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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of SANLANDO )  
UTILITIES CORPORATION for a )  
Limited Proceeding to Implement a )  
Water Conservation Plan. )

Docket No. 930256-WS  
Filed: February 16, 1994

MOTION TO DISMISS OF FLORIDA AUDUBON SOCIETY  
AND FRIENDS OF THE WEKIVA RIVER, INC.  
AND RESPONSE TO MOTION TO AMEND OF TRICIA A. MADDEN  
AND THE "CITIZENS RESPONSE" OF PUBLIC COUNSEL

Petitioners, Florida Audubon Society, Inc. and Friends of the Wekiva River Inc., pursuant to Rule 25-22.037, Florida Administrative Code, join in and support the "Motion to Dismiss and Answer to Petitions" filed by Sanlando Utilities Corporation, dated January 20, 1994 with regard to the Petitions of Tricia A. Madden, Jack R. Hyatt, and Robert Swett. Audubon and Friends also respond herein to the "Alternative Motion to Amend" filed on behalf of Tricia A. Madden, dated February 4, 1994, and the pleading of the office of Public Counsel, styled "Citizens Response to Motion to Dismiss and Answer to Petitions", dated February 4, 1994. In

addition to the reasons for dismissal of the petitions stated in Sanlando's January 20th motion, Audubon and Friends seek to supplement Sanlando's motion with the following arguments:

- To the extent that Petitioners' request for a formal hearing, and the Response of Public Counsel attempt to address the issues of the appropriateness of water conservation (Specifically Paragraphs 3 (a) through (i) of Public Counsel's pleading), or factual issues related to water conservation methods, the need to conserve, or the technological issues associated with water reuse, these pleadings are filed in the wrong forum. Water conservation

ACK ✓  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
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EAG \_\_\_\_\_  
LEG W/M  
LIN H  
CPC \_\_\_\_\_  
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requirements are provided in Chapter 17-40, Florida Administrative Code, and Chapter 42-2, Florida Administrative Code. Proper challenge of these requirements, and the factual basis for these rules could occur only through a rule challenge filed pursuant to Section 120.56, Florida Statutes. These rules must be presumed valid. Public Counsel cannot launch a collateral attack on these rules, or seek factual findings regarding the basis of these rules in a 120.57 (1) proceeding before the Public Service Commission.

2. To the extent that Petitioners' request for a formal hearing, and the Response of Public Counsel attempt to challenge the statutory basis for the Order of the Commission in this proceeding, which provides for the collection of funds for a water reuse project through the utility's rate base, these pleadings are again filed in the wrong forum. Section 403.064 (6) directs that:

Pursuant to Chapter 367, the Florida Public Service Commission shall allow entities which implement reuse projects to recover the full cost of such facilities through their rate structure. (emphasis added)

If Petitioners or Public Counsel wish to challenge the legislative directive that the full cost of water reuse projects be paid for through the rate base, then the proper forum for such a challenge is to test the validity of the statute in Circuit Court, not in a fact finding proceeding under Section 120.57 (1) before the Public Service Commission.

3. To the extent that Petitioners' request for a formal hearing, or the Response of Public Counsel attempt to address the factual issues pertaining to the need for water reuse facilities

associated with the operations of Sanlando Utilities, Inc., or the golf courses that are intended to receive reclaimed water for irrigation purposes as a result of Sanlando's plans, a new hearing on these issues is barred through the doctrine of res judicata. The factual issues relating to water conservation which Petitioners or Public Counsel may want to raise in this proceeding were decided in the following proceedings, of which the Petitioners and Public Counsel received lawful notice, (newspaper publication of Notice of Intent to Take Final Agency Action) but to which Petitioners or Public Counsel did not respond in a timely manner:

(a) Sanlando Utilities Co. Operating Permit (Friends of the Wekiva and Florida Audubon Society vs. Sanlando Utilities Corporation and Department of Environmental Regulation, DOAH Case No. 91-7543)

(b) Sanlando Utilities Corporation (Consumptive use permit No. 2-117-0006 UR, Issued February 13, 1990.)

(c) Orlando Resort Corporation, Sabal Point Golf Course, (Consumptive Use Permit No. 2-117-0227UV, issued May 7, 1991.)

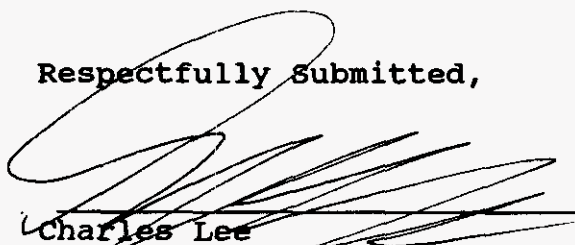
(d) Prince Lake Wood Florida, Inc., Sweetwater Country Club, (Consumptive Use Permit No. 2-095-0483UV issued April 9, 1991.)

(e) Francis and Leola Bowman, Wekiva Golf Club, (Consumptive Use Permit No. 2-117-0220UV, Issued May 7, 1991.)

It is not appropriate for either the Petitioners who attempt to seek an administrative hearing in this case, or for the Public Counsel to attempt to reopen the long decided matters relating to water conservation/water reuse in the Sanlando Utilities service area through the instant proceeding. To the extent that Petitioners

or the Public Counsel wish to raise factual issues pertaining to the water conservation/water reuse factors governing the above designated facilities, the petitions and pleadings of all should be rejected as untimely, and barred by the doctrines of laches and res judicata.

Respectfully Submitted,

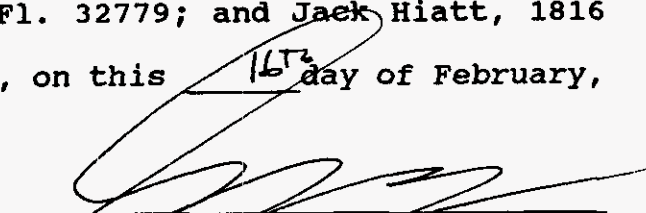


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Representative of Florida  
Audubon Society and Friends  
of the Wekiva River

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and 15 copies of the foregoing Motion were filed with the Clerk of the Florida Public Service Commission and a correct copy of the foregoing was sent by U.S. Mail to John F. Lowndes, 215 N. Eola Dr. Orlando, Fl. 32802; Kathy Biddell, Florida Public Service Commission, 101 E. Gaines St. Tallahassee, Fl. 32399; Maggie O'Sullivan, Division of Legal Service, Florida Public Service Commission, 101 E. Gaines St. Tallahassee, Fl. 32399; Jack Shreve, Public Counsel, and Stephen C. Reilly, Associate Public Counsel, Office of Public Counsel, 111 W. Madison St. Room 812 Tallahassee, Florida 32399-1400; Robert L.

Taylor, 1900 Summit Tower Blvd. Suite 800, Orlando, Fl. 32810;  
Tricia A. Madden, 108 Beaufort Dr. Longwood, Fl. 32779; Robert E.  
Swett, 106 Wyndham Ct. Longwood, Fl. 32779; and Jack Hiatt, 1816  
Wingfield Dr., Longwood, Fl. 32779, on this 16<sup>th</sup> day of February,  
1994.



Charles Lee