



FLORIDA SPRINGS COUNCIL

Chairperson Virginia Johns
Suwannee River Water Management District
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September 4, 2020

Dear Chair Johns,

The Suwannee River Water Management District (SRWMD) Governing Board has only four appointed Board Members currently serving. Unless additional gubernatorial appointees are seated prior to the SRWMD Governing Board Meeting and Public Hearing on September 8th, the SRWMD Governing Board cannot legally transact business. To do so would be a violation of the Florida Constitution, well-established legal precedent, and SRWMD policy.

Neither the Governor's Executive Orders in response to the COVID-19 pandemic, nor the SRWMD Emergency Orders adopted under the authority of the Governor's Executive Orders, permits the District to waive the rules requiring a quorum to conduct normal business under the current situation. Any actions taken by the Governing Board absent a quorum of five members, including adoption of the budget and millage rate, will be unlawful and subject to legal challenge.

The SRWMD Governing Board cannot transact business at a Governing Board Meeting or Public Hearing without a quorum. A quorum requires "the attendance of a majority of the membership of the Governing Board."

Section 373.073, Florida Statutes, mandates that the Governing Board of the Suwannee River Water Management District have nine board members and requires the Governor to appoint a specific number of Board Members for each year of his term to maintain a nine member board. The "membership of the Governing Board" is nine members. Therefore, "a majority of the membership" is five members, regardless of how many SRWMD Governing Board members are currently appointed.

The SRWMD Governing Board has indicated that it plans to meet in absence of a quorum under the authority of Executive Orders 20-52 and sections 120.569(2)(n) and 252.36, Florida



Statutes. **As detailed below, nothing in the statutes cited allows the District to transact regular business in the absence of a quorum.**

First, the title of SRWMD Emergency Order 20-002 and Emergency Order 20-005 is “Emergency Final Order For Continuity of Operations **Made Necessary by COVID-19.**” (bold added)

However, the lack of a quorum is solely due to the Governor’s failure to fulfill his statutorily mandated (Section 373.073, Florida Statutes) duty to appoint three members to the SRWMD Governing Board in 2019.

Had the Governor followed the law and made the statutorily required appointments in 2019 the SRWMD Governing Board would have a quorum today. Therefore, the need to waive rules requiring a quorum to conduct business **was not made necessary by COVID-19**, but by the Governor’s inaction and disregard for state law.

Second, Emergency Orders 20-002 and 20-005 finds that “immediate, strict compliance with the provisions of statutes, rules, or orders would prevent, hinder, or delay necessary action in coping with the emergency” and that the “actions authorized... are narrowly tailored to address the immediate need for action.”

This language closely mirrors Section 252.36(5)(a), Florida Statutes, which allows the Governor to “Suspend... the order or rules of any state agency, if strict compliance with the provisions of any such statute, order, or rule would in any way **prevent, hinder, or delay necessary action in coping with the emergency.**”

To understand the true intention of Section 252.36 one only needs look at the other powers provided to the Governor, all of which directly relate to addressing the cause of the emergency. These powers include commandeering private property, controlling the movements of persons, suspending firearm sales, suspending electric and water services, and compelling evacuations.

Yet, none of the agenda items on the September 8, 2020 Governing Board Meeting agenda nor the Public Hearing to adopt the Tentative Millage and Budget have any relation the COVID-19 public health emergency and are not necessary actions in coping with the emergency. In fact, they are the same type and kind of items that would appear on the agenda of a SRWMD Governing Board were there no public health emergency at all.

Third, Section 120.569(2)(n), Florida Statutes, only permits an agency head to issue an “immediate final order” if that order is consistent with state law, and the rules and orders of the agency. **Nothing in Section 120.569(2)(n) allows an agency head to unilaterally waive the rules governing the agency.**



Finally, only one of the SRWMD Governing Board Members represent a geographic area within the District, leaving hundreds of thousands of Floridians without representation in Governing Board decisions. This conflicts with the “residency requirements for the governing boards” found in Section 373.073(2)(c), Florida Statutes. **Adopting a tentative millage rate, absent a quorum and without any members representing specific geographic areas, is nothing short of taxation without representation. As one of our Founding Fathers noted, Taxation without representation is tyranny.** Exploiting the COVID-19 pandemic to cover-up for the failings of a Governor who refuses to follow the law and carry out his statutorily mandated duties to the people of Florida is unconscionable and an abdication of your responsibilities.

If you proceed on September 8th without a quorum, you are willfully contributing to the decline of the very institution, resource, and people you are supposed to lead and protect. The only honorable, prudent, and legal action is to adjourn all future Board Meetings until a quorum can be reached.

Sincerely,

Ryan Smart
Executive Director
Florida Springs Council

CC: Charles Keith
Richard Schwab
Virginia Sanchez
Hugh Thomas
George Reeves
Ben Glass