IN THE SUPREME COURT OF FLORIDA

JEFFREY L. HILL, SR., individually

And as etc.,

Petitioner,

v.

SUWANNEE RIVER WATER

MANAGEMENT DISTRICT,

Respondent.

On petition for discretionary review from the Florida First District

Court of Appeal Case No. 1D15-3772, L. T. No. 06-203 CA

PETITIONER'S BRIEF ON JURISDICTION

Jeffrey L. Hill, Sr., Petitioner, Pro Se

908 SE Country Club Rd.

Lake City, Florida 32025

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CITATIONS

PRELIMINARY STATEMENT

Petitioner, Jeffrey L. Hill, Sr. will hereinafter be referred to as 'Hill'. Respondent, Suwannee River Water Management District will hereinafter be referred to as 'District'. El Rancho No Tengo, Inc. will hereinafter be referred to as 'the farm'.

The appendix to this brief will hereinafter be referred to as App. page_____.

THE CASE AND FACTS

1) On August 6, 2007, the trial Court entered an order granting District permanent injunctive relief, denying defendant's motion for dismissal, dismissing count 3 of amended complaint and retaining jurisdiction over count 4 of amended complaint; App. pages 2 thru 16.
2) Defendant appealed that decision to the first DCA in case no. 1D07-4185. Oral argument was granted and held on February 29, 2009. Afterward, the trial Court's decision was per curiam affirmed without written opinion.
3) On May 6, 2015, Hill filed a motion to vacate the 2007 trial Court's decision.
4) On July 17, 2015 the trial Court denied Hill's motion.
5) Hill timely filed notice of appeal in August 2015.

6) Hill filed initial brief to the Florida First DCA on October 14, 2015.

7) Hill filed reply brief on January 14, 2016,

8) On March 16, 2016, the Florida First DCA per curiam affimed without opinion.

9) On March 22, 2016, Hill filed to the Florida First DCA requesting rehearing, hearing en banc and written opinion.

10) On April 8, 2016, the Florida First DCA denied all three of Hill's requests; App. page 1.

11) On May 6, 2016, Hill filed Notice to Invoke the discretionary jurisdiction of this Court.

This case is a challenge to the subject matter jurisdiction of the trial Court, the statutory and prudential standing of the District to begin the action and denial of due process of law to substantially affected, indispensable parties who were not named in the initial action taken by the District.

SUMMARY OF ARGUMENT

Subject Matter Jurisdiction is never waivable.

Statutory, Constitutional and prudential standing is threshold and a must and is essential to begin any legal action.

Due process of law should not be denied substantially affected parties.

In this case, the trial Court lacked subject matter jurisdiction, the District lacked standing and unnamed parties are substantially harmed.

ARGUMENT

This controversy began in May 2006 when the District filed a complaint in the trial Court demanding that the farm get a permit from them to replace an 18" pipe that had rusted through. The pipe was originally installed in 1966 and was replaced in 1987 by Hill. The pipe was installed in a dike on farmland deeded to El Rancho No Tengo, Inc.,(the farm). No permits were obtained for the original or replacement pipes. The Hill family exclusively own the farm. The subject matter in this controversy is the dike and pipe; App. page 4, line 1. Florida Statute 403.813 (g) & (h) specifically and particularly state no permit is needed.

This Honorable Court has jurisdiction over this matter pursuant to the Florida Constitution due to expressed and direct conflict within the Florida First District Court of Appeals: Art V, Section 3 (b) (3) and Art X, Section 6 (a) & (b) because the State must pay for private property taken for a public purpose.

This Supreme Court of Florida has jurisdiction to prevent manifest injustice and preserve the honor, integrity and good perception of Florida's judicial system. The Florida Constitution, as amended in 1980, did not intend to make the District Courts of Appeal the highest Courts in Florida. The First District Court of Appeal has abused its discretion by refusing to write an opinion after, at oral argument, stating on the record that the District had no authority to begin the action.

CONCLUSION

For these reasons, Petitioner Jeffrey Lance Hill, Sr. respectfully requests this Honorable Court exercise its discretionary jurisdiction in this case.

Jeffrey L. Hill, Sr., Petitioner, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished on this 16th day of May, 2016 to George T. Reeves, attorney for respondent at Post Office Drawer 652, Madison, Florida 32341 and the Florida Supreme Court, office of the clerk at 500 South Duval Street, Tallahassee, Florida 32399.

; Jeffrey L. Hill, Sr., Petitioner

908 SE Country Club Rd.

Lake City, Florida 32025

Phone; 386-623-9000

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing jurisdictional brief complies with Florida Rule of Appellate Procedure 9.210.

Jeffrey L. Hill, Sr., Petitioner, Pro Se

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

April 08, 2016

CASE NO.: 1D15-3772
L.T. No.: 2006-203 CA

Jeffrey Lance Hill, Sr., individually and as etc.	v.	Suwannee River Water Management District
Appellant / Petitioner(s),		Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion filed March 28, 2016, for rehearing is denied.

Appellant's motion filed March 28, 2016, for written opinion is denied.

Appellant's motion filed March 28, 2016, for rehearing en banc is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

George T. Reeves

Jeffrey Lance Hill, Sr.

jm

JON S. WHEELER, CLERK

Appendix A

Appendix to BRIEF ON Jurisdiction

IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT, IN AND
FOR COLUMBIA COUNTY, FLORIDA

SUWANNEE RIVER WATER MANAGEMENT DISTRICT,

Plaintiff,

vs.

EL RANCHO NO TENGO, INC.,

Defendant.

CASE NO: 06-203CA

2007 AUG -6 P 12:41

FINAL ORDER GRANTING PERMANENT INJUNCTIVE RELIEF, DENYING DEFENDANT'S MOTION FOR DISMISSAL, DISMISSING COUNT III OF AMENDED COMPLAINT, AND RETAINING JURISDICTION OVER COUNT IV OF AMENDED COMPLAINT

THIS CAUSE came on for consideration in open court on November 7, 2006 and February 7 and 8, 2007, in the Columbia County Courthouse in Lake City, Florida upon the request for temporary injunctive relief contained within the Amended Complaint filed by the Plaintiff, the SUWANNEE RIVER WATER MANAGEMENT DISTRICT (hereinafter referred to as "District"). Present before the Court were JOHN M. DINGES, corporate representative of the Plaintiff, and the Plaintiff's attorneys, JENNIFER B. SPRINGFIELD, THOMAS W. BROWN, and MATTHEW MITCHELL. Also present before the Court on behalf of the Defendant, EL RANCHO NO TENGO, INC., (hereinafter referred to as "Defendant"), was Jeffrey Hill, the President of the Defendant corporation and the Defendant's attorneys, ROBERT MOELLER and PAUL SMITH.

Subsequent to counsel submitting to the Court proposed orders and rebuttal arguments to the proposed orders, this Court entered on July 11, 2007, an "Order Denying Defendant's Motion for Dismissal and Granting in Part Plaintiff's Request for Temporary Injunction". Thereafter, Defendant filed its "Motion for Conversion of Temporary Order to Partial Final Judgment and Motion for Stay," with District filing its "Response to Defendant's Motion for Conversion of Temporary Order to Partial Final Judgment and Motion for Stay." At the hearing held on July 26, 2007 on Defendant's motion and the District's response, the Defendant, while

not stipulating to the correctness of the Court's order of July 11, 2007, requested that the Court's order be converted to a final order for purposes of appeal. The Plaintiff agreed to the order being converted to a permanent injunction.

Both parties agreed that they had presented on November 7, 2006 and February 7-8, 2007 all evidence which they intended to present upon all issues bearing upon the issuance of an order granting or denying temporary or permanent injunctive relief and that there was not any remaining evidence to be presented by either party on the issue of granting permanent injunctive relief. Both parties also stipulated that the court would retain jurisdiction over the issue of the assessment of statutory penalties, attorney's fees, and costs as prayed for in Count IV of Plaintiff's Amended Complaint. The parties disagreed concerning whether Count III of the Amended Complaint should or should not remain pending against the Defendant and requested the Court issue a ruling as to Count III.

The Court, having considered the testimony of each party's witnesses, including expert testimony and reports, the exhibits admitted into evidence, each party's memorandum of law, the argument of counsel, the proposed orders submitted by counsel subsequent to the evidentiary hearing, and the motion, response and argument presented subsequent to the order entered on July 11, 2007, hereby makes the following findings of fact and reaches these conclusions of law:

FINDINGS OF FACT

1. District is a special taxing district created and governed by chapter 373, Florida Statutes.
2. In 1986 District adopted and implemented an environmental resource-permitting program in chapter 40B-4, Florida Administrative Code.
3. Under part IV, Florida Statutes, Chapter 373, District is charged with implementing the operation and regulation of the management and storage of the surface waters within territories delegated to District by the legislature.
4. Columbia County is within the geographical boundaries of District as set forth in Florida Statutes § 373.069 (b).
5. Defendant is a Florida corporation that owns property in Columbia County on which the dam which is subject to this action is located. The president of the corporation is Jeffrey Hill.

6. The dam which is the subject matter of this controversy was constructed by L.P. Hill, Sr. (who is Jeffrey Hill's father) and members of his family in 1966. It was constructed in accordance with design specifications supplied by the United States Soil Conservation Service and an engineer privately retained by L.P. Hill, Sr. Construction supervision was provided by the United States Soil Conservation Service.

7. Jeffrey Hill participated in the original construction of the dam at a time when he was 10-11 years of age, and has participated in the routine maintenance of the impoundment through the present time.

8. In 1978, the Department of the Army, United States Corp of Engineers, commissioned a private engineering firm to perform an analysis of the water shed supplying the water to the impoundment and an analysis of the safety of the impoundment. This document is entitled "Phase I – Inspection Report National Dam Safety Program" and was admitted into evidence as Plaintiff's Exhibit 23. The report contains a copy of the original design diagram for the impoundment. These diagrams were accepted into evidence as Defendant's Exhibits 3 and 4. The report classified the impoundment as a dam and, although it considered the dam to be in the significant hazard category, it determined that at that time "there were no apparent indications of an immediate hazard to safety."

9. The dam is 910 feet in length and 20 feet in height at the downstream maximum section, which is at the center of the valley in the middle of the structure. The top of the dam is about 12 feet wide and the side slopes average about a 3:1 ratio.

10. Defendant's dam has a principal discharge spillway and an emergency discharge spillway through which waters are discharged off-site. As originally designed, the principal spillway consisted of a vertical 24" corrugated metal pipe which extended downward where it joined an 18" horizontal corrugated metal pipe by way of a metal junction box.

11. The horizontal 18" pipe extended in an East-West direction and flowed underneath the dam. The East end of the horizontal pipe was located in the impounded water and was equipped with a gate valve. The gate valve could be opened partially to allow constant flow of water from the dam. It can also be opened completely to drain the dam or to allow the discharge of waters during times of heavy rainfall. The westerly end of the horizontal pipe emptied water

into a stream bed which flows through a box culvert underneath CR 133 (Old County Club Road). Ultimately, the water flowed into Alligator Lake.

12. For design purposes, it was necessary that the principal spillway be constructed of some sort of pipe which separates the flowing water from contact of the earthen embankment. Actual contact of water with the earth comprising the dam would cause erosion and ultimate failure of the impoundment.

13. The secondary spillway component of the original structure consisted of an emergency spillway. The emergency spillway is essentially a "notch" cut into the earthen dam at the Southeast end of the dam. During periods of severe rainfall, the flow of water may be of such a magnitude that it can not all be handled by the principal spillway. In such event, water flows through the "notch" of the emergency spillway and around the dam. This design feature was created in order to avoid the prospect of the embankment being "over topped". Over topping can cause failure of the dam.

14. The dam has been continuously utilized by the Defendant and members of the Hill family for agricultural purposes since it was originally constructed in 1966.

15. In March of 2003, Columbia County experienced significant and prolonged rainfall. As a result, many roads, bridges and culverts were completely destroyed. Financial assistance from the Federal Emergency Management Administration (FEMA) was provided to Columbia County to assist in repairing the damage. The rainfall was of such magnitude that the principal spillway of the subject dam could not discharge all of the water which was flowing into the impoundment area. Consequently, water began to flow through the emergency spillway. The water flowed into an adjacent field owned by the Defendant and then proceeded to flow toward CR 133 (Old County Club Road) where it passed through the box culvert and ultimately flowed into Alligator Lake. A small section at the southeastern tip of the dam where it joined the emergency spillway was eroded. There was also serious erosion of the adjacent field. The soil was washed from the adjacent field, resulting in a large amount off soil being deposited on the northeast corner of the Alligator Lake Recreational Area, which is located southwest of the dam. The recreational area is owned by Columbia County and used by the public for recreational purposes. There was no injury to any person who was at or near the dam during the flooding event.

16. Between March of 2003 and March of 2006, there was correspondence and face-to-face meetings between representatives of the Plaintiff and the Defendant. During these contacts, the Plaintiff contended that an environmental resource permit was required under F.A.C. 40B-4.1040 prior to the performing of any repairs upon the dam. The Defendant, in turn, claimed that any work performed upon the dam was exempt from the permitting requirements of F.A.C. 40B-4.1040 under the terms of Florida Statute 403.813(2)(g).

17. In approximately February of 2006, the Defendant's president, Jeffrey Hill, discovered that the metal junction box at the junction of the vertical and horizontal principal spillway pipe was rusted out. Also, the horizontal pipe of the principal spillway had rusted out in many sections. Mr. Hill testified that the junction box had rusted out before and had been repaired by him on at least two occasions in the past. Mr. Hill testified that the rust damage in 2006 was more significant now than it had been in the past. The rusted out sections allowed water flowing through the principal spillway to come into actual contact with the soil comprising the embankment. Continued contact of the water with the soil of the dam could cause erosion and potential failure of the dam. As a result, Mr. Hill decided to replace all components. At trial, both parties and their experts agreed that the repair to the principal spillway was necessary to keep the dam safe.

18. Between December 2005 and June 2006, Defendant, without first obtaining an environmental resource permit, drained the dam and excavated a 23 foot wide by 20-25 foot high section through the heart of the existing dam on its property, removed the then existing principal spillway pipes, installed new pipes of a different composition, and rebuilt the 23 foot wide by 20-25 foot high section of the dam that had been removed. Defendant also excavated a ditch near the toe of the dam on its property. See Plaintiff's Exhibit 3. This work was performed by Mr. Hill and his children, none of whom has received formal training in the construction and repairs of dams.

19. There are areas within the newly repaired area of the dam that were not properly compacted and show up as loose material.[1]

20. Proper compaction of the soils is very important because water traveling horizontally through the dam will erode the dam and cause it to breach or fail.

21. The seven-foot hand-boring sample obtained by Defendant's expert witness from the repaired area of the dam is not adequate to determine the degree of soil compactness and is only useful in showing the type of soil.

22. Clayey sand is predominantly sand with less than 50% clay. Sandy clay is predominantly clay with less than 50% sand. Sandy clay would be more suitable in the construction of a dam than would clayey sand.

23. Defendant's exhibit 9, which was the soil sample removed from the repaired location that allegedly contained a clay core, was identified as clayey sand by Plaintiff's expert witness.

24. When water reaches the top of Defendant's dam, approximately 78 million gallons of water are stored behind the dam. At the top of the emergency spillway crest, there would be approximately 67 million gallons of water stored. At the normal pool elevation of the dam, there is approximately 49 million gallons of water stored behind the dam, which equals roughly 480 million pounds of water.

25. There is no assurance that Defendant rebuilt the dam to meet normally accepted standards for dams. The soil materials that were removed from the 23-foot wide section and later put back in place may not have been properly compacted when replaced.

26. Defendant's expert witness performed a seepage analysis and a slope stability analysis, which assumed the existence of a properly constructed clay core or barrier. Despite some disagreement with Plaintiff's experts' findings, Defendant's

[1] According to the testimony of John Dorman, explaining the reports of Cal-Tech Testing, two continuous standard penetration tests to depths of 25 foot were performed on Defendant's dam, one in the repaired area (B-1 boring location) and one in an area that was not disturbed by the excavation of the dam (B-2 boring location). The tests began at a depth of one foot and continued down 25 foot in two-foot intervals. During the test performed at the B-1 boring location, N values in the third layer of soil are one or less blows per foot and for approximately two foot of this layer the sampling spoon bent under the weight of the drill rod. The bending of the spoon under the weight of the drill rod was caused by encountering an absence of soil materials in the soil profile being sampled or very loose soils and the spoon advanced under its own weight. The soil compaction of Defendant's dam at the B-1 boring location was inadequate and showed a very loose to loose condition of the soils encountered, which did not appear to comprise a core tie-in or a fence. Upon completion of the standard penetration test, the two boring holes were filled with grout. The boring hole in the undisturbed area filled up easily whereas the B-1 boring location continued to take grout and took several hours to fill up. Twelve bags of cement were brought to the site, of which, 7-8 were used to fill the B-1 boring location. The variation in time and effort required to fill the B-1 boring location compared to the boring hole in the undisturbed area was most likely caused by the presence of very loose and poorly compacted soil in the repaired area of the dam.

own expert was not willing to certify the safety of the dam without additional analyses being performed.

27. Watershed modeling shows that changes in the watershed upstream of the dam since 1966 when the dam was constructed have resulted in an increased rate and volume of runoff to Defendant's dam. This means that if the impoundment elevation were at or above the normal pool elevation of approximately 119 feet NGVD, the dam could not handle the one percent chance storm occurring. The dam would overtop because the spillways of the structure are not adequate to pass the discharge from the one percent chance storm. The one percent chance storm would be roughly about 10 inches of rainfall in a 24 hour period.

28. Defendant's excavation activities threaten to cause environmental damage, to wit: sedimentation in waters of the state.

29. There is a significant likelihood that the Defendant's dam in its current condition may fail, though it is not known when this may happen.

30. The specific activities performed by Defendant on its dam between December 2005 and June 2006 that would make the work subject to an environmental resource permit include excavating a 23 foot wide by 20-25 foot high section through the middle of the dam, rebuilding the spillway, and returning the earth back to the excavated section.

31. Defendant was notified on numerous occasions that it was required to obtain an environmental resource permit prior to performing such maintenance, repair, or alteration on a dam that affects the surface waters within territory of District. Defendant was notified orally at several meetings with District staff, by certified mail, and by personal service by way of a process server. Defendant refused to obtain an environmental resource permit prior to, during or after the construction activities on the dam based upon the belief that it was exempt from such requirement under the provisions of F.S. 403.813(2)(g) and based upon a prior decision of this Court in the case of Suwannee River Water Management District (SRWMD) vs. El Rancho No Tengo, Inc; L. P. Hill, Sr., and Jeffrey Hill, Columbia County Circuit Court Case No. 89-22-CA.

32. In May 2006, when Plaintiff first sought a temporary injunction against Defendant, the dam impounded a minimal amount of water, if any. District's temporary injunction sought to maintain the status quo at that point in time when the dam

was empty and did not present a significant safety hazard. Subsequently, the dam has been filled with water again and is operational.

33. Routine custodial maintenance includes such activities as mowing the grass around the dam, removing any woody vegetation, correcting any areas of minor erosion, and maintaining the spillways in a clean condition. Major repair or alteration of an existing structure is not routine custodial maintenance.

34. The parties, subject matter, and issues in this proceeding are not identical to the parties, subject matter, and issues in SRWMD v. Hill, Columbia County Circuit Court Case No. 89-22-CA. Defendant's counsel conceded in closing argument that the res judicata defense is not sustainable, as the instant action involves a different structure.

CONCLUSIONS OF LAW

1. District is authorized to bring this action under sections, 373.129, 373.136, 373.433, and 120.69, Florida Statutes, as well as Rule 1.610, Fla. R. Civ. Pro., and Alachua County v. Lewis Oil Company, 516 So. 2d 1033 (Fla. 1st DCA 1987).

2. The principle of *res judicata* does not apply to this case, as the action in SRWMD v. Hill, Columbia County Circuit Court Case No. 89-22-CA, involved a different structure. *See*, Lake Region Hotel Co. v. Gollick, 149 So. 205, 207, (Fla. 1933) (In order to make a matter *res judicata* there must be concurrence of the following conditions: (1) identity in the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action and (4) identity of the quality in the persons for or against whom the claim is made.) Suniland Assocs., Ltd. V. Wilbenka, Inc., 656 So. 2d 1356, 1358 (Fla. 3rd DCA 1995) (for *res judicata* to apply there must also exist in the prior litigation a "clear-cut former adjudication" on the merits.) Additionally, the issue is moot, as Defendant did not pursue at the hearing its previously asserted defense of res judicata.

3. Statutory exemptions are to be strictly construed against those claiming the exemption. Pal-Mar Water Management District v. Martin County and South Florida Water Management District, 384 So. 2d 232 (Fla. 4th DCA 1980); Deseret, *supra*. "Those who seek shelter under an exemption law must present a clear case, free from all doubt, as such laws, being in derogation of the general rule,

must be strictly construed against the person claiming the exemption and in favor of the public." Robinson v. Fix, 151 So. 512, 522 (Fla. 1933). Defendant has failed to present a clear case to support its claim of exemption.

4. The exemption in paragraph 403.813(2)(g), Florida Statutes, for "the maintenance of existing insect control structures, dikes, and irrigation and drainage ditches, provided that spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of spoil material into waters of the state," is not applicable to the Defendant's actions in this case. The exemption is limited to insect control structures, dikes, and irrigation and drainage ditches, the construction of which typically generates "spoil material." In constructing dams, no "spoil material" is typically generated. Further, the statute contemplates that "dredging" activity will be necessary in order to perform the exempt maintenance. Typically, there is no dredging required for the construction of a dam. No case in which a court has found that this exemption applies has involved a dam. Save the St. Johns River v. St. Johns River Water Management District, 623 So. 2d 1193 (Fla. 1st DCA 1993) (exemption applied to dike). Suwannee River Water Management District v. Hill, Columbia County Circuit Court Case No. 89-22-CA (exemption applied to dike).

5. Not one of the three exemptions claimed by the Defendant applies to the Defendant's activities described in Finding of Fact paragraph 19 above: (1) The surface water management system that exists on the Defendant's property was recently altered. Consequently, the exemption in paragraph 40B-4.1070(1)(e), does not apply. (2) The exemption from part IV, chapter 373 permitting in subsection 373.406(1), Florida Statutes, is not applicable to Defendant's activities as it is intended to apply solely to the consumptive uses of water permitting program versus any surface water management activities designed to facilitate the "capture, discharge, and use of water." (3) The surface water management system on Defendant's property is not an "agricultural closed system" under subparagraph 40B-4.1070(1)(a)2, Florida Administrative Code, since it discharges water off-site. *See*, Corporation of the President of the Church of Jesus Christ of Latter Day Saints v. St. Johns River Water Management District, 489 So. 2d 59 (Fla. 5th DCA 1986).

6. The interpretation of a statute by an agency that has responsibility for its implementation is entitled to great weight and should not be overruled unless it is clearly erroneous. Save the St. Johns River v. St. Johns River Water Management District and David A. Smith, 623 So.2d 1193, 1202 (Fla. 1st DCA 1993); Dept. of Military Affairs v. Griffin, 530 So.2d 1029, 1031 (Fla. 1st DCA 1988).

7. The impoundment in question is not a "dike" as used in Fla. Stat. 403.813(2)(g) and therefore is not exempt from the permitting requirements of Fla. Admin. Code 40B-4.1040 and Florida Statutes §373.113 and 373.413. The language of Fla. Stat. §403.813(2)(g) very clearly exempts "dikes" and other structure from the permitting requirements of Fla. Admin. Code 40B-4.1040. The term "dike" is not officially defined anywhere in the Florida statutes or Administrative Code. Looking at the language of the statute, in its plain and ordinary meaning, it is quite clear that the impoundment in question is not a dike and thus not exempted from permitting.

8. The parties would have this Court make a determination of whether the current impoundment is a "dike" under the exemption by addressing other statutes and their legislative histories or by looking to case law which only addressed secondary and collateral issues. Rather than head down either path, this court will follow the first and foremost rule of statutory interpretation - look at the plain language of the statute. Joshua v. City of Gainesville, 768 So.2d 432, 435 (Fla. 2000). As stated numerous times by the Florida Supreme Court:

> When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. In such instance, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. "When the words of a statute are plain and unambiguous and convey a definite meaning, courts have no occasion to resort to rules of construction – they must read the statute as written, for to do otherwise would constitute an abrogation of legislative power." Nicoll v. Baker, 668 So.2d 989, 990-991 (Fla. 1996). (Internal citations omitted).

9. When a word is left undefined by the Legislature it does not mean that the statute is ambiguous, rather the courts may determine its plain and ordinary meaning by simply consulting a dictionary. L.B. v. State, 700 So.2d 370 (Fla. 1997) (a court

may refer to a dictionary to ascertain the plain and ordinary meaning which the legislature intended to ascribe to the term); Green v. State, 604 So.2d 471 (Fla. 1992) ("If necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary."). Various dictionaries define "dike" as

- Encarta Online Dictionary: (1) an embankment built along the shore of a sea or lake or beside a river to hold back the water and prevent flooding. "dike." *Encarta World English Dictionary*, 2006, Bloomsbury Publishing Plc, 26 Feb 2007 < http://encarta.msn.com/dictionary_/dike.html>
- American Heritage Dictionary: (1a) an embankment of earth and rock built to prevent floods. "dike." *The American Heritage Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. 26 Feb. 2007. <Dictionary.com http://dictionary.reference.com/browse/dike>.
- Dictionary.com: (1) an embankment for controlling or holding back the waters of the sea or a river. "dike." *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. 26 Feb. 2007. <Dictionary.com http://dictionary.reference.com/browse/dike>.
- Merriam-Webster: (2a) a bank usually of earth constructed to control or confine water. "dike." *Merriam-Webster Online Dictionary*. 2007. 26 Feb 2007 http://www.m-w.com/dictionary/dike

10. Based on these definitions it seems clear that the plain and ordinary meaning of the term "dike", as it is commonly used, is an embankment which main purpose is to prevent flood water from approaching upon land. This definition is consistent with those decisions which addressed the applicability of the exemption, but did not seek to define the term dike. See Save the St. Johns River, v. St. Johns River Water Management District, 623 So.2d 1193, 1195 (Fla. 1st DCA 1993) ("Currently, a dike system exists along the southern boundary of the proposed development property and ***separates the internal grazing lands from the lower marsh and flood areas external to the dike,***" and further stating, "the 1973 dike remained intact throughout the entire length and ***continued to impede water movement from the marsh into the agricultural areas.***") (emphasis added); Corporation of the President of the Church of Jesus Christ of Latter-Day Saints v. St. Johns River Water Management District, 489

So.2d 59, 60 (Fla. 5th DCA 1986) (Noting "[o]ther ranch employees testified that no maintenance had been performed on this system for over twenty-five years and ***the dike had failed to keep water off the ranch*** during that period.") (emphasis added).

11. Applying the plain meaning of "dike" to the instant impoundment, it is abundantly clear that it is not a dike as used in the statute. Mr. Hill testified that the impoundment in question was built to capture water to be used for various agricultural purposes. No evidence was presented that it has been, is, or will be used as a means of flood control, and therefore, is not a dike, as used in its plain and ordinary meaning. As such, the impoundment is a dam as contemplated in Fla. Admin. Code 40B-4.1040 and Florida Statute 373.403 and is subject to the permitting requirements thereof.

12. Defendant's activities described in Findings of Fact paragraph 18 above constitute construction, alteration, maintenance, and operation of a dam, impoundment, reservoir, appurtenant work or works, and surface water management system within the meaning of section 40B-4.1040, Florida Administrative Code. *See*, subsections 373.403(1) through (5) and (7) through (10), Florida Statutes.

13. Defendant's activities described in Findings of Fact paragraph 18 above require an environmental resource permit from the District pursuant to Rule 40B-4.1040, Florida Administrative Code. Sections 373.113 and 373.413, Florida Statutes

14. Defendant's activities described in Findings of Fact paragraph 18 above do not constitute "routine custodial maintenance" as that term is construed in interpreting paragraph 403.813(2)(g), Florida Statutes, and is used in subsection 373.403(8), Florida Statutes *see*, Corporation of the President of the Church of Jesus Christ of Latter Day Saints v. St. Johns River Water Management District, 489 So. 2d 59 (Fla. 5th DCA 1986) (commonly referred to as the "Deseret" decision) (the legislature intended to exclude only routine custodial maintenance having a minimal adverse environmental impact from permit requirements.)

15. To obtain an injunction in a case where a statutory violation is being asserted, the complainant must show that (1) irreparable harm will occur from a continued violation; (2) it lacks an adequate remedy at law; (3) it has a clear legal right to the relief requested; and (4) the injunction is in the public interest. Florida

Department of Environmental Regulation v. Kaszyk, 590 So. 2d 1010 (Fla. 3rd DCA 1991). "When the express purpose of a statute is to protect public health, safety, and welfare, and when the legislature has specifically empowered an agency to seek an injunction against one who violates that statue, irreparable harm is presumed", Id at 1011-12.

16. Section 373.016 (3)(j), Florida Statutes, states "It is further declared to be the policy of the Legislature ...to promote the health, safety, and general welfare of the people of this state". Sections 373.129(2) and 373.136(1), Florida Statutes, provide specific authority to the District to seek an injunction. Therefore, the first requisite for obtaining an injunction has been met.

17. Regarding the second requirement, compliance by Defendant with the District's regulations and the safety of the public cannot be achieved through a remedy at law in this case.

18. Thirdly, the District has a clear legal right to the relief requested under Sections 373.129(2) and 373.136(1), Florida Statutes.

19. Finally, if the statute is aimed at protecting the public health, safety, and welfare, and it is being violated, then issuing the injunction is in the public interest.

20. Count III of the Amended Complaint seeks the Court declare the dam a public nuisance based upon Section 373.433, Florida Statutes, which provides as follows:

> "Any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works which violates the laws of the state or which violates the standards of the governing board or the department shall be declared a public nuisance. The operation of such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be enjoined by suit by the state or any of its agencies, or by a private citizen. The governing board or the department shall be a necessary party to any such suit. Nothing herein shall be construed to conflict with the provisions of *s. 373.429*."

21. This Court's order granting Plaintiff's request for permanent injunctive relief is predicated upon the Defendant failing to obtain a permit as required by the applicable statues and regulations cited herein.

22. The permitting requirement of said statutes and regulations apply to a person or entity (not a "thing" such as a dam), and in the instant case, the permitting requirements apply to a corporation, to-wit: Defendant, El Rancho No Tengo, Inc.

23. While the Defendant corporation violated the law (as detailed in this order) by failing to obtain a permit, that act alone is not sufficient to transfer the violation to the dam, such as to declare the dam a public nuisance under Section 373.433, Florida Statutes.

24. Therefore, Plaintiff did not prove its case as alleged in Count III of the Amended Complaint and said count is dismissed.

WHEREFORE, based upon the foregoing findings of fact and conclusions of law, the Court finds that while Defendant in good faith relied upon a prior decision by this Court in opposing the District's efforts to regulate its activities, said reliance was erroneous. The Defendant's Motion to Dismiss is denied. The Court further finds that Plaintiff lacks an adequate remedy at law and a permanent injunction is in the public interest. However, Plaintiff having suggested and offered a procedure to address the public interest without requiring Defendant's strict compliance with the permitting requirements, therefore, in lieu of requiring the Defendant to complete the entire permitting process under chapters 40B-4 and 40B-400, Florida Administrative Code,

IT IS ORDERED AND ADJUDGED that permanent injunctive relief is granted in favor of the Plaintiff and against the Defendant as follows:

The Defendant shall forthwith drain the dam to the lowest level feasible and, within 60 days of entry of this order, provide to Plaintiff engineering certification of the dam and its appurtenant works and an operation and maintenance plan. The certification and operation and maintenance plan shall be made by an engineer licensed in the state of Florida under Chapter 471, Florida Statutes who is recognized by his peers as competent in the design and construction of earthen dams.

Within 30 days of its receipt of Defendant's certification and operation and maintenance plan, Plaintiff shall review and issue written notification to Defendant of Plaintiff's approval or of any deficiencies in the information/certification provided. During the pendency of this injunction, Plaintiff is authorized to enter and inspect the property during normal business hours upon reasonable notice given to Defendant, which shall be no less than 24 hours, unless an

emergency affecting public safety exists. In the event that Plaintiff notifies Defendant of deficiencies within the certification and/or operation and maintenance plan, Defendant shall have 30 days to cure these deficiencies, unless otherwise stipulated by the parties, and re-submit the certification and/or operation and maintenance plan.

The Defendant shall not impound water to its full capacity behind the dam until Plaintiff provides written approval to Defendant of the certification and operation and maintenance plan. Plaintiff shall diligently and expeditiously process the evaluation and issue its findings promptly.

The engineering certification of the dam and its appurtenant works shall include the following elements:

1. A detailed report on the pipe materials used for the principal spillway piping system;
2. New soil borings and soil properties testing to determine the presence, location, elevation, permeability, and other properties of the dam's clay core;
3. A seepage analysis based on properties of the soils tested;
4. A slope stability analysis based on properties of the soils tested;
5. An analysis of principal spillway and emergency spillway capacities to certify they will safely discharge flows from the following storm events:
   a. The one-percent chance (100-year recurrence interval) critical duration storm event for the dam's contributing watershed, and;
   b. The standard project flood as defined in Plaintiff's exhibit number 23, the 1978 Phase 1 Inspection Report of the L.P. Hill Dam.

The Defendant shall file a report with Plaintiff no later than July 1 of each third year following entry of this order. The report shall detail all operation and maintenance activities during the three-year period prior to the filing of the report.

The Court retains jurisdiction for the purpose of ruling on Plaintiff's claim for civil penalties, costs, and fees and entering such further orders as may be appropriate.

DONE AND ORDERED in chambers at Lake City, Columbia County, Florida, this 6th day of August, 2007.

LEANDRA G. JOHNSON, Circuit Judge

STATE OF FLORIDA, COUNTY OF COLUMBIA
I HEREBY CERTIFY, that the above and foregoing is a true copy of the original filed in this office.
P. DeWITT CASON, CLERK OF COURTS
By _____ Deputy Clerk
Date 8/26/13

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order has been furnished via facsimile and by U.S. First Class Mail on August 16, 2007, to:

JENNIFER B. SPRINGFIELD, Esquire
605 N.E. First Street, Suite G
Gainesville, Florida 32601

THOMAS W. BROWN, Esquire
P.O. Box 1029
Lake City, Florida 32056

MATTHEW MITCHELL, ESQUIRE
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ROBERT MOELLER, Esquire
P.O. Drawer 1419
Cross City, Florida 32628

PAUL V. SMITH, Esquire
153 NE Madison Street
Lake City, Florida 32055

By: Diane B. Hiers
Diane B. Hiers, Judicial Assistant

CLERK CIRCUIT COURT COLUMBIA COUNTY, FLORIDA

STATE OF FLORIDA, COUNTY OF COLUMBIA
I HEREBY CERTIFY, that the above and foregoing is a true copy of the original filed in this office.
P. DeWITT CASON, CLERK OF COURTS
By _____ Deputy Clerk
Date 8/26/13