

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this the 28th day of June, 2001, by and between Tampa Bay Water, A Regional Water Supply Authority (the "Authority"), Tampa Bay Desal, LLC, a limited liability company organized under the laws of Delaware and authorized to do business in the State of Florida ("Desal"), Hillsborough County, a political subdivision of the State of Florida (the "County"), and the Florida Department of Environmental Protection, an agency of the State of Florida (the "Department").

RECITALS

WHEREAS, the Department has issued a Notice of Intent to Issue Industrial Wastewater Facility Permit No. FL0186813-001-IW1S (the "Permit") to Desal for the construction and operation of a seawater desalination facility to be located in Hillsborough County, Florida (the "Desal Facility");

WHEREAS, the County filed a Petition for formal 120.57 administrative hearing (the "Petition") in opposition to issuance of the Permit without Desal providing financial assurances that it will be able to comply with Permit conditions and applicable Department laws and regulations;

WHEREAS, the Department has referred the Petition to the Division of Administrative Hearings who set the Petition for final hearing, DOAH Case Nos. 01-1949 and 1950, commencing August 27, 2001 (the "Administrative Proceeding");

WHEREAS, the Authority has a contract with Desal for the construction and operation of the Desal Facility and for purchase of potable water therefrom, and the Authority has intervened as a party in the Administrative Proceeding;

WHEREAS, the parties hereto have met and have agreed upon settlement of the issues raised in the County's Petition and that, subject to the terms and conditions of this Settlement and Stipulation, the Petition should accordingly be dismissed;

WHEREAS, Rule 62-620.301, F.A.C., authorizes the Department to require an applicant for an industrial wastewater discharge permit to submit proof of financial responsibility to guarantee compliance with Chapter 403, Florida Statutes, and Department rules;

WHEREAS, Rule 62-620, F.A.C., requires that proof of financial responsibility, such as posting an appropriate bond, shall be required only if the applicant's compliance record or financial inability to comply with permit conditions results in a lack of reasonable assurance that all applicable Department standards will be met;

WHEREAS, the Department's proposed agency action, as reflected in the above-referenced Notice of Intent to Issue Industrial Wastewater Facility Permit, is based on its determination that Desal has provided reasonable assurance that all applicable Department standards will be met;

WHEREAS, the Department has not required Desal to submit proof of financial responsibility as a condition precedent to the Department's determination that Desal has provided reasonable assurance of compliance with Chapter 403, Florida Statutes, and Department rules;

WHEREAS, notwithstanding the Department's determination of reasonable assurance, the County and Desal have agreed to request that the Department modify the Permit to include the permit conditions reflected in Paragraph 1 of the following Stipulated Disposition;

WHEREAS, Desal has agreed to accept the proposed permit conditions reflected in Paragraph 1 of the following Stipulated Disposition as a modification to the Department's proposed Industrial Wastewater Discharge Permit; and

WHEREAS, Desal has agreed that the permit conditions reflected in Paragraph 1 of the Stipulated Disposition shall be valid, binding and enforceable. The Department may seek to compel compliance with these permit conditions pursuant to Chapters 120 and 403, Florida Statutes, and the Department's applicable rules.

STIPULATED DISPOSITION

NOW THEREFORE, in consideration of the covenants and obligations contained herein and other good and valuable consideration, the sufficiency of which is conclusively admitted by the parties hereto, the following is hereby agreed to as final settlement and resolution of all matters raised in the Petition of the County:

1. The foregoing recitals are incorporated herein. Prior to final issuance, and subject to final resolution in any pending Section 120.57 proceeding, the Department shall modify the Permit by insertion of the following provisions in the Permit:

VII. G. Financial Assurances.

1. The permittee, subject to commercial availability, shall cause to be acquired prior to, and cause to be maintained during, operation of the seawater desalination facility, environmental impairment liability insurance coverage with policy limits of up to \$30.0 million per occurrence and policy aggregate provided that the five year total premium shall not exceed \$220,000.00, but in no event, subject to commercial availability, shall the policy limits be less than \$26.0 million dollars per occurrence and policy aggregate. Such environmental impairment liability insurance policy shall cover cleanup/remediation costs, third party claims for bodily injury and property damage (including natural resource damage) and legal defense for new pollution conditions that may be caused by the operation of the seawater desalination plant subject to reasonable deductibles or self-insured retention that shall not exceed \$100,000.00 per occurrence. Prior to operation of the

seawater desalination facility, the permittee shall submit evidence that it has obtained such coverage to the Department.

2. The permittee shall cause to be acquired prior to, and cause to be maintained during, operation of the seawater desalination facility, an operations and maintenance performance bond(s) to ensure the faithful performance by the permittee, or its subcontractor, of all terms and conditions of this permit and compliance with all Applicable Legal Requirements concerning operation of the seawater desalination facility. Such bond(s) shall be in the amount of \$8,500,000.00 and may also be subject to all performance obligations of the permittee, or its subcontractor, for the operation and maintenance of the seawater desalination facility. Subject to commercial availability, the permittee and Tampa Bay Water shall be named the obligees on the bond(s). The bond(s) shall contain provisions that suit under the bond(s) may be instituted within two (2) years from the time the last payment was made to the operator of the seawater desalination facility while the bond(s) was in force. As used in this paragraph, "Applicable Legal Requirements" means all local, state, and federal laws, rules, regulations, permits, and agreements, in each case, relating to the operation and maintenance of the desalination facility. Prior to operation of the seawater desalination facility, the permittee shall submit to the Department proof of the execution of such bond(s).

3. The Department's only duty with respect to the enforcement of the foregoing subparagraph 1 is to verify that the permittee has submitted proof of such coverage prior to commencing the operation of the seawater desalination facility. The Department's only duty with respect to the enforcement of the foregoing subparagraph 2 is to verify that the permittee has submitted proof of the execution of such bond(s) prior to commencing the operation of the seawater desalination facility. The foregoing subparagraphs 1 and 2 are not intended to constitute precedent for the Department's NPDES permitting program and shall not be construed as any type of limitation on the Department's right to pursue cost recovery, penalties or any other remedy authorized under Chapter 403, Florida Statutes.

2. Prior to final issuance, the Department shall modify the Permit by changing the permittee from "Tampa Bay Desal" to "Tampa Bay Desal, LLC."

3. Desal agrees that, subject to Paragraph 4 below, it will request inclusion of the language in the foregoing Paragraph 1 in modifications or renewal of the Permit for its second five year term, hence to include the period ten (10) years from permit issuance, so long as Desal,

or any entity acting on its behalf, is the permittee under such permit. The Department agrees, as part of its review of any such permit application, to consider the inclusion of the type of financial assurances contained in Paragraph 1. Should the Department not include such language in the permit renewal or modification, and in all events, Desal shall nevertheless maintain the insurance coverages and bond in accordance with Paragraphs 1 and 4 of this Agreement for a total period of ten (10) years from commencement of operation which obligation shall be enforceable by specific performance solely by the County.

4. Upon the first five year permit renewal of the Permit (that is, five (5) years from initial issuance of the Permit), the dollar amounts of the insurance coverages and the bond referenced in the foregoing Paragraph 1 shall be increased by no less than the percentage increase over the preceding five (5) years of the Consumer Price Index. For purposes of this paragraph, Consumer Price index shall mean the: Consumer Price Index for All Urban Consumers, all items, U.S. City Average issued by the Bureau of Labor Statistics of the United States Department of Labor. If the manner in which such index is determined by the Bureau of Labor Statistics is substantially revised, then the Bureau of Labor Statistics shall be requested to furnish a statement converting the Consumer Price Index published most recently prior to the start of the renewed industrial wastewater permit to a figure that would be comparable to the revised Consumer Price Index published most recently prior to the start of the renewed industrial wastewater permit. If the Consumer Price Index published by the Bureau of Labor Statistics is discontinued, then the Index shall be the Consumer Price Index published by the U.S. Department of Commerce with appropriate adjustment. If the U.S. Department of Commerce Index is discontinued, the Authority, Desal and the County shall agree on a reasonable substitute.

5. Upon execution of this Settlement Agreement by all parties, Hillsborough County shall support the permit conditions set forth in Paragraph 1 of this Agreement and shall file with the Division of Administrative Hearings, a notice that its Petition is withdrawn with prejudice and shall not thereafter participate in the Administrative Proceeding except by compulsion of law. Provided however, the County may intervene in the Administrative Proceeding solely to support the foregoing permit conditions set forth in Paragraph 1 of this Agreement if such conditions are challenged by any party or intervenor.

6. Desal agrees it shall not file a Petition for Formal Administrative Proceeding nor a Petition to Intervene in this Administrative Proceeding unless any other party to this Agreement challenges currently pending Department permit application FL0000817-003-IW1S necessary for the construction and operation of the Desal Facility.

7. The other parties hereto expressly do not admit that the Petition or the position of the County in the Administrative Proceeding is valid or meritorious and none of the parties admit to any violation of any law, regulation or policy with respect to the Permit or the Notice of Intent to Issue the Permit. The provisions contained herein are the result of negotiations for the settlement of disputed obligations. Accordingly, this Agreement shall not be admissible in any judicial or administrative proceedings except for a proceeding to enforce its terms and conditions

8. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties and shall be construed in accordance with the laws of the State of Florida.

9. Each party to this Agreement represents and warrants that it has the legal authority to enter into and execute this Agreement for the purposes herein stated.

10. Each party shall bear its own attorneys fees and costs incurred in this Administrative Proceeding.

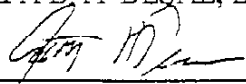
11. The parties stipulate and agree that the terms and conditions of this stipulation do not constitute any type of precedent with respect to the Department's NPDES permitting program.

12. All parties agree that Desal may assign this Agreement to its lenders. However, the parties recognize and agree that any transfer of the Permit would be subject to the Department's review under Rule 62-620.340, F.A.C. The Authority and the County agree to enter into such documentation as is reasonably required by Desal's lenders evidencing a consent to such assignment, and to provide an opinion regarding the authority of such entity to enter into this Agreement and the enforceability of this Agreement as reasonably required by such lenders. Desal's obligations under this Agreement are subject to the provision of such consents and opinions, and (i) Desal shall provide the forms of such consents and opinions to the Authority and the County within seven (7) days after the date of execution of this Agreement, and (ii) the Authority and the County shall provide such consents and opinions within seven (7) days after the receipt of such forms, or with respect to the County immediately following the next available County Board of County Commissioners' meeting following receipt, if required.

13. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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TAMPA BAY DESAL, LLC

By: 

Name: SCOTT H. PEARCE

Title: MEMBER

HILLSBOROUGH COUNTY, FLORIDA
By and through its Board of
County Commissioners

By: *Rat Frank*
Chairman

Approved as to Form
Office of County Attorney
By: *[Signature]*

ATTEST
RICHARD AKE, Clerk

By: *Mildred K. Dyer*
Deputy Clerk

SEAL



BOARD OF COUNTY COMMISSIONERS
HILLSBOROUGH COUNTY FLORIDA
DOCUMENT No. 01-0940

DEPARTMENT OF ENVIRONMENTAL PROTECTION


By: W. Douglas Beason

Name: W. DOUGLAS BEASON

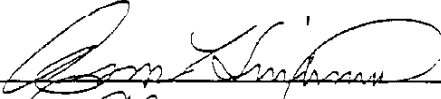
Title: ASSISTANT GENERAL COUNSEL

ATTEST:

TAMPA BAY WATER, A REGIONAL WATER
SUPPLY AUTHORITY



Jerry L. Maxwell, Secretary

By: 

Its: Chairman

(SEAL)

APPROVED AS TO FORM:



Office of the General Counsel