

TRANSMITTAL MEMORANDUM

Date: May 5, 1994 Our File No. WHC001-Sanlando

Enclosed please find: Docket #93-0256-WS Sanlando Utilities Corp.
an original and 15 copies of the Response to 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.

If checked here, please acknowledge receipt of enclosure.

TO [Florida Public Service Comm.
101 East Gaines Street
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Tallahassee, Fl 32399-0850]

pk

04434-94

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a Rate Increase)
in Seminole County by SANLANDO UTILITIES))
CORPORATION))

DOCKET NO.
93-0256-WS
Filed:
February 4, 1994

RESPONSE TO 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

COMES NOW, TRICIA A. MADDEN, as President of the WEKIVA HUNT CLUB COMMUNITY ASSOCIATION, INC., and Individually (hereinafter "Petitioners"), by and through their undersigned attorneys and hereby files this response to the "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", and as grounds therefore states:

- ACK ✓
 - AFA _____
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 - OPC _____
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 - WAS (circled) _____
 - OTH _____
1. To the extent that Audubon and Friends have attempted to incorporate into their pleading matters that have already been raised by Sanlando Utilities Corporation, the Petitioners hereby respond to those matters by re-alleging their existing responses.
 2. In their Paragraph 1, Audubon and Friends purposely mischaracterize this matter as an attack on the appropriateness of water conservation and methods of water conservation. These statements were made in an attempt to argue that this Petition was filed in the wrong forum. In fact, however, those issues are not before this body. What is before this body is the question of the proper method of funding the proposed conservation project.

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Audubon and Friends additionally argue that §120.56, Florida Statutes (1993), is the proper method to address the issues before this body. In fact, §120.56 addresses the procedure whereby an interested party challenges the validity of a rule "on the ground that the rule is an invalid exercise of delegated legislative authority." The Petitioners do not challenge the exercise of delegated legislative authority, but instead, have accepted the invitation to petition for a formal proceeding extended by the Commission, to challenge Commission Order No. PSC-93-1771-FOF-WS issued December 10, 1993. This action is, therefore, properly brought pursuant to §120.57, Florida Statutes (1993).

3. In their Paragraph 2, Audubon and Friends again mischaracterize this Petition as an attack on a Florida Law. However, Petitioners are not challenging legislative authority, but instead are challenging the method of funding the proposed conservation program. Therefore, Petitioners are in the proper forum.

4. In their Paragraph 3, Audubon and Friends allege that Petitioners are precluded from this action based upon the doctrines of res judicata and laches. This is simply not true.

First, the issue before this body is the method of implementing a conservation program via increases in the ratepayers' responsibility. This relief is different than that granted in the prior actions.

Second, this matter is a new cause of action resulting from the Proposed Agency Action Order No. PSC-93-1771-FOF-WS, and the

Commission's invitation to allow interested persons to file for formal proceedings.

Therefore, the doctrines of res judicata and laches do not apply.

5. Finally, the Motion to Dismiss by intervenors Florida Audubon Society and Friends of The Wekiva River, Inc. (hereinafter "Audubon and Friends") is improper in that intervenors take the case as they find it. See. Rule 25-22.039, Fla. Admin. Code.

WHEREFORE, the Petitioners respectfully request that the Commission deny Audubon and Friend's Motion to Dismiss and grant the Petitioners and the other ratepayers a formal hearing requested pursuant to §120.57, Florida Statutes (1993).

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by United States Mail to the individuals listed on the attached Service List, this 5th day of May, 1994.

Respectfully Submitted,



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