

**EPC
SPECIAL
4/11/00**

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SPECIAL MEETING AGENDA

April 11, 2000

11:30 a.m.

Commissioner's Board Room

To be held during the regularly scheduled
Board of County Commissioner's Land Use Meeting

AGENDA

Consider settlement of the pending arbitration initiated December 15, 1999, pursuant to the *Amended and Restated Interlocal Agreement Reorganizing the West Coast Regional Water Supply Authority*, regarding the Alafia River Intake Structure and Pump Station Environmental Resource Permit Application approved for submittal to the Southwest Florida Water Management District by the Tampa Bay Water Board of Directors on November 15, 1999.

RECEIVED

APR 07 2000

**PLANNING & GROWTH
MANAGEMENT DEPARTMENT**

Any person who might wish to appeal any decision made by the Environmental Protection Commission regarding any matter considered at the forthcoming public hearing or meeting is hereby advised that they will need a record of the proceedings, and for such purpose they may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based.

AGENDA ITEM COVER SHEET

To: EPC COMMISSIONERS
From: Patrick Courtney, EPC Special Counsel
Date: April 6, 2000
Re: Alafia River Intake Structure and Pump Station ERP Arbitration
Settlement Agreement

History:

On December 15, 1999, the Environmental Protection Commission of Hillsborough County voted to initiate an arbitration pursuant to the *Amended and Restated Interlocal Agreement Reorganizing the West Coast Regional Water Supply Authority*, with respect to the Alafia River Intake Structure and Pump Station Environmental Resource Permit Application. Since that time, EPC and Hillsborough County staff and consultants have been working with Tampa Bay Water staff, consultants, and legal counsel in an attempt to resolve the issues which led to the initiation of arbitration.

EPC legal counsel has met with and conferred with interested citizens as well as the Alafia River Basin Stewardship Council (Arabesque) in an effort to determine the key issues which should be addressed in a potential settlement agreement. Based upon those meetings, negotiations have taken place which have resulted in the attached Settlement Agreement.

Of primary importance was addressing concerns over navigation, public health, safety, and welfare, and verifying predicted impacts to the Alafia River as a result of the permitted withdrawals.

Commission Action Recommended:

Approve settlement of the currently pending arbitration regarding the Alafia River Intake Structure and Pump Station Environmental Resource Permit Application.

Commission Action Taken:

**ARBITRATION SETTLEMENT AGREEMENT
ALAFIA RIVER PUMP STATION AND INTAKE STRUCTURE
ENVIRONMENTAL RESOURCE PERMIT APPLICATION**

THIS AGREEMENT is made and entered into this _____ day of April, 2000, by and among **TAMPA BAY WATER**, A Regional Water Supply Authority (formerly known as the West Coast Regional Water Supply Authority) ("Tampa Bay Water"), an interlocal governmental agency created and existing pursuant to Sections 373.1962 and 163.01, Florida Statutes, acting by and through its Board of Directors, the governing board thereof, **HILLSBOROUGH COUNTY**, a political subdivision of the State of Florida ("Hillsborough County"), acting by and through its Board of County Commissioners, and the **ENVIRONMENTAL PROTECTION COMMISSION OF HILLSBOROUGH COUNTY**, a governmental entity created by Special Act of the Florida Legislature ("EPC") collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS an arbitration proceeding is pending before a duly convened Arbitration Panel, Arbitration Case No.: TBW-A-2000-1, involving, Tampa Bay Water's application for an Environmental Resource Permit ("ERP") for the Alafia River Pump Station and Intake Facility (the "Project"); and

WHEREAS, Tampa Bay Water, the EPC and Hillsborough County desire to avoid the expense and uncertainty of arbitration and to resolve any and all controversies and disputes among them with respect to the Project in a manner consistent with the Amended and Restated Interlocal Agreement executed on June 10, 1998, and have therefore agreed to settle this controversy and dismiss the pending arbitration proceeding involving the Project.

NOW, THEREFORE, in consideration of the premises set forth above and the covenants and agreements set forth below, which each of the Parties acknowledges and agrees is good and valuable consideration, and receipt of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

SECTION 1. PROJECT DESIGN MODIFICATIONS - Tampa Bay Water agrees to modify the design of the Alafia River Intake Structure and Pump Station, hereinafter referred to as "the Project", in accordance with the plans and drawings attached hereto and incorporated herein as Exhibit "A." EPC and Hillsborough County have reviewed Exhibit "A" and, after review, agree that the Intake Structure should be modified in accordance therewith.

SECTION 2. FLORIDA FISH AND WILDLIFE CONSERVATION

COMMISSION REVIEW – Tampa Bay Water agrees to request review of and comment on the modified Intake Structure set forth in Exhibit "A" from the Florida Fish and Wildlife Conservation Commission ("FWCC") and to present any report, comments or recommendations made by FWCC to the Board of Directors of Tampa Bay Water as an action item on the month's agenda following receipt of said report comments or recommendations. Tampa Bay Water staff shall recommend that Tampa Bay Water make every reasonable effort to implement any recommendations of FWCC with respect to the Project.

SECTION 3. EXPEDITED REVIEW OF EPC PERMITS: EPC agrees to expedite its review and issuance of any permits necessary under the applicable rules of the EPC for the Project.

SECTION 4 OTHER PERMITS: EPC and Hillsborough County each agree that with regard to Tampa Bay Water's applications for permits for the Project from the Tampa Port Authority and the Army Corps of Engineers, EPC and Hillsborough County (a) will not oppose the positions set forth in this Settlement Agreement; (b) will not oppose or hinder applications that are consistent with this Settlement Agreement; (c) will not take any action that is inconsistent with this Settlement Agreement; and (d) will not take any action that would result in the delay in issuance of the ERP, the Army Corps of Engineers permit(s), or the Tampa Port Authority permit(s).

SECTION 5. CITIZEN PARTICIPATION: Tampa Bay Water, EPC and Hillsborough County agree to each appoint up to two citizens to serve on a committee, and to work cooperatively with that committee of citizens to design a fascia for the stricture and contouring of the river bank that will complement the natural setting while not impairing the function or utility of the Intake Structure and to plan for the re-vegetation of any impacted areas resulting from the construction of the Project. The committee's recommendation or suggestions should be provided to Tampa Bay Water no later than May 19, 2000.

SECTION 6. NOISE ABATEMENT: Tampa Bay Water agrees to incorporate noise abatement principles into the design, construction and operation of the Pump Station in order to reduce noise emissions from the facility. Tampa Bay Water agrees to meet the strictest standards currently in effect in the Hillsborough County Land Development Code, Section 6.09.03 for noise associated with "manufacturing facilities." In addition, Tampa Bay Water will consider additional noise abatement measures beyond regulatory requirements if such additional measures are determined by Tampa Bay Water to be technically and financially feasible.

← EPC noise rules

SECTION 7. LIGHTING - Tampa Bay Water agrees to comply with those lighting standards currently in effect in the Hillsborough County Land Development Code with respect to lighting of the Project. Tampa Bay Water agrees to incorporate directional lighting, and any navigational lighting, as may be required by the FWCC or the Tampa Port Authority.

SECTION 8. BELL SHOALS BRIDGE RIVER STAGE GAUGE - Tampa Bay Water agrees to continue its funding of the operations and maintenance of the existing USGS river stage gauging device at the Bell Shoals Bridge (USGS # 02301638). Should the USGS discontinue its operation and maintenance of said gauging device, then Tampa Bay Water agrees to assume and continue the operation and maintenance of said gauging device. Tampa Bay Water agrees to analyze stage data from said gauging device during the first twelve (12) months of withdrawals and prepare a report to be completed by a qualified professional in order to determine if actual stage impact is consistent with stage impact calculations offered in support of WUP #2011794.00.

SECTION 9. POSTING OF MONTHLY COMPLIANCE REPORTS - Tampa Bay Water agrees to post on its web site, within 48 hours of submission to the Southwest Florida Water Management District, its monthly compliance reports required under WUP # 2011784.00

SECTION 10. ADDITIONAL MONITORING - Prior to withdrawals, Tampa Bay Water agrees to install and monitor, or to contract for the installation and monitoring of devices to detect upstream changes in pH and turbidity and install an automatic shut-off or alarm for the Pump Station in the event a water quality problem is indicated or detected by such devices.

SECTION 11. SUPPORT OF PORT AUTHORITY PERMITS AND ERP - EPC and Hillsborough County agree to make their respective staff and consultants available, at Tampa Bay Water's expense, to testify as witnesses as to the positions of EPC and Hillsborough County consistent with this Settlement Agreement and with respect to Tampa Bay Water's applications for: (a) any Tampa Port Authority permit(s) required for the Project; and (b) the ERP for the Project.

SECTION 12. DISMISSAL OF PENDING ARBITRATION PROCEEDING- Upon approval for filing by Tampa Bay Water of amendments or modifications to the ERP application that are consistent with and comply with the terms of this Agreement, EPC and Hillsborough County agree to voluntarily dismiss with prejudice their respective requests for arbitration regarding the Project, with all Parties bearing their own attorney's fees and costs. Each party shall pay the agreed upon fee for its designated arbitrator. Tampa Bay Water shall pay one-half and EPC/Hillsborough County shall pay one-half of the agreed upon fees and costs for the Chairman of the Arbitration Panel.

SECTION 13. NO FURTHER DEMAND FOR ARBITRATION - EPC and Hillsborough County agree not to request arbitration of any modifications or amendments to either Tampa Bay Water's ERP application for the Project or Tampa Bay Water's Army Corps of Engineers Section 404 permit application for the Project that are necessary to implement or accomplish the terms of this settlement, including, any redesign of the Project as shown in Exhibit "A" or any reconfiguring the site as shown in the attached Exhibit "B." EPC and Hillsborough County hereby accept and consent to such modifications and amendments, recognizing and acknowledging that they are necessary to effectuate this Settlement Agreement.

SECTION 14. SCOPE OF SETTLEMENT AGREEMENT - The Parties acknowledge and agree that this Settlement Agreement represents, applies to and shall govern their respective actions and positions regarding the Alafia River Intake Structure and Pump Station permit applications identified or referred to herein and resolves all issues and disputes regarding said permits, but does not represent, address or affect their respective positions regarding water withdrawal quantities for the Alafia River Project.

SECTION 15. AUTHORITY - The Parties hereto each represent that their signing representatives have the authority to enter into and execute this Settlement Agreement as a binding and enforceable legal contract.

SECTION 16. DEFAULT AND REMEDY - Enforcement of this Settlement Agreement shall be by specific performance, or such other legal or equitable remedies that may be available, in a court of competent jurisdiction, with the prevailing party in any such action being entitled to recover from the non-prevailing party or parties its attorneys fees and costs of litigation.

SECTION 17. EFFECTIVENESS - The Settlement Agreement shall take effect upon execution by all Parties hereto.

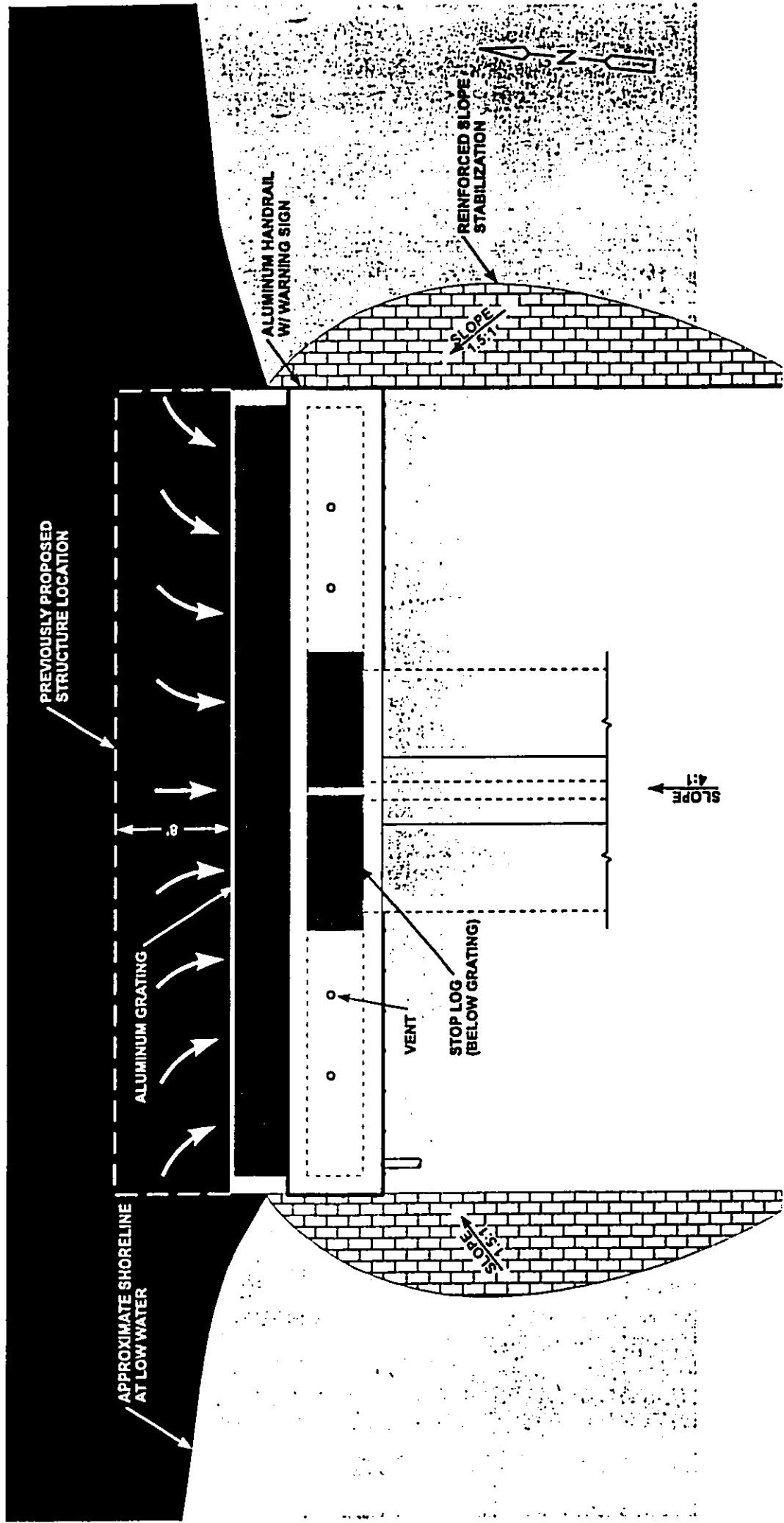
SECTION 18. COUNTERPART ORIGINALS - This Settlement Agreement may be executed in counterpart originals in order that each party might retain a fully executed original. Any all the fully executed counterpart originals shall be deemed for all purposes to be an original Settlement Agreement.

SECTION 19. GOVERNING LAW - This Settlement Agreement shall be construed, interpreted and enforced in all respects according to the laws of the State of Florida.

Alafia River Intake and Pump Station

Revised Intake Location - Plan

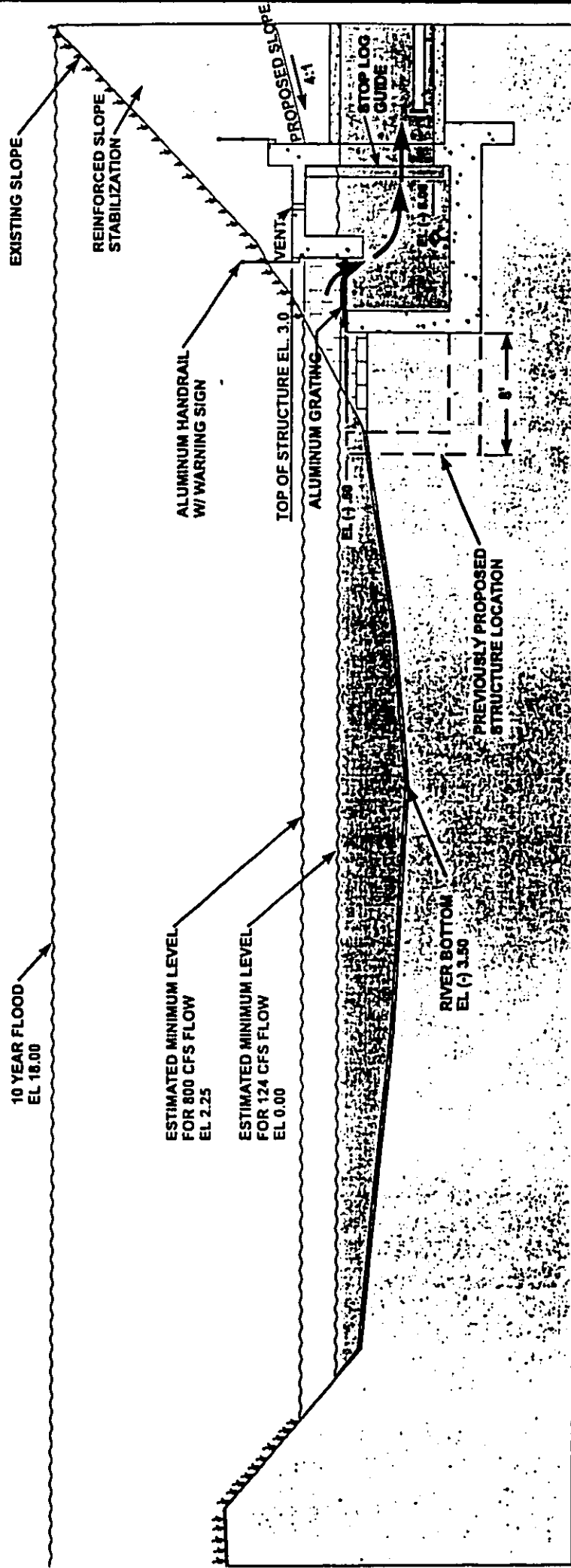
Figure No. 1



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**Alafia River Intake and Pump Station
 Revised Intake Location - Section**

Figure No. 2



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COMMISSIONERS' ITEMS

8. a. Letter Regarding Tampa Bay Water Master Plan (Commissioner Platt)

STAFF ITEMS

9. a. Brandon Main Street Project Implementation FY 00-01(Planning & Growth Management Department) 1:45 P.M. TIME CERTAIN.

COUNTY ATTORNEY'S ITEMS

10. a. None.
10. b. Zoning Approvals Related to Water Availability 2:30 P.M. TIME CERTAIN
10. c. Arbitration Settlement Agreement- Alafia River Pump Station and Intake Structure Environmental Resource Permit Application. 11:30 A.M. TIME CERTAIN

SCHEDULED APPEARANCES

11. a. None

SIGN APPEALS

12. a. None

ADJOURNMENT

Although Tampa Bay Water's Master Water Plan does not include any proposed increase in withdrawals under WUP #2011794.00, if at any time during the term of said permit Tampa Bay Water proposes to modify the withdrawal schedule authorized in WUP #2011794.00, Tampa Bay Water agrees to hold a public meeting in Hillsborough County before approving any application for such permit modification, and to provide the record of that public meeting to the Southwest Florida Water Management District, the County, and the EPC. In addition, Tampa Bay Water shall take into consideration the data, reports and analysis from the Hydrobiological Monitoring Program (HBMP) required under WUP #2011794.00 and the Hillsborough County Independent Monitoring Program (HIMP) if at any time during the term of said permit Tampa Bay Water proposes to modify the authorized withdrawal schedule.