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July 25, 2002

VIA: OVERNIGHT FEDERAL EXPRESS

Florida Public Service Commission
Division of Commission Clerk and Administrative Services
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: In Re: Petition of Florida Water Services
Docket No. 020554

Dear Sirs:

Enclosed is the Notice of Protest of Hernando County to be filed in the above referenced docket number. Thank you for your assistance.

Sincerely yours,



Robert Bruce Snow

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Encl.

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FPSC-COMMISSION CLERK

FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Water Services Corporation
For Determination of Exclusive Commission
Jurisdiction Over Florida Water's Land and
Facilities in Hernando County and Application for
Original Certificate of Authorization for Existing
Utility Currently Charging for Service

Docket No. 020554

Date Filed: June 21, 2002

**NOTICE OF PROTEST
TO**

**PETITION OF FLORIDA WATER SERVICES CORPORATION
FOR DETERMINATION OF EXCLUSIVE COMMISSION JURISDICTION
OVER FLORIDA WATER'S LAND AND FACILITIES IN HERNANDO
COUNTY AND APPLICATION FOR ORIGINAL CERTIFICATES OF
AUTHORIZATION FOR AN EXISTING UTILITY CURRENTLY
CHARGING FOR SERVICE**

HERNANDO COUNTY, FLORIDA, by and through its undersigned counsel, hereby files this its NOTICE OF PROTEST to FLORIDA WATER SERVICES CORPORATION'S petition requesting the Florida Public Service Commission ("Commission") to determine that the Commission has exclusive jurisdiction over Florida Water's land and facilities in Hernando County, Florida and grant an application for an original certificate of authorization for an existing utility. In support of this NOTICE OF PROTEST to the Petition and the Application, **HERNANDO COUNTY** states as follows:

A. BACKGROUND INFORMATION

1. The name and address of Respondent filing this NOTICE OF PROTEST, is:

Hernando County, Florida,
20 North Main Street
Hernando County Courthouse
Brooksville, Florida 34601

DOCUMENT NUMBER-DATE

07782 JUL 25 2002

FPSC-COMMISSION CLERK

2. All pleadings, notices, staff recommendations, orders and other documents filed or served in this proceeding should be served on the following on behalf of Hernando County:

Robert Bruce Snow, Esquire
112 North Orange Ave.
Brooksville, Florida 34601
Tel: (352) 796-1441
Fax: (352)797-8948

And

Kent Weissinger, Esquire
Hernando County Legal Department
20 North Main Street, Room 462
Brooksville, Florida 34601

B. NOTICE OF PROTEST TO PETITION FOR DETERMINATION OF EXCLUSIVE COMMISSION JURISDICTION OVER FLORIDA WATER'S LAND AND FACILITIES IN HERNANDO COUNTY

I. HISTORIC BACKGROUND

3. Florida Water has filed a Petition with the Commission requesting the Commission to declare that it has exclusive jurisdiction over Florida Water's utility systems in Hernando County, Florida. The putative basis for such a Petition is Section 367.171(7), Florida Statutes.
4. Florida Water provides water and wastewater in the Spring Hill area of Hernando County.¹ These water and wastewater services were provided pursuant to certificates of authorization issued by the Commission.²

¹ Florida Water's predecessor, Deltona Utilities, Inc., has provided water and wastewater service to the Spring Hill area dating back to the late 1960's.

² PSC Certificates 046-W and 047-S.

5. On April 5, 1994, the Hernando County Board of County Commissioners adopted Resolution No. 94-77 that rescinded Commission jurisdiction in Hernando County effective immediately, pursuant to Section 367.171(1), Florida Statutes.
6. On June 9, 1994, the Commission acknowledged Hernando County's rescission of Commission jurisdiction by the adoption by the Commission of Order No. PSC 94-0719-FOF-WS.
7. Said Order No. PSC 96-0719-FOF-WS canceled Florida Water's certificates of authorization³ that were held by Florida Water's immediate predecessor, Southern States Utilities, Inc. ("Southern States").
8. Thereafter, Florida Water's predecessor, Southern States, applied for and was issued grandfather certificates of authorization,⁴ by Hernando County, and Florida Water has provided water and wastewater services pursuant to such certificates of authorization from Hernando County.
9. Since 1994, Hernando County has exercised exclusive jurisdiction over Florida Water's land and facilities in Hernando County.
10. Hernando County is the proper governmental body to exercise exclusive jurisdiction over Florida Water's land and facilities in Hernando County, pursuant to section 367.171(1), Florida Statutes.
11. There is presently pending in Hernando County a docket wherein Hernando County issued an Order to Show Cause directing Florida Water to demonstrate "...why a determination that [Florida Water] is not

³ PSC Certificates 046-W and 047-S.

⁴ Hernando County Certificates 98-01-WS and 98-02-WS

providing reasonably adequate and efficient service in accordance with its franchise should not be made, with such cause to be demonstrated by a Special Report and documentation of any and all factors affecting the low water pressure problems in areas of Spring Hill...” The Hernando County Order to Show Cause was entered on June 13, 2002.

12. This Petition before the Commission requesting the Commission to determine that it has jurisdiction over the land and facilities of Florida Water in Hernando County is, in large part, in response to the Hernando County Order to Show Cause docket.
13. Florida Water cites Section 367.171(7), Florida Statutes, as the basis for its Petition for the Commission to assert exclusive jurisdiction over Florida Water’s utility system in Hernando County.

II. ADMINISTRATIVE RES JUDICATA

14. The issues raised by Florida Water in its Petition are the same issues that were raised and resolved through final administrative action of the Commission as evidenced by Order No. PSC-94-0719-FOF-WS issued by the Commission on June 9, 1994.
15. There have been no changes in facts or in the law from the date of the issuance of said Order No. PSC-94-0719-FOF-WS by the Commission.
16. Service to the BP Property cited in the Petition existed at the time of the Order and was well known to Petitioner.
17. The Palm Terrace and Zephyr Shores service areas and facilities in Pasco County existed at the time of the Order and were well know to Petitioner.

18. The fact that Petitioner provides water and wastewater services in Zephyr Shores and Palm Terrace service areas in Pasco County and the provides water service to a BP service station situate in Pasco County did not constitute a basis for the Commission to assert exclusive jurisdiction in the docket wherein Order No. PSC-94-0719-FOF-WS was issued; and, does not constitute a basis for the Commission to assert exclusive jurisdiction pursuant to the Petition.
19. There has been final administrative action determining that Hernando County had exclusive jurisdiction over the lands and facilities of Petitioner in Hernando County. The Petition is barred by the doctrine of Administrative Res Judicata.
20. As recently as January 14, 2002, the Commission, through its staff, has acknowledged that the Commission relinquished jurisdiction over Florida Water through Order No. PSC-94-0719-FOF-WS and further confirming the cancellation of the PSC certificates of authorization.⁵

III. *SETTLEMENT AGREEMENT*

21. Notwithstanding the issuance of Order No. PSC-94-0719-FOF-SW in PSC Docket 940408-WS, the Petitioner continued to contest and litigate Hernando County's authority to exercise exclusive jurisdiction over Florida Water's utility system in Hernando County. Petitioner pursued such litigation in various circuit court actions in the Circuit Court of the Fifth Judicial Circuit in and for Hernando County, Florida, as well as various administrative challenges in dockets before the Hernando County

⁵ See Document 00528-02, dated January 15, 2002, in Docket 940408-WS.

Board of County Commissioners wherein Hernando County was exercising its jurisdiction over Petitioner's utility system in Hernando County as confirmed in Order No. PSC-94-0719-FOF-WS.

22. On July 17, 1997 Petitioner and Hernando County entered into a Settlement Agreement (Agreement). Pursuant to the Agreement, Petitioner and Hernando agreed on the rates to be charged by the utility for the period of June 14, 1997, through September 1, 2000. The Agreement resolved all outstanding disputes between Petitioner and Hernando, including all disputes over the exclusive jurisdiction of Hernando County.⁶
23. On December 12, 2000 Petitioner and Hernando County entered into a Settlement Agreement Extension (Settlement Extension). The Settlement Extension continued the effect of the Settlement Agreement for an additional three (3) year period, and in so doing, further constituted a resolution of all disputes over the exclusive jurisdiction of Hernando County.⁷
24. By entering into the Settlement Agreement and the Settlement Extension, Petitioner settled and resolved with Hernando County all issues pertaining to any dispute over Hernando County's exclusive jurisdiction over Petitioner's utility system in Hernando County.
25. The Commission approved the Settlement Extension by entering Order PSC-01-0387-AS-WS dated February 15, 2001.

⁶ However, the Agreement specifically did not settle or resolve any refund issue or refund obligation of Florida Water during any period of time prior to June 14, 1997.

⁷ The Settlement Extension also resolved all issues arising out of the Spring Hill refund dispute.

26. By the Settlement Agreement and the Settlement Extension, approved by the Commission, the Petitioner and Hernando County resolved all issues pertaining to the exclusive jurisdiction of Hernando County over Petitioner's utility system in Hernando County.
27. There has been no change in any of the facts or in the law since the Petitioner and Hernando County entered into the Settlement Agreement and the Settlement Extension. The Petitioner is bound by the terms of the Settlement Agreement and the Settlement Extension, including the resolution of all issues pertaining to the exclusive jurisdiction of Hernando County.

IV. WAIVER AND ESTOPPEL

28. By virtue of the Settlement Agreement and the Settlement Extension, Petitioner is barred by the doctrine of Waiver and Estoppel from filing its Petition in this matter.

V. OPERATING OUTSIDE AUTHORIZED SERVICE AREA

29. The BP Station in Pasco County is not within any service area for which Petitioner is authorized to provide water and/or wastewater service.
30. The providing of service to the BP Station in Pasco County is in violation of Florida Water's Certificates granted to it by Hernando County and as such constitutes an unauthorized and illegal action on the part of Petitioner. The providing of service to the BP Station in Pasco County was also in violation of Florida Water's Certificates previously issued by the Commission.

31. There does not exist any road right of way permit or other approval by either Hernando County or Pasco County for a service to be provided across County Line road separating Hernando County and Pasco County. The failure to obtain appropriate right of way permits or other approvals to extend service outside Petitioner's certificated area further establishes the unauthorized and illegal action on the part of Petitioner.
32. The BP Station in Pasco County is located with a service area presently being served by the Utility Department of Pasco County.
33. The Utility Department of Pasco County has the present ability and desire to provide service to the BP Station within the service area presently being served by Pasco County.
34. The Application for Certificate of Authorization contained within the Petition seeks to add a twenty-acre tract within Pasco County to Petitioner's authorized service area. The entire twenty-acre tract is an area presently being served by the Utility Department of Pasco County. Petitioner is not entitled to add said tract to its authorized service area because such would infringe upon the service area already pre-empted by the Utility Department of Pasco County.
35. An unauthorized and illegal providing of service outside a utility's certificated and authorized area does not establish a legal basis upon which the jurisdiction of Hernando County could be divested and acquired by the Commission pursuant to Section 367.171(7), Florida Statutes.

36. Instead, Florida Water should be subject to appropriate sanctions for violating its certificates of authorization issued by Hernando County by providing utility services without regulatory approval and outside its authorized service area.

VI. LACK OF JURISDICTIONAL BASIS UNDER SECTION 367.171(7), FLORIDA STATUTES

37. Petitioner contends that its Zephyr Shores and Palm Terrace service areas in Pasco County result in the creation of a utility system consisting of the two areas in Pasco County and the Spring Hill service area in Hernando County.

38. The Zephyr Shores and Palm Terrace service areas are not part of the Spring Hill utility system within the meaning of either Section 367.171(7), Florida Statutes or Section 367.021(11), Florida Statutes.

39. This matter has previously been litigated and is barred by Res Judicata. See *Hernando County v. Public Service Commission*, 635 So. 2d 48 (Fla. 1st DCA 1996).

40. The issues in connection with Petitioner's Section 367.171(7) contention were resolved by this Commission's Order contained in PSC 94-0719-FOF-WS and as such are barred by Administrative Res Judicata.

41. There have been no changes in the facts or in the law to change the decision of the Commission as contained in said Order.

42. Any operational or administrative inter-relationships of Florida Water's water and wastewater utility systems in Pasco and Hernando Counties are inconsequential, minor, and collateral in nature and do not establish any

inter-relationship under Section 367.171(7), Florida Statutes so as to invest the Commission with jurisdiction.

43. The operational or administrative operations attendant to the providing of utility service in the Palm Terrace service area and the Zephyr Shores service area are provided by Florida Water's Apopka office in Orange County.

C. NOTICE OF PROTEST TO APPLICATION FOR CERTIFICATE OF AUTHORIZATION FOR EXISTING UTILITY CURRENTLY CHARGING FOR SERVICE

44. Hernando County hereby provides this its Notice of Protest to Petitioner's Application for Certificate of Authorization for Existing Utility Currently Charging for Service.
45. Hernando County has exclusive jurisdiction over Petitioner's utility system within Hernando County.
46. Hernando County has issued certificates of authorization to Florida Water for the providing of water and wastewater services to its Spring Hill system.
47. Jurisdiction rests within Hernando County to hear any Application for Certificate of Authorization.
48. The Commission should dismiss and/or deny the Application for Certificate of Authorization for lack of jurisdiction.
49. The Commission should dismiss and/or deny the Application for Certificate of Authorization and order that the matter be transferred to Hernando County for consideration.

50. Hernando County incorporates by reference paragraphs 1 through 43 above and makes them a part of this Notice of Protest to Application for Certificate of Authorization.

D. STANDING

51. Hernando County currently has exclusive jurisdiction to regulate Florida Water Services Corporation pursuant to Section 367.171(1), Florida Statutes and other provisions of law.
52. The Spring Hill utility system lies within the geographic boundaries of Hernando County and Hernando County exercises its general police powers as a county government under the Constitution of the State of Florida to protect the public's health, safety, and welfare.
53. Hernando County is a substantially affected party and is entitled to participate in the matters contained in the above styled docket.

E. REQUEST FOR HEARING

54. Without waiving any rights, powers, duties, and privileges otherwise possessed by Hernando County as having exclusive jurisdiction over water and wastewater systems within Hernando County and over the Petitioner, Hernando County hereby formally requests a Formal Administrative Hearing pursuant to the provisions of Chapter 120, Florida Statutes.

F. PRAYER FOR RELIEF

55. Hernando County prays that the Petition and Application in the above styled docket be dismissed; that the Petition and Application be denied; that Hernando County be granted a Formal Administrative Hearing

pursuant to the provisions of Chapter 120, Florida Statutes; and that all matters be referred or transferred to Hernando County for consideration as the jurisdictional authority over Petitioner.

Respectfully submitted



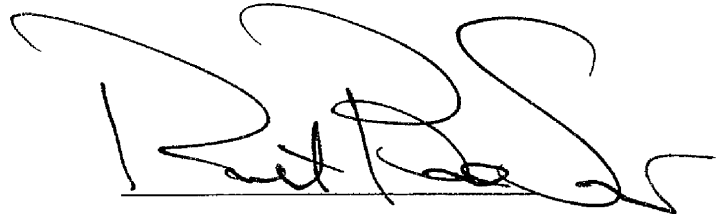
ROBERT BRUCE SNOW, ESQ.
112 North Orange Ave.
Brooksville, Florida 34601
(352) 796-1441
Florida Bar No. 134742
Attorney for Hernando County

And

Kent Weissinger, Esq.
Hernando County Legal Dept.
20 North Main Street
Room 462
Brooksville, Florida 34601

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing Notice of Protest was furnished by regular U. S. Mail this 24th day of July, 2002, to Kenneth A. Hoffman, Esquire and J. Stephen Mention, Esquire, Rutledge, Ecenia, Purnell & Hoffman, P. A., P. O. Box 551, Tallahassee, Florida.



Robert Bruce Snow, Esq.