



# FLORIDA SPRINGS COUNCIL

Chairman Douglas Burnett  
St. Johns River Water Management District  
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September 4, 2020

Dear Chairman Burnett,

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

Neither the Governor's Executive Orders in response to the COVID-19 pandemic, nor the SJRWMD 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.

According to SJRWMD Governing Board Policy 110, section 2(d) "The attendance of a majority of the membership of the Governing Board, or a committee or advisory body thereof, shall constitute a quorum at any meetings."

Section 373.073, Florida Statutes, mandates that the Governing Board of the St. Johns 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 SJRWMD Governing Board members are currently appointed.

The SJRWMD Governing Board has indicated that it plans to meet in absence of a quorum under the authority of Executive Orders 20-52 and 20-114 and sections 120.569(2)(n), 252.36,



252.38, 252.46 and 373.119, 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 stated purpose of the SJRWMD “Emergency Order 2020-10” is “addressing continuity of operations, procurement, and certain other measures **necessitated by the Public Health Emergency and impacts associated with the Novel Coronavirus Disease 2019.**” (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 SJRWMD Governing Board in 2019.

Had the Governor followed the law and made the statutorily required appointments in 2019 the SJRWMD Governing Board would have a quorum today. Therefore, the need to waive rules requiring a quorum to conduct business **was not necessitated by the Public Health Emergency and impacts associated with the Novel Coronavirus Disease 2019,** but by the Governor’s inaction and disregard for state law.

Second, Emergency Order 2020-10 finds that “immediate, strict compliance with the provisions of statutes, rules, or orders... would prevent, hinder, or delay action to cope with and mitigate 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(5) 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, neither agenda items 1-14 and 18-25 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 SJRWMD Governing Board were there no public health emergency at all.

Similarly, Section 252.46, Florida Statutes, which is also cited in the District’s Emergency Order, only allows the SJRWMD to “make, amend, and rescind such orders and rules **as necessary for**



**emergency management purposes.” Nothing to be considered on the September 8<sup>th</sup> Board Meeting or Public Hearing are “necessary for emergency management purposes.”**

Third, paragraph 4 under “Findings of Fact” of Emergency Order 2020-10 references Executive Order 20-69 “suspending Florida Statutes that require quorum to be physically present.” **Executive Order 20-69 suspends the requirement that a quorum be present in person and allows for the use of “communications media technology” to conduct meetings but gives no authority for the SJRWMD to transact business without a quorum.** In fact, Executive Order 20-69 explicitly “does not waive any other requirements under the Florida Constitution and “Florida’s Government in the Sunshine Laws.” The issuance of Executive Order 20-69 is actually instructive that governing bodies must have a quorum to transact business, as it provides a means for that very purpose.

Fourth, paragraph 13 under “Findings of Fact” of Emergency Order 2020-10 identifies the SJRWMD as a “political subdivision” under Section 252, Florida Statutes, and relies on Section 252.38, Florida Statutes, to “waive the procedures and formalities otherwise required by law pertaining to:

- a. Performing public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
- b. Entering into contracts;
- c. Incurring obligations;
- d. Employing permanent and temporary workers;
- e. Utilizing volunteer workers;
- f. Renting equipment;
- g. Acquiring and distributing, with or without compensation, supplies, materials, and facilities; and
- h. Appropriating and expending public funds.”

However, Section 252.38 applies specifically to “each political subdivision of the state.” The term “political subdivision” is defined in section 252.34, Florida Statutes, as “any county or municipality created pursuant to law.” **The SJRWMD is not a county or municipality. Therefore, the provisions of 252.38 do not apply to the SJRWMD and cannot be the basis for waiving procedures and formalities otherwise required by law.**

Fifth, 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.**



Sixth, Section 373.119, Florida Statutes, authorizes the executive director of a water management district to issue an emergency order in the case that “an emergency exists requiring immediate action to protect the public health, safety, or welfare; the health of animals, fish, or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural or other reasonable uses.” **However, such an order can only be issued with the “concurrence... of the governing board.” Absent a quorum, it is not possible for the governing board to concur with the emergency order and the emergency order is invalid.**

Finally, none of the SJRWMD Governing Board Members represent a geographic area within the District, leaving millions 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 8<sup>th</sup> 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: Ron Howse  
Susan Dolan  
Anne Shortelle  
Mary Ellen Winkler  
Joseph Lambert