

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,

vs.

DOAH CASE NO.: 22-0518
SJRWMD F.O.R. NO.: 2023-06

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

**RESPONDENT, FLORIDA DEPARTMENT OF TRANSPORTATION'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, the State of Florida Department of Transportation ("FDOT"), by and through its undersigned counsel, and pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby responds in opposition to Petitioners' Motion for Extension of Time For Filing Response(s) to Respondents' Exceptions to (Amended) Recommended Order, filed on February 23, 2024. In support, FDOT states:

INTRODUCTION

1. On January 29, 2024, the Administrative Law Judge ("ALJ"), E. Gary Early, filed his Amended Recommended Order in the above-styled action with the Clerk of the Division of Administrative Hearings.¹

¹ The ALJ's Recommended Order filed on January 29, 2024, included directions to the South Florida Water Management District. This Amended Recommended Order corrected that scrivener's error.

2. On February 13, 2024, Petitioners filed exceptions to the ALJ's Amended Recommended Order.

3. On February 13, 2024, Respondents, FDOT and the St. Johns River Water Management District ("District") 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 emailed counsel of record requesting additional time to file their responses to Respondents' Exceptions. Specifically, Petitioners' qualified representative stated:

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.

6. FDOT and the District both indicated that they opposed Petitioners' request. Specifically, counsel for FDOT responded:

FDOT is in receipt of your request for additional time to file Responses to Exceptions and does not consent to this request.

Please note that in accordance with Rule 28-106.217(3), F.A.C., a party has ten days to file responses to another party's exceptions. Subsection (4) provides that no additional time is provided for mailing. Similarly, there is no stay provided for action on a request for extension of time. To the extent that Petitioners' Responses are untimely filed, FDOT will move to strike.

7. On February 23, 2024, Petitioners filed their Motion for Extension of Time For Filing Response(s) to Respondents' Exceptions to (Amended) Recommended Order.

I. PETITIONERS' REQUEST

8. Rule 28-106.217(3), Florida Administrative Code, authorizes a party to file responses to another party's exceptions within ten (10) days from the date the exceptions were filed with the agency. There is no automatic extension of time to file exceptions beyond the ten (10) days authorized in Rule 28-106.217, Florida Administrative Code. Accordingly, any extension must be requested under Rule 28-106.204, Florida Administrative Code.

9. Rule 28-106.204(4), Florida Administrative Code, allows parties to move for extensions of time, generally. These motions must state good cause for the request. *Id.* The filing of such a motion does not trigger an automatic stay, however. *See, id.*

10. Petitioners argue good cause because (1) this is a complex case; 2) they are represented by a non-attorney qualified representative who can only work on this case during his free time; and finally, 3) Petitioners' qualified representative "was under the weather over the past week." Each of these arguments are addressed below.

11. As argued by Petitioners, Administrative Law Judge E. Gary Early previously granted an additional ten (10) days to the parties to submit post-hearing submissions. Tr. p. 1861-1864. ALJ Early's stated reason for granting additional time was 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." *Id.* Those same conditions no longer exist; Mr. LaMontagne has served as Petitioners' qualified representative for over five months. Contrary to Petitioners' representation in paragraph 1 of its motion, ALJ Early made no such finding to grant additional time "due to the length and quantity of materials in this case, and another that Petitioners are only represented by a single, non-attorney, qualified representative."

12. By representing Petitioners as qualified counsel, Mr. LaMontagne agreed to comply with the Standard of Conduct for Qualified Representatives. Specifically, he agreed to only handle matters that he knew or should have known he was competent to handle, and to adequately prepare for issues in the scope of his representation. *See Fla. Admin. Code R. 28-106.107(3)*. If personal or professional conflicts prevent a qualified representative – or an attorney for that matter – from providing adequate representation to a client, then the remedy is to refrain from that representation initially or to later withdraw from it. That other personal or professional issues demand Mr. LaMontagne’s time is not evidence of good cause.

13. Finally, Mr. LaMontagne had ample time to move for an extension of time. However, he waited until the day that responses were due to consult with Respondents regarding his request, and his email to Respondents made no indication that health issues had impeded his ability to adequately prepare for the filing deadline. Petitioners’ failure to do so adversely affects the District as this matter has already been announced and placed on the District’s Agenda for the Board meeting scheduled March 12, 2024. Moreover, this case has been marked by continuous delay and further extensions of time. *E.g.*, Petitioners’ request to continue the final hearing was granted, Petitioners’ request for additional time to provide proposed recommended orders was authorized, Recommended Order was issued January 29, 2024, despite a Scheduling Order stating that it would be issued no later than January 8, 2024. Further delay will adversely impact FDOT which must expend the funding source for this project or else see it expire.

14. Finally, to the extent that Petitioners untimely file responses to Respondent’s exceptions, FDOT reserves the right to move to strike such responses as untimely.

CONCLUSION

WHEREFORE, FDOT, the applicant for the permit in question, 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/ Frederick L. Aschauer, Jr.
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