STATE OF FLORIDA
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

BEAR WARRIORS UNITED, INC.,
THE SWEETWATER COALITION
OF VOLUSIA COUNTY, INC.,
DEREK LAMONTAGNE, an individual,
and BRYON WHITE, an individual,

Petitioners,

v.

FLORIDA DEPARTMENT OF
TRANSPORTATION and ST.
JOHNS RIVER WATER
MANAGEMENT DISTRICT,

Respondents.
_____/

DOAH No. 23-1512

SJRWMD F.O.R. No. 2023-06

PETITIONERS' RESPONSES TO RESPONDENTS' EXCEPTIONS

Pursuant to Rule 28-106.217, Florida Administrative Code, and other relevant Florida Rules and Statutes, Petitioners, by and through their qualified representative, herein submit the following Responses to Respondents' Exceptions to the (Amended) Recommended Order ("RO"), for which the RO was entered by the Honorable Administrative Law Judge E. Gary Early ("ALJ") on January 29, 2024 and Exceptions filed on February 13, 2024, and subsequent Motion for an Extension of Time to file this document timely filed on February 23, 2024. The same abbreviation of terms as Petitioners used in their Proposed Recommended Order will be used here. In general, Petitioners disagree with any of the Exceptions by either Respondents which attempt to overturn the ALJ's RO, and more specifically, state:

FDOT's Exception No. 1

1. As noted in the ALJ's footnote [RO, p.53], "the result reached herein is a measure of Petitioners meeting their burden of ultimate persuasion to establish their case in opposition to the Permit through the presentation of competent and substantial evidence." Thus, the ALJ did acknowledge that Petitioners in totality did meet the burden needed to counter the *prima facie* case made by FDOT. Respondent's attempt to breakdown individual findings on stormwater quality or quantity misses the point that the *overall* project is what matters, as it is not true that Petitioners had to win "on every point" in order to prove their burden. As noted in Petitioners' Exceptions, Petitioners take exception to the characterization that they did not offer evidence to counter Respondents' demonstration of compliance, as in part because they were unfairly prevented from introducing such evidence, but nevertheless through their overall presentation and questioning of Respondents' witnesses, were able to prove their case.

2. Petitioners also take exception to the idea that, when quoting paragraph of 173 of the RO, that the ALJ "switched back" a burden away from Petitioners for no reason. When the ALJ states in the RO, page 52, that "There was no competent, substantial evidence to demonstrate to what extent, or whether, the waters of Spruce Creek would experience any measurable reduction in concentrations of the impairment parameters, only that the post-development concentration of those parameters from the stormwater management system to the receiving waters of the Unnamed Canal would be reduced", he correctly points out that there is a difference between benefits provided to the "Unnamed Canal" and to "Spruce Creek," and that that final connection is what is missing (and needed according to rules/criteria). Petitioners fulfilled their burden of proof in this case by simply pointing out the obvious, that that analysis was never done or did not exist. For instance, Petitioners' expert Dr. Anderson confirmed that, stating "I did not find or get

access to the phosphorus loading analysis prior to my deposition; so if it existed, I didn't -- I didn't find it." [T:V.2, p.403] and "the Lake Swamp Mitigation Bank might have equivalent functions, but they aren't functions *that are going to provide any benefit to Spruce Creek* because this mitigation bank is nowhere near the basin for Spruce Creek." [emphasis added, T:V.2, p.414] In Dr. Cho's review, she also did not observe that the Project would provide its stated benefit once the original conditions are disturbed, saying it in many ways, including here: "they are not going to be one-to-one in terms of acreage to the functions of the ecosystems that are provided by natural habitats and wetlands." [T:V.2, p.538] Dr. Barile likewise testified that "during flood conditions, where there isn't adequate attenuation of pollutants within the wet retention areas, we can expect more nutrients, we can except more suspended solids and such to the downstream aquatic systems.· So, indeed, it could affect the floodplain down gradient and also Spruce Creek." [T:V.2, p.1032]. Thus, the ALJ had several examples of how Petitioners met their burden, and it is incorrect to say that they had not.

3. Petitioners also wish to point out, once again, that this Project was *never modified in design in any way* since issuance of the Permit, and that at the time of issuance, the evidence is clear that both Respondents *did not know* that the Project was even situated in an Outstanding Florida Waterbody ("OFW"). [See Petitioners' Motion for Attorney's Fees]. Thus, they had no incentive to design it such that it had "positive" factors in terms of the public interest, and indeed simply were trying to scramble after the fact once learning they had a higher bar to meet. Respondents had plenty of chance to change their design, but were recalcitrant in doing so, and should not be rewarded for simply trying to "talk their way out" of legally-mandated Project design improvements.

4. Another difference which Respondent FDOT attempts to conflate is that simply "being positive" in terms of the public interest is NOT the same as being "clearly in" the public interest. This point cannot be overstated. Being "clear" to the public interest is a stronger criteria, which was not met here, and the reviewing agency should maintain and reach the same conclusion as the ALJ and deny the Permit.

FDOT's Exception No. 2

5. Respondent FDOT claims that a "net 29% annual reduction" in Total Phosphorous Loading "far exceeds" the net improvement requirement, but this position is misleading on several points. First, as mentioned previously, it ignores the difference between nutrient loading to the "Unnamed Canal" vs. "Spruce Creek." Nutrients, in theory, would be have several ways to reach Spruce Creek from this Project site, only one of which is the Unnamed Canal, and as found by the ALJ, there was no competent analysis provided showing the ultimate affect on Spruce Creek, an OFW. Second, as an "ephemeral" stream, reductions in nutrients to the Unnamed Canal *may not even reach or benefit Spruce Creek,* as any claimed reduction would be meaningless if for much of the year, that is not a major cause of the pollution. In other words, a reduction in near-zero nutrient loading by 29% is still near-zero. It is undisputed that Spruce Creek is impaired for various nutrients, but it is not "clear" how this Project will change that, and being "clear" is the criteria in question here, related to public interest. Finally, the entire position that a "29% reduction" to the Project site area is beneficial *complete ignores* the negative impacts which will be felt *on site*, namely that *scores of wetlands/forests will be destroyed!* Thus, the presentation of this factor is simply one-sided, and cannot be taken to be "positive" in its entirely any more than saying that the "mitigation" would be positive in the other factors of the public interest test. In those other factors, the ALJ found that the "loss" of wetlands on-site

and "mitigation" off-site added up to "neutral" overall (although Petitioners believe it more negative), and it would have been wrong to rule that mitigation was a "positive" factor alone because the negative impacts are part of the assessment. Similarly, in the nutrient loading public interest assessment, the reviewing Board should confirm what the ALJ found, that there *are* *major* negatives to the on-site environment associated with the construction of this Project, and the so-called "positive" of 29% reduction in one nutrient is not an isolated contributing factor.

6. Also, as is understood, Spruce Creek suffers from not having a Basin Management Action Plan ("BMAP") in place, despite Total Maximum Daily Load ("TMDL") studies from 2008 [Pet. Ex. 218, 219] placing that burden on the state to create or at least initiate it. The fact that project after project have been approved in the Spruce Creek basin for the last 15 years is a failure of environmental protection by all agencies involved. But as should be pointed out, those studies *do* mention by how much at minimum Spruce Creek should reduce its Phosphorous loading, and that number is 27% [*Id.*]. As one can see, the "29%" reduction here (to a side canal, not even the main waterway) in indeed "barely" above that minimum, and to say it "far exceeds" the requirements is simply wishful thinking. As such, it is not "clearly" in the public interest.

7. Petitioners also wish to emphasize that the "Project site" is large, and involves several subbasins, at least one of which is actually *increasing* Phosphorous loading, based on Respondent's expert's own analysis [T:V.5 p.1682]. The ALJ found "Mr. Miracle testified that the basin-by-basin analyses for phosphorus showed that Basin D is expected to have a slight increase in phosphorus." [RO p.20] Taking the Project as a whole, then (as the ALJ says one should), the poor Project design leading to that negative factor neutralizes the "positive" factor of the other basins. Why could not *all* of the basins reduce loading? Petitioners contend it is because FDOT made no effort to (as they simply planned to "buy" their way out through

mitigation and not minimization), and/or because the Project site is *simply too environmentally sensitive to avoid such significant impacts*, and that is yet another reason this Project is simply inappropriate for this ecological location.

FDOT's Exception No. 3

8. Respondent FDOT's attempt with this exception to claim that the ALJ "misconstrued" testimony ignores the ample evidence to the contrary. Mr. Drauer and Ms. Martin were not the only witnesses to comment on whether or not this (first) factor of the public interest test was neutral; ALL of Petitioners witnesses commented to that (see Petitioners' Proposed Recommended Order for full list of citations), each saying that it was a NEGATIVE factor, at least in part because the wetlands that would be lost provide important functions in their current state. It appears that the ALJ made a point of using Respondents' *own experts' testimony* as a point of emphasis to show that, *at maximum,* this factor is neutral. Had he simply quoted any of Petitioners' witnesses, Respondents might be able to say he was ignoring their witnesses, so instead he used what they said to make his excellent point. Through extensive questioning, none of the Respondents' witnesses were able to say, *clearly,* that this factor was in the public interest. Saying, *explicitly,* that it was "neutral" (their primary words) shows that it is more neutral than positive, which in no way can be interpreted to mean "clearly positive." Likewise, the additional "at minimum" quotation which Respondent claims was ignored was not, it just was not given any weight, as it is factually meaningless. Does someone saying that they scored "at minimum zero touchdowns" in the big game mean they made a positive contribution to the outcome? Of course not, so this flawed logic and conditional and wishful phrase of "at minimum" should be disregarded, and it is in no way proof that the this criterion is positive.

9. Respondent's conclusion that the ALJ's conclusion should be changed thus has no basis in fact, and as mentioned above essentially asks the reviewing Board to completely ignore Petitioners' copious amounts of testimony which the ALJ found compelling, as he stated that a "preponderance of the evidence establishes that the factors in this subparagraph are neutral for purposes of determining whether the Project is 'clearly in the public interest.'" [RO, p.26]

FDOT's Exception No. 4

10. Respondent FDOT claims that the seventh public interest criteria is positive is contrary to Respondents' claims throughout the hearing, and the Technical Staff Report produced [Jt. Ex. 2]. This FDOT exception statement is the first time that Petitioners are hearing this claim, and object to it being brought up now. But to get to the claim itself, Petitioners disagree whole-heartedly that the offsite mitigation will provide any benefit to Spruce Creek, as Petitioners witnesses convincingly testified to, and which the ALJ acknowledged was a concern "not without merit" [RO, p.24]. A separate rule challenge, however, may need to be made in the future, but herein Petitioners wish to respectfully request that the reviewing Board consider making a change under their own volition, namely that "Spruce Creek" be considered a "nested basin" of the greater Halifax basin. By making this one small change, it would ensure that future mitigation would actually benefit Spruce Creek, and not places far away. Although all waterways are important, it should be obvious that Petitioners care deeply and specifically about Spruce Creek, and it appears that the current rule essentially allows *all of Spruce Creek to be wiped out* as long as "Halifax" gets mitigation somewhere in its basin. To Petitioners, that simply is unacceptable, and we believe it is to the reviewing Board as well, so we hope you make this change, an option already employed in other areas (e.g., Basins 5, 6, 13, 15, and 19) within the District. As put elegantly by Dr. Cho, *the* leading expert on the Halifax watershed, the mitigation proposed by

Applicant is too far away to offset the Project's impacts: "*you can have mitigation in the broader Halifax River Basin, but then you don't acknowledge even the impact within the Spruce Creek. And, for me, that doesn't make too much of sense*" [T:V.2 P.522].

11. FDOT also claims in their exception that the wetlands are "fragmented" – but this is clearly *not* true for all of the wetlands, and conflating them all together goes against the requirement of individual wetland UMAM analysis. They also, without definition, say "regional ecological value" will be achieved, but fail to define the region. They also falsely claim (again in Paragraph 33) that the mitigation banks retain a "connection to an Outstanding Florida Water" – as is obvious from maps and testimony that Lake Swamp Mitigation Bank is *not* hydrologically connected to Spruce Creek, the OFW in question, and Farmton Mitigation Bank only marginally so, in one section of the bank, and entirely upstream from the Project.

FDOT's Exception No. 5

12. Respondent FDOT claims that this Project is an "improvement" to public safety, but ignores Petitioners' evidence and testimony provided, most notably by Mr. Collins, and even so that criterion does not make it "clearly" in the public interest, especially when alternatives exist. If FDOT wishes to claim that *any* project which builds a road or access points is, by default, "in" the public interest, then there would be no need for any permitting at all. But this position should obviously be rejected, and specifically, as made clear by the ALJ, only environmental factors considered for weighing this environmental permit.

13. Stretching of resources so thin that the public suffers by missing out on other projects is an overall concern when deciding what is in the public interest in general, although Petitioners believe it is outside the scope of this analysis. However, it appears that the FDOT is attempting to contradict the ALJ's assessment, and bring in additional criteria which are not appropriate

considerations. But should the reviewing Board believe other outside factors must be weighed, then Petitioners believe they should not have been prevented from providing such evidence during the Final Hearing. Indeed, the Motions in Limine excluded such discussion, and it is therefore unfair for FDOT to try to introduce such factors here.

14. FDOT also claims in paragraph 37, without evidence, that "side roads are likely to be clogged in an emergency" – which is pure speculation, unspecific, and unfounded. Nowhere is it mentioned either who is responsible for building such roads/connections, and Petitioners contend (elsewhere) that some of the developments in that area are obligated to build such infrastructure so as not to burden the general taxpayer. Petitioners have more to say on this, but believe it is not part of the reviewing process, but if that changes, wish to be able to provide such evidence.

15. FDOT's claims in this exception also completely ignore the fact that there are *many* alternatives to what is being proposed. For instance, they could remove the road stub-outs which do not contribute to hurricane "evacuation" so as to reduce the wetland impact. They could improve other nearby road infrastructure, as suggested by Mr. Collins, which include for instance changes to Williamson Boulevard or other intersections, saying "*there are other alternatives to resolving . . . that problem, if you will, at that {Dunlawton Boulevard, Port Orange} intersection that was less costly and more beneficial*" [T:V.1 P.266-267]. Or they could simply build the interchange elsewhere or with a different footprint.

16. FDOT also claims (with no evidence, paragraph 39) that the new access points "provide an environmental benefit to adjacent property owners." This is not founded in any evidence provided. It also neglects the fact that *encouraging* more growth in this area *stretches* city/county resources like police and fire, and neglects to mention that increasing traffic and having more trucks in that area *increases* the likelihood of spills or other vehicle emergencies. It was found

that traffic indeed increased in this area as a result of the Project [T:V.1 P.316-320]. But once again, Petitioners reiterate that they were instructed and prevented by the ALJ to not talk about the "need" for this Project (because of the Motion in Limine), which is partially being relitigated here by FDOT. This Project will *introduce* many more problems than it will solve, but the FDOT is not listing those negatives at all here.

17. In terms of preparedness, Mr. Collins credibly testified that the Project will actually be a hindrance to evacuation, saying "Yes. . . You want to keep people moving as far west . . . from the ocean as possible" [T:V.1 P.293]. This supports a conclusion that the first factor of the public interest test will be *negative*.

18. In terms of "access" – this Project simultaneously *removes* access from an environmental point of view, permanently destroying what appears to be the last remaining land corridor to reach the Doris Leeper Spruce Creek Preserve, land that is *on* the Florida Forever "essential parcel" acquisition list [Pet. Ex. 307].

FDOT's Exception No. 6

19. Petitioners disagree with Respondent FDOT's unclear logic, and point out that the condition for issuance of the permit (at least in part) is that the Project be "clearly" in the public interest. As such, Petitioners contend, and believe the ALJ agreed, that a Project *can* be "barely" in the public interest but not be "clearly" in the public interest. Essentially, "clearly," as in other parts of the law (like the term "clear and convincing"), is a *stronger* criterion, and is intended to be so due to the desire of the state to protect OFWs. If a Project is primarily "neutral" (as in 6/7 neutral factors), and/or if a factor is only positive within the margin or error, then it should be denied. It is also "clear" to Petitioners, based on the number and ratio of comments against this Project, and the sustained public opposition over 30+ years, that there is no way to say that this

Project is clearly in the public interest. Regarding paragraphs 51 and 52, Petitioners also wish to point out that, technically, having one positive factor, even if that one is "significant" (which Petitioner do NOT contend this Project provides) would not *necessarily* reach the threshold of "clearly" in the public interest, as there are many other considerations to make, most notably, all the negative, neutral, and unknown impacts as well. In one way of thinking about it, "clearly" means "obvious to the average person," and this Project simply does not meet that threshold.

20. It is not beneficial to the public or to the OFW to award *carte blanche* approval to a Project just because it has a solitary, small, and within the margin of error factor in its favor. For every so-called benefit of this Project, there are numerous and offsetting negatives which were not truly attempted to be avoided, and as such, this Permit must be denied as presented.

SJRWMD Exceptions

21. As the St. Johns River Water Management District's Exceptions took on a different format than the FDOT's, Petitioners will do their best to respond in general to the ideas presented.

22. First, Petitioners disagree that the ALJ's interpretation of weighing the seven public interest factors is "unsupported" (p.5), and instead, find it to be very well supported (through his numerous citations within the RO), as well as the reasonable logic he presented.

23. The SJRWMD seems to state that the "law and policy" questions are reserved for the agency, so Petitioners have to ask – is it the policy of the SJRWMD to protect Spruce Creek? If so, then how does mitigation in Lake Swamp Mitigation Bank do that? How does allowing the Applicant to make the Project *more* impactful to wetlands (by adding road stub-outs) go along with their mission to reduce impacts wherever practical? And is it the policy to pardon applicants and reviewers who made a catastrophic oversight, namely that a Project is *in* an OFW,

by simply treating it as if it did not happen, and not require *any* changes to the Project? Petitioners think not, and believe the SJRWMD wishes to fulfill its high and noble duty to protect Florida's waters, and are given the chance here by simply denying a poorly put together Project.

24. In another sense, the fact that Petitioners made this Petition in the first place should be taken as a serious truth that the public *does not see this Project as a public benefit.* Petitioners and their organizations represent thousands of concerned Floridians, and had a herculean task to prove their case, but did so according to the ALJ.

25. If SJRWMD wishes to stipulate that the FDOT's witnesses should not have been testifying to the seven public interest criteria and such testimony should be thrown out as not credible, then Petitioners support that decision in general. Similarly, if SJRWMD agrees that no evidence was presented that the Project will reduce other nutrients into Spruce Creek, including iron and copper, then Petitioners support that too in general.

26. On page 9 of their Exceptions, SJRWMD claims that Applicant went "above and beyond" what was required, but the main question is, why? Did they *know* it was in an OFW? If so, then why did the application not list the Project as being in an OFW? [Jt. Ex. 3] What incentive would the FDOT have for designing to a higher standard than they believed was necessary, especially when they were seen nickel-and-diming things like wetland mitigation? Furthermore, as discussed earlier herein, the Project design does not go "above and beyond" the criteria, and instead only attempts to barely meet them.

27. The Unnamed Canal should have a name, and Petitioners humbly request that the SJRWMD and other agencies begin the process of naming it, which should include solicitation of

public input. Locals have a few historic names for it (some of which have been provided during this case), and this could be a great outreach endeavor.

28. But in regards to the nature of it, if SJRWMD contends that the canal only flows intermittently, then would not its so-called "benefits" only be seen intermittently for Spruce Creek as well? And does SJRWMD agree that much more is needed to be done to help Spruce Creek return to health in general, and wouldn't some of that effort likely involve *restoration* of some of its lost wetlands? So instead, it would seem to make sense to prevent their loss in the first place, and that opportunity is presented here by denying this Permit (and helping to create a BMAP).

29. As the ALJ stated, it seems unreasonable to believe that simple regulatory compliance is sufficient to meet the "clearly in the public interest" standard, because it would make the test superfluous [RO, p.53]. It is true the each case is different, and the facts and specifics matter in this case. One of those facts is that the Applicant (and SJRWMD) did not know (or at least disclose) that the Project was in a OFW *until six months after the permit was issued,* so it seems highly unlikely that these seven criteria were considered before then. The criteria are not superfluous for OFWs, and listing things like "hurricane evacuation" as a reason to grant it would literally render the test moot as long as any project could claim that vague standard. What road cannot make that unspecified claim, especially for a "hypothetical" hurricane with "hypothetical" traffic in one area and not another? It makes no logical sense to base issuance of an environmental permit on such a criterion, and as such the ALJ was right to disregard it.

30. In several locations the unfounded claim that a "29% reduction" of one nutrient (Phosphorous) to an ephemeral tributary of the actual OFW (Spruce Creek) is a "significant" benefit fails to quantify what a "non-significant" benefit would be. Starting on page 9, the

SJRWMD seems to say that a "1%" decrease meets the impairment reduction parameter, but that somehow 29% is "above and beyond," so the question then is, at what percent did the benefit become "significantly more?" Is 2% significant? Is 10%? It seems unclear and non-scientific to claim 29% magically is significant, especially in a "clear" sense, and especially when the TMDL studies said, more than 15 years ago, the minimum needed was 27%. And it is not clear that Spruce Creek has gotten cleaner since then. So the "clarity" of this significance is muddled, and as such, fails to meet the criteria.

31. Furthermore, the "reductions" to nutrients and flooding all come at a very high cost – loss of scores of acres of wetlands which provide habitant, water filtration, and water storage *as is*. Dr. Cho and other experts testified to the *greater* benefit that natural wetlands provide compared to a manmade stormwater system [T:V.2 p.526-527, 529, 555].

32. What hurts Petitioners is that SJRWMD, on page 15, claims that an "*increase in storage volume provided*" by the stormwater system is somehow a *benefit.* The problem is that, by this logic, one could (and indeed, *should*) destroy *all* wetlands in an area simply to make a large storage pond to hold stormwater, and that manmade, barren pond would somehow be better for the environment and the public than a natural wetland ecosystem. Petitioners reject that logic, and therefore point out that the "additional" stormwater storage was actually a *huge negative* for the environment, as it simply meant clearing more acres of wetlands for this artificial and less-proven-than-nature criterion.

33. Furthermore, nowhere in the Exceptions did Petitioners see mention of the Atlantic Coastal Ridge (which was testified to extensively by Dr. Cho, [T:V.2 P.525-529]) and the effect its proximately will have on flooding if this Project is built in its "sink." Similarly, almost no mention was made as to the effect the Project will have on Spruce Creek, and indeed

Respondent's experts did not mention even giving it much consideration at all in their public interest analysis [T:V.5, p.1832].

34. Likewise, there was almost no mention that this Project is being built near where known historic resources (like Old King's Road and Native American shell mounds, confirmed by Mr. Baker, [T:V.1 p.115, p.161, L.23]) are known to exist, and the Project's stated goals of wishing to increase development in the areas put that history at real risk.

35. The SJRWMD also should consider the testimony of the top county elected official, Chairman Brower, in regards to how this Project is and will be perceived by the public, which he testified as being unwanted and not in the public interest, not least of which because it was a waste of taxpayer money, hurts Spruce Creek, and that there were preferable alternatives for evacuation routes [T:V.1 P.228]. Although Petitioners understand the ALJ's logic regarding the number of public comments (hundreds in opposition, less than 10% in favor) being irrelevant to whether or not the Project meets the criteria, considering the ALJ found it *not* to meet that criteria, Petitioners wish to emphasize the fact that the vast majority of the public hates this Project means this should be a no-brainer for the reviewing Board to deny the Permit.

36. It should also be noted that some of the other cases cited in the Exceptions either do not involve an OFW, or in other ways have a different set of facts which make it difficult to compare. But in our case, the facts as determined by the ALJ resulted in a "neutral" evaluation, and therefore, according to SJRWMD expert Ms. Martin herself, would have to be denied.

37. Regarding Ms. Martin's testimony, it should also be noted that during the Final Hearing it became clear that the public interest criteria assessment was not done until the *second* revised technical staff report, which did not appear until months *after* the Permit was issued. It is also not entirely clear *who* is responsible, as on the last line of page 25 of the Exceptions, it simply

says “the District” conducted the balancing test. This mistake is correctable, but only if the SJRWMD *demanded* design changes, which they did not, which made Ms. Martin and her team’s mistake unforgiveable. Also, on page 12, the SJRWMD quotes an entirely hypothetical case (starting with “if”) which should be disregarded as irrelevant and not explicitly related to this case. Any witness can answer a hypothetical however they want; the issue is whether or not it is *this* case they are talking about, and that connection was never made.

38. Petitioners also take exception to the characterization that they “hardly questioned” the District engineer responsible for nutrient loading analysis, most notably because Respondents never made clear who that was. Petitioners do note that an important witness for the FDOT, Mr. Dinardo, was *never* called, and Petitioners believe, based on his deposition, that that was because he would have incriminated the case against the Applicant.

39. Some of the arguments made by SJRWMD in their Exceptions seems to imply that the ALJ process was moot, as the final “review” belongs the reviewing Board. Petitioners to not dispute that the reviewing Board will produce the Final Order, nor that they have the right to their own analysis, but Petitioners do contend that the ALJ’s opinion was accurate, thoughtful, well-cited, and logical. Petitioners feel that with a “closer review” of the facts, their position that this Permit should be denied will only become more clear, as we were prevented from providing many pieces of inculpatory evidence during the Final Hearing, but were still able to prevail.

40. Also, in case it was not explicitly stated, any of the earlier (i.e., FDOT Exception) responses should be considered to respond to the SJRWMD and vice versa, as applicable. This includes the important fact that many of the ALJ’s findings were based on the totality of Petitioners’ evidence and expert testimony, *not* solely on a few words mentioned or not mentioned by Respondents’ experts. Petitioners hope to not repeat themselves entirely, but do

wish to reiterate that even if a criterion is pushed (p.16) from neutral to a "small positive," it is *not* equivalent or sufficient to meet the threshold of "clearly in the public interest," which eseentially should be an *overwhelming* positive that is clear to anybody.

RESPECTFULLY SUBMITTED this 27th of February, 2024.

/s/ DEREK LAMONTAGNE
Derek LaMontagne
lamontagne@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was provided to the Clerk of the St. Johns River Water Management District (Clerk@sjrwmd.com); Kathleen Patricia Toolan (Kathleen.Toolan@dot.state.fl.us); Carson Zimmer (Carson.Zimmer@dot.state.fl.us); Thomas Mayton (TMayton@sjrwmd.com); Jessica Pierce Quiggle (JQuiggle@sjrwmd.com); Robert Diffenderfer (rdiffenderfer@llw-law.com); and Frederick L. Aschauer (faschauer@llw-law.com) on this 27th day of February, 2024, via email.

/s/ DEREK LAMONTAGNE
Derek LaMontagne
lamontagne@gmail.com