

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,

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT
via hand delivery
FEB 27 2024
MBP 12:14 PM
PALATKA, FLORIDA
DISTRICT CLERK

Petitioners,
v.

DOAH Case No. 23-1512

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

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

Respondents.
_____ /

**RESPONDENT, ST. JOHNS RIVER WATER MANAGEMENT DISTRICT'S
RESPONSE IN OPPOSITION TO PETITIONERS' MOTION FOR AN EXTENSION
OF TIME FOR FILING RESPONSE(S) TO RESPONDENTS' EXCEPTIONS
TO (AMENDED) RECOMMENDED ORDER**

COMES NOW, Respondent, St. Johns River Water Management District ("District"), by and through its undersigned counsel, and pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), hereby responds in opposition to Petitioners' Motion for Extension of Time For Filing Response(s) to Respondents' Exceptions to (Amended) Recommended Order (hereafter "Motion"), filed on February 23, 2024. In support, the District states:

INTRODUCTION

1. On January 29, 2024, the Administrative Law Judge ("ALJ") filed an Amended Recommended Order in the above-styled action.
2. On February 13, 2024, Petitioners filed exceptions to the ALJ's Amended Recommended Order.

3. On February 13, 2024, Respondents, the District and the Florida Department of Transportation (“FDOT”) each filed Exceptions to the Amended Recommended Order.

4. On February 23, 2024, Respondents, FDOT and the District each filed responses to Petitioners’ Exceptions.

5. On February 23, 2024, Petitioners’ qualified representative, Mr. LaMontagne, emailed Respondents’ counsel of record requesting additional time to file responses to Respondents’ Exceptions. A copy of that email is attached as Exhibit “A.” Notably, in his email, Mr. LaMontagne did not offer any reason for the requested extension. As a result, the District and FDOT both indicated by email that they opposed Petitioners’ request.

6. On February 23, 2024, Petitioners filed their Motion.

7. Rule 28-106.217(3), F.A.C., authorizes a party to file responses to another party’s exceptions within 10 days from the date the exceptions were filed with the agency. There is no provision in Rule 28-106.217 to extend that 10-day time limit. Accordingly, any extension would need to be requested by a motion under Rule 28-106.204, F.A.C.

8. Rule 28-106.204(4), F.A.C., generally allows parties to move for an extension of time, but the motion must “state good cause for the request.” *Id.* Petitioners’ three stated grounds for “good cause” in the Motion are: (1) this is a complex case; (2) they are represented by a single non-attorney qualified representative who can only work on this case during his free time; and (3) Petitioners’ qualified representative “was under the weather over the past week.” Motion at 1-2. As will be shown, each of these arguments fail to show good cause.

9. In paragraph 1 of the Motion, Petitioners argue that the ALJ “found it reasonable” to grant the Petitioners and other parties an additional ten days to prepare and submit a proposed recommended order (PRO) of 40 pages (initially), “due to the length and quantity of materials in

this case, and ... Petitioners are only represented by a single, non-attorney, qualified representative.” Motion at 1-2. In fact, the ALJ’s stated reason for granting additional time was simply because, “Mr. La Montagne [...] got booted by his lawyer kind of late in the process, and I think it would be manifestly unfair for him to have to crank something out in 10 days.” T. 1863:14-18. The ALJ’s reason for that extension was based on timing and perhaps the complexity of drafting a 40-page PRO. Neither of those factors apply here. It has now been over six months since Petitioners’ legal counsel withdrew (in early August 2023). Petitioners have had ample opportunity to adapt to that changed circumstance. Moreover, drafting a response to an exception is significantly less complicated than drafting a PRO, and it is optional.

10. Finally, Mr. LaMontagne failed to expressly state in the Motion that his unidentified health issue prevented him from preparing responses by the filing deadline. Instead, Mr. LaMontagne states that due to his “personal and professional obligations ... this case can only be worked on in his free time.” Motion at 2. In other words, Petitioners’ qualified representative has simply failed to “exercise due diligence” as required by rule 28-106.207(1), F.A.C., in preparing Petitioners’ responses. Petitioners’ failure to prioritize this matter should not trump the applicant’s statutory right to a final order within 45 days after the recommended order is submitted. §120.60(1), F.S.

11. The 45-day time limit in section 120.60(1), F.S., creates substantive beneficial rights to the permit applicant, which only the permit applicant can waive. *See 1977 Fla. Op. Att’y Gen.* 85. A review of the final hearing transcript shows that the Applicant, FDOT, did not waive any timeframes under the statute. T. 1863. The ALJ’s allowance of an additional 10 days for Petitioners to file their PROs was granted over the Applicant’s objection. *Id.* Here, the Applicant clearly has not waived any timeframes under 120.60(1), F.S., and thus the District must render a

final order within 45 days from the date of the recommended order. Any delay caused by Petitioners' untimely filing of their responses to exceptions unduly prejudices both the Applicant, as described above, and the District, by allowing less than 45 days for the District to rule on exceptions and issue a final order.

12. If Petitioners do file responses to Respondent's exceptions, the District requests that such responses be treated as untimely and waived under rule 28-10.217(3). *Env't'l Coal. of Fla., Inc. v. Broward Cty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991).

WHEREFORE, the District respectfully requests that the St. Johns River Water Management District deny Petitioners' Motion for Extension of Time For Filing Response(s) to Respondents' Exceptions to (Amended) Recommended Order.

Respectfully submitted this 27th day of February, 2024.

/s/ Thomas I. Mayton, Jr.

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Attorneys for Respondent

St. Johns River Water Management District

4049 Reid Street

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 27, 2024, the original of the foregoing has been filed by hand delivery with the District Clerk of St. Johns River Water Management District, and that a true and correct copy of the foregoing was furnished electronically to:

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/s/ Thomas I. Mayton, Jr.
Thomas I. Mayton, Jr.

Exhibit A

Thomas Mayton

From: Derek <lamontagne@gmail.com>
Sent: Friday, February 23, 2024 7:50 AM
To: Kathleen.Toolan@dot.state.fl.us; Carson.Zimmer@dot.state.fl.us; Thomas Mayton; Jessica Quiggle; rdiffenderfer@llw-law.com; faschauer@llw-law.com; Steven Kahn; Erin Preston
Subject: Petitioners Consultation on Request for Additional Time, DOAH Case No. 23-1512

Follow Up Flag: Follow up
Flag Status: Completed

Dear SJRWMD and FDOT,

Herein Petitioners, through their qualified representative, wish to consult with you to ask if you support or oppose giving Petitioners until end of day next Tuesday, February 27th, to file Response(s) to your Exceptions to Recommended Order regarding DOAH Case No. 23-1512.

If you at least one representative from each Respondent can respond by 2:00pm today, that would be appreciated.

Thank you,
Derek LaMontagne
LaMontagne@gmail.com
Qualified Representative for Petitioners