

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

WWALS WATERSHED COALITION, INC.,

Petitioner,

vs.

Case No. 15-4975

SABAL TRAIL TRANSMISSION, LLC,  
AND DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Respondents.

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RECOMMENDED ORDER

The final hearing in this case was held on October 19 through 21, 2015, in Jasper, Florida before Bram D. E. Canter, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner WWALS Watershed Coalition, Inc. ("WWALS"):

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For Respondent Sabal Trail Transmission, LLC ("Sabal Trail"):

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("Department"):

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STATEMENT OF THE ISSUE

The issue to be determined in this case is whether Sabal Trail is entitled to the proposed Environmental Resource Permit and Easement to Use Sovereign Submerged Lands to construct a natural gas pipeline.

PRELIMINARY STATEMENT

On July 10, 2015, the Department published its Consolidated Notice of Intent to Issue Environmental Resource Permit and Easement to Use Sovereign Submerged Lands to Sabal Trail. On August 7, 2015, WWALS filed a petition for hearing with the Department to challenge the validity of these two authorizations.

The Department dismissed WWALS' petition, but granted leave to amend. WWALS filed an amended petition, which added its subsidiary corporation, WWALS Watershed Coalition Florida, Inc. ("WWALS-FL"), as a second Petitioner. The Department dismissed the petition of WWALS-FL as untimely and struck portions of WWALS' amended petition. The Department then referred the amended petition to DOAH. WWALS was permitted to amend its petition again, but upon motion, certain claims in the last

amended petition were struck because they were not cognizable in this state administrative proceeding.

On September 21, 2015, Sabal Trail filed a motion for summary hearing pursuant to section 403.973(14) (b), Florida Statutes (2015), which was granted.

At the final hearing, WWALS presented the testimony of: Dennis Price, an expert in geology; Donald M. Thieme, an expert in geomorphology; Richard Gamble, Suwannee County Commissioner; Carlos Herd, Director of the Water Supply Division for the Suwannee River Water Management District; Dale Jenkins, Bureau Chief of the Bureau of Project Management with the Saint Johns River Water Management District; Guy Means, Florida Geological Survey; Lisa Prather, environmental consultant for the Department's Central District; and 13 WWALS members: David Shields, John Quarterman, Joe McClung, Thomas Edwards, Deanna Mericle, Christopher Mericle, Donna Ellison, Wayne Ellison, Merrilee Malwitz-Jipson, Dana Stevens, Debra Johnson, Richard Gamble, Willard Randall, and Lori McCraney.

Sabal Trail presented the testimony of: Jim Abrosino, an expert in archeology; David Dickson, senior consultant for Cardno, Inc., and part of the Permit team responsible for putting together the application; David Shammo, corporate representative of Spectra Energy Partners, LP; Marty Bass, an expert in pipeline construction management; Gregg Jones, an expert in geology and

hydrogeology; and Alan K. Lambeth, an expert in natural gas pipeline design and operations.

The Department presented the testimony of Lisa Prather.

Joint Exhibits 1 through 12 were admitted into evidence. Sabal Trail's Exhibits 1 through 55 were admitted into evidence. Petitioner's Exhibits 1 through 12 were admitted into evidence.

The six-volume Transcript of the final hearing was filed with DOAH. The parties submitted proposed recommended orders that were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

##### The Parties

1. Petitioner, WWALS, is a Georgia not-for-profit corporation registered with the Florida Department of State as a Foreign Not For Profit Corporation. Its mailing address is in Hahira, Georgia.

2. WWALS' mission is to advocate for conservation and stewardship of the Withlacoochee, Willacoochee, Alapaha, Little, and Upper Suwannee River watersheds in South Georgia and North Florida.

3. WWALS stated in its petition that it has a total of 85 members, 36 of whom reside in Florida. The total number of WWALS members was not established at the final hearing. If members that joined WWALS after it filed its petition for hearing are

included, WWALS has about 40 members living in Hamilton County and Suwannee County.

4. Sabal Trail is a Delaware limited liability company that is registered to do business in the State of Florida. It is the applicant for the authorizations that are challenged by Petitioner.

5. The Department is the state agency charged with administering the Environmental Resource Permitting program under chapter 373, Florida Statutes, and Florida Administrative Code Chapters 62-4 and 62-330.

6. The Department is also the state agency authorized by chapter 253, Florida Statutes, and Florida Administrative Code Chapter 18-21, to review and authorize certain uses of state-owned submerged lands.

#### General Project Description

7. Sabal Trail proposes to construct an interstate natural gas pipeline. The primary purpose of the pipeline is to support electric power generation in Florida.

8. The pipeline would start in the vicinity of a Transcontinental Gas Pipeline Company station in Tallapoosa County in Alabama. The portion of the pipeline in Florida would cross twelve Florida counties, entering the state in Hamilton County and terminating in Osceola County.

9. The pipeline would include 232.75 miles of 36-inch diameter pipe for the Mainline Route, 13.1 miles of 36-inch diameter pipe for the Hunter's Creek Line, and 21.5 miles of 24-inch pipe for the Citrus County Line.

10. The pipe used would be made of high-strength ductile carbon steel.

11. The project would include construction and operation of three compressor stations and three meter and regulation stations in Florida. There would also be access roads, pig launcher and receiver stations, mainline valves, and pipe storage/work areas.

12. Most of the pipeline would be installed using a conventional "cut and cover" technique, which means a trench is excavated, sections of pipe are placed in the trench and connected, and the trench is backfilled with soil excavated from the trench.

13. However, waterbodies along the route, including the Suwannee River and Santa Fe River, would be crossed using Horizontal Directional Drilling ("HDD"). The HDD method involves boring a pilot hole beneath the waterbody and then enlarging the hole with one or more passes of a reamer until the hole is large enough to pull a prefabricated pipe segment through the hole. The pipeline would be installed more than 40 feet beneath the Suwannee River and Santa Fe River.

14. During HDD operations, drilling fluid or "mud" is used to lubricate the drill head, and remove cuttings from the hole. Drilling mud is a non-toxic, naturally occurring, bentonite clay, which is commonly used for drilling water wells.

15. The pipeline will require a permanent 50-foot right-of-way.

16. Because the construction would require digging trenches through wetlands, drilling under riverbeds, and construction of stormwater management systems for the various stations, an environmental resource permit from the Department must be obtained for the work. Because some construction is over state-owned submerged lands, authorization from the Trustees of the Internal Improvement Trust Fund is also required.

#### Route Selection

17. The pipeline route was selected based on environmental and cultural resource factors and co-location opportunities with existing utility rights-of-way. The proposed route was modified many times to reduce environmental impacts and respond to landowner requests.

18. The pipeline runs parallel to two existing natural gas pipelines that cross the Santa Fe River.

19. The closest major spring to the pipeline route would be Madison Blue Spring, 1.7 miles away. The route is closer to some

smaller springs, but it would not cross near spring vents or areas of concentrated spring flow.

20. The pipeline would cross above the Falmouth Cave system. However, the pipeline would be only four-to-six feet beneath the land surface. The cave system is more than 100 feet below ground.

21. Sabal Trail reduced or eliminated impacts to wetlands and waterbodies along the pipeline route, but the project would result in unavoidable temporary and permanent losses of portions of wetlands along the route. The functional loss of wetland functions, as calculated under the Uniform Mitigation Assessment Method ("UMAM"), would be offset by Sabal Trail's purchase of credits from approved wetland mitigation banks.

#### Petitioner's Objections

22. The primary concern of WWALS and its members is the possibility of environmental impacts arising from the construction of the pipeline in karst terrain.

23. Karst terrain, which is limestone undergoing dissolution and characterized by the formation in the limestone of holes, cracks, fissures, conduits, and sinkholes, is common in North Florida and throughout the State.

24. Although fragile in particular locations, karst terrain is able to support large linear facilities in North Florida such as Interstate 10, Interstate 75, and railroads, which bear loads



of many tons without collapses occurring in the underlying limestone.

25. Sabal Trail conducted geophysical tests, evaluated the potential for sinkhole formation, developed drilling best management practices, and prepared a karst mitigation plan to address potential adverse circumstances that might arise during construction of the pipeline.

26. The pipeline design specifications provide reasonable assurance that the formation of a sinkhole along the path of the pipeline would not cause it to break.

27. It is in the interests of Sabal Trail to build and operate the pipeline so that breaks or disruptions of service do not occur.

28. There are existing natural gas pipelines that were constructed under the Suwannee River and Santa Fe River. A geologist with the Florida Geological Survey testified that he was unaware of any adverse impacts that have been associated with these other pipelines.

29. WWALS presented no evidence of adverse impacts that have been caused by similar pipelines in similar areas.

30. Petitioner's members are afraid the pipeline will cause adverse impacts because of its construction in karst terrain, but with the exception of four WWALS members whose properties would be crossed by the pipeline, the concerns expressed by members

about how they would be affected were vague and speculative. Not all of the potential pipeline impacts described by WWALS members were vague or speculative, but the members' injuries were vague and speculative. For example, it was not adequately explained how a sinkhole, if one were to occur along the route of the pipeline, would affect them.

31. WWALS expressed concerns about water quality, but the use of drilling mud and grout for the HDD operations is unlikely to affect the residential water wells of any member or non-member. Nor would it affect the water quality of the rivers under which the pipeline is installed, because the amount of drilling mud and grout is so small in relation to groundwater volumes.

32. WWALS expressed general concerns about fish and wildlife impacts, but no member identified any particular wetland impact caused by construction of the pipeline that would directly affect him or her and Petitioner presented no competent evidence to refute the UMAM assessment or the reasonableness of the proposed mitigation. No competent evidence was presented about the possibility that HDD drilling under the rivers could result in adverse impacts to fish and wildlife.

33. Some WWALS members testified they use and enjoy the rivers and surrounding area, but the concerns about adverse impacts to their use and enjoyment were speculative, being based

on the proposition that a sinkhole or other disruption of the limestone will be caused by the construction of the pipeline and it will cause a change in the rivers or land to a degree that their use and enjoyment of the rivers or land will be materially diminished. Petitioner did not establish the connection between pipeline impacts and interference with members' use of area waters.

34. One member testified he has an organic farm and believes it would be adversely affected by air pollution from a proposed compressor station for the pipeline, but there is a separate permit associated with the air quality impacts of the pipeline. Air quality is not a cognizable issue in this proceeding.

35. A few members believe there could be impacts that would adversely affect their business interests, which are not interests that this proceeding was designed to protect.

36. Although a substantial number of WWALS members have substantial interests in the use and enjoyment of the waters and environment of Hamilton County and Suwannee County, a showing of potential injury to those interests was only established in the record for four WWALS members--the four who own land that the pipeline will cross.

37. Four members is not a substantial number when compared to the total number of WWALS members living in Hamilton County and Suwannee County, which is about forty.

Public Interest

38. For projects located in, on, or over wetlands or other surface waters, an applicant must provide reasonable assurance that the project will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the criteria set forth in rule 62-330.302.

39. Rule 62-330.302(1)(a) lists seven public interest factors to be considered and balanced:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;

6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and

7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

40. Petitioner presented no competent evidence to refute the evidence presented by Sabal Trail and the Department that the pipeline project would not result in adverse impacts on public health, safety, or welfare. Beyond general, undisputed evidence about the characteristics of karst geology, no competent evidence was presented by Petitioner to show that a karst-related impact could occur that would affect its members.

41. Petitioner presented no competent evidence to refute the evidence presented by Sabal Trail and the Department that the pipeline would not cause adverse impacts to fish and wildlife.

42. Petitioner presented no competent evidence to refute the evidence presented by Sabal Trail and the Department that the project would not cause adverse impacts to navigation or the flow of water or cause harmful erosion or shoaling.

43. Petitioner presented no competent evidence to refute the evidence presented by Sabal Trail and the Department that the project would not cause adverse impacts to fishing or recreational values or marine productivity.

44. It is undisputed that some of the pipeline impacts and the pipeline, itself, will be of a permanent nature.

45. Petitioner presented no competent evidence to refute the evidence presented by Sabal Trail and the Department that the proposed pipeline would not adversely affect significant historical and archaeological resources.

46. Petitioner presented no competent evidence to refute the evidence presented by Sabal Trail and the Department that the proposed pipeline would not adversely affect the current condition and relative value of environmental functions being performed in the area that would not be fully mitigated.

47. Considering the seven public interest factors listed above, the proposed pipeline is not contrary to the public interest.

48. The Suwannee River and Santa Fe River have been designated as Outstanding Florida Waters. Any activities that would affect them must be shown to be clearly in the public interest. As discussed in the Conclusions of Law, demonstrating that a project is clearly in the public interest requires greater assurance that all permitting requirements will be complied with. Sabal Trail showed clearly that it will comply with all permitting criteria.

49. Rule 62-4.242 prohibits the degradation of water quality in an Outstanding Florida Water. 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.

50. Rule 18-21.004(1)(a) requires that activities on sovereignty submerged lands not be contrary to the public interest. Rule 18-21.003(51) defines public interest in this context as:

Demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic cost of the proposed action.

Therefore, to obtain authorization to use sovereignty submerged lands easement, an applicant must create a net public benefit.

51. Sabal Trail and the Department demonstrated the project creates a net public benefit because it would not have adverse environmental impacts that would not be fully mitigated and the project addresses a need determined by the Public Service Commission for additional natural gas transportation capacity into Florida, enhancement of natural gas supply diversity and reliability, and increased competition for natural gas transportation services.

52. WWALS contends the proposed project would conflict with rule 18-21.004(2)(a), which requires that all sovereignty submerged lands be primarily managed to maintain "essentially

natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating, and swimming.” However, WWALS presented no competent evidence to show that any sovereignty submerged lands would lose their essential natural conditions, that fish and wildlife propagation would be diminished, or that traditional recreational uses would be interfered with. The proposed project complies with the requirement of rule 18-21.004(2).

#### CONCLUSIONS OF LAW

##### Standing

53. Standing to participate in a section 120.57(1) proceeding is afforded to persons whose substantial interests will be affected by proposed agency action. See § 120.52(13)(b), Fla. Stat. (2015).

54. For an association to establish standing as a party, it must prove that a substantial number of its members, but not necessarily a majority, have a substantial interest that reasonably could be affected, that the subject matter of the proposed activity is within the general scope of the interests and activities for which the organization was created, and that the relief requested is of the type appropriate for the organization to receive on behalf of its members. Fla. Home Builders Ass’n v. Dep’t of Labor & Emp. Sec., 412 So. 2d 351 (Fla. 1982).



55. Economic or business interests are not substantial interests in this environmental permitting proceeding. Agrico Chem. Co. v. Dep't of Env'tl. Reg., 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

56. An association cannot establish its standing based on its corporate mission or solely on the substantial interests of its members. Fla. Home Builders, supra. A "riverkeeper" organization like WWALS cannot establish its standing in a case involving the very rivers it keeps without demonstrating that a substantial number of its members could be injured.

57. At hearing, a petitioner establishes its standing by offering evidence to prove its substantial interests could be affected by the agency's action. St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051, 1054 (Fla. 5th DCA 2011). However, the evidence offered must be "good" evidence; that is, competent and non-speculative.

58. The speculative concerns of WWALS members regarding the pipeline's impacts on their use and enjoyment of the Suwannee River, Santa Fe River, and surrounding areas, are not sufficient to confer standing. See Menorah Manor, Inc. v. Ag. for Health Care Admin., 908 So. 2d 1100, 1104 (Fla. 1st DCA 2005).

59. WWALS failed to establish its standing because it did not show that a substantial number of its members could be affected by the project.

60. In its amended petition, WWALS cites section 403.412(5), which allows a citizen of the state to intervene in an ongoing section 120.569 or section 120.57 proceeding by filing a verified pleading. However, section 403.412(5) does not authorize a citizen to initiate a proceeding under section 120.569 or 120.57. Furthermore, WWALS is not a "citizen of the state" because it is a Georgia corporation. Therefore, section 403.412(5) does not provide WWALS another basis for standing.

61. WWALS failed to demonstrate standing. However, because an evidentiary hearing was held and evidence on the merits was received, findings and fact and conclusions of law on the merits are presented in this Recommended Order.

#### Burden and Standard of Proof

62. A chapter 120 proceeding is a de novo proceeding intended to formulate final agency action, not to review action taken earlier and preliminarily. McDonald v. Dep't of Banking Fin., 346 So. 2d 569, 584 (Fla. 1st DCA 1977).

63. Because chapter 373, Florida Statutes, governs the issuance of the Environmental Resource Permit, subsection 120.569(2)(p) applies and it places the ultimate burden of persuasion upon WWALS to prove Sabal Trails is not entitled to the permit.

64. The authorization to use sovereign submerged lands was issued under chapter 253. Under that chapter, the applicant has

the burden of ultimate persuasion to demonstrate its entitlement to the authorization. See Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

65. An applicant must provide reasonable assurance that it will comply with all applicable regulatory criteria. Reasonable assurance means a "substantial likelihood that the project will be successfully implemented." See Metro. Dade Cnty. v. Coscan Fla., Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992). Reasonable assurance does not require absolute guarantees. See Save Anna Maria, Inc. v. Dep't of Transp., 700 So. 2d 113, 117 (Fla. 2d DCA 1997).

66. If an activity significantly degrades or is in an Outstanding Florida Water, the applicant must provide reasonable assurance that the activity will be clearly in the public interest. Fla. Admin. Code R. 62-4.242. To be clearly in the public interest does not require a demonstration of need or net public benefit. See 1800 Atlantic Developers v. Dep't of Env'tl. Reg., 552 So. 2d 946, 957 (Fla. 1st DCA 1989). It requires greater assurance that a project will comply with applicable criteria. See Angelo's Aggregate Materials, Ltd. v. Dep't of Env'tl. Prot., Case No. 09-1543 (Fla. DOAH June 28, 2013) (The quantum of assurance that is deemed reasonable by the Department should depend on the potential harm.).

67. The standard of proof is a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat. (2015).

68. Chapter 373, Part IV, rule chapter 62-330, and the Environmental Resource Permit Applicant's Handbook establish the criteria for issuance or denial of a requested Environmental Resource Permit. Sabal Trail provided reasonable assurance that the pipeline project will comply with all applicable permitting criteria.

69. Because Sabal Trail clearly demonstrated compliance with all applicable regulatory criteria, the project is clearly in the public interest.

70. WWALS failed to prove that Sabal Trail is not entitled to the Environmental Resource Permit.

71. Pursuant to Florida Administrative Code Rule 18-21.004(1)(a)-(b), activities on sovereignty lands must not be contrary to the public interest, and all easements for sovereignty land activities must contain such terms, conditions, or restrictions as deemed necessary to protect and manage those sovereignty lands. Sabal Trail's proposed project meets these requirements.

72. Sabal Trail proved the pipeline project will comply with all applicable criteria and that it is entitled to the easement for use of sovereign submerged lands.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Environmental Protection issue a final order that approves issuance of Environmental Resource Permit No. 0328333-001 and grants an easement to use sovereign submerged lands to Sabal Trail Transmission, LLC, for the Sabal Trail Natural Gas Pipeline.

DONE AND ENTERED this 11th day of December, 2015, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.