STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WWALS Watershed Coalition, Inc.,

Petitioner,

vs.

DOAH Case No.: 15-4975
OGC Case No.: 15-0468

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

Respondents.
_____/

RESPONDENT, SABAL TRAIL TRANSMISSION, LLC'S, RESPONSE TO PETITIONER, WWALS WATERSHED COALITION, INC.'S, EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to Rule 28-106.217(3), Florida Administrative Code, Respondent, Sabal Trail Transmission, LLC, ("Sabal Trail"), by and through undersigned counsel hereby files this response to WWALS Watershed Coalition, Inc.'s ("WWALS") exceptions to the Administrative Law Judge's ("ALJ") Recommended Order. Sabal Trail respectfully requests that the Florida Department of Environmental Protection ("Department") deny the exceptions and enter a final order consistent with the findings of the ALJ without modification.

Standard of Review for Exceptions

Pursuant to sections 120.569 and 120.57, Florida Statutes, the ALJ is the finder of fact in a formal administrative proceeding. The ALJ has the exclusive authority "to consider all the evidence presented, resolve conflicts, judge the credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence." *Goin v. Comm'n of Ethics,* 658 So. 2d 1131, 1138 (Fla. 1st DCA 1995) (quoting *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)); *see also*

Belleau v. Dep't of Envtl. Prot., 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997). In reviewing a recommended order, such as the one now before the Department, the findings of fact entered by the ALJ may not be rejected or modified by a reviewing agency "unless the agency first determines from a review of the **entire record**, and states with particularity in the order, that the findings of fact are not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2015) (emphasis added); *Dunham v. Highlands County School Bd.*, 652 So. 2d 894 (Fla. 2d DCA 1995). Moreover, the Department's review of the administrative law judge's conclusions of law is limited. An "agency . . . may reject or modify the conclusions of law over which it has jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction," but the "[r]ejection or modification of conclusions of law or interpretation of administrative rule may not form the basis for rejection or modification of findings of fact." § 120.57(1)(l), Fla. Stat.; *Pillsbury v. Dep't of Health and Rehabilitative Servs.*, 744 So. 2d 1040, 1041-42 (Fla. 2d DCA 1999).

An agency reviewing a recommended order from an ALJ may not reweigh the evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of the ALJ as the trier of fact. *Belleau v. Dep't of Envtl. Protection*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Maynard v. Unemployment Appeals Commission*, 609 So. 2d 143, 145 (Fla. 4th DCA 1992). An agency reviewing a recommended order has no authority to make independent or supplemental findings of fact in its final order. *N. Port, Fla. v. Consolidated Minerals, Inc.*, 645 So. 2d 485, 486-87 (Fla. 2d DCA 1994).

The scope of agency review of a recommended order involves ascertaining whether the ALJ's findings of fact are supported by competent substantial evidence of record. *N. Port*, 645 So. 2d at 487. Competent substantial evidence is such evidence that it is sufficiently relevant and

material that a reasonable mind would accept it as adequate to support the conclusion reached. *Perdue v. T.J. Palm Associates, Ltd.*, 755 So. 2d 660, 665 (Fla. 4th DCA 1999) (citing *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)). Thus, the issue is not whether the record contains evidence contrary to the findings of fact in the Recommended Order, but whether the finding is supported by any competent substantial evidence. *Fla. Sugar Cane League v. State Siting Bd.*, 580 So. 2d 846, 851 (Fla. 5th DCA 1991). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. *See, e.g.*, *Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So.2d 287, 289 n.3 (Fla. 5th DCA 1996). "The fact findings of [an ALJ] become binding upon an agency unless it finds they are not supported by competent substantial evidence . . . ." *Fla. Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987); *see also Charlotte County v. IMC Phosphates Co.*, 18 So. 3d 1089, 1092 (Fla. 2d DCA 2009) ("If the findings are supported by record evidence and comply with the essential requirements of law, DEP is bound by the ALJ's findings of fact."). An agency "may not reject the [ALJ's] finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred." *Heifetz*, 475 So. 2d at 1281 (emphasis added). "The agency is not permitted to reweigh the evidence or judge the credibility of witnesses." *Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005).

"The Florida courts have ruled that, if there is competent substantial evidence supporting an administrative law judge's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting the contrary finding." *Lane v. Int'l Paper Co.*, 2001 WL 1917274, at *4 (FDEP Final Order, Oct. 8, 2001) (citing *Arand Constr. Co. v. Dyer*, 592 So. 2d

276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622 (Fla. 1st DCA 1986)). "[F]actual issues susceptible of ordinary methods of proof that are not infused with [agency] policy considerations are the prerogative of the [ALJ] as the finder of fact." *See Martuccio v. Dep't of Prof'l Regulation, Bd. of Optometry*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Heifetz*, 475 So. 2d at 1281. Moreover, "the ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of competent substantial evidence of record supporting the decision." *Parham v. Dep't of Envtl. Prot.*, 2009 WL 736938, at *3 (FDEP Final Order, Mar. 2009) (citing *Collier Med. Ctr. v. Dep't of Health & Rehab. Servs.*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm'n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983)).

A state agency reviewing an ALJ's recommended order has no authority to make independent and supplementary findings of fact to support conclusions of law in the agency final order. *See, e.g., Manasota 88, Inc. v. Tremor*, 545 So. 2d 439, 441 (Fla. 2d DCA 1989) (citing Friends of *Children v. Dep't of Health and Rehab. Servs.*, 504 So. 2d 1345 (Fla. 1st DCA 1987)). "The agency's scope of review of the facts is limited to ascertaining whether the [ALJ's] factual findings are supported by competent substantial evidence." *City of N. Port v. Consol. Minerals, Inc.*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994).

An agency's review of legal conclusions in a recommended order is restricted to those that concern matters within the agency's field of expertise. *See, e.g., G.E.L. Corp. v. Dep't of Envtl. Prot.*, 875 So. 2d 1257, 1264 (Fla. 5th DCA 2004). An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. *See, e.g., Pub. Emps. Relations Comm'n v. Dade County. Police Benevolent Ass'n*, 467 So. 2d

987, 989 (Fla. 1985); *Fla. Pub. Emp. Council 79 v. Daniels*, 646 So. 2d 813, 816 (Fla. 1st DCA 1994). However, agencies do not have jurisdiction to modify or reject the ALJ's rulings on discovery, procedural, or evidentiary matters. *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1011-12 (Fla. 1st DCA 2002); *Fla. Power & Light Co. v. State*, 693 So. 2d 1025, 1028 (Fla. 1st DCA 1997) (Benton, J., concurring); *see also Martuccio*, 622 So. 2d at 609 (reversing agency's effectively evidentiary finding that interested expert witness's testimony could not serve as competent substantial evidence). Agencies also do not have the authority to modify or reject conclusions of law that apply general legal concepts typically resolved by judicial or quasi-judicial officers. *See, e.g., Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140, 1142 (Fla. 2d DCA 2001).

Judged by these standards, WWALS' exceptions do not identify a basis to modify any portion of the Recommended Order. Consequently, the exceptions should be rejected in their entirety. The Department does not have the authority to supplement ALJ's findings of facts 26 and 27 related to the pipeline design specifications. *N. Port*, 645 So. 2d at 486-487.

Responses to Exceptions

1. Response to WWALS Exceptions 1-9, 11-12, 14-19

WWALS Exceptions 1-9, 11-12, and 14-19 should be rejected because these exceptions simply invite the Department to impermissibly reweigh the evidence considered by the ALJ. The Department does not have the authority to now reweigh the competent substantial evidence relied on by the ALJ. *Belleau*, 695 So. 2d at 1307; *Maynard*, 609 So. 2d at 145.

For instance, WWALS's Exception 1 should be rejected. Page three of the Recommended Order lists Willard Randall as a member of WWALS. While Mr. Randall was

qualified as an "expert welder" at the hearing, he had no knowledge of the Sabal Trail project. [Randall, V5, p. 500-01.] During the hearing, the ALJ expressed that Mr. Randall's testimony would be treated as irrelevant unless it was "tied to" the project. [Randall, V5, p. 488-89.] The Petitioner and witness failed to ever establish such a connection.

Furthermore, competent substantial evidence was provided that the pipeline was designed with karst terrain in mind. [Lambeth, V6, p. 719.] Evidence was provided that thousands of miles of natural gas pipeline have been laid in karst terrain throughout the United States. [Lambeth, V6, p. 725; ST Exhibit 32.] The pipeline itself is made from modern, high-strength ductile carbon steel pipe. [Lambeth, V6, p. 720.] Sabal Trail has an extensive specification requirement for selection of the pipe used for this project. [Lambeth, V6, p. 720-21.] Finally, Sabal Trail proved that an impressed current will be used to provide cathodic protection from corrosion. [Lambeth V6, p. 729-30; Joint Exhibit 12, p. 373.] A technology Mr. Randall was apparently unfamiliar with given that Mr. Randall testified that zinc packs are "the only thing [he] ever [knew … would] stop electrolysis." [Randall, V5, p. 484-486, 501.]

Additionally, WWALS's Exception 2 should be rejected because the Department does not have the authority to supplement the ALJ's findings of fact related to the drilling mud used during horizontal directional drilling ("HDD") operations. *N. Port*, 645 So. 2d at 486-487. Finding of Fact 14 was well established by testimony at the hearing and the admitted record. [Joint Exhibit 5, p. 1514 (ST Exhibit 23, p. 4); Means, V5, p. 563; Jones V6, p. 670.] And WWALS's Exception 2 improperly misrepresents the testimony and evidence admitted at the hearing. Mr. Means explained that "grouting is the use of materials, namely cements, to fill in and support potential -- or drill strings, wells, and that sort of thing." [Means, V5, p. 532.] The Petitioner's Exception mischaracterizes Jenkin's testimony, because he did not understand "what

grout [meant] in this particular instance" when being questioned by WWALS. [Jenkins, V6, p. 603-04]. More importantly, WWALS never presented evidence admitted into the record concerning what affect, if any, grout (unrelated to drilling fluid used in HDD operations) would have on water resources. More instructively is that in Finding of Fact 49, the ALJ concludes that Sabal Trail and the Department showed the construction and operation of the pipeline would not degrade the water quality of the Suwannee River or Santa Fe River.

Similarly, Exception 3 attempts to mischaracterize the Recommended Order. Finding of Fact 18 provides that "the pipeline runs parallel to two existing natural gas pipelines *that cross the Santa Fe River*." (emphasis added.) This fact was substantiated by Marty Bass [Bass, V6, p. 703.] and confirmed by WWAL's own witness [Malwitz-Jipson, V3, pp. 248-49.]. The Department should reject Exception 3. WWALS's Exception 3 additionally attempts to improperly supplement the findings of fact with evidence of pipelines stability which was not entered into evidence at the hearing. WWALS failed to provide any relevant evidence to prove that a pipeline crossing would cause an adverse impact. The lack of relevant evidence was recognized by the ALJ on multiple occasions at the hearing. The ALJ specifically provided that "how many crossovers [the Sabal Trail project] has compared to others, a general question like that, [he didn't think was] relevant." [Dickson, V1, p. 94.] The ALJ later said:

> [WWALS has] asked a lot of questions about crossings of other lines, but you've never -- **it's never been established in my mind what you're getting at**. If it's beyond safety, which is not something we can take up, I never understood what exactly you were trying to suggest.

[Bass, V6, P 711. (emphasis added)]

The Department should reject WWALS's Exception 4, because it attempts to mischaracterize Finding of Fact 19 in the Recommended Order. The closest approach to a

major spring is the Madison Blue Spring, which is 1.7 miles from the pipeline. [Jones, V6, p. 677; ST Exhibit 22.] The four minor springs on or near Mr. Edwards' property included a 2nd magnitude spring, two 4th magnitude springs, and a spring of unknown magnitude. [Jones, V6, pp. 659-62, 664-65; ST Exhibit 19; Joint Exhibit 5, p. 26, 2313-14.] The only spring downgradient of the Suwannee River HDD crossing is a 4th magnitude spring. [Id.] The upgradient springs are at least ¾ miles from the HDD crossing. [Joint Exhibit 5, 2314.] Mr. Jones provided testimony at the hearing that the area of the Suwannee River HDD crossing "is not an area of concentrated groundwater discharge" or "a well-developed conduit system." [Jones, V6, p. 662.] The Department does not have the authority to now reweigh the competent substantial evidence relied on by the ALJ. *Belleau*, 695 So. 2d at 1307; *Maynard,* 609 So. 2d at 145.

Next the Department should also reject WWALS's Exception 5. Gregg Jones provided direct testimony related to the pipeline crossing the Falmouth Cave system at a depth of four to six feet, and the cave system being more than one-hundred feet below the ground. [Jones, V6, p. 659.] If the ALJ chose not to rely on the testimony of Dennis Price, the Department cannot reweigh the evidence as requested by WWALS.

WWALS's Exception 6 mischaracterizes the testimony of Gregg Jones, who discusses the uniqueness of the geology in the Cody Scarp area that runs from an area east of the Appalachicola River west and south all the way to Alachua County. [Sabal Trail Exhibit 18]. This "unique" geology is not limited to Hamilton and Suwannee Counties as suggested by WWALS. The Department should also reject WWALS's Exception 6 regarding Finding of Fact 24 regarding Interstate 10 and 75. Sufficient evidence was presented in the record that these interstates traverse the area of the Cody Scarp. [Sabal Trail Exhibit 18.] Dr. Jones' testimony

further supports these facts. [Jones, V6, pp. 655-57.] And while WWALS's Exception takes issue with Dr. Jones's statement that the pipeline would be subterranean, it fails to consider the his earlier unrefuted statement that the construction of the interstates would be "much more invasive than anything the pipeline would involve." [Jones, V6, p. 656.] The Department should reject WWALS's exception 6.

Moreover, the Department should reject WWALS's Exception 7, as Finding of Fact 26 relies on facts presented by the direct testimony of Alan Lambeth. *See* response to WWALS's Exception 2 on page 6.

Regarding catastrophic collapse, Dr. Jones refuted WWALS's allegations that a catastrophic collapse could occur in Hamilton or Suwanee Counties. [Jones, V6, p. 692-694.] The majority of the sinkhole features within a ¼ mile of the pipeline "are small, shallow, [and] sediment-filled." [Jones, V6, p. 693.] The Department does not have the authority to now reweigh the competent substantial evidence relied on by the ALJ. *Belleau*, 695 So. 2d at 1307; *Maynard*, 609 So. 2d at 145.

And the Department should reject WWALS's Exception 8, because Finding of Fact 27 relies on evidence in the record and testimony by David Shammo related to the purpose of the pipeline. The purpose of the Sabal Trail project is to provide diverse and reliable natural gas and natural gas transportation services to the southeast in general, and Florida in particular. [Shammo, V1, pp. 24-26; Joint Exhibit 12, p. 34.] As a transportation company, Sabal Trail clearly has an interest in minimizing any disruptions in its service.

Moreover, WWALS's Exception 9 should be rejected by the Department because the Petitioner fails to point to any admitted evidence that refutes the Finding of Fact 29. WWALS

provided no evidence that pipeline crossing other pipelines would cause negative impacts. The ALJ concluded that Mr. Gamble's testimony regarding the cost of remediation of a sawmill project was "vague," "speculative," and ultimately excluded from the record. [Gamble, V6, pp. 593-95.]

Interestingly, WWALS accepts Finding of Fact 28, whereby the ALJ concludes that WWALS's *own witness,* Mr. Means, testified that he was ***not aware of any negative impacts*** associated with other natural gas pipelines in Florida, including ones that were installed in karst terrain using the HDD method. [Means, V5, p. 557.]

Regarding WWALS's alleged reversible error related to the failure to allow the Petitioner to provide testimony related to safety, the Department must reject this exception as it relates to an issue beyond the substantive jurisdiction of the Department. § 120.57(1)(l), Fla. Stat., and *Pillsbury,* 744 So. 2d at 1041-42. While the Petitioner contends that the ALJ did not allow it to provide any testimony related to safety, the ALJ made it clear in his instruction that he was "not making any findings about safety, pipeline safety, *except* as it affects – potential effects on the environment and human use of the water resources." (emphasis added.) [Lambeth, V6, p. 735.] This is born out in the Recommended Order where the only reference to safety was specific to the public interest analysis under section 373.414, Florida Statutes. Nonetheless, WWALS still failed to provide any competent substantial evidence that the pipeline would result in adverse impacts on public health, safety, or welfare.

The Department should reject WWALS's Exception 12. Petitioner's exception relies on a statement made by the ALJ that "if drilling fluid is a pollutant…" However, in the Recommended Order the ALJ specifically found that the drilling fluid is a non-toxic, naturally

occurring clay. [Finding of Fact 14.] WWALS fails to cite to any evidence on the record any "substances" will come in contact with water of Outstanding Florida Waters. WWALS further fails to cite to any adverse effects that would occur to "sensitive fish and wildlife" which lived in such waters. WWALS provided no expert testimony related to biological behaviors and needs of wildlife which the ALJ explained would be required to establish such effects. [Edwards, V2, p. 131.] Consequently, the Department should reject this exception.

The Petitioner wrongly contends in Exception 15 that it demonstrated through testimony of employees of the Department that the Department failed to acquire reasonable assurances that the permit would not be contrary to the public interest. WWALS' claims are not substantiated by evidence in the record. However, the testimony of Lisa Prather was clear that the Department concluded that reasonable assurances were met. [Prather, V4, p. 360-376.] What matters is the evidence offered at the hearing. This proceeding was *de novo*, and intended to formulate final agency action as opposed to reviewing action taken earlier and preliminarily." *Young v. Dep't of Community Affairs,* 625 So. 2d 831, 833 (Fla. 1993); *Hamilton Cnty. Bd. of County Comm'rs v. Dep't of Envtl. Regulation,* 587 So. 2d 1378, 1387 (Fla. 1st DCA 1991); *McDonald v. Dep't of Banking & Fin.*, 346 So. 2d 569, 584 (Fla. 1st DCA 1977). The ALJ weighed the evidence and concluded that considering all seven factors, the proposed pipeline project was not contrary to the public interest. [Finding of Fact 47.]

The Department should reject WWALS' Exception 19, as well. WWALS' cannot cite to any evidence on the record to support its allegation that the HDD method employed under the Suwannee and Santa Fe Rivers would likely cause those lands to lose their essential natural conditions. Additionally, WWALS continues to ignore the langue in rule 18-21.004(2), Florida Administrative Code, which expressly provides "[c]ompatible secondary purposes and uses

which will not detract from or interfere with the primary purpose may be allowed." The evidence presented to the ALJ was that the installation of the pipeline via the HDD method under the rivers would ***not*** adversely affect the natural conditions including navigation or shoaling, the propagation of fish and wildlife, and traditional recreational uses. [Prather, V4, p. 374-75.]

2. Response to WWALS Exceptions 10, 14, 20-23

The Department should reject WWALS Exceptions 10, 14, and 21-23 as they relate to standing. After receiving testimony and accepting evidence into the record, the ALJ correctly found both as a matter of fact and law that WWALS failed to demonstrate that a sufficient number of its members would be substantially affected by the pipeline. The Department does not have the authority to now reweigh the competent substantial evidence relied on by the ALJ related to WWALS' lack of standing. *Belleau*, 695 So. 2d at 1307; *Maynard*, 609 So. 2d at 145.

Additionally, the Department should discount WWALS disagreement with the ALJ on the correct application of the law governing administrative standing. Standing is a procedural matter, not an organic law within the Department's substantive jurisdiction. The Department does not have "substantive jurisdiction" to reject discovery, procedural or evidentiary rulings. *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1011-12 (Fla. 1st DCA 2002). The record is quite clear that only four members of WWALS established the requisite substantial interest. The generalized, speculative concerns of the other members that testified is insufficient. None were ever able to articulate an actual immediate injury-in-fact that they would suffer if the pipeline was approved. WWALS repeatedly was given opportunities to demonstrate the requisite standing and repeatedly fell short of its burden.

3. Response to WWALS Exception 13

The Department should reject WWALS' Exception 13. The ALJ was correct that air quality is not a "cognizable issue" in an ERP proceeding. The Department's review of the ERP is limited to effects on the state's water resources. It does not reach other potential harms or interests, even if related to environmental matters, which are beyond the protection or impact to water resources of the state. *See Royal Palm Beach Colony, L.P. v. South Florida Water Management District*, 21. F.A.L.R. 3663, 3674 (DOAH 1999) (criteria set forth in section 373.414 for issuance of an ERP are limited to assessing potential adverse impacts to water resources of the state); *see also In re Florida Power & Light Co., Manatee Orimulsion Project*, 21 F.A.L.R. 2569, 2587-88 (Siting Board, 1998) (cumulative impacts to water resources associated with atmospheric deposition of air pollutants from power plant outside scope of ERP program). *See also Florida Chapter of the Sierra Club et al v Suwannee American Cement, Inc. et al*, 2000 WL 1185499 at *16-17 (Fla. Dep't. Envt'l Protection 2000) (emissions of mercury into the air are not "discharges" subject to state water quality standards).

4. Response to WWALS Exception 18

The Department should reject Exception 18 as it misstates the standard related to the easement to use sovereign submerged lands. Paragraph 50 of the Recommended Order correctly states the standard of "public interest" for purposes of the sovereign submerged land easement. This standard is different from the "public interest" test related to the Environmental Resource Permit. The easement requires demonstrable environmental, social, and economic benefits that would accrue to the public at large. Rule 18-21.003(51), Fla. Admin. Code. As properly concluded by the ALJ, the Public Service Commission's need for additional natural gas transportation capacity, increased competition, and enhanced reliability shows that the project

fulfills environmental, social, and economic benefits for the public at large. The Department does not have the authority to now reweigh the competent substantial evidence relied on by the ALJ. *Belleau*, 695 So. 2d at 1307; *Maynard*, 609 So. 2d at 145.

5. Response to WWALS Exception 24

WWALS's Exception 24 misstates the holding in *Metropolitan Dade County v. Coscan Florida*, 609 So. 2d 644, 648 (Fla. 3d DCA 1992), and should be rejected by the Department. In that case, the court expressly found that reasonable assurances mean there is "a substantial likelihood that the project will be successfully implemented." *Id.* Specifically, the court held:

> In our view, the statute is intended to prevent the degradation of existing water quality, and to ameliorate existing violations. If a full scale project proceeds where there is only a mere possibility of successful implementation, that exposes the water body to the risk that water quality violations will most likely result and persist for some period of time before the last phase of the project is removed. Such a scenario falls short of the reasonable assurance contemplated by the statute. **"Reasonable assurance" contemplates, in our view, a substantial likelihood that the project will be successfully implemented.**
>
> The hearing officer in the present case used varying terminology to describe the prospects for the Coscan proposal. In the portions of the Order quoted above, the hearing officer commented that the evidence **did not provide** adequate assurance of water quality…. (emphasis added.)

Id. (emphasis added).

The *Coscan Florida* case was remanded because the hearing officer had concluded that adequate assurances were not provided, and the hearing officer terminology was inconsistent with the court's view that a substantial likelihood that the project will be successfully implemented.

6. Response to WWALS Exception 25

The Department should reject WWALS's Exception 25, which attempts to mischaracterize the Conclusion of Law 69. In his Conclusion of Law 68, the ALJ clearly states

that the criteria to issue an Environmental Resource Permit is set forth in chapter 373, part IV of the Florida Statutes, Chapter 62-330, Florida Administrative Code, and the Applicant's Handbook as adopted by rule. These sources combined create the "regulatory criteria" referred to in Conclusion of Law 69, and expressly incorporate and implement the public interest test found in section 373.414, Florida Statutes. The Department should not allow WWALS to manipulate the conclusion found in paragraph 69.

For the foregoing reasons, each of WWALS's exceptions should be rejected and the Department should enter a final order adopting the Administrative Law Judge's Recommended Order.

Respectfully submitted this **4th** day of January, 2016.

HOPPING, GREEN & SAMS, P.A.

By: */s/ Timothy M. Riley*

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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was provided by electronic mail to the following on the **4th** day of January, 2015:

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