

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SIERRA CLUB,)
)
 Petitioner,)
)
 v.)
)
 DEPARTMENT OF ENVIRONMENTAL)
 PROTECTION,)
)
 Respondent.)
 /

OGC CASE NO. 17-1165
DOAH CASE NO. 19-0644

THOMAS GREENHALGH,)
)
 Petitioner,)
)
 v.)
)
 DEPARTMENT OF ENVIRONMENTAL)
 PROTECTION,)
)
 Respondent.)
 /

OGC CASE NO. 17-1165
DOAH CASE NO. 19-0645

SAVE THE MANATEE CLUB, INC.,)
)
 Petitioner,)
)
 v.)
)
 DEPARTMENT OF ENVIRONMENTAL)
 PROTECTION,)
)
 Respondent.)
 /

OGC CASE NO. 17-1167
DOAH CASE NO. 19-0646

SILVER SPRINGS ALLIANCE, INC., AND)
RAINBOW RIVER CONSERVATION, INC.,)

Petitioners,)

v.)

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)

Respondent.)

OGC CASE NO. 18-1060)
DOAH CASE NO. 19-0647)

OUR SANTA FE RIVER, INC.,)
ICHETUCKNEE ALLIANCE, INC., GINNIE)
SPRINGS OUTDOORS, LLC, and JIM TATUM)

Petitioners,)

v.)

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)

Respondent.)

OGC CASE NO. 18-1061)
DOAH CASE NO. 19-0648)

PAUL STILL,)

Petitioner,)

v.)

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)

Respondent.)

OGC CASE NO. 18-1061)
DOAH CASE NO. 19-0649)

FRIENDS OF WEKIVA RIVER, INC.,)

Petitioner,)

v.)

DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)

Respondent.)

OGC CASE NO. 18-1065)
DOAH CASE NO. 19-0650)

CORRECTED FINAL ORDER ON REMAND¹

The Department of Environmental Protection (the Department) entered a consolidated Final Order on May 18, 2021 (the 2021 Final Order), approving basin management action plans (BMAPs) addressing spring basins for certain Outstanding Florida Springs. Specifically, the Department approved the Volusia Blue Spring BMAP in OGC Case number 17-1167; the Santa Fe River Basin BMAP in case number 18-1061; the “Silver Springs and Upper Silver River and Rainbow Spring Group and Rainbow River BMAP” in OGC case number 18-1060; the Suwannee River BMAP in OGC case number 17-1165; and the Wekiva Spring and Rock Springs BMAP in case number 18-1065.

In the 2021 Final Order, the Department incorporated a recommended order (the Recommended Order) from the Division of Administrative Hearings in DOAH case number 19-0644 (and consolidated cases), albeit with some clarification of clerical errors. The Recommended Order describes the early procedural history of the case. Petitioners Sierra Club, Thomas Greenhalgh, Save The Manatee Club, Silver Springs Alliance, Rainbow River Conservation, Our Santa Fe River, Ichetucknee Alliance, and Jim Tatum filed a timely appeal in case numbers 17-1167, 18-1061, 18-1060, and 17-1165. No party appealed the final order as to OGC case number 18-1065, and therefore the approval of the Wekiva Spring and Rock Springs BMAP is final. On appeal, the First District Court of Appeal reversed the final order with an opinion, in case number 1D21-1667. The Court observed that the appellants had raised four issues, and “wr[o]te only” to address the second issue, on which it reversed the final order. The opinion discussed certain pie charts which showed current estimated nitrogen loading in spring

¹ This Order corrects attachments A, B, C, and D, with brief explanation. Each of those attachments supersede and replace the previous versions.

basins and sub-basins, by categories of sources. As observed by the Court, the Department contended that those pie charts were “estimated allocations” as required by section 373.807(1)(b)7., Florida Statutes.

The Court rejected the Department’s argument, reasoning as follows:

Section 373.807(1)(b)7. requires that BMAPs for Outstanding Florida Springs include an “[i]dentification of each point source or category of nonpoint sources” The BMAPs for Outstanding Florida Springs must also include “[a]n estimated allocation of the pollutant load . . . for each point source or category of nonpoint sources.” § 373.807(1)(b)7., Fla. Stat. However, the pie charts included in the BMAPs only show *current* estimated nitrogen loading in the various springsheds by source. There is no “allocation of the pollutant load” as required by section 373.807(1)(b)7., or put another way, allocation of the necessary load reductions to meet the TMDL. *See also* § 403.067(7)(a)2., Fla. Stat. (“A basin management action plan must equitably allocate . . . pollutant *reductions* to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate.” (emphasis added)).

Sierra Club v. Dep't of Envtl. Prot., 357 So. 3d 737, 743 (Fla. 1st DCA 2023) . The Court reversed the 2021 Final Order and remanded for further proceedings consistent with the opinion, but with no further instructions on remand. The Court’s opinion is the law of the case.

Following reversal and remand, when the appellate court provides general directions for further proceedings, the lower tribunal has “broad discretion” in directing the course of subsequent proceedings. *Collins v. State*, 680 So. 2d 458, 459 (Fla. 1st DCA 1996); *see Dade Cnty. Sch. Bd. v. Jackson*, 473 So. 2d 1356, 1357 (Fla. 1st DCA 1985) (applying rule in the context of the “quasi-judicial discretion” of a deputy commissioner). However, state agencies have further constraints upon their discretion. After initiation of a formal proceeding, even after reversal and remand, state agencies must base their determinations upon the findings and record developed before the presiding officer who conducted the evidentiary hearing. *Fox v. Treasure Coast Reg'l Planning Council*, 442 So. 2d 221, 227 (Fla. 1st DCA 1983) (addressing agency action following remand from State Land and Water Adjudicatory Commission). Where no

findings of fact are necessary to take action consistent with the appellate opinion, the agency may reconsider the record evidence in light of the appellate opinion. *Dade Cnty. Sch. Bd. v. Jackson*, 473 So. 2d 1356, 1357 (Fla. 1st DCA 1985).

The existing record and in particular, the findings in Recommended Order, enable the Department to adopt each disputed BMAP, with amendments. The Department will also provide a point of entry to resolve any disputed issues of fact regarding those amendments, if requested by a person whose substantial interests would be affected by the amendments. As explained in the record, there was no dispute in the accuracy of the “pie charts.” [Recommended Order ¶¶ 63-64]. As explained below, those findings provide a factual basis to make the allocations described below.

Based on the holding of the First District Court of Appeal, the pie charts are not deemed an allocation as required by the applicable statutes. Allocations are adopted as described below. The Department prepared these allocations based upon data from the proposed BMAPs, including data on source contributions, loading to groundwater, and the reductions necessary to achieve the TMDL. In making these allocations, the Department considered two optional approaches: first, calculating reductions based on BMAP data regarding loading to groundwater; and second, applying the allocation based on reductions needed at the spring vent. In the case of Rainbow Spring and Rainbow River BMAP, the Department set the allocations based on the spring vent contributions because the alternative approach would have led to lower (less protective) allocations. In all other cases, because allocations based on loading to groundwater were more protective, the Department made allocations based on loading to groundwater.

The Department adopts the “estimated allocation” to categories of nonpoint sources for purposes of section 373.807(1)(b)7., Florida Statutes, as described in attachments A, B, C, and D of this Final Order. These allocations will also be deemed a “detailed allocation to specific point sources and specific categories of nonpoint sources” as described in section 403.067(6)(b), Florida Statutes. These allocations supersede and replace the allocation to the entire basin as previously set forth in Section 2.1.5 of each of the associated BMAPs. Each of these attachments will supplement the existing BMAPs as a final appendix to the BMAP documents, as proposed. Based on the existing record, no other changes to the BMAPs are required at this time. For that reason, this Final Order will adopt the BMAPs as proposed previously, with the new appendices that will create allocations to categories of nonpoint sources. The Division of Environmental Assessment and Restoration is directed to disseminate each of the respective BMAPs with those additional appendices.

The Division of Environmental Assessment and Restoration is directed to review its current data and as appropriate, to update the allocations adopted herein as soon as practicable.

This Final Order is effective upon issuance, and each of those BMAPs are fully enforceable. For each of the BMAPs, the prohibitions on certain activities within a priority focus area identified in section 373.811, Florida Statutes, the adopted OSTDS remediation plans in the BMAPs, and other BMAP requirements are in place. If a timely and sufficient petition for administrative hearing is filed, some or all of the prohibitions and requirements may not take effect, depending on the BMAP, until the completion of appropriate proceedings. The respective BMAPs as amended are incorporated herein. The specific pollutant reduction projects and management actions required of individual entities are set forth in Chapter 2 of the BMAPs, as well as the appendices to the BMAPs. Unless otherwise noted in the BMAPs, all

requirements of the BMAPs are enforceable upon the effective date of this Order. This Final Order on Remand and incorporated BMAPs are enforceable under sections 403.067, 403.121, 403.141, 403.161, 373.119 and 373.129, Florida Statutes.

Consistent with the appellate mandate, this Final Order does not purport to address the matters argued, but not expressly addressed, in the appellate opinion. An appropriate notice of appellate rights is provided.

Having considered the record and the appellate opinion, and being otherwise duly advised, it is

ORDERED that:

- A. The Suwannee River Spring BMAP is approved as amended;
- B. The Volusia Blue Spring BMAP is approved as amended;
- C. Silver Springs and Upper Silver River and Rainbow Spring Group and Rainbow River BMAP is approved as amended; and
- D. The Santa Fe River Springs BMAP is approved as amended.

NOTICE OF RIGHTS

Existing parties to these proceedings, whose substantial interests are affected by this Final Order, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Final Order means that the Department's final action may be different from the position it has taken in the Final Order. The petition for administrative hearing must contain all of the following information:

- a) The name and address of each agency affected and each agency's file or identification number, if known;

b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

c) A statement of when and how the petitioner received notice of the agency decision;

d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice.

Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections

120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Final Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 30th day of ~~July~~^{June} 2023, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



SHAWN HAMILTON
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.



CLERK

June 30, 2023
DATE


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by electronic mail to:

John R. Thomas, Esq. Law Office of John R. Thomas, P.A. 8770 Dr. Martin Luther King, Jr., St. N St. Petersburg, FL 33702 jrthomasesq@gmail.com	Douglas MacLaughlin, Esq. 319 Greenwood Drive West Palm Beach, FL 33405 douglasmaclaughlin@aol.com
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this 30th day of July 2023.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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Appendix I.

Load reductions for categories of nonpoint sources within the springshed in the Volusia Blue Spring BMAP are allocated as follows:

Table 1. Allocation of Pollutant Loads

Source	NSILT Percent Contribution	TN Reduction (lbs/yr)
Onsite Sewage Treatment and Disposal Systems (OSTDS)	54%	105,580
Urban Turfgrass Fertilizer (UTF)	22%	42,088
Atmospheric Deposition (AD)	5%	9,813
Farm Fertilizer (FF)	2%	3,905
Sports Turfgrass Fertilizer (STF)	4%	7,698
Livestock Waste (LW)	1%	1,567
Wastewater Treatment Facilities (WWTF)	8%	15,814
WWTF - Reuse	4%	8,526
Total	100%	194,989

The allocation reductions are established and will serve as the “estimated allocation” to categories of nonpoint sources for purposes of section 373.807(1)(b)7., Florida Statutes. These allocation reductions will also be deemed a “detailed allocation to specific point sources and specific categories of nonpoint sources” as described in section 403.067(6)(b), Florida Statutes. These allocations supersede and replace the allocation to the entire basin as previously set forth in Section 2.1.5 of the BMAP.

Appendix G.

Load reductions for categories of nonpoint sources within the springsheds in the Santa Fe River BMAP are allocated as follows:

Table 1. Allocation of Pollutant Load Reductions

Source	NSILT Percent Contribution	TN Reduction (lbs/yr)
Onsite Sewage Treatment and Disposal Systems (OSTDS)	7%	145,138
Urban Turfgrass Fertilizer (UTF)	21%	451,093
Atmospheric Deposition (AD)	10%	214,909
Farm Fertilizer (FF)	46%	1,006,518
Sports Turfgrass Fertilizer (STF)	1%	15,393
Dairies	1%	31,151
Other-Livestock Waste (LW)	14%	311,110
Wastewater Treatment Facilities (WWTFs)	1%	21,566
Total	100%	2,196,878

The allocation reductions are established and will serve as the “estimated allocation” to categories of nonpoint sources for purposes of section 373.807(1)(b)7., Florida Statutes. These allocation reductions will also be deemed a “detailed allocation to specific point sources and specific categories of nonpoint sources” as described in section 403.067(6)(b), Florida Statutes. These allocations supersede and replace the allocation to the entire basin as previously set forth in Section 2.1.5 of the BMAP.

Appendix H.

Load reductions for categories of nonpoint sources for the springsheds in the Silver Springs and Upper Silver River and the Rainbow Spring Group and Rainbow River BMAP are allocated as follows:

Table 1. Allocation of Pollutant Load Reductions for Silver Springs and Upper Silver River

Source	NSILT Percent Contribution	TN Reduction (lbs/yr)
Onsite Sewage Treatment and Disposal Systems (OSTDS)	29%	345,418
Urban Turfgrass Fertilizer (UTF)	10%	121,407
Sports Turfgrass Fertilizer (STF)	10%	125,527
Atmospheric Deposition (AD)	10%	122,268
Farm Fertilizer (FF)	7%	85,328
Horse Farms	10%	115,377
Cattle Farms	18%	212,888
Misc. Livestock	1%	8,036
Wastewater Treatment Facilities (WWTFs)	2%	30,546
WWTF Reuse	2%	21,184
Drainage Wells	1%	18,763
Total	100%	1,206,742

Table 2. Allocation of Pollutant Load Reductions for Rainbow Spring Group and Rainbow River

Source	NSILT Percent Contribution	TN Reduction (lbs/yr)
Onsite Sewage Treatment and Disposal Systems (OSTDS)	20%	353,978
Urban Turfgrass Fertilizer (UTF)	9%	163,484
Sports Turfgrass Fertilizer (STF)	4%	65,525
Atmospheric Deposition (AD)	11%	201,397
Farm Fertilizer (FF)	12%	219,988
Horse Farms	16%	284,473
Cattle Farms	25%	452,829
Misc. Livestock	1%	15,197
Wastewater Treatment Facilities (WWTFs)	1%	26,735
Total	100%	1,783,607

The allocation reductions are established and will serve as the “estimated allocation” to categories of nonpoint sources for purposes of section 373.807(1)(b)7., Florida Statutes. These allocation reductions will also be deemed a “detailed allocation to specific point sources and specific categories of nonpoint sources” as described in section 403.067(6)(b), Florida Statutes. These allocations supersede and replace the allocation to the entire basin as previously set forth in Section 2.1.5 of the BMAP.

Appendix G.

Load reductions for categories of nonpoint sources within the springsheds in the Suwannee River BMAP are allocated as follows:

Table 1. Allocation of Pollutant Loads

Source	NSILT Percent Contribution	TN Reduction (lbs/yr)
Onsite Sewage Treatment and Disposal Systems (OSTDS)	3.10%	212,776
Urban Turfgrass Fertilizer (UTF)	3.01%	207,071
Atmospheric Deposition (AD)	8.31%	570,602
Farm Fertilizer (FF)	59.58%	4,093,274
Sports Turfgrass Fertilizer (STF)	0.13%	9,055
Dairies	3.49%	239,581
Livestock Waste (LW)	21.46%	1,474,427
Wastewater Treatment Facilities (WWTFs)	0.92%	63,391
Total	100.00%	6,870,176

The allocation reductions are established and will serve as the “estimated allocation” to categories of nonpoint sources for purposes of section 373.807(1)(b)7., Florida Statutes. These allocation reductions will also be deemed a “detailed allocation to specific point sources and specific categories of nonpoint sources” as described in section 403.067(6)(b), Florida Statutes. These allocations supersede and replace the allocation to the entire basin as previously set forth in Section 2.1.5 of the BMAP.