STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WWALS WATERSHED COALITION, INC.,

Petitioners,

vs. DOAH Case No.: 15-4975

SABAL TRAIL TRANSMISSION, LLC and
STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.
_____

PETITIONER'S PROPOSED FINAL ORDER

STATEMENT OF THE ISSUES

At issue is whether Sabal Trail Transmission, LLC ("Sabal Trail") provided the necessary reasonable assurances to the Florida Department of Environmental Protection ("DEP") as required under section 373.414, Florida Statutes, and Chapter 18-21.004, Fla. Admin. Code, that their activity through karst terrain is "clearly in the public interest" and not in violation of the requirement "to afford the highest protection to Florida Outstanding Waters," Chapter 62-302.700(1) Fla. Admin. Code, and, therefore, may be entitled to an Environmental Resource Permit ("ERP") and Easement to use sovereign submerged lands ("Easement") to build a 267 mile long, subterranean pipeline transporting 1.1 billion cubic feet per day of natural gas through Florida and stretching from the Georgia-Florida border in Hamilton County to Osceola County, including ancillary equipment such as the Hildreth compressor station in Suwannee County, through privately and publicly-owned lands and under at least two Florida Outstanding Waters, the Suwanee and Santa Fe Rivers.

PRELIMINARY STATEMENT

The Pipeline is scheduled to pass through 12 counties in Florida. Of specific concern is its route through Hamilton and Suwannee counties and where it crosses under the Suwannee River and over the Falmouth Cathedral Cave system. Within these two counties Sabal Trail's application demonstrates that the pipeline will pass through and very proximate to numerous sensitive karst features, including springs, underground caverns and direct conduits to the Floridan Aquifer, and Outstanding Florida Waters.

A. Operation of the Pipeline by Spectra Energy Corp.

Sabal Trail's first witness, David Shammo, "vice-president of business development, southeast operations, for Spectra Energy Corp." (I, 22), testified that "Spectra Energy is responsible for the execution of the project, which would include the design, construction, operation, and maintenance." (I, 23) In cross examination by WWALS counsel, Mr. Shammo further stated that he (an employee of Spectra Energy) was responsible for administration of the Sabal Trail project (I, 43-44), and that Spectra Energy would build and operate the Sabal Trail pipeline (I, 50) using its own employees and contractors from firms including TRC, MVP, and Cardno ENTRIX (I, 53-54), that those employees and contractors of Spectra Energy would be responsible for governmental agency compliance and mitigation (I, 56), and that there are (I, 56) "formation agreements, joint venture agreements that would include service agreements that would cover the operation of the pipeline," that would cover Spectra operating the Sabal Trail pipeline (I, 57) in "Perpetuity. As long as the pipeline is there." This acknowledgement of operation of Sabal Trail in perpetuity by Spectra Energy and its contractors is relevant to the question of compliance history. Mr. Shammo also testified that the Hildreth compressor station in Suwannee County near

Hildreth is part of the Sabal Trail project, although he was unfamiliar with the nearby town of O'Brien (I, 51).

B. Insufficiency of Application Review Process by DEP and Failure to Verify Information Provided by Sabal Trail

DEP Project Manager, Lisa Prather, testified that DEP verified the information that was supplied to them by Sabal Trail (III, 306), but that information other than that supplied by Sabal Trail was not specifically sought (IV, 373). When asked by Petitioner's counsel whether the 24-inch and 36-inch diameters of the pipe were inner or outer diameter, Ms. Prather said she did not know and even with the assistance of Respondents' counsel Ms. Prather could not find that information in the application among the stacks of Respondents' exhibits. (III, 307-311) Petitioner is concerned that this demonstrates a lack of basic knowledge on behalf of those reviewing the application of the details, and therefore impacts of the pipeline.

When asked if an expert from Florida Geological Survey (FGS) is dispatched by DEP to verify distance of springs from the pipeline route, Ms. Prather responded yes (IV, 354). However, she did not know if anyone from DEP went into the field to verify the location of the springs mentioned by Tom Edwards, discussed *infra*. (IV, 374) Although WWALS member Tom Edwards provided Ms. Prather with information about how his property would be affected by this pipeline, it was Ms. Prather's testimony that she was not aware of any portions of the Sabal Trail Project that would adversely affect the property of others. (IV, 377)

C. DEP's Failure to Timely Place Comments from Affected Landowners in the Public Record

Ms. Prather testified that she did receive emails with attachments from WWALS member and affected landowner, Tom Edwards, some of which included materials about springs on his property, but the information in those attachments was not made a part of the public record until

after DEP's announcement of its intent to issue the permit. (II, 225) Those attachments also were not returned in response to an open records request to DEP from WWALS during the discovery phase of this DOAH case, despite other correspondence from Tom Edwards' inquiries to DEP being returned to WWALS. (Petitioner's Exhibit 4)

D. DEP's Disregard for the Heightened Protection Requirements of Florida Outstanding Waters in their application Review Process.

Petitioner's counsel read to Ms. Prather Rule 62-302.700, "Special Protection, Outstanding Florida Waters, Outstanding National Resource Waters," paragraph 1, which states: *"It shall be the Department policy to afford the highest protection to Outstanding Florida Waters and Outstanding National Resource Waters. No degradation of water quality, other than that allowed in subsections 62-4.242(2) and (3), F.A.C., is to be permitted in Outstanding Florida Waters and Outstanding National Resource Waters, respectively, notwithstanding any other Department rules that allow water quality lowering."* Petitioner's counsel then asked (III, 348) Ms. Prather whether this application was treated differently from other applications because the pipeline would cross Outstanding Florida Waters. In response Ms. Prather testified that no impacts were considered on the Outstanding Florida Water, the Suwannee River, because the pipeline is to be drilled from upland to upland, under the river (IV 348, 349). Her testimony makes it clear that DEP did not take into consideration that there may be any impacts to the Suwannee River from the HDD drilling or any other aspects of the pipeline.

E. Admission by Sabal Tail of Adverse Impacts of Horizontal Directional Drilling (HDD) on Water Quality and the Failure of DEP to Adequately Consider those Impacts.

Ms. Prather testified that she had read (III, 342) Sabal Trail's Karst Mitigation Plan. (Petitioner's Exhibit 6; also Respondents' Joint Exhibit 3, Vol. 7, Appendix I, Bates Nos. 3125-3153; also Sabal Trail Exhibit 21) That plan specifically lists on page 3 of 31 among "*general risks*

associated with HDD construction methods in karst area" this risk: "*Loss of drilling fluid into open conduits and inadvertent drilling fluid returns leading to turbidity in nearby wells, springs, and rivers."*

And in Section 7.3.1., on page 30 of 31: *"If drilling fluid loss downhole affects nearby springs or rivers and complete drilling fluid loss to the formation cannot be prevented, all or a portion of pilot hole would be abandoned and a new pilot hole started at an alternate depth. Drilling will continue and the affected waterbody will be monitored in accordance with the Best Drilling Practices Plan for the Sabal Trail Project."*

This drilling fluid loss is not just possible during pilot hole drilling; it can occur during reaming of the main hole for the pipe, according to Section 7.3.2., on page 31 of 31: "*If drilling fluid loss downhole affects nearby springs or rivers and complete drilling fluid loss to the formation cannot be prevented, reaming operations will continue and the affected waterbody will be monitored in accordance with the Best Drilling Practices Plan for the Sabal Trail Project."*

This potential drilling fluid loss applies to the specific rivers in question, according to Pages 24-26 of 31, Table 3. "Results of Geophysical and Geotechnical Testing for HDD Crossings", rows 2-5, which says for each of four rivers in karst terrain, the Withlacoochee River just across the state line in Georgia, the Flint River, and in Florida the Suwannee River and the Santa Fe River: "*Installation of pipeline at site feasible but construction difficulties expected with possible loss of drilling fluid returns during HDD operations & localized ground settlement near exit. Large voids not anticipated along HDD path but possible. Drilling fluid loss to smaller voids or zones of loose material such as those encountered in borings expected. Mitigation measures outlined in this document will increase likelihood of successful installation.*" This drilling fluid loss is not just theoretical or hypothetical; that table states that it already occurred during test drillings under the

Withlacoochee River and the Suwannee River, "*Drilling fluid returns lost at 15, 18, 12, & 13 feet in SR-B-1 through SR-B-4, respectively. Voids not noted in the borings but small voids (<12 inches) likely*," and the Santa Fe River, "*Drilling fluid returns lost from 8 to 25 feet. Borings encountered weight of hammer materials in overburden soils. Large voids not observed, however; small voids (<12 inches) likely.*" Ms. Prather testified that she had read that Karst Mitigation Plan (III, 342), yet she testified that there would be no impacts to the Suwannee River (III, 348-349). Thus it does not appear that DEP did proper due diligence in evaluating the information supplied to it by Sabal Trail.

F. Failure of DEP in its Application Review Process to Consider the Potential Additional Risks Associated with the Crossing of Existing Subterranean Pipelines

Ms. Prather also testified that she was not aware that the Sabal Trail pipeline proposes to cross other natural gas pipelines, nor whether boring will be required to pass the pipeline under or over these other pipelines, nor whether service to these other pipelines would be interrupted during the construction of Sabal Trail (III, 331, 332). It is evident from this testimony that complete information was not provided to DEP about Sabal Trail crossing other natural gas pipelines.

G. Failure of DEP to Verify Information Presented to DEP by Sabal Trail

FGS Professional Geologist and WWALS expert witness Guy Means testified that he co-authored the memo dated March 27, 2014 (Petitioner's exhibit 10) which raised many concerns about geologic and hydrogeologic impacts to the environment that Sabal Trail is proposed to traverse. (V, 529) In the memo, it states that (second page, last sentence) ". . .in some settings, the pipeline route could be altered to avoid suspected conduit and spring flow areas." Mr. Means testified that the Falmouth Dye test (Exhibit J of the Re-Amended Petition and Petitioner's Exhibit 3, page 6) was done in proximity to the proposed pipeline route and the preliminary results revealed locations of water flow that were unknown prior to the test. He testified that this information about

the dye test was included in an August 2014 memo that he co-authored and that memo was seen by his superiors who were making decisions about the approval of the permit (V, 540-544). Mr. Means also testified that FGS did not "verify" what Sabal Trail provided to them, but they used that information, as well as information they had "in-house" and other data bases they had access to, in order to form their opinion about the impacts of the pipeline that they then submitted to DEP (V, 546). Mr. Means testified that he did not personally visit the Sabal Trail pipeline site.

Both Ms. Prather and Mr. Means testified that DEP (and FGS) relied on information provided to them by Sabal Trail. Yet Sabal Trail witness David Shammo testified (I, 44) "I didn't actively provide inputs into the application." If neither Ms. Prather nor Mr. Means verified what Sabal Trail said in the application, how could DEP know if Sabal Trail provided reasonable assurances of public benefit?

E. Sabal Trail's Lack of Basic Knowledge about Pipeline Specifications

Sabal Trail expert witness (I, 100) David Dickson, who identified himself as an employee of Cardno (I, 61), presumably worked under the direction of Mr. Shammo, could not answer a basic question of whether the 36-inch or 24-inch measurements of the proposed pipeline and its Hunters Creek offshoots were inside or outside diameter, nor what material the pipeline would be made out of (I, 103). Mr. Dickson also did not know how many crossings of proposed Sabal Trail pipeline with other existing pipelines there might be (I, 94-95). Mr. Dickson said he relied on subject matter experts, however, *they* were not the ones who wrote the application, nor who pulled together the subject matter material. Mr. Dickson testified (I, 64): "I was part of the ERP team that wrote the application and coordinated with the subject matter experts to pull together all the various appendices. Q. Did you actually prepare any parts of the application? A. Yes, sir." If Mr. Dickson

did not know the material or diameter of the pipe, or the number of crossings of existing pipe, how could Ms. Prather or Mr. Means know?

Additionally, when asked HDD borings under the Suwannee and Santa Fe Rivers, Sabal Trail witness Mr. Lambeth said "Yeah, I reviewed them myself and looked those over. There are no voids." That contradicts Sabal Trail's own Karst Mitigation Plan (Petitioner's Exhibit 6), which shows in Table 3 that drilling fluid was lost at several depths under each of those rivers. This demonstrates a persistent pattern of misinformation within Sabal Trail.

H. Sabal Trail's Admission of Adverse Impacts from the Pipeline Passing Near a Spring, yet Sabal Trail Maintains its Plan for the Pipeline to Pass Near Large Magnitude Springs

Sabal Trail geologist, Greg Jones, an employee of Cardno (VI, 640), and according to the testimony of Mr. Shammo, presumably he is under the direction of Mr. Shammo, a Spectra Energy employee, testified that his team of geologists "felt that it was important for the pipeline not to be near the spring vent itself because that is where the conduit flow is and that is where the spring is most sensitive." (VI, 658) He also testified that the larger magnitude springs were more important to avoid than the smaller magnitude springs. (VI, 658)

What Mr. Jones didn't mention, and what Tom Edwards tried to point out by moving the "close-up view" circle south, along the pipeline route after it crosses into Suwannee County (Sabal Trail Exhibit-tab 19, Karst notebook) is that the pipeline route runs within a mile of Lime Run Spring, a first magnitude spring. (Petitioner's Exhibit 3, page 4) Lime Run Spring is the spring associated with the Falmouth Cathedral Cave system. (Petitioner's Exhibit 9 and Sabal Trail Ex. 19) Mr. Jones testified that the closest Magnitude 1 spring to the proposed route was Madison Blue Spring at 1.7 miles (VI, 677). However, Lime Run Spring is nearly twice as close as Madison Blue Spring to the Pipeline.

He also testified that spring conduits get "thinned out" the farther away you get from the spring vent (VI, 658). However, as can be seen by Petitioner's Exhibit 9 and Sabal Trail's Exhibit-Tab 19, Karst notebook, the Falmouth Cathedral Cave system is many miles long and has been mapped by divers, so it is at least large enough to allow divers with scuba gear to swim along those many miles. Mr. Jones testified that he is aware that the proposed route crosses the Falmouth Cathedral System (VI, 659). He also testified to being aware of the Falmouth Dye test (VI, 668) which showed evidence of previously unmapped flow systems, as testified by Guy Means. (V, 541). Mr. Jones testified that sinkhole formation collapse along the pipeline route during the construction phase could block some flow in the groundwater flow system (VI, 674). At first he stated there is no water flow below the river (VI, 649), then later stated there is water in the aquifer below the river (VI, 686). Mr. Jones testified that he was the editor of the Karst Mitigation plan (Petitioner's Exhibit 6) (VI, 667) which states there may be interception with spring conduits during HDD construction. He stated that the two main aspects addressed by the Karst Mitigation plan are sinkhole formation during construction along the pipeline and the HDD drilling under the rivers because these are the areas where it was thought there would be the most impacts (VI, 666). However, DEP doesn't consider there to be *any* impacts to Outstanding Florida Waters, such as the Suwannee River, from the HDD drilling under the river.(VI, 348, 349).

I. Adverse Impacts on the Karst Geology are Substantially Likely

WWALS expert witness Mr. Dennis Price, a Florida licensed professional geologist, testified that there is no way for DEP or Sabal Trail or anyone to be positive that there won't be negative impacts on the karst geology from the pipeline. (IV, 390) Mr. Price testified that he visited the site of the proposed Suwannee River crossing as part of his evaluation. (IV, 391) He testified to fracture traces at the river edge which may be 300 feet to miles deep (IV, 442), and to numerous active

sinkholes and depressions along the pipeline path on Suwannee River State Park property (Hamilton County) where the pipeline HDD drilling will occur. (IV, 436) (Petitioner's Exhibits 7,8) He testified that his 40 years of experience as a geologist and well-driller in the area, in addition to his geological evaluation of the Suwannee River crossing site, led to his conclusion that the Suwannee River crossing is not a stable area geologically for the pipeline to be drilled. (IV, 447) The years of flooding with acidic, tannic river water has led to removal of much of the overlying clay and sands as well as the dissolution of the soft limestone, including under the river (IV, 399), which leaves this area vulnerable to multiple sinkholes and expected extreme difficulty with installation of a large diameter pipeline by HDD drilling. (IV, 406) He testified that there may be areas along the Suwannee River that are better than others for this type of pipeline installation, but the karst geology in the vicinity of the Suwannee River is persistent throughout this part of the state, therefore making it unsuitable (IV, 446).

Mr. Price also testified as a rebuttal witness (VI, 746-749) regarding the Falmouth Cathedral Cave system that would be crossed by the Sabal Trail Pipeline. He testified that from his experience visiting the Falmouth Spring many times and noting the depth of the limestone at the spring, the estimated depth of the cave system in the area that will be crossed by the pipeline is shallower than estimated by Sabal Trail geologist, Greg Jones. Mr. Price testified that removing 5-7 feet of soil has caused sinkhole formation in the past and may cause collapse of part of the Falmouth Cathedral Cave. He testified that the only way to stop continued collapse would be to apply significant grouting that would essentially block the cave, which is a spring conduit. In turn, significantly lower or stop the flow to that spring.

J. Leaks Occur on All Pipes Eventually, and the Extensive Length and Width this Pipeline will Make Detection of Leaks More Difficult

WWALS expert witness, Willard Randall, natural gas pipe welder, testified that corrosion of the pipe would be a tremendous obstacle for both the successful operation and maintenance of the pipeline. (V, 484) Leaks would be especially difficult to prevent, to detect and to repair given the subterranean nature of the pipe, its carbon-steel composition, and its transport of natural gas, which can stay undetected under the ground for extensive periods of time. (V, 480) Efforts to reduce corrosion only deter and delay corrosion. They do not completely prevent corrosion. For example, even during the installation of the pipe, the anticorrosive coating is often scratched, kick starting the corrosion process. (V, 497) Corrosion ultimately leads to temporary or permanent failure of a pipeline. He also testified that the actual areas of the inside of the pipe, where the welds are located, are not covered by any protective coating (V, 494).

K. Sabal Trail's Failure to Use LiDAR Along the Entire Pipeline Route, Arbitrary Assignation of Risk Levels and Failure of the Karst Mitigation Plan to Sufficiently Address Impacts on Drinking Wate

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WWALS expert witness in geomorphology Dr. Donald M. Thieme testified that the Sabal Trail Karst Mitigation Plan lacked specific information about how pollution from the pipeline into waterways will be detected and monitored (IV, 461). He testified that LiDAR data is essential in evaluating the geology along the pipeline route due to its detail in showing elevations. (IV, 455, 456) He testified that the relative risk of low, medium and high assigned to the areas by Sabal Trail was based on a small sample size as seen in the Karst Mitigation Plan, Petitioner's Exhibit 6. (IV, 457) He testified that water in Florida is a treasure and a great source of potable water for future generations (IV, 459). He testified that there should have been more concern by Sabal Trail about groundwater and shallow aquifers than appeared in the Karst Mitigation Plan (IV, 460).

L. A Substantial Number of WWALS Members will be Substantially Affected by the Pipeline

Thirteen WWALS members residing in Florida (eleven of whom reside in Hamilton or Suwannee County, two in Columbia County) testified that they would be substantially affected by the pipeline. A member on the membership committee, Deanna Mericle, testified that the 26 individuals named in Petitioner's Exhibit 11, WWALS Members in Florida, are indeed current WWALS members. She also corroborated that 5 of the members who testified as affected members, but who were not on Petitioner's Exhibit 11, are indeed current members of WWALS. She further testified that there are at least 8 other current members who live in Hamilton or Suwannee County who are not on Petitioner's Exhibit 11. (VI, 621-625) In total, WWALS Watershed Coalition, Inc. has 85 memberships, with just over 100 individuals when family memberships are taken into consideration. Of those 100 individual members, 40 reside or own property in Hamilton or Suwannee County, and use the public lands and waterways in those counties through which the pipeline passes.

M. WWALS Mission and Use of Public Lands and Waterways which the Pipeline Traverses

The president of WWALS, John S. Quarterman, testified (VI, 627-637) to the mission of WWALS, which is: "WWALS Watershed Coalition advocates for conservation and stewardship of the Withlacoochee, Willacoochee, Alapaha, Little, and Upper Suwannee River watersheds in south Georgia and north Florida through awareness, environmental monitoring, and citizen activities". He testified to the numerous advocacy efforts of WWALS in Florida, to its frequent outings on local rivers including the Suwanee, to the effects of the pipeline on its members, to its status as a Waterkeeper® Alliance Affiliate which gives it the same duty throughout its territory of thentire watershed of the upper Suwannee River as a Riverkeeper, and its relevance to the NAACP precedent case regarding associational standing cited in the Re-Amended Petition and reiterated in the subsection below on WWALS Associational Standing.

O. Failure of DEP to Consider the Suwannee River Water Management District's Advice to Reroute the Pipeline avoiding the Fragile Geology around the Suwannee River

Two Suwannee River Water Management District (SRWMD) Officials, Carlos Herd and Dale Jenkins, testified that they wrote a memorandum (Petitioner's Exhibit 5) warning of the particularly fragile geology in the Suwannee River area and recommended re-routing the pipe to an area of more stable geology (V,506 and VI, 597). Dale Jenkins, Professional Geologist, testified that he is now with St Johns River Water Management District, and was formerly with SRWMD, that he recognized the Falmouth Cathedral Cave System on Petitioner's Exhibit 9 (VI, 601, 602) and that Lime Run Spring is a part of that cave system. (VI, 601-602)

P. Failure of DEP to consider the Extreme Expense of Remediating Geologic Collapse

Finally, Suwannee County Commissioner, Richard Gamble, testified to the extreme expense of "Between 1.4 and 1.5 million" dollars (VI, 595) to his community when excavation for a sawmill led to the development of numerous sinkholes that had to be filled in order to stabilize the land. (VI, 588, 592, 595)

Procedural History

On August 7, 2015, Petitioners timely filed their Petition for Administrative Hearing. On September 3, 2015, FDEP issued an order striking WWALS references to the impact of the pipeline resulting in a decrease in property values, increase in insurance rates and decrease in eco-tourism and stated "It is well settled that the Department does not consider non-environmental impacts to the property of others in the public interest analysis."

On September 28, 2015, upon Sabal Trail's motion for summary hearing, despite Petitioner's objection, this Court ordered a Summary Hearing take place along with the application of expedited procedures. Upon Sabal Trail's Motion in Limine and Motion to Strike, the Court

ordered that the issues of safety and federal law, be struck from the pleadings and not be heard at the summary hearing. On September 29, 2015, this Court ordered discovery to be limited to those described in section 120.574(2)(b), unless otherwise authorized pursuant to section 120.574(2)(a)(2).

On October 2, 2015, this Court granted Sabal Trail's Motion in Limine and limited WWALS presentation of evidence at hearing to only that of its own members and the environmental resource permit. WWALS was precluded from presenting any reference to the easement for sovereign submerged lands, any evidence of future harm from transporting petroleum fuels, including its vulnerability to terrorist attacks and reduction in demand for solar power. Finally, the Court also precluded WWALS from presenting any evidence related to pipeline safety, non-environmental public interest factors and compliance history of the future operator of the pipeline. Petitioner's counsel Ms. Boone asked to proffer "some exhibits we would've brought in if we were allowed to speak about safety anyway?" The Court responded "No, and that's because it's so clear that I've excluded it, and your right to show error is so clear without an exhibit." (VI, 736, lines 9-14)

On October 7, 2015, this Court entered another order further limiting the proceedings to Florida law, Florida agencies and only to *Florida* members of WWALS. Petitioner believes this left a significant gap of members who may live in Georgia yet use the public lands and waterways of Florida. Finally, on October 15, 2015, this court precluded WWALS from presenting evidence of negative impacts to riparian rights, water quality and water flow and safety.

However, at the Summary Hearing held October 19-21, 2015, WWALS counsel noted (I, 7) that the Re-Amended Petition included citations of rules and statutes related to the Easement, and the Court responded (I, 7, lines 14-21): "The Florida Administrative Code Rule Chapter 18 would probably -- one of those rules would probably be applicable, and chapter 253 of the Florida

Statutes. I haven't looked again, and there wasn't a subsequent motion addressed to any infirmities in the petition. So I thought -- I expected those issues to be presented today."

Further, counsel for Sabal Trail, Mr. Brightman assumed that the Easement was being litigated in the hearing, "Your Honor, if we are to litigate the entitlement for an easement over sovereign submerged lands, the public interest test that is designed to demonstrate an entitlement to that easement requires a balancing of the social and economic environmental pros and cons. And the intent of these questions is to show that the Sabal Trail pipeline will have social, economic, and environmental benefits to the state of Florida." (I, 29, lines 6-15)

Numerous WWALS witnesses, including at least Joe Britt McClung, Chris Mericle, Dennis Price, and Guy Means (V, 556,566,571), testified either about conditions under the Suwannee River or about HDD drilling under that or other Florida rivers, or both, in many cases referring to exhibits about the same sovereign submerged lands that are the subject of the Easement, as did Sabal Trail witnesses Greg Jones, Alan Lambeth, and David Dickson. (I, 66,71,73-74) The Lisa Prather of DEP also so testified to same. (III, 344, etc.) Because of these statements by the Court, Sabal Trail's counsel, and testimony and evidence regarding lands under the river and drilling through those lands, it is clear that the Easement was litigated in the hearing.

At the Summary hearing held October 19-21, 2015, Petitioner's exhibits 1,2,3,4,5,6,7,8,9,10, and 11 were admitted into evidence. Petitioner's request to proffer evidence related to past and numerous violations of Spectra Energy, the operator of the Pipeline, was denied. (VI, 736, lines 9-14)

Sabal Trail rebuttal witness Alan Lambeth testified at length (VI, 714-746) about Spectra Energy's compliance and safety history, stating "My direct role is to administer our procedures, make sure everything is being done the way we do things." (VI, 715-716) Petitioner's contend that

Spectra and Sabal Trail's procedures and compliance history thus seem directly relevant to those Outstanding Florida Waters, and whether the easement and ERP are in the public interest. Mr. Lambeth specifically used the word "safety" and referred to the Pipeline and Hazardous Materials Safety Administration (PHMSA) (VI, 731), to which Sabal Trail's witness Marty Bass also referred (VI, 706). Mr. Lambeth referred (VI, 725) to a map of pipelines throughout the United States (Sabal Trail Exhibit 32), some of which are not even those of Spectra Energy. Petitioner's Counsel asked for that testimony to be stricken (VI, 734-735) and asked: "I'm also concerned that the testimony we heard predominantly goes to safety, and it's unclear to me the Court's order on safety, whether or not this opens the door for us to discuss safety." Yet the court declined to say the door was opened, and also declined to strike Mr. Lambeth's testimony. (VI, 735-736) This discussion on safety also contradicts the court's previous Order on October 2, 2015 restricting such discussion of safety matters.

Petitioner presented the expert testimony of Dennis Price (professional geologist and also a WWALS member who operates an eco-tourism business guiding canoe and camping trips on the Suwannee River), Dr. Donald M. Thieme (Geology Professor and WWALS member), and Willard Randall (30-year pipe welder on oil and gas pipelines and WWALS member who resides near the Suwannee River and uses the groundwater). Petitioners presented the lay testimony of WWALS members who will be substantially affected by the pipeline. Joe "Britt" McClung, Suwannee River scuba diver and WWALS member whose property is approximately 1200 feet from the proposed pipeline route; Tom Edwards, WWALS member whose Suwannee riverfront property will be the location where HDD drilling under the river will emerge and will have further pipeline installed; David Shields, WWALS member with a wife and 6 children whose home is near the proposed compressor station, and who owns an organic livestock farm; Dana Stevens, WWALS member

whose property would have the pipeline installed on it as well as through a family memorial area where his wife's grandmother's ashes are spread (VI, 610); Merrillee Malwitz-Jipson, WWALS member who lives in Columbia County and who owns a canoe and kayak rental business near the Santa Fe River, also Policy Director of Our Santa Fe River and president of Save Our Suwannee; Chris Mericle, WWALS member and outdoorsman who frequently uses the Suwannee River for recreation; Debra Johnson, WWALS member who frequently uses the Suwannee River for outdoor recreation; Lori McCraney, WWALS member who lives on the Suwannee River and uses it frequently for outdoor recreation as has her family for generations; Deanna Mericle, WWALS member who frequently uses the Suwannee River for outdoor recreation; Donna Ellison, WWALS member on whose property the pipeline would be installed and who had a cow fall into a sinkhole (III, 379-380); Wayne Ellison, WWALS member on whose property the pipeline would be installed.

The hearing was in a total of VI volumes. The transcript was filed on November 6, 2015.

FINDINGS OF FACT

A. The Parties

1. WWALS is a non-profit 501(c)(3) organization registered in Georgia and registered as a foreign corporation in Florida. WWALS has a mission of "WWALS Watershed Coalition advocates for conservation and stewardship of the Withlacoochee, Willacoochee, Alapaha, Little, and Upper Suwannee River watersheds in south Georgia and north Florida through awareness, environmental monitoring, and citizen activities." (III, 260 and VI, 635) WWALS has more than 80 memberships; when family memberships are taken into account, WWALS has more than 100 members, of whom fifteen testified. Of these, 38 memberships and 50 members are in Florida, of whom thirteen testified. Of these, 40 members are in Hamilton or Suwannee Counties, of whom

eleven testified, plus two from Columbia County. Forty Florida WWALS members are substantially affected, either by their use of the rivers, public lands or their ownership of land under which the pipeline would traverse. Not all Florida members were able to testify due to jobs or other obligations. Of those Florida WWALS members who did testify, 4 are landowners through whose land the pipeline would run, and 8 use the rivers, springs, or other natural features of north Florida, for boating, swimming, fishing, scuba diving, deadhead logging, or in other ways. The final Florida member testified that he and his family would be affected by the proposed compressor station near his home. See also the section *infra* on WWALS Standing.

2. DEP is the Florida state agency charged by statute with the responsibility of administration of lands held in trust by the Board of Trustees of the Internal Improvement Trust Fund ("the Trustees"), including all environmental resource permitting under Chapter 373, Florida Statutes, for activities uses of state-owned submerged sovereignty lands and protection of Florida's Outstanding Waters. § 253.002(1), Fla. Stat.; Rule 18-21.002, Fla. Admin. Code; Rule 62-302.700, Fla. Admin. Code.

3. Sabal Trail Transmission, LLC is the applicant to the DEP for the Environmental Resource Permit and the Easement to place the Sabal Trail Pipeline through 12 counties in Florida and under at least two Outstanding Florida Waters.

B. WWALS's Standing

4. WWALS has met the test of standing outlined by the Court: a substantial number of members substantially affected. WWALS qualifies for associational standing.

WWALS Members through whose Property the Pipeline Would Run

5. The Court explained this was an unquestionable criterion for being substantially affected: "All persons whose property will have the pipeline on it are substantially affected, no question." (VI, 611, lines 5-7)

6. Four Florida WWALS members testified that the pipeline would run through their land: Tom Edwards (II, 119-172), Donna Ellison (IV, 378-382), Wayne Ellison (IV, 383-385), and Dana Stevens (VI, 607-613). Two more Florida WWALS members testified the pipeline or its equipment would run near their land: Joe Britt McClung (II, 175-184) residing within about 1200 feet of the proposed pipeline path, and Dave Kenneth Shields (III, 277-292) residing about 2,000 feet from the Hildreth compressor station, with his property line about 1200 feet from the property line of the compressor station site.

Substantially Interested

7. The Court explained substantial interest (III, 263, lines 11-19): substantial interest ". . . means you use the water body for recreational activities. You swim, fish, crab, scuba dive, all that stuff."

8. WWALS witness Christopher J. Mericle responded to the Court (III, 263, line 20): "I do all that but crabbing." On the following pages Mr. Mericle testified to the WWALS mission statement (III, 260) and described multiple WWALS outings on the Suwannee River with multiple people, specifically describing boating with multiple WWALS members (III, 264, lines 12-25; III, 265, lines 1-3), and that he personally did scuba diving (III, 265, line 6) and swimming (III, 265, line 9). Mr. Mericle further added that he hikes and photographs springs (III, 265, lines 6-8). He said he had hiked in the areas affected by the proposed pipeline both before and after it was proposed (III, 267, lines 1-5). Mr. Mericle further explained that he is a WWALS board member (III, 256, lines 4-20), Outings Committee Chair (III, 256, lines 23-24; III, 258, lines 5-

11 and 19-25; III, 259, lines 1-5), and Withlacoochee River Water Trail Committee Chair (III, 256, lines 24-25; III, 258 lines 12-18; III, 259 lines 6-17), and that WWALS through its board and committees plans and executes activities involving its members. He spelled out that WWALS and its members are substantially affected by the proposed pipeline (III, 261, lines 3-8): "Absolutely. We're the waterkeeper for the upper Suwannee and all its watersheds, which includes the Withlacoochee -- well, all the rivers I just named. And so any negative impact, whether it's from a pipeline or any activity, is part of our business."

9. DEP's counsel on cross-examination elicited testimony from Mr. Mericle that he believes that the proposed pipeline will substantially affect future boating trips on the Suwannee River (III, 271, lines 13-22). There was no objection to Mr. Mericle's testimony that he believes future boating trips with WWALS members on the Suwannee River, as well as other activities, will be substantially affected if the proposed pipeline is implemented.

10. WWALS witness Joe Britt McClung testified he is a WWALS member (II, 180, lines 14-16), that he lives about 1,200 feet from the proposed pipeline path (II, 175, lines 12-15), that he is a professional scuba diver certified by DEP (II, 176, lines 3-25, II, 177, lines 1-6) and that he has dived downstream and upstream from Suwannee River State Park while deadhead logging, but was not permitted in the state park area due to antiquities and sturgeon from the Gulf of Mexico among other reasons (II, 183, lines 6-14). He testified to springs in the riverbed and thermoclines coming from them (II, 183, lines 15-25; II, 184, lines 1-12). He testified on redirect that the proposed pipeline crossing of the Suwannee River would be in the area in which he was prohibited from deadhead logging (II, 184, lines 18-25; II, 185, lines 1-2), and that there are caves in that whole area about every eighth of a mile (II, 185, lines 16-25; II, 186, lines 1-6). Mr.

McClung's scuba diving and deadhead logging would be affected by any contaminants or turbidity caused by the pipeline coming up out of any of those vents and drifting downstream.

11. Eight Florida WWALS members testified that they use the rivers, springs, or other natural features of north Florida, for boating, swimming, fishing, scuba diving, deadhead logging, or in other ways: Joe Britt McClung (II, 175-284), Merrillee Malwitz-Jipson (III, 240-252), Christopher Mericle (III, 254-274), Dennis James Price (III, 387-446), Dana Stevens (VI, 607-613), Lorelei A. McCraney (VI, 615), Debra Johnson (VI, 617-618), and Deanna Mericle (VI, 619-625). WWALS president John S. Quarterman (VI, 627-637) also mentioned invasive species monitoring and water quality testing conducted by WWALS members. WWALS Membership Committee member Deanna Mericle testified that more WWALS members who could not be present to testify are also so affected.

WWALS Members Substantially Affected

12. The Court explained "substantially affected" (II, 130-131): as "generally about what's going to happen that could affect that substantial interest. . .So when you bring your witnesses forward for standing that are lay people, all they have to do is identify their substantial interest. And from them, I don't want to hear about their concerns: about effects."

13. WWALS witness Tom Edwards (II, 119-172) testified that he is a WWALS member (II, 126, lines 12-13), that he owns between 900 and 1,000 acres in Suwannee County abutting Suwannee River State Park with between two and two and a half miles of frontage on the Suwannee River (II, 119, lines 13-18), and that the proposed pipeline would cross his land (II, 119-120; II, 126). The Court specifically recognized "He has established his substantial interest, which is the ownership of property affected by the pipeline." (II, 130, lines 8-9). Mr. Edwards testified that he had tried to get DEP to take notice of substantial issues on his land where the

pipeline would pass, without ever seeing the main evidence he had submitted appear in the public record (II, 121-122). Mr. Edwards testified that he offered to show Sabal Trail gopher tortoises on his property, that Sabal Trail never came to look, and that he eventually got admission in writing from Sabal Trail that the gopher tortoises were there (II, 124). Mr. Edwards testified that he had written the e-comment to FERC in Petitioner's Exhibit 3 (II,126-127), saying: "My intent was to let the authorities, both the DEP and FERC, know that there were items that had been omitted by Sabal Trail in submitting their requests for permits that were omitting crucial information based upon their own words and their own documentation." (II, 139, lines 2-7). Mr. Edwards testified at length about specific substantial effects on his property, about which ALJ said: "All right. That's not opinion testimony. That's eyewitness testimony, I mean, observations of a landowner of features on his own property." (II, 148, lines 5-8). Clearly, WWALS member Tom Edwards is substantially affected both by the proposed pipeline path being on his property and by the failure of DEP to consider the information he as a landowner directly observed and conveyed to DEP.

14. In addition to Mr. Edwards, all the above-mentioned WWALS members through whose land the pipeline would run or go near, or who use the rivers or the natural environment for boating, fishing, swimming, scuba diving, or other activities, are substantially affected.

WWALS Substantial Interest

15. According to a case cited by DEP in its Order of August 14, 2015 ("DEP Order") denying the petition and granting Petitioner 14 days to amend its first petition and resubmit, *St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. District, 54 So. 3d 1054 (Fla. 5th DCA 2011)* ("St Johns"): "Riverkeeper established substantial interest standing. Among other things, the record contains evidence establishing that (1) Riverkeeper's purpose and mission is the protection

of the St. Johns River as a natural resource, and its principal activities are use and enjoyment of the River…. Chapter 373 of the Florida Statutes addresses water resource protection and conservation..."

16. The purpose of WWALS is to protect the territory of the upper Suwannee River watershed as designated by the Waterkeeper® Alliance. The Mission of WWALS is (III, 260 and VI, 635) "WWALS Watershed Coalition advocates for conservation and stewardship of the Withlacoochee, Withlacoochee, Alapaha, Little, and upper Suwannee River watersheds in south Georgia and north Florida through awareness, environmental monitoring, and citizen activities." The activities of its members were established in testimony at the hearing.

WWALS Associational Standing

17. See *NAACP, Inc. v. Florida Board of Regents*, 863 So.2d 294, 295 (Fla.2003): "In our analysis of 'associational standing' in Florida Home Builders, we concluded that the First District's interpretation was 'an excessively narrow construction of section 120.56(1)' and that it restricted public access to the processes provided in the Florida Administrative Procedure Act. Id. at 352. In our analysis of the statutorily created 'associational standing,' this Court explained that a key purpose of the legislation was to expand rather than restrict public participation in the administrative process."

18. As the Court remarked (III, 275-276), "What the law is trying to protect is a person's use of the resource, because if that resource is harmed, those uses will be diminished or eliminated." That is what WWALS is trying to protect, and as the Waterkeeper® Affiliate for the upper Suwannee River watershed, WWALS is the designated nonprofit for such protection. If anyone has the ability to challenge DEP's interpretation of the statutes and rules underlying its proposed ERP and Easement, it would be WWALS.

19. WWALS president John S. Quarterman (VI, 632-633) and WWALS board member Chris Mericle (III, 261, lines 3-8) both testified that WWALS is the Waterkeeper® Alliance Affiliate for the upper Suwannee River watershed. Diana Mericle, testified that there is a substantial number of WWALS members that will be substantially affected. Thus, WWALS has demonstrated associational standing in this case. (VI, 619-625)

B. Character of Geology In Hamilton and Suwannee counties through which the Pipeline Traverses

20. Petitioner's exhibit 5, Memorandum by Carlos Herd and Dale Jenkins (SRWMD) dated April 18, 2014, states: "Most of the pipeline route traverses karst terrain. The route passes through a portion of the Florida Springs Protection area in north and central Florida." "Both of these crossings [Suwannee and Santa Fe Rivers] are in known karst regions in areas of numerous documented springs and sinkholes." "...the pipeline route should be altered to avoid karst areas, conduit and spring flows area of the SRWMD." "...based on the information provided to date, we recommend that the pipeline route be reconsidered to avoid sensitive karst regions that can have a significant impact on the water resources within the SRWMD."

21. Petitioner's Exhibit 10, memorandum by Frank Rupert and Guy Means, DEP, dated March 27, 2014, "Portions of the route may pass through shallow karst with extensively developed cavernous porosity. Shallow caves may be of sufficient size to preclude installing effective support for the pipe." The Floridan Aquifer Vulnerability Assessment map on the last page of Petitioner's Exhibit 10 (page 14) clearly shows that the proposed pipeline route traverses the area in Florida where the aquifer is the most vulnerable. Even though these memoranda are dated in 2014, the geology has not changed.

C. Character of Geology near the Suwannee River under which the Pipeline Traverses

22. According to Sabal Trail's Karst Mitigation plan, Petitioner's Exhibit 6, Section 2.3.2, Fracture and Conduit size limitations for HDD, it states, "Open conduits can present risks of stuck and or lost tooling in the borehole during HDD operations. In karst sensitive areas, conduits in the limestone formations feed groundwater to springs in the region. Near the mouth of these springs, the conduits can be large enough to be explored by divers. Essentially, the springs are fed by irregular networks of smaller conduits that become increasingly smaller with distance from the spring. Because of the distance the HDD sites are from the nearest documented springs, as discussed in Resource Report 2, it is anticipated that any conduits encountered will be less than a few feet in size. Additionally, evidence of large open voids or conduits was not observed during site characterization activities." However, Sabal Trail Geologist, Greg Jones testified that the Karst Characterization (Sabal Trail Exhibit 17) was done before any geotechnical testing was performed (VI, 651).

23. Karst Mitigation Plan section 2.3.2, page 6 of 27: **"**When estimating the type and width of subsurface voids that can be successfully spanned, consideration must be given to the type, strength, and rigidity of the drilling tooling and mainline pipe. During consultations with HDD contractors, experienced in karst-sensitive areas, it has been determined that open conduits or voids of approximately 15 feet or less in diameter have been successfully spanned utilizing similar tooling and in similar conditions as those expected on the proposed Sabal Trail project."

24. It has been shown, using Petitioner's Exhibit 9 (and Sabal Trail's route map, Exhibit tab 19-Karst notebook), depicting the Falmouth Cathedral Cave system as an example, that cave systems can be many miles long and large enough along their length to accommodate divers with scuba equipment. The Falmouth Cave system is over 6 miles long and has been mapped this distance by cave divers. Guy Means testified that the Falmouth Dye test showed flow systems between springs

that were previously unknown (V, 542-543). Sabal Trail's Exhibit-Tab-19, Karst notebook, shows a partially mapped cave system at Stevenson Spring and several other springs in the close up view that don't have any mapped system. The same Sabal Trail Exhibit shows the Suwanacoochee Cave system that is many miles long and crosses under the Withlacoochee River at least twice. This whole area is fraught with springs and cave systems. Greg Jones testified that the river is the bottom of the flow system. It is common knowledge that the Suwannee River is not 100 feet deep. Yet, Mr. Jones testified that he believed that the Falmouth Cathedral Cave is 100 feet deep where it would be crossed by the pipeline. Therefore, there is flowing water below the level of the river.

D. Methods of Pipeline Installation

25. Respondents did not contest Petitioner's counsel Mr. Wohlsifer's statement that "The Southern Natural Gas Company, Your Honor, has a pipeline that runs parallel largely to the proposed pipeline by Sabal Trail, and it's -- the proposal, it's my understanding that those two pipelines cross each other at an uncommon rate, at a rate that, certainly, Southern Natural Gas is concerned about." (I, 88). Yet DEP's one witness Lisa Prather testified that she was not aware that the Sabal Trail pipeline proposes to cross other natural gas pipelines, nor whether boring will be required to pass the pipeline under or over these other pipelines, nor whether service to these other pipelines would be interrupted during the construction of Sabal Trail (III, 331, 332). Sabal Trail expert witness and Carno employee David Dickson said he did not know how many times Sabal Trail would cross existing pipelines (I, 94-95).

26. According to the Sabal Trail's Best Drilling Practices, (Exhibit-tab 23, Karst notebook), Section 2.4 HDD contingency plans, it states that in the event the HDD crossing cannot be completed on the first attempt, there is room within the work space for multiple attempts to install the HDD. The contingency plans allows for three attempts with multiple tries on each attempt by

redirecting up or down, or moving the drilling rig left or right. Therefore, as many as 9 or more holes could be drilled or partially drilled in the already sinkhole prone area. According to Dennis Price's testimony, drilling difficulties are likely at the Suwannee crossing. Multiple attempts drilling through the already unstable geology will exacerbate the instability, and be more likely to lead to adverse impacts to the area, such as sinkhole formation near the proposed route and under the river.

E. Impact of Methods of Construction on Geology and Environment

27. Karst Mitigation Plan page 3 of 31 lists among "general risks associated with HDD construction methods in karst area" this risk: "Loss of drilling fluid into open conduits and inadvertent drilling fluid returns leading to turbidity in nearby wells, springs, and rivers."

28. Even pilot hole drilling can cause drilling fluid loss, according to Karst Mitigation Plan Section 7.3.1., on page 30 of 31:

> *If drilling fluid loss downhole affects nearby springs or rivers and complete drilling fluid loss to the formation cannot be prevented, all or a portion of pilot hole would be abandoned and a new pilot hole started at an alternate depth. Drilling will continue and the affected waterbody will be monitored in accordance with the Best Drilling Practices Plan for the Sabal Trail Project.*

29. This drilling fluid loss is not just possible during pilot hole drilling; it can occur during reaming of the main hole for the pipe, according to Karst Mitigation Plan Section 7.3.2., on page 31 of 31:

> *If drilling fluid loss downhole affects nearby springs or rivers and complete drilling fluid loss to the formation cannot be prevented, reaming operations will continue*

and the affected waterbody will be monitored in accordance with the Best Drilling Practices Plan for the Sabal Trail Project."

30. Drilling fluid losses are not just hypothetical, they have already happened, according to Karst Mitigation plan, Table 3, the geotechnical testing of the HDD crossing of the Suwannee River, drilling fluid returns were lost at 15, 18, 12, and 13 feet respectively in all four borings, indicating that voids were encountered. The borings are just a small sampling of what may be encountered over the whole HDD route. Table 3 even states that construction difficulties are expected. This provides further evidence of the instability of the area and the possibility of intersecting a spring conduit or large void during the 36 inch diameter pipeline installation.

31. While Sabal Trail witnesses emphasized that the drilling fluids would be bentonite clay, the Sabal Trail Best Drilling Practices (Respondents' Joint Exhibit 1, Vol.3, Appendix D, page 2) notes that additives of unknown types can be introduced at the discretion of drillers:

Depending on subsurface conditions encountered, certain additives may also be introduced in the drilling fluid mixture. These additives include lost circulation materials (LCMs) and special polymers. Lost circulation materials may be used during inadvertent return events and/or in certain cases when drilling fluid circulation seems to be diminishing. Lost circulation materials may be used to attempt to seal conduits or to aid in reestablishment of drilling fluid returns to the entry and/or exit pits. Many types of LCMs are available for use during HDD operations that are inert and environmentally benign. . .The type of products used is typically left to the discretion of the HDD Superintendent and the Environmental Inspector.

32. Therefore, drilling fluid additives could contaminate soil or water, as could installation vehicle fuel or oil.

33. Sabal Trail's emphasis is on installing the pipeline, according to Karst Mitigation Plan Table 3, which says "Mitigation measures outlined in this document will increase likelihood of successful installation." It does not say that such measures will prevent damage to the geophysical substrate.

34. Mitigation does not mean prevention or fixing, according to Karst Mitigation Plan, Glossary, page 32 of 31 says "Mitigation – the action of reducing severity or seriousness of something. In the context of this plan, karst mitigation is a set of actions intended to reduce a probability and/or impacts associated with karst terrain." Sabal Trail's test drillings have already caused damage to the karst terrain, as noted in Karst Mitigation Plan Table 3, so more damage can be expected during construction.

35. Sabal Trail expert witness Greg Jones, who said he was the editor of the Karst Mitigation Plan (VI, 666-667), said there were no catastrophic sinkholes in the area where the pipeline would drill under the Suwannee River (VI, 653-655). He defined catastrophic collapse as big enough to affect an Interstate highway or a railroad, despite those being built to carry as he said "130-ton locomotives that carry 50 cars of hazardous waste" and a pipeline not being so constructed. He referred to a sinkhole the size of an Olympic swimming pool as what he would consider catastrophic collapse (VI, 693), despite WWALS witness Donna Ellison's testimony that she had a cow fall into a sinkhole (III, 379-380) or WWALS counsel's mention of a news story of a sinkhole into which a Hamilton County man fell and died (VI, 692). An Olympic pool measures 82 feet by 164 feet 1 inch, while that same Karst Mitigation Plan says (section 2.3.2, page 6 of 27) that only voids of 15 feet or less have been successfully spanned by the type of HDD drilling

proposed for the Suwannee River. A 15-foot sinkhole that collapsed the Sabal Trail pipeline would be catastrophic enough, even out in "the middle of nowhere" as Spectra Energy executive and Sabal Trail witness Alan Lambeth called where many WWALS members live. (VI, 722)

36. It is WWALS' contention that unmapped, large conduits that may be over 15 feet in diameter, could be present along the HDD path of the pipeline and could be intersected, possibly even under the river. Mr. McClung's eyewitness testimony affirmed numerous spring vents along the floor of the Suwannee River. Sabal Trail's Karst Mitigation plan, Section 2.3.3, sinkhole development from HDD operations states, "HDD operations could trigger or reactivate sinkhole activity..." Petitioner's Exhibits 7 and 8 show numerous sinkholes and fracture traces along the proposed pipeline route at the Suwannee River HDD crossing site. Dennis Price, Professional Geologist, evaluated the crossing site in person and used LiDAR and information in Sabal Trail's application to DEP to conclude that the geology at this crossing site is very unstable and that HDD operations could cause further instability, resulting in reactivation of existing sinkholes and formation of new sinkholes. He testified that the expected difficulty of drilling in this unstable area makes the proposed route unsuitable.

37. Intersection of the pipeline with underground large conduits is possible and could not only cause damage to a spring and endangered species that live in those conduits, such as the pallid cave crayfish (Sabal Trail Exhibit-Tab 53, Godley notebook), it could also compromise the integrity of the pipe or sinkhole formation under the river. Pipe welder Willard Randall testified that pipes leak (V, 480, etc.). If the gas leaked into a spring conduit housing the endangered pallid cave crayfish, it could further endanger this species. Mr. Randall also testified that it can take a long time to detect a leak and repair it (V, 480-499). By that time who knows how many cubic feet of gas will have leaked into the ground and water flow systems? Not Greg Jones, not DEP, no one. Dennis Price

testified that there is no way to be sure that there won't be negative impacts from the pipeline. WWALS contends that it is not worth the risk to find out.

38. Effects of drilling would not be limited to the proximate area. Karst Mitigation Plan, page 6 of 31, §3.2 Fracture Traces:

> *Fracture traces were located by identifying large-scale parallel lines of sinkholes and river segments on aerial photographs. Fracture traces of significant scale that intersected the proposed pipeline alignment were identified in Florida (Hamilton, Madison, Suwannee, Gilchrist, Alachua and Levy Counties) and in the counties in Georgia where the Floridan aquifer was mostly unconfined (Terrell, Dougherty, Brooks, and Lowndes Counties).*

39. What Sabal Trail considers "insignificant" for installation of the pipeline may be quite significant for residents or property owners or river users, such as the members of WWALS.

F. Impacts of the Permanent Presence of the Pipeline

40. The pipeline right of way would change the surface hydrology through clearcutting, access roads, the pipeline cut, and HDD boreholes, all likely to contribute to erosion, especially at sloping areas such as river banks, or shoaling in streams including the Suwannee River (IV, 365-366). Such erosion and shoaling has already occurred near the proposed pipeline path, according to Petitioner's expert witness in geology Dennis Price (IV, 398-399) as depicted on Petitioner's Exhibit 7, page 4.

E. Erosion Could expose the Pipeline, Making it More Vulnerable to Damage.

41. The drilling fluid returns already lost in test drillings at the Suwannee and Santa Fe Rivers (see Karst Mitigation Plan Table 3 on pages 24-26) indicate cracks in the karst limestone or other substrate leading away from those test holes which have not been "remediated".

Rainwater, river water, contaminants from construction, or other materials could leak down those holes and through those cracks at any time, causing soil and water contamination.

F. Karst Conduits Opened by Pipeline Construction would Transport Contaminants

42. Cracks or sinkholes could form during operation of the pipeline, according to Sabal Trail's Karst Mitigation Plan (Petitioner's Exhibit 6), Page 27-28 of 31, § 7.1.2. Ground Subsidence or Sinkhole Formation (emphasis added on "**and operation**"):

> *As required by Code 49 of Federal Regulations, Part 192.613, route surveillance will be conducted during construction **and operation** of the facilities, along with training of surveillance personnel, to monitor the pipeline alignment for evidence of subsidence, surface cracks, or depressions which could indicate sinkhole formation.*

43. Sabal Trail's Best Drilling Practices only mentions concern about water wells within 2,000 feet of any HDD boring, but the existence of the Falmouth Cathedral Cave System demonstrates that underground connections could extend for many miles, which means that wells could be affected miles away from a source or initial conduit of contamination (see Petitioner's Exhibit 9 and Sabal Trail's route map, Exhibit tab 19-Karst notebook). Despite the contention of Sabal Trail's witnesses that water only flows underground by their definition of down gradient that cavern system and the Falmouth Dye Test indicate that underground flows are not so predictable, and indeed can travel for miles.

44. WWALS witness Joe Britt McClung testified that there are underwater caves about every eighth of a mile in the area of the Suwannee River that Sabal Trail proposes to cross (II, 185, lines 16-25; II, 186, lines 1-6): "Oh, they're everywhere. I mean, every eighth of a mile there's something out there, there's some kind of vent, some kind of crack, a little gusher coming out of the side of the bank or a big spring." Obviously Mr. McClung's scuba diving and deadhead

logging would be affected by grouting or other contaminants from Sabal Trail drilling or pipeline breaks coming up out of any of those vents and drifting downstream.

G. Acidic River Water Contributes to the Especially Fragile Nature of the Karst

45. Suwannee River water leaking into such conduits could by its acid composition dissolve the karst limestone. WWALS expert witness in geology Dennis Price testified (IV, 426-427) that the Suwannee River is a blackwater river, which means its water is tea-colored in a glass and appears black at depth because of tannic acid, that makes the river water acidic at about pH 3 or 4. He testified: "And through that tannic water invading the aquifer, it obviously helps dissolve the calcium carbonate. It's not neutral." Sabal Trail expert witness in geology and hydrogeology Greg Jones testified that river water when it gets into the limestone will "very aggressively dissolve the limestone." (VI, 653-654)

46. Furthermore, Petitioner's expert witness, Mr. Price, detailed how this acid water causes and expands underground caverns (IV, 399-401). Even if the pipeline were installed during a dry season, cracks, connections, or sinkholes could develop during a later flood season. WWALS expert witness in geology Dennis Price testified (IV, 427): "Q Is the water tannic at the proposed crossing of the Suwannee River? A It is during flood conditions, specifically. That's where you're going to find most of your invasion. Recharge happens during wintertime or during flood conditions."

47. The tannic acid does not originate in the river; it comes from swamps, some of which are uphill from the pipeline path, including quite possibly from the boreholes on either side of the Suwannee River. As WWALS expert witness in geology Dennis Price testified: "The source of that water is coming out of the Okefenokee. All the swamps have drained into it. And all that tea-colored water is tannic water. It's been steeping in the swamps and, you know, leaks out. When it

rains, it kind of flushes out into the river, and that's the source of the water into the river from White Springs."(IV, 427)

48. In summation, river water, swamp water, rain water, or other liquids down such conduits could cause them to enlarge, connect with others, or collapse. River water or other tannic acid water leaking down cracks or the pipeline borehole to the pipe itself could cause corrosion of the pipe, potentially causing the pipe to leak. Leaks from the pipeline itself of highly pressurized natural gas could cause or exacerbate cracks in the karst limestone or other substrate, contributing to the risk of further cracks, connections, or sinkholes.

CONCLUSIONS OF LAW

Jurisdiction

The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding under Sections 120.569 and 120.57(1), Florida Statutes.

Standing

To establish standing to challenge a proposed ERP and Easement under § 120.569, Florida Statutes, an association petitioner must have a substantial interest that would be affected by the proposed permit, § 120.52(13)(b), Fla. Stat., and meet the standing test set forth in *Fla. Home Builders Ass'n v. Dep't of Labor & Emp. Sec.*, 412 So. 2d 351, 353 (Fla. 1982). § 120.569(1), Fla. Stat.; § 120.52(13)(b); *St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. District, 54 So. 3d 1054 (Fla. 5th DCA 2011),* and for associational standing according to the precedent of *NAACP, Inc. v. Florida Board of Regents*, 863 So.2d 294, 295 (Fla.2003) as explained in *Rosenzweig v. Department of Transp*., 979 So.2d 1050 (Fla. App., 2008). Petitioners have satisfied that test. (¶ *supra*)

Environmental Resource Permit

A. Standard of Review

A DOAH hearing held pursuant to Sections 120.569 and 120.57(1), Florida Statutes, is a de novo proceeding. *Florida Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So.2d 778, 786-87 (Fla. 1st DCA 1981).

As the permit applicant, SABAL TRAIL has the initial burden to prove by a preponderance of the evidence that it is entitled to the ERP, *Id*. at 787. Similarly for the Easement. To satisfy that burden, the SABAL TRAIL must provide "reasonable assurance" that: (1) state water quality standards will not be violated, and (2) "if such an activity significantly degrades or is within an Outstanding Florida Water that the proposed activity is clearly in the public interest." § 373.414(1), Fla. Stat.

In determining whether an activity is clearly in the public interest, the DEP shall consider and balance the factors in § 373.414(1)(a), Fla. Stat.

Once the applicant has made a preliminary showing of entitlement, the petitioner challenging a permit under Chapter 373 bears the ultimate burden of persuasion of proving the facts alleged in the petition. *J.W.C.*, 396 So.2d at 789. The applicable standard of proof is preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

A. Clearly Not in the Public Interest

In evaluating the public interest, DEP must consider "[w]hether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling," § 373.414(1)(a)(3), Fla. Stat., and "[w]hether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity." § 373.414(1)(a)(4), Fla. Stat.

SABAL TRAIL's pipeline would bore a three-foot wide or larger hole under the Suwannee River and would be perilously close to caverns such as the Falmouth Cathedral Cave system. (Lisa

Prather testified that the mainline route is 36 inches in diameter throughout and Sabal Trail's Exhibit 19 depicts the route over the Falmouth cave system.) Petitioners presented extensive evidence that due to the fragile geologic structure of the areas through which the pipeline passes, that it is highly likely to cause geologic collapse, resulting in a shift in water flow. Dennis Price, PG, testified that collapse of the roof of the Falmouth Cathedral cave system could occur due to removal of overlying clays and sands during the installation of the pipeline over the cave. He testified that if that were to occur, in order to stop continued collapse, the void would need to be plugged with concrete, which would block the conduit through which water passes through the cave system. Dale Jenkins, PG, testified that the Falmouth cave system connects to Lime Run Spring (VI, 601-602), and the two are shown as connecting in the Falmouth Dye Test press release (Petitioner's Exhibit 3, page 6). Lime Run Spring is a magnitude 1 spring, according to Table 1, "First Magnitude Springs in the Suwannee River Basin" from "Springs of the Suwannee River Basin in Florida," a publication of the Suwannee River Water Management District. (Petitioner's Exhibit 3, page 18) Sabal Trail's Karst Mitigation plan (Petitioner's Exhibit 6) does not address a situation such as this, where a spring conduit would be plugged with concrete and would adversely affect the flow of water to such springs or to an Outstanding Florida Water, such as the Suwannee River.

The public interest test further requires consideration of "[w]hether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats," § 373.414(1)(a)(2), Fla. Stat., and "[t]he current condition and relative value of functions being performed by areas affected by the proposed activity." § 373.414(1)(a)(7), Fla. Stat.

SABAL TRAIL's own exhibit 52 shows there are sensitive species present such as the gopher tortoise, Sherman's fox squirrel, gopher frog, Florida pine snake, Southeastern American kestrel

among others, that the pipeline is "likely to adversely affect." According to Sabal Trail's Exhibit 53, the pallid cave crayfish, also a designated species, has habitat that abuts the HDD crossing site of the Suwannee River. Nothing in Sabal Trail's application to DEP explains the plan for protecting the pallid cave crayfish. WWALS witness Tom Edwards testified that he had identified gopher tortoises on his property and offered to show them to Sabal Trail, yet Sabal Trail never sent anyone to see them (II, 124).

DEP's application coordinator, Lisa Prather, testified that attachments to an email Tom Edwards sent her were kept on a disk on her personal office computer and not made part of the publicly visible record until after the Notice of Intent to Issue (Tab 4 of Volume 12 of Joint Exhibit for Identification 10) was published (II, 225). Those attachments were not returned in response to an open records request by WWALS, even though Tom Edwards' letters to Ms. Prather listing them as attachments were returned by DEP to WWALS. (see Petitioner's Exhibit 4) Ms. Prather testified (II, 224, lines 24-25) "Well, the entire file, as far as our record in-house, is all public record." If a file is not visible to the public, even through an open public records request, how is it a public record? Given that DEP did not hold any public hearings or other public meetings about the application (IV, 362, lines 21-23), how could the public know of Mr. Edwards' concerns as submitted to DEP in that application process?

Petitioner presented expert testimony, by Willard Randall, that due to corrosion and the extensive width and length of the pipe that leaks will occur. Therefore, leaks will occur within feet of habitat essential for these species. A leak would be substantially likely to adversely affect said habitat, and therefore, the sensitive species that rely on the pristine condition of that habitat.

Additionally, the public interest test requires consideration of "[w]hether the activity will be of a temporary or permanent nature." § 373.414(1)(a)(5), Fla. Stat.

SABAL TRAIL's pipeline is intended to be permanent, according to the testimony of David Shammo, an employee of Sabal Trail's operator, Spectra Energy (I, 57). Even if parts of the pipeline were to be removed, the impact of the geology and environment would be permanent (VI, 746-749). Therefore, it requires the highest scrutiny when considering the other six factors of the public interest test.

Finally, the public interest test requires consideration of "[t]he current condition and relative value of functions being performed by areas affected by the proposed activity." § 373.414(1)(a)(7), Fla. Stat.

According to a memorandum from DEP to FERC, attested by its co-author WWALS expert witness Guy Means, the entire pipeline route in Florida would run through the most vulnerable area of the Floridan Aquifer (Petitioner's Exhibit 10). The pipeline passes under the Suwannee and Santa Fe Rivers, both Outstanding Florida Waters and through preserved lands, such as Suwannee River State Park that are used, not only by countless Floridians, but by tourists as well. The value of clean drinking water and pristine places to recreate and enjoy is so high that it is incalculable. Florida state law requires the highest levels of protection for Outstanding Florida Waters, yet DEP did not take into consideration any of the impacts that this Pipeline would have on an Outstanding Florida Water. (IV 348, 349)

When taken together, the adverse effect on water flow, erosion, recreation, sensitive species, the Floridan Aquifer systems and the permanent nature of the pipeline demonstrate that the proposed pipeline is not clearly in the public interest as required by Florida Law.

Reasonable Assurances

SABAL TRAIL has failed to give reasonable assurance that there is a substantial likelihood that the proposed project will not result in water quality violations contrary to the requirements of

section 373.414(1), Florida Statutes. To the contrary, petitioners presented evidence that that the proposed pipeline has a substantial likelihood of causing permanent and irreparable harm to the water quality of both subterranean and surface waterways.

SABAL TRAIL has additionally failed to provide reasonable assurance that it is substantially likely that the proposed pipeline will not permanently damage Florida's geology, aquifer, waterways, lands, sensitive species and enjoyment of public lands and waterways. To the contrary, Petitioner presented evidence that the proposed pipeline is substantially likely to cause permanent and irreparable harm to water flow through erosion and water contamination and adverse effects on recreation, sensitive species and the use of both subterranean and surface waterways.

Easement on Sovereign Submerged Lands

"All activities or sovereignty land must not be contrary to the public interest. . ." Rule 18-21.004, Fla. Admin. Code. Public interest is defined as:

> "Public interest" means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.
>
> 18-21.003 (51), Fla. Admin. Code

As demostrated in *supra*, SABAL TRAIL has failed to provided resonable assurances that their Easement is not contary to the publicy interest.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law Petitioner recommends that the Department issue a Final Order: (1) determining that Petitioner has standing to challenge the issuance of the Environmental Resource Permit to SABAL TRAIL, (2) determining that

Petitioner has standing to challenge the issuance of the Easement to SABAL TRAIL, (3) denying SABAL TRAIL's Environmental Resource Permit for failure to provide the reasonable assurances as required by Florida law demonstrating that the issuance of an environmental resource permit for their pipeline is clearly in the public interest, (4) denying SABAL TRAIL's Easement to use sovereign submerged lands for failure to provide the reasonable assurances required by Florida law demonstrating that the issuance of an environmental resource permit for their pipeline is not contrary to the public interest.

Respectfully submitted November 16, 2015.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all parties receiving electronic notification via eALJ Electronic Filing system as of November 16, 2015.

By: /s/ Leighanne Boone
Leighanne C. Boone, Esquire