) hour advance notice. Costs associated with such inspections shall be borne by the District.
5. Upon twenty-four (24) hour advance notice, the Tribe shall allow the District reasonable access to Reservation and Tribal Trust lands for the purpose of performing testing necessary to fulfill the District's obligations under the Compact.
6. The Tribe is responsible for enforcing the provisions of the Compact, the Manual, and for complying with the terms and conditions of approved work plans on Reservation and Tribal Trust lands. The Tribe has the authority to promulgate a Tribal Water Code to implement and enforce the Compact, the Manual, and the terms and conditions of approved work plans.

B. Tribal Representative

All communication with the Tribe concerning rights and obligations under the Compact shall be through the Tribal office created for such purpose, or through such other party as is expressly designated by Tribal Council Resolution.

C. Notice

All notices provided for under the Compact shall consist of written communication by registered or certified mail to the addresses of the parties or as specified in the Manual. All notices, pleadings, or other materials required to be filed with the District Clerk shall be deemed filed on the date of actual receipt by the District Clerk. All other notices, pleadings or other materials shall be deemed filed upon mailing first class, postage prepaid.

D. Lands To Which Compact Rights Apply

This Compact, the Manual, the Tribal Water Code, and applicable federal laws constitute the sole sources of regulation of consumptive water use, and the management and storage of surface water and groundwater on Reservation and Tribal Trust lands.

E. Effective Date of Compact

This Compact among the Tribe, the State, and the District, shall not become final and shall be without binding force and effect until all requirements enumerated in section 2 of the Settlement Agreement between the parties to Seminole Tribe of Indians of Florida v. State of Florida, No. 78-6616-CIV (S.D. Fla) (to which the Compact will be attached as Exhibit C) have been satisfied. This Compact, in the form approved by the Board on May 15, 1987, shall be null and void on December

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31, 1988 unless it has received all necessary approvals and/or ratifications by that date.

F. Inapplicability of Compact to Existing Facilities, Projects, and Improvements on Reservations and Tribal Trust Lands

1. Existing facilities, projects, and improvements, other than works of the District, which are located on Reservations or Tribal Trust lands, and which may be inconsistent with the criteria and standards set forth in the Compact, shall be required to meet the criteria and standards set forth in the Compact and the Manual only if:
 - a. the Tribe intends to integrate such existing facilities, projects and improvements into new developments under the Tribe's work plan when:
 - i) the additional flow to be routed to the existing facilities, when combined with current design flows, exceeds the design capacity of the existing facilities;
 - ii) the additional flow to be routed to the existing facilities will originate from areas of significantly different land use;
 - iii) the existing facilities will be modified to accommodate the new water supply or water management development; or
 - b. such existing facilities, projects, and improvements substantially harm, or pose a threat of serious irreparable harm, to lands other than Reservation and Tribal Trust lands. Such existing facilities, projects, and improvements shall be required to meet the criteria and standards of the Compact only to the extent necessary to mitigate the demonstrated harm.
2. Such existing facilities, projects, and improvements which are located on Reservations and Tribal Trust Lands and which may be inconsistent with the criteria and standards set forth in the Compact shall not be required to meet the criteria and standards set forth in the Compact except in the circumstances set forth under subsection 1. of this section.
3. Notwithstanding any other provision of the Compact or Manual, the Tribe shall not be required to institute mandatory water utility pressure reductions during a declared water shortage on systems serving Big Cypress or Brighton Reservations.

G. Description of Numbering System for Compact

Letters and numbers designating provisions of the Compact shall be in the following order, and shall be identified in the following manner: "I" is a Part; "A." is a section; "1." is a subsection; "a." is a paragraph; and "i)" is a subparagraph.

H. Computation of Time

In computing any period of time prescribed or allowed under the Compact, the day of the act from which the designated period of time begins shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the periods shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays include those days so designated under State and federal law. The date of final District action under Part VII. of the Compact shall be the date on which the written order specified in Section I. of

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this Part is filed with the District Clerk.

I. Requirement for Written Orders / Final District Action

Any act or event which constitutes final District action under the Compact shall be reduced to a written order, filed with the District Clerk, and served on the Tribe within ten (10) days of such act or event. Service on other persons shall be as provided under Part VII. of the Compact.

J. Relationship Between Compact, Manual and Tribal Water Code

1. Provisions of the Compact listed in paragraphs a. through e. of this subsection shall be implemented according to the Manual:
 - a. Part III.B.; III.C.6.; III.D.; and
 - b. Part IV.; and
 - c. Part V.A.; V.B.; V.C.; V.D.; and
 - d. Part VI.B.; VI.D.; and
 - e. All of Part VII.
2. If the Tribe complies with the applicable requirements and objectives of the Compact, then the Tribe, with the exception of the procedural chapter of the Manual, does not need to meet the specific criteria outlined in the Manual. If the Tribe satisfies the specific criteria outlined in the Manual, a presumption shall arise that the Tribe has met the requirements and objectives of the Compact.
3. Following the procedures set forth under Part VII.G. of the Compact, the parties to the Compact may modify, amend, or otherwise change the Manual.
4. One of the purposes of the Manual is to further define and explain the conditions, criteria and objectives of this Compact. Any ambiguities in the Compact should be resolved, if possible, by reference to the Manual. However, in no event, shall the Manual be used to alter or modify terms or provisions contained in the Compact which are not facially ambiguous. Conflicts between the Compact and the Manual shall be resolved by adhering to the Compact. Conflicts between provisions of the Tribal Water Code and the Compact shall be resolved by adhering to the Compact. Conflicts between provisions of the Tribal Water Code and the Manual shall be resolved by adhering to the Manual.
5. In any instance where the District establishes a new program of general applicability throughout the District or institutes changes in any rules, regulations, or procedures, which are of general applicability throughout the District, or institutes changes to rules, regulations or procedures affecting only the basin or area within which Tribal lands to which the Compact applies, and which are inconsistent with or not addressed by the Compact or Manual:
 - a. The District shall notify the Tribe of said changes in writing upon initiation by the District of rulemaking; and
 - b. Within sixty (60) days of adoption the Tribe shall elect to proceed under either

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the new provision or under the prior provision if any. If the Tribe elects to proceed under the new provisions, the Manual shall be appropriately amended.

K. Promulgation and Amendment of Tribal Water Code

The Tribe shall provide the District with a copy of proposed provisions and proposed amendments of the Tribal Water Code at least ten (10) days before adoption by the Tribe of such provisions and amendments.

III. CONSUMPTIVE WATER USE

A. Protection and Regulation of Tribal Water Use

1. The principles set forth in this part of the Compact are intended to prescribe and protect the Tribe's rights to the use of water.
2. The Tribe's rights shall not be adversely affected or limited by any change subsequently made in the State system or the District rules, regulations, and orders affecting preference or priority of water use. The Tribe shall have a preference or priority equal to any preference or priority which may be established for the same use under State law for any other party after the effective date of the Compact.
3. After the effective date of the Compact the Tribe will have an opportunity for significant input into water related land use decisions on lands surrounding the Reservation. In return for this increased input from the Tribe, surrounding landowners should be able to rely on past land use decisions without fear that later exercise of tribal rights will negatively impact them. Present surrounding land uses do not present any inherent conflicts.
4. It is consistent with the public interest to take steps and means to avoid the undesirable effects of inflexibility in the transfer of water rights while retaining adequate security for any such existing rights. Water rights exercised under any existing system should not become so inflexible that water resources cannot meet new needs and demands by transfer from existing uses to new uses which are more beneficial.

B. General Criteria

The Tribe must give reasonable assurances that any proposed consumptive water use:

1. will not cause significant inland movement of either surface saline water or the underground saline water interface; will not cause either significant upconing of saline water that may be beneath freshwater or vertical leakage of connate saline water; or otherwise reduce the amount of potable water;
2. will not have a significant adverse impact on lawful land uses including wetlands located on lands other than Reservation and Tribal Trust lands;
3. will not cause significant adverse environmental impacts;
4. will not cause significant pollution of the surface water or the aquifer;
5. is a reasonable-beneficial use ;

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6. will not interfere with presently existing legal uses of water and users of water protected under the Compact; and
7. is consistent with the essential terms and principles of the State system as defined in the Compact.

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C. Competing Uses

1. The Tribe shall be given a preference in approval of Work Plans involving withdrawal and use of the groundwater resources underlying Reservation and Tribal Trust lands.
 - a. The Tribe shall be entitled to a preference when its proposed use conflicts with a proposed use by a non-Tribal user and the recognition of such preference is reasonably necessary to the accomplishment of the Tribe's lawful purposes.
 - b. The Tribe shall be entitled to a preference to a reasonable share of available resources when its proposed use conflicts with a then pending application by a non-Tribal user to renew or increase its authorized use of water and the recognition of such preference is reasonably necessary to the accomplishment of the Tribe's lawful purposes.
2. The Tribe through its exercise of rights under this Compact, is afforded an opportunity to perfect its rights to water as though it had been an existing user and had elected to perfect its rights to water on or after March 2, 1974 (the date of implementation of Part II, Chapter 373, Florida Statutes).
3. If two (2) or more proposed uses which otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, such proposed competing uses must first satisfy the standard conditions for approval which apply to each applicant. The Board shall consider the reasonable beneficial uses for the water as well as the extent to which the proposed use is reasonably necessary for the Tribe to achieve its purposes.
4. No Tribal preference shall be asserted in a manner that will cause catastrophic changes to aquifer systems. No Tribal preference shall be asserted directly or indirectly for the purpose of exporting water for use offsite of Reservations and Tribal Trust lands.
5. Determination of any tribal claim that offsite activities or water consumption have caused water quality problems in aquifer systems underlying Reservation and Tribal Trust lands shall be made without regard to any preferred rights of the Tribe under this section.
6. Drawdown Limitations

This subsection specifies maximum drawdowns in artesian aquifers. Actual drawdowns permitted by the District pursuant to the Compact with respect to the Tribe or Chapter 373, Florida Statutes, with respect to adjacent landowners may be substantially less than these maximums.

a. Exercise of Tribal Preference

In exercising its preference rights, the Tribe shall not cause more than a twenty (20) foot drawdown of the potentiometric head of any artesian aquifer system at the boundaries of the Reservation or Tribal Trust lands involved unless it has specific written authority or agreement from affected landowners.

b. Adjacent Landowners

No development of groundwater resources on lands adjacent to any of the

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Seminole Reservations or Tribal Trust lands will be permitted by the District if the drawdown of the potentiometric head of any artesian aquifer system will be more than twenty (20) feet at the boundary of the Reservation unless it has specific written authority or agreement from the Tribe.

7. All water use permits issued by the District after the date this Compact is approved by the Board to non-Tribal users whose permit rights may be affected by the Tribal rights confirmed under the Compact, shall include a special condition advising the permittee of the Compact and its potential impact on any future permit renewals. Appropriate notice of Tribal rights under the Compact shall be sent to all potentially affected holders of existing permits.
8. The Tribe shall mitigate adverse impacts on lawful single family home domestic users existing as of the date the Compact is approved by the Board, where such adverse impacts are caused by the exercise of Tribal rights under the Compact. Adverse impact shall be determined according to the Manual.

D. Water Shortage

1. Reductions in Tribal water use due to water shortages shall be made in the same manner and percentage as the equivalent class of use, source, and manner of withdrawal as required under the District water shortage plan. The Tribe may request a variance from water use restrictions imposed pursuant to this Section, using the procedures and criteria in the Manual. Variances shall not be unreasonably denied. The Tribe shall not be required to reduce its water sources, uses, and methods of withdrawal more than the reduction in sources, uses, and methods of withdrawal of the least restricted user of the same source, use, and method of withdrawal class except as authorized under Chapter 7 of the Manual.
2. Declared water shortages occurring solely on Reservation and Tribal Trust lands shall be governed solely by the Tribal Water Code provided that the Tribal provisions satisfy the objectives of the District and that the applicable Tribal procedures are consistent with the Compact.

IV. **MANAGEMENT AND STORAGE OF SURFACE WATERS**

A. General Criteria

The Tribe must give reasonable assurances that the proposed surface water management system:

1. provides adequate flood protection and drainage;
2. will not cause significant adverse water quality and quantity impacts on receiving waters and non-Tribal lands;
3. will not cause discharges to ground or surface waters which result in any violation of State water quality standards;
4. will not cause significant adverse impacts on surface and groundwater levels and flows;
5. will not cause significant adverse environmental impacts;

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6. can be effectively operated and maintained;
7. will not adversely affect public health and safety;
8. will not otherwise be harmful to the water resources of the District; and
9. is consistent with the essential terms and principles of the State system as defined in the Compact.

V. MISCELLANEOUS ENVIRONMENTAL

A. Water Well Construction

The Tribe must give reasonable assurances that the construction, alteration, operation, maintenance, and abandonment of any water well on Reservation and Tribal Trust Lands will not be harmful to the water resources of the District and will not be inconsistent with the purposes of the Compact.

B. Underground Injection

1. The Tribe must give reasonable assurances that the construction, alteration, operation, maintenance, and abandonment of any underground injection facility will not be harmful to the water resources of the District and will not be inconsistent with the purposes of the Compact.
2. The District shall, independently of the federal authority having jurisdiction over the matter, review requests by the Tribe for installation and operation of underground injection systems in accordance with the provisions of the Manual.

C. Water Quality Criteria

Tribal activities shall not cause significant pollution of ground or surface waters. The Tribe shall comply with those water quality standards imposed by the District as provided in the Compact, the Manual, and with federal pesticides requirements on Reservation and Tribal Trust lands. The Tribe shall use only pesticides, herbicides, fertilizers, and other agricultural chemicals which have been approved by the Environmental Protection Agency and the U.S. Department of Agriculture for use in Florida and shall apply the pesticides, herbicides, fertilizers, and other agricultural chemicals in strict accordance with the label directions. Upon written Tribal Council Resolution by the Tribe, the District shall condition permits or other requests for approval reasonably expected to affect Tribal interests by requiring adherence to those water quality standards imposed by the law. The District shall cooperate with the Tribe and appropriate State and federal agencies to enforce the requirements of this subsection against the use of pesticides, herbicides, fertilizers, and other agricultural chemicals by third persons on lands other than Reservation or Tribal Trust lands in a manner which causes water quality violations. The District's cooperation may include, but not be limited to, requiring reasonably appropriate monitoring by permittees and other appropriate actions authorized by state or federal law.

D. Wetlands Protection

1. The Tribe will provide reasonable assurances that wetland values and functions will be maintained. Wetlands and proposed impacts on wetlands shall be evaluated using sound

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engineering and ecological principles.

2. Wetlands greater than forty (40) acres, or covered under subsection 3. of this section, will be protected in accordance with the criteria set forth in the Manual.
3. Wetlands of forty (40) acres or less which are incorporated within a surface water management system or are otherwise protected, shall be governed by subsection 2. of this section.
4. Wetlands of forty (40) acres or less which are not incorporated within a surface water management system or are not otherwise protected, may be disturbed, provided that an upland system of equivalent size is set aside in an area committed for passive uses. The wetland and upland areas to be traded shall be specifically described in any Work Plan proposed under Part VII., Section A. of the Compact. The District may waive the requirement for uplands set aside under such circumstance as would justify such a waiver for non-Tribal interests.

VI. SPECIAL PROVISIONS APPLICABLE TO SPECIFIED RESERVATION AND TRIBAL TRUST LANDS

A. Landowner Agreements

The Tribe and any landowners who may be affected by operations of the Tribe under a tribal Work Plan, may be protected and governed by site specific criteria applicable to groundwater withdrawals and, if applicable, to surface water withdrawals, determined by private agreement, which may include provisions for arbitration. Criteria for groundwater withdrawals may apply to well placement, construction and operation. Similar criteria for surface withdrawal pumps or other works will be identified, if appropriate, to implement the purpose and intent of this subsection. Any such private agreement may be presented to the District for approval and if so approved by the Board the agreement shall have, as between the parties to such agreement, the force and effect of the Compact and, specifically, shall prevail in any dispute between the parties to such private agreement in the event of a conflict with the Compact, the Manual or with other applicable permitting criteria of the District. Nothing herein shall affect the authority of the District to evaluate Work Plans, permit applications, or other requests for approval under other provisions of the Compact or state law. Nothing herein shall be construed to preclude a third person from asserting that such Work Plan, permit application, or other request for approval adversely affects their substantial interests. The private agreement between the Tribe and United States Sugar Corporation entered into prior to May 15, 1987 is attached hereto as Exhibit A and made a part hereof. The private agreement between the Tribe and Lykes Bros., Inc. entered into prior to May 15, 1987 is attached hereto as Exhibit B and made a part hereof. Both private agreements are hereby approved.

B. Brighton Reservation

1. The Tribe shall be entitled to fifteen percent (15%) of the total amount of water which can be withdrawn from the District canals and from District borrow canals by all users from surface water within the Indian Prairie Basin as described in Rule 40E-21.691(6)(a), Florida Administrative Code (1987), (legal description to be corrected in Florida Administrative Code) calculated by the District on a monthly basis. The Tribe shall not be entitled to any preference to withdrawals in excess of fifteen percent (15%) from such District canals. The Tribe shall withdraw its fifteen percent (15%) share of the waters in the specified canals under procedures detailed in the Manual which, in the light of experience, are reasonably

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designed to assure the Tribe of the opportunity to make its entitled withdrawals on a monthly basis. Notwithstanding the provisions of the Manual, the Tribe shall have the opportunity to demonstrate that it is not receiving its entitled share of the waters in the specified canals because of the actions of the District or of some third party. The Tribe shall have the burden of proof on this issue and shall assert any such violations of the Compact under the provisions of Part VII. of the Compact and the Manual.

2. The Tribe shall have access to a fractional share of surface waters from Lake Okeechobee for use on the lands of the Reservation located within the Lakeshore Perimeter Basin as described in Rule 40E-21.691(3)(d), Florida Administrative Code (1987), for water use as it exists on the effective date of the Compact. Such fractional share shall be calculated from the ratio of the total area of the water supply service area as it exists on the effective date of the Compact to the total land area of the Brighton Reservation within the Lakeshore Perimeter Basin for water use as it exists on the effective date of the Compact.
3. Expansion by the District of the geographical boundaries of the area receiving surface water from a specific source for water use purposes shall entitle the Tribe to a fractional share of any additional available water in the District canals and District borrow canals for use on the Brighton Reservation. Such fractional share shall be calculated from the ratio of the total land area of the Brighton Reservation within the expanded service area to the total land area of the expanded service area. This subsection, however, shall not serve to diminish the percentage of surface water of the Indian Prairie Basin which was available to the Tribe before the expansion of the service area, and which the Tribe may elect to retain pursuant to subsection 1. of this section.

C. Hollywood (Dania) Reservation

1. On the Hollywood (Dania) Reservation, the Tribe shall have the rights set forth under Part III. of the Compact, except that with respect to public water supply permittees of the District whose permits are approved as of the effective date of the Compact, the Tribe shall have no more than the rights accorded public water supply permittees of the District whose permits are approved as of the effective date of the Compact.
2. After receiving notice pursuant to the Manual of an application potentially affecting Tribal rights under the Compact, the Tribe may:
 - a. Object to the application pursuant to the Manual; or
 - b. Require the District, if the potentially competing use request is granted, to order the permittee to accept the Reservation as a bulk consumer of the permittee's system. The District shall adjust the permittee's allocation to include the additional water needs of the Tribe, if such needs are not included in the allocation granted. The District shall place a condition in the permittee's permit that the permittee must allow the Tribe to connect to the permittee's system and must charge the Tribe at a rate not to exceed the most favorable consumer rate charged to any consumer of the permittee's system. If the additional water needed to supply the Tribe cannot be withdrawn without causing significant adverse impacts, the District shall place a condition in the permit that the permittee must satisfy the reasonable-beneficial needs of the Tribe before satisfying the additional needs of non-Tribal users. It is understood that this procedure is not intended as a precedent for any other situation.

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D. Big Cypress Reservation

The Tribe shall be entitled to withdraw from any surface water resources on the Big Cypress Reservation that percentage of the water available within the South Hendry County/L-28 Gap Water Use Basin as described in rule 40E-21.691(7)(c), Florida Administrative Code (1987), as the lands of the Big Cypress Reservation bear to the total land acreage within the basin.

VII. ADMINISTRATIVE PROCEDURES

A. Submission Approval and Amendment of Work Plans

The Tribe, before commencing any work that is covered by the provisions of this Compact, shall submit a work plan to the District, or, where required, an amendment to any work plan, under the procedures specified in the Manual. Such procedures shall give interested parties adequate notice of Tribal plans and an opportunity to be heard, in accordance with the timeframes set forth in the Manual. Such procedures shall also give the District staff sufficient information to properly evaluate the proposals in accordance with the criteria and principles contained in Parts I. through VI. of the Compact and in accordance with the detailed provisions of the Manual.

B. Implementation of Work Plans After District Action

Following District action, the Tribe may request the Board for a rehearing or shall give notice of its intent to implement the Work Plan as approved following final District action or implement the proposed Work Plan or amendment without complying with part or all of final District action in accordance with the timeframes and procedures set forth in the Manual. Initiation of federal court action by the District or third parties shall be in accordance with the timeframes set forth in Part VIII. of the Compact and the procedures contained in the Manual.

C. Dispute Resolution; Exhaustion of Administrative Remedies Before Court Action

The Tribe and the District shall use best efforts to resolve disputes concerning the enforcement of rights and obligations created by the Compact through informal meetings, mediation, arbitration or third party facilitation. Before commencing action, in accordance with the provisions of Part VIII. of the Compact in the federal district court for violations of the Compact by any party to the Compact or third party, notice shall be given to the Tribe or the District, as the case may be, and remedies provided in the Manual shall be exhausted under procedures established in the Manual.

D. Tribal Water Code

The Tribe, through a Tribal water code, shall enforce the provisions of the Compact and the Manual and terms and conditions of approved Work Plans against persons conducting activities on Reservation and Tribal Trust Lands. Notwithstanding this provision, the Tribe may in individual cases through Tribal Council resolution request the District to enter Reservation and Tribal Trust Lands for the purpose of enforcing the provisions of the Compact against persons other than the Tribe conducting activities on Reservation or other Tribal Trust Lands in accordance with procedures established in the Manual.

E. Tribal Challenge to District Approval of Applications by Third Parties

If the Tribe perceives that permit applications or other requests for approval by third parties from the District would conflict with Tribal rights under the Compact, the Tribe shall give the District adequate notice and shall raise its objections with respect to such permit applications or other

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request for approval in accordance with the timeframes set forth in the Manual before challenging such permit applications or requests in federal district court. The District shall timely notify the Tribe by certified mail, return receipt requested of such permit applications or other requests for approval. The dated return receipt from the U.S. Postal Service shall be attached to the staff report or other proposed District action and shall be conclusive evidence that the Tribe has been properly noticed pursuant to this section. The District's failure to comply with this section shall not deprive the Tribe of rights it would have been able to assert had the District complied with this section. In the case of third party permit applications where a request for administrative hearing is filed, the Tribe shall have thirty (30) days from the date of either filing of the request for hearing, or Board evaluation of a Tribal notice of objection, whichever occurs later to make one of the elections set forth in the Manual. If one of these elections is made, the Tribe may not file any action in federal district court until final District action has occurred. A court action filed under this paragraph must be filed within thirty (30) days of final District action. The Tribe shall not file any such action in federal district court until final District action has occurred.

F. Violations of the Compact, the Manual, or the Terms of any Approved Work Plan by the Tribe or the District

Any substantially affected third parties who are substantially affected by actions of the Tribe or the District which are perceived to be in violation of any of the provisions of the Compact, the Manual or the terms and conditions of any approved Work Plan shall have the right to challenge such actions in procedures established in the Compact and the Manual. Persons other than the State or the District with claims over which the Tribe has jurisdiction must exhaust Tribal remedies.

Substantially affected third persons may file a written complaint with the District Clerk alleging violation of the Compact, Manual or the term of any approved Work Plan. Upon receipt of a complaint, the District shall conduct an investigation and make a determination of its intended action in accordance with the procedures set forth in the Manual. The Complainant or Tribe may file a request for a hearing before the Board within fourteen (14) days of notice of the District's findings.

G. Modification and Amendment of Manual

1. The initial Manual shall be the Manual approved by the Board in conjunction with the approval of the Compact. The Manual shall become effective on the effective date of the Compact.
2. On or before March 1 of any fiscal year, a party to the Compact may propose to the other parties to the Compact a modification, amendment, or other change in the Manual. All such proposals shall be made in good faith belief that the proposals are consistent with the provisions and intent of the Compact. Non-parties may propose amendments to those specific provisions of the Manual which establish criteria that apply to both Reservation land and adjacent land and shall be given an opportunity to be heard.
3. The Tribe, the State, and the District shall make a good faith attempt to consider and agree upon modifications, amendments, and other changes in the Manual which are consistent with the provisions and intent of the Compact.
4. Upon agreement among the Tribe, the State, and the District to modify, amend, or otherwise change the Manual, the District shall publish and provide notice as described in the Manual.

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- a. Substantially affected third persons may, within fifteen (15) days of publication of notice, request the District for a hearing before the Board at which the sole issue shall be whether the modification, amendment, or other change in the Manual violates the Compact. The Board may reject frivolous requests for hearing and requests filed by persons lacking a non-frivolous interest which is substantially affected.
 - b. Requests by a substantially affected third person for a hearing shall contain the information and follow the form set forth in the Manual.
 - c. Within five (5) days of receipt of a request for hearing, the District shall provide the Tribe and the State with copies of the request and all other materials filed.
 - d. Minor, nonsubstantive changes to the Manual may be made at any time upon agreement of the Tribe, the State and the District. Such changes include, but are not limited to, editorial changes necessary for clarity and change of address. Neither notice nor an opportunity for hearing need be given before such changes become effective. When the parties agree upon substantive changes pursuant to this section, minor, nonsubstantive changes previously made, but not noticed, shall also be noticed.
5. For purposes of this section, the Tribe shall act through its Tribal Council, the District through its Governing Board and the State through the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, or their successors.

VIII. COURT ACTION

- A. The parties to the Compact will seek federal legislation giving the District Court for the Southern District of Florida original jurisdiction of all civil actions brought by or against the Seminole Tribe to enforce the Compact's provisions., including enforcement of agreements to arbitrate under the authority of the Compact.
- B. No action in federal district court shall be instituted under the Compact unless the party has complied with administrative procedures specified under Part VII. of the Compact and the Manual. Unless otherwise specified in the Compact, any action brought by any person who is not a party to the Compact shall be brought ex rel the District. A party proceeding ex rel may not challenge the validity of any final District action.
- C. In any action commenced under the Compact, a special master shall be appointed to report to the federal district court on questions of fact and law, unless the court makes a determination, in the exercise of sound judicial discretion, that use of a special master is not warranted. Actions under the Compact shall be decided on an expedited basis.
- D. Except for those persons having Tribal remedies, the judicial procedures specified in this part and the administrative procedures specified in Part VII. of the Compact shall be the exclusive procedures for resolution of any matter or dispute arising under the terms of the Compact or involving Tribal water use and any determination made under these procedures shall be final for all purposes, subject only to appeal from decisions of the federal district court presently allowed by federal law.
- E. In an action brought under the Compact for permanent injunctive relief or in any final determination on the merits, the substantially prevailing party shall be entitled to costs and attorney's fees.

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- F. The Seminole Tribe of Florida, the State of Florida and the South Florida Water Management District expressly waive any immunity each may have to civil actions for injunctive relief commenced to enforce the Compact and its implementing federal legislation.
- G. The District or any person who timely requested a hearing or filed a notice of reliance, as set forth in the Manual, shall have thirty (30) days after the Tribe files notice of its intent with regard to the Work Plan, to commence suit in federal court. Such action shall not be ex rel the District. Persons who requested a hearing or filed a notice of reliance shall have an additional ten (10) days following expiration of the thirty (30) days to commence suit in federal court ex rel the District to enforce final District action.
- H. The Tribe may file suit in federal district court on a third party's permit within thirty (30) days of final District action.
- I. 1. Any action filed in federal court shall deal separately with disputed issues of District procedure, interpretations of law, determinations of fact or policy within the District's exercise of delegated discretion. If the federal court determines that either the fairness of the proceeding or the correctness of the action may have been impaired by a material error in procedure or failure to follow prescribed procedure, then the federal court shall remand the case for further District action. If the federal court finds that the District erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall either set aside or modify the District action or remand the case to the District for further action under a correct interpretation of the provision of law.
2. This subsection applies when a formal hearing has been held pursuant to section 120.57, Florida Statutes (1985). If the District's action depends on any fact found by the District in a proceeding meeting the requirement of section 120.57, Florida Statutes, the federal court shall not substitute its judgment for that of the District as to the weight of the evidence on any disputed finding of fact. The federal court shall, however, set aside the District's action or remand the case to the District if it finds that the District's action depends on a finding of fact that is not supported by competent or substantial evidence in the record. The federal court shall remand the case to the District if it finds that the District exercise of discretion is either outside the range of discretion delegated to the District by law; inconsistent with a District rule; inconsistent with an officially stated District policy or prior District practice, if deviation therefrom is not explained by the District; or otherwise in violation of a constitutional or statutory provision. However, the federal court shall not substitute its judgment for that of the District on an issue of discretion. Such review shall not be de novo. Section 373.114, Florida Statutes (1985), shall not apply.
- J. No action in federal district court may be commenced until the Board has taken final District action, unless delay would cause irreparable injury and the relief requested is a temporary restraining order.