

Governance and Funding

Issue Definition

Regional Governance and Funding

Issue #1: What are the best possible governance structures and funding mechanisms for regional water supply entities in order to ensure the construction and operation of alternative water supply projects to meet the State's needs through 2030?

With regard to its water supplies, Florida is at a critical point in its history. The inexpensive groundwater the State has traditionally relied on as a primary source of water to meet its water supply needs (i.e. public supply, agricultural irrigation, industrial uses, and commercial uses) will not be adequate to meet all the future water supply needs of significant areas of peninsular Florida. While there are adequate supplies of potable groundwater in northwest Florida, recently, in the central and southeast parts of the State (and even in some areas of the northeast part of the State), the Water Management Districts (WMDs) have declared that groundwater cannot be relied on to meet the growing demand for water in these areas. This is in addition to existing limitations on groundwater withdrawals in southwest Florida. Florida's water supply needs in these areas will be met only by: (1) decreasing demand through increased conservation, (2) increasing the reuse of reclaimed wastewater, and (3) increasing the supply of water from *alternative* water sources, such as surface water and desalination. Due to the high costs of developing alternative water supplies, there is increasing need for local governments and others to work together on a regional basis to address this common problem. While there are currently a limited number of regional water supply authorities in the State, there will need to be many more regional water supply authorities or other similar regional entities to ensure the future construction of the alternative water supply projects necessary to meet the State's future water supply needs.

With regard to funding, the majority of costs for the construction and operation of future alternative water supply projects will be borne by the end user of the water - the rate payer. Nevertheless, funding assistance from the State and WMDs is needed to provide start-up capital for the creation of regional water supply entities and to offset the costs for the construction of alternative water supply projects.

Because the need to address water supply issues crosses not only municipal boundaries but also county boundaries, for purposes of this paper, the term "regional water supply entities" will be used to refer to *multi-county* water supply entities. The term is intended to include not only regional water supply authorities but any other entity created by two or more local governments (i.e. cities, counties, special districts, etc.) coming together to address their water supply problems.

State-level Governance and Funding

Issue #2: What is the best possible state-level governance structure and what are the best possible funding mechanisms to ensure that sufficient water is available for all existing and future reasonable-beneficial uses and the natural systems, and to ensure that the adverse effects of competition for water supplies are avoided?

There is a growing consensus among those in Florida who are knowledgeable about issues relating to water supply that while the existing statutory governance structures have served the state well to date, they may not be adequate to fully implement the current state water policy of promoting “the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems.” The significant limitations on groundwater withdrawals in central, southeast, southwest, and parts of northeast Florida have served to highlight potential shortcomings of the existing governance structures.

There is also a growing awareness that Florida may not have a water shortage problem so much as it has a *storage and distribution* problem. The water is often not where it needs to be when it needs to be there. There may be a seasonal abundance of water in one part of the State at the same time there are seasonal shortages in other parts. Therefore, the issue of the storage and distribution of water over broader geographic areas of the State must be considered.

It is possible that additional steps – beyond those provided in our current water supply governance structures - will need to be taken to ensure that there will be adequate planning to meet Florida’s future water supply needs and to ensure that the plans are implemented, including the construction and operation of the infrastructure to provide water storage and the distribution of water supplies perhaps across not only county boundaries but also water management district boundaries. If the current governance structures are not adequate to implement the State water policy, then the creation of some type of state-level entity may be needed.

The source and level of funding for such a state-level water supply entity will necessarily be determined by the nature of the responsibilities assigned to the entity.

Background

With regard to water supply, Florida for many years has had the clearly stated policy “to promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems.”¹ This policy is reiterated and expanded in other sections of statute to add: “and that the adverse effects of competition for water supplies be avoided.”² In other words, it is the policy of the State to ensure that instead of viewing water as a limited resource to be divided up between competing users of the resource, the State will seek to ensure that new supplies of water will be developed so that *all users in all parts of the State* will have adequate supplies of water to meet *all their needs* now and into the future, including sufficient water to meet *the needs of natural systems*. This water policy should allay any fears that the development of future water supplies will either harm environmental resources, diminish water supplies needed in one part of the State to meet water supply needs in other parts of the State, or prefer one water user group over another. This articulated policy must form the basis for any discussion with regard to water supply.

¹ Paragraph 373.016(3)(d), F.S.

² Paragraphs 373.0831(2)(a), F.S., and 373.196(2)(a), F.S.

The term “water supply” encompasses water for public supply (i.e. domestic uses such as drinking water, residential lawn irrigation, cooking, cleaning, etc), agricultural irrigation, industrial uses (including electric power generation and mining), and commercial uses. According to the Annual Status Report on Regional Water Supply Planning published by the Florida Department of Environmental Protection (FDEP) in March 2007, water used for public supply (37%) and agricultural irrigation (43%) make up 80% of the water use in Florida. The bulk of the remaining use is attributable to industrial and commercial uses. The largest projected increases in the next 20 years are expected to be in water used for public supply. The Report stated that between 2007 and 2025, the amount of water to be used for public supply is expected to grow by nearly 50%.

Consistent with the stated policy to ensure that sufficient water is also available for *natural systems*, the statutes provide for a mechanism to establish *minimum flows* of rivers and streams and *minimum levels* of lakes and aquifers to prevent surface water and groundwater withdrawals from causing any significant harm to environmental resources.³ If additional levels of protection are needed for environmental resources, there is also a statutory mechanism for either the WMDs or the FDEP to “reserve” water from use by water use permit applicants “in such locations and quantities, and for such seasons as in its judgment may be required for the protection of fish and wildlife. . . .”⁴

The governance structures created to implement the state’s water policy have evolved over time. Though the Legislature has given the FDEP general responsibility to implement the state’s water policy, it was envisioned that the vast majority of that responsibility would be delegated to the WMDs.⁵ Nevertheless the Department is still charged with exercising “general supervisory authority over the WMDs” and has been given the authority to “exercise any power herein authorized to be exercised by a water management district.”⁶

Prior to the enactment of the Florida Water Resources Act of 1972 (Act), there existed the Central and South Florida Flood Control District and the Southwest Florida WMD. Both of these districts had been created to serve as local sponsors for major federally funded flood control projects in the respective geographic areas. With the passage of the Act, five WMDs were created throughout the State. In addition to their flood control responsibilities, the districts were given statutory authority to regulate *well construction*, the *consumptive use of water*, and the *management and storage of surface waters*. Over the following years, much of the focus of the districts changed from their flood control responsibilities to their regulatory responsibilities. In 1997, the districts were given additional responsibilities for *water supply planning* - on a district-wide and regional basis. Finally, in 2005, the districts were given a significant role in providing *funding assistance* for the development of alternative water supply projects.

³ Sections 373.042 and 373.0421, F.S.

⁴ Subsection 373.223(4), F.S.

⁵ Subsections 373.016(5) and 373.026,(7), F.S.

⁶ Subsection 373.026(7), F.S.

Under the current statutory governance structure, the FDEP is charged with developing the “Florida Water Plan.”⁷ The Florida Water Plan is to include the “programs and activities of the department related to *water supply*, water quality, flood protection and floodplain management, and natural systems.” The last version of the Florida Water Plan was issued in December 2001 and was updated annually through 2003. It has not been updated since then.

The Florida Water Plan is also to include the “district water management plans.” The governing board of each WMD is to develop a district water management plan that is to address “*water supply*, water quality, flood protection and floodplain management, and natural systems.”⁸ Each WMD is to identify one or more water supply planning regions within the district. Each district is required to conduct water supply planning for any region in the district “where it determines that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems.”⁹ Each regional water supply plan is to include a “water supply development” component that quantifies the water supply needs of the region within a 20 year planning horizon and that provides a list of water supply development project options that will meet those needs. The regional water supply plan is also required to list those “water resource development” projects that support water supply development.¹⁰ The DEP is to provide an annual report to the Governor and the Legislature on the status of all regional water supply planning efforts in each district. The FDEP has provided these annual reports since 2002.

As previously stated, Florida is now at a critical point with regard to water supply. While there are currently adequate supplies of potable groundwater in northwest Florida, traditional supplies of groundwater will not be available to meet all of the future water supply needs of significant areas of peninsular Florida.

The evidence of the limitations on the use of groundwater for water supply arose during the mid-1990s when the Southwest Florida WMD informed the local governments of the Tampa Bay area that it had over-allocated groundwater withdrawals for public water supply. In 2006, the three WMDs charged with regulating water use permitting in central Florida (the St. Johns River WMD, the Southwest Florida WMD, and the South Florida WMD) identified an area known as the Central Florida Coordination Area (CFCA), and concluded that the area’s future water supply demands beyond 2013 could not be met using groundwater alone. In 2007, the South Florida WMD imposed significant restrictions on further groundwater withdrawals in southeast Florida through the Regional Water Availability Rule.¹¹ Local governments in the Volusia, St. Johns and Flagler County region are being encouraged to investigate various desalination technologies to decrease their reliance on groundwater withdrawals.

⁷ Subsection 373.036(1), F.S.

⁸ Subsection 373.036(2), F.S.

⁹ Subsection 373.0361(1), F.S.

¹⁰ Subsection 373.0361(2), F.S.

¹¹ The Regional Water Availability Rule limits utilities that draw water from the regional Everglades system to their actual pumpage in April 2006.

It is now clear that much of Florida's future water supply needs will be met only by decreasing demand through conservation, increasing the reuse of reclaimed water, and by increasing water supplies through the development of *alternative* water sources, such as surface water and desalination.

This general background raises questions with regard to both *regional* governance and funding and the broader questions of *state-level* governance and funding. Because the largest projected increases in water use are for public supply, and this user group is the one best positioned to develop alternative water supplies, the following discussion of governance structures is focused primarily on those structures needed to provide water for public supply.

Regional Governance and Funding

Governance

Under Chapter 373, Florida Statutes (F.S.), counties, municipalities and special districts are encouraged to create "regional water supply authorities" and other types of "multi-jurisdictional water supply entities" in order to develop alternative water supply projects.¹² Section 373.1962, F.S., provides for the creation of "regional water supply authorities" by interlocal agreement between counties, municipalities, or special districts "for the purpose of developing, recovering, storing, and supplying water for county or municipal purposes in such a manner as will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas." Regional water supply authorities are provided specific statutory powers and duties.¹³ An inter-local agreement creating a regional water supply authority must be approved by the Secretary of the FDEP.

A "multijurisdictional water supply entity" is defined by statute as "two or more water utilities or local governments that have organized into a larger entity, or entered into an interlocal agreement or contract, for the purpose of more efficiently pursuing water supply development or alternative water supply development projects listed pursuant to a regional water supply plan."¹⁴

Cooperation between counties and municipalities is seen as necessary for the "development of county-wide and multi-county alternative water supply projects that allow for necessary economies of scale and efficiencies to be achieved in order to accelerate the development of new, dependable, sustainable alternative water supplies."¹⁵ Due to the high costs of developing alternative water supplies, there is increasing need for local governments and others (cities, counties, special districts, etc.) to work together on a regional basis to develop these supplies.

¹² Paragraph 373.196(1)(c), F.S.

¹³ Subsection 373.1962(2), F.S.

¹⁴ Subsection 373.016(12), F.S.

¹⁵ Paragraph 373.196(1)(c), F.S.

There are numerous impediments to the timely implementation of any alternative water supply project, including project feasibility, high construction and operating costs, permitting, and local politics. However, the first step is the identification of the entities willing to step forward to fund, build, and operate the project. Key to this step is the creation of some type of “regional water supply entity,” that among other things, will allocate the costs of the project among the local project participants, determine the responsibilities for the construction and operation of the project, determine the allocation of quantities of water from the project to each participant, and establish the rates to be charged to those receiving the water. Naturally, questions arise as to the precise nature of the governance structure of the regional water supply entity. Is there one model that is preferable, or are there many different types of arrangements that can work?

Funding

Chapter 373, F.S., currently provides for funding assistance to those entities that seek to develop water supply projects and alternative water supply projects. Specifically, the law requires that certain water supply development projects be entitled to priority state or district funding assistance if the project supports establishment of a dependable, sustainable supply of water which is not otherwise financially feasible, or if it provides substantial environmental benefits by preventing or limiting adverse water resource impacts, or if the project significantly implements reuse, storage, recharge, or conservation of water.¹⁶

In 2005, the Legislature, recognizing the need for the development of additional alternative water supplies, created the Water Protection and Sustainability Program and Trust Fund under Senate Bill 444. The Trust Fund is to be funded with revenues from documentary stamps and is to provide money “for the purpose of providing funding assistance for the development of alternative water supplies under the Water Protection and Sustainability Program.”¹⁷ These funds are to be used to supplement other funding sources in the development of alternative water supplies. The statute sets forth a process through which WMDs determine those projects which are to be selected for financial assistance, and establishes certain factors that the districts must use to select projects for funding assistance. Each district is to report annually to the Legislature and the Governor describing all alternative water supply projects funded and the quantity of water created as a result of those projects.

A total of \$160 million was available statewide for the development of alternative water supplies in FY 2005 – 2006 and 2006-2007 through the Water Protection and Sustainability Program.¹⁸ While this amount of money is not insignificant, it compares to an estimated \$2.5 billion as the amount of money needed to develop the alternative water supply projects identified during that period. In FY 2007-2008, the funding for alternative water supply projects was \$60 million and for FY 2008-2009 it was only \$7.7 million.

¹⁶ Subsection 373.0831(4), F.S.

¹⁷ Subsection 373.1961(3), F.S.

¹⁸ Annual Status Report on Regional Water Supply Planning, March 2007, FDEP

It is apparent that the vast majority of costs for the construction and operation of future alternative water supply projects will be borne by the end user of the water - the rate payer. While the rate-payers who receive the water from the project will bear the greatest share of the costs for the construction of a project, all avenues of potential funding assistance must be explored.

State-level Governance and Funding

Governance

As explained above, Florida has a statutory process in place to address water supply planning at a district and regional level. However, in spite of this process, large areas of central and southeast Florida and some areas of northeast Florida are on notice that they will not be able to rely on groundwater withdrawals to meet all their future water supply needs. These limitations on groundwater withdrawals are in addition to limitations already in place in portions of southwest Florida.

In addition to the shortcomings relating to water supply planning, there is a growing awareness that Florida's perceived water shortage problem is exacerbated by a lack of water storage and distribution infrastructure. There is often a seasonal abundance of water in some parts of the State at the same time there are seasonal shortages in other parts. Therefore, the issue of water storage and the distribution of water over broader geographic areas of the State must be considered. This may require a governance structure at the state-level to ensure the construction and operation of the infrastructure needed for such a system.

Under current law, the WMDs have the responsibility to implement legislative water supply *policy*. They also have the responsibility to conduct water supply *planning* at the district and regional level. In addition, they have the responsibility to provide *funding* assistance for the development of alternative water supply projects. All these responsibilities are carried out while at the same time the districts are charged with the responsibility to *regulate* the withdrawals of water from surface and groundwater sources.

In addition to all the above responsibilities, the WMDs have the authority to *construct and operate water production facilities*. Specifically, WMDs have the "power and duty" to "construct, operate and maintain water production and transmission facilities for the purpose of supplying water to counties, municipalities....multijurisdictional water supply entities, or regional water supply authorities."¹⁹ However, for a variety of reasons, no water management district has chosen to exercise this statutory authority. It appears that it may now be time to consider the exercise of this authority – and, if necessary, by a state-level entity.

The current governance structure causes local governments to produce potable water supplies from localized wellfields to be distributed through localized distribution systems. This governance structure was sufficient as long as there were adequate supplies of groundwater for all.

¹⁹ Section 373.1961(1)(c), F.S.

The current governance structure has also resulted in local and regional parochialism as some areas of the State try to “protect their water resources” from other areas of the state. This parochialism arises out of a fear that one area will lose its water resources to another area. This type of fear led to the enactment of the so-called “Local Sources First” provision of law in 1998.²⁰ This provision of law requires that before a local government can go outside its county boundaries to secure a water supply, it must first exhaust all alternative water supplies within its own county. The fears result from the uncertainty that the citizens of an area may have as to the availability of adequate water supplies to meet their own needs. While the stated water policy - “to promote the availability of sufficient water for *all* existing and future reasonable-beneficial uses and natural systems” - should allay these fears by providing certainty as to the availability of adequate water supplies, the absence of a state-level water supply entity to ensure adequate water supplies for all has allowed these fears to continue.

The recent developments with regard to limitations on future groundwater withdrawals, especially in the Central Florida Coordinating Area (CFCA), have served to raise the issue as to whether the current governance structure will be adequate to address Florida’s future water supply needs. The CFCA involves the overlapping jurisdictions of *three* WMDs to address the potable water needs of all or portions of *six* counties, numerous municipalities and over 80 water utilities. Proposed solutions to prevent the impending water supply shortage include surface water withdrawals from the St. Johns, Ocklawaha, and Kissimmee Rivers. Such surface water withdrawals have the potential to impact downstream counties and cities outside the CFCA. There is a question as to whether the WMDs working from their own district’s plans and regional water supply plans will be able to ensure the identification and implementation of workable solutions to the CFCA dilemma.

While the current governance structures have served the State well to date, it is unclear that those same structures will be sufficient in the future to assure continuing implementation of the State water policy. As a result of the recent developments in central and southeast Florida, in many different forums people are asking whether it is time to consider the creation of a state-level water supply entity. Such an entity could have responsibilities to ensure water supply planning that would transcend water management district boundaries, and to ensure the construction and operation of the infrastructure needed for the storage and distribution of water over broad geographic areas so as to provide water to and between regional water supply entities.

It is worth noting that “A Model Water Code” (by Dean Frank Maloney and others at the University of Florida), which provided much of the basis for the Florida Water Resources Act of 1972, envisioned a “top-down” approach to water supply beginning with a “State Water Resources Board.” Under the Code, a “State Water Resources Board” (to have been appointed by the Governor) was to have been given the responsibility for the development of the “State Water Use Plan” by proceeding “as rapidly as possible to study the existing water resources in the state; means and methods of conserving and augmenting such waters; existing and contemplated needs and uses of water for” a variety of uses including protection of wildlife, irrigation, mining, power, and domestic and municipal uses. The study was also to examine related issues including “drainage, reclamation, flood-plain or flood-hazard area zoning and selection of reservoir sites.” Though the Water Resources Act

²⁰ Subsection 373.223(3), F.S.

incorporated much of the Model Water Code, the State Water Resources Board was one of the few features of the Model Water Code that the Legislature did not incorporate into the Act. Nevertheless, the responsibilities that were to have been given to the Board were divided between what is now the FDEP and the five WMDs.

Because of the highly controversial nature of the idea of a state-level water supply entity, it should only be considered as a last resort if the current governance structures cannot resolve the present water supply dilemmas in the central and southeast parts of the State.

An important part of any discussion with regard to governance structures is a clear understanding of the current statutory law with regard to water supply, especially as it relates to policy, planning, production and funding. While Chapter 373, F.S., contains those sections of statutory law that address these important issues, they have been added over many years and are scattered throughout the chapter. This disjointed presentation of these important sections of law has made it difficult for interested parties to fully understand the legislature's intent and purposes with regard to water supply policy, planning, production and funding. In light of the current circumstances, it may be an appropriate time to consider the consolidation of these sections of law into a separate and distinct "Part" in Chapter 373, F.S. Such a reorganization of the water supply components of Chapter 373, F.S. could be very useful in facilitating any discussion of governance structures, including a discussion of whether a state-level entity is even needed.

Funding

If there is a clearly defined need for a state-level water supply entity, then such an entity charged with responsibilities for ensuring water supply planning and for ensuring the construction and operation of water storage and distribution infrastructure would require a recurring funding source.

Issue Criticality for Water Supply

Florida's economic future is inextricably tied to the availability of "sufficient water for *all* existing and *future* reasonable-beneficial uses and natural systems, so "that the adverse effects of competition for water supplies" will be avoided. While each of the topic areas is important, the timely creation of regional water supply entities, especially in the central and southeast parts of the state, will be essential for the construction of the necessary alternative water supply projects to meet not only the current regulatory restrictions for these areas, but to meet the State water policy of ensuring sufficient water supplies for all existing and future reasonable-beneficial uses and natural systems, including not only water for public supply, but also for agricultural irrigation, industrial uses, and commercial uses. The consequences of failing to create the appropriate regional water supply entities in a timely manner will be that the needed alternative water supply projects will not be constructed in time to meet the regulatory constraints. This will inevitably result in either large-scale building moratoria or the removal of the regulatory constraints. It could also result in competition for water supplies between the various water user groups (i.e. public supply, agriculture, industrial, and commercial).

Hand-in-hand with the creation of the regional water supply entities will be identifying the funding sources for the construction of the alternative water supply projects. Until these projects

are built and operating, the pressure on limited groundwater supplies in the identified areas will continue.

If the WMDs are not able to resolve the water supply issues in central and southeast Florida in the very near future, the State may be forced to step in to provide a solution. Unless the current limitations on groundwater withdrawals are removed (which is considered neither likely nor advisable), alternative supplies of water will have to be developed to meet the water supply needs of these areas.

Only in the event that the current governance structures cannot solve the water supply problems in central and southeast Florida would the creation of a state-level water supply entity be critical to meeting Florida's future water supply needs over the long-term. This is because of the need to ensure: (1) effective water supply planning, (2) implementation of district and regional water supply plans, (3) the creation of regional water supply entities, and (4) the construction and operation of the infrastructure for the effective storage and distribution of water to and between regional water supply entities.

Funding will be important to provide seed money for the creation of regional water supply entities, the initial selection and design of alternative water supply projects, and to help offset the large capital costs associated with the construction of those projects. However, while the issue of funding is important at both the regional and state-level, having clean, safe drinking water is fundamentally an issue of public health, safety and welfare. Not having adequate supplies of water is not an option, and we will ultimately pay whatever it costs to have them.

Florida 2030 Vision

Looking forward to 2030, it is likely that there will be several regional water supply entities across southwest, central, southeast, and perhaps even northeast Florida that will have collaborated to construct and operate numerous regional alternative water supply projects to produce, store and distribute water. It is also likely that some of these entities will have, or will be planning, interconnections between them so as to provide for a "water grid" to help ensure the effective distribution of water.

Only if a clearly defined need has been identified would a state-level entity exist with the responsibility to ensure that sufficient water is available for "all existing and future reasonable-beneficial uses and for natural systems" by ensuring the necessary planning and construction of regional alternative water supply projects, and by ensuring the construction and operation of the necessary storage and distribution infrastructure to provide water to and between regional water supply entities. This entity could also be responsible for ensuring adequate supplies of water for all user groups, including agriculture, industry and natural systems.

Options and Path Forward to Achieve FL 2030 Vision

In order to ensure the availability of sufficient water for *all* existing and *future* reasonable-beneficial uses and natural systems, in the face of increasing limitations on groundwater withdrawals, steps must be taken to ensure the construction and operation of water supply projects that will produce water from alternative sources. The construction and operation of such projects will be dependent upon the cooperative efforts of local governments (cities, counties,

special districts, etc.) to develop regional water supply entities. There is also a growing recognition that the State's current governance structure – concentrated largely at the WMDs – may not be adequate to meet the state water supply policy. Below are options for addressing both the regional governance issue and the state-level governance issue.

Regional Governance and Funding

Local governments in Florida have several governance alternatives from which to choose in order to create a regional water supply entity, and there is no one option that fits all situations. However, before choosing any one governance structure option, local governments must make such fundamental decisions as who is allowed to join, who is the decision-making body, and how is voting to be determined. They must also determine the functions that they wish to have the regional water supply entity perform. The following is a list of possible functions for a regional water supply entity:

1. Identify, locate and design new water production facilities.
2. Finance the construction of water production facilities.
3. Construct water production facilities.
4. Own water production facilities.
5. Operate water production facilities.
6. Allocate water from the water production facilities to wholesale customers.
7. Establish the rates for the water allocated from the water production facilities to wholesale customers.
8. Plan to meet all future demands for water supply within the regional governance entity's service area.

The regional governance options that have been identified include:

1. Regional Water Supply Authority. Regional water supply authorities can be created pursuant to Sections 373.1962 and 163.01(7)(g), F.S. Regional water supply authorities can also be created by special act of the legislature. Currently there are three regional water supply authorities in peninsular Florida: Tampa Bay Water, the Peace River-Manasota Regional Water Supply Authority, and the Withlacoochee Regional Water Supply Authority. Each has its own unique governance structure. Several key issues must be addressed by the participants in the process of creating an authority. One such issue is whether to have votes on the governing body of the authority based upon a weighted formula or provide one vote for each participant. In addition, participants must determine the scope of the authority. Will it supply water on a limited basis or will it provide all the needs of the participants. In turn, this will determine whether water production facilities will be financed through a subscription model or an exclusivity model. Exclusivity models, such as Tampa Bay Water, involve provision by the authority of most, if not all, of the water needs for the participants. A subscription model involves the sale of the capacity of individual projects to the participants. The exclusivity model is

a more creditworthy financing structure, albeit more difficult to achieve politically. For governments working with each other for the first time on regional water supply issues, subscription is typically the model of choice. There are also examples of hybrid authorities which include elements of both exclusivity and subscription, such as Peace River. Another critical issue which must be resolved when establishing a regional water supply authority is determining how to provide capacity at the times and in the quantities required by the individual participants. This sometimes results in participants purchasing capacity prior to the time it is actually needed.

2. Multijurisdictional water supply entities. This is a statutorily defined term that means “two or more water utilities or local governments that have organized into a larger entity, or entered into an inter-local agreement or contract, for the purpose of more efficiently pursuing water supply development or alternative water supply development projects.”²¹ Such an entity could function like a regional water supply authority but would have the flexibility to define the relationship between the participants without the statutory constraints imposed on regional water supply authorities.
3. Lead Agency. Another governance model involves a local government with its own water production facilities expanding those facilities to provide water to other governments. In this case, the government would act as the lead agency for the other participants. There are several financial and political difficulties associated with this model. Among others is the ability of the lead agency to finance the project without adversely affecting its credit ratings or ratepayers. Another issue is the level of comfort required by participants in regard to the lead agency's capability to appropriately operate and manage the project. These issues can be addressed either in the water supply contracts between the participants and the lead agency or by creation of an oversight board.
4. Large Landowner. A large landowner whose property has developable water resources can also function as a lead agency in providing water to participating governments. This requires the approval and cooperation of the water management district where the water is located. There may be reluctance on the part of the water management district to devote grant moneys to a project owned and developed by a private entity. It is also more difficult to finance water projects which are owned by a private party with tax-exempt obligations. In addition, the Public Service Commission (PSC) may have jurisdiction over the landowner setting rates unless all the water is sold to governmental entities.
5. Public/Private Partnerships. Another governance model involves the establishment of a partnership between local governments and a private party that is willing to put equity into a financing for new water production facilities. In this structure, the equity partner would contribute to the capital costs of the facilities. In return, the equity partner would receive tax benefits associated with the water production facilities. In addition, the private party may also be involved with the construction and operation of the facilities and be paid accordingly. Oversight by local governments in this type of transaction can take several forms. The facilities could be leased to an authority, or an oversight board can be established by the participating governments. Various safeguards could also be

²¹ Subsection 373.019(12), F.S.

set forth in the water supply contracts between the public/private partnership and participating governments. Under various conditions, tax-exempt obligations could be used to finance the facilities.

6. WMD. Another option for financing, constructing and operating regional water supply facilities is for the WMDs to exercise their current statutory authority to do so. The WMDs would secure the financing of such facilities with water supply contracts with participating governments. The principal difficulty of this model is that the water regulatory authority would also be the water supplier. This could result in conflicts of with local governments, as well as other regulatory agencies.

In each of the above-described models, there are two critical issues relating to establishment of governance options and the financing of the water production facilities. The first issue is that it is very difficult for governments to find the necessary seed money to hire engineers, lawyers and other experts to fund the initial efforts needed to review options and make decisions with regard to the creation of the regional water supply entity. While funds are available through the Water Protection and Sustainability Program for the construction of alternative water supply projects, there is limited funding available to assist local governments in their efforts to create the regional water supply entity that will be necessary to construct and operate these projects. It is essential that a funding source be found to help defray these initial costs. The State and/or the WMDs should provide money for this purpose, either through the Water Protection and Sustainability Program or through ad valorem revenues available to the WMDs.

One possible additional source of funding could come from the creation of basin boards in the St. Johns River WMD and the South Florida Water WMD, similar to those already in existence in the Southwest Florida WMD. Ad valorem tax revenues levied by the governing boards of these two WMDs for such basin boards could be used to provide funding assistance for the development of alternative water supply projects within the specific basin board's geographic area. It should also be noted that one of the powers given to regional water supply authorities is the power to levy ad valorem taxes.²²

The second issue is the ability to finance the water production facilities regardless of the governance model that is used. All the aforementioned models depend heavily upon water supply contracts between the sponsoring entity and the participating governments in order to secure financing for the projects. As a result, it is essential that the water supply contracts provide maximum security to prospective bondholders. In that vein, it is important that the WMDs issue water use permits which will not terminate prior to the final maturity of the obligations which provide the funding for the water production facilities. It is also important that the WMDs not provide any regulatory hurdles that could adversely affect the bondholders.

State-level Governance and Funding

While it is premature to propose the creation of a state-level water supply entity, a thorough discussion of other important water supply issues (e.g. conservation, reuse of reclaimed

²² Paragraph 373.1962(2)(a), F.S., a regional water supply authority may “upon approval of the electors residing in each county or municipality within the territory to be included in any authority, levy ad valorem taxes, not to exceed 0.5 mill pursuant to s. 9(b), Art. VII of the State Constitution.”

water, development of alternative water supplies, water transfers) will likely shape the debate as to the need for such an entity. If that debate leads to a conclusion that such an entity is needed, the following discussion may prove helpful.

As noted above, the current governance structure for implementing the state's water supply policy is concentrated primarily in the WMDs, which includes the responsibilities for water supply planning, funding, and regulation, and the authority to construct water supply production facilities. The concentration of these responsibilities at the WMDs creates a potential internal conflict within the WMDs as they try to balance what can be competing responsibilities while they attempt to ensure the availability of sufficient water "for all existing and future reasonable-beneficial uses and natural systems." One possible solution is to give some of the current responsibilities now carried out by the districts to a state-level entity.

Before offering options as to the nature of any state-level entity, it is essential to identify the potential functions that such an entity might have. The following is an initial list of what some of those functions could be:

1. Be the entity ultimately responsible for implementing the State water policy to ensure the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems and avoid the adverse effects of competition for water supplies.
2. Prepare a state water use plan.
3. Ensure effective regional water supply planning.
4. Ensure the implementation of regional water supply plans.
5. Ensure intergovernmental cooperation through the use of inter-local agreements for the creation of the regional water supply entities that will be needed to construct and operate future water supply projects.
6. Provide funding to local governments to assist with the creation of regional water supply entities.
7. Provide funding to regional water supply entities to assist with the capital costs of the construction of alternative water supply projects.
8. If necessary, construct and operate the necessary infrastructure to ensure adequate storage and distribution of water to and between regional water supply entities.
9. Set state-wide standards for water conservation and reuse.
10. Plan for potential impacts of climate change on water supply.
11. Represent the State in inter-state water disputes.

Only after the essential functions have been identified would the appropriate state-level entity be chosen. It is possible that the solution to the State's water supply problems could be as simple as having the FDEP exercise its existing statutory authority to exercise its supervisory

responsibilities over the WMDs. Since by statute it has the authority to exercise any power that a water management district can exercise, the FDEP is positioned to play a key role in the resolution of the state's water supply problems.

Nevertheless, if there is a clearly established need to create a state-level water supply entity to carry out any of the listed functions, the following is a list of possible options as to the nature of that entity:

1. Utilize an existing State agency to carry out the functions. These options include:
 - a. Expanding the current functions at the FDEP Office of Water Policy to include these functions. If the functions include responsibilities for the construction and operation of water production infrastructure, then the Florida Turnpike Enterprise could serve as a model.
 - b. Creating a new office within the Department of Community Affairs.
 - c. Creating a new office within the Governor's office.
2. Create a new state-level entity to carry out the functions. These options include:
 - a. An appointed board/commission - Such an entity could be an appointed board/commission along the lines of the PSC. The appointments could be made jointly by the Governor and Cabinet. The appointees should have broad geographic representation (to ensure that all areas of the state are represented) and should have diverse but appropriate backgrounds and areas of expertise (e.g. local government utilities, environmental community, agricultural community, engineering, regional water supply authority, etc.)
 - b. An elected board/commission - Such an entity could be the Governor and Cabinet sitting as the state water board. Models for this exist in the form of the Trustees of the Internal Improvement Trust Fund, the Administration Commission, and the former Cross Florida Barge Canal Authority
 - c. Appointment of a state water "czar" with the responsibility to carry out the functions listed above concentrated in a single individual.

Regardless of the exact nature of the state-level entity, it would need to be staffed by competent professionals knowledgeable in water supply policy, planning, funding, and production. Outsourcing of many of these responsibilities to qualified private contractors should be seriously considered.

The funding needs of any state-level entity will depend on the functions assigned to the entity. Some of the potential funding sources include:

1. Allocate a portion of the documentary stamp tax.
2. Remove the sales tax exemption on bottled water.
3. Allocate a portion of the Constitutional 1.0 mills for water management purposes.
4. Authorize a new ad valorem tax.

5. Remove the sales tax exemption on utilities' water sales.
6. Authorize a gross receipt tax on water sales.

Advantages and Disadvantages

Advantages

Pursuing the options set forth above with regard to regional governance structures will likely be essential to ensure that sufficient water is available for all existing and future reasonable-beneficial uses and the natural systems, and that the adverse effects of competition for water supplies are avoided. The creation of a state-level water supply entity will be advantageous only if the current governance structures fail to resolve the current water supply dilemma.

Disadvantages

It is difficult to envision the disadvantages associated with the ideas presented herein on regional governance structures. However, with regard to a new state-level governance structure there is the possible disadvantage of only adding more bureaucracy to the current system without achieving significant gains. In addition, opposition to this concept is likely to arise from:

- Cultural resistance (i.e. "it's new and scary") - from some within the FDEP, the WMDs, and local governments.
- Politics (i.e. "it's our water and you can't have it") - from local governments who have not yet been faced with limitations on groundwater withdrawals.
- Environmental groups and the media who may perceive that these ideas will harm environmental resources.
- Groups who might see the current groundwater withdrawal limitations as a helpful mechanism to control future growth.

Issues for Consideration

1. Whether the FDEP should act more aggressively to use its existing statutory authority for resolve conflicts among the WMDs that have the potential to delay the construction of alternative water supply projects.
2. Whether the Department of Community Affairs should aggressively enforce existing statutory disincentives for local governments that fail to adequately plan for and develop adequate water supplies (e.g. strict limitations on local government comprehensive plan amendments).
3. Whether additional statutory incentives are needed to encourage the creation of regional water supply entities.

4. Whether funding should be provided to assist in the creation of regional water supply entities.
5. Whether additional funding should be provided to regional water supply entities to assist with the design and construction of alternative water supply projects.
6. Whether the WMDs should maximize the duration of water use permits for alternative water supply projects.
7. Whether the WMDs should minimize regulatory restrictions that impede the issuance of bonds to fund the development of alternative water supply projects.
8. Whether a new Part VII to Chapter 373, F.S., should be created to consolidate existing statutory provisions on water supply policy, planning, production and funding.
9. Whether there is a need to consider the creation of some form of a state-level water supply entity.