



Citizens Fight the State's Inadequate Plans to Restore 15 Outstanding Florida Springs

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Tallahassee, FL: On Wednesday, November 20, springs advocates concluded a seven-day administrative hearing, before Administrative Law Judge Francine Ffolkes, to challenge the Florida Department of Environmental Protection's (DEP or Department) ineffective water quality plans (Basin Management Action Plans or BMAPs) for 15 Outstanding Florida Springs. These plans fail to meet the minimum standards in state law, including, most importantly, the ability to reach the total maximum daily load (TMDL) water quality goal within 20 years.

In recent years, the state has adopted 36 Basin Management Action plans designed to protect important rivers, lakes, and estuaries. The Outstanding Florida Springs BMAPs, required by the Florida Springs and Aquifer Protection Act, are the first to be challenged in the state. Attorney's John Thomas, Anne Harvey, Doug MacLaughlin, and Terrell Arline represented the petitioners.

The unprecedented legal challenges, originally filed in January of 2019 by seven conservation organizations and three individuals, cover three springs of the Santa Fe River basin (Our Santa Fe River, Ichetucknee Alliance, Jim Tatum, Paul Still), seven springs of the Suwanee River basin (Sierra Club, Tom Greenhaugh), Silver and Rainbow Springs (Rainbow River Conservation, Silver Springs Alliance), Wekiwa and Rock Springs (Friends of Wekiva River), and Volusia Blue Spring (Save the Manatee Club). The Florida Springs Council led the effort to raise funding, recruit expert witnesses, and coordinate between the numerous petitioners.

The hearing began with the Department presenting its case that the BMAPs met the minimum requirements in state law. Despite the clear inability of several of the BMAPs to achieve the

necessary pollution load reduction, DEP argued that the plans could nevertheless meet water quality goals within 20 years because of uncertainty in the fate and transport of nitrogen through groundwater and because “adaptive management” would allow them to amend and improve the plans every five years as they are implemented. Department witnesses argued that the BMAPs were not required to require pollutant reductions for categories of polluters, despite the clear intent of Florida law and DEP’s own rules. DEP also claimed that it did not have the authority to reduce pollution beyond what was already in the BMAPs.

As Florida Springs Council Board Member Bob Palmer, who oversaw the case for FSC, explains, “Over and over again DEP misinterpreted the law, science, and data to make its job easier, with apparently no concern over whether the plans would actually work. The challenged BMAPs fail to meet water quality goals, fail to account for future growth in pollution, and fail to provide serious recommendations and the required information to make these plan successful in the future.”

Under cross-examination, DEP witnesses acknowledged that project and funding information required under state law was missing for many of the nitrogen reduction projects listed in the BMAPs. They admitted to significant errors in the BMAPs, particularly related to their assumptions for septic tank nitrogen loading and the benefits from converting to advanced septic systems. Questioning further revealed that DEP’s plans relied on credits from total adoption of advanced agricultural practices that are neither required, funded, or widely practiced.

According to Save the Manatee Club attorney Anne Harvey, “Because of these errors the water quality plans for Volusia Blue, Wekiwa, Rock, Silver, and Rainbow Springs will only achieve a fraction of the reduction in nitrogen loading assumed by the Department. There is no reason why the people of Florida should have to wait five years for DEP to correct its mistakes and produce honest plans.”

FSC attorneys presented evidence that DEP had changed its interpretation of the law and science during the drafting process. In early drafts of the BMAPs, the Department acknowledged a “gap” between the reductions needed to achieve the water quality goal and the reductions achievable through the BMAPs. At the hearing, DEP witnesses testified that it was not possible to evaluate the effectiveness of the plans because of uncertainty in how nitrogen travels through the aquifer.

More significantly, DEP removed or weakened important policy recommendations relating to agricultural pollution, which accounts for more than two-thirds of nitrogen pollution to

Outstanding Florida Springs, at the request of the Department of Agricultural and Consumer Services (DACS). While DEP's witnesses pointed to a lack of cooperation from the Department of Agriculture and Consumer Services for their inability to meaningfully address agricultural pollution, the draft plans show the DEP essentially allowed DACS to rewrite the plans to remove any urgency or cost estimates regarding necessary advances in reducing agricultural pollution. "What's most distressing," says FSC executive director Ryan Smart, "is that DEP actually had better plans at one point in time. Draft plans did account for future growth, were honest about what needed to be done to address agricultural pollution, and gave policy recommendations and estimated costs to meet water quality goals. We've seen the draft plans and presented them to the court. They clearly show that DEP buckled to political pressure and changed the plans to be less honest and effective."

On day four of the hearing, November 15, the petitioners called their first expert witness, Bob Knight, PhD., who methodically walked the court through the decline in Florida Springs water quality and failure of the BMAPs to provide a credible path to achieving water quality goals. Dr. Knight also highlighted projected increases in population and agricultural production, which are completely unaccounted for in the BMAPs, and explained critical flaws in DEP's arguments related to nitrogen attenuation and fate and transport.

As Knight explains, "The Florida Springs Institute has both the technical expertise and on-the-ground experience to challenge DEP's failed water quality plans with science and data. Florida's springs are getting more and more polluted each year and the BMAPs are our only means of restoring them. Our state government has a responsibility to the people of Florida and an obligation under the law to do better."

Expert witnesses Anthony Gaudio and Allen Stewart broke down the Department's claims regarding septic tanks, showing that DEP had significantly under-estimated the amount of nitrogen loading entering the springs basins and miscalculated the benefits of transitioning from conventional to advanced septic systems.

The Florida Springs Council's final expert witness was Tom Greenhalgh, a longtime DEP employee and individual petitioner who owns property along the Suwannee River. Mr. Greenhalgh's testimony exposed that, despite a requirement in state law, the relevant current agricultural best management practices (BMPs) have never been verified by DEP to be effective in reducing nitrogen loading to groundwater. He showed that where BMPs have been implemented, like in the Santa Fe and Suwannee basins, they have completely failed to curb the increase in pollution to springs. In fact, because the BMAPs do not account for future growth in agricultural production, water quality is likely to get worse, even after BMP implementation.

FSC also put on a host of standing witnesses who travelled to Tallahassee to represent their individual organizations. Among these was Ichetucknee Alliance President John Jopling, who testified on the Santa Fe BMAP, “The statute doesn’t say you are going to come up with this plan unless it’s hard. It doesn’t say you are going to come up with this plan unless it steps on somebody’s toes. It says come up with a plan to reduce pollution. You must. You shall. And this plan manifestly simply doesn’t do that.”

On the final day of the hearing, famed springs photographer John Moran presented a collection of his photographs documenting the decline of Florida’s springs and what we all stand to lose if DEP’s failed plans go into law.

Over the next month, FSC attorneys, experts, and volunteers will draft a “Proposed Recommended Order” and submit it to the court for consideration. In early 2020, we expect a decision and look forward to working with DEP to draft new, successful, Basin Management Action Plans that restore water quality in Outstanding Florida Springs and meet the requirements under state law.

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The Florida Springs Council is the leading advocate for the restoration of Florida’s world-class springs and the protection of the Floridan aquifer. Find out more about FSC at floridaspringscouncil.org.