

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

RAINBOW RIVER CONSERVATION,
INC., MICHELLE BLASINGAME,
GRETCHEN MARTIN, SENATOR
DENNIS JONES, GORDON HART, and
WILLIAM VIBBERT

Petitioners,

DOAH Case Number: 19-002517

v.

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT

Respondent.

PETITIONERS' MOTION FOR RECONSIDERATION/REHEARING

Pursuant to Florida Rule of Civil Procedure 1.530, Petitioners, by and through the undersigned counsel, move this Honorable Tribunal for a new hearing, reconsideration and for amendment of the Final Order, and state:

1. On May 14, 2019, Petitioners Rainbow River Conservation, Inc., Michelle Blasingame, Senator Dennis Jones, William Vibbert (Petitioners), Gordon Hart, and Gretchen Martin filed a Petition to Invalidate Proposed Rule 40D-8.041(22) of the Southwest Florida Water Management District (District) as an invalid exercise of delegated legislative authority, pursuant to section 120.56(2), Florida Statutes (2019).

2. Proposed Rule 40D-8.041(22) would establish a minimum flow rule, pursuant to section 373.042, Florida Statutes, for Rainbow Springs and the Rainbow River .

3. On May 20, 2019, Petitioners filed an Amended Petition to Invalidate Proposed Rule 40D-8.041(22) which was granted over the District's objections on May 24, 2019, and the Amended Petition was accepted, preliminarily establishing the issues in this matter.

4. On June 10 through 12, 2019, after a very brief period of discovery, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division), conducted a duly-noticed hearing in Brooksville, Florida.

5. The parties timely filed proposed final orders on September 18, 2019, which ALJ Telfer was expected to consider in the preparation of a Final Order. The January 31, 2020 Final Order rejects much of Petitioners' challenge and concludes Proposed Rule 40D-8.041(22), other than portions of 40D.041(22)(c)4. and 5., is not an invalid exercise of delegated legislative authority.

6. The Final Order overlooks and fails to consider, discuss, or resolve a number of disputed issues, and ignores evidence demonstrating that the District's methods and assumptions submitted in support of the Proposed Rule were erroneous and inadequate.

7. "The granting or denial of rehearing is a matter within the sound discretion of the trial court, but it is never an arbitrary discretion." *Holl v. Talcott*, 191 So.2d 40, 46 (Fla.1966).

Issues

8. As described briefly herein, in the development of the proposed rule, the District failed to utilize essential, scientifically accepted tools and methods, including parameter estimation techniques and basic statistical checks on the model estimates. These failures are contrary to established scientific method.

9. The average error between the model simulation and the most relevant monitoring well's empirical elevation data indicated that the District's model was significantly flawed. Specifically, as summarized in Petitioners' Proposed Final Order (PPFO) paragraphs 20-21, the evidence demonstrated an error in the District's model's estimation of water levels in this well of over 4 feet. This is a huge error for the most relevant well where the District adduced evidence that a 4 foot error was an extreme the District would not accept. See also paragraph 22 summarizing huge errors demonstrated by the Northern District Model uncertainty estimates.

10. One of the Petitioners' experts, Dr. Robert Knight, analyzed the output of several other models, each of which confirmed that the impact on flow from groundwater withdrawals is several times larger than predicted by the District's model. Dr. Knight's analyses included three empirical analyses that corroborated the superior accuracy of Dr. Knight's water balance model. See PPFO paragraph 28.

11. The principle model developed by the Petitioners performed better statistically than the District's model and the Final Order lacks explanation as to why Petitioners' model was not accepted as the best information available and instead the highly inaccurate NDM Models relied upon by the District were accepted.

12. The Final Order fails to address Petitioners' evidence that the District could not explain the fact that spring flows for a given amount of annual rainfall have fallen significantly over the past 20 years. In other words, the same amount of rainfall over certain years did not result in even approximately equivalent flows, and the only way to account for the discrepancy was explained by Petitioners as related to increased groundwater withdrawals in Florida and Georgia. See PPFO paragraph 32-40.

13. Even though the District's MFL report states that low rainfall conditions alone do not explain the last 15 years of low flows, the District continued to assert that nearly all of the recent flow reductions were due to diminished rainfall patterns. However the District did no analysis whatsoever to link rainfall data with flow reductions over the past 20 years. This is not sound science and does not rely upon the best information available.

WHEREFORE, Petitioners request a re-evaluation of the evidence, including a new hearing, reconsideration, and/or amendment of the Final Order entered on January 31, 2020.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed using the eALJ Electronic Filing portal and sent via electronic mail to Adrienne Vining, Esq., adrienne.vining@swfwmd.state.fl.us; Michael Bray, Esq., mike.bray@swfwmd.state.fl.us; Christopher Tumminia, Esq., chris.tumminia@swfwmd.state.fl.us; Hillary Ryan, Esq., hillary.ryan@swfwmd.state.fl.us; on this February 10, 2020.

/s/ JW

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