

SUWANNEE RIVER WATER MANAGEMENT DISTRICT

MEMORANDUM

TO: Governing Board

FROM: George T. Reeves, Governing Board Legal Counsel

DATE: April 5, 2021

RE: Appeal of Final Order Number 21-003, Seven Springs Water Company v. Suwannee River Water Management District; SRWMD Renewal WUP App. No. 2-041-218202-3; DOAH Case Nos. 20-1329, 20-3581 (Consolidated)

RECOMMENDATION

The Governing Board of the Suwannee River Water Management District (the "District") approve the appeal of the Final Order Number 21-003, Seven Springs Water Company v. Suwannee River Water Management District; SRWMD Renewal WUP App. No. 2-041-218202-3; DOAH Case Nos. 20-1329, 20-3581 (consolidated).

BACKGROUND

On February 23, 2021, the Governing Board held a special meeting to consider and enter a final order on the application of Seven Springs Water Company ("Seven Springs") for a renewal water use permit (the "Renewal Permit") to supply groundwater to Nestle's water bottling facility (the "Facility") in Gilchrist County, Florida. The Governing Board approved the issuance of the final order which directed staff to issue the Renewal Permit. The final order was filed, and the Renewal Permit was issued on February 24, 2021.

The Governing Board issued the final order "under protest" because the District did not agree with the ruling of the Administrative Law Judge that the District could not raise the fact that Seven Springs did not own or control the Facility. By issuing the final order "under protest" the District retained the right to appeal the final order to the District Court of Appeal if it wished. However, under Florida law, if the District was going to appeal the final order, the notice of appeal must be filed within 30 days after the final order was filed or by March 26, 2020 (February 24, 2021 + 30 days = March 26, 2021).

The only Governing Board meeting between the February 23, 2021 special meeting and the running of the appeal period on March 26, 2021 was the Governing Board's March 9, 2021 regular meeting. The Governing Board did not instruct the general counsel to appeal at the March 9, 2021 meeting, so the general counsel was not intending to file the notice of appeal. However, after the March 9, 2021 regular meeting, the District received two petitions for administrative hearing concerning the Renewal Permit. The petitions have since been referred to the Division of Administrative Hearings for the Division to conduct hearings and the issuance of a recommended order.

In the petitions, the petitioners assert that since Seven Springs did not own or control the Facility, the Renewal Permit should not have been issued. These are the same reasons that the Governing Board issued the final order "under protest." All parties have informed me that if they are not successful, they intend to appeal to the District Court of Appeal. Therefore, in any event, it now seems likely that the District will be drawn into an appeal where the issue of Seven Springs lack of ownership and control of the Facility will be raised and argued.