

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

WWALS WATERSHED COALITION, INC.,

Petitioners,

vs.

OGC CASE NO. 15-0468

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

Respondents.

_____ /

**ORDER DISMISSING PETITION OF WWALS-FL WITH PREJUDICE AND
STRIKING PORTIONS OF WWALS' AMENDED PETITION FOR HEARING**

On August 7, 2015, the Petitioner, WWALS Watershed Coalition, Inc. (WWALS), filed its petition for administrative hearing (Petition) regarding the Department of Environmental Protection's (Department) Consolidated Notice of Intent to Issue Environmental Resource Permit and Easement to Use Sovereign Submerged Lands¹ (Notice of Intent) issued to the Respondent Sabal Trail Transmission, LLC. (Sabal Trail). Sabal Trail proposes to construct and operate a natural gas transmission pipeline and related structures (File No. 0328333-001). On August 14,

¹ Subsection 253.002(1), Florida Statutes provides that "[t]he Department of Environmental Protection shall perform all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund. . . . Unless expressly prohibited by law, the board of trustees may delegate to the department any statutory duty or obligation relating to the acquisition, administration, or disposition of lands, title to which is or will be vested in the board of trustees."

2015, the Department dismissed the Petition giving WWALS 14 days to file an amended petition.

On August 28, 2015, WWALS timely filed its amended petition for administrative hearing (Amended Petition). The Amended Petition also served as an initial petition for administrative hearing from a newly formed nonprofit subsidiary corporation, WWALS Watershed Coalition Florida, Inc. (WWALS-FL).² As discussed below, the Department must dismiss the untimely initial petition of WWALS-FL. In addition, this Order strikes certain allegations of the Amended Petition that are not cognizable in this administrative proceeding.

ORDER DISMISSING WWALS-FL PETITION

WWALS-FL's Initial Petition is Untimely

WWALS states that it received notice of the Department's action on July 16, 2015, in the legal notices of the Jasper News. Rule 62-110.106(3), Florida Administrative Code, and the notice require that persons whose substantial interests are affected by the agency's decision must file a petition for an administrative hearing in the Department's Office of General Counsel within 14 days of publication of notice. See Fla. Admin. Code R. 62-110.106(2); City of LaBelle v. Bio-Med Servs., Inc., 598 So. 2d 207, 208 (Fla. 2d DCA 1992). Rule 62-110.106(3)(b) provides that the failure to file a petition within the applicable time period constitutes a waiver of any right to request an administrative hearing under Chapter 120, Florida Statutes.

WWALS-FL was not incorporated until after the Department's August 14 dismissal of WWALS' Petition. WWALS-FL's failure to timely file an initial petition within 14 days of

² Effective date of incorporation in Florida was August 23, 2015. See Amended Petition at page 2.

publication of notice constitutes a waiver of its right to request an administrative proceeding under Chapter 120, Florida Statutes. See Fla. Admin. Code R. 62-110.106(3)(b); Envtl. Resource Assoc. of Fla., Inc. v. Dep't of General Servs., 624 So. 2d 330, 331 (Fla. 1st DCA 1993)(reflecting that appellant waived its right to a hearing when it failed to avail itself of the opportunity provided by agency's notice). Under Section 120.569(2)(c), Florida Statutes, this defect cannot be cured by WWALS-FL.

IT IS THEREFORE ORDERED that WWALS-FL's initial petition is DISMISSED, with prejudice.

ORDER STRIKING PORTIONS OF WWALS' AMENDED PETITION

The Amended Petition contains allegations that are not material facts in this type of proceeding that relate to the proposed activity's effect on property values, insurance rates and the economic benefits of eco-tourism. See Amended Petition at page 11 of 34, paragraphs 1.b. and 1.c. It is well settled that the Department does not consider non-environmental impacts to the property of others in the public interest analysis. See, e.g., VanWagoner v. Dep't of Transp., 18 F.A.L.R. 2277 (DEP 1996); aff'd, Save Anna Maria, Inc. v. Dep't of Transp., 700 So. 2d 113 (Fla. 2d DCA 1997); Miller v. Dep't of Env'tl. Reg., 504 So. 2d 1325, 1327 (Fla. 1st DCA 1987); Mid-Chattahoochee River Users v. Fla. Dep't of Env'tl. Prot., 948 So. 2d 794, 797 (Fla. 1st DCA 2006), rev. den., 966 So. 2d 967 (Fla. 2007).

In addition, WWALS' allegation regarding a conflict of interest under subsection 112.311(5), Florida Statutes, is not material in this proceeding. See Amended Petition at page 14 of 34, paragraph 10; page 17 of 34, line 9. Such a claim falls outside the scope of the Department's jurisdiction in this proceeding. See § 112.320, Fla. Stat. (2015).

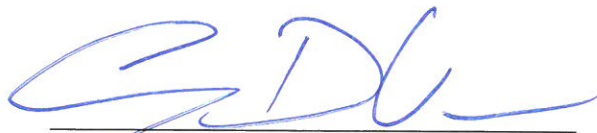
IT IS THEREFORE ORDERED that WWALS' Amended Petition paragraphs 1.b. and 1.c. on page 11 of 34; paragraph 10 on page 14 of 34; and line 9 on page 17 of 34, are stricken.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by filing a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fee with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after the date this order is filed with the clerk of the Department.

DONE AND ORDERED this 22nd day of September, 2015, in Tallahassee, Florida.


STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



CRAIG D. VARN
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FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.


CLERK
Deputy

9/2/15
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was provided by **email only** to Chris and Deanna Mericle, 7712 SW 32nd Lane, Jasper, Florida 32052, at mericle.deanna@gmail.com and cjmericle@gmail.com; John S. Quarterman, President, WWALS Watershed Coalition, Inc., P.O. Box 88, Hahira, GA 31632, at wwalswatershed@gmail.com; Sabal Trail Transmission, LLC, c/o Gus McLachlan, 400 Colonial Center Pkwy, Suite 300, Lake Mary, Florida, 32746, at gamlachlan@spectraenergy.com; Richard S. Brightman, Timothy M. Riley, and H. French Brown, IV, Hopping Green & Sams, Post Office Box 6526, Tallahassee, Florida, 32314-6526, at richardb@hgslaw.com, timothy@hgslaw.com, frenchb@hgslaw.com, on this 2nd day of September, 2015.



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